10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

F. List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a Special Local Regulation § 100.721 to read as follows:

§ 100.721 Special Local Regulations; Clearwater Super Boat National Championship, Gulf of Mexico; Clearwater Beach, FL.

(a) *Regulated Areas.* The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of the Gulf of Mexico contained within the following points: 27°58.67′ N, 82°50.32′ W, thence to position 27°58.60′ N, 82°49.98′ W, thence to position 28°00.88′ N, 82°50.35′ W, thence to position 28°00.80′ N, 82°49.90′ W, thence back to the original position, 28°58.67′ N, 82°50.32′ W.

(2) *Spectator Area.* All waters of Gulf of Mexico seaward no less than 150 yards from the race area and as agreed upon by the Coast Guard and race officials.

(3) *Enforcement Area.* All waters of the Gulf of Mexico encompassed within the following points: 28°58.67′ N, 82°50.62′ W, thence to position 28°00.95′ N, 82°49.75′ W, thence to position 27°58.53′ N, 82°50.53′ W, thence to position 27°58.38′ N, 82°49.88′ W, thence back to position 28°58.67′ N, 82°50.62′ W.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port St. Petersburg in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the Race Area unless an authorized race participant.

(2) Designated representatives may control vessel traffic throughout the enforcement area as determined by the prevailing conditions.

(3) All vessels are to be anchored and/or operate at a No Wake Speed in the spectator area. On-scene designated representatives will direct spectator vessels to the spectator area.

(4) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

(d) *Effective Date.* This section is effective annually from approximately 10 a.m. to 5 p.m. EDT daily during the last Saturday and Sunday of September.

Dated: August 13, 2014.

G.D. Case,

Captain, U.S. Coast Guard, Captain of the Port Saint Petersburg.

[FR Doc. 2014–21463 Filed 9–9–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450 and 771

Federal Transit Administration

49 CFR Parts 613 and 622

[Docket No. FHWA–2014–0031; FHWA RIN 2125–AF66; FTA RIN 2132–AB21]

Additional Authorities for Planning and Environmental Linkages

AGENCY: Federal Highway Administration, Federal Transit Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM provides interested parties with the opportunity to comment on proposed revisions to the Federal Highway Administration (FHWA) and the Federal Transit Administration's (FTA) 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. The revisions are prompted by the enactment of the *Moving Ahead for*

Progress in the 21st Century Act (MAP–21). Specifically, through this rulemaking FHWA and FTA would interpret and implement MAP–21's additional authority for FHWA and FTA to use planning products developed by States, Metropolitan Planning Organizations (MPO), and other agencies during the transportation planning process in the environmental review process for a project.

DATES: Comments must be received on or before November 10, 2014.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor Room W12–140, Washington, DC 20590–0001;
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329;
- *Instructions:* You must include the agency name and docket number or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Harlan W. Miller, Planning Oversight and Stewardship Team (HEPP–10), (202) 366–0847; or Mr. Jomar Maldonado, Office of the Chief Counsel (HCC–30), (202) 366–1373. For the FTA: Ms. Elizabeth Patel, Office of Planning and Environment, (202) 366–0244; or Ms. Nancy-Ellen Zusman, Office of Chief Counsel, (312) 353–2577. Both agencies are located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., Eastern Time for FHWA, and 9 a.m. to 5:30 p.m., Eastern Time for FTA, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2012, President Obama signed into law MAP–21 (Pub. L. 112–141, 126 Stat. 405); section 1310 codifies in 23 U.S.C. 168 an additional authority for the use of planning products in the environmental review process required under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). This NPRM proposes amendments to 23 CFR parts 450 and 771, as well as amendments to the authorities in 49 CFR parts 613 and 622, to reflect this additional authority. The FHWA and FTA, hereafter referred to as the ''Agencies,'' are carrying out this rulemaking on behalf of the Secretary.

General Discussion of the Proposal

The transportation planning process—established in 23 U.S.C. 134–135, 49 U.S.C. 5303–5304, and through implementing regulations at 23 CFR part 450—create the Statewide and Nonmetropolitan Transportation Planning and the Metropolitan Transportation Planning programs. These programs provide funding to support cooperative, continuous, and comprehensive planning for making transportation investment decisions throughout each State—both in metropolitan and nonmetropolitan areas.

The Statewide and Nonmetropolitan Transportation Planning Process

States must undertake a statewide planning process to develop a multimodal, long-range statewide transportation plan and a statewide transportation improvement program (STIP) (23 U.S.C. 135; 49 U.S.C. 5304; 23 CFR part 450, subpart B). The long-range statewide transportation plan must provide for the development of transportation facilities that function as an intermodal State transportation system and must cover at least a 20-year planning horizon at the time of adoption by the State (23 CFR 450.214). When developing a plan, States need to cooperate with MPOs in the metropolitan areas (23 CFR 450.208). In nonmetropolitan areas, States must cooperate with local elected officials who have the responsibility for transportation (23 CFR 450.208). Some States may have regional planning organizations to help support the planning process in nonmetropolitan areas. States also must provide an opportunity for public comment on the long-range statewide transportation plan (23 CFR 450.214).

In addition, States must develop a federally approved STIP at least once every 4 years (23 CFR 450.216). The STIP contains a 4-year program of projects, and must be consistent with the long-range statewide and metropolitan transportation plans. The STIP must identify the sources of funding that is reasonably expected to be available to support the program of projects in the STIP (23 CFR 450.216). When the State submits the STIP to the Agencies for approval, the State must certify that the metropolitan and statewide and nonmetropolitan transportation planning processes are in compliance with applicable requirements. The Agencies will approve the STIP if they jointly determine that the STIP substantially meets the statewide and nonmetropolitan transportation planning requirements (23 CFR 450.218).

The Statewide transportation planning process provides an opportunity for States, in cooperation with local elected officials and MPOs, as appropriate, to develop studies and analyses. The STIP identifies the projects or program of projects resulting from these studies and analyses. Examples of these studies and analyses may include corridor planning studies, evaluations of alternatives, traffic analyses and forecasts, growth studies, land use analyses, and population growth forecasts. It also provides an opportunity for States, in cooperation with local elected officials and MPOs, as appropriate, to make decisions that would affect transportation project proposals such as decisions on transportation mode choice (e.g., transit, highway, rail), financing (e.g., tolling, use of public-private partnerships), and general travel corridor location.

The Metropolitan Transportation Planning Process

Metropolitan transportation planning occurs in urbanized areas with a population of 50,000 or greater (23 U.S.C. 134; 49 U.S.C. 5303; 23 CFR part 450, subpart C). An MPO is the policy board of the organization created and designated by the Governor and local officials to carry out the metropolitan planning process in an urbanized area. The boundary of the metropolitan planning area covered by the MPO planning process is established by agreement between the Governor and the MPO and, in general, encompasses the current urbanized area and the area to be urbanized during a 20-year forecast period. Certain urbanized areas—generally those over 200,000 in population—are designated as transportation management areas (TMA).

An MPO establishes the investment priorities of Federal transportation funds in its metropolitan area through the metropolitan transportation plan and transportation improvement program (TIP). Each MPO, regardless of size, must prepare a metropolitan transportation plan and update it every 4 or 5 years (23 CFR 450.322). The plan must cover at least a 20-year planning

horizon at the time of adoption by the MPO. Before it adopts its plan, the MPO must provide a reasonable opportunity for public comment on the plan's content (23 CFR 450.322).

The MPO, in cooperation with the State and providers of public transportation, must also develop a TIP (23 CFR 450.324). The TIP is a prioritized listing/program of transportation projects covering a period of 4 years, and must include a financial plan that describes the sources of funding that would reasonably be expected to be available to support the projects in the TIP. The MPO must update and approve the TIP at least once every 4 years. Prior to approving the TIP, the MPO must provide a reasonable opportunity for public comment on the TIP. The TIP also is subject to approval by the Governor. When the MPO submits the TIP to the State, the MPO must certify that the metropolitan transportation planning process is in compliance with applicable requirements (23 CFR 450.334).

The Agencies must certify the transportation planning process in TMAs at least once every 4 years. During that certification process, the Agencies will review whether the process complies with the metropolitan transportation planning requirements (23 CFR 450.334).

Similar to the statewide transportation planning process, the metropolitan transportation planning process provides opportunities for agencies to develop analyses and studies, and to make decisions that may affect the proposals for projects.

NPRM on 23 CFR Part 450 and 49 CFR Part 613 Published June 2, 2014

The Agencies jointly issued another NPRM for 23 CFR part 450 and 49 CFR part 613 to reflect other changes made by MAP–21 on statewide and metropolitan planning processes (79 FR 31784, June 2, 2014). The proposed rule would make the regulations consistent with current statutory requirements and propose 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 processes, by requiring State to have a higher level of involvement with nonmetropolitan local officials and providing a process for the creation of regional transportation planning organizations; a structural change to the membership of the larger MPOs; a new framework for voluntary scenario planning; and a process for optional programmatic mitigation plans. Depending on timing, the Agencies may combine the proposed rules and issue a single final rule.

Other Planning Processes Pursuant to Federal Law

The statewide and metropolitan transportation planning processes are not the only planning processes that are conducted pursuant to Federal law. There are other planning processes that may occur during, but independent of the transportation planning process and that could produce planning products that should be considered in the environmental review of a project. For example, 23 U.S.C. 119(e) (section 1106 of MAP–21) requires States to develop risk-based asset management plans to improve or preserve the condition of assets in the National Highway System and to improve its performance. Another process outside the statewide and metropolitan transportation planning process is the process established by MAP–21's section 1315(b), requiring the evaluations of reasonable alternatives for roads, highways, or bridges that repeatedly require repair and reconstruction activities. The results of both of these types of planning activities could be useful to States and MPOs when making decisions about transportation needs and investments.

The FTA is required by law to evaluate and rate transit capital projects seeking funding under the discretionary Capital Investment Grant program (known more commonly as the New Starts, Small Starts, and Core Capacity program) authorized by 49 U.S.C. 5309. Additionally, proposed projects must proceed through several formal steps outlined in law before they can receive construction funding from FTA. Prior to the enactment of MAP–21, the law required that a project seeking Capital Investment Grant funding first complete a formal Alternatives Analysis study to evaluate the mode and alignment options for the project corridor. The Alternatives Analysis informed local officials and community members of the benefits, costs, and impacts of transportation options at a greater level of detail than is typically undertaken during the metropolitan transportation planning process. Although MAP–21 eliminated the requirement for a formal Alternatives Analysis study separate from the metropolitan transportation planning process and the environmental review process, some project sponsors may choose to complete the studies they already had underway when the law went into effect or initiate new Alternatives Analysis studies as a method to better inform local decisionmaking.

In addition, there are many planning processes conducted pursuant to Federal law that occur outside of the surface transportation context that could also produce planning products to assist in the environmental review of surface transportation projects. Examples include the development of State and local hazard mitigation plans (under Federal Emergency Management Agency's requirements), the Natural Resources Conservation Service's conservation plans, Federal Aviation Administration's airport layout plans, U.S. Fish and Wildlife Service habitat conservation plans, and U.S. Forest Service land management plans.

Planning and Environmental Linkages

The FHWA and FTA use the term Planning and Environment Linkages (PEL) to refer to the process of using and relying on planning analyses, studies, decisions, or other information for the project development and environmental review of transportation projects. With PEL, the Agencies could, 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 alternatives analyses conducted during planning; rely on future land use plans as a source of information for the cumulative impacts analysis required under NEPA; or rely on the modal choice selection as a method of establishing the criteria for the consideration of reasonable alternatives to address the identified need—provided such strategies are consistent with NEPA for the particular project.

States, MPOs, and local agencies can achieve significant benefits by incorporating environmental and community values into transportation decisions during early planning and carrying these considerations through project development and delivery. Through its focus on building interagency relationships, the PEL approach enables non-transportation Federal, State, and local government resource agencies and tribal governments to be more effective players in the transportation decisionmaking process. Federal, State, and local government resource agencies and tribal governments have an opportunity to help shape transportation projects by getting involved in the early stages of planning. In addition, improvements to interagency relationships may help resolve differences on key issues as

transportation programs and projects move from planning to design and implementation.

Since 1998, the Agencies have undertaken several initiatives to promote PEL. In February 2005, the Agencies disseminated a legal analysis and program guidance document, ''*Linking the Transportation Planning and NEPA Process*'' (*http://www.fhwa.dot.gov/hep/guidance/plannepalegal050222.cfm*), articulating how information, analyses, and products from the transportation planning process could be incorporated into and relied upon during the NEPA review process. In 2007, the Agencies developed the regulatory authorities in 23 CFR 450.212 and 450.318, taking into account the guiding principles from the 2005 legal analysis and program guidance. In addition, the Agencies developed and incorporated as Appendix A to 23 CFR part 450 more detailed guidance that described how information, analysis, and products from transportation planning can be incorporated into and relied upon in NEPA documents. Courts have upheld the PEL concept as a valid process for informing the project development process and the environmental review process.[1]

Congress established additional authority for PEL in 23 U.S.C. 168. This additional authority is not meant to displace or repeal other authorities that may be available for PEL, including the existing authority available in 23 CFR 450.212 and 450.318. Rather, it provides an additional avenue for pursuing PEL. See 23 U.S.C. 168(f)(3). This NPRM proposes to amend 23 CFR parts 450 and 771 to reflect the additional authority under 23 U.S.C. 168. It also amends the authorities in 49 CFR parts 613 and 622.

Section-by-Section Discussion of the Proposal

Subpart B—Statewide Transportation Planning and Programming

Section 450.212

The term ''environmental review process'' is used throughout 23 U.S.C. 168 and is defined in the section as ''the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared'' under NEPA. However, using this term throughout the regulation would create confusion with the term ''environmental review process'' defined under 23 U.S.C. 139(a)(3)(A), which ''includes the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than'' NEPA. To avoid this confusion, the Agencies propose to refer in the regulation to the NEPA classes of action (categorical exclusions (CE), environmental assessments (EA), or environmental impact statements (EIS)) and to other documents prepared under NEPA instead of relying on the term ''environmental review process.'' Proposed paragraph (d) contains the first instance.

Section 168 uses the term ''Federal lead agencies'' throughout. The Agencies propose to use the term throughout the proposed regulation to identify when the Federal agency is the responsible entity for a task. The term refers to the Federal agency that has the lead role in the NEPA process or the Federal agencies serving as joint leads when more than one Federal agency is involved. The term ''Federal lead agency'' is narrower than the term ''NEPA lead agencies'' used in 23 CFR 450.212(b)–(c) and 450.318(b)–(c) because it excludes non-Federal agencies that have been designated as joint lead agencies under 23 U.S.C. 139(c)(3). Section 168 makes clear that the Federal agency leading the NEPA review process bears the responsibility for taking some of the steps in the PEL adoption process pursuant to this authority. The use of ''Federal lead agency'' is also meant to capture States that have assumed the environmental review responsibilities of the Agencies under 23 U.S.C. 326 or 327. These sections establish programs that allow State agencies to assume the Agencies' NEPA responsibilities and responsibilities under other environmental requirements for highway and public transportation projects. The Agencies note that section 327(c)(2)(B)(iv) prohibits the assignment of responsibilities related to 23 U.S.C. 134 and 135 or 49 U.S.C. 5303 and 5304. However, this prohibition does not prohibit the assignment of responsibilities related to PEL under the authority of 23 U.S.C. 168 since this authority would be used during the NEPA review process and is a provision separate from 23 U.S.C. 134 and 135.

The Agencies propose to add a new paragraph (d) that interprets the new PEL authority under 23 U.S.C. 168. The introduction would make it clear that the authority granted in section 168 is a PEL authority in addition to other existing authorities for PEL such as 23 CFR sections 450.212(b) and 450.318(b), and 40 CFR 1502.21 (incorporation by reference). See 23 U.S.C. 168(f)(3). The introduction would establish the effect of the adoption process under section 168, which is to allow a planning product to be incorporated directly into an environmental review process document or other environmental document. See 23 U.S.C. 168(e). The introduction also emphasizes that the Agencies may adopt a planning product in its entirety or may choose to only adopt and use portions of these planning products. See 23 U.S.C. 168(b)(3). The introduction establishes that the timing of adoption could be at the time the Agencies and other joint lead agencies (like non-Federal lead agencies) are deciding the appropriate NEPA class of action or later when the Agencies are developing the NEPA documents. See 23 U.S.C. 168(b)(4). Finally, the introduction establishes that subparagraphs (d)(1) thru (d)(4) are pre-conditions prior to the adoption and use of planning products in the NEPA process under 23 U.S.C. 168.

The first condition, established through proposed paragraph (d)(1), is based on the definition of planning products found in 23 U.S.C. 168(a)(2) with three notable differences. First, the term ''timely'' used in the statute is not used in the rule. The Agencies believe that a timely planning product is a planning product that was approved no later than 5 years prior to the date on which the information will be adopted. See 23 U.S.C. 168(d)(10). The Agencies found that there was no need to introduce the term in the condition since this time restriction is a pre-requisite to adoption.

Second, in providing examples for detailed corridor or transportation plans, the statute makes specific reference only to those developed

[1] See *HonoluluTraffic.com* v. *Federal Transit Administration,* 742 F.3d 1222, 1230–32 (9th Cir. 2014) (using transportation planning process to define the project's purpose and need was reasonable, and reliance on a State-prepared alternatives analysis to eliminate alternatives was appropriate); *Building a Better Bellevue* v. *U.S. Dept. of Transp.,* 2013 WL 865843 (W.D. Wash. 2013) (Sound Transit's reliance in the transportation planning process to confine the purpose of the East Link to expanding light rail was reasonable, and the EIS was not required to study alternatives that did not meet that purpose); *Sierra Club* v. *U.S. Dept. of Transp.,* 310 F.Supp.2d 1168, 1193 (D. Nevada 2004) (a Federal agency does not violate NEPA by relying on prior studies and analyses performed by local and State agencies, and FHWA's reliance on the major investment study to eliminate alternatives was not arbitrary and capricious); *Laguna Greenbelt, Inc.* v. *U.S. Dept. of Transp.,* 42 F.3d 517, n. 6 (9th Cir. 1994) (the mere absence of a more thorough discussion in the EIS of alternatives that were discussed in and rejected as a result of prior State studies does not violate NEPA); *North Buckhead Civic Association* v. *Skinner,* 903 F.2d 1533, 1542–43 (11th Cir. 1990) (Federal, State, and local officials complied with federally mandated regional planning procedures to develop the purpose and need section of the EIS, and it was not necessary for the EIS to restate the conclusions of all the experts, or to engage in a rethinking of the regional and citywide transportation plans).

through the metropolitan planning process in 23 U.S.C. 134. The Agencies understand that the statute provides this reference as an example and believe that adding references to 23 U.S.C. 135 and 49 U.S.C. 5303–5304 would clarify that detailed corridor or transportation plans developed under those authorities are also covered by the section 168 authority.

Third, the Agencies are proposing a process for obtaining approvals for the planning products. Section 168(a)(2)(C) establishes that those planning products intended to be adopted and relied on during the environmental review process in accordance with the new section 168 authority must be approved by the State, all local and tribal governments where the project is located, and by any appropriate MPO. This approval requirement is a departure from current practice since approval is typically reserved for the overall plan and not required for the underlying analyses and studies that support the plan. Proposed paragraph (d)(1)(iii) puts the preparers of planning products on notice of this unique statutory requirement. The Agencies propose an approval process where the preparer of the planning product provides the planning product to the State, all local and tribal governments where the project is located, and appropriate MPO and allows them at least 60 days for its review and approval unless additional time is needed for good cause. The required approvals could occur through explicit approvals or through implicit approval if the State, local, or tribal government, or MPO remains silent, fails to object, or fails to explicitly disapprove the planning product within the 60 day period. The Agencies believe that 60 days is an appropriate time period that allows enough time for entities such as MPOs to meet to execute the required approval.

The second condition, established through proposed paragraph (d)(2), states that the planning product must be a planning decision or planning analysis. Planning decisions and planning analyses are described through the list of illustrative examples in section 168(c)(1)–(2). The Agencies note that this is not an exhaustive list of what could be considered a planning decision or planning analysis, but provides an illustration of the types of decisions or analyses that may be considered under this authority.

Proposed paragraph (d)(3) establishes that the preparer of the planning product must provide Federal, State, and local agencies that may have an interest in the project, tribal governments that may have an interest in the project, and the public with an opportunity to participate in the planning process that leads to the development of the planning product. The Agencies propose that this opportunity be announced through a notice, by publication or other means, during the planning process. The notification should identify the planning products that could be produced by the planning process and that could be used and relied upon during the NEPA process. This condition derives from 23 U.S.C. 168(d)(4). The Agencies decided to place this condition as a stand-alone prerequisite prior to the ''determination'' required from the Agencies in order to emphasize that it must be met at the planning stage instead of the NEPA stage, and that it must be met by the preparer of the planning product (i.e., State, MPO, or local agency) instead of the Federal lead agency. The Agencies believe that this difference between the location of the condition in the statutory and regulatory processes does not represent a substantial deviation from the statutory structure, and that this approach would retain the purpose of the statutory requirement while making it consistent with the planning process. The Agencies expect that this notification would be made during the agency consultation and public involvement process required for the plans.

Proposed paragraph (d)(4) establishes that the Federal lead agency must make a determination that the conditions in paragraphs (d)(4)(i)(A)–(H) have been met, secure the concurrence from all participating agencies in this determination, and make the determination and documentation relating to the planning product available for public review and comment before drafting, adopting and using the planning product for the NEPA process.

The list of conditions in proposed paragraphs (d)(4)(i)(A)–(H) is based on the list of conditions in 23 U.S.C. 168(d). Proposed paragraph (d)(4)(i)(A) mirrors section 168(d)(1) establishing that the planning product must be developed through a planning process conducted pursuant to applicable Federal law. Proposed paragraph (d)(4)(i)(B) reflects section 168(d)(2), which establishes that the planning product must have been developed through active consultation with appropriate Federal and State resource agencies and Indian tribes. It also adds a requirement that the Agencies must identify those agencies that participated in the development of the planning product if the planning product does not specifically mention them. This additional sentence is based on section 168(b)(2), which requires the Federal lead agency to identify the agencies that participated in the development of the planning product.

Proposed paragraph (d)(4)(i)(C) mirrors section 168(d)(3) which requires that the planning process must have included consideration of systems-level or corridor-wide transportation needs. Proposed paragraph (d)(4)(i)(D) mirrors section 168(d)(6) which establishes that no significant new information or new circumstances have occurred since the approval of the planning product. Proposed paragraph (d)(4)(i)(E) mirrors section 168(d)(7) which requires that the planning product be based on a rational basis and on reliable and reasonably current data and scientifically acceptable methodologies.

Proposed paragraph (d)(4)(i)(F) mirrors section 168(d)(8), which requires that the planning product be documented in sufficient detail to support the decision or the results of the analysis. Proposed paragraph (d)(4)(i)(G) mirrors section 168(d)(9), which requires the Federal lead agency to determine that the planning product is appropriate for adoption and use in the NEPA review. Finally, except for a correction due to a drafting error with the statute, the proposed paragraph (d)(4)(i)(H) mirrors section 168(d)(10), which the Agencies believe was intended to establish a 5-year limit on the validity of an approved planning product for purposes of the section 168 adoption process. Pursuant to the proposed regulatory language, for purposes of adoption and use of planning products under the authority of section 168, the date of approval of the planning products must not be earlier than 5 years from the date of its adoption and use in the NEPA process.

Proposed paragraph (d)(4)(ii) indicates that the lead agency must secure the concurrence on this determination from all participating agencies with relevant expertise. The lead agency should also secure the concurrence from project proponents as appropriate. Participating agencies are Federal and non-Federal agencies that have an interest in the project and have been invited to participate in the environmental review process for a project. See 23 U.S.C. 139(d)(1). The request for concurrence in the determination must include the planning products for review or indicate where the planning products may be found for review. The Agencies propose a process where the preparer of the planning product sends each

participating agency the determination and documentation relating to the planning product with a written request for concurrence. Once the participating agency acknowledges receipt of the material and the participating agency would have at least 60 days for its review and concurrence unless additional time is needed for good cause. The participating agency's acknowledgment of receipt may be done in a variety of ways such as oral communication (e.g., phone conversation or in person meeting), electronic (e.g., email), or regular mail (e.g., return receipt or letter acknowledging receipt). Each participating agency has the option of concurring or nonconcurring in the determination. The needed concurrence could occur through explicit concurrence or through implicit concurrence if the participating agency remains silent, fails to object, or fails to explicitly nonconcur with the determination within the 60-day period. Concurrence of the determination would be a concurrence with the Federal lead agency's determination that a planning product meets the conditions for use and adoption pursuant to section 168. Concurrence would not mean that the participating agency endorses the findings or conclusions of the planning product, nor that the data or methodologies are the only acceptable and reasonable ones available.

If one or more participating agencies do not concur, the statutory prerequisites for the use and adoption of the planning product through section 168 would not be met and the planning product cannot be used and adopted pursuant to the section 168 authority.

Proposed paragraph (d)(4)(iii) requires a public comment process for the determination. This comment process should also make available the documentation associated with the planning product that will be adopted and used. Ideally, this public review process will be coordinated with other public review processes required under NEPA, the environmental review process outlined in 23 U.S.C. 139, and the Agencies' environmental procedures. For example, the NEPA scoping process for an EIS provides an opportunity to share this determination with the public. Section 139(e) requires the Agencies to provide an opportunity for involvement by the participating agencies and the public in the definition of the purpose and need, and determining the range of alternatives. The public review process under this paragraph may be coordinated with these public involvement opportunities. The Agencies note that there may be situations where the public review and comment opportunity that must be provided under this authority would go above and beyond the public involvement required by NEPA, 23 U.S.C. 139, or the Agencies procedures. One example is when the FHWA or FTA would seek to adopt and rely on a planning product under this authority to support a CE determination.

Proposed paragraph (e) discusses the effect that the Agencies' adoption and use of a planning product pursuant to this authority may have on other Federal agencies. Section 168(e) establishes that any other Federal agency may use and rely on a planning product for their own reviews as long as the planning product and adoption meets the conditions outlined in section 168. The Agencies interpret ''reviews'' in this provision to mean the reviews other Federal agencies would need to undertake for environmental permits, licenses, and other approvals associated with the project, which also includes the NEPA responsibilities associated with those approvals. The provision in paragraph (e), like the statutory provision in section 168(e), is permissive and leaves it up to the reviewing Federal agency's discretion whether to rely on the planning product in its review.

Proposed paragraph (f) paraphrases the rules of construction established in section 168(f). The Agencies believe that the section applies to the incorporation by reference process outlined in paragraph (b), as well as the proposed section (d). These authorities should not be construed to (1) make NEPA applicable to the transportation planning process conducted under 23 U.S.C. and chapter 53 of 49 U.S.C.; (2) subject transportation plans and programs to NEPA if a CE determination, EA, or EIS process, or preparation of a document under NEPA is initiated for a project as a part of, or concurrently with, transportation planning activities; or (3) affect the use of planning products in the CE determination, EA, or EIS process, or document prepared under NEPA pursuant to other authorities under any other provision of law or to restrict the initiation of their development during the transportation planning process. Proposed paragraph (f)(3) is a savings clause that establishes that the authorities in sections 23 CFR 450.212 and 450.318, and section 168 do not prevent the reliance or use of planning products if another law exists that allows such reliance or use. It also establishes that nothing in these sections would prevent an entity from voluntarily initiating the start of the NEPA process during the transportation planning process.

Subpart C—Metropolitan Transportation Planning and Programming

Section 450.318

The Agencies propose to add a paragraph (f) to mirror the proposed section 450.212(d) but apply it to the metropolitan transportation planning process. The Agencies propose to add a section 450.318(g) that would mirror the proposed section 450.212(e) but apply it to the metropolitan transportation planning process. Finally, the Agencies propose to add a section 450.318(h) that would mirror the proposed section 450.212(f) but apply it to the metropolitan transportation planning process. The same discussion and analysis provided for the proposed paragraphs in section 450.212 applies to this section and is, therefore, incorporated by reference.

Part 771—Environmental Impact and Related Procedures

Section 771.111

The Agencies propose an amendment to paragraph (a)(2) of this section to reflect the new authority made available in 23 U.S.C. 168 and the proposed regulations in part 450.

Rulemaking Analyses and Notices

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

Executive Orders 12866 and 13563 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Agencies have determined preliminarily that this action would not be a significant regulatory action under

Executive Order 12866 nor would it be significant within the meaning of U.S. Department of Transportation regulatory policies and procedures (44 FR 11032). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It is anticipated that the economic impact of this rulemaking would be minimal. The changes that this rule proposes are intended to streamline environmental review.

These provisions are optional and would not have a significant cost impact for MPOs, States, or local providers of public transportation. It is anticipated that these optional provisions, if implemented, could potentially result in cost savings for the States, MPOs, and local providers of public transportation by minimizing the potential duplication of planning and environmental processes and by improved project delivery timeframes.

The Agencies do not have specific data to assess the monetary value of the benefits to the proposed changes to the planning process made by this rule because such data does not exist and would be difficult to develop. There are several other benefits of the proposal including the potential to enable agencies to be more effective players in the transportation decisionmaking process through its focus on building interagency relationships. By encouraging resource and regulatory agencies to get involved in the early stages of planning, agencies have an opportunity to help shape transportation projects.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the Agencies have evaluated the effects of this proposed rule on small entities and anticipate that this action would not have a significant economic impact on a substantial number of small entities.

States and metropolitan planning organizations are not included in the definition of a small entity 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 regulations are primarily intended for States and MPOs, the Agencies have determined that the action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $148.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the Agencies will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector. Additionally, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect 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 Agencies have analyzed this proposed action in accordance with the principles and criteria contained in Executive Order 13132 and determined that it would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The Agencies have also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We invite State and local governments with an interest in this rulemaking to comment on the effect that adoption of specific proposals may have on State or local governments.

Executive Order 13175 (Tribal Consultation)

States and MPOs are required through the transportation planning process to develop plans in consultation with Indian Tribal government. The proposed action would not substantively change how Indian Tribal governments are involved in the transportation planning process. The Agencies have analyzed this action under Executive Order 13175, and believe that it would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal law. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

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

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the Agencies solicit comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The Agencies have determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a), 91 FR 27534, May 10, 2012 (available online at *www.fhwa.dot.gov/enviornment/environmental_justice/ej_at_dot/order_56102a/index.cfm*), require DOT agencies to achieve environmental justice (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 populations and low-income populations in the United States. The DOT Order requires DOT agencies to address compliance with the Executive Order and the DOT Order in all rulemaking activities. In addition, both Agencies have issued additional documents relating to administration of the Executive Order and the DOT Order. On June 14, 2012, the 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 *www.fhwa.dot.gov/legsregs/directives/orders/664023a.htm*). The FTA also issued an update to its EJ policy, *FTA Policy Guidance for Federal Transit Recipients,* 77 FR 42077, July 17, 2012 (available online at *www.fta.dot.gov/legislation_law/12349_14740.html*).

The Agencies have evaluated this proposed rule under the Executive Order, 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, transit agencies, and MPOs, FHWA, and FTA encourage these entities to incorporate EJ principles into the statewide and metropolitan planning processes and documents as appropriate consistent with the applicable Orders and the FTA Circular. When the Agencies make a future funding or other approval decision on a project basis, they consider EJ at that point.

Nothing inherent in these proposed regulations would disproportionately impact minority or low income populations. The proposed regulations would establish procedures and other requirements to guide future State and local decisionmaking on programs and projects. Neither the regulations nor 23 U.S.C. 134 and 135 dictate the outcome of those decisions. The Agencies have determined that these proposed regulations, if finalized as proposed, would not cause disproportionately high and adverse human health and environmental effects on minority or low income populations.

Executive Order 13045 (Protection of Children)

The Agencies have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agencies certify that this action would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The Agencies do not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

Agencies are required to adopt implementing procedures for NEPA that establish specific criteria for, and identification of, three classes of actions: Those that normally require preparation of an EIS; those that normally require preparation of an EA; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This proposed 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 Agencies have evaluated whether the proposed action would involve unusual circumstances or extraordinary circumstances and have determined that this proposed action would not involve such circumstances.

The proposed rule provides the policies and requirements for statewide and metropolitan transportation plans and transportation improvement programs. The proposed 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.

Regulation Identification Number

An 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 recordkeeping requirements.

23 CFR Part 771

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Public lands, Recreation areas, Reporting and recordkeeping requirements.

49 CFR Part 613

Grant programs—transportation, Highways and roads, Mass transportation.

49 CFR Part 622

Environmental impact statements, Grant programs—transportation, Public transit, Recreation areas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FHWA and FTA propose to amend 23 CFR parts 450 and 771, and 49 CFR parts 613 and 622, as set forth below:

Title 23

PART 450—PLANNING ASSISTANCE AND STANDARDS

■ 1. The authority citation for part 450 is revised to read as follows:

Authority: 23 U.S.C. 134, 135, and 168; 42 U.S.C. 7410 et seq.; 49 U.S.C. 5303 and 5304; 49 CFR 1.85 and 1.90.

§ 450.212 [Amended]

■ 2. Amend § 450.212 by adding paragraphs (d), (e), and (f) to read as follows:

§ 450.212 Transportation planning studies and project development.

* * * * *

(d) In addition to the process for incorporation directly or by reference outlined in paragraph (b) of this section, a Federal lead agency may follow the process in this paragraph to adopt and use planning products in support of a determination that a project qualifies for a categorical exclusion, in the preparation of an environmental assessment or environmental impact statement, or in the development of other documents prepared under NEPA. The Federal lead agency may incorporate the planning product directly into a document prepared under NEPA. The Federal lead agency

may adopt a planning product in its entirety or may select portions for adoption. The determination with respect to adoption of a planning product may be made at the time the Federal lead agency and other joint lead agencies decide the appropriate scope of the class of action, as defined in 23 CFR 771.115, or later during the preparation of materials for compliance with NEPA requirements. To adopt and use planning products pursuant to this paragraph:

(1) The planning product must be a detailed decision, analysis, study, or other documented information that:

(i) Is the result of an evaluation or decisionmaking process carried out during transportation planning, including a detailed corridor plan or a transportation plan developed under 23 U.S.C. 134 or 135 (or 49 U.S.C. 5303–5304) that fully analyzes impacts on mobility, adjacent communities, and the environment;

(ii) Is intended to be carried into the transportation project development process; and

(iii) Has been approved by the State, all local and tribal governments where the project is located, and by any relevant metropolitan planning organization. Approved means that the preparer of the planning product provided the planning product to these entities with at least 60 days for review and approval, unless an extension is needed for good cause, and the entities:

(A) Explicitly approved the planning product; or

(B) Implicitly approved the planning product by remaining silent, failing to object, or failing to explicitly disapprove the planning product within the specified time.

(2) The planning product must be either a planning decision or a planning analysis.

(i) Planning decisions that may be adopted under this process include:

(A) Whether tolling, private financial assistance, or other special financial measures are necessary to implement the project;

(B) A decision with respect to modal choice, including a decision to implement corridor or subarea study recommendations to advance different modal solutions as separate projects with independent utility;

(C) A basic description of the environmental setting;

(D) A decision with respect to methodologies for analysis; and

(E) An identification of programmatic level mitigation for potential impacts that the Federal lead agency, in consultation with Federal, State, local, and tribal resource agencies, determines are most effectively addressed at a regional or national program level, including: System-level measures to avoid, minimize, or mitigate impacts of proposed transportation investments on environmental resources, including regional ecosystem and water resources; and potential mitigation activities, locations, and investments.

(ii) Planning analyses that may be adopted under this process include studies with respect to:

(A) Travel demands;

(B) Regional development and growth;

(C) Local land use, growth management, and development;

(D) Population and employment;

(E) Natural and built environmental conditions;

(F) Environmental resources and environmentally sensitive areas;

(G) Potential environmental effects, including the identification of resources of concern and potential cumulative effects on those resources, identified as a result of a statewide or regional cumulative effects assessment; and

(H) Mitigation needs for a proposed action, or for programmatic level mitigation, for potential effects that the Federal lead agency determines are most effectively addressed at a regional or national program level.

(3) The preparer of the planning product must provide Federal, State, and local agencies that may have interest in the proposed project, tribal governments that may have interest in the proposed project, and the general public with an opportunity to participate in the planning process leading to the development of the planning product. This opportunity must be offered through a notice, by publication or other means, during the planning process that identifies the planning products that the planning process would produce and that would be relied on during any subsequent NEPA review of the project.

(4) Prior to its determination that a project qualifies for a categorical exclusion, during the environmental impact statement, or environmental assessment process, or prior to the completion of other documents prepared under NEPA, the Federal lead agency must:

(i) Determine that all of the following conditions are met:

(A) The planning product was developed through a planning process conducted pursuant to applicable Federal law.

(B) The planning product was developed by engaging in active consultation with appropriate Federal and State resource agencies and Indian tribes. The determination must identify those agencies that participated in the development of the planning product if the planning product does not specifically mention the agencies.

(C) The planning process included broad, multidisciplinary consideration of systems-level or corridor-wide transportation needs and potential effects, including effects on the human and natural environment.

(D) There is no significant new information or new circumstance that has a reasonable likelihood of affecting the continued validity or appropriateness of the planning product.

(E) The planning product has a rational basis and is based on reliable and reasonably current data and reasonable and scientifically acceptable methodologies.

(F) The planning product is documented in sufficient detail to support the decision or the results of the analysis and to meet requirements for use of the information in the categorical exclusion determination, environmental assessment, or environmental impact statement process, or other documents prepared under NEPA.

(G) The planning product is appropriate for adoption and use in the categorical exclusion determination, environmental assessment, or environmental impact statement process, or other documents prepared under NEPA for the project.

(H) The planning product was approved, as established in paragraph (d)(1)(iii) of this section, not earlier than 5 years prior to the date on which the information is adopted.

(ii) Obtain the concurrence on this determination from other participating agencies with relevant expertise and, when appropriate, from project sponsors, and make the documentation relating to the planning product available for their review. Concurrence under this subsection means that the Federal lead agency provided the proposed determination and the documentation relating to the planning product to, and received acknowledgment of receipt by, each of these entities with at least 60 days for review and concurrence, unless an extension was needed for good cause, and each of these entities:

(A) Explicitly concurred with the determination; or

(B) Implicitly concurred with the determination by remaining silent, failing to object, or failing to explicitly nonconcur with the determination within the specified time.

(iii) Make this determination and the documentation relating to the planning product available for public comment,

and consider the comments received in its decision whether to adopt and use the planning product.

(e) Any other Federal agency may rely upon and use any planning product adopted by a Federal lead agency through this process in carrying out reviews of the project.

(f) This section shall not be construed to:

(1) Make NEPA applicable to the transportation planning process conducted under 23 U.S.C. and chapter 53 of 49 U.S.C.

(2) Subject transportation plans and programs to NEPA if a categorical exclusion determination, environmental assessment, or environmental impact statement process, or preparation of a document under NEPA is initiated as a part of, or concurrently with, transportation planning activities.

(3) Affect the use of planning products in the categorical exclusion determination, environmental assessment, or environmental impact statement process, or a document prepared under NEPA pursuant to other authorities under any other provision of law or to restrict the initiation of their development during the transportation planning process.

§ 450.318 [Amended]

■ 3. Amend § 450.318 by adding paragraph (f), (g), and (h) to read as follows:

§ 450.318 Transportation planning studies and project development.

* * * * *

(f) In addition to the process for incorporation directly or by reference outlined in paragraph (b) of this section, a Federal lead agency may follow the process in this paragraph to adopt and use planning products in support of a determination that a project qualifies for a categorical exclusion, in the preparation of an environmental assessment or environmental impact statement, or in the development of other documents prepared under NEPA. The Federal lead agency may incorporate the planning product directly into a document prepared under NEPA. The Federal lead agency may adopt a planning product in its entirety or may select portions for adoption. The determination with respect to adoption of a planning product may be made at the time the Federal lead agency and other joint lead agencies decide the appropriate scope of the class of action, as defined in 23 CFR 771.115, or later during the preparation of materials for compliance with NEPA requirements. To adopt and use planning products pursuant to this paragraph:

(1) The planning product must be a detailed decision, analysis, study, or other documented information that:

(i) Is the result of an evaluation or decisionmaking process carried out during transportation planning, including a detailed corridor plan or a transportation plan developed under 23 U.S.C. 134 or 135 (or 49 U.S.C. 5303–5304) that fully analyzes impacts on mobility, adjacent communities, and the environment;

(ii) Is intended to be carried into the transportation project development process; and

(iii) Has been approved by the State, all local and tribal governments where the project is located, and by any relevant metropolitan planning organization. Approved means that the preparer of the planning product provided the planning product to these entities with at least 60 days for review and approval, unless an extension is needed for good cause, and the entities:

(A) Explicitly approved the planning product; or

(B) Implicitly approved the planning product by remaining silent, failing to object, or failing to explicitly disapprove the planning product within the specified time.

(2) The planning product must be either a planning decision or a planning analysis.

(i) Planning decisions that may be adopted under this process include:

(A) Whether tolling, private financial assistance, or other special financial measures are necessary to implement the project;

(B) A decision with respect to modal choice, including a decision to implement corridor or subarea study recommendations to advance different modal solutions as separate projects with independent utility;

(C) A basic description of the environmental setting;

(D) A decision with respect to methodologies for analysis; and

(E) An identification of programmatic level mitigation for potential impacts that the Federal lead agency, in consultation with Federal, State, local, and tribal resource agencies, determines are most effectively addressed at a regional or national program level, including: System-level measures to avoid, minimize, or mitigate impacts of proposed transportation investments on environmental resources, including regional ecosystem and water resources; and potential mitigation activities, locations, and investments.

(ii) Planning analyses that may be adopted under this process include studies with respect to:

(A) Travel demands;

(B) Regional development and growth;

(C) Local land use, growth management, and development;

(D) Population and employment;

(E) Natural and built environmental conditions;

(F) Environmental resources and environmentally sensitive areas;

(G) Potential environmental effects, including the identification of resources of concern and potential cumulative effects on those resources, identified as a result of a statewide or regional cumulative effects assessment; and

(H) Mitigation needs for a proposed action, or for programmatic level mitigation, for potential effects that the Federal lead agency determines are most effectively addressed at a regional or national program level.

(3) The preparer of the planning product must provide Federal, State, and local agencies that may have interest in the proposed project, tribal governments who may have interest in the proposed project, and the general public with an opportunity to participate in the planning process leading to the development of the planning product. This opportunity must be offered through a notice, by publication or other means, during the planning process that identifies the planning products that the planning process would produce and that would be relied on during any subsequent NEPA review of the project.

(4) Prior to its determination that a project qualifies for a categorical exclusion, during the environmental impact statement, or environmental assessment process, or prior to the completion of other documents prepared under NEPA, the Federal lead agency must:

(i) Determine that all of the following conditions are met:

(A) The planning product was developed through a planning process conducted pursuant to applicable Federal law.

(B) The planning product was developed by engaging in active consultation with appropriate Federal and State resource agencies and Indian tribes. The determination must identify those agencies that participated in the development of the planning product if the planning product does not specifically mention the agencies.

(C) The planning process included broad, multidisciplinary consideration of systems-level or corridor-wide transportation needs and potential

effects, including effects on the human and natural environment.

(D) There is no significant new information or new circumstance that has a reasonable likelihood of affecting the continued validity or appropriateness of the planning product.

(E) The planning product has a rational basis and is based on reliable and reasonably current data and reasonable and scientifically acceptable methodologies.

(F) The planning product is documented in sufficient detail to support the decision or the results of the analysis and to meet requirements for use of the information in the categorical exclusion determination, environmental assessment, or environmental impact statement process, or other documents prepared under NEPA.

(G) The planning product is appropriate for adoption and use in the categorical exclusion determination, environmental assessment, or environmental impact statement process, or other documents prepared under NEPA for the project.

(H) The planning product was approved, as established in paragraph (e)(1)(iii) of this section, not earlier than 5 years prior to the date on which the information is adopted.

(ii) Obtain the concurrence on this determination from other participating agencies with relevant expertise and, when appropriate, from project sponsors and make the documentation relating to the planning product available for their review. Concurrence under this subsection means that the Federal lead agency provided the proposed determination and the documentation relating to the planning product to, and received acknowledgment of receipt by, each of these entities with at least 60 days for review and concurrence, unless an extension was needed for good cause, and each of these entities:

(A) Explicitly concurred with the determination; or

(B) Implicitly concurred with the determination by remaining silent, failing to object, or failing to explicitly nonconcur with the determination within the specified time.

(iii) Make this determination and the documentation relating to the planning product available for public comment and consider the comments received in its decision whether to adopt and use the planning product.

(g) Any other Federal agency may rely upon and use any planning product adopted by a Federal lead agency through this process in carrying out reviews of the project.

(h) This section shall not be construed to:

(1) Make NEPA applicable to the transportation planning process conducted under 23 U.S.C. and chapter 53 of 49 U.S.C.

(2) Subject transportation plans and programs to NEPA if a categorical exclusion determination, environmental assessment, or environmental impact statement process, or preparation of a document under NEPA is initiated as a part of, or concurrently with, transportation planning activities.

(3) Affect the use of planning products in the categorical exclusion determination, environmental assessment, or environmental impact statement process, or a document prepared under NEPA pursuant to other authorities under any other provision of law or to restrict the initiation of their development during the transportation planning process.

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 4. 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 1315, 1316, 1317, and 1318.

§ 771.111 [Amended]

■ 5. Revise § 771.111(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(f), which implement 23 U.S.C. 168.[3]

* * * * *

Title 49

PART 613—PLANNING ASSISTANCE AND STANDARDS

■ 6. The authority citation for part 613 is revised to read as follows:

Authority: 23 U.S.C. 134, 135, 168, 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).

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 7. The authority citation for part 622 is revised to read as follows:

Authority: 42 U.S.C. 4321 et seq.; 49 U.S.C. 303, 5301 and 5323; 23 U.S.C. 139, 168, and 326; Pub. L. 109–59, 119 Stat. 1144, sections 6002 and 6010; 40 CFR parts 1500–1508; 49 CFR 1.51; and Pub. L. 112–141, 126 Stat. 405, sections 1310, 1315, 1316 and 1317.

Issued in Washington, DC, on September 3, 2014, under authority delegated in 49 CFR 1.85 and 1.91.

Gregory G. Nadeau,

Acting Administrator, Federal Transit Administration.

Therese W. McMillan,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2014–21439 Filed 9–9–14; 8:45 am]

BILLING CODE 4910–22–P

[3] On February 14, 2007, FHWA and FTA issued guidance on incorporating products of the planning process into NEPA documents as Appendix A of 23 CFR part 450. This guidance, titled ''Linking the Transportation Planning and NEPA Processes,'' is available on the FHWA Web site at *http://www.fhwa.dot.gov* or in hard copy upon request.