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**DEPARTMENT OF TRANSPORTATION**

**[4910-22-P]**

**Federal Highway Administration**

**23 CFR Part 450**

**Federal Transit Administration**

**49 CFR Part 613**

**[Docket No. FHWA-2013-0037]**

**FHWA RIN 2125-AF52; FTA RIN 2132-AB10**

**Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FHWA and the FTA are jointly issuing this NPRM to propose revisions to the regulations governing the development of metropolitan transportation plans and programs for urbanized areas, State transportation plans and programs, and the congestion management process. The changes reflect recent passage of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21). The MAP-21 continues many provisions related to transportation planning from prior laws; however, it introduces transformational changes and adds some new provisions. The proposed rule would make the regulations consistent with current statutory requirements and proposes the following: a new mandate for State departments of transportation (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; revisions to the integration of the planning and environmental review process; and a process for programmatic mitigation plans.

**DATES:** Comments must be received on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Mail or hand deliver comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at <http://www.regulations.gov>, or fax comments to (202) 493-2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

## **Electronic Access and Filing**

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<https://www.federalregister.gov>.

**FOR FURTHER INFORMATION CONTACT:** For the FHWA: Mr. Harlan W. Miller, Planning Oversight and Stewardship Team (HEPP-10), (202) 366-0847; or Ms. Anne Christenson, Office of the Chief Counsel (HCC-30), (202) 366-1356. For the FTA: Ms. Sherry Riklin, Office of Planning and Environment, (202) 366-5407; Mr. Dwayne Weeks, Office of Planning and Environment, (202) 493-0316; or Mr. Christopher Hall, Office of Chief Counsel, (202) 366-5218. 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., e.t. for FHWA, and 9 a.m. to 5:30 p.m., e.t. for FTA, Monday through Friday, except Federal holidays.

## **SUPPLEMENTARY INFORMATION:**

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## **I. EXECUTIVE SUMMARY**

### **A. Purpose of the Regulatory Action**

The MAP-21 (Pub. L. 112-141) transforms 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 introduces critical changes to the planning process itself by requiring States, MPOs, and providers of public transportation to link investment priorities (the transportation improvement program of projects) to the achievement of performance targets that they would establish to address performance measures in the key areas such as safety, infrastructure condition, congestion, system reliability, emissions, and freight movement.

Accordingly, this proposed rule is central to the implementation of the overall performance management framework created by MAP-21. Additional changes include a new emphasis on nonmetropolitan transportation planning, changes to the structure of MPOs that serve a transportation management area (TMA), and codification of some existing best practices.

### **B. Summary of the Major Provisions of the Regulatory Action in Question**

As a fundamental element of a performance management framework, States, MPOs, and providers of public transportation will need to establish targets in key national performance areas to document expectations for future performance. This NPRM proposes in 23 CFR 450.206 and 450.306 that States, MPOs, and providers of public transportation coordinate their targets. The MAP-21 requires that MPOs reflect those

targets in their metropolitan transportation plan and encourages States to do the same in their long-range statewide transportation plan. Accordingly, this NPRM proposes that MPOs would reflect those targets in the metropolitan transportation plans. In addition, FHWA and FTA propose that States should reflect the targets in their long-range statewide transportation plans. Both States and MPOs would describe the anticipated effect toward achieving the targets in their respective transportation improvement programs.

In addition to these proposed changes to the planning provisions, MAP-21 contains new performance-related provisions requiring States, MPOs, and public transportation providers to develop other performance-based plans and processes. This NPRM proposes in §§ 450.206 and 450.306 that MPOs and States must integrate the goals, objectives, performance measures, and targets of other performance-based plans and processes into their planning processes.

This proposal also places a new emphasis on the importance of nonmetropolitan transportation planning. Proposed §§ 450.208 through 450.210 and 450.216 require the States to work more closely with nonmetropolitan areas. Additionally, this NPRM proposes that States should have the option of designating RTPOs to help address the planning needs of the nonmetropolitan areas of the State.

The MAP-21 made two changes specific to the metropolitan planning process. The first change affects the policy board structure of large MPOs. For each MPO serving a TMA, the planning statutes and current planning regulations identify a list of government or agency officials that must be on that policy board. Consistent with MAP-

21, this NPRM proposes in § 450.310 to add representation by providers of public transportation to this list of officials. The second change proposes in § 450.324 of this NPRM that MPOs may use scenario planning, 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. Both of these proposed changes will support the effective implementation of a performance-based planning process.

In addition to changing the planning statutes, MAP-21 continues efforts to expedite project delivery through better coordination between the transportation planning process and the environmental review process. Section 1310 of MAP-21 creates an additional process for integrating planning and the environmental review activities, but also preserves other authorities for integration. Sections 450.212 and 450.318 of the planning regulations are among those pre-MAP-21 authorities. Together with implementing regulations for the National Environmental Policy Act of 1969<sup>1</sup> adopted by the President's Council on Environmental Quality<sup>2</sup> and the FHWA and FTA,<sup>3</sup> §§ 450.212 and 450.318 have long provided pathways for using transportation planning information and decisions in the environmental review process. With one exception, FHWA and FTA propose to retain the existing regulatory provisions in §§ 450.212 and 450.318, as well as the guidance in Appendix A. The agencies will address implementation of section 1310 of MAP-21 and any needed updates to provisions on pre-MAP-21

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<sup>1</sup> 42 U.S.C. 4321, et seq.

<sup>2</sup> 40 CFR parts 1500-1508.

<sup>3</sup> 23 CFR part 771.

integration authorities through separate rulemaking or guidance. The exception is the proposed deletion of paragraph (d) of § 450.318 due to revisions made to 49 U.S.C. 5309 by MAP-21 (references to mandatory Alternatives Analysis within Appendix A are also proposed to be removed consistent with those changes). More specifically, MAP-21 removed the requirement for a stand-alone alternatives analysis for projects that seek section 5309(d) or (e) funding. In addition, the proposed new sections 450.214 and 450.320 would provide guidance on the optional development of programmatic mitigation plans for use during the project development and environmental review process.

Summary – Key Changes Proposed to the Planning Rule by this NPRM

Proposed Change	Description	Key Regulatory Section(s)
Performance Based Planning and Programming	The statewide and metropolitan transportation planning processes shall provide for the 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 29 U.S.C. 5301. These processes are where decisionmaking and investment priorities would be linked to	23 CFR 450.206(c) 23 CFR 450.208(g) 23 CFR 450.216(f) 23 CFR 450.218(r) 23 CFR 450.226 23 CFR 450.300(a) 23 CFR 450.306(a) 23 CFR 450.306(d) 23 CFR 450.314(a) 23 CFR 450.314(e) 23 CFR 450.314(g) 23 CFR 450.324(f)(3) 23 CFR 450.324(f)(4) 23 CFR 450.324(i)(1)(iii) 23 CFR 450.324(i)(2) 23 CFR 450.326(c) 23 CFR 450.326(d) 23 CFR 450.340

	targets in key areas. See 23 U.S.C. 150 and 49 U.S.C. 5326 and 5329.	
New emphasis on the importance of nonmetropolitan transportation planning	A State may establish and designate Regional Transportation Planning Organizations (RTPOs).	23 CFR 450.210(d)
	State consultation with nonmetropolitan local officials in the statewide planning process becomes State cooperation with nonmetropolitan local officials or, if appropriate, RTPOs.	23 CFR 450.208(a)(4) 23 CFR 450.210(b) 23 CFR 450.216(g) 23 CFR 450.218(c) 23 CFR 45.222(c)
Changes specific to the metropolitan planning process	MPOs that serve an area designated as a TMA shall include representation by providers of public transportation.	23 CFR 450.310(d)(1)(ii)
	MPOs may use scenario planning during the development of their plan.	23 CFR 450.324(i)
Programmatic Mitigation	States and MPOs may develop programmatic mitigation plans to address potential environmental impacts of future transportation projects as part of the	23 CFR 450.214 23 CFR 450.320

	statewide or metropolitan transportation planning process.	
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C. Costs and Benefits

The FHWA and FTA expect that the proposed regulatory changes to the planning process would improve decisionmaking through increased transparency and accountability and support the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301. The FHWA and FTA have not been able to find data or empirical studies to assist it in monetizing or quantifying the benefits of this NPRM. In addition, estimates of the benefits of this NPRM would be difficult to develop. The proposed 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 proposal would establish accountability through mandating reports on progress toward meeting those targets.

Other elements of the proposal also would improve decisionmaking, such as representation by providers 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 FHWA and FTA estimate the total cost of this proposed rule is \$30.8 million annually. 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 proposed rulemaking for all 52 States<sup>4</sup> and 420 (estimated) MPOs is approximately \$28.3 million per year. These costs are primarily attributable to an increase in staff time needed to meet the proposed requirements. For the estimated 600 total providers of public transportation that operate within metropolitan planning areas, the cost would be \$2.4 million per year in total. The total Federal, State, and local cost of the planning program is \$1,166,471,400. As the cost burden of this rule is estimated to be 2.6 percent of the total planning program, FHWA and FTA believe the economic impact of this rulemaking would be minimal and the benefits of implementing this rulemaking would outweigh the costs.

#### Summary of Average Annual Regulatory Costs and Burden Hours of Effort

Entity	Total Additional Cost	Non-Federal Share (20 %)	Average Additional Person Hours Per Agency
TMA MPOs (210)	\$18,402,300	\$3,680,500	1,800
Non-TMA MPOs (210)	\$3,909,200	\$781,800	400
States (52)	\$6,075,800	\$1,215,200	2400
Providers of Public Transportation (600)	\$2,440,000	\$488,000	100

<sup>4</sup> This number (52 States) includes the 50 States, the District of Columbia, and Puerto Rico. This is consistent with the definition of "States" in the current and proposed regulations at 23 CFR 450.104.

TOTAL	\$30,827,300	\$6,165,500	

## II. Background

### 1. 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—both in metropolitan and nonmetropolitan areas. Since the 1962 Federal-aid Highway Act,<sup>5</sup> Federal authorizing legislation for expenditure of surface transportation funds has required metropolitan and statewide transportation plans and transportation improvement programs to be developed through a 3-C planning process. Over successive reauthorization cycles, including the passage of MAP-21 in July 2012, Congress has revised and expanded the requirements for 3-C planning.

#### The Statewide and Nonmetropolitan Transportation Planning Process

States must undertake a 3-C statewide transportation planning process to develop a multimodal long-range statewide transportation plan and a statewide transportation improvement program (STIP).<sup>6</sup> The long-range statewide transportation plan must provide for the development of transportation facilities that function as an intermodal

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<sup>5</sup> Pub. L. No. 87-866, 76 Stat. 1145 (1962).

<sup>6</sup> See 23 U.S.C. 135.

State transportation system and must cover at least a 20-year planning horizon at the time of adoption by the State. There is not a required update cycle for the long-range statewide transportation plan. When developing a plan, States need to cooperate with the MPOs in the metropolitan areas. In nonmetropolitan areas, States must cooperate with local elected officials who have the responsibility for transportation. 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. As part of public engagement, FHWA and FTA encourage States to include minority and low-income populations and otherwise incorporate environmental justice principles into the statewide and nonmetropolitan planning process and documents as appropriate.

In addition, States must develop a federally approved STIP at least once every 4 years. 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 incorporate the transportation improvement programs (TIPs) developed by MPOs either directly or by reference without alteration. Finally, the STIP must identify the source of funding that is reasonably expected to be available to support the program of projects in the STIP. When the State submits the STIP to FHWA and FTA for approval, the State must certify that the metropolitan and statewide and nonmetropolitan transportation planning processes are in compliance with applicable requirements. The FHWA and FTA will approve the STIP if they jointly determine that the STIP substantially meets the statewide and nonmetropolitan transportation planning requirements.

## The Metropolitan Transportation Planning Process

Metropolitan transportation planning occurs in urbanized areas with a population of 50,000 or greater.<sup>7</sup> 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 TMAs.

An MPO establishes the investment priorities of Federal transportation funds in its metropolitan areas through the metropolitan transportation plan and TIP. Each MPO, regardless of size, must prepare a metropolitan transportation plan and update it every 4 or 5 years. 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. As part of public engagement, FHWA and FTA encourage MPOs to include minority and low-income populations and otherwise incorporate environmental justice principles into the metropolitan planning process and documents as appropriate.

The MPO, in cooperation with the State and providers of public transportation, must also develop a TIP. 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

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<sup>7</sup> 23 U.S.C. 134.

source of funding that would be reasonably 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.

In the TMAs, the metropolitan transportation planning process also must include a congestion management process (CMP).<sup>8</sup> The CMP provides for the effective management of new and existing transportation facilities through the use of travel demand reduction and operational strategies.

The FHWA and FTA must certify the transportation planning process in TMAs at least once every 4 years. During that certification process, FHWA and FTA will review whether the process complies with the metropolitan transportation planning requirements, including the new MAP-21 requirements.

## 2. What Does MAP-21 Do?

The MAP-21 leaves the basic framework of the planning process, as described above, largely untouched. However, MAP-21 introduces transformational changes to the planning process to increase transparency and accountability.<sup>9</sup> Most significantly, States and MPOs now must take a performance-based approach to planning and programming,

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<sup>8</sup> 23 U.S.C. 134(k)(3).

<sup>9</sup> MAP-21 sections 1201 and 1202 revising 23 U.S.C. 134 and 135; MAP-21 sections 20005 and 20006 revising 49 U.S.C. 5303 and 5304.

linking investment decisionmaking to the achievement of performance targets.<sup>10</sup> Along with its emphasis on performance-based planning and programming, MAP-21 emphasizes 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 makes some structural changes to the membership of the MPOs that serve a TMA. Finally, MAP-21 includes voluntary provisions related to scenario planning and developing programmatic mitigation plans. Many of these non-performance management changes codify existing best planning practices.

### 3. Stakeholder Engagement

Beginning in 2009, FHWA and FTA initiated a series of peer exchanges, conferences, and workshops to develop a framework for performance-based planning and programming. These sessions explored how States, MPOs, regional planning organizations, and providers of public transportation were implementing performance-based planning and programming, both individually and in concert with their planning partners and stakeholders. During FHWA's and FTA's outreach efforts, the States and MPOs emphasized the need to integrate performance-based planning and programming into the existing, long-standing planning processes, and to avoid creating a separate or distinct process for performance-based planning.

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<sup>10</sup> By October 1, 2017, the Secretary of Transportation must submit to Congress a report evaluating the overall effectiveness of performance-based planning and the effectiveness of the performance-based planning process of each State and MPO. In addition, the Secretary will be required to report on the extent to which the MPOs have achieved the performance targets. 23 U.S.C. 134(l) and 135(h)(2) and 49 U.S.C. 5303(l) and 5304(h)(2).

After the passage of MAP-21, FHWA and FTA continued to engage stakeholders to discuss how FHWA and FTA could best implement the various MAP-21 changes to the planning process. This outreach included ongoing workshops on performance-based planning and programming, general and topic-based Webinars, an online dialogue, and participation at stakeholder meetings and conferences. The FHWA and FTA hosted Webinars on the planning provisions of MAP-21, as well as specific topics such as performance-based planning and programming. Participants in the Webinars included States, MPOs, and providers of public transportation.

The FTA also conducted an online dialogue on the topic of TMA MPO structure and the new MAP-21 requirement to include representation by providers of public transportation in that structure. Issues raised in the dialogue included voting representation and determining the process for inclusion of providers of public transportation on MPOs. A transcript from this online dialogue is included with the docket for this NPRM.

A list of the various stakeholder outreach initiatives, including any notes, meeting minutes, or recordings taken during the outreach, and comments received prior to publication, if any, are included in the docket for this NPRM. External stakeholders frequently commented on the need for flexibility and simplicity in implementing MAP-21 requirements given the varying size, capabilities, and operating environments of States, MPOs, and providers of public transportation. Stakeholders also expressed concerns regarding potential difficulties, uncertainties, and risks associated with implementing new provisions such as performance-based planning and programming.

### **III. Major Proposed Revisions to the Planning Rule**

#### **A. Performance-Based Planning and Programming**

The MAP-21 transforms 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.<sup>11</sup> As part of this new performance-based approach, recipients of Federal-aid highway program funds and Federal transit funds would be required to link the investment priorities contained in the STIP and TIP to achieving performance targets. This proposed rule is one of several proposed rules that would establish the basic elements of a performance driven, outcome-based program. This proposed rule is important to the FHWA's and FTA's overall implementation of the performance management provisions of MAP-21 because the planning process brings all of the elements together by tying performance to investment decisionmaking.

Several MAP-21 provisions administered by FHWA and FTA focus on the achievement of performance outcomes. In implementing these provisions, FHWA and FTA are undertaking a number of separate but related rulemakings. This NPRM addresses the metropolitan transportation planning and statewide and nonmetropolitan transportation planning provisions of MAP-21. Additional FHWA and FTA performance-related rules include: Federal-aid Highway Performance Measure Rules [RIN 2125-AF49, 2125-AF53, 2125-AF54], updates to the Highway Safety Improvement

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<sup>11</sup> See, e.g., 23 U.S.C. 150(a).

Program Regulations [RIN 2125-AF56], Federal-aid Highway Risk-Based Asset Management Plan Rule for the National Highway System (NHS) [RIN 2125-AF57], Transit Asset Management Rule [RIN 2132-AB07], and National and Public Transportation Safety Plans Rule [RIN 2132-AB20].<sup>12 13</sup> A more detailed discussion of these related rulemakings is included in FHWA's first proposed Federal-aid Highway Performance Measure Rule, which is available online at [www.fhwa.dot.gov/tpm/](http://www.fhwa.dot.gov/tpm/).

These performance-related rules for the various FHWA and FTA programs will implement the basic elements of a performance management framework, such as establishment of performance measures and targets and reporting requirements. The planning process brings these elements together—it is where States, MPOs, and providers of public transportation will link decisionmaking and investment priorities to performance targets in key areas.<sup>14</sup> The FHWA and FTA will establish national performance measures in key areas, including safety, infrastructure condition, congestion, system reliability, emissions, and freight movement.<sup>15</sup>

The performance management framework requires States, MPOs, and providers of public transportation to use these measures to establish targets in these key national performance areas to document expectations for future performance.<sup>16</sup> The proposed

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<sup>12</sup> The FTA anticipates publishing a consolidated Advance Notice of Proposed Rulemaking that will present the two transit rules under RIN 2132-AB20.

<sup>13</sup> Another performance-related rule issued by the National Highway Traffic Safety Administration is the Uniform Procedures for State Highway Safety Grant Programs, Interim Final Rule, 78 FR 4986 (January 23, 2013) (to be codified at 23 CFR part 1200).

<sup>14</sup> In addition to establishing targets related to the performance measures identified in Title 23 and Chapter 53 of Title 49, States and MPOs may establish targets related to locally created measures.

<sup>15</sup> See 23 U.S.C. 150(b) and 49 U.S.C. 5326(c) and 5329.

<sup>16</sup> 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).

regulatory changes in §§ 450.206 and 450.306 mandate States and MPOs, respectively, to coordinate their targets with each other to ensure consistency, to the maximum extent practicable. In addition, for transit-related targets, States and MPOs would need to coordinate their targets relating to safety and state of good repair with providers of public transportation to ensure consistency with other performance-based provisions applicable to transit providers, to the maximum extent practicable. This coordination through the planning process should help align MPO and State decisionmaking and advance performance outcomes for the States.

The FTA and FHWA request public comment on the following questions relating to target-setting: What obstacles do States, MPO and transit providers foresee to the coordination among them that is necessary in order to establish targets? What mechanisms currently exist or could be created to facilitate coordination? What role should FHWA and FTA play in assisting States, MPOs and transit providers in complying with these new target-setting requirements? What mechanisms exist or could be created to share data effectively amongst States, MPOs and transit providers? For those States, MPOs and transit providers that already utilize some type of performance management framework, are there best practices that they can share?

Once performance targets are selected, MAP-21 requires that MPOs reflect those targets in their metropolitan transportation plans and encourages States to do the same. Accordingly, this NPRM proposes<sup>17</sup> that, in their transportation plans, MPOs would need to describe these performance targets, evaluate the condition and performance of the

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<sup>17</sup> See proposed §§ 450.216, 450.218, 450.324 and 450.326.

transportation system, and report on progress toward the achievement of their performance targets.<sup>18</sup> In addition, States should include similar information in their transportation plans.<sup>19</sup> Importantly, as part of the State and MPO program of projects (the STIPs and TIPs, respectively), the States and MPOs would need to 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.<sup>20</sup> 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.

The MAP-21 performance-related provisions also require States, MPOs, and public transportation providers to develop other performance-based plans and processes or impose 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,<sup>21</sup> the strategic highway safety plan,<sup>22</sup> the public transportation agency safety plan,<sup>23</sup> the highway and transit asset management plans,<sup>24</sup> and, optionally, a State freight plan.<sup>25</sup> This NPRM proposes in §§ 450.206 and 450.306 that MPOs and States integrate the goals, objectives, performance measures, and targets of these other performance plans and processes into their planning

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<sup>18</sup> See 23 U.S.C. 134(i)(2) and 49 U.S.C. 5303(i)(2).

<sup>19</sup> 23 U.S.C. 135(f)(7) and 49 U.S.C. 5304(f)(7).

<sup>20</sup> 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).

<sup>21</sup> See 23 U.S.C. 149.

<sup>22</sup> See 23 U.S.C. 130 and 148.

<sup>23</sup> See 49 U.S.C. 5329.

<sup>24</sup> See 23 U.S.C. 119 and 49 U.S.C. 5326.

<sup>25</sup> See MAP-21 Section 1118.

process.<sup>26</sup> This integration would help ensure that key performance elements of these other performance plans are considered as part of the investment decisionmaking process.

The metropolitan planning agreement helps facilitate the working relationship among MPOs, States, and providers of public transportation. In this NPRM, FHWA and FTA propose to amend § 450.314 to require that MPOs include a description in their metropolitan planning agreements that identifies how the parties would cooperatively implement these performance-based planning provisions. The amended metropolitan planning agreements would identify 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 agreements would 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.<sup>27</sup>

The FHWA and FTA seek public comment on how regional planning coordination can be further improved in situations where multiple MPOs serve one or several adjacent urbanized areas. Additionally, FHWA and FTA seek 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.

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<sup>26</sup> 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).

<sup>27</sup> Federal-aid Highway Risk-Based Asset Management Plan Rule for the National Highway System (NHS) [RIN 2125-AF57].

## B. New Emphasis on Nonmetropolitan Transportation Planning

As indicated by the change in the title to the statutory section, MAP-21 places a new emphasis on the importance of nonmetropolitan transportation planning. The MAP-21 requires the States to work more closely with nonmetropolitan areas. It also gives States the opportunity to designate RTPOs to help address the planning needs of the nonmetropolitan area of the State.

Prior to MAP-21, when developing the long-range statewide transportation plan and the STIP, the State was required to consult with nonmetropolitan local officials, which meant that the State would confer with nonmetropolitan local officials and consider their views.<sup>28</sup> Under MAP-21 and these proposed regulations, States retain decisionmaking authority, but would be required to cooperate with nonmetropolitan local officials, which means that they would be required to work together to achieve a common outcome.<sup>29</sup> Changing from “consultation” to “cooperation” means States would need to work more closely with nonmetropolitan local officials in the development of the long-range statewide transportation plan and the STIP.

To support States’ efforts to cooperate with nonmetropolitan areas, MAP-21 provides a more formal framework for States to optionally designate and establish RTPOs.<sup>30</sup> States have long had the option of establishing regional planning organizations to conduct transportation planning in nonmetropolitan areas, and several States have successfully done so. The MAP-21 codifies this best practice by formally providing for

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<sup>28</sup> See 23 CFR 450.104.

<sup>29</sup> See 23 CFR 450.104.

<sup>30</sup> See 23 U.S.C. 135(m) and 49 U.S.C. 5304(l).

RTPOs. This NPRM proposes in § 450.210 that States may designate and establish RTPOs, and that the duties of the RTPO include the development and maintenance of regional long-range multimodal transportation plans and regional TIPs and fostering the coordination of local planning. These regional plans and programs, along with public involvement, would assist the State in development of the long-range statewide transportation plan and the STIP.

C. Additions to the Metropolitan Planning Process

The MAP-21 made two changes specific to the metropolitan planning process—one change affects the policy board structure of large MPOs, and the second establishes a process for scenario planning. Both of these changes would support the effective implementation of a performance-based planning process.

First, for each MPO serving a TMA, the planning statutes and current planning regulations identify a list of government or agency officials that must be on that policy board, including local elected officials, administrators or operators of major modes of transportation, and appropriate State officials. The MAP-21 specifically identifies in this list<sup>31</sup> representatives of providers of public transportation. This proposal would add representatives of providers of public transportation to the list of officials in § 450.310. This NPRM proposes that representatives of providers 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. It is up to the MPO, in cooperation with providers of public transportation, to determine how this representation will be structured and

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<sup>31</sup> 23 U.S.C. 134(d) and 49 U.S.C. 5303(d).

established. The MPOs can restructure to meet this requirement without being redesignated by the Governor and local officials.

Including public transportation representation on each MPO serving a TMA supports the new performance requirements for providers of public transportation, including the coordination of MPO targets with providers of public transportation, the coordination of public transportation provider targets with MPOs, and the integration of public transportation performance plans into the metropolitan transportation planning process.

Second, this NPRM proposes in § 450.324 that MPOs may use scenario planning during the development of their metropolitan transportation plans.<sup>32</sup> Scenario planning is currently used by many MPOs as part of their transportation planning process, and FHWA and FTA consider it a best practice.<sup>33</sup>

Scenario planning is an analytical framework that evaluates the effects of alternative policies, plans and/or programs on the future of a community or region. Scenario planning informs decision makers and the public on the potential implications of various transportation system investments and performance. Scenario planning may consider potential regional investment strategies, distribution of population and employment, land use, future climate scenarios, system performance measures including

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<sup>32</sup> 23 U.S.C. 134(i)(4) and 49 U.S.C. 5303(i)(4).

<sup>33</sup> FHWA and FTA have developed resources on scenario planning such as case studies and a Guidebook that are available at: [https://www.fhwa.dot.gov/planning/scenario\\_and\\_visualization/scenario\\_planning](https://www.fhwa.dot.gov/planning/scenario_and_visualization/scenario_planning). DOT has incorporated climate change scenarios, sustainability, and resilience into best practices documents DOT shares with the States and MPOs. Examples include the Cape Cod and the New Mexico climate scenario planning projects case studies that are available at: [www.volpe.dot.gov/interagencyproject.html](http://www.volpe.dot.gov/interagencyproject.html) and [www.volpe.dot.gov/nmscenarioplanning](http://www.volpe.dot.gov/nmscenarioplanning).

locally developed measures, and the relationship between investments and local priorities. A defining characteristic of successful scenario planning is that it actively involves the public, the business community, and elected officials on a broad scale, educating them about, and incorporating their values and feedback into future plans.

The FHWA's and FTA's proposal encourages MPOs to use scenario planning during development of the transportation plan. If used, it should include an analysis of how the preferred scenario maintains or improves transportation system condition and performance. Use of scenario planning can improve the effectiveness of a performance management approach because it allows decisionmakers to understand alternative approaches to achieving their performance targets and optimize the use of limited transportation funds.

#### D. Programmatic Mitigation

In addition to revising the planning statutes, MAP-21 provides an array of provisions designed to increase innovation and improve efficiency, effectiveness, and accountability in the planning, design, engineering, construction, and financing of transportation projects. These provisions continue efforts to expedite project delivery through better coordination between the transportation planning process and the environmental review process pursuant to the National Environmental Policy Act.<sup>34</sup>

The MAP-21 creates a new statutory framework for the optional development of programmatic mitigation plans as part of the planning process for use during the

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<sup>34</sup> 42 U.S.C. 4321, et seq.

environmental review process.<sup>35</sup> Use of these plans can expedite project development because the plans provide opportunities for early consideration of environmental resources at a statewide, regional, or corridor level and identify options for mitigating impacts to environmental resources. Prior to the passage of MAP-21, States and MPOs could develop programmatic environmental mitigation plans as part of the statewide metropolitan transportation planning processes.<sup>36</sup> These new provisions would create a regulatory framework for States' and MPOs' possible development of programmatic environmental plans, including the scope, contents, and process for developing these plans. The proposed new §§ 450.214 and 450.320 would provide guidance on the use of the programmatic mitigation plan during the project development and environmental review process, as described more fully in the section-by-section discussion.

#### **IV. Section-by-Section Discussion**

The FHWA and FTA have drafted the section-by-section discussion for the statewide and nonmetropolitan planning sections and the metropolitan planning sections so those sections are self-contained sections. Although this approach may seem repetitive, it will enable stakeholders to review the sections that are relevant to them while minimizing references to other sections.

Sections or paragraphs that would be unchanged under this proposal or where the only changes would be in numbering are not identified in this discussion. In addition, references to the statewide transportation improvement program, metropolitan planning

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<sup>35</sup> See 23 U.S.C. 169 (MAP-21 Section 1311).

<sup>36</sup> See 23 U.S.C. 134(i)(2)(D) and 135(f)(4); 49 U.S.C. 5303(i)(2)(B) and 5304(f)(4).

organizations, the Clean Air Act, and others may have been changed to the appropriate acronym. Minor and nonsubstantive changes in capitalizations, changing certain numbers from words to numerals, changes to citation format and order, adding statutory citations to some Clean Air Act references, updates to renumbered cross-references to other sections within part 450, updates to statutory references, and changes from “USDOT” to “DOT” have also been made throughout the proposed regulations without further discussion. In addition, some minor, nonsubstantive grammatical changes were made to provide clarity, including several changes throughout the regulatory text from the passive voice to the active voice without changing the meaning. The docket contains a redline version of the regulatory text showing the differences between the existing regulatory text for 23 CFR part 450 and the proposed regulatory text.

*Subpart A--Transportation Planning and Programming Definitions*

*Section 450.104 Definitions*

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

“Alternatives analysis” would be removed consistent with MAP-21 changes to FTA’s Fixed Guideway Capital Investment Grant Program (49 U.S.C. 5309), which eliminated the requirement to undertake an alternatives analysis.

“Amendment” would be updated to more accurately reflect the relationship of the Clean Air Act’s transportation conformity requirements to the planning process, specifically, to clarify that a conformity determination is not a criterion for determining the need for an amendment in nonattainment and maintenance areas. In addition, the

phrase “changing the number of stations in the case of fixed guideway transit projects” would be added to the list of examples of major changes in design concept or design scope.

“Asset management” would be a new definition that would be identical to the definition in MAP-21 Section 1103 (23 U.S.C. 101(a)(2)).

“Committed funds” would be updated to reflect changes to FTA terminology resulting from MAP-21 Section 20008 (49 U.S.C. 5309(h)(7)). Specifically, “Project Grant Agreement” would become “Expedited Grant Agreement.”

“Conformity” would be changed to add “subpart A” after the reference to “40 CFR part 93” to be more specific regarding the citation for the transportation conformity regulations. In addition, “transportation conformity rule” would be changed to “transportation conformity regulations” for clarity. Both of these changes are made throughout the proposed regulatory text where appropriate; please see the redline version of the regulatory text included in the docket for all instances. The phrase “or any required interim emission reductions or other milestones in any area” is added to the end of the second sentence of the definition to conform with the language in section 176(c)(1)(A)(iii) of the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

“Congestion management process” would be changed to add the phrase “travel demand reduction and” as part of the definition to make it consistent with the long-standing statutory definition in 23 U.S.C. 134(k)(3)(A).

“Consideration” would be updated to include the word “consequences” as an item to take into account.

“Designated recipient” would be updated to conform to the statutory definition, now in 49 U.S.C. 5302(4)(B)—“State regional authority” would be changed to “State or regional authority.” Changes resulting from MAP-21 would include: deleting reference to 49 U.S.C. 5306, changing “chief executive officer” to Governor, and replacing “transportation management areas (TMAs) identified under 49 U.S.C. 5303” with “urbanized areas of 200,000 or more in population.” See 49 U.S.C. 5302(4)(A).

“Environmental mitigation activities” would be updated to provide a more readable, streamlined definition for environmental mitigation activities without changing the substance of the definition. The proposed definition would remove reference to “activities” in the list of activities because it is duplicative. It would remove the phrase “compensate for (by replacing or providing substitute resources)” and replace it with “rectify, reduce, or eliminate” because any compensation would typically occur in project development, not in planning. It would remove the phrase “or disruption of elements” of the plan because it is unnecessary. It changes “human and natural environment” to “environmental resources” because it is more specific to state that environmental mitigation would address avoiding or minimizing potential impacts to specific environmental impacts during planning. It also would remove the last two sentences of the definition, which further expound on the definition of human and natural environment, and describe the regional nature of environmental mitigation activities. These sentences were removed because FHWA and FTA did not want States and MPOs to limit mitigation under consideration to only the listed examples as there might be other areas where mitigation could be considered.

“Expedited Grant Agreement (EGA)” would be a new definition added to reflect a new term used in MAP-21. An EGA means a contract that defines the scope, the Federal financial contribution, and other terms and conditions of a Small Starts project, in accordance with 49 U.S.C. 5309(h)(7).

“Freight shippers” would be revised to broaden the definition to include any entity that routinely transports cargo from one location to another by providers of freight transportation services or by their own operations, involving one or more travel modes. The FHWA and FTA believe the existing definition is too narrow because it is limited to “any business that routinely transports its products from one location to another.” The proposed revised definition for “freight shippers” would be expanded to mean “any entity that routinely transports cargo from one location to another.” The term “entity” would be used in the revised definition to mean any entity that is shipping cargo, and it would replace the term “business,” which was used in the old definition, because it is too limited. The term “products” as used in the existing definition would be changed to “cargo” because “products” is limited to “products” resulting from “business” while “cargo” more widely considers movement of other goods in addition to “products.” “Vehicle fleet” would be changed to “involving one or more travel modes” to reflect the fact that that there may be more than one travel mode involved in shipping freight (e.g., freight movement between trucks and rail at an intermodal facility).

“Highway Safety Improvement Program” (HSIP) would be a new definition. As discussed in the major revisions discussion above, MAP-21’s shift to performance-based approach to transportation planning includes several elements. One of those elements is

the requirement to integrate the goals, objectives, performance measures, and targets from other performance-based plans and processes into the statewide and metropolitan transportation planning processes. The HSIP would be one of those processes. The new definition would be taken from the proposed 23 CFR 924.3. See the updates to the HSIP regulations [RIN 2125-AF56].

“Illustrative project” would be revised to remove a reference to “(but is not required to)” after the word “may” because it is redundant.

“Local official” would be added as a new definition because of the new emphasis under MAP-21 on nonmetropolitan transportation planning. In particular, MAP-21 requires States to work more closely with nonmetropolitan local officials. A local official would be defined as an elected or appointed official of general-purpose local government with responsibility for transportation.

“Major modes of transportation” is a proposed new definition. The FHWA and FTA propose to add this definition to help clarify the use of the term “major modes of transportation” as it relates to the changes in structure to each MPO that serves a TMA. Although each MPO that serves a TMA will continue to consist of officials, including “officials of public agencies that administer or operate major modes of transportation in the metropolitan area,” MAP-21 adds to the end of this phrase “representation by providers of public transportation.” Major modes of transportation would mean those forms of transportation administered, managed, owned, or operated by public agencies or authorities that provide services to the public for the movement of people and goods, or as operated by the private sector on behalf of a public, agency-owned facility.

“Metropolitan Planning Agreement” is a proposed new definition that would mean 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, including performance-based planning. Even though Metropolitan Planning Agreements are currently provided for in § 450.314, FHWA and FTA propose this definition because this agreement plays an important role in transitioning to a performance-driven, outcome-based program by helping to identify how MPOs, States, and providers of public transportation would cooperatively implement performance-based planning.

“Non-metropolitan local officials” would be revised to change “non-metropolitan” to “nonmetropolitan.” This change would be made throughout the proposed regulatory text; to see all the instances please refer to the redline in the docket as referenced above.

“Obligated projects” would be updated to clarify that funds may have been obligated in the preceding program year or the current year.

“Performance measures,” “performance metrics,” and “performance targets” would be new definitions added as a result of the new performance-based planning provisions in MAP-21, including sections 1203, 20019, and 20021 (23 U.S.C. 150 and 49 U.S.C. 5326 and 5329). These definitions would refer to the definitions developed for these terms during the rulemakings to implement the referenced MAP-21 provisions. See Federal-aid Highway Performance Measure Rules [RIN 2125-AF49, 2125-AF53, 2125-

AF54], Transit Asset Management Rule [RIN 2132-AB07], and National and Public Transportation Safety Plans Rule [RIN 2132-AB20].

“Project construction grant agreement” would be deleted because MAP-21 renamed it “Expedited Grant Agreement” (which is included as a new definition), in accordance with 49 U.S.C. 5309(h)(7).

“Provider of freight transportation services” would be modified so that “goods” is changed to “cargo” to be consistent with the definition of “freight shippers.”

“Public transportation agency safety plan” is a proposed new definition and would mean a comprehensive plan established by a State or recipient of funds under Title 49, chapter 53. This definition reflects MAP-21’s new requirement that the statewide and nonmetropolitan transportation planning process integrate the goals, objectives, performance measures, and targets from other performance-based plans. The public transportation agency safety plan would be one of those plans.

“Public transportation operator” would be modified to provide clarification. The phrase “public entity” in the existing definition would be changed to “public entity or government-approved authority.” This would reflect that the public transportation operator may be: (1) A public entity, or (2) a governmental-approved authority that is not a public entity. Also, the definition is modified so that the list of entities that are not considered to be “public transportation operators” would be expanded to include a conveyance that provides “sightseeing” or “certain types of shuttle service.”

“Regional Transportation Planning Organization (RTPO)” would be a new definition resulting from MAP-21’s emphasis on nonmetropolitan transportation planning

and the creation of a new optional statutory framework for these organizations. The definition would be taken directly from 23 U.S.C. 135(m)(1) and (2) and would mean a policy board of nonmetropolitan local officials or their designees created to carry out the regional transportation planning process.

“Regionally significant project” would be modified by removing the word “significant” from the last sentence of the definition. This change would eliminate an unintended redundancy in the existing regulation, as all fixed guideway transit facilities that offer an alternative to regional highway travel are regionally significant projects. The proposed change would not change the meaning of the term “Regionally significant project.”

“Scenario planning” would be a new definition added to reflect MAP-21’s codification of an existing best practice in the metropolitan transportation planning process. Scenario planning would mean a planning process that evaluates the effects of alternative policies, plans and/or programs on the future of a community or region. The MPOs may use scenario planning as they develop the transportation plan. The FHWA and FTA have based this definition on language in 23 U.S.C. 134(i)(4)(A)-(C).

“Strategic Highway Safety Plan” would be retained and updated, consistent with 23 U.S.C. 148, as amended by MAP-21. In addition to minor administrative changes, FHWA and FTA propose to change “plan” to “comprehensive multidisciplinary plan, based on safety data.”

“Transit Asset Management Plan” and “Transit Asset Management System” would be proposed new definitions, added as a result of the new performance-based

planning provisions in MAP-21, to integrate performance elements of other plans (including the new transit asset management plan) into the transportation planning process. These definitions would refer to the definitions developed for these terms during the rulemaking to implement the new MAP-21 transit asset management provisions (49 U.S.C. 5326). See Transit Asset Management Rule [RIN 2132-AB07].

“Transportation Control Measure” would be changed to add the phrase “including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA section 176(c)(8)” as part of the definition. This change is being proposed for better consistency with the 2005 amendments to section 176 of the Clean Air Act (codified at 42 U.S.C. 7506(c)), enacted in section 6011(d) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109–59, 119 Stat. 1144 (2005).

“Visualization techniques” would be changed to add language to clarify the types of methods that can be used (“GIS or web-based surveys, inventories”) as well as the types of facilities and resources that may be included (“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”). This list is illustrative of the types of items that can be included and is not an exclusive list.

*Subpart B--Statewide and Nonmetropolitan Transportation Planning and Programming*

The title of Subpart B would be changed from “Statewide Transportation Planning and Programming” to “Statewide and Nonmetropolitan Transportation Planning” to reflect statutory changes. The addition of “Nonmetropolitan” to the title epitomizes MAP-21’s new emphasis on the importance of nonmetropolitan transportation planning.

*Section 450.200 Purpose*

The statement of purpose in § 450.200 would be revised to make two changes to reflect the MAP-21 shift to a performance-based approach to statewide transportation planning. The two changes include adding reference to the new 23 U.S.C. 150 (the new Federal-aid highway program provision requiring the Secretary to establish performance measures and standards) and adding “performance-based” before the reference to the multimodal transportation planning process.

*Section 450.202 Applicability*

Existing § 450.202 would be modified to add RTPOs as one of the entities responsible for satisfying the statewide transportation planning provisions. One of MAP-21’s major changes is the codification of a framework States may use to establish and designate RTPOs.

*Section 450.206 Scope of the Statewide Transportation and Nonmetropolitan Planning Process*

Section 450.206 describes the scope of the statewide and nonmetropolitan transportation planning process. The FHWA and FTA propose to revise this section to incorporate MAP-21’s critical changes to the planning process requiring States, MPOs,

and providers of public transportation to link investment priorities (the transportation improvement program of projects) to achieving performance targets that will be established to reflect performance measures in key areas. Several key elements of a performance management approach would be included in the proposed revisions to this regulation (see paragraph (c)): establishment of performance targets, coordination of performance targets, integration of elements of other performance-based plans, and consideration in the development of investment priorities. One other significant change is the inclusion of the word “nonmetropolitan” in the proposed heading reflecting the increased emphasis on nonmetropolitan transportation planning. These major proposed changes, as well as other minor proposed changes, are further described below.

The heading of existing § 450.206 would be changed to add “and Nonmetropolitan” to be consistent with MAP-21 section 1202’s change to the heading of 23 U.S.C. 135.

Section 450.206(b) would be revised to add “(including Section 4(f) properties as defined in 23 CFR 774.17)” after “human and natural environment” to clarify that Section 4(f) properties should be included in considerations of human and natural environment for purposes of this section. This change also reflects the 2008 revision to the joint FHWA and FTA Section 4(f) regulations, which are now contained in 23 CFR 774 and include a definition for “Section 4(f) Property”.

The proposed new § 450.206(c) would describe the new performance-based approach to transportation planning and programming under MAP-21 and set up the foundation for such an approach. As a fundamental principle, proposed new paragraph

(c)(1) would require States to use a performance-based approach to transportation decisionmaking to support national goals and purposes.

Proposed new paragraph (c)(2) starts building the foundational steps to this performance-based approach by requiring States to establish performance targets for the Federal-aid highway program based on measures that FHWA will develop in separate rulemakings (Federal-aid Highway Performance Measure Rules [RIN 2125-AF49, 2125-AF53, 2125-AF54]). These separate rulemakings will contain detailed requirements for establishing targets. As part of the planning process, States would be required when selecting and establishing performance targets in proposed paragraph (c)(2), to coordinate those targets to ensure consistency, to the maximum extent practicable, with the MPOs. In addition, States would also coordinate the establishment of performance targets with affected Federal Lands Management Agencies. See 23 U.S.C. 135(d)(2).

Proposed new paragraph (c)(3) relates to public transportation performance targets and would require States to coordinate the selection of public transportation targets with providers of public transportation. These targets will be based on measures and standards that will be developed by FTA in separate rulemakings (Transit Asset Management Rule [RIN 2132-AB07], and National and Public Transportation Safety Plans Rule [RIN 2132-AB20]). Paragraph (c)(3) provides that in areas not represented by MPOs, States would be required to coordinate the selection of these public transportation performance targets to the maximum extent practicable with providers of public transportation, to ensure consistency. See 49 U.S.C. 5304(d)(2).

In paragraphs (c)(3) and (c)(4), the language in section 23 U.S.C. 135(d)(2)(B)(ii) and 49 U.S.C. 5304(d)(2)(B)(ii) that refers 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 propose the following interpretation. Instead of using “urbanized areas,” FHWA and FTA would instead use the phrase “areas not represented by a metropolitan planning organization” because States would need to coordinate with providers 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).

Proposed paragraph (c)(4) continues to build the foundational steps by requiring States to integrate into the statewide transportation planning process the elements (goals, objectives, performance measures, and targets) in other State transportation plans and transportation processes, as well as any plans developed by providers of transportation in areas not represented by an MPO. Examples of other performance-based plans and processes include the HSIP, the SHSP, the NHS Asset Management Plan, the State Freight Plan (if the State chooses to develop one), the transit asset management plan, and the public transportation agency safety plan.

The FHWA and FTA propose a new paragraph (c)(5) that is a critical piece of the foundation for a performance-based management approach. This paragraph would require States to consider the performance measures and its performance targets when developing its planning documents and making investment priorities. This would ensure

that these decisions are transparent. See 23 U.S.C. 135(d)(2)(D) and 49 U.S.C. 5303(d)(2)(D).

Existing § 450.206(c) would become § 450.206(d) and be revised to include that the performance-based planning aspects of the statewide transportation planning process, as described above in proposed new paragraph (c), are not subject to review by any court. In addition, “reviewable” is changed to “subject to review.” These changes are consistent with the MAP-21 changes to 23 U.S.C. 135(d)(3) and 49 U.S.C. 5304(d)(3).

Existing § 450.206(d) would become 450.206(e) and the second sentence would be revised. The reference to 23 U.S.C. 104(b)(1) and (3) and 105 becomes 23 U.S.C. 104(b)(2) because MAP-21 section 1105 changed references to the 23 U.S.C. 104 apportioned programs, and MAP-21 section 1519(b) repealed 23 U.S.C. 105. Now, the Surface Transportation Program apportionment is under 23 U.S.C. 104(b)(2). Transportation planning, previously an eligible activity under the NHS program funds in SAFETEA-LU, is no longer eligible for the National Highway Performance Program (NHPP), which replaced the NHS program. References to 49 U.S.C. 5310 and 5311 would be added to clarify existing authorities. In addition, “for statewide transportation planning” would be added to the end of the second sentence to clarify eligibility of statewide planning for these funds.

#### *Section 450.208 Coordination of Planning Process Activities*

Section 450.208 generally describes how States must work with other agencies when conducting the statewide and nonmetropolitan transportation planning process. The revisions to this section propose changes in two areas. First, there is a change to

reflect the new emphasis under MAP-21 on nonmetropolitan transportation planning. Second, there are changes to reflect an aspect of the new performance-based approach—the integration of elements of other performance-based plans into the planning process. These proposed changes, as well as other minor proposed changes, are further described below.

Consistent with MAP-21’s new emphasis on nonmetropolitan transportation planning, this section proposes two changes. First, existing § 450.208(a)(4) would be revised to note the change in language from “consider the concerns” to “cooperate with affected” in accordance with changes to 23 U.S.C. 135(e)(1) and 49 U.S.C. 5303(e)(1). Second, this proposed section would now include RTPOs as an entity States would cooperate with, if they choose to designate and establish RTPOs.

The MAP-21 now requires the integration of other performance-based plans into the statewide transportation planning process under 23 U.S.C. 135(d)(2) and 49 U.S.C. 5304(d)(2). Current regulations encourage consideration of asset management principles during the planning process. With the new MAP-21 requirements to develop and implement asset management plans (See Federal-aid Highway Risk-Based Asset Management Plan Rule for the NHS [RIN 2125-AF57], Transit Asset Management Rule [RIN 2132-AB07], and National and Public Transportation Safety Plans Rule [RIN 2132-AB20]), it is even more important for States to consider these plans during the transportation planning process. The FHWA and FTA are proposing revisions to § 450.208(e) and a new § 450.208(f) to ensure that these asset management principles and techniques are part of the planning process. In particular, revised paragraph (e) would

now require that States apply asset management principals and techniques to the statewide transportation planning process consistent with the Asset Management Plan for the NHS, the Transit Asset Management Plan, and the Public Transportation Agency Safety Plan. The new paragraph (f) covers the non-NHS highways and proposes that States “may” apply asset management principles to the transportation planning and programming processes.

Proposed new paragraph (g) includes the MAP-21 performance-related requirement that States integrate goals, objectives, performance measures, and targets of other performance-based plans into their statewide transportation planning process. This paragraph identifies the other performance-based plans processes States would integrate, including the Asset Management Plan for the NHS, the SHSP, the Public Transportation Agency Safety Plan, the Transit Asset Management Plan, the State Freight Plan (if one exists, as it is optional), as appropriate, and other State transportation plans and processes required as part of a performance-based program.

Existing § 450.208(g) would become § 450.208(i) and is revised to delete references to 49 U.S.C. 5316 and 5317 because MAP-21 repealed these sections. This change was made throughout this proposed regulation; please see the redline version of the regulatory text included in the docket for further information.

Existing § 450.208(h) would be deleted and the reference to the SHSP would be moved to § 450.208(g)(2). The reference to SHSP would be moved because of the new MAP-21 requirements for States to integrate the elements of other performance-based

plans and processes (including the SHSP) into the statewide transportation planning process.

*Section 450.210 Interested Parties, Public Involvement, and Consultation.*

Section 450.210 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. The proposed § 450.210 would retain the existing process for public involvement and would, along with minor changes: (1) Require States to cooperate, rather than consult, with nonmetropolitan local officials in development of the long-range statewide transportation plan and STIP, and (2) add a new process for States that elect to establish and designate RTPOs to perform planning in nonmetropolitan areas. These proposed changes reflect MAP-21's theme of increased cooperation between States and nonmetropolitan areas in transportation planning. These changes, and other minor changes, are described below.

Existing § 450.210(a)(1)(i) would be revised so that the word "citizens" would be replaced with the word "individuals" to avoid confusion of the term "citizens" with U.S. citizenship. In proposed paragraph (a)(1)(iii), the words "but not limited to" following "including" would be removed because they are unnecessary; use of "including" or "include" generally precedes a nonexclusive list. Both of these changes would be made throughout the proposed regulatory text; to see all the instances please refer to the redline version of the regulatory text included in the docket as referenced above. Examples of affected public agencies to which a State might provide an opportunity to be involved in the statewide planning process under § 450.210(a)(1)(i) include agencies with

responsibility for economic development, human and natural resources, environmental protection, sustainability, mitigation, adaptation, climate, and air quality.

Section 450.210(b) requires States to provide for nonmetropolitan local official participation in the development of the long-range statewide transportation plan and STIP. Paragraph (b) would retain the current requirement for States to have a documented process for the participation of nonmetropolitan local officials and to review and solicit comments on the process at least once every 5 years. The current regulation requires this participation to be consultative in nature, which means that States are required to consider the views of nonmetropolitan local officials. Consistent with MAP-21's amendments, the proposed regulation would require States to cooperate with nonmetropolitan local officials, meaning that they would be required to work together to achieve a common outcome. The proposed change from consultation to cooperation would require States to work more closely with nonmetropolitan local officials in the development of the long-range statewide transportation plan and STIP. Section 450.210(b)(1) also would be revised to remove the reference to "(as of February 24, 2006)" because the requirement has existed for long enough that that date is no longer meaningful.

Proposed § 450.210(c), which concerns areas of States under the jurisdiction of an Indian 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 area. This change would be made because the Department of the Interior, not the Federal land management

agencies, is the Federal agency with responsibility for managing Indian tribal matters.

Paragraph (c) would also be revised to insert the word “the” in the phrase “Secretary of the Interior” to correct that official’s title.

Proposed § 450.210(d) would be added to provide a process to establish and designate an RTPO and describe the structure and primary functions of an RTPO. To support States’ cooperation with nonmetropolitan areas, MAP-21 introduces an optional formal process for States to establish and designate RTPOs to carry out the transportation planning process in nonmetropolitan areas. If established, a State would cooperate with nonmetropolitan local officials through the RTPO. The establishment and designation of an RTPO is optional; if a State chooses not to establish RTPOs under the proposed rule, the State itself would carry out all elements of the statewide and nonmetropolitan planning process, as is currently required, and would cooperate directly with affected nonmetropolitan local officials.

The MAP-21 provides that “States” have the authority to establish and designate an RTPO. Proposed paragraph (d) would clarify that this authority resides in the Governor or the Governor’s designee. This clarification is proposed because the Governor is the chief executive of a State. Proposed paragraph (d) would require existing regional planning organizations to go through the formal establishment and designation process required by this proposed section to become an RTPO. This is proposed because RTPOs have a certain structure and statutorily specified duties, as described below, and MAP-21 requires States to cooperate with RTPOs when they are present.

The proposed paragraphs (d)(1) and (d)(2), which closely track statutory language, would describe the structure of an RTPO. 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. An RTPO also would be required to establish a policy committee and a fiscal and administrative agent to provide professional planning, management, and administrative support. The policy committee would be composed mostly of nonmetropolitan local officials, with additional representatives, as appropriate, from the State, private business, transportation service providers, economic development practitioners, and the public in the region.

Proposed paragraph (d)(3), which also closely tracks statutory language, would describe the duties of an RTPO. The duties of an RTPO would include developing 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. By conducting nonmetropolitan planning as local organizations, RTPOs would enhance the planning, coordination, and implementation of the long-range statewide transportation plans and STIPs, with an emphasis on addressing the needs of the nonmetropolitan areas of the State. Nothing in paragraph (d) would prevent an RTPO from conducting other transportation planning activities in addition to those required under this paragraph.

*Section 450.212 Transportation Planning Studies and Project Development.*

Current § 450.212 and Appendix A provide the context and the means for using transportation planning information and decisions in the environmental review process. Those provisions reflect long-standing practice for highway and transit projects pursuant to various sections of the Council on Environmental Quality regulations that implement NEPA at 40 CFR parts 1500-1508 and case law.<sup>37</sup> The practice of using information and decisions developed during transportation planning provides opportunities for expediting project delivery, generating cost savings by reducing duplication of effort, and improving environmental outcomes through the planning of projects in an environmentally sensitive manner. The MAP-21 section 1310 broadens this practice by creating 23 U.S.C. 168, which provides additional statutory authority for linking planning and the environmental review process. The FHWA and FTA propose to retain § 450.212 without revision. The agencies will address implementation of section 1310 and any needed updates to provisions on pre-MAP-21 integration authorities through separate rulemaking or guidance.

The current Appendix A of 23 CFR part 450, referenced in existing § 450.212, provides detailed information on how to evaluate whether material, information, decisions, or analyses developed during the transportation planning process could be used during the environmental review process of a project (i.e., project development). The

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<sup>37</sup> See *Carmel-by-the-Sea v. U.S. DOT*, 123 F.3d 1142 (9th Cir. 1997) (finding that the EIS appropriately relied on growth plans developed during the planning process for the EIS discussion of the project's growth inducing effects); *North Buckhead Civic Association v. Skinner*, 903 F.2d 1533 (11th Cir. 1990) (validating the use of a purpose and need statement under NEPA that was developed through the transportation planning process); *Sierra Club v. U.S. DOT*, 310 F. Supp. 2d 1168 (D. Nevada 2004) (finding that reliance during the NEPA process on forecasts and modeling efforts developed in the planning process was reasonable).

FHWA and FTA derived the concepts in Appendix A from NEPA regulations, guidance, and case law. The Agencies propose to retain Appendix A.

*Section 450.214 Development of Programmatic Mitigation Plans.*

Proposed § 450.214 is new and implements a new statutory provision at 23 U.S.C. 169, created by MAP-21 Section 1311, that provides a statutory framework for the optional development of programmatic mitigation plans as part of the planning process for use during the subsequent environmental review process. See 23 U.S.C. 168(c)(1)(E). This new proposed regulatory section is intended to clarify the possible scope, scale, and contents of programmatic mitigation plans developed pursuant to 23 U.S.C. 169 as well as the process used to develop them, and subsequently use them, in the environmental review process. For FHWA and FTA, programmatic mitigation plans are plans that address the potential environmental impacts of future transportation projects.

A State can develop a programmatic mitigation plan at the statewide, regional, local jurisdiction, ecosystem, watershed or similar scale, and can normally develop a plan with an aim toward protecting, preserving, rehabilitating, or creating environmental resources, or mitigating possible harm to environmental resources due to future transportation projects. Examples of resources that the plan might identify include wetlands, streams, rivers, stormwater, parklands, cultural resources, historic resources, farmlands, and threatened and endangered species. The plan may inventory existing or planned wetland, stream, habitat, species, and/or other environmental resource mitigation sites or areas, and resource areas of high value or concern, as well as adopt or develop standard measures or operating procedures for mitigating certain types of impacts. The

plan may include development of mitigation or conservation banks, in-lieu-fee programs, or consolidated mitigation areas. The plan may be used to develop mitigation strategies based on an analysis of greenhouse gas emissions and vulnerability to climate change impacts, or an energy analysis. In developing a programmatic mitigation plan as part of the statewide transportation planning process (or the metropolitan transportation planning process under § 450.320 below), a State (or MPO) would need to consult with each agency with jurisdiction over the environmental resources considered in the plan. The consultation may address considerations such as the applicability of the plan to meet multiple regulatory requirements and identification of steps necessary for implementation of the plan. The State (or MPO), must make the plan available for review and comment by the public and the applicable environmental resource agencies. A programmatic approach to environmental mitigation has the potential to streamline the project development process and improve environmental outcomes through early identification of potential environmental impacts and identification of potential avoidance or mitigation opportunities. The degree to which programmatic mitigation strategies are useful later in the project development process depends on the extent of consultation, as well as the level of detail that is developed during planning with the agency of jurisdiction over a particular resource that will later consider that mitigation for purposes of satisfying permit requirements. Thus, FHWA and FTA suggest that such consultation take place during planning, and agreement reached as much as feasible to maximize the extent to which programmatic mitigation can be used. The FHWA and FTA strongly encourage

flexibility within the constraints of existing regulations with respect to permitting in support of better environmental outcomes.

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

Existing § 450.214 would become § 450.216. It would be revised to codify in regulation MAP-21's provision that each State should implement a performance-based approach in the development of its long-range statewide transportation plan. The statewide transportation plan is a multimodal transportation plan addressing at least a 20-year planning horizon for all areas of the State. As part of the proposed performance-based changes to this section, each State should describe in its long-range statewide transportation plan the performance measures and performance targets it used to assess the performance of its transportation system. The State's long-range plan should include a system performance report that contains the State's evaluation of the condition and performance of the transportation system with respect to performance targets established by the State to address the performance measures identified under 23 U.S.C. 150(c), and 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d). The State should also report on the progress achieved by the MPOs in meeting their performance targets in comparison with the system performance recorded in previous reports. See 23 U.S.C. 135(f)(7) and 49 U.S.C. 5304(f)(7). This section adds the new emphasis on nonmetropolitan planning and requires a State to provide nonmetropolitan local officials or RTPOs the opportunity to participate in the development and update of the plan. Finally, the section also encourages the State to assess the appropriateness of innovative finance techniques in its

development of financing strategies as part of the financial plan component of the long-range statewide transportation plan. It also encourages a State, when assessing its capital investments as part of the long-range statewide transportation plan, to consider the financial plans and investment strategies from the State Asset Management Plan for the NHS, as defined in 23 U.S.C. 119(e), and the investment priorities of the public transit asset management plan, as discussed in 49 U.S.C. 5326. This will help ensure that key elements of the asset management plans are considered as part of the investment decisionmaking process.

Consistent with existing § 450.214, proposed § 450.216 would maintain the opportunity for the long-range statewide transportation plan to be comprised of policies and/or strategies, not necessarily specific projects, over the minimum 20-year forecast period. In addition, it would retain State discretion to identify a periodic schedule for updating the long-range statewide transportation plan and to revise the plan as necessary.

Existing § 450.214(c) would become proposed § 450.216(c) and be revised to add “as appropriate” after the list of items that the plan shall reference, summarize, or contain because some items might not be relevant. Examples of plans that the plan might reference include energy plans, or plans that address resilience to current and future conditions. Such conditions could include severe weather events and changes in weather patterns.

Existing § 450.214(d) would become proposed § 450.216(d) and be revised to reflect that States should integrate into the statewide transportation plan the priorities, goals, countermeasures, strategies, or projects contained in the HSIP, including the

SHSP, as required under 23 U.S.C. 148, and the Public Transportation Agency Safety Plan required under 49 U.S.C. 5329, 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.

Proposed § 450.216(f) would be added to reflect a key provision added by MAP-21 to 23 U.S.C. 135(f)(7) and 49 U.S.C. 5304(f)(7) regarding a performance driven, outcome-based statewide transportation planning process and closely follows the statutory text. Specifically, proposed paragraph (f) states that the statewide transportation plan should be performance-based and should include a description of the performance measures and targets used in assessing the performance of the transportation system. The statewide plan should also include a system performance report and subsequent updates evaluating the performance of the transportation system with respect to the performance targets, including progress achieved by the MPO(s) in meeting the performance targets in comparison with system performance recorded in previous reports.

Consistent with MAP-21's emphasis on nonmetropolitan planning discussed above, and requirements for States to work more closely with nonmetropolitan local officials and, if applicable, RTPOs, existing § 450.214(g) would become proposed § 450.216(h), "consultation" with "non-metropolitan" officials would become "cooperation" with "nonmetropolitan" officials, and provision for cooperation with RTPOs, if applicable, would be added. See 23 U.S.C. 135(f)(2)(B) and 49 U.S.C. 5304(f)(2)(B). State DOTs would retain final decisionmaking authority for development

of the long range statewide transportation plan and the statewide transportation improvement program.

Existing § 450.214(j) would become proposed § 450.216(k) and be revised to add regional and local entities to the list of entities States must consult when developing the discussion on potential environmental mitigation strategies or the long-range statewide transportation plan.

Existing § 450.214(k) would become proposed § 450.216(l) and be updated. Consistent with MAP-21's new emphasis on nonmetropolitan transportation planning, this section proposes that the State provide nonmetropolitan local elected officials, or the RTPOs if applicable, the opportunity to participate in the development and update of the long-range statewide transportation plan. This change results from changes in MAP-21 section 1202 to 23 U.S.C. 135(f)(2)(B) and 49 U.S.C. 5304(f)(2)(B). In addition, proposed paragraph (l)(2) would remove the reference to "to the maximum extent practicable" to be consistent with the statutory text (23 U.S.C. 135(f)(3) and 49 U.S.C. 5304(f)(3)). Where applicable, "to the maximum extent practicable" is included in the appropriate provisions in the referenced § 450.210(a).

Existing § 450.214(l) would become proposed § 450.216(m) and be updated to remove two references to "(but is not required to)" after the word "may" because it is redundant. A statement would also be added to this section: "[t]he 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." This provision would support 23 U.S.C. 106(h)(3)(D), which

encourages earlier consideration of innovative finance techniques. Although 23 U.S.C. 106(h)(3)(D) refers to consideration as part of the finance plan for a project, it is also appropriate to consider innovative finance techniques as part of the finance plan for the statewide plan.

New § 450.216(n) is proposed to provide that as the State develops the financial strategies for its long-range statewide transportation plan and assesses its capital investment, it should consider the financial plan and investment strategies from the newly required State asset management plan for the NHS as defined in 23 U.S.C. 119(e) and investment priorities of the newly required public transit asset management plan(s) as discussed in 49 U.S.C. 5326. Information from these newly required plans can inform States in their capital investment decisionmaking process.

Existing § 450.214(g) would become § 450.216(p) and would be revised to add “for public review” to clarify that the long-range statewide transportation plan shall be made available for public review, including electronically. This is consistent with a long-standing statutory requirement in 23 U.S.C. 135(f)(3) and 49 U.S.C. 5304(f)(3).

*Section 450.218 Development and Content of the Statewide Transportation Improvement Program (STIP).*

Existing § 450.216 would become proposed § 450.218. Section 450.218 describes the development and the content of the STIP. The STIP is the prioritized listing of transportation projects covering a period of 4 years that the State develops in cooperation with the MPOs, nonmetropolitan local officials, and, if applicable, RTPOs. The FHWA and FTA approve the STIP. This section would be revised to incorporate

MAP-21's new requirements for a performance-based planning and programming process and increased emphasis on nonmetropolitan transportation planning. A significant revision to this section would be the addition of the new performance-based requirement that the STIP would include a description of how the investment priorities in the STIP contribute toward the achievement of the performance targets in the statewide transportation plan. Because the STIP is developed with opportunity for public comment, the new requirement to demonstrate how investment decisions are made adds additional accountability and transparency to the planning process. The establishment of performance targets would also align the STIP in those key areas where targets are established, including safety, state of good repair, congestion and reliability, freight, and emissions. A description of the performance-based changes to this section and other minor proposed changes to this section are as follows.

Existing § 450.216(a) would become § 450.218(a) and be updated to add "shall" after "4 years and" and include the phrase "of the State" after the word "Governor" to provide clarification.

Section 450.216(c) would become § 450.218(c) and be updated to reflect the new emphasis on nonmetropolitan transportation planning. Specifically, the proposed regulation would change "consultation" with "non-metropolitan" officials to "cooperation" with "nonmetropolitan" officials and would add 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 these joint regulations, FHWA and FTA determined that it was appropriate to use “cooperation,” rather than “consultation” in this paragraph of these joint regulations. To have two different processes—a consultation process for Title 23 actions and a cooperation process for Title 49 actions—is overly burdensome. Using “cooperation” is consistent with the comparable changes MAP-21 made to the long-range statewide transportation plan provisions (see proposed § 450.216(h)). Because of the long-standing requirement that the STIP be consistent with the long-range statewide transportation plan, 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 proposed 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.

Existing § 450.216(e) and (g) would become proposed § 450.218(e) and (g), and “Federal Lands Highway Program” would be changed to “Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program” to reflect MAP-21 program changes to 23 U.S.C. 201–204.

Section 450.216(g) would become § 450.218(g) and be updated to reflect MAP-21 changes to programs, phrases, and plans. In particular, “transportation enhancements” would become “transportation alternatives,” and “associated transit improvements” would be added under (g). “Associated transit improvements” is FTA’s equivalent of

FHWA’s “transportation alternatives.” Reference to SHSP would be changed to HSIP because HSIP is the program that funds safety projects (as opposed to a SHSP), and is more closely associated with the STIP. Under § 450.218(g)(2), 23 U.S.C. 104(f) would become 23 U.S.C. 104(d) and reference to 49 U.S.C. 5339 would be deleted. Paragraph 450.218(g)(4) would be revised to remove references to the “National Highway System,” and “and/or Equity Bonus” because these programs are not continued under MAP-21 and remove reference to “[a]t the State’s discretion” as it is repetitive. Because of the creation of FTA’s emergency relief funding program, FHWA and FTA want to clarify that § 450.218(g)(5), which indicates that emergency relief projects meeting certain conditions are not required to be included in the STIP, would not apply to resiliency projects funded under 49 U.S.C. 5324. Section 450.218(g)(6) would be revised and reference to “national planning and research projects funded under 49 U.S.C. 5314” would be changed to “[r]esearch 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.” This change is proposed because of MAP-21 changes to research programs that separated the programs into two sections and created a distinct technical assistance and standards development program. Section 450.218(g)(8) would be added to reflect that State safety oversight funds awarded under 49 U.S.C. 5329 are not subject to the rule of financial constraint, and therefore State safety oversight programs may, but are not required to, be included in the STIP.

Existing § 450.216(j) would become proposed § 450.218(j) and be updated to add “subpart A” after the second reference to “40 CFR part 93” to be more specific regarding the citation for the transportation conformity.

Section 450.216(l) would become § 450.218(l) and would be revised to delete “made” from the phrase “reasonably expected to be made available” for consistency with other terminology. The phrase “Starting December 11, 2007” would be removed because this date has passed and the use of year of expenditure dollars for revenue and cost estimates in the STIP continues to be a requirement. Reference to “(but is not required to)” after the word “may” would be removed because it is redundant.

Section 450.216(m) would become § 450.218(m) and the following provision would be moved to its own section at 450.218(p) for added emphasis: “The STIP shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.” In addition, a more specific statutory citation to the definition of public transportation (“49 U.S.C. 5302”) would replace the more general reference (“49 U.S.C. Chapter 53”).

Consistent with the new requirements to integrate elements of other performance-based plans and processes into the statewide transportation planning process, a new proposed § 450.218(o) would be added to indicate 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 plan. See 23 U.S.C. 119(e) and 49 U.S.C. 5326. The financial plan and investment strategies of the State asset management

plan for the NHS and the investment strategies of the public transit asset management plan are elements of new performance-based plans required under MAP-21. The FHWA and FTA propose in this section that States consider these elements as part of the investment decisionmaking process to inform the STIP.

The FHWA and FTA propose to incorporate the MAP-21 requirements for a performance-based STIP in proposed new § 450.218(r). See 23 U.S.C. 135(g)(4) and 49 U.S.C. 5304(g)(4). Importantly, proposed paragraph (r) would require the STIP describe how the projects in the STIP would achieve the State performance targets—linking investment priorities to those targets. Because the development of a STIP is a public process, these new requirements help establish accountability and transparency of transportation investment decisions.

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

Existing § 450.218 would become § 450.220. Proposed § 450.220 describes how States would self-certify that the transportation planning process is being carried out in accordance with all applicable requirements, including MAP-21 requirements. It also describes how FHWA and FTA would approve the STIP after the State submits the STIP to FHWA and FTA. This section would be largely unchanged except that in § 450.220(a)(4) the reference to section 1101(b) of SAFETEA-LU would become section 1101(b) of MAP-21, the successor provision.

*Section 450.222 Project Selection from the STIP.*

Existing § 450.220 would become § 450.222. Proposed § 450.222 describes the procedures for the selection of projects from the STIP by the State and the MPOs. This

section is changed in two ways. First, it would be revised to reflect MAP-21's increased emphasis on nonmetropolitan transportation planning. Second, it would be updated to reflect name changes to tribal funding programs. These changes are described below.

Proposed paragraph (c) would be revised to include the new MAP-21 requirements (23 U.S.C. 135(g)(6) and 49 U.S.C. 5304 (g)(6)) for States to cooperate with nonmetropolitan areas when selecting projects from the STIP for projects that are not on the NHS. This proposed new requirement will require States work with local officials, or, if applicable, RTPOs, when selecting projects from the STIP in nonmetropolitan areas. Prior to MAP-21, States were not required to conduct outreach with nonmetropolitan local officials when selecting projects from the STIP that are not on the NHS.

In revised § 450.222(d), "Federal Lands Highway Program" would be changed to "Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program" to reflect MAP-21 changes to 23 U.S.C. 201–204.

*Section 450.224 Applicability of NEPA to Statewide Transportation Plans and Programs*

Section 450.222 would become § 450.224 and be unchanged except that the acronym NEPA is spelled out as the "National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)." This change would be made throughout the proposed regulations; please see the redline version of the regulatory text included in the docket for further information.

*Section 450.226 Phase-In of New Requirements*

Existing § 450.224 would become § 450.226. This proposed section updates the schedule for implementation based on MAP-21 changes. The section is based on provisions in 23 U.S.C. 135(l) and 49 U.S.C. 5304(k), as well as the new performance requirements in 23 U.S.C. 150 and 49 U.S.C. 5326 and 5329.

For purposes of phasing in the new MAP-21 requirements, there are two categories of changes. The first category is those changes that are unrelated to performance management, and the second category is those changes that are performance management related. The FHWA and FTA propose two different phase-in schedules, one for each category of changes.

The major change unrelated to performance management is the new emphasis on nonmetropolitan transportation planning. The FHWA and FTA propose that STIPs and statewide long range plans adopted on or after a date 2 years after publication of this final rule in the Federal Register must reflect this new emphasis. The FHWA and FTA would only approve STIP amendments or updates that are based on a planning process that incorporates the new emphasis on nonmetropolitan transportation planning. For instance, if this final rule were published in fall of 2014, FHWA and FTA would only approve a STIP after fall of 2016 that meets the non-performance-based requirements of this rule. The FHWA and FTA also propose that before the end of this 2-year period, States may use the new MAP-21 requirements in developing STIPs and long-range transportation plans. The FHWA and FTA believe this approach is consistent with 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 MAP-21 changes. This

approach also meets the requirement that States shall reflect changes made to their transportation plan or STIP updates not later than 2 years after the date of issuance of guidance by the Secretary.

The second phase-in schedule would be for the new performance management requirements proposed in this NPRM (e.g., discussion of targets in long range plans and STIPs, requirements to coordinate target selection, linking of targets to investment priorities in STIPs, system performance reports, integration of elements of other plans) that depend on issuance of FHWA's and FTA's performance rules. The FHWA and FTA propose that updates and amendments to any STIPs and plans based on these new performance management requirements would be based on the effective date of the performance measures rules implementing 23 U.S.C. 150 and 49 U.S.C. 5326 and 5329.<sup>38</sup> The FHWA and FTA currently anticipate that the performance rules implementing these provisions would have the same effective date. If the effective date of these performance measure rules is not the same, the phase-in of the new performance management requirements would be based on the effective date of each individual performance measure rule. In order to determine the appropriate phase-in schedule of the new performance management requirements, FHWA and FTA balanced a number of statutory provisions and logistical and practical considerations. Each of these provisions has specific timing requirements for establishment of targets:

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<sup>38</sup> Federal-aid Highway Performance Measure Rules [RIN 2125-AF49, 2125-AF53, 2125-AF54], Transit Asset Management Rule [RIN 2132-AB07], and National and Public Transportation Safety Plans Rule [RIN 2132-AB20].

- 23 U.S.C. 150(d)(1) – States would have 1 year from the effective date of the performance management rule to establish targets (the specific timing will be discussed in the separate rulemaking implementing 23 U.S.C. 150);
- 49 U.S.C. 5329(d)(1) – States or recipients would be required to include performance targets in a safety plan 1 year after the effective date of the final rule; and
- 49 U.S.C. 5326(c) -- Recipients would need to establish performance targets not later than 3 months after the issuance of the final rule and each fiscal year thereafter.

Once States or recipients establish targets, MPOs would be required to establish targets not later than 180 days after the date on which the relevant State or recipient establishes performance targets (23 U.S.C. 134(h)(2) and 49 U.S.C. 5303(h)(2)). These targets would need to be coordinated among the States, MPOs, and providers of public transportation to ensure consistency.

The FHWA and FTA determined that giving States, recipients, and MPOs 2 years following the effective date of the performance rules would provide adequate time for the relevant States, recipients, and MPOs to develop targets, coordinate targets, and include any performance-based planning requirements in their transportation planning process and related documents. This phase-in period would also provide time to integrate into the transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets from other transportation plans and transportation

processes, as proposed in 23 CFR 450.206(c) and 450.306(d). Depending on the measure, providing a 2-year phase-in of these requirements may provide MPOs additional time after the establishment of the targets to include these targets in any new or amended metropolitan or long range statewide transportation plans or transportation improvement programs.

Consistent with the statutory requirement in 23 U.S.C. 135(l) and 49 U.S.C. 5304(k), FHWA and FTA are not proposing to require a State to deviate from its established planning update cycle to implement the changes required by MAP-21 to the planning process.

#### *Subpart C--Metropolitan Transportation Planning and Programming*

##### *Section 450.300 Purpose*

Similar to the “Purpose” section of subpart B, existing § 450.300 would be revised to make two changes to reflect that under MAP-21 the metropolitan planning process becomes a performance-based process. The two changes include adding reference to the new 23 U.S.C. 150 and adding “performance-based” before the reference to the “multimodal transportation planning process.”

##### *Section 450.306 Scope of the Metropolitan Transportation Planning*

Existing § 450.306 describes the scope of the metropolitan transportation planning process. Similar to proposed revisions to § 450.206 (the scope of the statewide and nonmetropolitan transportation planning process), FHWA and FTA propose to revise this section to incorporate MAP-21’s critical performance-based changes to the planning process. States, MPOs, and providers of public transportation would link investment

priorities (the transportation improvement program of projects) to achieving performance targets in key areas. Elements of a performance management approach would be included in the proposed revisions paragraphs (a) and (d): an emphasis on developing planning documents through a performance-based approach, establishment of performance targets, coordination of performance targets, and the integration of elements of other performance-based plans. These major proposed changes as well as other minor proposed changes are further described below.

Section 450.306 would be revised to add proposed new § 450.306(a) to reflect the new statutory language in 23 U.S.C. 134(c) and 49 U.S.C. 5303(c)(1) requiring a performance driven, outcome-based approach to planning for metropolitan areas.

Section 450.306(b) would become § 450.306(c) and be revised to add “(including Section 4(f) properties as defined in 23 CFR 774.17)” after “human and natural environment” to clarify that Section 4(f) properties should be included in considerations of human and natural environment for purposes of this section. This change also reflects the 2008 revision to the joint FHWA and FTA Section 4(f) regulations, which are now contained in 23 CFR 774 and include a definition for “Section 4(f) Property”.

Revised § 450.306(d) is proposed to incorporate MAP-21 requirements for a performance-based approach to metropolitan transportation planning. See 23 U.S.C. 134(h)(2) and 49 U.S.C. 5303(h)(2). As described in paragraph (d)(1), part of the metropolitan planning process would include supporting the national goals, described in 23 U.S.C. 150(b), and general purposes, described in 49 U.S.C. 5301(c).

Proposed new paragraph (d)(2) starts building the foundational steps to this performance-based approach for MPOs by requiring them to establish performance targets for the Federal-aid highway program based on measures that FHWA will develop in separate rulemakings (Federal-aid Highway Performance Measure Rules [RIN 2125-AF49, 2125-AF53, 2125-AF54]). These separate rulemakings will contain detailed requirements for establishing targets. This paragraph also would require MPOs to establish performance targets using the measures and standards that FTA will develop in separate rulemakings (Transit Asset Management Rule [RIN 2132-AB07] and National and Public Transportation Safety Plans Rule [RIN 2132-AB20]). As part of the planning process, in proposed paragraph (d)(2), MPOs would be required to coordinate the selection and establishment of targets. When establishing targets for the Federal-aid highway program, MPOs would be required to ensure that the MPOs' and State's targets are as consistent as practicable. When establishing transit-related targets, MPOs would be required to coordinate to the maximum extent practicable with providers of public transportation. These coordination requirements would be based on the new MAP-21 requirements in 23 U.S.C. 134(h)(2)(B) and 49 U.S.C. 5303(h)(2)(B).

Paragraph (d)(3) would require MPOs to select performance targets not later than 180 days after the date on which the relevant State or provider of public transportation establishes performance targets based on the MAP-21 requirements.

Paragraph (d)(4) would continue to build the foundational steps by requiring MPOs to integrate into the metropolitan transportation planning process the elements (goals, objectives, performance measures, and targets) in other State transportation plans

and processes, as well as any plans developed by providers of public transportation in the metropolitan planning area, required as part of a performance-based program. Examples of other performance-based plans and processes include the SHSP, as defined in the HSIP (23 U.S.C. 148), the State NHS asset management plan for highways in 23 U.S.C. 119(e), the transit asset management plan as defined in 49 U.S.C. 5326, the Public Agency Safety Plan in 49 U.S.C. 5329(d), the optional State Freight Plan, as described in MAP-21 section 1118, the CMAQ performance plan in 23 U.S.C. 149(l), the congestion management process, and other State transportation plans and processes required as part of a performance-based program.

Existing § 450.306(c) would become § 450.306(e) and be changed to include that the performance-based planning aspects of the metropolitan transportation planning process, as described above in proposed new paragraph (d), are not reviewable by any court. These changes are consistent with MAP-21 changes to 23 U.S.C. 134(h)(3) and 49 U.S.C. 5303(h)(3).

Existing § 450.306 (e) and (h) would be deleted and references to the new NHS asset management plan and the Transit Asset Management Plan, other safety and security planning and review processes, plans, and programs, and the SHSP would be moved to § 450.306(d)(5). These would be moved because, as discussed above, this section includes the MAP-21 requirements to integrate elements of other performance-based plans into the metropolitan transportation planning process.

Existing § 450.306(i) would be moved to new § 450.310(c).

*Section 450.308 Funding for Transportation Planning and Unified Planning Work Programs*

Existing § 450.308 would be retained and updated. This section describes funding for metropolitan transportation planning and the development of Unified Planning Work Programs (regulations for these work programs are contained in 23 CFR part 420).

Proposed § 450.308(a) would remove reference to the Equity Bonus Program, formerly codified at 23 U.S.C. 105, because MAP-21 repealed this program and it is no longer available as a funding source. Proposed § 450.308(a) would also add the sentence, “At the option of the State, funds provided under 49 U.S.C. 5305(e) may also be provided to MPOs for activities that support metropolitan transportation planning.” This proposed sentence does not reflect a change in the law, but rather would be added to clarify that funds apportioned under 23 U.S.C. 5305(e), which are primarily for the purpose of State planning and research, are a possible source of funding to MPOs for activities that support metropolitan transportation planning. Statutory references in § 450.308(a) would be updated as follows: 23 U.S.C. 104(f) becomes 23 U.S.C. 104(d), reference to 49 U.S.C. 5305(d) is added, reference to 49 U.S.C. 5339 is deleted, reference to 23 U.S.C. 104(b)(1) and (b)(3) becomes 23 U.S.C. 104(b)(2), and reference to 23 U.S.C. 133(d)(3)(E) becomes 23 U.S.C. 133(d)(4). All of these changes would be based on changes from MAP-21.

Proposed § 450.308(d) would replace the word “would” with the word “shall” to clarify that the requirements described in (d) are requirements of any simplified statement of work.

Existing § 450.308(f) would be unchanged, except FHWA and FTA propose remove “.1B” after the reference to FTA Circular C8100 and instead add the words “as amended” after the reference to FTA Circular C8100 to accommodate possible future editions of this circular. Proposed § 450.308(f) would also update the title of this circular to reflect the most recent edition, which is called “Program Guidance for Metropolitan Planning and State Planning and Research Program Grants.”

*Section 450.310 Metropolitan Planning Organization Designation and Redesignation*

Existing § 450.310 would be retained and revised to reflect changes from MAP-21, including changes to the structure of an MPO serving a TMA by adding representation by providers of public transportation to the list of officials that must be included. In addition, the proposed changes would move other provisions related to TMAs to this section. These changes, and other more minor changes, are described below.

Proposed § 450.310(c) is moved from existing § 450.306(i) and would be modified to reflect changes from MAP-21. In the first sentence, “designate” would be changed to “identify,” and the word “additional” would be deleted from this paragraph. The revisions would not change the meaning of this paragraph.

Consistent with MAP-21’s requirements, proposed § 450.310(d)(1) would also require the structure of a MPO serving a TMA consist of representation by providers 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. This NPRM proposes that representatives of providers 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. It is up to the MPO, in cooperation with providers of public transportation, to determine how this representation will be structured and established. The MPOs can restructure to meet this requirement without being redesignated by the Governor and local officials.

The FHWA and FTA have received several questions and comments<sup>39</sup> generally on how an MPO serving a TMA must be structured. As a result of these questions and comments, FHWA and FTA are requesting comment on whether any of the following questions should be addressed in the proposed regulation and, if so, how:

- Should the regulations clarify who appropriate “officials” may be?
- Can staff members or other alternates be substituted for the “officials” identified in paragraph (d)(1)?
- 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 also serve as a representative of a major mode of transportation?
- Should the regulations provide more specificity on how each of the officials identified in paragraph (d)(1) should be represented on the MPO?

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<sup>39</sup> On September 30, 2013, FTA and FHWA published “Proposed Policy Guidance on Metropolitan Planning Organization Representation” for notice and comment. 78 FR 60015.

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

To ease any necessary changes to MPO structure, the proposed rule includes new paragraph (d)(2), which would provide that an MPO may be restructured to meet the structure requirements without undergoing a redesignation. Since MAP-21 now provides a specific date for compliance with the required structure for an MPO serving a TMA, proposed new paragraph (d)(3) would require all the TMA MPOs to comply with this structure by October 1, 2014, except those MPOs that are exempt under 23 U.S.C. 134(d)(3) and 49 U.S.C. 5303(d)(3). This exemption has existed in statute in some form since 1991. The FTA and FHWA's long-standing interpretation of this provision is that an exemption from the MPO structure requirements is only appropriate for an MPO where (1) the MPO 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, as regards to the structure or organization of the MPO; and (3) the MPO has not been designated or re-designated after December 18, 1991. An MPO that claims it qualifies for this exemption must self-certify its exempt status with the FTA and FHWA as part of the MPO certification process described at 23 CFR 450.334 or through some other documentation. The proposed rule would add this statutory provision (23 U.S.C. 134(d)(3) and 49 U.S.C. 5303(d)(3)) to the regulations.

Existing § 450.310(1)(3) adds "described in paragraph (d)."

*Section 450.312 Metropolitan Planning Area Boundaries*

Proposed § 450.312 describes how metropolitan planning area boundaries would be established by agreement between the MPO and the Governor. This area is the geographic area in which the MPO carries out the metropolitan transportation planning process. This section is largely unchanged, with some minor, nonsubstantive, exceptions. Existing paragraph (a) would be split into two paragraphs. In paragraph (f), “the appropriate” would be added before “MPOs.” In paragraph (i), “reduces access disadvantages experienced by” would be revised to “improves access to.” None of these revisions are intended to change the meaning of this section.

*Section 450.314 Metropolitan Planning Agreements*

The metropolitan planning agreement helps facilitate the working relationship among MPOs, States, and providers of public transportation. Currently, MPOs, States, and providers of public transportation are required to form metropolitan planning agreements to delineate their respective responsibilities in the metropolitan planning process, including provisions for the cooperative development and sharing of information related to the formation of financial plans, the TIP, and the annual list of obligated projects.

The FHWA and FTA propose to revise § 450.314(a) to require that MPOs modify their existing metropolitan planning agreements to identify how the parties would work together to implement MAP-21’s performance-based planning provisions. The modified metropolitan planning agreements would additionally identify how the MPO, State, and providers of public transportation will collect transportation system performance data, select performance targets for the metropolitan area, report metropolitan area targets,

report actual system performance related to those targets, and collect data for asset management plans for the NHS. These proposed changes would make the metropolitan planning agreement a focal point for establishing how the MPO, the State, and providers of public transportation will cooperatively implement the performance-based planning and related performance management provisions in MAP-21. States, MPOs, and providers of public transportation would need to coordinate their targets in key national performance areas and document expectations for future performance. Also, this section proposes that the metropolitan planning agreement describe the collection of data for the State asset management plan for the NHS. The NHS is on both State and locally owned highways. Given multiple NHS highway “owners,” the agreement can serve as a mechanism for identifying respective roles and responsibilities of the State and local governments related to collecting data for the NHS asset management plan in metropolitan areas.

Section 450.314(a) also would be revised to replace the phrase “public transportation operator(s)” with “providers of public transportation” because this is the phrase used in statute. A new § 450.314(b) would be added to require that metropolitan planning agreements should be reviewed periodically and updated as necessary. A need for changes could result from a number of factors, such as new Federal legislation or regulations. This is proposed to ensure that metropolitan planning agreements remain relevant and reflect current planning needs in metropolitan areas.

Existing § 450.314(d) describes the requirement for an agreement when more than one MPO has been designated to serve an urbanized area. Existing § 450.314(d) would

become proposed § 450.314(e), and would be unchanged with the exception that it would be revised to require that MPOs modify their existing metropolitan planning agreements to identify how the parties would work together to implement MAP-21's performance-based planning provisions.

Existing § 450.314(f) describes the requirement for an agreement when 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. Existing §450.314(f) would become proposed § 450.314(g) and would be unchanged with the exception that, similar to proposed §§ 450.314(a) and 450.314(e), it would be revised to require that MPOs modify their existing metropolitan planning agreements to identify how the parties would work together to implement MAP-21's performance-based planning provisions. The MAP-21 requires that the States and MPOs coordinate their targets with each other to ensure consistency, to the maximum extent practicable. In addition, for transit-related targets, MAP-21 requires States and MPOs to coordinate their targets relating to safety and state of good repair with providers of public transportation to ensure consistency with other performance-based provisions applicable to transit providers, to the maximum extent practicable. The proposed revisions to the metropolitan planning agreement requirements in this section are intended to foster State, MPO, and public transportation provider coordination and consistency during performance target establishment. Also, in the case where there are multiple MPOs serving a single urbanized area, the agreement established under proposed § 450.314(e) would assist with coordination among the MPOs, States, and providers of public transportation serving this single urbanized area

such that the individual State and MPO targets are consistent to the maximum extent practicable. Similarly, the metropolitan planning agreement established under § 450.214(f) would foster the development of consistent performance targets among the States, MPOs, and providers of public transportation in the situation where part of an urbanized area that has been designated as a TMA overlaps into an adjacent MPO serving an urbanized area that is not designated as a TMA. This coordination should help align MPO and State decisionmaking and advance performance outcomes for the States.

*Section 450.316 Interested Parties, Participation and Consultation.*

Section 450.316 currently 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. Examples of affected public agencies that an MPO might provide with an opportunity to be involved in the metropolitan planning process under § 450.316(a) include agencies with responsibility for economic development, human and natural resources, environmental protection, sustainability, mitigation, adaptation, climate, and air quality. The participation plan is required to include, for example, provisions for timely notice of public meetings and access to information about planning issues and processes, publishing public information, and responding to public input.

Proposed § 450.316(a)(2) would be revised to change the general citation to the transportation conformity regulations (“40 CFR part 93”) to the more specific regulatory citation to the provision in the transportation conformity regulations that addresses consultation (“40 CFR 93.105”).

Proposed § 450.316(b)(3) would be revised to change the statutory reference from 23 U.S.C. 204 to 23 U.S.C. 201-204. Although the relevant MAP-21 provision (23 U.S.C. 134(g)(3)(B)(iii)) continues to reference only 23 U.S.C. 204, there were significant changes made to the Federal Lands Highways Program under MAP-21 and that program was split into several different provisions—23 U.S.C. 201–204. The metropolitan planning process must provide for the design and delivery of transportation services provided by recipients of assistance under all these provisions.

*Section 450.318 Transportation Planning Studies and Project Development.*

Existing § 450.318, which largely mirrors existing § 450.212, would be retained unchanged except for the deletion of existing paragraph (d). The FHWA and FTA propose to delete paragraph (d) due to revisions made to 49 U.S.C. 5309 by MAP-21. More specifically, MAP-21 removed the requirement for a stand-alone alternatives analysis for projects that seek Section 5309(d) or (e) funding. The reader should refer to the discussion provided under § 450.212 for an explanation of the proposed retention.

*Section 450.320 Development of programmatic mitigation plans.*

Proposed § 450.320 would follow the same language and format as proposed § 450.214, with the exception of changing references from the State or statewide to MPO or metropolitan, as necessary. It would be duplicated in subpart C to avoid the need for

cross referencing and to provide the same option for MPOs to develop programmatic mitigation plan(s) in the metropolitan transportation planning process. The reader should refer to the discussion provided under § 450.214 for an explanation of the proposed changes.

*Section 450.322 Congestion Management Process in Transportation Management Areas*

In TMAs, the metropolitan transportation planning process must include a congestion management process, 23 U.S.C. 134(k)(3). The congestion management process provides for the effective management of new and existing transportation facilities through the use of travel demand reduction and operational strategies. When developing and implementing a congestion management process, MPOs may use the process to support the performance-based approach to transportation decisionmaking. Specifically, the congestion management process may support the performance-based approach to metropolitan transportation planning in this part, support applicable performance measures established under section 23 U.S.C. 150(c), and also support applicable national goals described in section 23 U.S.C. 150(b) and in 49 U.S.C. 5301.

Existing § 450.320(b) would be revised and split into § 450.322(b) and (c). Proposed § 450.322(c) would add “and improve efficient service integration within and across modes, including highway, transit, passenger and freight rail operations, and non-motorized transport” to the list of strategies to manage demand and improve operations. This added provision would encourage States, MPOs, and operators of public transportation to develop multimodal strategies to manage demand and improve operations.

Existing § 450.320(c) would become § 450.322(d) and be revised as follows. Paragraph (d)(1) would be revised to add “underlying” before “causes of recurring and non-recurring congestion” to provide clarity with no change in meaning. Paragraph (d)(2) would be revised to add “including providers of public transportation.” This revision would emphasize that States and MPOs need to consult with local officials and operators of major modes of transportation, including providers of public transportation as they define levels of acceptable system performance as part of the congestion management process. This change closely tracks MAP-21’s added provision in 23 U.S.C. 134(d)(2) and 49 U.S.C. 5303(d)(2), which requires representation of providers of public transportation on MPOs.

*Section 450.324 Development and Content of the Metropolitan Transportation Plan*

Existing § 450.322 would become § 450.324. It would be revised to reflect MAP-21’s provision that each MPO must implement a performance-based approach in the development of its metropolitan transportation plan. The metropolitan transportation plan is a multimodal transportation plan addressing at least a 20-year planning horizon for the metropolitan planning area. The proposed performance-based changes to this section would require each MPO to describe in its metropolitan transportation plan the performance measures and performance targets it used to assess the performance of its transportation system. The MPO must also include a system performance report in the plan that contains its evaluation of the condition and performance of the transportation system with respect to performance targets established to address the performance measures identified under 23 U.S.C. 150(c), and 49 U.S.C. 5326(c) and 49 U.S.C.

5329(d). The MPO must also report on the progress it achieves in meeting its performance targets in comparison with the system performance recorded in previous reports. This section is also revised to propose that MPOs may use scenario planning, a tool to inform decisionmakers about the implications of various transportation system investments and performance, during the development of their plan. Finally, this section encourages the MPO, when developing the financial plan as part of the long range plan, to assess the appropriateness of innovative finance techniques in its development of financing strategies. In addition, when assessing its capital investments as part of the plan, the MPO should consider the financial plans and investment strategies that are part of the State Asset Management Plan for the NHS (as defined in 23 U.S.C. 119(e)) and of the investment priorities of the public transit asset management plan (as discussed in 49 U.S.C. 5326). These changes, and other minor changes, are as follows.

Proposed § 450.324(a) would be revised to add “In formulating the transportation plan, the metropolitan planning organization shall consider factors described in § 450.306 as the factors relate to a 20-year forecast period.” to clarify that MPOs shall consider planning factors that are described in § 450.306.

Existing § 450.322(b) would be retained as proposed § 450.324(b) and be revised to provide clarity by changing “lead to” to “provide for.” Reference to “including accessible pedestrian and bicycle transportation facilities” would be added to be consistent with 23 U.S.C. 134(c)(2) and 49 U.S.C. 5303(c)(2).

Existing § 450.322(f) would become § 450.324(f) and be revised to add the MAP-21 requirements or clarify existing requirements for a metropolitan transportation plan, as described below.

Existing § 450.322(f)(1) would become § 450.324(f)(1) and be revised to require that, in addition to the projected demand for transportation, an MPO must include the current transportation demand of persons and goods in the metropolitan transportation plan. This change would enable the public and decision makers to better understand existing transportation system needs.

Existing § 450.322(f)(2) would become proposed § 450.324(f)(2). It would be revised for clarity and to include MAP-21 changes that specifically require MPOs to identify “nonmotorized transportation facilities” in the Metropolitan Transportation Plan. While the term “nonmotorized transportation facilities” is added to reflect MAP-21, the existing regulation requires MPOs to identify pedestrian walkways and bicycle facilities in their metropolitan transportation plans. To reflect this change, this paragraph would be revised to state “nonmotorized transportation facilities (e.g., pedestrian walkways and bicycle facilities).” See 23 U.S.C. 134(i)(2)(A)(i) and 49 U.S.C. 5303(i)(2)(A)(i). This section also would be updated to reflect that the legislation eliminated the requirement for an Alternatives Analysis.

Proposed new paragraphs (f)(3) and (4) would require that MPOs include important elements of MAP 21’s performance-based approach into the metropolitan transportation plan. Specifically, MAP-21 requires that MPOs describe performance targets, evaluate the condition and performance of the transportation system, and report in

the metropolitan transportation plan on progress it has achieved toward their performance targets. See 23 U.S.C. 134(i)(2)(B) and (C) and 49 U.S.C. 5303(i)(2)(B) and (C).

New paragraph (f)(3) proposes to require that an MPO describe in its metropolitan transportation plan the performance measures and performance targets that it used to assess the performance of the transportation system.

New paragraph (f)(4) proposes to require that an MPO include a system performance report that describes the MPO's evaluation of the condition and performance of the transportation system with respect to performance targets identified in § 450.324(f)(3) and the progress toward the achievement of the performance targets.

This section also proposes to require that MPOs that elect to use scenario planning during the development of their metropolitan transportation plans must also describe how the preferred scenario would improve the condition and performance of the transportation system and how changes in local development policies and investment strategies would impact the cost of achieving established performance targets. The option for MPOs to develop multiple scenarios is discussed below in proposed § 450.324(i).

Existing § 450.322(f)(5) would become § 450.324(f)(7) and be revised to include a provision that as MPOs assess capital investment and other strategies to preserve the existing and projected metropolitan transportation infrastructure and provide for multimodal capacity increases, they should consider the financial plan and investment strategies from the newly required State asset management plan for the NHS (as defined in 23 U.S.C. 119(e)) and the investment priorities of the newly required public transit asset management plans (as discussed in 49 U.S.C. 5326). Information from these newly

required plans can inform MPOs in their capital investment decisionmaking process. Furthermore, they may also consider energy plans, and strategies that will enhance the resiliency of the transportation system to current and future conditions. Such conditions could include severe weather events and changes in weather patterns.

Existing § 450.322(f)(9) would become proposed § 450.324(f)(8), which adds references to “transportation alternatives” and “associated transit improvements,” as described in 23 U.S.C. 101(a) and 49 U.S.C. 5302(a) respectively, to reflect new programs that fund projects similar to those funded under the former Transportation Enhancements and Transit Enhancement Programs. The statute still requires “transportation and transit enhancement activities” to be included in a metropolitan transportation plan (23 U.S.C. 134(i)(2)(H) and 49 U.S.C. 5303(i)(2)(H)).

Existing § 450.322(f)(10) would become § 450.324(f)(11). In § 450.324(f)(11)(iii), language would be added, “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,” in consideration of 23 U.S.C. 106(h)(3)(D), which encourages early consideration of innovative finance as part of a project financial plan. Reference to the December 11, 2007, date in § 450.324(f)(11)(iv) would be deleted because this date has passed.

Existing § 450.322(h) would become § 450.324(h) and would be revised to state that MPOs should integrate into the metropolitan transportation plan the goals, objectives, performance measures, and strategies described in the HSIP, including in the

SHSP required under 23 U.S.C. 148 and the Public Transportation Agency Safety Plan required under 49 U.S.C. 5329, the FHWA and FTA propose removing reference to the term “targets” because MPOs would be required to integrate targets from these plans and processes into the transportation planning process under proposed § 450.306(d).

Consistent with MAP-21, the proposed § 450.324(i) would encourage MPOs to elect to undertake scenario planning as part of the development of the metropolitan transportation plan. Scenario planning is an analytical tool that provides a framework for developing a shared vision of the future. It informs decisionmakers and the public about the potential implications of various investments and policies on transportation system condition and performance. Scenario planning is currently used by many MPOs as part of their transportation planning process and FHWA and FTA consider it a best practice. This proposed section describes the suggested framework that MPOs may follow as they develop those scenarios including potential regional investment strategies, alternative distributions of population and employment, land use, future climate scenarios, system performance measures including locally developed measures, and the relationship among a wider array of investments and local priorities. See 23 U.S.C. 134(i)(4) and 49 U.S.C. 5303(i)(4).

Existing § 450.322(1) would be retained and revised and become proposed § 450.324(m). Language would be added to describe the 12-month conformity lapse grace period in accordance with the Clean Air Act and the transportation conformity regulations (40 CFR part 93, subpart A). This change would be included here because it provides a grace period of up to 1 year before the existing conformity determination on

the metropolitan plan will lapse. Specific information on conformity lapse grace period can be found in the transportation conformity regulations at 40 CFR 93.104.<sup>40</sup> The FHWA and FTA propose these revisions to incorporate the changes to the conformity regulations that have occurred since the last revisions to 23 CFR part 450. In addition, the general reference to the interagency consultation definition in “40 CFR part 93” would be replaced with the more specific citation at “40 CFR 93.105.”

*Section 450.326 Development and Content of the Transportation Improvement Program (TIP)*

Existing § 450.324 would become § 450.326 and would describe the development and the content of the TIP. The TIP is the prioritized program of transportation projects covering a period of 4 years that is developed and adopted by the MPO and approved by the Governor. This section would be revised to incorporate MAP-21’s transformation of the planning and programming process to a performance-based planning and programming process (see proposed new paragraphs (c) and (d)) as well as other minor changes. The proposed revisions are as follows.

Proposed § 450.326(a) would be revised to add one of the MAP-21 general requirements for a TIP—that the TIP “shall reflect the investment priorities established in the current metropolitan transportation plan.” See 23 U.S.C. 134(j)(1)(A)(ii) and 49 U.S.C. 5303(j)(1)(A)(ii).

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<sup>40</sup> For more information please see Transportation Conformity Rule Amendments to Implement Provisions contained in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), 73 FR 4420, 4423 (Jan. 24, 2008).

The FHWA and FTA propose to incorporate MAP-21 requirements for a performance-based TIP in proposed new § 450.326(c) and new § 450.326(d). See 23 U.S.C. 134(j)(1)(A) and (j)(2)(D) and 49 U.S.C. 5303(j)(1)(A) and (j)(2)(D). Proposed paragraph (c) would require that MPOs design TIPs that make progress toward achieving MPO performance targets. Importantly, proposed paragraph (d) would require the TIP describe how the projects in the TIP would achieve the MPO performance targets—linking investment priorities to those targets. Because the development of a TIP is a public process, these new requirements would promote greater accountability and transparency of transportation investment decisions.

Existing § 450.324(c) would become § 450.326(e) and be revised to reflect MAP-21 changes to programs, phrases, and plans. Those changes are “transportation enhancements” would become “transportation alternatives,” and “transit enhancements” would become “associated transit improvements.” “Strategic Highway Safety Plan” would be updated to become the “Highway Safety Improvement Program” since the HSIP is the safety funding program associated with funding safety projects in the TIP. “Federal Lands Highway Program” would be changed to “Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program” to reflect MAP-21 changes to 23 U.S.C. 201–204. In addition, “accessible” would be added before “pedestrian walkways.” Statutory citations referenced in proposed § 450.326(e)(2) would be changed as follows: 23 U.S.C. 104(f) becomes 23 U.S.C. 104(d), and 49 U.S.C. 5339 is deleted. Under proposed § 450.326(e)(4), “National Highway System” and “Equity Bonus” would be deleted because the programs are not continued under MAP-21, and

eligibility is not continued under the NHPP program that replaced the NHS program. In addition “State planning and research projects” is replaced with “metropolitan planning projects” to correct an error in the existing regulations. Because of the creation of FTA’s emergency relief funding program, FHWA and FTA want to clarify that § 450.324(c)(5), which indicates that emergency relief projects meeting certain conditions are not required to be included in the TIP, would not apply to resiliency projects funded under 49 U.S.C. 5324.

Existing § 450.324(f) would become proposed § 450.326(h) and be updated to add “subpart A” after the second reference to “40 CFR part 93” to be more specific regarding the citation for the transportation conformity regulations.

Existing § 450.324(h) would become § 450.326(j) and be unchanged, except that the reference to 270 days after the effective date of the old rule would be deleted because this date has passed and reference to “(but is not required to)” after the word “may” would be deleted because it is redundant.

Consistent with the new requirements to integrate elements of other performance-based plans into the metropolitan transportation planning process as described above, a new paragraph (m) would be added to indicate that the TIP should be informed by the financial plan and investment strategies from the State asset management plan for the NHS and the public transit asset management plan. See 23 U.S.C. 134(h)(2)(D) and 49 U.S.C. 5303(h)(2)(C). The financial plan of the State asset management plan for the NHS and the investment strategies of the public transit asset management plan are elements of new performance-based plans required under MAP-21. The FHWA and

FTA propose in this section that MPOs consider these elements as part of the investment decisionmaking process to inform the TIP.

Existing § 450.324(k) would be deleted because the topic is addressed in proposed § 450.324(j).

Existing § 450.324(m) would become proposed § 450.326(p) and be revised to include language describing the 12-month conformity lapse grace period in accordance with the Clean Air Act and the transportation conformity regulations (40 CFR part 93, subpart A). This change would be included here because it provides a grace period of up to 1 year before the existing conformity determination on the TIP will lapse. Specific information on conformity lapse grace period can be found in the transportation conformity regulations at 40 CFR 93.104. In addition, the general reference to the interagency consultation definition in “40 CFR part 93” would be replaced with the more specific citation at “40 CFR 93.105.”

*Section 450.332 Project Selection from the TIP*

Existing § 450.330 would become proposed § 450.332. References to projects funded under the Bridge or Interstate maintenance programs would be removed because these programs were eliminated in MAP-21. Also, “Federal Lands Highway Program” would be changed to “Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program” to reflect MAP-21 changes to 23 U.S.C. 201–204.

*Section 450.336 Self-Certifications and Federal Certifications*

Existing § 450.334 would be retained and become § 450.336. Proposed § 450.336 describes the long-standing requirement that the State and the MPO(s) would periodically certify that the metropolitan transportation planning process is being carried out in accordance with all applicable requirements and goes on to specifically describe what the applicable requirements are.

The only change to this section would be updating reference in § 450.336(a)(5) from the SAFETEA-LU provision to the successor provision in MAP-21.

The MPO self-certifications and Federal certifications of the planning process in TMA areas would continue to be based on meeting the requirements of 23 U.S.C. 134 and 49 U.S.C. 5303, subject to the phase-in requirements discussed in proposed § 450.340, and include meeting the requirements of the MAP-21 planning provisions implemented through this regulation. Some of the new planning requirements under Titles 23 and 49, which MPOs would have to meet to self-certify, would include the performance-based planning requirements. As part of the self-certification, larger MPOs would also certify that they are meeting the new requirements for MPO policy board representation in TMA areas. The FHWA and FTA would review that TMAs are meeting these requirements during FHWA and FTA certification reviews. The FHWA and FTA would conduct a certification review of each TMA at least once every 4 years.

#### *Section 450.340 Phase-In of New Requirements*

For purposes of phasing in the MAP-21 requirements, there are two categories of changes. The first category is those changes that are unrelated to performance management, and the second category is those changes that are performance management

based. The FHWA and FTA propose two different phase-in schedules, one for each category of changes.

The proposed changes to this section are similar to the changes made to the phase-in requirements for the statewide and nonmetropolitan transportation planning provisions in proposed 23 CFR 450.226. With respect to any non-performance management changes, FHWA and FTA propose that the MPOs should follow the same phase-in requirements as the States, including not deviating from their established planning update cycle to implement the changes required by MAP-21 to the planning process. The structure of the planning requirements is based on integrated statewide and metropolitan planning processes. If the metropolitan planning process had a different phase-in schedule than the statewide planning process, the integration of the two processes would be eroded. There are provisions throughout the statute and regulations that support this proposal and demonstrate how the processes are integrated, including:

- 23 U.S.C. 135(b)(1) and 49 U.S.C. 5304(b)(1) require the State to coordinate planning carried out under the statewide and nonmetropolitan provisions with the transportation planning activities carried out under the metropolitan planning provisions.
- Existing regulations (23 CFR 450.216(b)) require that the TIP be included without change in the STIP, directly or by reference, after approval of the TIP by the MPO and the Governor.
- Existing regulations (23 CFR 450.218) provide that the State shall certify that the transportation planning process is carried out in

accordance with the applicable metropolitan and statewide planning requirements in 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304.

- In 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304, there are requirements that either the MPO cooperate with the State on the development of the MPO financial plan and the TIP or that the State cooperate with the MPO in development of the statewide transportation plan and the STIP.

Because of all of these requirements to cooperate in the development of documents and to consider the planning processes together, FHWA and FTA determined that it is important that both the metropolitan and the statewide and nonmetropolitan processes have similar phase-in requirements. The MPOs, as well as States, also would have the option of developing any planning products consistent with the new regulatory requirements immediately upon issuance of the planning final rule.

With respect to any performance management changes, the MPOs would still need to consider the timing of implementing the new performance-based planning requirements (e.g., new requirements for the Metropolitan Planning Agreement).

#### *Appendix A--Linking the Transportation Planning and NEPA Processes*

The Agencies propose to retain Appendix A, which will continue to be referenced in §§ 450.212 and 450.318. References to Alternatives Analysis studies as required for funding under 49 U.S.C. 5309 are proposed to be removed pursuant to the elimination of that requirement by MAP-21. References to Alternatives Analysis studies as optional

tools for linking planning with the environmental process will be retained, as these studies may still be completed by project sponsors at their option.

*49 CFR Part 613*

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

**V. Regulatory Analyses and Notices**

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

**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 preliminarily that this rulemaking would be a significant regulatory action within the meaning of Executive Order 12866, and is significant under DOT regulatory policies and procedures because of substantial State, congressional, local government, and public interest. These interests involve receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements, and balancing of transportation mobility and environmental goals.

The changes proposed herein would add new 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 proposal, 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 proposed regulatory changes that would have a significant cost impact for MPOs, States, or providers of public transportation, and have estimated those costs on an annual basis. This cost analysis is included as a separate document, entitled “Regulatory Cost Analysis of Proposed Rulemaking,” and is available for review in the docket.

The FHWA and FTA 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. The FHWA and FTA have not been able to find data or empirical studies to assist it in monetizing or quantifying the benefits of this NPRM. In addition, estimates of the benefits of this NPRM would be difficult to develop. The FHWA and FTA expect that the proposed regulatory changes to the planning process would improve decisionmaking through increased transparency and accountability and support the national goals described in 23 U.S.C. 150(b) and 49 U.S.C. 5301. The proposal would promote transparency by requiring 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 developed with public review. The proposal would promote accountability through mandating reports on progress toward meeting those targets. The FHWA and FTA expect that the proposed regulatory changes to the planning process would support the national goals described in 23 U.S.C. 150(b) and 49 U.S.C. 5301.

Beyond improved transparency and accountability, there are several other benefits of the proposal. Other elements of the proposal may improve decisionmaking, such as representation by providers 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 proposal may enhance the statewide and nonmetropolitan transportation planning process by requiring State DOTs to cooperate with nonmetropolitan local officials or RTPOs, if applicable, when conducting rural transportation planning giving the local officials or RTPOs a stronger voice in the development of planning products and project selection. The proposed option for MPOs to use scenario planning in the development of their metropolitan transportation plans provides MPOs 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 FHWA and the FTA invite comments on 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 proposed option for State DOTs 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 and as a result, potentially minimize or avoid impacts to these resources. This has the potential to streamline project development and to protect environmental resources and may have benefits that outweigh the costs of performing the analysis. The FHWA and the FTA invite comments on 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.

Based on the cost analysis, we estimate the total cost of this proposed rule is \$30.8 million. Of this total, the estimated costs for all 52 States<sup>41</sup> and an estimated 420 MPOs would be approximately \$28.3 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 providers of public transportation would be approximately \$2.4 million per year. Eighty percent of these

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<sup>41</sup> This number (52 States) includes the 50 States, the District of Columbia, and Puerto Rico. This is consistent with the definition of "States" in the current and proposed regulations at 23 CFR 450.104

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 MAP-21 did not significantly increase the mandatory set-aside in Federal funds for metropolitan transportation planning, as well as Statewide Planning and Research funding. The States, providers of public transportation, and MPOs have the flexibility to use certain other categories of Federal highway dollars for transportation planning, such as Surface Transportation Program funds, if they so desire. Consequently, the increase in non-Federal cost burden attributable to this proposed rulemaking is estimated to be only \$6.2 million per year in total. The total Federal, State, and local cost of the planning program is \$1,166,471,400. As the cost burden of this rule is estimated to be 2.6 percent of the total planning program, we believe that the economic impact of this rulemaking would be minimal and the benefits of implementing this rulemaking would outweigh the costs.

The FHWA and FTA welcome comments on the economic impacts of these proposed regulations. Comments, including those from the State DOTs, providers of public transportation, and MPOs, regarding specific burdens, impacts, and costs would be most welcome and would aid us in more fully appreciating the impacts of this ongoing planning process requirement. The FHWA and FTA encourage comments on all facets of this proposal regarding its costs, burdens, and impacts.

### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601-612), FHWA and FTA have determined that 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. Metropolitan planning organizations, by definition, represent urbanized areas having a minimum population of 50,000. Because the regulations are 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, I hereby certify 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, March 22, 1995, 109 Stat. 48). This proposed rule would not result in the expenditure of non-Federal funds by State, local, and tribal governments, in the aggregate, or by the private sector, of \$143.1 million in any one year (2 U.S.C. 1532). Eighty percent of the costs attributable to this rulemaking 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).

Additionally, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program and Federal Transit Act permit this type of flexibility to the States.

### **Executive Order 13132 (Federalism)**

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

### **Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Planning and Construction (or 20.217); 20.500, Federal Transit Capital Improvement Grants; 20.505, Federal Transit Technical Studies Grants; 20.507, Federal Transit Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to these programs and were carried out as part of the outreach on the federalism implications of this rulemaking. This EO applies because State and local governments would be directly affected by the proposed regulation, which is a condition on Federal highway funding. The FHWA and the FTA solicit comments on this issue.

### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from the Office of Management and Budget (OMB) prior to conducting or sponsoring a collection of information. The FHWA and FTA have determined that this proposal contains collections of information for the purposes of the PRA. The reporting requirements for metropolitan planning unified planning work programs (UPWPs), 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 for it soon. The FTA conducted the analysis supporting this approval on behalf of both FTA and FHWA, since the regulations are jointly issued by both agencies. The reporting requirements for statewide transportation plans and programs are also approved under this same OMB control number. Because approval for the FHWA and FTA collection will soon be expiring, both agencies are seeking renewed approval for its existing collection.

The paragraphs below describe the burden analysis conducted by FHWA and the FTA for the existing planning requirements in this proposed regulation which remain unchanged from SAFETEA-LU and were carried over from the existing regulation. It serves as a baseline burden analysis (analysis of the burden to implement elements of the existing regulations which were carried over from the existing regulation into these proposed regulations without change). It is followed by a description of the burden

analysis for the new (changed) planning requirements proposed by this NPRM, which resulted from the passage of MAP-21.

*Burden Analysis for the Existing Planning Requirements (Baseline Burden Analysis)*

The Unified Planning Work Program (UPWP) identifies transportation planning activities in metropolitan areas and supports the request for funding to support the work under both FTA and FHWA planning programs in metropolitan areas. A similar listing of planning activities is prepared on a statewide level as the basis for FTA and FHWA 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 TIP and STIP are short-range multiyear listings (4 years) of highway and transit improvement projects which are consistent with the metropolitan and statewide plans and which support the request for, and receipt of, Federal transportation funding under Title 23 U.S.C. and Chapter 53 of Title 49 U.S.C.

The FTA and FHWA jointly carry out the Federal mandate to improve metropolitan and statewide transportation under authority of Title 49, Chapter 53, and Title 23 U.S.C. Sections 5305(g) of Title 49 and 104(f) of Title 23 authorize funds to support transportation planning at metropolitan and statewide levels. As a condition to receive Title 49, Chapter 53, and Title 23 funding, requirements are established for metropolitan and statewide transportation planning under Sections 5303 and 5304 of Title 49 and Sections 134 and 135 of Title 23 that call for development of transportation plans and transportation improvement programs in all States and metropolitan areas. The

information collection activities necessary to prepare federally required plans and programs, and the supporting planning studies proposed for funding in UPWPs and under the SP&R work programs are necessary to monitor and evaluate current and projected usage and performance of transportation systems nationwide - in each urbanized area and throughout every State.

The metropolitan transportation plan 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.” Sections 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 MPOs and States use metropolitan and statewide plans, TIPs, and STIPs as the basis for investing Federal and non-Federal capital funds for transportation infrastructure investments. (Note: Paperwork Reduction Act requirements for preparation of the STIP are covered by OMB control number 2125-0039.)

Part 450, title 23, Code of Federal Regulations implements these statutory requirements. (Note: 23 CFR part 450 is identical to, and cross-referenced by, the equivalent regulation in Title 49, 49 CFR part 613.) The MPO, together with the State and public transportation operators, prepares plans for each urbanized area, while the State develops a statewide plan, which, in metropolitan areas, is developed in cooperation with affected MPOs. These plans form the basis for development of TIPs and STIPs, the

short-range programming documents for federally funded transportation capital investments.

A UPWP is required by 23 CFR 450.308 for all MPOs in TMAs. The MPOs in urbanized areas of less than 200,000 population, with prior approval by the State, FTA, and FHWA, 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 FTA and FHWA metropolitan planning funds, as required by Section 5303 of Title 49 U.S.C. and 23 U.S.C. 134, are set out in 23 CFR 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, TIPs, and STIPs are essential components of decisionmaking by State and local officials for planning and programming Federal transportation dollars 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 FTA and FHWA on a national scale 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, 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 law and regulations.

Sections 5303 and 5304 of 49 U.S.C. and Sections 134 and 135 of 23 U.S.C. require the development of plans and programs in all urbanized areas and entire States 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, FTA and FHWA must make a conformity finding on these areas' plans and TIPs before TIPs are incorporated into STIPs.

The complete STIP is then jointly reviewed and approved (or disapproved) by FTA and FHWA. With that action comes a joint determination, or finding, by FTA and FHWA that metropolitan and statewide planning processes are in compliance with all applicable Federal laws and regulations. These planning "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/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. Estimated cost - since 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. Source of Federal funds - The STIP/TIP is an integrated FTA/FHWA 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. Identification of the recipient - because the STIP/TIP is an integrated program of highway and transit improvements, many potential capital grant recipients have projects included in the document. For FTA funding, it is necessary that each individual project be identified as to the likely capital grant applicant. The STIP/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, TIP, and STIP are adaptable to computer generation and revision. Both FTA and FHWA have extensive technical assistance programs encouraging application of computer techniques. These programs reduce burden 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 FTA and FHWA, FTA and FHWA cooperate to avoid duplication of effort. Most visible is consolidating FTA and FHWA statutory requirements for planning through the issuance of joint planning regulations. The MPOs and States prepare a single set of UPWPs, plans, TIPs, and STIPs to satisfy both FTA and FHWA requirements.

The information contained in projects proposed for funding under the SP&R programs, UPWPs, metropolitan and State plans, TIPs, and STIPs 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 FHWA and FTA requirements are met, thus further reducing any duplication and unnecessary burden. The SP&R programs, statewide plans, STIPs, UPWPs, metropolitan plans and TIPs have been submitted to FTA and FHWA for many years to support funding of the transportation planning and capital improvement programs for urbanized and non-urbanized areas. Continuing contact between each of FTA's grantees and FTA regional staff as well as FHWA's division office staff and State DOTs and MPOs 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 Florida Department of Transportation and the American Association of State Highway and Transportation Officials (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 based upon the average for all MPOs and States.

A 30-day Federal Register notice was published on January 29, 2014 (79 FR 4808).

The following summarizes in tabular form the estimated burden hours for the collection of information for the purposes of developing and completing UPWPs, metropolitan and statewide transportation plans, and TIPs/STIPs and an explanation of the methodology used to calculate the number of hours required per submission.

Unified Planning Work Programs (UPWPs) – current Regulation

Urbanized Area (UZA) population	Total Number of Entities	Burden Annual Submissions	Total Annual Hours per Submission	Burden Hours
Under 200,000	210	210	200	63,000
Over 200,000	210	210	300	42,000
TOTAL	420	420	--	105,000

Transportation Improvement Programs (TIPs and STIPs) – Current Regulation

Entity	Number of Entities	Average Annual Submissions	Burden Hours per Submission	Total Annual Burden Hours
MPOs in Attainment Areas	181	45	8,135	366,066
MPOs in Nonattainment and Maintenance Areas	239	60	11,330	679,837
State DOTs	52	13	17,868	232,284

TOTAL	472	118	--	1,278,187
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Transportation Plans – Current Regulation

Entity	Number of Entities	Average Annual Submissions	Burden Hours per Submission	Total Annual Burden Hours
MPOs in Attainment Areas	181	36	19,503	702,092
MPOs in Nonattainment or Maintenance Areas	239	60	21,731	1,303,885
State DOTs	52	13	30,068	390,881
TOTAL	472	109	--	2,396,858

The respondent's cost is the cost of the MPOs' and State agencies' staff time required to compile and produce the UPWP. The UPWPs must be developed 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 210 non-TMAs to prepare simplified statements of work, FTA and FHWA know of no MPOs that are developing such simplified statements. Using a staff salary of \$31.62 (based on annual staff salary of \$65,760) per hour total respondent cost is estimated at \$3,320,100. Assuming a 54 percent overhead rate, the total annualized cost with overhead is estimated to be \$5,112,954.

The OMB has previously approved the burden on respondents to develop State (SPR) work programs under FHWA control number 2125-0039.

Metropolitan TIPs are prepared by MPOs in cooperation with the State and local public transportation operators. The TIPs are required every 4 years; plans in nonattainment and maintenance areas must be updated and submitted to FTA/FHWA every 4 years and in attainment areas every 5 years. Although the requirements for metropolitan TIPs and plans, particularly in nonattainment and maintenance areas, are complex, current burden estimates have been generated from past experiences, informal discussion with both FTA/FHWA 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 8,135 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 11,330 person hours per submission are required for these TIPs.

The development by States of a STIP draws heavily on the work cooperatively done by MPOs and States 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 at 17,868 person hours is required for each STIP.

Total respondent burden hours for the TIP/STIP development is estimated to be 1,278,187. Total respondent cost for TIP/STIP development without overhead is estimated to be \$40,416,518. Total respondent cost for TIP/STIP development assuming a 54 percent overhead rate is estimated to be \$62,241,438. The Joint Planning Regulations require that plans in nonattainment and maintenance areas be updated and submitted to FTA/FHWA every 4 years and that plans in attainment areas be updated every 5 years. The development by States of a statewide plan draws heavily on the work cooperatively done by MPOs and States 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 at 21,731 person hours are required for the preparation of the plan in a non-attainment area. These plans are updated every 4 years. We estimate that burden at 19,503 person hours are required for the preparation of the plan in an attainment area. These plans are updated every 5 years. Assuming an average rate of \$31.62/ hour we estimate that the respondent cost for the metropolitan plan is \$63,428,993 and for the statewide plan is \$12,359,657.

Total respondent burden hours for the plan development by States and MPOs is estimated to be 2,396,858. Total respondent cost for plan development without overhead is estimated to be \$75,788,650. Total respondent cost for plan development assuming a 54 percent overhead rate is estimated to be \$116,714,521.

There are no capital or start-up costs associated directly with the collection of information required by the UPWPs, TIPs/STIPs, 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 \$64,459,978 as calculated in the table below:

Total Annual Burden Costs to the MPOs and the States

Task	Total Costs With Overhead	Total Costs Without Overhead
UPWP	\$5,112,954	\$3,320,100
TIP	\$50,925,017	\$33,071,100
Metropolitan Plans	\$97,671,020	\$63,428,993
STIPs	\$11,309,908	\$7,344,820
Statewide Plans	\$19,031,996	\$12,359,657
Total	\$184,050,895	\$119,525,023

Total Annual Burden Hours to the MPOs and the States

Task	Total Burden Hours
UPWP	105,000 hrs.
TIP	1,045,892 hrs.
Metropolitan Plans	2,005,977 hrs.

STIPs	232,284 hrs.
Statewide Plans	390,881 hrs.
Total	3,780,045 hrs.

Please note that each State DOT 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 State planning and research work program have been previously approved by OMB under FHWA control number 2125-0039.

This justification includes estimates of burden hours and costs to complete the major planning products required by the Statewide and Nonmetropolitan Transportation Planning and Metropolitan Transportation Planning regulations that are significantly different than the estimates provided in the previous four information collection justifications submitted to OMB. The estimates included in this justification reflect the baseline estimates of burden hours and costs developed for the Regulatory Impact Analysis (RIA) prepared as part of this Joint NPRM for the Metropolitan Transportation Planning Program and the Statewide and Nonmetropolitan Planning Program to implement provisions of MAP-21. To develop the baseline for the RIA, FHWA and FTA estimated the current average 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 TMAs and 12 non-TMA MPOs and used this sample to calculate costs for States and MPOs. Historically, FTA and FHWA have used an estimation

methodology, not based on sampling, to estimate the burden hours required of MPOs and States to meet the planning requirements. This methodology assumed very limited increase in the costs of developing the planning products.

*Additional Burden Hours Associated with these Proposed Rules*

The FHWA and FTA conducted an analysis of the additional annual burden hours of work for the States, MPOs, and providers of public transportation that are associated with their implementation of the proposed changes to the planning process. The proposed changes to the planning process that impact the average annual burden hours of effort 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 including representation by providers of public transportation on MPOs that serve TMAs. The FHWA and the FTA assumed that this additional work will increase the annual cost of preparing a long-range transportation plan and STIP/TIP by the State, the MPOs, and the providers of public transportation by 15 percent, on average. These burden hours of effort were calculated using the same labor wage rates and overhead rates that were used in the baseline paperwork reduction act analysis.

Summary of Average Annual Regulatory Costs and Burden Hours of Effort Resulting from the Changes Proposed in this Rule

Entity	Total Additional Cost	Non-Federal Share (20%)	Average Additional Person Hours Per Agency
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TMA MPOs (210)	\$18,402,300	\$3,680,500	1,800
Non-TMA MPOs (210)	\$3,909,200	\$781,800	400
States (52)	\$6,075,800	\$1,215,200	2,400
Providers of Public Transportation (600)	\$2,440,000	\$488,000	100
TOTAL	\$30,827,300	\$6,165,500	

As shown in the above table, the proposed changes to the rule would have a total estimated cost increase of \$30,827,300 per year for the States, MPOs, and providers of public transportation. When converted to burden hours, that equates to an additional 1,800 hours of annual burden for each TMA MPO, 400 additional hours of annual burdenhours for each non TMA-MPO, 2,400 annual burden hours for each State, and 100 annual burden hours for each provider of public transportation.

*FHWA and FTA Seek Public Comments on the Information Collection Associated with these Proposed Rules*

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the DOT's performance; (2) the accuracy of the estimated burdens; (3) ways for the DOT to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

## **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: those that normally require preparation of an Environmental Impact Statement, those that normally require preparation of an Environmental Assessment, 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, sections 134(q), 135(k), and 168(f)(1) of title 23, U.S.C., and sections 5303(q) and 5304(j) of title 49, U.S.C., 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 Executive Order 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. These proposed regulations do provide the State DOTs and the MPOs with the option of developing a programmatic mitigation plan as part of the transportation planning process, and 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. These proposed regulations also encourage early coordination by State DOTs and MPOs with Federal and State environmental resource agencies during the planning process to identify environmental resources 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 at that point.

**Executive Order 13653 (Climate Preparedness and Resilience)**

The FHWA and FTA have evaluated this action under Executive Order 13653, Climate Preparedness and Resilience. The FHWA and FTA have determined that this proposed rule provides an optional means where State DOTs and MPOs could consider the effects of climate change and resilience in the context of the transportation planning process, such as during the development of statewide or metropolitan transportation plans. Scenario planning, which is discussed in these regulations as an optional tool for aiding MPOs in their development of the metropolitan transportation plan, is another option where MPOs could consider climate change and resilience as part of scenarios evaluated during the development of the metropolitan transportation plan. The FHWA

and FTA have determined that these proposed regulations, if finalized as proposed, could provide an optional means for States and MPOs to assess climate change and resilience as part of the transportation planning process.

**Executive Order 12988 (Civil Justice Reform)**

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

**Executive Order 13045 (Protection of Children)**

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

**Executive Order 12630 (Taking of Private Property)**

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Executive Order 13175 (Tribal Consultation)**

The FHWA and FTA have analyzed this action under Executive Order 13175, dated November 6, 2000, and believe that the proposed action would not have substantial direct effects on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. The planning regulations contain requirements for States to consult with Indian tribal

governments in the planning process. Tribes are required under 25 CFR part 170 to develop long-range plans and develop an Indian Tribal Transportation Program (TTP) for programming TTP projects. However, the requirements in 25 CFR part 170 would not be changed by this rulemaking. Therefore, a tribal summary impact statement is not required.

**Executive Order 13211 (Energy Effects)**

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

**Executive Order 5610.2(a) (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 [http://www.fhwa.dot.gov/environment/environmental\\_justice/ej\\_at\\_dot/order\\_56102a/index.cfm](http://www.fhwa.dot.gov/environment/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 12898 and the DOT Order in all rulemaking activities. In addition, FHWA and FTA have issued additional documents relating to administration of the Executive Order 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 (the FHWA Order) (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](http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf)).

The FHWA and FTA have evaluated this proposed rule under the Executive Order, the DOT Order, the FHWA Order, and the FTA Circular. Environmental justice 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 FHWA and FTA 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 Sections 134 and 135 of title 23 dictate the outcome of those decisions. The FHWA and FTA 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.

### **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.

49 CFR Part 613

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

Issued in Washington, DC on May 21, 2014, under authority delegated in 49 CFR 1.85 and 1.91:

Gregory G. Nadeau  
Deputy Administrator  
Federal Highway Administration

Therese W. McMillan  
Deputy Administrator  
Federal Transit Administration

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

**Title 23—Highways**

1. Revise part 450 to read as follows:

**PART 450--PLANNING ASSISTANCE AND STANDARDS**

**Subpart A--Transportation Planning and Programming Definitions**

Sec.

450.100 Purpose.

450.102 Applicability.

450.104 Definitions.

**Subpart B--Statewide and Nonmetropolitan Transportation Planning and Programming**

450.200 Purpose.

450.202 Applicability.

450.204 Definitions.

450.206 Scope of the statewide and nonmetropolitan transportation planning process.

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

### **Subpart C--Metropolitan Transportation Planning and Programming**

450.300 Purpose.  
450.302 Applicability.  
450.304 Definitions.  
450.306 Scope of the metropolitan transportation planning process.  
450.308 Funding for transportation planning and unified planning work programs.  
450.310 Metropolitan planning organization designation and redesignation.  
450.312 Metropolitan planning area boundaries.  
450.314 Metropolitan planning agreements.  
450.316 Interested parties, participation, and consultation.  
450.318 Transportation planning studies and project development.  
450.320 Development of programmatic mitigation plans.  
450.322 Congestion management process in transportation management areas.  
450.324 Development and content of the metropolitan transportation plan.  
450.326 Development and content of the transportation improvement program (TIP).  
450.328 TIP revisions and relationship to the STIP.  
450.330 TIP action by the FHWA and the FTA.  
450.332 Project selection from the TIP.  
450.334 Annual listing of obligated projects.  
450.336 Self-certifications and Federal certifications.  
450.338 Applicability of NEPA to metropolitan transportation plans and programs.  
450.340 Phase-in of new requirements.

APPENDIX A TO PART 450—LINKING THE TRANSPORTATION PLANNING AND NEPA PROCESSES.

**Authority:** 23 U.S.C. 134 and 135; 42 U.S.C. 7410 et seq.; 49 U.S.C. 5303 and 5304; 49 CFR 1.85 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, PM10, PM2.5, and nitrogen dioxide) meet the health-based National Ambient Air Quality Standards (NAAQS) for that pollutant. An area may be an attainment area for one pollutant and a nonattainment area for others. A

“maintenance area” (see definition below) is not considered an attainment area for transportation planning purposes.

*Available funds* means funds derived from an existing source dedicated to or historically used for transportation purposes. For Federal funds, authorized and/or appropriated funds and the extrapolation of formula and discretionary funds at historic rates of increase are considered “available.” A similar approach may be used for State and local funds that are dedicated to or historically used for transportation purposes.

*Committed funds* means funds that have been dedicated or obligated for transportation purposes. For State funds that are not dedicated to transportation purposes, only those funds over which the Governor has control may be considered “committed.” Approval of a TIP by the Governor is considered a commitment of those funds over which the Governor has control. For local or private sources of funds not dedicated to or historically used for transportation purposes (including donations of property), a commitment in writing (e.g., letter of intent) by the responsible official or body having control of the funds may be considered a commitment. For projects involving 49 U.S.C. 5309 funding, execution of a Full Funding Grant Agreement (or equivalent) or 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 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, consequences, 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 § 450.216(j) and § 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 to implement the provisions of 23 U.S.C. 130 and 148, 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.

*Local official* means elected or appointed officials of general purpose local government with responsibility for transportation.

*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).

*Major modes of transportation* means those forms of transportation administered, managed, owned, or operated by public agencies or authorities that provide transportation services open to the public for the movement of people and goods or as operated by the private sector on behalf of a public agency owned facility.

*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* is as defined in 23 CFR 490.XXX and 49 CFR XXX.XXX.

*Performance metric* is as defined in 23 CFR 490.XXX and 49 CFR XXX.XXX.

*Performance target* is as defined in 23 CFR 490.XXX and 49 CFR XXX.XXX.

*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 multidisciplinary plan, based on safety data developed by a State DOT in accordance with the requirements of 23 U.S.C. 148.

*Transit Asset Management Plan* is as defined in 49 CFR XXX.XXX.

*Transit Asset Management System* is as defined in 49 CFR XXX.XXX.

*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 and bicycle transportation facilities) and that fosters economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution in all areas of the State, including those areas subject to the metropolitan transportation planning requirements of 23 U.S.C. 134 and 49 U.S.C. 5303.

### **§ 450.202 Applicability.**

The provisions of this subpart are applicable to States and any other organizations or entities (e.g., 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; and

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

(b) Consideration of the planning factors in paragraph (a) of this section shall be reflected, as appropriate, in the statewide transportation planning process. The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation systems development, land use, employment, economic development, human and natural environment (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. Each State should select and establish performance targets in coordination with affected Federal Lands Management agencies, as appropriate.

(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 National Highway System (NHS) Asset Management Plan, 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 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 § 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 shall apply asset management principles and techniques consistent with the NHS Asset Management Plan 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) A State shall integrate the goals, objectives, performance measures, and targets from the following into the statewide transportation planning process:

(1) NHS Asset Management Plan, as defined in 23 U.S.C. 119(e), and Transit Asset Management Plan, as discussed in 49 U.S.C. 5326;

(2) Applicable portions of the HSIP, including the SHSP, as specified in 23 U.S.C. 148;

(3) Public Transportation Agency Safety Plan in 49 U.S.C. 5329(b);

(4) Other safety and security planning and review processes, plans, and programs, as appropriate;

(5) The State Freight Plan, if the State chooses to develop one; and

(6) Other State transportation plans and transportation processes required as part of a performance-based program.

(h) 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.

(i) 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, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties;

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

(iii) Provide adequate public notice of public involvement activities and time for public review and comment at key decision points, including a reasonable opportunity to comment on the proposed long-range statewide transportation plan and STIP;

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

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

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

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

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

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

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

(b) The State shall provide for 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.

**§ 450.214 Development of Programmatic Mitigation Plans.**

(a) A State may develop programmatic mitigation plans to address the potential environmental impacts of future transportation projects. The State will determine the scope of the programmatic mitigation plan 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.

(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, and threatened or endangered species 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, 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) If a State chooses to develop a programmatic mitigation plan then it shall be developed as part of the statewide transportation planning process, requiring the State to consider the following process prior to adopting a programmatic mitigation plan:

(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 developed pursuant to this section, any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project may use 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) and any other environmental laws and regulations.

(e) Nothing in this section limits the use of programmatic approaches for reviews under NEPA.

**§ 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. 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 should 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 consultation 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 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, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed long-range statewide transportation plan. In carrying out these requirements, the State shall 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 long-range statewide transportation plan should be informed by the financial plan and investment strategies from the State asset management plan for the NHS (as

defined in 23 U.S.C. 119(e)) and investment priorities of the public transit asset management plan(s) (as discussed in 49 U.S.C. 5326).

(o) 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.

(p) 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).

(q) 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.

(r) 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 should be informed by the financial plan and the investment strategies from the State asset management plan for the NHS (as defined in 23 U.S.C. 119(e)) and by the public transit asset management plan(s) (as discussed in 49 U.S.C. 5326).

(p) 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.

(q) 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.

(r) 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. This discussion should be consistent with the strategies to achieve targets presented in the statewide transportation plan and other performance management plans such as the highway and transit asset management plans, the SHSP, the public transportation agency safety plan, the Congestion Mitigation and Air Quality Improvement Program (CMAQ) performance plan, and if one exists, the State freight plan.

**§ 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 MAP-21 (Pub. L. 112-141) 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 [2 years after the publication date of the final rule], 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 [2 years after the publication date of the final rule], 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 [2 years after the publication date of the final 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 [2 years after the publication date of the final rule], 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 [2 years after the publication date of the final 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 [2 years after the publication date of the final rule], 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 and bicycle transportation facilities) and foster economic growth and development, while minimizing transportation-related fuel consumption and air pollution; and

(b) Encourages continued development and improvement of metropolitan transportation planning processes guided by the planning factors set forth in 23 U.S.C. 134(h) and 49 U.S.C. 5303(h).

**§ 450.302 Applicability.**

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

**§ 450.304 Definitions.**

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

**§ 450.306 Scope of the metropolitan transportation planning process.**

(a) 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; and

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

(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) 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 NHS asset management plan, 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 sec. 1118);

(vi) The congestion management process, as defined in 23 CFR 450.322, if applicable; and

(vii) 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 these regulations, 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 transit operator(s), 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) 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) 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 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 § 450.306(d)), the collection of data for the asset management plans for the NHS, 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. The written agreement shall 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 (see § 450.306(d)), and the collection of data for the asset management plans for the NHS. 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). The written agreement shall 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 (see § 450.306(d)), and the collection of data for the asset management plans for the NHS,

**§ 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, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.

(1) The 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, 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.

#### **§ 450.320 Development of Programmatic Mitigation Plans.**

(a) An MPO may develop programmatic mitigation plans to address the potential environmental impacts of future transportation projects. The MPO will determine the

scope of the programmatic mitigation plan, 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.

(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, and threatened or endangered species 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, 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) If an MPO chooses to develop a programmatic mitigation plan then the MPO shall develop it as part of the metropolitan transportation planning process, considering the following process prior to adopting a programmatic mitigation plan:

(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 an MPO develops a programmatic mitigation plan pursuant to this section, any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project may use 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) and any other environmental laws and regulations.

(e) Nothing in this section limits the use of programmatic approaches for reviews under NEPA.

**§ 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 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.

**§ 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 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, transit, 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 and provide for multimodal capacity increases based on regional priorities and needs. The metropolitan transportation plan should be informed by the financial plan and investment strategies from the State asset management plan for the NHS (as defined in 23 U.S.C. 119(e)) and investment priorities of the public transit asset management plan(s) (as discussed in 49 U.S.C. 5326). 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 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 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; and

(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 section 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, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan using the participation plan developed under § 450.316(a).

(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. This discussion should be consistent with the strategies to achieve targets presented in the metropolitan transportation plan 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 if one exists, the State freight plan.

(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) The metropolitan TIP should be informed by the financial plan and investment strategies from the State asset management plan for the NHS (as defined in 23 U.S.C.

119(e)) and by the public transit asset management plan(s) (as discussed in 49 U.S.C. 5326).

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

(o) 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.

(p) 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.

(q) 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 MAP-21 (Pub. L. 112-141) 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 (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 [2 years after the publication date of the final rule], 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 [2 years after the publication date of the final rule], 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 [2 years after the publication date of the final 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 [2 years after the publication date of the final 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 [2 years after the publication date of the final 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 [2 years after the publication date of the final 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 decisionmaking. 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 decisionmaking.

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

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

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

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

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

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

The NEPA requires that the FHWA and the FTA be able to stand behind the overall soundness and credibility of analyses conducted and decisions made during the transportation planning process if they are incorporated into a NEPA document. For example, if systems-level or other broad objectives or choices from the transportation

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

## **II. Substantive Issues**

### **General Issues To Be Considered:**

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

The following questions should be answered prior to accepting studies conducted during the transportation planning process for use in NEPA. While not a “checklist,” these questions are intended to guide the practitioner's analysis of the planning products:

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

- Are natural resource and land use plans being informed by transportation planning products, and vice versa?

**Purpose and Need:**

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

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

23 U.S.C. 139(f), as amended by the SAFETEA-LU Section 6002, provides additional focus regarding the definition of the purpose and need and objectives. For example, the lead agency, as early as practicable during the environmental review process, shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project. The statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include: (a) Achieving a transportation objective identified in an

applicable statewide or metropolitan transportation plan; (b) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or Tribal plans; and (c) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

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

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

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

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

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

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

Consistent with NEPA, the purpose and need statement should be a statement of a transportation problem, not a specific solution. However, the purpose and need statement should be specific enough to generate alternatives that may potentially yield real

solutions to the problem at-hand. A purpose and need statement that yields only one alternative may indicate a purpose and need that is too narrowly defined.

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

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

The NEPA process may be initiated in conjunction with transportation planning studies in a number of ways. A common method is the “tiered EIS,” in which the first-tier EIS evaluates general travel corridors, modes, and/or packages of projects at a planning level of detail, leading to the refinement of purpose and need and, ideally, selection of the design concept and scope for a project or series of projects. Subsequently, second-tier NEPA review(s) of the resulting projects would be performed in the usual way. The first-tier EIS uses the NEPA process as a tool to involve environmental, regulatory, and resource agencies and the public in the planning decisions, as well as to ensure the appropriate consideration of environmental factors in these planning decisions.

Corridor or subarea analyses/studies are another option when the long-range transportation plan leaves open the possibility of multiple approaches to fulfill its goals and objectives. In such cases, the formal NEPA process could be initiated through publication of a NOI in conjunction with a corridor or subarea planning study.

**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 of this appendix for additional elements to consider with respect to acceptance of planning products for NEPA documentation and the response to Question 12 of this appendix 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), Surface Transportation Program (STP), and Equity Bonus); and
- FTA planning and research funds (49 U.S.C. 5303 and 49 U.S.C. 5313(b)), urban formula funds (49 U.S.C. 5307), and (in limited circumstances) transit capital investment funds (49 U.S.C. 5309).

The eligible transportation planning-related uses of these funds may include: (a) Conducting feasibility or subarea/corridor needs studies and (b) developing system-wide environmental information/inventories (e.g., wetland banking inventories or standards to identify historically significant sites). Particularly in the case of PL and SPR funds, the proposed expenditure must be closely related to the development of transportation plans and programs under 23 U.S.C. 134-135 and 49 U.S.C. 5303-5306.

For FHWA funding programs, once a general travel corridor or specific project has progressed to a point in the preliminary engineering/NEPA phase that clearly extends beyond transportation planning, additional in-depth environmental studies must be funded through the program category for which the ultimate project qualifies (e.g., NHS, STP, Interstate Maintenance, and/or Bridge), rather than PL or SPR funds.

Another source of funding is FHWA's Transportation Enhancement program, which may be used for activities such as: conducting archeological planning and research; developing inventories such as those for historic bridges and highways, and other surface transportation-related structures; conducting studies to determine the extent of water pollution due to highway runoff; and conducting studies to reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.

The FHWA and the FTA encourage State DOTs, MPOs, and public transportation operators to seek partners for some of these studies from environmental, regulatory, and resource agencies, non-government organizations, and other government and private sector entities with similar data needs, or environmental interests. In some cases, these partners may contribute data and expertise to the studies, as well as funding.

**17. What staffing or organizational arrangements may be helpful in allowing planning products to be accepted in the NEPA process?**

Certain organizational and staffing arrangements may support a more integrated approach to the planning/NEPA decisionmaking continuum. In many cases, planning organizations do not have environmental expertise on staff or readily accessible. Likewise, the review and regulatory responsibilities of many environmental, regulatory, and resource agencies make involvement in the transportation planning process a challenge for staff resources. These challenges may be partially met by improved use of the outputs of each agency's planning resources and by augmenting their capabilities through greater use of GIS and remote sensing technologies (see <http://www.gis.fhwa.dot.gov/> for additional information on the use of GIS). Sharing databases and the planning products of local land use decision-makers and State and Federal environmental, regulatory, and resource agencies also provide efficiencies in acquiring and sharing the data and information needed for both transportation planning and NEPA work.

Additional opportunities such as shared staff, training across disciplines, and (in some cases) reorganizing to eliminate structural divisions between planning and NEPA practitioners may also need to be considered in order to better integrate NEPA considerations into transportation planning studies. The answers to the following two questions also contain useful information on training and staffing opportunities.

**18. How have environmental, regulatory, and resource agency liaisons (Federally- and State DOT-funded positions) and partnership agreements been used to provide the expertise and interagency participation needed to enhance the consideration of environmental factors in the planning process?**

For several years, States have utilized Federal and State transportation funds to support focused and accelerated project review by a variety of local, State, Tribal, and Federal agencies. While Section 1309(e) of the TEA-21 and its successor in SAFETEA-LU section 6002 speak specifically to transportation project streamlining, there are other authorities that have been used to fund positions, such as the Intergovernmental Cooperation Act (31 U.S.C. 6505). In addition, long-term, on-call consultant contracts can provide backfill support for staff that are detailed to other parts of an agency for temporary assignments. At last count (as of 2003), 246 positions were being funded. Additional information on interagency funding agreements is available at: <http://environment.fhwa.dot.gov/strmlng/igdocs/index.htm>.

Moreover, every State has advanced a variety of stewardship and streamlining initiatives that necessitate early involvement of environmental, regulatory, and resource agencies in the project development process. Such process improvements have: addressed the exchange of data to support avoidance and impact analysis; established formal and informal consultation and review schedules; advanced mitigation strategies; and resulted in a variety of programmatic reviews. Interagency agreements and workplans have evolved to describe performance objectives, as well as specific roles and responsibilities related to new streamlining initiatives. Some States have improved collaboration and efficiency by co-locating environmental, regulatory, and resource and transportation agency staff.

**19. What training opportunities are available to MPOs, State DOTs, public transportation operators and environmental, regulatory, and resource agencies to assist in their understanding of the transportation planning and NEPA processes?**

Both the FHWA and the FTA offer a variety of transportation planning, public involvement, and NEPA courses through the National Highway Institute and/or the National Transit Institute. Of particular note is the Linking Planning and NEPA Workshop, which provides a forum and facilitated group discussion among and between State DOT; MPO; Federal, Tribal, and State environmental, regulatory, and resource agencies; and FHWA/FTA representatives (at both the executive and program manager levels) to develop a State-specific action plan that will provide for strengthened linkages between the transportation planning and NEPA processes.

Moreover, the U.S. Fish and Wildlife Service offers Green Infrastructure Workshops that are focused on integrating planning for natural resources (“green infrastructure”) with the development, economic, and other infrastructure needs of society (“gray infrastructure”).

Robust planning and multi-issue environmental screening requires input from a wide variety of disciplines, including information technology; transportation planning; the NEPA process; and regulatory, permitting, and environmental specialty areas (e.g., noise, air quality, and biology). Senior managers at transportation and partner agencies can arrange a variety of individual training programs to support learning curves and skill development that contribute to a strengthened link of the transportation planning and NEPA processes. Formal and informal mentoring on an intra-agency basis can be arranged. Employee exchanges within and between agencies can be periodically scheduled, and persons involved with professional leadership programs can seek temporary assignments with partner agencies.

#### **IV. Additional Information on this Topic**

Valuable sources of information are FHWA's environment website (<http://www.fhwa.dot.gov/environment/index.htm>) and FTA's environmental streamlining website (<http://www.environment.fta.dot.gov>). Another source of information and case studies is NCHRP Report 8-38 (Consideration of Environmental Factors in Transportation Systems Planning), which is available at <http://www4.trb.org/trb/crp.nsf/All+Projects/NCHRP+8-38>. In addition, AASHTO's Center for Environmental Excellence website is continuously updated with news and links to information of interest to transportation and environmental professionals ([www.transportation.environment.org](http://www.transportation.environment.org)).

#### **Title 49—Transportation**

2. Revise 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**

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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