Sunshine Act Meetings

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Thursday, October 28, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 2, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, November 4, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC. (Ninth Floor.)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Future Meetings.

Correction and Approval of Minutes.

Report of the National Performance Review on Reinventing Government—Creating a Government That Works Better and Costs Less.

Letter from the American Society of Association Executives Requesting Withdrawal of the "Member" Rules.

FY 1994 Management Plan.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

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federal register

Thursday
October 28, 1993

Part II

Department of Transportation

Federal Highway Administration
Federal Transit Administration

23 CFR Part 450
49 CFR Part 613
Statewide Planning; Metropolitan Planning; Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 450

[FHWA Docket Nos. 93–4, 93–5]

RIN 2125–AC95, 2125–AC94

Federal Transit Administration

49 CFR Part 613

RIN 2132–AA44, 2132–AA48

Statewide Planning; Metropolitan Planning

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

ACTION: Final rules.

SUMMARY: The FHWA and the FTA are jointly issuing revised planning regulations governing the development of transportation plans and programs for urbanized areas. Additionally, the FHWA and the FTA are issuing joint regulations governing the development of statewide plans and programs. By implementing provisions of the Intermodal Surface Transportation Efficiency Act of 1991 these regulations will ensure the adequacy of statewide and metropolitan transportation planning and programming and the eligibility of metropolitan areas and States for Federal highway and transit funds.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Sheldon Edner, Planning Operations Branch (HEP–21), (202) 366–4066 (metropolitan planning), Mr. Dee Spann, Planning Programs Branch (HEP–12), (202) 366–4086 (on statewide planning), or Mr. Reid Alsop, FHWA Office of the Chief Counsel (HCC–31), (202) 366–1371. For the FTA: Mr. Paul Verchinski, Resource Management Division (TGM–21), (202) 366–6385 or Mr. Scott Biehl, FTA Office of the Chief Counsel (TCC–40), (202) 366–4063. Both agencies are located at 400 Seventh Street SW., Washington, DC 20590. Office hours for FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Sections 1024, 1025, and 3012 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, amended title 23, U.S.C., and the Federal Transit Act by revising sections 134 and 135 of title 23 and section 8 of the Federal Transit Act (49 U.S.C. app. 1607) which require a continuing, comprehensive, and coordinated transportation planning process in metropolitan areas and States. The FHWA and the FTA are revising their current metropolitan planning regulations and issuing new State planning regulations to implement these changes.

On March 2, 1993, the FHWA and the FTA jointly published notices of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 12064 and 12084). A supplemental notice announcing a series of four public meetings and soliciting public input regarding eight specific questions was published in the **Federal Register** on March 24, 1993 (58 FR 15816). The discussion below addresses comments received in response to both notices, the public meetings and other communications provided to the FHWA and the FTA for both the metropolitan and statewide planning regulations.

General

Publication of Combined Regulations

The FHWA and the FTA, in response to written comments requesting clarification of the relationship between proposed rules for metropolitan and statewide transportation planning, have decided to combine the regulations in a single publication which incorporates the revisions to both proposed rules. A single set of definitions is being issued to be designated as subpart A. The statewide planning regulation is issued as subpart B and the metropolitan planning regulation as subpart C. The FTA revises 49 CFR part 613 to reference the provisions of 23 CFR part 450 for the FTA's programs. Throughout this rule any references to 23 CFR part 450, as a result of the FTA's cross-reference, are applicable to 49 CFR part 613.

Development of Regulations

The final rules were developed by an interagency task force of the FHWA and the FTA with input from the Federal Aviation Administration, Federal Railroad Administration, Maritime Administration, Office of the Secretary of the U.S. DOT, and the U.S. Environmental Protection Agency (EPA). The FHWA and the FTA considered the comments received at the public meetings and to the Docket for both the statewide and metropolitan planning regulations in developing the revisions to the NPRM for the final rule.

Relationship to Interim Guidance Issued April 6, 1992 (Metropolitan Planning) and May 28, 1992 (Statewide)

On April 6, 1992, and May 28, 1992, the FHWA and the FTA jointly issued interim guidance to aid States and MPOs in complying with the new legislative requirements. The guidance was published on April 23, 1992, at 57 FR 14943, and on January 4, 1993, at 58 FR 169. This interim guidance is superseded by this regulation.

Applicability

The provisions of these rules apply to all metropolitan planning organizations serving urbanized areas with populations of at least 50,000, State transportation agencies, and publicly-operated transit agencies as appropriate. The rules provide for the development of transportation plans and transportation improvement programs (TIPs) and for the selection of projects to be funded under title 23, U.S.C., and the Federal Transit Act in metropolitan areas and States.

Linkage to Management System Requirements

The transportation management systems required under 23 U.S.C. 303 are addressed in a separate rulemaking. However, these management systems are a significant factor in the metropolitan and statewide planning processes and provide valuable information and strategies supporting the development of transportation plans and programs. This preamble and that of the management systems rule address the relationship of the planning process to the management systems and their linkage to plan and TIP development. To the extent possible, the definitions of terms utilized in the metropolitan and statewide planning rules are utilized in the management system rule.

Results of Public Meetings

Four public meetings were held: San Francisco (March 31–April 1, 1993), Atlanta (April 7–8, 1993), Philadelphia (April 14–15, 1993), and Kansas City (April 20–21, 1993). Average attendance at the four meetings was approximately 50 individuals with an average of 15 presentations at each. The meetings provided opportunities for comment on the proposed rules for statewide and metropolitan planning and management systems. Transcripts of the testimony presented have been placed in the docket for each rule and considered by the FHWA and the FTA in preparing this final rule.

Written Comments Received to the Docket

Approximately 170 comments regarding metropolitan planning and 100 regarding statewide planning were received to the respective dockets from interested parties. The relative distribution of commenters is reflected in the following table:

Type of commenter	Approximate percentage statewide	Approximate percentage metropolitan
Federal Agency	8	4
State DOT/Highway	35	18
State Transit, Safety, Environment, etc.	5	5
MPO, COG, Regional Planning	15	29
City/County	10	16
Local/Regional Transit	10	8
Railroad Companies	2	1
Consultant	2	2
Private Citizens	5	3
National and Regional Associations/Advocacy Groups	8	13

The comments received were diverse and, in some cases, opposing. The great majority of commenters indicated general support for the proposed rule and also offered individual specific suggestions for revisions. Some comments suggested major revisions. The responses to the suggestions received are discussed below. General comments concerning the rules are addressed initially, followed by specific responses to comments raised on individual sections of the statewide and metropolitan regulations.

General Relationship Between Planning and Management Systems

Comment: Several commenters expressed the view that the relationship between the planning and management systems rules was not clear in terms of the operational relationship between the planning process and the management systems.

Response: The following discussion lays out a general relationship between the planning process and management systems at the conceptual level. Further guidance and technical assistance from the FHWA and the FTA will provide more detailed specification of the technical operating relationship between these two processes.

The overall objective of the ISTEA is the improved performance of the statewide and metropolitan transportation systems through preservation, operations, and capacity enhancements. The management systems provide information concerning both the condition and performance of the existing and future transportation system in terms of the six specific areas they address. Three of the systems (bridge, pavement and public transportation) tend to focus on the management of system assets. The other three focus more on the performance aspects of the system. All six, however, must produce strategies for ensuring that the performance of the current and future systems is optimized, in terms of each individual system, the overall transportation system and the performance measures established for the metropolitan area.

Where these systems may suggest strategies for improving the transportation system that may be inconsistent with other strategies or are less than optimal from a longer term perspective, the planning process must reconcile these inconsistencies. Where there are insufficient resources available to fund all improvements identified through the management systems and planning process, the decision on which proposed improvement is of highest priority for inclusion in the financially constrained plan and/or program is made through the planning process. The planning process focuses on integrating the operation and preservation of the existing system with its long term development and performance. Hence, the plan and its development process must address broadranging alternative financial strategies for meeting needs. These alternatives may include financing different mixes of projects. The planning process also may consider major modifications to the existing transportation system facilities ranging from abandonment of facilities that no longer contribute to the optimal carrying capacity of the overall system to major additions needed to support new development. The management systems develop information and strategies to improve the performance of the existing and future facilities and provide input to the planning process for consideration at the system level.

The planning process provides a mechanism for linking the existing human, natural and built environment with future development patterns. In meeting the demands of the current and future system users, the process must address not only the results of the management systems but the other factors specified by the ISTEA. For the metropolitan planning process, this means consideration of fourteen other planning factors, twenty-two for statewide planning. While the most recognized products of the process are the transportation plan and TIP (both statewide and metropolitan), the continuing generation and analysis of information through the planning process is also a vital product. The planning process as envisioned in ISTEA is a dynamic activity which effectively integrates current operational and preservation considerations with longer term mobility, environmental and development concerns.

Another contributing factor to this change in planning is the intermodal nature of the transportation planning process. The promulgation of these rules is an indication of the broader integration of the transit and highway modes. However, consideration of other modes and modal planning processes also is now essential. For example, comments received from aviation interests indicated that the aviation planning process occurs on a different regional scale from that of surface transportation. While this may be technically correct, the consequences of the airport planning process in terms of surface transportation system changes and impacts on system performance must be addressed in a "real time" and integrated fashion. Consequently, while the planning process must address the production of a plan, it also must provide an ongoing context for metropolitan and statewide decisionmaking that supports integration of these multiple dimensions of the transportation decision process.

The planning processes provide a basis and framework for the development of the metropolitan and statewide Transportation Improvement Program (TIPs). TIPs must be consistent with plans. They also provide a vehicle for implementing the strategies developed through the management systems and validated through the planning processes for inclusion in the plan. Projects included in the approved metropolitan and statewide TIP can be advanced for implementation. Once implemented, these projects constitute the improvements which contribute to system performance enhancements.

Improvements in performance bring us back to the beginning of this iterative set of relationships between the planning process and the management systems. The following chart graphically indicates the relationship described in the preceding paragraphs.

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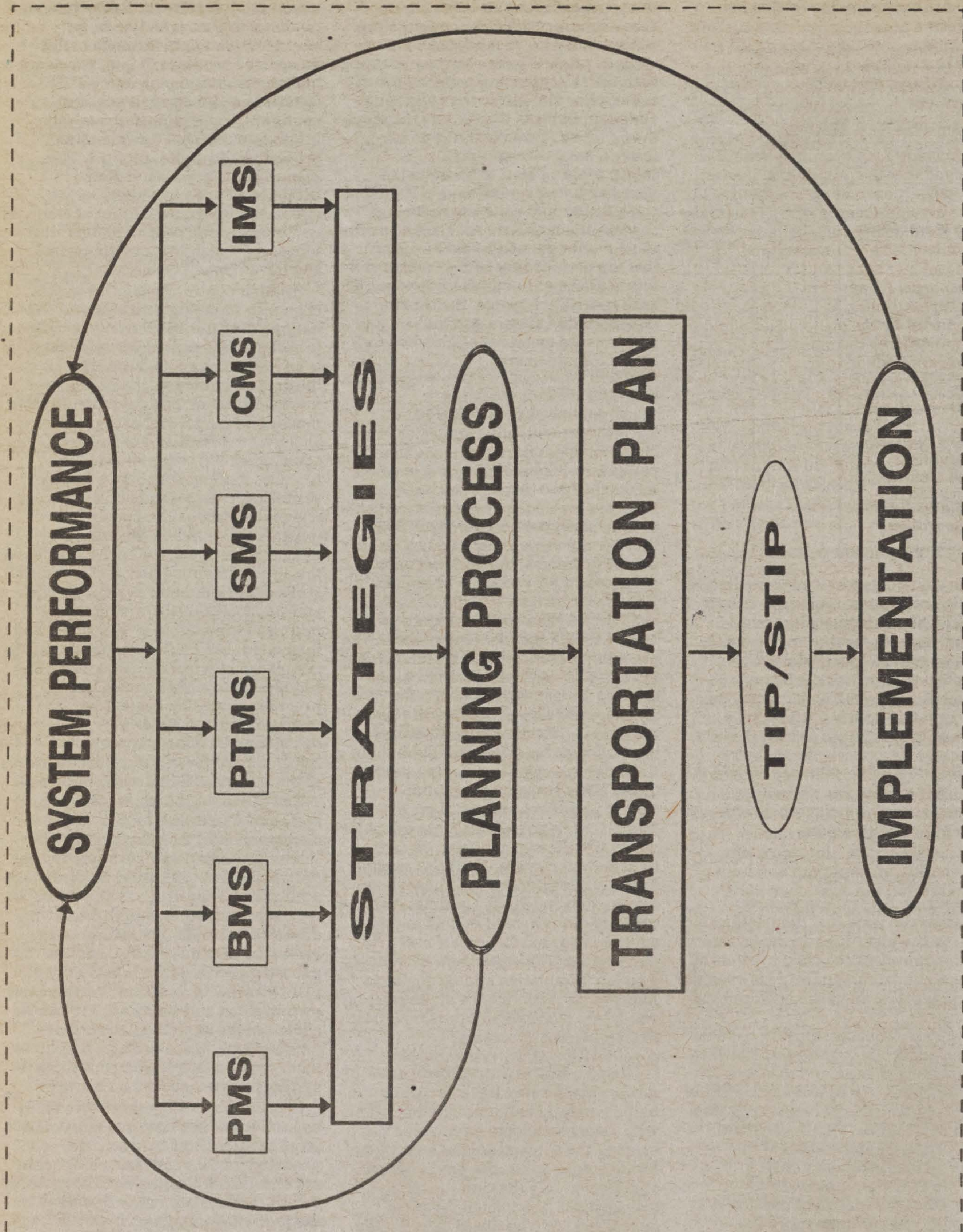

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To further clarify the relationship between management systems and the planning process, common definitions have been adopted and included in the planning and management system regulations.

Burdensome Requirements

Comment: Many commenters observed that the proposed regulation was too burdensome and restrictive in terms of requirements to be met. On the other hand, many commenters recommended additional requirements to be met by States and MPOs.

Response: As noted in the preamble to the proposed rules, their development was guided by the principle of reducing and minimizing regulatory burdens wherever possible. In response to the comments received on this matter, we have carefully considered both the need to reduce the regulatory requirements and the appropriateness of additional requirements. Changes are discussed in the section-by-section analysis below.

Questions Raised in Supplemental Public Notice

The supplemental notice published on March 24, 1993, raised eight questions to which the FHWA and the FTA were soliciting comment. While these individual questions relate to specific sections within the metropolitan and statewide planning rules, the FHWA and the FTA have chosen to highlight the general response here and deal with specific revisions in the section-by-section analysis.

Question 1: Approach to Certification

The FHWA and the FTA solicited comments regarding the desirability of more fully specifying the criteria which must be met for certification of the metropolitan transportation planning processes and the consequences of failing to comply with them.

Comments: Approximately thirty commenters addressed this question. About two-thirds of these respondents supported more detailed criteria. The remainder supported the proposed rule or no minimum criteria. Suggested specific requirements included: delineating requirements for States, requiring involvement of transit operators, detailed articulation of procedures to consider the fifteen mandatory planning factors, and a public involvement procedure. One commenter suggested specifying how compliance with certification criteria will be determined.

Response: The proposed regulation was based on a discretionary certification process to accommodate the diversity of transportation management areas. Detailed criteria were not proposed; but nonregulatory guidance would be issued at a later date. After considering the comments received, the FHWA and the FTA believe that the discretion provided in the proposed rule is still the appropriate approach to conducting the certification process. The specific suggestions for certification criteria will be further reexamined for inclusion in the guidance to be issued at a later time.

The comments received regarding the extent to which planning processes must meet the planning criteria suggested that full compliance with all fifteen planning factors should not be required. Hence, no change was made in the final rule.

Question 2: Reasonably Available Funding Sources

Comments were solicited as to what funding sources could be reasonably identified as available and whether only those sources currently in place could be utilized.

Comment: Approximately 40 comments to the metropolitan docket and 30 to the statewide planning docket were received on this issue. Comments in general were divided. Some preferred more flexibility for transportation plans than TIPs, others wanted the same standards applied. One comment suggested the utilization of two forms of plans, constrained and visionary. One comment wanted to limit funding to specifically defined sources and not permit the utilization of sources that required new legislation or voter approval. Sentiment was expressed by some for programming based on contingency considerations. Two comments raised the need for State forecasts of future revenue streams to support statewide and metropolitan estimates of available funding.

Response: Recognizing (1) the need to allow States the flexibility to manage obligation authority, (2) the legislative directive to encourage use of innovative funding sources, (3) the need to allow other project implementors to manage their own revenue sources in the most cost-efficient fashion, and (4) the congressional directive to permit utilization of Federal authorization levels as a basis for forecasting available Federal revenues, the FHWA and the FTA believe that some flexibility beyond available funding is necessary for effective planning. At the same time, the Congress indicated a need for a more constrained approach to programming than has historically existed and that plans should have a financing strategy associated with them. Comments received on the plan's fiscal constraints tended to favor the flexibility provided in the proposed rule. Hence, only minor modification has been made to the financial plan requirement. However, as discussed in the comments on §§450.324 and 450.216 below, the requirement for identifying funding sources in TIPs has been modified, in part to achieve consistency with the requirements of the U.S. EPA's conformity rule.

Question 3: Public Participation

Comments were solicited regarding the desirability of more detailed public participation requirements, including Federally specified minimum requirements.

Comment: There were fifty-five (40 metropolitan and 15 statewide) comments received on this issue. About a third of these comments indicated that minimum criteria were warranted. Twenty comments took the position that the specification provided by the proposed rule was too prescriptive. Among the specific recommendations offered were: requiring the establishment of a citizen advisory committee, establishing a test of sufficiency, requiring minimum time periods for review, defining significant public comments, specifying access to records, and MPO requirements to provide publicly available written accounts of all comments received.

Response: Consideration of comments received led to rewriting the participation requirements extensively. A balance was struck between the imposition of detailed time periods and frequency of meetings and more generalized criteria that would set thresholds of expected performance. The final regulatory language draws attention to the intended outcome of the public involvement process: informed and involved citizens who have access to public records and the decisionmaking process. The detailed changes are discussed in the comments regarding §§450.316(b) and 450.212. The thrust of the revisions is to make more explicit the areas of concern to the FHWA and the FTA while providing State and local officials the flexibility to develop processes that work within their diverse environments.

Question 4: Gubernatorial Delegation

The FHWA and the FTA asked for comments regarding the desirability of requiring the Governor of a State to personally exercise the authority vested in their office by the ISTEA or permitting delegation of this authority. If delegation is permitted, a companion question asked whether a public interagency coordination process should be required.

Comment: About thirty comments were received on this topic. Seven argued for prohibiting delegation. Twenty comments supported the ability of the Governor to delegate. Two comments supported the creation of a coordinating process, one opposed.

Response: The FHWA and the FTA proposed to allow delegation. The ISTEA is silent on the matter of delegation. Therefore, the language of the proposed rule has been modified by deleting the words "or designee" to more accurately reflect the statutory wording.

Question 5: Interim Congestion Management System

Comments were requested on the desirability of the proposed phase-in approach for implementation of the Congestion Management System (CMS) or, alternatively, whether projects significantly increasing SOV (single occupant vehicle) capacity in Transportation Management Areas that are nonattainment for ozone and/or carbon monoxide should be deferred until full implementation of the CMS.

Comment: Approximately twenty-five comments were received on this subject. About thirteen supported the proposed rule, two opposed it in general terms. Four comments addressed the requirements of the Clean Air Act Amendments (CAAA) and the need to ban significant SOV projects to achieve the goals of this legislation. Approximately six comments suggested prohibiting increases in capacity during the phase-in period.

Response: The principal concern of those supporting the proposed wording, and of the FHWA and the FTA in crafting it was to permit programming of such SOV projects in a timely manner where it is shown that the need for them cannot be met through demand and operations management strategies. Full implementation of the CMS will take several years and the ISTEA specifically required a phase-in of the CMS requirement in Transportation Management Areas. Hence, the interim strategy which relies on the basic premise of the legislative concept (limiting the need for capacity increases through alternative demand management measures, including operating strategies) was devised. In the judgment of the FHWA and the FTA, this strategy continues to be appropriate and, therefore, is adopted in the final rule.

Question 6: State/MPO Linkage

Comments were requested on the extent to which the cooperative linkage between MPOs and State transportation agencies as envisioned by the proposed rule would be workable given the diverse nature of MPOs and States.

Comment: Twelve comments were received on this subject. About half of these comments described the linkage as workable, the remainder addressed specific revisions. Among the specific points raised were: establishing consistency between State and MPO plans and TIPs, recognizing the importance of county-level transportation agencies, clarification of interface between State and MPO planning, establishment of roles to provide equitable representation for all interested parties, and identification of a lead agency.

Response: The generally positive tenor of these comments has led the FHWA and the FTA to retain the original structural linkage proposed in the NPRM. Some minor modifications have been made to the wording describing the MPO and State linkage in specific sections of the rule. These are discussed below in relation to § 450.332.

Question 7: Simplified Planning Procedures

Input was solicited regarding the desirability of additional regulatory detail for simplified planning procedures.

Comment: About ten responses to this question were received. Over half supported the utilization of simplified procedures. These comments also appeared to support implementation through guidance rather than regulation. Two comments indicated that there was no need for such procedures and one questioned the basis for allowing simplified procedures.

Response: Since the provision for simplified planning procedures is explicitly provided for in the ISTEA and the question evoked minimal response, the FHWA and the FTA have chosen to retain the wording proposed as the final rule language.

Question 8: Cooperative Approach to Structure of MPOs

The FHWA and the FTA requested comments on the appropriateness of continuing to rely on the Governor and local officials to define the form and procedure of MPOs.

Comment: Approximately 20 comments were received on this issue. Just under half of these comments indicated that no further guidance or direction was necessary. About a fifth of the comments indicated that the regulations should identify and specify voting membership on the MPO policy board. Individual suggestions were received on the following: Balancing central city and suburban concerns, proportional representation and voting, representation of major modes of transportation, and county level representation. Finally, a national study of the structure of MPOs was recommended.

Response: Over twenty years of reliance on gubernatorial and local specification of MPO structure and membership has produced a working process of MPO governance tailored to State and local needs. While individual instances of MPO instability have prompted suggestions for modification of this approach, at this time there is no clear, compelling reason for changing this historic approach. Therefore, the FHWA and the FTA have decided to retain the approach specified in the proposed rule, particularly since the ISTEA specifically states that existing MPOs remain in effect and sets up specific procedures to be used to revoke existing designations and designate new MPOs.

Section-by-Section Analysis

Subpart A—Definitions

Approximately thirty commenters offered one or more comments concerning definitions included in the statewide planning NPRM. Approximately forty additional commenters offered one or more comments concerning definitions included in the metropolitan planning NPRM. The FHWA and the FTA have combined the definitions in both NPRMs and added a few new definitions so that now a single set of definitions are applicable to both planning rules. They are also applicable as appropriate to the management systems rule. There are additional definitions in the management systems rule that are applicable to that rule only.

The definitions of *consultation* and *coordination* received very few comments. After consideration of the comments, the FHWA and the FTA have decided to retain these definitions as proposed in the NPRM with minor revision.

The definition of *cooperation* received more comment (approximately 15) than most of the other definitions. After consideration of the comments and further deliberation regarding the "concurrence" feature of the NPRM definition and the concern that it went further than was intended by the Congress in providing powers to various entities, the FHWA and the FTA have decided to use a very general definition of *cooperation* in the final rule. This definition envisions a process in which the participating parties will work together toward common goals/objectives, e.g., compatible plans and programs, implementation of projects that meet State as well as local transportation needs, consideration of environmental impacts in the planning and programming processes, etc. Evaluation of the level of cooperation will be a major factor in FHWA/FTA's planning finding made in conjunction with STIP approval and certification of the planning process in TMAs.

Relatively few comments (about half a dozen) were received on the definition of *Governor*. However, the FHWA and the FTA have deleted "or designee" from the definition to more accurately reflect the wording of the ISTEA.

The definition of *maintenance area* has undergone minor revision to clarify statutory references concerning designation.

A significant number of comments (about two dozen) were received on the definition of *major metropolitan transportation investment*. The FHWA and the FTA have revised it considerably to make it clearer. The major revisions deal with examples offered, references to substantial cost and capacity, and clarifying discussion of the process for determining other improvements that might be designated as major metropolitan transportation investments.

The definition of *management system* is taken directly from the management system rule.

No change is made to the definition of *metropolitan planning area*.

About 10 comments were received on the definition of *metropolitan planning organization* (MPO) with most seeking clarification. The MPO is now defined as the forum for cooperative transportation decisionmaking for an urbanized area. The definition clarifies that MPOs designated prior to this rule remain valid unless a redesignation takes place in accordance with subpart C. The FHWA and the FTA emphasize the cooperative aspect of this definition and will evaluate this as a significant part of the certification for TMAs and the planning finding on TIPs and STIPs.

A new definition is provided for *metropolitan transportation plan* that emphasizes the official nature of the plan for the metropolitan area and that it is a product of the planning process.

There is no change to the definition for *nonattainment area*.

The definition of *regionally significant* received approximately 10 comments. After considerable deliberation and consideration of comments and to maintain consistency with the U.S. EPA conformity regulation, the FHWA and the FTA have modified the definition. The FHWA and the FTA have decided to substitute the term *regionally significant project* rather than *regionally significant* and define a regionally significant project as any project (except for minor projects that may be grouped in the TIP) on a regional facility that would normally be included in the regional modeling for the transportation network. As a minimum, principal arterial highways and transit facilities/services that offer a significant alternative to regional highway travel should be part of this network.

Although relatively few comments were received on the definition of *State*, it is revised to drop the phrase "when an action by the State is required, then the *State* means the State transportation agency." The ISTEA is silent on an extended definition of State even though it seems to differentiate between State and gubernatorial responsibilities. This leads to the conclusion that State responsibilities could be prescribed in the rule as the responsibility of a particular State agency, e.g., the State transportation agency. However, the possibility exists that the Governor may delegate the responsibility to other State agencies. Therefore, the FHWA and the FTA have decided to depend on the historic practice. Specific reference to State transportation agency has been deleted and the definition in 23 U.S.C. 101(a) of *State* is now utilized for part 450.

There is no change in the definition of *state implementation plan* (SIP).

The definition of *statewide transportation improvement program* (STIP) is revised to emphasize the statewide and intermodal nature of the program. It also emphasizes the fact that the STIP is a product of the planning process and must be consistent with the Statewide plan.

The definition of *statewide transportation plan* is simplified.

The definition of *transportation improvement program* is simplified.

The definition of *transportation management area* (TMA) is modified to clarify the area to which the TMA requirements applies. It recognizes that the TMA requirements are applicable to the entire metropolitan planning area served by an MPO(s) within which the TMA is located.

Subpart B—Statewide Planning

General

Approximately 100 commenters submitted comments to docket FHWA/FTA 93–5 in response to the NPRM. The items that surfaced as most important are discussed in the appropriate sections below or in the section elsewhere in this preamble that discusses elements that transcend both planning rules and the management systems rule. These issues are: (1) Definition of cooperation, (2) public involvement, (3) partial STIPs, (4) policy versus corridor-level plan, (5) incorporating metropolitan plans into State plans, (6) minimum factors, and (7) STIP content.

Section 450.200 Purpose

No comments were received on this section, therefore the FHWA and the FTA have not made any revisions.

Section 450.202 Applicability

No comments were received on this section, therefore the FHWA and the FTA have not made any revisions.

Section 450.204 Definitions

The FHWA and the FTA have decided to address definitions in a separate section of Part 450. This section is modified by dropping all definitions and referring to 23 CFR Part 450, subpart A. Further discussion of the FHWA and the FTA disposition of comments received and changes made to definitions is discussed elsewhere in this preamble under subpart A.

Section 450.206 General Requirements

This section sets forth several components for the statewide transportation planning process in each State. Since no substantive Federal requirements for statewide transportation planning existed prior to the ISTEA, the FHWA and the FTA have established a general framework for this process. Comments related to this section were limited but reflected the general opinion that paragraph (a)(6) was unclear in its intent. We have therefore eliminated the paragraph and modified paragraph (a)(4) slightly to stress the requirement for the development of a statewide transportation plan that is based on a range of transportation options that consider all modes of transportation and the connections between modes. This will require appropriate consideration of multimodal alternatives in keeping with the statutory requirements of ISTEA, while leaving the level of effort to the discretion of State and local officials.

Section 450.208 Factors

The FHWA and the FTA proposed to allow flexibility to the States in deciding how the factors should be addressed, rather than establish minimum standards or requirements by regulation for each factor. The FTA and the FHWA proposed to issue additional guidance to assist the States in providing substantive consideration of the specific factors. The overwhelming majority of commenters supported the flexible approach as proposed. Several commenters stressed, however, that there should be greater assurance that the factors will be considered seriously in the planning process. The FHWA and the FTA agree and have added language in the rule indicating that the Department expects explicit consideration and analysis of the factors. Further, the Department expects such consideration to be reflected in the products of the planning process, and conforming changes have been made to those sections of the rule. The rule continues to recognize that the extent of such analyses should be determined by the scale and complexity of conditions in the State. It also clarifies that duplicate analyses are not required where overlap may exist between two or more factors.

Several commenters took issue with repeating the duplicative statutory factors in subparagraphs (a)(1) and (a)(15) regarding management systems. We have combined them as a factor in paragraph (a)(1).

A number of commenters suggested that their particular interest be included in the list of factors that must be considered. We have added one additional factor because it is specifically mentioned in the ISTEA, i.e., strategies for identifying and implementing transportation enhancements. Examples were added to clarify the coverage of existing factors. These examples include facilities of all modes as part of system management and investment strategies; commuter rail as part of transit services; strategies for preventing loss of rights-of-way as part of corridor preservation; movement of goods as part of long-range needs of the State transportation system; and emphasis on housing, employment, and development goals.

Section 450.210 Coordination

Fewer than ten commenters explicitly supported inclusion of this section or requested additional areas for which provision of coordination should be required.

Fewer than ten commenters favored elimination of all or part of this section. The comments from these agencies either emphasized the fact that the ISTEA does not specifically contain an overall coordination requirement or indicated that this section, or part of this section, would result in an administrative burden.

A few commenters desired minimum standards for coordination and other changes to substantially increase the minimum allowable coordination.

Finally, a few commenters indicated either confusion regarding the extent of the responsibility of the State for providing coordination, concern over the administrative burden that States would place on local agencies to provide coordination or concern that the coordination requirement would result in overemphasis within the planning process of issues that should more properly be emphasized elsewhere, for example, the project development process.

As a result of consideration of these comments and further analysis, the FHWA and the FTA have decided to retain this section, essentially as it was in the NPRM with a few changes. One change eliminates any responsibility, within this subpart, on the part of the State to provide for coordination of organizational entities while retaining the requirement to provide coordination of activities. The language in the NPRM had required provision of coordination of organizational entities in certain circumstances. Given that the coordination of planning activities carried out by the different organizations is both more critical and potentially easier than coordination of the organizations themselves, the FHWA and the FTA believe this change will more positively focus coordination efforts.

In light of the considerable emphasis in the ISTEA on the concept of intermodalism, the FHWA and the FTA expect that planning for all transportation modes will be folded into the Statewide transportation planning process. This includes state rail plans, airport system plans, port system plans, etc. This intermodal emphasis is evident not only in § 450.210 on coordination but also in § 450.214 on the statewide transportation plan and § 450.206 on the general requirements of the statewide transportation planning process.

The FHWA and the FTA have added a requirement for coordination between transportation planning carried out by the State and transportation planning carried out by operators of major intermodal terminals. One of the commenters suggested this change. Given the importance such terminals may potentially have in the transportation system, the FHWA and the FTA agreed with the suggestion and adopted it.

A final change is that the degree of coordination is to be more closely based on State or sub-area conditions. One of the commenters suggested this change. Because the language of the NPRM implied that the degree of coordination could be inconsistent with the level of planning in some cases, the FHWA and the FTA agreed with the suggestion and adopted it.

Section 450.212 Public Involvement

The general section of this preamble describes the approach and philosophy to public involvement taken by FHWA and FTA which is that the planning process is open to all and should provide the opportunity to those desiring to participate to do so. It is up to the participating parties to define a process which provides the opportunity for participation for the interested parties, which include private sector as well as public sector providers of both freight and passenger transportation. It also discusses the response to comments on public involvement.

There are public involvement requirements for Statewide Transportation Planning (subpart B) that are different from those for Metropolitan Transportation Planning (subpart C):

(1) Clarifying language has been added stating that the FHWA and the FTA will accept as meeting the statewide planning public involvement requirements, public involvement activities carried out in a metropolitan area (in accordance with subpart C) concerning an issue of statewide concern, if the State and MPO agree that they satisfy the statewide public involvement requirements.

(2) The draft plan must be published with reasonable notification of its availability or otherwise made readily available for public review and comment. The final plan must be published with reasonable notification of its availability or otherwise made readily available for public information. In metropolitan areas, public meetings consistent with the requirements of § 450.316 and § 450.322 shall be held as appropriate.

(3) The draft STIP must be published with reasonable notification of its availability or otherwise made readily available for public review and comment. The final STIP, if it differs significantly from the draft, must be published with reasonable notification of its availability or otherwise made readily available. In metropolitan areas, public meetings consistent with the

requirements of § 450.316 and § 450.322 shall be held as appropriate.

As with metropolitan public involvement procedures described in subpart C, a 45 day time period is now required for public review and comment before public involvement procedures are adopted.

Section 450.214 Plan

The FTA and the FHWA have changed the format of the section on the statewide transportation plan to distinguish the requirements applying to the form and content of the plan from the requirements applying to the State's development of the plan. This is not to reduce the flexibility on form and content generally endorsed by the commenters, but to show more clearly the procedural steps required in plan development.

In response to several comments questioning the ambiguity regarding freight movement and trucks, the FHWA and the FTA are including commercial motor vehicle facilities in the references to rail, waterway, and aviation facilities.

Wording is added to emphasize that analysis of factors is expected as factors are considered in statewide transportation plan development.

Of the dozen or so agencies that commented on the need for statewide plans to include refinement to the corridor level, only one insisted that it should be a requirement. Almost all felt that policy-type plans would be a sufficient basis for later programs of transportation projects. In the interest of supporting the States' flexibility to determine how best to depict their long-range transportation goals and objectives, the FHWA and the FTA have not changed the proposed rule allowing for a policy level plan. Nevertheless, the FHWA and the FTA will continue to support the inclusion of corridor level information as good practice in the development of statewide plans.

The commenters generally support the approach of the NPRM that there must be a cooperative effort and consistency between statewide and metropolitan plans. However, there were several who felt that the FHWA and the FTA could not, or should not, require any coordination; on the other hand, there were several who felt that outright incorporation of metropolitan plans should be required. The FHWA and the FTA recognize that the law does not mandate joint State-local action on Statewide plans, but strongly encourage coordination, cooperation and consistency. Therefore, the FHWA and the FTA have not changed the approach of the NPRM.

Comment on cooperation with Indian tribal governments was virtually absent from the docket. One commenter was concerned that total agreement between parties when requiring cooperation with Indian tribal governments and the Secretary of the Interior not be required. This has been clarified by the discussion of the definition of cooperation above.

Several parties commented on the issue of a 20-year planning horizon. Most were satisfied with the 20-year requirement of the NPRM, however a few thought it was too long and none recommended a longer period. The FHWA and the FTA have retained the 20-year requirement as a minimum.

The FHWA and the FTA considered prescribing an update cycle for the statewide transportation plan, but due to several factors including limited experience with the statewide planning process and the apparent need for flexibility among States, the FHWA and the FTA chose not to prescribe a specific cycle for update. However, the FHWA and the FTA expect a continuing evaluation of the plan and periodic update as appropriate for each State based upon a variety of issues including changes in metropolitan plans, statewide growth and development, changes in funding, etc.

Section 450.216 STIP

Several comments were received concerning the need for clarification of the intent of the FHWA and the FTA concerning approval of a partial STIP. Revisions have been made to make it clear that approval of partial STIPs is acceptable primarily when difficulties are encountered in cooperatively developing the STIP portion for a particular metropolitan area or for a Federal lands agency.

Revised language has been developed clearly indicating that metropolitan TIPs must be included in the STIP without modification, either directly or by reference. The rule clearly states that TIP priorities, including preference to TCMs (transportation control measures) will dictate STIP priorities for each individual metropolitan area. The FHWA and the FTA encourage the States and other participating agencies, e.g., MPOs, Federal lands agencies, etc. to broaden communication so that information on their projects can flow as early as possible in the STIP development process.

The FTA and the FHWA believe that as part of an adequate coordination effort among agencies with transportation project funding responsibilities, the State should notify each agency proposing projects for inclusion in the STIP when the projects have been included in the STIP. In addition, all title 23 and Federal Transit Act fund recipients are expected to share information on project status, development, progress reports, fund expenditures, etc., with planning process participants as projects in the STIP are implemented. MPO agreements should contain a provision for project status information. Language to this effect has been incorporated accordingly.

A considerable number of comments were received concerning the aspects of the rule dealing with financial constraint of the STIP. Comments ranged from the desire for latitude allowing considerable overprogramming to the desire for no overprogramming with the STIP restricted only to projects to be funded with current funds, i.e., funds that the funding agency has "in the bank" with no conditions or other restrictions attached. The FHWA and the FTA believe that some latitude regarding this issue is the practical approach in order to allow for some "slippage" of projects; therefore, the Federal funding levels for which the STIP should be developed are basically the authorizations (which traditionally exceed the obligation limitations) for each year for which the STIP is being prepared. Of course all federally funded projects must have appropriate match; the source (by jurisdiction) of these funds must be identified. If these match funds are not currently available, the lack of available match must be identified in the STIP for each such project.

In summary, the rule now requires that the STIP contain financial information showing projects to be implemented using current funds that the implementing agency has "in the bank" and those projects to be implemented using proposed funds that have some degree of promise or condition attached to them which must be satisfied before they can be utilized. Where proposed funds are included, strategies for ensuring their availability must be identified. In nonattainment and maintenance areas, the first two years of the STIP/TIP may only contain projects for which funding is available or committed. The preamble section-by-section analysis for subpart C provides further explanation of this approach. The need to show in the STIP appropriate funding levels to adequately operate and maintain the system as a whole has not changed from the NPRM. Maintenance and operations funding estimates will likely be more general than estimates for an individual project. A summary sheet to permit ready comparison of STIP financial information by year is encouraged.

The FHWA and the FTA have modified the wording from the NPRM concerning certain projects to be contained in the STIP:

1. Regionally significant projects requiring an action by the FHWA or the FTA must be in the STIP whether or not title 23 or Federal Transit Act funds are used. It is the intent of the FHWA and the FTA that projects such as "demonstration" projects must now be in the STIP and TIP before project authorization or grant approval is given. By restricting the requirement in the STIP to only regionally significant projects requiring an action by the FHWA or the FTA, projects such as utility adjustments and air rights which are not in a TIP do not have to be in the STIP.

2. The FHWA and the FTA also now ask for inclusion in the STIP for information purposes those regionally significant surface transportation projects proposed to be funded with Federal funds other than FHWA or FTA administered funds, e.g., major intercity rail investments.

3. The FHWA and the FTA have also changed the emphasis on the inclusion for information purposes of regionally significant projects to be funded with non-federal funds from "may" to "should." This leaves some flexibility while still emphasizing the need to include these types of projects in the STIP for planning, coordination, and public disclosure purposes.

Several commenters suggested the STIP cover more than a three year period; others suggested it cover less. The rule allows more than three years with the additional years considered as informational. Three years is consistent with the metropolitan rule. States might consider developing a three year STIP and possibly a 7–10 year short range plan, which would be in addition to the required 20 year plus statewide plan. A STIP covering less than three years would not be a realistic and acceptable programming effort for public disclosure purposes.

There was apparently some confusion generated by the NPRM concerning the relationship between the STIP and project selection. A new paragraph has been added to clarify that the non-metropolitan projects in the first year of the STIP are to be considered selected for implementation, and that they must have been selected for the STIP through a process that meets the project selection requirements for each category of funds.

The paragraph on STIP amendment has been slightly modified emphasizing that amendment procedures should be agreed to by cooperating parties and must be consistent with the procedures for STIP development, public involvement and project selection. One procedure to expedite project selection could be to have "contingency projects" in the second year of the STIP that have been properly selected and that can be moved forward without further project selection action if unavoidable circumstances delay advancement of a specific project.

The FHWA and the FTA encourage the participating parties to view the STIP as a management tool for monitoring progress in implementing the plan. In this regard, the STIP could (1) identify criteria and process for prioritizing implementation of plan elements (including intermodal trade-offs) within the STIP and any changes in priorities from previous STIPs and (2) list major projects from the previous STIP that were implemented and, for those that were not, identify any significant delays in the planned implementation of major projects. It then can serve as a mechanism that focuses and determines the projects, establishes the relationship among projects and notifies the public of project status. Of special importance is sharing of project and TIP/STIP implementation information among title 23 and Federal Transit Act fund recipients as projects in the STIP are implemented. Programming is no longer just assembling a list of projects that may be able to proceed; it is now a process for comprehensively managing project advancement in relation to other transportation and transportation related activities that impact transportation system performance.

Section 450.218 Funding

Comments were very limited in reference to this section. There appeared to be some misinterpretation, however, that this section addressed the use of capital funding available under the Federal Transit Act and title 23, U.S.C. This section simply specifies those funds made available under title 23, U.S.C., and the Federal Transit Act to carry out planning activities necessary to accomplish the requirements of this regulation.

Section 450.220 Approvals

Comments were mixed on this section. Some commenters stated that approvals of partial STIPs should be allowed only if certain specific milestones had been achieved, such as, (a) a plan which addresses how each one of the 23 factors specified in § 450.208 have been incorporated in the process; (b) a plan for public involvement, with minimum standards identified, has been developed; (c) specific procedures for determining nonattainment and maintenance area TIP conformity with the State Implementation Plan (SIP) for air quality have been adopted; and (d) specific agreement has been reached between the State and the MPOs on how Federal funds will be allocated statewide. Other commenters favored the flexibility in the proposed rule which would allow approval of the STIP based on review of the partial STIP by the FHWA and the FTA with appropriate approval action being left to the discretion of the FHWA and the FTA jointly.

The FHWA and the FTA agree that a good faith effort in addressing each of the factors described in the regulations must be made in the statewide planning process, that public involvement must become an integral and ongoing part of each statewide and metropolitan planning effort, and that funding must be equitably shared to meet the most pressing transportation needs. These factors will be closely monitored by the FHWA and the FTA staff during their review of STIPs.

Further, the FHWA and the FTA believe that it would not be appropriate to delay an entire STIP, with the attendant delays in capital funding statewide, because the State (for non-metropolitan areas), a contributing metropolitan area or Federal lands agency has not completed its portion of the STIP. The FHWA and the FTA have therefore added a fourth possible approval action which allows the joint approval of a partial STIP covering only a portion of the State in special circumstances. The FHWA and the FTA have retained the other proposed partial approval mechanisms as specified in the NPRM.

Other commenters were concerned that the joint FHWA/FTA approval process set up in the NPRM would result in excessive delays of the STIPs. The FHWA and the FTA believe that they must maintain mutual approval authority on the STIPs to act as responsible stewards to their clients. The FHWA and the FTA are working in close concert to ensure that the time required for joint FHWA/FTA approval is minimized. The FHWA and the FTA encourage the parties participating in the planning process, e.g., State, MPO, transit operator, etc., to likewise develop a streamlined process for TIP/STIP development and processing to minimize the time required for appropriate approval.

Before Federal approval action can be taken, the FHWA and the FTA must make the findings stipulated in §§ 450.220 and 450.330. Federal approval constitutes a determination that the State has complied with the requirements of 23 U.S.C. 134 and 135, and section 8(q) of the Federal Transit Act, as a condition of eligibility of the projects contained in the STIP for Federal-aid funding. It does not relate to the content of the plan or STIP, which is the prerogative of the State.

In response to questions about the STIP approval period, language has been added to § 450.220 to make it clear that the approval period for STIPs cannot exceed two years. Except for special extenuating circumstances, projects in STIPs that have not been updated/amended and approved within a 2 year period may not be advanced. Where the State demonstrates to the FHWA and the FTA that they had a reasonable schedule for meeting the 2 year deadline and due to extenuating circumstances will be unable to maintain this schedule, the FHWA and the FTA will consider a request to extend the approval period for all or a portion of the old STIP for some limited period of time, as determined jointly by the FHWA and the FTA, subject to the State providing evidence that it is expediting completion of a new STIP. If the request involves projects within metropolitan planning areas, and the delay was due to the TIP development process, the MPO must also provide justification for an extension as well as providing concurrence in the State's request to advance projects from the old STIP. Additionally, in nonattainment and maintenance areas, the conformity determination on the TIP must still be valid under the U.S. EPA's conformity regulations and the period of extension cannot exceed the life of the conformity determination.

The FTA and the FHWA have clarified paragraph (e) by moving the discussion of emergency funding to § 450.216(a)(7) and retaining the discussion allowing the FHWA and/or the FTA Administrators to approve operating assistance for specific projects or programs even though they may not be included in a currently approved STIP.

There appeared to be some concern by a few commenters that Federal approval of the STIP must occur before the self-certification by the State can be accepted and therefore might hold up the certification action. The State self-certification (and the self-certification for metropolitan areas if not previously submitted) must accompany the submission of the STIP to the FHWA and the FTA and will be reviewed concurrently with the STIP. The certification action is not tied to STIP approval, only to its submission. However, the preparation and submission of the STIP will be a major factor in FHWA/FTA's determination of compliance with 23 U.S.C. 135 and section 8(q) of the Federal Transit Act discussed above.

Section 450.222 Project Selection

Several commenters discussed differences between project selection for the STIP and scheduling of projects for construction. The relationships among the participating parties in project selection for the STIP may differ somewhat from project scheduling. The FHWA and the FTA expect that all projects contained in the first year of the approved STIP will be initiated during the first year of the STIP. The sequence in which these projects are advanced for implementation is at the discretion of the funding agency with appropriate consideration to the priorities established in the TIP/STIP, particularly as they relate to TCMs in nonattainment areas. The TIPs and STIPs are considered serious programming tools which reflect State, MPO, and transit agency commitments to the utilization of Federal funds for projects they have determined to be eligible and ready to proceed. Thus, the issue of project readiness, possible phasing of projects, whether or not to use State nonattributable funds to support projects proposed by the MPO, project scheduling, etc., should be addressed by the State, MPO, and transit operator during the negotiations leading up to the development of a proposed TIP and STIP, and prior to the approval of the TIP by the MPO and the Governor. Once the Governor has approved a TIP, that action constitutes a firm commitment on behalf of the State to include all projects programmed in the TIP, including their identified funding source, in the STIP.

In considering projects for inclusion in the first year of the TIP/STIP, the level of authorized funding available to the State and metropolitan area under the ISTEA, should be used as the basis for financial restraint and scheduling for those projects to be funded with ISTEA funds. The first year of both the TIP and the STIP constitute an "agreed to" list of projects for project selection purposes except that the regulations provide an opportunity to revisit project selection if the appropriated amounts, including the highway obligation ceiling and transit appropriations, are significantly less than the authorized amounts. In such cases, if requested by the MPO, State, or the transit operator, a revised "agreed to" list of projects for project selection purposes must be developed. Regardless of these circumstances, the inclusion of projects in the first year of the approved STIP shall be viewed as a firm commitment to advance these projects during that STIP year, unless unforeseen problems arise with specific projects.

The FHWA and the FTA have revised this section to clarify that, if projects requiring FHWA or FTA funds are not included in the currently approved STIP, they are not eligible for such funding.

In response to several comments, the FHWA and the FTA have revised this section to emphasize that projects in the STIP for metropolitan areas must be selected in accordance with the project selection portion of the metropolitan planning regulation (subpart C of 23 CFR 450).

The FTA and the FHWA have revised language to clarify that non-metropolitan transportation projects listed in the first year of the STIP are to be selected in accordance with selection procedures required for the category of funds, and that they will constitute an "agreed to" list of projects for implementation and subsequent scheduling.

The FHWA and the FTA have retained the language allowing for simplified movement of projects in the second or third year of the STIP to the first year subject to procedures agreed to by the cooperating parties. Such procedures could allow all three years of the STIP to be considered selected (provided they were selected for the STIP in accordance with the selection procedures for each funding category).

Section 450.224 Phase-in

Some commenters stated that the January 1, 1995, deadline for identification of an official statewide transportation plan in full compliance with § 450.214 was unrealistic. Conversely, some commenters felt that this deadline was much too late and did not fully meet the intent of ISTEA. The FHWA and the FTA acknowledge both positions and believe that they have established a reasonable schedule for development of the official statewide transportation plan. The FHWA and the FTA have therefore retained the language in the NPRM.

Subpart C—Metropolitan Planning

Section 450.300 Purpose

Comment: Two comments indicated that the purpose of the regulation should be to require designation of "metropolitan" transportation systems.

Response: The wording of 23 U.S.C. 134(a) and section 8(a) of the Federal

Transit Act indicates that metropolitan plans and programs "shall provide for the development of transportation facilities * * * which will function as an intermodal transportation system for the State, the metropolitan areas, and the Nation." The FHWA and the FTA believe that the Congress intended local decisionmakers to address the performance of the local transportation network from a systemic perspective. The agencies do not believe that the Congress intended to require the designation of a metropolitan equivalent to the National Highway System. While metropolitan areas may find it useful to do so, designation of a metropolitan system is not required under this regulation.

Comment: One commenter observed that there was no specific mention of commuter rail as a specific modal concern of the planning process.

Response: Commuter rail is an eligible modal choice for providing transportation service under the Federal Transit Act and title 23, U.S.C. It was not singled out as a specific option simply because it was treated as one of a set of modal options that could be considered by MPO decisionmakers. Section 450.318 specifically addresses commuter rail as a modal option.

Comment: A similar comment was raised regarding the role port authorities should have in the development of the TIP.

Response: The involvement of operators of major modes of transportation in transportation programming is not required by the ISTEA except in MPOs, located in or containing TMAs, which are designated or redesignated after the enactment of the ISTEA (December 18, 1991). The FHWA and the FTA will continue to encourage the inclusion of other operators of major modes of transportation as well as, where appropriate, an increase in representation of local elected officials in MPO decision processes and committees regardless of when the MPO is designated or redesignated. The agencies believe that the Congress did not intend a general round of MPO redesignations because of the specific grandfather provision of 23 U.S.C. 134(b)(4) and section 8(b)(4) of the Federal Transit Act. Hence, the final rule does not mandate the inclusion of port authorities in existing MPOs. Their inclusion, and the inclusion of other operators of major modes of transportation, will be encouraged through guidance. The addition of transit operators and other operators of major modes of transportation or local elected officials does not constitute redesignation. It also should be noted that § 450.312 specifically requires that the development of the plan and TIP be coordinated with the other providers of transportation including port operators. Section 450.316 requires that the process provide for the involvement of various transportation agencies, including port authorities.

Comment: Amend § 450.300 to require that transportation planning address economic productivity in the context of access by citizens to employment and affordable housing.

Response: The purpose of these regulations is to implement the ISTEA requirements that are intended to improve upon the longstanding requirement for transportation planning in urbanized areas that goes back to the early sixties. Successful implementation of these requirements necessitates that the metropolitan transportation planning process be an open process in which information is shared with all interested parties and all interested parties have opportunities to participate in the process. These regulations mandate such a process.

In determining transportation needs, consideration must be given to what is necessary for the metropolitan area to be economically productive with access by citizens to employment and housing, i.e., transportation must be an integral element of other policy goals including, but not limited to, stimulating the economy and creating jobs, spawning technical innovation, and breaking through the isolation of the inner city. This involves not only stimulating commerce and increasing economic efficiency, but improving peoples' lives and their access to opportunities. The process needs to consider ways for inner-city residents to commute to areas where they can find work. In the case of new empowerment zones, both people and goods movement to and from the zones must be addressed if they are to be successful. As the transportation planning process considers these broader objectives, it becomes increasingly important for local elected officials, including mayors, to be personally involved in the process to make it responsive to the their local goals and plans as well as the needs of their constituents.

Comment: To what extent are the needs of the central city addressed by the proposed rule?

Response: While the ISTEA clearly emphasizes a metropolitan wide focus on transportation issues, the personal involvement of central city elected officials in the planning process will be a significant factor in determining whether their priorities are included in metropolitan transportation plans and programs. Their involvement also provides a mechanism for ensuring that central city issues, such as, access to jobs and affordable housing, reverse commute concerns, and economic stimulation through redevelopment or mobility projects, are addressed. For example, the growing awareness that mobility strategies may impact affordable housing and job access should be addressed during the plan development process.

While the structure of the metropolitan planning and decisionmaking process do not guarantee absolute levels of funding to the central cities or any other jurisdictions, it does provide a forum for addressing the reciprocal needs of the central cities and the suburbs. As noted in reports of the National League of Cities, the economic fate of the suburbs and the central cities are integrally tied together. Therefore, the transportation system should serve the whole metropolis and respect no political boundaries. Hence, transportation investments should be made in light of the broader context of the metropolitan community and its goals. Central cities, in many cases, have deferred infrastructure investments that eventually have to be addressed. On the other hand, growth in the suburbs has created pressure to build new facilities to serve this growth. The reciprocal assessment of these needs through the cooperative metropolitan decision process where past historic tensions are discarded and the local elected officials find creative ways to work together for the common good will ultimately provide a balanced investment strategy for the region and its central cities.

Section 450.302 Applicability

Comment: One suggestion was to include the language in the preamble to the proposed rule that describes the applicability of the regulation in the final regulatory language.

Response: The FHWA and the FTA believe that this language does not substantively improve the clarity of the regulatory language. No change has been made.

Section 450.304 Definitions

The discussion of comments received on the definitions used in the NPRM for the metropolitan planning rule is handled under the preamble discussion for subpart A.

Section 450.306 Metropolitan planning Organization: Designation and Redesignation

Approximately thirty comments were received on this section of the regulation.

Comment: Comments were received regarding the representation of concerned parties at the policy, technical, and advisory levels of an MPO, at local discretion. Several commenters addressed the representation of specific modes, including transit, ports, private providers/operators of transportation facilities including truck facilities, freight rail roads, and commuter rail roads.

Response: Nothing prevents the Governor and local officials from providing for this, or any other form of representation. Responsibility for designating voting status and participation is a matter governed by agreement between the Governor and local officials, or by State law. Membership on the MPO policy board and other committees for the various major modal representatives is strongly encouraged by the FHWA and the FTA, but not required except as provided in the requirements of the redesignation process for MPOs containing TMAs (See § 450.306(a)).

Comment: Clarification of the involvement of groups or modes that do not exist within a given metropolitan planning area was requested by one commenter.

Response: The FHWA and the FTA believe that the Congress intended that participation in MPO decisions reflect the key interests and modes within that region. Hence, the regulations do not require participation in MPO decision processes of modes or interests that are non-existent within a given region.

Comment: Clarification of the special redesignation provisions involving representatives of twenty-five percent of the affected population within an existing MPO was requested.

Response: These provisions are applicable only to the Chicago and Los Angeles metropolitan areas. Previous FHWA and the FTA guidance and communications with representatives of agencies in these areas have indicated that the legislative requirements mandate that, while representatives of twenty-five percent of the population served (including central cities) by an existing MPO can request redesignation, designation of a new MPO requires the agreement of representatives of seventy-five percent of the existing population within the existing MPO's jurisdiction (not the population of the new MPO) and the concurrence of the appropriate central cities.

An argument was advanced that these provisions would also apply to major proposals to significantly reorganize the institutional structure of the MPO and/or its service area boundaries. The FHWA and the FTA have found no legal basis for such application. Thus, for example, addition of representatives to the MPO policy board and/or its committees to provide representation for areas encompassed by planning area boundary extensions required by title 23, U.S.C. and the Federal Transit Act or provide for the representation of modal operators not previously represented will be allowed without triggering a redesignation. This position is consistent with the expressed intent of the Congress not to impose a broad wave of MPO redesignation.

Comment: Clarification of the term "voice" as applied to participation in MPO policy board and committee meetings was requested.

Response: For MPOs not redesignated or designated after December 18, 1991, "voice" is intended to mean active participation in the decisionmaking processes of the MPO, up to and including voting membership on the policy body. Voting membership, while not required, is encouraged. MPOs which include TMAs and which are designated or redesignated after December 18, 1991, are required to include representatives of operators of major modes of transportation, local elected officials, and appropriate State officials as voting members of the policy board. All other MPOs may adopt this or other representation strategies which fall short of providing voting membership.

Comment: Transit agencies must pay dues in order to be considered voting members of the MPO policy board.

Response: The requirement for dues is a local and/or State matter. It is not required by these regulations.

Section 450.308 Metropolitan planning organization: Geographic scope of metropolitan planning area boundaries

Just over ten comments were received on this section.

Comment: One commenter remarked that the Governor and the MPO should not be able to arbitrarily change the planning area boundary. It should be based on the nonattainment area boundary.

Response: Title 23, U.S.C., section 134(c) and section 8(c) of the Federal Transit Act extend the metropolitan transportation planning area boundary to the nonattainment area designated by the U.S. EPA, unless a joint decision by the Governor and the MPO is made to reduce the planning area boundary. The NPRM proposed that, if such an action was taken, it must provide for a mechanism for resolving policy conflicts over regional emission budgets. The FHWA and the FTA have adopted this approach based on the legislative direction indicated by the ISTEA.

Comment: Clarification of the process to be utilized when more than one MPO occupies a nonattainment area or metropolitan planning area was requested.

Response: The responsibility of each MPO for its portion of the overall nonattainment area or planning area boundary is a product of the urbanized area which it serves and agreement(s) with the other affected MPO(s) within the nonattainment area to divide responsibility for the remainder of the planning area. Where multiple MPOs sharing portions of multiple States are involved, an agreement shall address the responsibility of each MPO for its share of the overall planning area.

Comment: Suggestions were offered to define planning area boundaries based on passenger and freight movement and population density.

Response: The Congress defined planning area boundaries based on the Census Bureau's designated urbanized areas and areas that would become urbanized over a twenty year forecast period. The exceptions were planning areas where the local officials and the Governor extended the boundaries to the MSA and in the case of nonattainment areas. Forecasts of areas to become urbanized are to be based on the same approach used by the U.S. Bureau of the Census, i.e., a population density of 1000 per square mile. The FHWA and the FTA believe that the statutory criteria are appropriate and see no need to expand on them.

Comment: A single commenter asked for clarification of funding allocations when planning area boundaries are redefined, e.g., extended to nonattainment area limits.

Response: No change in funds available to the metropolitan planning area occurs as a result of boundary changes. For example, although suballocated Surface Transportation Program funds may be used anywhere in the metropolitan area, the suballocations are based on the population residing within the urbanized area as provided by the most recent decennial census. Congestion mitigation and air quality funds are determined on the basis of the nonattainment area population. If the

MPO and the Governor shift the planning area boundaries, funds available to the MPO do not change directly. However, the MPO's geographic scope of responsibility for system planning and programming does shift and would affect the claim made for a share of all funds available to a State. This would be an obvious factor influencing the cooperative roles of the State and the MPO in establishing priorities for programming projects identified in metropolitan plans.

Additionally, the FHWA and the FTA have made a change to the wording of § 450.308(a) to clarify the eligibility of areas excluded from planning area boundaries. In nonattainment areas which include TMAs with urbanized area populations over 200,000, if the entire nonattainment area is not included in the metropolitan planning area boundary, suballocated STP funds cannot be utilized for projects outside the metropolitan planning area boundary.

Section 450.310 Metropolitan Planning Organization: Agreements

Approximately forty comments were received on the subject matter of this section.

Comment: Several commenters indicated that the requirement for agreements is cumbersome.

Response: The requirement ensures that roles and responsibilities are clearly delineated and, thus, provide a framework for the cooperative planning process. Alternative mechanisms for satisfying the requirement through the Unified Planning Work Program (UPWP) or prospectus are identified. The involvement of State and regional air agencies is a product of the CAAA. The role of the transit operators reflects the intermodal context of the ISTEA and the intent of Congress to provide greater emphasis on transit as a means of reducing over reliance on single occupant vehicles in providing mobility.

Additionally, the agreement requirement provides a basis for formally structuring working relationships that are good practice but might otherwise be ignored. For example, agencies should share information concerning the status of projects with other agencies affected by or interested in their progress. Section 450.210 provides for this process and it should be addressed in the agreements for the metropolitan planning process.

Comment: A few commenters indicated that exclusion of a portion of the nonattainment area from the metropolitan planning area boundary must be coordinated with the FHWA, the FTA and the U.S. EPA.

Response: Provision was made in the rule for this coordination. Minor revisions were made to indicate a role for the regional air quality agency where one exists. Support for requiring an agreement where there is a reduction in the planning area boundary in a nonattainment circumstance was received from several commenters.

Comment: Several commenters indicated that in circumstances where multiple MPOs serve a complex metropolitan area, coordination between the MPOs should be required.

Response: Provision for this coordination is made within the regulatory language.

Comment: It was suggested that there should be only one agreement and it should establish the MPO and the related coordination arrangements.

Response: The legal provisions governing designation of an MPO are contained within 23 U.S.C. 134. These provisions address the creation of the MPO and its membership. The coordination provisions address the relationship of the MPO with other organizations engaged in transportation or transportation related planning activities. Further, the process of structuring the MPO addresses the issue of membership on the MPO policy board which would be charged with approving the agreements between the MPO and other agencies. The FHWA and the FTA believe that it might be unduly complicated to combine these separate activities but not impossible. To permit local and State officials maximum flexibility in designing workable local agreements, the approach articulated in the proposed rule has been retained.

Comment: One commenter asked that the agreements section distinguish between the requirements that apply to planning area boundaries and nonattainment area boundaries.

Response: These agreements are one and the same by virtue of the requirements of 23 U.S.C. 134(c) and section 8(c) of the Federal Transit Act unless a portion of the nonattainment area is excluded from the metropolitan planning area boundary. The agreement specifying the exclusion may also stipulate responsibility for planning in the excluded area. The requirement for a conformity finding in the excluded area would still apply; the agency responsible for the conformity finding would be designated in the agreement.

Comment: A few commenters suggested that simplified planning processes in marginal nonattainment areas be provided through additional agreements.

Response: The legal mandate in 23 U.S.C. 134(j) and section 8(j) of the Federal Transit Act is that simplified planning procedures may only be utilized in attainment areas.

Section 450.312 Metropolitan Planning Organization: Responsibilities, Cooperation and Coordination

Approximately 40 comments were addressed to this section of the proposed rule.

Comment: The MPO should include airport operators and address access to airports. Other operators of transportation modes should be included, most notably transit.

Response: The language of the rule has been clarified to indicate the respective roles and responsibilities of operators of major transportation modes. It is the express intent of the Congress not to force redesignation of existing MPOs. Section 450.316 requires that the process provide for the involvement of various transportation agencies, including operators of airports. However, voluntary additions of new modal representatives to MPO boards and committees is strongly encouraged. This process of coordination is not intended to confound Federal planning requirements in other modal areas, e.g., aviation. However, access to airports, marine ports, freight terminals and other major facilities must be considered as part of the planning process.

Comment: The final rule should define roles, actors, responsibilities, and duties.

Response: The structure of this section is intended to recognize the primary responsibility of State and local governments, acting through the MPO, to determine the best processes for achieving coordination among the key metropolitan and State agencies. While coordination across transportation modes and with other government agencies, e.g., historic preservation, should occur, it is the position of the FHWA and the FTA that this should be driven by local decisions regarding best mechanisms for achieving coordination. It is clearly Congress' intent that the structure and approach of both MPOs and the metropolitan planning process reflect key decisions made by State and local officials. In keeping with this philosophy, the FHWA and the FTA have attempted to provide sufficient leeway to enable State and local officials to structure effective local processes for coordination and cooperation.

Comment: The wording of this section does not recognize existing State congestion management systems or the cooperative working relationship between the State and MPOs in developing the congestion management systems.

Response: The working arrangement between the States and MPOs in the development of congestion management systems is addressed in § 450.320 and 23 CFR 500. The structure of the relationship places final responsibility for the development, establishment and implementation of management systems with the State, recognizing that in metropolitan areas these activities are to be carried out cooperatively with the MPO and transit operator. In transportation management areas, the congestion management system must be developed as an integral part of the planning process.

Comment: Establish a single mechanism for evaluating and implementing transportation control measures.

Response: The process of developing and assuring implementation of transportation control measures (TCMs) for nonattainment areas is a joint effort of the air quality (State and regional) and transportation agencies. TCMs adopted in State air quality implementation plans (SIPs) must be coordinated with and reflected in transportation plans and programs. Ideally, TCMs requiring funding from transportation implementing agencies will not be included in SIPs without their support or commitment.

The requirement (§ 450.336(b)) to update transportation plans in nonattainment areas by October 1, 1993, was intended to facilitate this coordination. Since the rule will not be published until after October 1, 1993, this provision was not included in the final rule. Instead, it has been addressed through interim guidance. In addition, this rule, recognizing the comments received to the docket, clarifies this relationship (see discussion regarding § 450.336).

The relationship between air quality and transportation planning also partially explains the three-year update requirement for transportation plans. In order to ensure that TCMs are identified and implemented and that the transportation sector continues to fulfill its responsibilities with regard to clean air, plans must be revised more frequently than in the past.

Comment: Pedestrian and bicycle transportation facility studies should be referenced in the metropolitan plan.

Response: Section 450.322(b) (2) and (3) require the identification of pedestrian and bicycle facilities in the metropolitan transportation plan. Both pedestrian walkways and bicycle facilities require continuity to be useful. Coordination of pedestrian and bicycle facilities to create a connected system across local jurisdictional boundaries is essential if these systems are to serve a transportation function. For the same reasons that motor vehicle roadways are planned at a regional level, so too must pedestrian and bicycle facilities be planned as a connected system to serve destination oriented transportation needs. Therefore, pedestrian and bicycle facilities must be addressed in the metropolitan plan.

Comment: Geographic application of conformity analysis should not extend to maintenance areas.

Response: The proposed U.S. EPA rule on conformity analysis dictates the application of conformity analysis to maintenance areas. This metropolitan transportation planning rule simply recognizes this requirement.

Section 450.314 Urban transportation Planning Process: Unified Planning Work Programs

Two modifications were made to the proposed rule by the FHWA and the FTA for clarification and simplification purposes. Section 450.314(a)(3) requiring demonstration that adequate staff and funds were being committed to high priority projects was dropped as being unnecessary and burdensome. Section 450.314(d) was modified by adding the last sentence to the final wording. This change facilitates submission of simplified work programs (produced by smaller MPOs) by allowing their submission with State work programs.

Approximately 30 comments were received on this section of the regulation.

Comment: A general concern voiced by several writers was the broad inclusion of all metropolitan transportation planning activities regardless of funding source within the UPWP. A parallel concern was raised concerning the one- or two-year timeframe.

Response: This provision continues a current requirement. The intent is to broaden MPO awareness of activities and plans that impact surface transportation. It does not require the MPO to assume responsibility for those planning activities outside its jurisdiction or for Federal programs outside those already within its purview. Since the intent of the legislative revision incorporated within the ISTEA was to improve the performance of the transportation system as a whole, it is consistent that planned improvements should be based on all key decisions affecting growth and development within the metropolitan area. An additional reason for this requirement is to ensure that the work plan proposed by the MPO is consistent with and does not duplicate other planning activities in the region. Accountability for the final work products remains with the organization initiating them, even if performed by another organization under contract.

Comment: If the UPWP contains a corridor or subarea study, then the determination of funding level, end products and schedule of analysis will be complicated by the fact that the magnitude of the project studied will not be determined until the findings of the scoping conference are approved.

Response: The scope of a major investment study can be amended after a scoping conference. The scoping conference can occur prior to inclusion of the major investment study in the UPWP. Since a major investment study will address improvements of substantial scale, it is unlikely they will be completed within a one year timeframe. Therefore, changes to the UPWP resulting from a change in the scope of a proposed major investment study may be made at that time. Additional funding for large studies is available through the ISTEA flexible funding provisions for STP, Bridge, Section 9, NHS, etc., funds. When 23, U.S.C., Chapter 1, capital funds are utilized, the major investment study shall be included in the TIP to reflect the utilization of funds for planning and the scale of the work undertaken.

Comment: MPOs should develop UPWPs "in consultation with" the State and transit operators.

Response: The structural relationship among the State, MPO and transit operator reflects the mutual responsibilities shared by these entities in the cooperative development and implementation of transportation plans and programs. The transit operators are the primary recipients for most FTA funds for transportation improvements and their participation becomes a key factor in the successful utilization of such funds. A similar point can be made with regard to the utilization of flexible funds. Thus, the rule relies on a cooperative working relationship among all three entities to develop UPWPs.

Comment: Implementation of the management systems should take place as soon as possible but no later than January 1, 1995.

Response: The implementation schedule for the management systems is addressed in a separate rulemaking process (See 23 CFR 500 as proposed). The rationale for the implementation schedule for the management systems will be discussed in the preamble to that rule.

Comment: The utilization of a prospectus to satisfy the requirements of § 450.310 is inappropriate because it is not required by statute.

Response: The prospectus is an optional mechanism for meeting the requirements stipulated in this section. Its use will facilitate agreements in some areas. Authority to utilize this mechanism stems from the general authority granted the U.S. DOT to develop mechanisms to implement legislative requirements.

Comment: Activities funded in the metropolitan area with State highway research funds should be included in the metropolitan UPWP.

Response: While the work to be funded remains the responsibility of the State, the UPWP must include the State planning and research funded activities related to the metropolitan planning process. This requirement also applies to FTA funded State planning and research activities under the Federal Transit Act section 26(a)(2) program.

Section 450.316 Metropolitan Transportation Planning Process: Elements

Significant changes have been made to this section reflecting both comments received and further clarification of the provisions by the FHWA and the FTA. Some of the elaboration of individual planning factors has been reduced or clarified and the public participation requirements have been substantially revised. The general section of this preamble describes the basic approach and philosophy to public involvement taken by FHWA and FTA which is basically that the planning process is open to all and should provide the opportunity to those desiring to participate to do so. As in the State planning process, it is the responsibility of the participating agencies to ensure that the process provides the opportunity for participation for interested parties, which include private sector as well as public sector providers of both freight and passenger transportation. As noted in the previous discussion of comments on the supplemental questions, no changes were made to the option for simplified planning processes.

Over sixty comments were received on this section of the rule.

Comment: Specific Federal guidance should be provided on what measures should be considered in prioritizing the fifteen statutory factors and planning products.

Response: The FHWA and the FTA plan to issue guidance on the application of the fifteen factors in the planning process rather than attempt to specify a standard approach that fails to consider the inherent diversity of metropolitan areas. The Congress did not specify the detailed extent to which each factor should be considered. The proposed rule indicated simply that each of the fifteen factors shall be considered.

The final rule indicates that each factor shall be explicitly considered and analyzed as appropriate. Consistent with the above, the FHWA and the FTA generally have chosen not to add additional elaboration to individual factors as requested by some commenters. Indeed, the agencies have clarified or eliminated some previously supplied elaboration for §§ 450.316(a)(1) and 450.316(a)(9) as not essential in the regulatory context. An addition, however, to § 450.316(a)(13) identifies the human environment as a subject for consideration. This addition indicates the important role that transportation systems play in addressing social concerns such as access to affordable housing and jobs. It further highlights the need to make transportation planning consistent with plans developed to address other metropolitan concerns, e.g., employment, energy, housing, community development, etc.

Comment: Clarify that § 450.316(a)(6) applies only to regionally significant projects.

Response: The wording remains unchanged because the wording of 23 U.S.C. 134 and section 8 of the Federal Transit Act requires the consideration of all projects. The Congress intended that the planning process address all projects that would significantly affect the performance of the transportation system and air quality.

In the context of an intermodal transportation system, non-surface transportation improvements and their impacts on the surface transportation system should be addressed. For example, marine port and airport improvements can have significant consequences for existing or proposed access routes. To foster consideration of these linkages and the impact of such improvements on the Federally supported transportation system, the FHWA and the FTA are requiring the consideration of all improvements, regardless of funding source. Similarly, metropolitan planning analyses should address linkages of metropolitan facilities to facilities outside the metropolitan planning area boundary, e.g., commuter rail, etc.

Comment: Does the requirement for consideration of the congestion management system outputs apply after January, 1995 when they must be operational?

Response: Consideration of the outputs of the management systems should begin as soon as the management systems produce useful data, analysis, or strategies. Even before the systems are fully operational, they can provide information that is useful in the development of plans and TIPs.

Comment: Require the identification of bicycle and pedestrian facilities as transportation enhancement improvements.

Response: The identification of bicycle and pedestrian facilities is required in transportation plans under § 450.322 (b)(2) and (b)(3). Pedestrian and bicycle improvements may be funded under the transportation enhancement program.

Comment: Add commuter rail projects utilizing existing rail rights-of-way to § 450.316(a)(1) which requires preservation of existing transportation facilities.

Response: The generic language of this planning factor encompasses the intermodal philosophy and facilities orientation of the ISTEA and a specific listing of elements of individual modes, e.g., transit, and, thus, a specific list of individual modes is not considered warranted.

Comment: For interim air quality conformity, the guidance should be clarified to state that policy plans are acceptable as a basis for determining plan conformity.

Response: Metropolitan policy plans are not acceptable for conformity purposes. The level of detail is insufficient to demonstrate that the financial resources are available to implement the plans and to make conformity determinations as required under the U.S. EPA conformity rules. In attainment areas, the level of detail shall reflect the complexity of the transportation system. However, in all cases there must be sufficient detail to develop a financial plan for implementation purposes.

Comment: Strengthen and elaborate the specifics of the public involvement process for the transportation plan.

Response: The requirements for public involvement have been substantially strengthened in the final rule. The requirement for a 45-day comment period on the establishment of the metropolitan public involvement process has been retained. Further, the characteristics and performance expectations of the metropolitan public involvement process have been substantially elaborated. For FTA grantees, this revised public involvement process will satisfy the requirement for an opportunity for a public hearing under sections 3 and 9 of the Federal Transit Act. The FTA will revise Circular C9030.1A to reflect this change for section 9 and incorporate this change in its new section 3 circular.

A number of commenters recommended the inclusion of requirements for specific procedures, including but not limited to the formation of advisory committees, full access to all data and data analyses, a minimum number of public meetings, specific timeframes for notices, etc. Rather than adopt specific standards that might inappropriately burden MPOs and States, the FHWA and the FTA have adopted a "performance" approach which identifies what an effective involvement process should achieve. The States and MPOs may custom design procedures which achieve these objectives and which are suitable for the local context, except that certain minimum requirements are specified in nonattainment TMAs. Supplemental guidance will be developed and issued to assist States and MPOs in developing and implementing involvement procedures.

The FHWA and the FTA have taken this approach to promote innovative and effective involvement processes. The performance criteria will be addressed in all certification and planning reviews as a means of stimulating locally designed mechanisms for achieving these objectives. Such locally designed approaches would as a minimum, provide opportunities for comment to those interests specifically identified in the legislation and other interests deemed important in a specific metropolitan context. Additionally, while nonattainment and maintenance areas have special concerns to address, the public involvement performance criteria apply to all metropolitan areas. The FHWA and the FTA considered requiring that these public involvement processes be subject to direct Federal approval. However, the less burdensome approach of including them in certification or planning reviews was adopted.

Comment: Clarify the simplified planning process.

Response: A simplified planning process is available to MPOs which are not TMAs and which are in attainment status. The extent of procedural simplification is a product of negotiations between the appropriate FHWA Division and FTA regional offices and the proposing MPO and State. The intent is to reduce analytical efforts to those sufficient to meet the objectives of the Federal program within the context of the transportation system complexity facing a given metropolitan area. Hence, while all fifteen factors must be considered, the degree to which data gathering and analysis is necessary to consider them will be decided cooperatively on a case-by-case basis.

Comment: Clarify whether the omission of the UPWP as minimum product in non-TMAs was intended.

Response: A work program is required for all MPOs. However, the work program in non-TMAs can be less detailed. It is not a product of the planning process, but instead identifies the activities that will be carried out as part of the planning process.

Section 450.318 Metropolitan Transportation Planning Process: Major Metropolitan Transportation Investments

Approximately seventy commenters raised questions concerning this topic. Many of these comments raised issues regarding the lack of clarity in the intended focus of the major investment analysis and its linkage to the planning process. A number of commenters questioned which agency should be lead for the purposes of completing the required analytical work. To respond to these general concerns the FHWA and the FTA have revised the definition of a major investment to clarify when such a study may be necessary and how it should be managed. Such investment studies should occur before a particular investment is ultimately defined in an area's approved plan. Pending the completion of such studies, either the "no build" option or one or more build alternatives may be assumed for the conformity determination under the U.S. EPA conformity rule and for regional financial analyses. To facilitate the identification of promising alternatives warranting more detailed analysis in the corridor/subarea study the participating agencies should consider an initial, sketch level analysis of potential alternatives. After a corridor/subarea study is completed, the plan would be revised to reflect the specific decision resulting from the study.

To facilitate the determination of the need for such a study and its scope, provision is made in the regulation for a cooperative process to include, at a minimum, the State, MPO, transit operator, affected local officials, environmental and resource agencies, FHWA, FTA, and operators of other major modes of transportation, as appropriate. To initiate the cooperative process, the affected parties will meet to define the conduct of the study, including the respective roles of the participating agencies and the determination of the lead agency. While the MPO may have the lead in many cases, it may be appropriate for the State or transit operator to have the lead where they have the analytical capacity or expertise. The alternatives to be considered in such a study should be broad ranging in character. They may include, but are not limited to, traditional highway and transit options as well as multimodal options.

Properly done, major investment analyses should broaden the consideration of options earlier in the planning process such that local and State officials are provided a broader array of choices to improve the performance of the transportation system.

These studies should also be undertaken with the intent that they will substantially improve the linkage between the planning process and environmental review process required under the National Environmental Policy Act and other statutes. This will not only reduce the redundant analyses which are currently being done but also provide for early consideration of environmental impacts. As a minimum, the major investment analysis should result in the identification of the preferred alternative(s). The environmental document could then reference and draw upon the corridor study and the early consideration that the study gave to alternatives and environmental factors and focus on design options for the preferred alternative. Another option available under the regulation would be for the lead agency and the responsible Federal agencies to develop a draft Federal environmental document as part of the corridor study. This study could, for example, be used as the basis of a draft environmental impact statement. In such cases, the corridor studies would need to include the environmental studies, interagency coordination, public involvement, etc., necessary to meet the requirements of 23 CFR 771.

Additionally, as provided for in the ISTEA, the FTA is required to conform its review requirements for transit projects under NEPA to comparable FHWA requirements applicable to highway projects. The major investment analysis achieves this goal in part. Also required by the ISTEA will be a revision to the FHWA's and the FTA's environmental regulations to modify procedural requirements. This process has been initiated and will be completed as soon as possible. Additionally, the FHWA and the FTA will be issuing guidance regarding the major investment analysis process.

Comment: Clarify review responsibilities of Federal agencies for corridor and subarea studies.

Response: Reviews will be conducted jointly by the FHWA and the FTA. The major investment studies will satisfy the FTA alternatives analysis requirement and the review procedures will be jointly administered by both agencies.

Comment: Clarify the definition of a major transportation investment, and provide examples of "significant capacity increases and require substantial public investment."

Response: The definition of a major investment has been revised to provide a clearer indication of what a major investment is intended to be. The rule now states that a major investment refers to a high-type highway or transit improvement that involves substantial cost and that is expected to have a significant effect on capacity, traffic flow, level of service, or mode share at the transportation corridor or subarea level. The definition also provides examples of such investments and projects which would not be considered major investments. The lists of what is or is not an investment are not intended to be exclusive. Generally, major highway investments would involve facilities that are important to regional travel, i.e., principal arterials, and substantial capacity adding improvements where private access to a new or existing facility is not permitted. In most cases, highway improvements on facilities not classified as principal arterials or improvements on new or existing facilities where private access is permitted would not be considered major investments. Generally, major transit investments would involve new fixed guideway facilities or substantial changes to existing fixed guideway facilities. In most cases, new bus service (or changes to existing bus service) operating on the regular street system would not be considered major investments. It is the responsibility of State and MPO officials, in concert with the FHWA and the FTA and other affected parties, to arrive at a determination of whether an improvement constitutes a major investment. The relative scale of such investments makes it difficult to specify a dollar value or specific project type as a defining basis for a major investment. It is the FHWA's and the FTA's intent to assist MPO and State officials in effectively managing the Federal resources available to them. Major investments will constitute a major potential cost to individual metropolitan areas. Hence, they should be evaluated carefully. Similarly, specific modal options and analyses should be based on local conditions. Where appropriate, the study should address the movement of goods as well as the movement of people, for example, freight and commuter rail. Parallel concerns are applicable to commuter rail.

Comment: Major investments have no basis in legislation.

Response: The ISTEA requires the development of transportation systems embracing various modes of transportation in a manner which will efficiently maximize mobility of people and goods and minimize transportation related fuel consumption and air pollution. The legislation also specifically requires that the planning process be comprehensive to the degree appropriate, based on the complexity of the transportation problems. The FHWA and the FTA believe these requirements provide a basis for ensuring that proposed major investments are evaluated through a process that considers an appropriate range of alternatives and their cost-effectiveness and impacts. This also will assist in subsequently addressing the NEPA requirement for considering alternatives. Corridor and/or subarea studies will generate estimates of costs, effectiveness, and impacts at the level of detail necessary for informed choices to be made.

Further statutory basis is found in Section 3(i) and 8(h)(4) of the Federal Transit Act. Section 3(i) requires an alternatives analysis for fixed guideway transit projects. In the past, FTA had merged the alternatives analysis process with the preparation of the draft environmental impact statement. Major transit projects thus faced different, and possibly more complex, procedural requirements than major highway projects. However, Section 3012 of the ISTEA (Section 8(h)(4) of the Federal Transit Act) required the FTA to conform its environmental review requirements with those of the FHWA. The major investment procedures are the first step in reconciling the agencies environmental requirements.

Comment: Major investment studies should be funded with other than FHWA planning or FTA section 8 funds.

Response: Depending upon the scale of the study and funds available to a metropolitan area, major investment studies may be funded from any category of planning as well as capital funds since the studies will most likely involve activities generally funded as preliminary engineering. When title 23 capital funds administered by the FHWA are used, the project must be included in the TIP because of the scale of cost and the utilization of capital funds and to ensure that implementing agencies are aware of the decision to use these funds for planning activities.

Comment: Make a distinction between subarea and corridor.

Response: A corridor involves a nominally linear transportation service area that may have an existing highway or transit improvement serving it. A subarea may focus on a non-linear part of a metropolitan area, such as an activity center or other geographic portion of the region. Neither a corridor nor a subarea have a predefined size or scale. They refer to a geographic focus that may be dictated by existing or proposed systems or transportation demand.

Comment: The major investment planning process should be undertaken where historic and archeological compliance process pursuant to 23 CFR 771 and 36 CFR Part 800 has not been initiated.

Response: The requirement for a major investment study is being phased in. The FHWA and the FTA expect that all future studies will encompass at least the initial phases of the environmental process. The "initiation" of the environmental review process under 23 CFR 771 was chosen as a convenient break point for determining which projects would be subject to the major investment analysis requirement. Where the environmental process has already been initiated, the regulation establishes a cooperative process to determine the extent to which ongoing studies should be modified.

Comment: Analysis under the National Environmental Policy Act (NEPA) will help to prioritize the utilization of scarce Federal resources.

Response: The planning process is the best mechanism for prioritizing the utilization of scarce Federal resources. However, the intent of this requirement is to integrate planning and environmental requirements at the planning stage so that alternative courses of action, their costs and environmental effects as well as transportation demand are considered at that point. This will streamline the environmental process and help to assure that a particular alternative does not become "locked-in" before the environmental and other effects have been considered.

Comment: Some subareas are part of larger statewide, interregional corridors that may be studied over the objection of an MPO.

Response: The requirements of § 450.310 indicate that coordination among MPOs must be undertaken in such areas for transportation plans. The same is true for major investment studies. In addition, the metropolitan planning process must be carried out cooperatively by the MPO and the State and the statewide planning process by the State in coordination with the MPO. Thus, issues on such corridors should be resolved through these cooperative efforts.

Comment: Requirements should apply only to projects with Federal funding.

Response: It is unlikely that the funding sources for a project of the scale envisioned for major investments will be fully known prior to the initiation of the study. Even if they are, since all projects are to be part of the transportation plan regardless of the funding source, it still would be advantageous for the MPO to utilize this process to ensure that decisions are based on a comprehensive evaluation process. The regulation has been revised to state that corridor and/or subarea studies are not required unless Federal funds are potentially involved.

Comment: The issue could involve differences between a concept (sketch) plan for the twenty year period, a financially constrained plan for five to ten years, and the TIP for three to five years.

Response: Plans must be financially constrained over the twenty year period. The TIP implements a plan through a program of projects.

Comment: How do the required major investment studies relate to single occupant vehicle projects that must be justified through a congestion management system?

Response: Since the SOV restriction applies only to TMAs that are nonattainment for carbon monoxide and/or ozone, the CMS (as well as the major investment study) would be implemented through the metropolitan planning process. For a project subject to both requirements, it is expected that a single study/analysis would be undertaken to satisfy both requirements.

Comment: It is too difficult to develop a financially balanced TIP and plan because of the various alternative modes that must be considered.

Response: The requirement to develop a financially constrained TIP is legislatively mandated. The FHWA and the FTA will be developing guidance to assist in this process. The rule establishes a process through which the scope and design concept in the plan are not finalized for major metropolitan investments until the studies in § 450.318 are completed and one alternative has been chosen by the MPO in cooperation with the participating agencies. Where the major investment analysis has not been completed and closure has not been reached on a particular alternative, an alternative may be included in the plan as an assumption in accordance with § 450.322(b)(8) for the purpose of clean air conformity, financial analyses, and other purposes.

Section 450.320 Metropolitan Planning Process: Congestion Management System

In general, the FHWA and the FTA have modified this section of the regulation to address the relationship of the planning process to the management systems in general and not just the congestion management system. This change was made to eliminate the confusion that appeared to exist in terms of the general relationship between planning and the management systems noted in the earlier preamble discussion. In response to questions as to what constitutes a significant increase in SOV capacity, clarifying language has been added. Further, it should be noted that data collection and analysis in support of performance measures of the transportation system are eligible costs under title 23 and the Federal Transit Act and may require non-traditional funding strategies, e.g., use of flexible funding sources, to support the level of effort required in a given metropolitan area and/or State. The restrictions on programming SOV projects in TMAs that are nonattainment for carbon monoxide and ozone that were included in the NPRM on the CMS have been added to this section and deleted from the rules being developed for the management system. Programming restrictions are more appropriately addressed in the planning rule. The requirements for special analyses for SOV facilities will be contained in the CMS final rule when it is published.

Approximately twenty-five comments were received on this section of the rule.

Comment: The congestion management system should be part of the MPO planning process and local governments should participate in the development of the management systems.

Response: The development of the management system is a cooperative process involving the State, transit operator, and the MPO. The MPO is the vehicle through which local governments are able to provide input to the development of the system. In TMAs, the CMS must be developed as part of the metropolitan planning process. To the extent appropriate, the congestion, intermodal and public transportation management systems must be developed as part of the metropolitan planning process in all metropolitan areas.

Comment: The rule should delineate a three-year period of review for management systems.

Response: The implementation of the management system is detailed in 23 CFR 500 as proposed and will be included in the final rule when issued. The implementation schedule is being reviewed for possible extension to permit more time for development and implementation of the management system.

Comment: Clarify requirements for the congestion management system.

Response: These requirements are detailed in 23 CFR 500 as proposed and will be included in the final rule when issued.

Comment: Mention planning for heliport or vertiport facilities.

Response: These facilities would be addressed as part of the planning process for the development of intermodal and transportation plans as deemed appropriate by the MPO.

Comment: Define significant increases in single occupant vehicle capacity.

Response: For the purposes of the SOV restriction in TMAs that are nonattainment for carbon monoxide or ozone, the final rule indicates that this applies to adding general purpose lanes to an existing highway (except for elimination of safety or bottleneck problems) or to constructing a new general purpose highway on a new location.

Comment: Coordination of management systems in multi-State urbanized areas should be limited to information exchange.

Response: The requirements for coordination of the management systems are detailed in the management system regulation 23 CFR 500, except where the management systems are developed as part of the metropolitan planning process, e.g., CMS in TMAs where the coordination requirements for metropolitan plans will apply. Because the management systems must produce more than information, i.e, strategies for improving system performance, the coordination process cannot be limited just to information exchange. Coordination will have to address strategies also.

Comment: The absence of "cost effectiveness" or "political feasibility" criteria may leave States and MPOs in a difficult position for SOV projects.

Response: The legislative mandate provides little qualification with regard to the basis for justifying single occupant vehicle projects. They must result from a congestion management system. In developing the management systems, State and local officials will have the opportunity to specify the criteria they will use for assessing strategies. These criteria could include "cost-effectiveness" and "political feasibility". However, in TMAs that are nonattainment for ozone or carbon monoxide the requirements of 23 CFR 500.505(e) must be met.

Comment: Define period of validity for management system evaluation to be the same period as TMA certification.

Response: In TMAs, the certification process will address the management systems in general. Their implementation would be just one consideration in determining whether a planning process should be certified. However, the periodic review of the management systems is a separate requirement that is not tied to the certification process. States must certify that they are implementing the management systems annually by legislative mandate. This and other management system related questions are addressed in the management systems rule (23 CFR 500).

Section 450.322 Metropolitan Planning Process: Transportation Plan

The FHWA and the FTA made two modifications to clarify wording and reflect the cooperative development of the final rule with the U.S. EPA. A clarification has been made to § 450.322(b)(1) where "near term" transportation demand has been changed to "demand over the life of the plan." A modification in relation to the U.S. EPA conformity rule has been made by requiring an annual public meeting in TMAs that are nonattainment.

Approximately sixty comments were received concerning the content of the plan.

Comment: Plan updates should be less frequent and left to local discretion.

Response: The frequency of required updates reflects the dynamic nature of the planning process. While transportation plans will continue to serve as a fundamental product of the planning process, their function is changing from documentation of system development to contemporary decision tool. Integration of short term system operation and maintenance concerns with longer term capacity management issues will force plans to be more dynamic. The transportation linkage to air quality in nonattainment areas requires that plans be more sensitive to changing environmental conditions and responsive to goals established by the Clean Air Act. Hence, the schedule for updating transportation plans is tied to the schedule for conformity determinations. Furthermore, it is the expectation of the FHWA and the FTA that State air implementation plans will be based on the adopted transportation plan for a metropolitan planning area and vice versa. Any transportation control measures needed for the area will need to effectively reduce the transportation related emissions resulting from the adopted plan.

To reflect these concerns, the FHWA and the FTA have identified a schedule of updates that maintains the technical utility of plans and their ability to serve State and local decisionmakers needs. Formally updating a plan does not require an entirely new plan but does require a review of plan assumptions, transportation trends, the development in the area, air quality considerations, system characteristics, and extension of the forecasts to maintain a twenty year horizon. This will ensure that fundamental forces and factors affecting the operation, maintenance and development of the transportation system are adequately addressed. The FHWA and the FTA will be issuing guidance to assist State and MPO officials in updating plans.

Comment: Too much detail is required in the twenty year plan.

Response: Most of the detail relates to mandates in the ISTEA or CAA and is, therefore, a minimum level of detail required. Further specification of detail, e.g., specific identification of modal options such as commuter rail, greater specificity for cost estimating, better integration of air quality, socioeconomic and land use needs, or greater reliance on land use scenarios in preparing plans, was resisted because of the existing detail in the legislation and the need to permit MPOs and States the flexibility to tailor plans to local conditions. The detail required achieves a balance between legislated mandates and State/local determination of performance expectations for transportation systems. This permits tailoring of options and analyses to local conditions.

The financial plan requirement has been amplified to give greater clarity to the intent of the statute. Specifically, the requirement indicates that a plan for meeting revenue shortfalls through strategies for developing new or increased revenues must be a part of the transportation plan. The development of these strategies permits metropolitan areas to plan for system development utilizing current and reasonably available new revenues over a twenty year horizon which is very difficult to concretely forecast in detail. At the same time, this flexibility is consistent with the congressional intent to make plans more "realistic" by constraining them to revenues reasonably available to a metropolitan area and State. The MPOs and the States will need to work cooperatively to identify revenues available to the area, including forecasts of Federal, State, local, and private revenues. Technical assistance on forecasting funds and utilizing alternative revenue sources will be provided. Financial constraint of the plan and TIP is discussed in more detail under the comments addressed to § 450.324.

Comment: Require the planning process for the long range plan to include the identification of a metropolitan transportation system consistent with the requirement of the ISTEA.

Response: The designation of a metropolitan transportation system is not a requirement in the ISTEA. However, the plan will identify the regional transportation network that serves the metropolitan area. In this sense, the plan will address a metropolitan transportation system. However, it is not the intent of the FHWA or the FTA to require designation of metropolitan transportation system in the same vein as the National Highway System is designated.

Comment: Aviation planning and funds should be excluded from the responsibility of the MPO.

Response: It is not the intent of the regulation to imply that airport planning is the responsibility of the MPO. However, the intermodal philosophy of the ISTEA emphasizes the need to ensure linkages among various modes of transportation, and access to airports along with access to other important intermodal terminals must be considered as part of the planning process. The final rule retains the language originally proposed to emphasize the necessity of MPOs to be aware of related planning and investment activities that will impact those for which they are directly responsible. Similarly, MPOs should be aware of and take into account aviation improvements in terms of their potential impact on surface transportation needs.

Comment: Revise § 450.322(b) to modify reference to transportation enhancements and to include reference to historic preservation plans and Indian tribes.

Response: The FHWA and the FTA have kept the references in this section as general as possible to permit flexibility for MPOs in developing plans. The reference to transportation enhancement in § 450.322(b)(10) is in accordance with statutory language. However, § 450.312 was modified to require involvement of appropriate

Federal and tribal agencies in the development of plans and TIPs where the metropolitan planning area includes Federal public lands and/or Indian tribal lands.

Comment: Delete reference to major investment studies.

Response: The FHWA and the FTA have decided to retain the major investment process in the final regulation for reasons set out earlier in this preamble. Moreover, the level of information required must be consistent with the requirements of the U.S. EPA's conformity regulations. New conformity determinations on plans for nonattainment and maintenance areas will be required where there are regionally significant changes in the plan.

Comment: Define affected public agencies in terms of which agencies should be consulted for input.

Response: The FHWA and the FTA are encouraging a broad approach to this process of consultation. It is up to the MPO and other partners in the planning process to solicit input from appropriate agencies in each metropolitan area.

Comment: The rule should apply only to Federally funded transportation control measures.

Response: Metropolitan planning must address all transportation control measures in nonattainment areas to ensure a comprehensive approach to this issue, consistent with the approach taken in the Clean Air Act.

Comment: Encourage evaluation of the impacts of projects on land use and alternative land use scenarios.

Response: The ISTEA requires consideration of land use in the development of transportation plans. In complex metropolitan areas, land use would be a significant factor in developing these plans and should be comprehensively considered by the MPO.

Comment: Tie updates of the transportation plan to updates of SIPs in maintenance areas.

Response: The schedule for updating the transportation plan in maintenance areas is the same as in nonattainment areas since conformity reviews are required in both of these areas.

Comment: Identifying pedestrian walkways and bicycle facilities is not appropriate at a regional scale.

Response: The requirements for this consideration are specified in 23 U.S.C. 217(g). Specifically, the law requires that pedestrian walkways and bicycle facilities be developed as part of the metropolitan and statewide planning process and that they be included in the overall metropolitan and statewide transportation plan.

Section 450.324 Transportation Improvement Program: General Content

Several changes have been made to the structure of this section in addition to some substantive modifications. The provision permitting exclusion of emergency relief projects (paragraph (n) in the NPRM) has been redesignated as paragraph (f) and modified to add the exclusion of safety projects. Emergency relief projects are fully excluded from the TIP except those which involve substantial functional, locational or capacity changes to existing facilities, which shall be included in the TIP.

The provision prohibiting suballocation of STP funds (paragraph (l) in the NPRM) has been redesignated as paragraph (k). It remains unchanged. Several comments were received, some expressing opposition to, some support for, this provision. In reviewing these comments the FHWA and the FTA did not find any substantive reason to modify the wording as proposed.

Paragraph (e) has been modified to make it clear that each year of the TIP must be financially constrained and to limit the sources in nonattainment and maintenance areas to sources that are available or committed. A new paragraph (m) has been added to indicate how to estimate and handle Federal Transit Act section 3 funds for the purpose of determining available revenues.

The provision permitting approval of operating assistance in the absence of an approved TIP remains unchanged but is redesignated as paragraph (o).

In response to comments, paragraph § 450.324(b) has been modified to make it clear that the frequency and cycle for updating the TIP must be compatible with the STIP development and approval process. In addition, language has been added to indicate that since the TIP becomes part of the STIP, the TIP lapses when the FHWA and FTA approval of the STIP lapses. Reference is also made to the provision in § 450.220(e) that allows the FHWA and the FTA to approve short extensions of the STIP approval for all or part of the STIP in the event submission of a new STIP is delayed due to extenuating circumstances. Where the request for an extension involves projects in the metropolitan planning area, the MPO must concur in the request for an extension and if the delay is due to problems in developing the TIP, the MPO must provide information to support the request for the extension. In nonattainment and maintenance areas, the conformity determination on the TIP must still be valid under EPA's conformity regulations and the period of extension cannot exceed the life of the conformity determination.

Approximately 70 comments were received on this section of the rule.

Comment: Several comments on financial plans were received, e.g., financial plans should be very generalized; should only require identification of Federal sources; clarify responsibilities of the States in helping to define available resources, particularly with respect to Federal funds that are distributed throughout the state; it should be recognized that in the absence of suballocation of funds, metropolitan TIPs may cumulatively exceed the resources of the State; MPOs do not know actual apportionments when developing their TIPs, therefore, allow flexibility for this; the public and interested parties should have an opportunity to comment on the financial plans.

Response: It is very clear from the report language that the Congress included the requirements for financial plans for both transportation plans and the TIPs because of concerns with pre-ISTEA "wish list" transportation plans and TIPs.

The statutory language specifically requires that the financial plan indicate the resources from public and private sources that are reasonably expected to be made available to carry out the plan. In response to concerns related to demonstrating conformity with the SIP and assuring that funds are available to give priority to TCMs in nonattainment areas, additional requirements have been included for nonattainment areas.

With respect to the comments concerning lack of information on funds under State control, etc., it is essential that the financial plans be developed by the MPO, in cooperation with the State and the transit operator, just as all other elements of the metropolitan transportation planning process are carried out through a cooperative process. Through this cooperative process, agreement on the funding to be used to implement the transportation plan and TIP should be reached. Since the State will be involved in the development of all TIPs as well as the STIP, the cumulative total of the State/Federal funds in the TIPs and STIP should not exceed, on an annual basis, the total State/Federal funds reasonably available to the State. In the case of funds controlled by the State, approval of the TIP by the Governor will be considered a commitment of funds to implement projects in the TIP.

Since the financial plans will be included in the metropolitan transportation plans and TIPs, the public and other interested parties will have an opportunity to review and comment on the financial plans through the public involvement process required under these regulations. Similarly, agencies involved in the conformity process will have an opportunity to review and comment on the financial plans through the interagency consultation procedures contained in the U.S. EPA conformity regulations which require that there be a process for circulating draft documents (including plans and TIPs) for comment prior to approval.

The following general guidance on the development of financial plans is being provided in response to requests for such guidance. As indicated in the regulatory language, the financial plan must demonstrate which projects can be implemented annually using current revenue sources and which projects are to be implemented annually using proposed new revenue sources while the existing transportation system is being adequately operated and maintained. This means that priority should be given to the maintenance and operation of the existing system including capital replacement. A credible cost estimate and replacement schedule must support this assessment. Notwithstanding the need to give priority to preservation of the existing system, in nonattainment areas priority must be given to the implementation of TCMs included in the approved SIPs.

For years 1 and 2 of the TIP in nonattainment and maintenance areas, the funds must be available or committed. Available funds means funds derived from an existing source of funds dedicated to or historically used for transportation purposes which the financial plan (in the TIP approved by the MPO and the Governor) shows to be available to fund projects. In the case of State funds which are not dedicated to or historically used for transportation purposes, only those funds over which the Governor has control may be considered to be committed funds. In this case, approval of the TIP by the Governor will be considered a commitment of the funds. For local or private sources of funding not dedicated to or historically used for transportation purposes (including donations of property), a commitment in writing/letter of intent by the responsible official or body having control of the funds will constitute a commitment. Where the use of State, local or private funds not dedicated to or historically used for transportation purposes is proposed and a commitment as described above cannot be made, this funding source should be treated as a new funding source and must be demonstrated to be a "reasonably available new source."

With respect to Federal funding sources, "available" or "committed" shall be taken to mean authorized and/or appropriated funds the financial plan shows to be available to the area on an annual basis. Where the transportation plan or TIP period extends beyond the current authorization period for Federal program funds, "available" funds may include an extrapolation based on historic authorizations of Federal funds that are distributed by formula. For Federal funds that are distributed on a discretionary basis, including Section 3 and "demo funding," any funding beyond that currently authorized and targeted to the area should be treated as a new source and must be demonstrated to be a "reasonably available new source."

For periods beyond years 1 and 2 of the TIP in nonattainment and maintenance areas, for TIPs in other areas, and for the transportation plan, funding must be "reasonably available," but need not be currently available or committed. Hence, new funding sources may also be considered. New funding sources are revenue sources that do not currently exist or that require some steps (legal, executive, legislative, etc.) before a jurisdiction, agency, or private party can commit such revenues to transportation projects. Simply identifying new funding sources without identifying strategies for ensuring their availability will not be acceptable. The financial plan must identify strategies for ensuring their availability. It is expected that the strategies, particularly for new funding sources requiring legislation, voter approval or multi-agency actions, include a specific plan of action that describes the steps that will be taken to ensure that the funds will be available within the timeframe shown in the financial plan.

The plan of action should provide information on the actions that will be taken to obtain the new funding, such as, how the support of the public, elected officials, business community, and special interests will be obtained, e.g., comprehensive and continuing program to make the public and others aware of the need for new revenue sources and the consequences of not providing them. Past experience (including historical data) with obtaining this type of funding, e.g., success in obtaining legislative and/or voter approval for new bond issues, tax increases, special appropriations of funds, etc., should be included. Where efforts are already underway to obtain a new revenue source, information such as the amount of support (and/or opposition) for the measure(s) by the public, elected officials, business community, and special interests should be provided.

For innovative financing techniques, the plan of action should identify the specific actions that are necessary to implement these techniques including the responsible parties, steps (including the timetable) to be taken to complete the actions and extent of commitment by the responsible parties for the necessary actions.

The financial plan will be a part of the plan or TIP and will be reviewed through the public involvement process. The following are examples of specific cases where new funding sources should not generally be considered to be "reasonably available": (1) Past efforts to enact new revenue sources have generally not been successful; (2) the extent of current support by public, elected officials, business community and/or special interests indicates passage of a pending funding measure is doubtful; or (3) no specific plan of action for securing the funding source and/or other information that demonstrates a strong likelihood that funds will be secured is available.

Comment: States must provide MPOs their best estimates of Federal funding that will be available to the metropolitan area in order for MPOs to develop financially constrained TIPs. Once a State has advised the MPO of the amount of Federal funds that will be available to the area, it should not be able to move funds out of the area because there is disagreement between the MPO and the State over which projects to include in the TIP.

Response: FHWA and FTA agree that States must provide MPOs with their best estimate of the Federal funds that will be available for use in metropolitan areas so financially constrained TIPs can be developed. This is not an easy task for the States since the States must decide how they will allocate the funds among all of the competing metropolitan and nonmetropolitan interests throughout the State. Unless the State suballocates all Federal funds to the various jurisdictions within the State (FHWA and FTA discourage suballocation), it needs to have a process for obtaining information on funding needs for the metropolitan areas as well as the nonmetropolitan areas of the State to provide a basis for deciding how to distribute the Federal funds. If a State chooses, it can utilize its process for developing its statewide transportation improvement program to obtain information on funding needs and to determine how to distribute its funds.

The ISTEA specifically provides for the MPO to develop the TIP in cooperation with the State and the transit operator, and for the TIP to be approved by both the MPO and Governor. Through the cooperative TIP development process and the joint approval requirement, disagreements over which projects to include in the TIP and their priority should be resolved. While we would hope that through negotiations a mutually acceptable decision on the projects to include in the TIP would be reached, it is recognized that this may not always be the case. Where agreement cannot be reached on the projects to be included in the TIP, the statutory provisions do not prohibit a State from using the Federal funds (other than STP funds allocated to urbanized areas with a population over 200,000) in some other part of the State.

Comment: The TIP should remain as a program of projects not a management tool for monitoring progress.

Response: The requirements for financially constraining and prioritizing the TIP, public comment and, in nonattainment areas, the conformity process and need to give priority consideration for TCMs, have functionally transformed the TIP. The TIP no longer serves as an interim step toward subsequent actions which actually determine what projects are funded. The TIP must serve as the mechanism that focuses and prioritizes the projects, establishes the relationship among projects and notifies the public of project status for the metropolitan area. Further, it should reflect the changes that have taken place in the concept of programming. TIP programming functionally shifts from assembling a list of projects that may be able to proceed to comprehensively managing the process of project advancement in relation to other transportation and transportation related activities that impact transportation system performance. Hence, the information requirements established for the TIP reflect this change. For example, projects from previously conforming TIPs must be tracked, TCM project priority must be assured, and SOV limitation requirements must be met.

Some relief from the level of required detail is provided through grouping of projects and prioritizing on an annual basis. This reduces the burden by limiting the amount of detail required for smaller projects. Additionally, by highlighting projects that serve multiple purposes, e.g., mobility strategies aimed at compensating for job access, the appropriate coordination can be achieved before projects are implemented and burdens reduced through cooperative relationships with other organizations.

Comment: The TIP should be a six-year, financially constrained program of projects.

Response: The ISTEA requires the TIP to be a minimum of three years and be updated at least biennially. It permits longer TIPs but the requirements for annual financial constraint and prioritization apply; that is, the projects must be grouped by year by funding source and each year of the TIP must be financially constrained to the resources reasonably available.

Comment: Overprogramming should be permitted and projects should be able to move within TIP duration with TIP amendments.

Response: Overprogramming is inconsistent with legislative requirements for a financially constrained TIP. Further, it is unnecessary since the project selection procedures can be used to advance a project from years 2 and 3 of the TIP if the schedule for a project included in year 1 slips. This does not require a TIP amendment.

Comment: Projects in the TIP should bear a direct relationship to implementation of the transportation plan.

Response: Capacity expanding improvements must be specifically identified in the plan. Minor projects such as those that may be grouped in the TIP do not have to be individually identified, but the plan must clearly indicate the resources that will be devoted to such projects by type, functional classifications and jurisdiction.

Comment: MPOs should not distribute STP funds on the basis of predetermined formulas.

Response: Within a metropolitan area, suballocation of STP funds allocated to urbanized areas over 200,000 in population is not permitted under the final rule unless it can be demonstrated to be based on factors considered part of the planning process.

Comment: Clarify the relationship between the metropolitan and State TIP.

Response: Once the metropolitan TIP has been approved by the MPO and the Governor, and in nonattainment and maintenance areas found to conform by the FHWA and the FTA, it is included in the statewide TIP either verbatim or by reference.

Comment: If TIP fails to prioritize freight projects an MPO should be considered in violation of the ISTEA objectives.

Response: With the exception of TCMs in nonattainment areas, the ISTEA does not establish a priority for other types of projects. It relies instead on the MPO, in cooperation with the State and the transit operator, to make choices that contribute to the overall performance of the local transportation system within the broad parameters of the Act.

Comment: How are projects serving Federal lands and funded under the ISTEA included in the metropolitan TIP?

Response: The sponsoring agency should work with the MPO to include the project in the metropolitan plan and TIP.

Comment: Operations and maintenance is the responsibility of operating agencies not the MPO.

Response: The MPO, in cooperation with the State and the transit operator, is responsible for developing a financial plan that demonstrates that the resources are reasonably available to implement the plan and the TIP. To do this, the financial plan must demonstrate also that operating agencies have the capacity to finance the operations and maintenance of facilities. This will require a close working relationship between the MPO and all agencies involved in the metropolitan transportation system.

Comment: Add the following wording to the final rule: "Nothing in this rule may be construed as imposing an obligation upon a private party to disclose proprietary business information involuntarily or as subjecting any MPO to any sanction for not obtaining information from private parties which those private parties do not wish to disclose voluntarily."

Response: The FHWA and the FTA agree with the principle behind the proposed revision. However, they could not determine a basis on which this might become an immediate issue in the planning process and have chosen not to include the wording as proposed. Consideration will be given to issuing guidance on this matter if it should become an issue.

Section 450.326 Transportation Improvement Program: Modification

Approximately 20 comments were received on this section.

Comment: Clarify when a TIP amendment is necessary.

Response: An amendment is required to add or delete a project from the TIP. An amendment is not required if funding sources change unless that forces addition or deletion of other projects.

Comment: TIP amendments should be made quarterly.

Response: TIPS can be amended at any time. However, in nonattainment areas this would require a new conformity determination (unless the amendment includes only exempt projects provided in 40 CFR 51) and in all areas appropriate public involvement (unless the amendment only includes minor projects which may be grouped under the requirements of 23 CFR § 450.324). The FHWA and the FTA have provided a mechanism that permits MPOs to move projects from year two and three of a TIP to year one without amending the TIP.

Comment: Are approved amendments automatically included in the Statewide TIP?

Response: A single metropolitan TIP/STIP amendment process may be used in a given metropolitan planning area as long as it utilizes the metropolitan public involvement procedures, providing the change only impacts on the metropolitan area. Where the metropolitan TIP amendment affects other portions of the State, the agreed upon STIP amendment procedures must be utilized, in addition to the metropolitan TIP amendment process.

Comment: Which projects do not require public comment when changes are made to the TIP?

Response: The regulations do not require public comment on TIP amendments involving minor projects that may be grouped (see § 450.324(i)). The MPO establishes its public involvement process in compliance with § 450.316(c). In their public involvement procedures, the MPO could specify which types of TIP amendments will not be subject to the public involvement procedures. All actions on the TIP must be taken in accordance with an area's public involvement program.

Section 450.328 Transportation Improvement Program: Relationship to Statewide TIP

Two minor changes were made to the language in this section. A clarification was provided to indicate that when the Governor has approved the metropolitan TIP, it is included directly, or by reference, in the statewide TIP (which subsequently must be approved by the FHWA and the FTA) except in nonattainment and maintenance areas where it must be found to conform before it is included. Notification of approval of the TIP by the Governor must be sent to the MPO and Federal land highway project sponsors and Indian tribes where they have projects proposed for inclusion on the TIP.

About fifteen comments were received on this section of the rule.

Comment: Provide for statewide conformity process as an alternative to metropolitan process.

Response: The conformity procedure is developed according to legislative requirements in the CAA and applies to individual nonattainment and maintenance areas only. Conformity with the SIP for these individual areas must be demonstrated.

Comment: What happens if the MPO TIP is approved but the State TIP is not approved?

Response: Federal approval action is on the STIP. If the STIP is not approved, projects cannot be implemented with Federal funding except for emergency relief or operating assistance approved by the FHWA and FTA on an individual basis. A partial approval of the State TIP is possible which could mean that a partial STIP, including this approved TIP could be approved. Most partial STIP approvals are likely to involve a situation where the Governor and/or MPO had not approved the metropolitan TIP. In such cases, Federal funds would not be approved for projects in that area, but the rest of the State could be eligible for funding if the rest of the STIP is approved.

Section 450.330 Transportation Improvement Program: Action Required by FHWA/FTA

Just under ten comments were received on this section.

Comment: Modify paragraph (b) to give priority to TCMs funded under title 23, U.S.C.

Response: This requirement is already included under §§ 450.322 and 450.324.

Comment: Require the FHWA to be the lead agency for findings and approvals with the FTA concurrence within thirty days.

Response: Approvals and findings will be made jointly by both agencies as required in the delegation of the Secretary of U.S. DOT.

Comment: Include language to reflect the authority of the Secretary of the U.S. Department of Interior as provided in 23 U.S.C. 204.

Response: This has been accomplished in §§ 450.324 and 450.332.

Comment: Conformity determinations by both the MPO and the U.S. DOT must be promulgated as rules under the Administrative Procedure Act.

Response: The FHWA and the FTA do not believe that a conformity determination is a rule under the Administrative Procedure Act. A conformity determination is simply one of many conditions on grants-in-aid and creates no commitment to a grant. Further, a conformity determination by an MPO is not subject to the Administrative Procedure Act because an MPO is created under State and local law and its plans and TIPs represent local policy and decisionmaking.

Section 450.332 Project Selection for Implementation

Comment: Remove transit operator from this section.

Response: The role of the transit operator is central to an effective collaboration in the development of a metropolitan surface transportation program. The transit operators have been included in this section in recognition of their status in receiving Federal Transit Act assistance and to provide them with an effective voice in the process of programming.

Comment: Project selection should include the State historic preservation officer, a certified local government representative, other historic preservation officials and Indian tribal representatives.

Response: The rule reflects the project selection requirements in the ISTEA which do not require historic preservation officials to be involved. The project selection procedures for Federal lands highways include Indian representation and this has been clarified in § 450.332. Organizations not directly involved in project selection have input through the public involvement processes for the TIP and STIP.

Comment: Define project selection.

Response: Project selection is a process for advancing projects to implementation from the approved TIP, either in the first year as an "agreed to" list or in later years as a means of moving projects from year to year. Selection is essentially a joint activity involving the State, MPO and transit operator since all agencies are affected by the actions of one another. Hence, language modifications have been made to this section to clarify and reflect this mutual responsibility. Generally, the rule provides that the first year of the approved TIP constitutes a list of projects for project selection purposes which may, thus, be advanced by the implementing agency without further action by the MPO. Project selection procedures also provide a mechanism for modifying the annual priority of projects without amending the TIP.

The selection procedures specified in the rule can be jointly modified through cooperative agreement of the MPO, State and transit operator.

Comment: What about projects that fall on or cross the boundary of two MPOs?

Response: The two MPOs would have to agree on the procedures to be used, but as a minimum the appropriate portions of the project would have to be included in the appropriate transportation plan. Both MPOs would need to include the project in their respective TIPs and select the project for further advancement.

Section 450.334 Metropolitan Transportation Planning Process: Certification

Approximately 15 comments were received on the certification issue beyond those submitted in response to the supplemental questions.

Comment: More certification requirements for TMAs should be provided in final rule.

Response: The majority of the comments received supported the certification approach established in the proposed rule, although some sentiment for additional regulatory guidance was expressed. The FHWA and the FTA have chosen to rely on the proposed approach and have adopted it for the final rule.

Section 450.336 Phase-in of New Requirements

The topic receiving the most attention in the comments was the deadline of October 1, 1993, for updating plans. The FHWA and the FTA have reviewed the matter and significantly adjusted the deadlines through interim guidance. In nonattainment areas requiring TCMs as part of their November, 1993, SIPs, the October 1, 1993, still applies. However, since the rule will not be published until after October 1, 1993, this issue was excluded from consideration in the development of the final rule. Interim guidance was issued on September 22, 1993.

Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA and the FTA have determined that this rulemaking is a significant regulatory action within the meaning of Executive Order 12866 and under Department of Transportation regulatory policies and procedures because of substantial State, local government, congressional and public interest. These interests involve receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements, and balancing of transportation mobility and environmental goals. The FHWA and the FTA anticipate that the economic impact of this rulemaking will be minimal. Most of the costs associated with these final rules are attributable to the provisions of the ISTEA, the Clean Air Act (as amended), and other statutes including earlier highway acts.

These rules revise existing urban planning regulations of the FHWA and the FTA and conform those regulations to the requirements of the ISTEA. While they incorporate new requirements to govern statewide transportation planning processes as directed by statute, States have been carrying out statewide transportation planning activities, including data collection, with Title 23 and FTA planning and research funds for many years. In addition, these rules support the U.S. EPA's proposed transportation conformity rule which would increase requirements for MPOs to perform regional transportation and emissions modelling and to document the regional air quality impacts of transportation plans and programs.

For the reasons set forth here, a full regulatory evaluation has not been prepared. However, for both this rule and the related joint FHWA/FA rule on management and monitoring systems, the agencies will be placing in the docket a summary of anticipated impacts, particularly the costs associated with modified data collection activities. The impacts on the States and MPOs result mainly from modified data collection and analysis activities that may be necessary to implement the ISTEA, planning, management systems, and traffic monitoring requirements under this rule and the forthcoming rule on management and monitoring systems. In general, the FHWA and the FTA have limited regulatory requirements to those necessary to comply with the ISTEA and CAAA requirements in order to give States and MPOs the flexibility to tailor their processes to address their individual situations and to minimize resources used for data collection and analysis. While there may be additional costs to some States and MPOs, ISTEA significantly increased the mandatory set-aside in Federal funds that must be used for transportation planning, and in addition, gives the States and MPOs the flexibility to use Federal capital funds for transportation planning if they so desire.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C., 601–612), the FHWA and the FTA have evaluated the effects of these rules on small entities such as local governments and businesses. The metropolitan planning regulation modifies existing requirements for urban transportation planning and does not create a new activity. The statewide planning regulations require new planning procedures for States. The modifications of the existing planning requirements are substantially dictated by the provisions of the ISTEA and the Clean Air Act Amendments of 1990. No comments were submitted on the economic consequences of this rule or its impact on small entities in response to the notice of proposed rulemaking or the public meetings. The FHWA and the FTA believe that the overall compliance burden on public entities implementing the provisions of the regulation will not be substantially greater than that associated with simply implementing legislative requirements. Since many States already conducted transportation planning activities at the State level, the FHWA and the FTA believe that these regulations will not create a significant new burden. Based on this evaluation, the FHWA and the FTA certify that this rulemaking would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

These actions have been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The ISTEA authorizes the Secretary to promulgate rules to implement the provisions of the ISTEA regarding metropolitan and statewide planning. The rules recognize the role of State and local governments in implementing the metropolitan and statewide planning provisions of the ISTEA, including the increased discretionary authority allocated to them under the Act. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order, as well as the applicable provisions of the ISTEA. It has been determined that these rules do not have sufficient Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in Executive Order 12612.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Planning and Construction; 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.

Paperwork Reduction Act

The information collection, reporting and recordkeeping provisions in these rules has been reviewed for compliance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The creation and submission of required reports and documents have been constrained to those specifically required by the ISTEA or essential to the performance of the FHWA and the FTA's findings and approvals. The reporting requirements for metropolitan UPWPs, transportation plans and programs were approved by the Office of Management and Budget under OMB control number 2132–0529. The reporting requirements for statewide transportation plans and programs were constrained to those specifically required by the ISTEA or essential to the performance of the FHWA and the FTA's findings and approvals. OMB approval of the information collection requirements contained in this rule has been requested. These requirements will become effective once they have been approved and a notice to that approval will be provided in the Federal Register.

National Environmental Policy Act

The FHWA and the FTA have analyzed these actions for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that these actions would not have any effect on the quality of the environment.

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, Highways and roads, Mass Transportation, Metropolitan planning, Statewide planning, Project selection, and Metropolitan transportation improvement program and Statewide transportation improvement program, Reporting and recordkeeping requirements.

49 CFR Part 613

Grant programs—Transportation, Mass transportation.

Issued on: October 22, 1993.

Rodney E. Slater,

Federal Highway Administration.

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Federal Transit Administration.

In consideration of the foregoing, the Federal Highway Administration is amending title 23, Code of Federal Regulations, Part 450, and the Federal Transit Administration is amending title 49, Code of Federal Regulations, Part 613 as set forth below.

23 CFR Chapter I

1. In Chapter I of title 23 CFR, part 450 is revised to read as follows:

Subchapter E—Planning

PART 450—PLANNING ASSISTANCE AND STANDARDS

Authority: 23 U.S.C. 104(f), 134, 135, 217, and 315; 42 U.S.C. 7410 et seq; 49 U.S.C. app. 1602, 1604, 1607, and 1607a; 49 CFR 1.48(b) and 1.51.

Subpart A—Planning Definitions

§ 450.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part which go beyond those terms defined in 23 U.S.C. 101(a).

§ 450.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

§ 450.104 Definitions.

Except as defined in this subpart, terms defined in 23 U.S.C 101(a) are used in this part as so defined.

Consultation means that one party confers with another identified party and, prior to taking action(s), considers that party's views.

Cooperation means that the parties involved in carrying out the planning, programming and management systems processes work together to achieve a common goal or objective.

Coordination means the comparison of the transportation plans, programs, and schedules of one agency with related plans, programs and schedules of other agencies or entities with legal standing, and adjustment of plans, programs and schedules to achieve general consistency.

Governor means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

Maintenance area means any geographic region of the United States designated nonattainment pursuant to the CAA Amendments of 1990 (Section 102(e)), 42 U.S.C. 7410 et seq., and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the Clean Air Act as amended (CAA), 42 U.S.C. 7410 et seq.

Major metropolitan transportation investment means a high-type highway or transit improvement of substantial cost that is expected to have a significant effect on capacity, traffic flow, level of service, or mode share at the transportation corridor or subarea scale. Consultation among the MPO, State department of transportation, transit operator, the FHWA and the FTA may lead to the designation of other proposed improvements as major investments beyond the examples listed below. Examples of such investments could generally include but are not limited to: Construction of a new partially controlled access (access allowed only for public roads) principal arterial, extension of an existing partially controlled access (access allowed only for public roads) principal arterial by one or more miles, capacity expansion of a partially controlled access (access provided only for public roads) principal arterial by at least one lane through widening or an equivalent increase in capacity produced by access control or technological improvement, construction or extension of a high-occupancy vehicle (HOV) facility or a fixed guideway transit facility by one or more miles, the addition of lanes or tracks to an existing fixed guideway transit facility for a distance of one or more miles, or a substantial increase in transit service on a fixed guideway facility. For this purpose, a fixed guideway refers to any public transportation facility which utilizes and occupies a designated right-of-way or rails including (but not limited to) rapid rail, light rail, commuter rail, busways, automated guideway transit, and people movers. Projects that generally are not considered to be major transportation investments include but are not limited to: Highway projects on principal arterials where access is not limited to public roads only, small scale improvements or extensions (normally less than one mile) on principal arterials with the primary goal of relieving localized safety or operational difficulties, resurfacing, replacement, or rehabilitation of existing principal arterials and equipment, highway projects not located on a principal arterial, and changes in transit routing and scheduling.

Management system means a systematic process, designed to assist decisionmakers in selecting cost effective strategies/actions to improve the efficiency and safety of, and protect the investment in the nation's infrastructure. A management system includes: identification of performance measures; data collection and analysis; determination of needs; evaluation, and selection of appropriate strategies/ actions to address the needs; and evaluation of the effectiveness of the implemented strategies/actions.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for the metropolitan planning area. MPOs designated prior to the promulgation of this regulation remain in effect until redesignated in accordance with § 450.106 and nothing in this part is intended to require or encourage such redesignation.

Metropolitan transportation plan means the official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for the metropolitan planning area.

Nonattainment area means any geographic region of the United States that the Environmental Protection Agency (EPA) has designated as a nonattainment area for a transportation related pollutant(s) for which a National Ambient Air Quality Standard (NAAQS) exists.

Regionally significant project means a project (other than projects that may be grouped in the STIP/TIP pursuant to § 450.216 and § 450.324) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including, as a minimum, all principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.

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

State Implementation Plan (SIP) means the portion (or portions) of an applicable implementation plan approved or promulgated, or the most recent revision thereof, under sections 110, 301(d) and 175A of the Clean Air Act (42 U.S.C. 7409, 7601, and 7505a).

Statewide transportation improvement program (STIP) means a staged, multiyear, statewide, intermodal program of transportation projects which is consistent with the Statewide transportation plan and planning processes and metropolitan plans, TIPs and processes.

Statewide transportation plan means the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process.

Transportation improvement program (TIP) means a staged, multiyear, intermodal program of transportation projects which is consistent with the metropolitan transportation plan.

Transportation Management Area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the FTA. The TMA designation applies to the entire metropolitan planning area(s).

Subpart B—Statewide Transportation Planning

§ 450.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 135, which requires each State to carry out a continuing, comprehensive, and intermodal statewide transportation planning process, including the development of a statewide transportation plan and transportation improvement program, that facilitates the efficient, economic movement of people and goods in all areas of the State, including those areas subject to the requirements of 23 U.S.C 134.

§ 450.202 Applicability.

The requirements of this subpart are applicable to States and any other agencies/organizations which are responsible for satisfying these requirements.

§ 450.204 Definitions.

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

§ 450.206 Statewide transportation planning process: General requirements.

(a) The statewide transportation planning process shall include, as a minimum:

(1) Data collection and analysis;

(2) Consideration of factors contained in § 450.208;

(3) Coordination of activities as noted in § 450.210;

(4) Development of a statewide transportation plan that considers a range of transportation options designed to meet the transportation needs (both passenger and freight) of the state including all modes and their connections; and

(5) Development of a statewide transportation improvement program (STIP).

(b) The statewide transportation planning process shall be carried out in coordination with the metropolitan planning process required by subpart C of this part.

§ 450.208 Statewide transportation planning process: Factors.

(a) Each State shall, at a minimum, explicitly consider, analyze as appropriate and reflect in planning process products the following factors in conducting its continuing statewide transportation planning process:

(1) The transportation needs (strategies and other results) identified through the management systems required by 23 U.S.C. 303;

(2) Any Federal, State, or local energy use goals, objectives, programs, or requirements;

(3) Strategies for incorporating bicycle transportation facilities and pedestrian walkways in appropriate projects throughout the State;

(4) International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation and scenic areas, monuments and historic sites, and military installations;

(5) The transportation needs of nonmetropolitan areas (areas outside of MPO planning boundaries) through a process that includes consultation with local elected officials with jurisdiction over transportation;

(6) Any metropolitan area plan developed pursuant to 23 U.S.C. 134 and section 8 of the Federal Transit Act, 49 U.S.C. app. 1607;

(7) Connectivity between metropolitan planning areas within the State and with metropolitan planning areas in other States;

(8) Recreational travel and tourism;

(9) Any State plan developed pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. (and in addition to plans pursuant to the Coastal Zone Management Act);

(10) Transportation system management and investment strategies designed to make the most efficient use of existing transportation facilities (including consideration of all transportation modes);

(11) The overall social, economic, energy, and environmental effects of transportation decisions (including housing and community development effects and effects on the human, natural and manmade environments);

(12) Methods to reduce traffic congestion and to prevent traffic congestion from developing in areas where it does not yet occur, including methods which reduce motor vehicle travel, particularly single-occupant motor vehicle travel;

(13) Methods to expand and enhance appropriate transit services and to increase the use of such services (including commuter rail);

(14) The effect of transportation decisions on land use and land development, including the need for consistency between transportation decisionmaking and the provisions of all applicable short-range and long-range land use and development plans (analyses should include projections of economic, demographic, environmental protection, growth management and land use activities consistent with development goals and transportation demand projections);

(15) Strategies for identifying and implementing transportation enhancements where appropriate throughout the State;

(16) The use of innovative mechanisms for financing projects, including value capture pricing, tolls, and congestion pricing;

(17) Preservation of rights-of-way for construction of future transportation projects, including identification of unused rights-of-way which may be needed for future transportation corridors, identification of those corridors for which action is most needed to prevent destruction or loss (including strategies for preventing loss of rights-of-way);

(18) Long-range needs of the State transportation system for movement of persons and goods;

(19) Methods to enhance the efficient movement of commercial motor vehicles;

(20) The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavements;

(21) The coordination of transportation plans and programs developed for metropolitan planning areas of the State under 23 U.S.C. 134 and section 8 of the Federal Transit Act with the statewide transportation plans and programs developed under this subpart, and the reconciliation of such plans and programs as necessary to ensure connectivity within transportation systems;

(22) Investment strategies to improve adjoining State and local roads that support rural economic growth and tourism development, Federal agency renewable resources management, and multipurpose land management practices, including recreation development; and

(23) The concerns of Indian tribal governments having jurisdiction over lands within the boundaries of the State.

(b) The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation problems, land use, employment, economic development, environmental and housing and community development objectives, the extent of overlap between factors and other circumstances statewide or in subareas within the State.

§ 450.210 Coordination.

(a) In addition to the coordination required under § 450.208(a)(21), in carrying out the requirements of this subpart, each State, in cooperation with participating organizations (such as MPOs, Indian tribal governments, environmental, resource and permit agencies, public transit operators) shall, to the extent appropriate, provide for a fully coordinated process including coordination of the following:

(1) Data collection, data analysis and evaluation of alternatives for a transit, highway, bikeway, scenic byway, recreational trail, or pedestrian program with any such activities for the other programs;

(2) Plans, such as the statewide transportation plan required under § 450.214, with programs and priorities for transportation projects, such as the STIP;

(3) Data analysis used in development of plans and programs, (for example, information resulting from traffic data analysis, data and plans regarding employment and housing availability, data and plans regarding land use control and community development) with land use projections, with data analysis on issues that are part of public involvement relating to project implementation, and with data analyses done as part of the establishment and maintenance of management systems developed in response to 23 U.S.C. 303;

(4) Consideration of intermodal facilities with land use planning, including land use activities carried out by local, regional, and multistate agencies;

(5) Transportation planning carried out by the State with transportation planning carried out by Indian tribal governments, Federal agencies and local governments, MPOs, large-scale public and private transportation providers, operators of major intermodal terminals and multistate businesses;

(6) Transportation planning carried out by the State with significant transportation-related actions carried out by other agencies for recreation, tourism, and economic development and for the operation of airports, ports, rail terminals and other intermodal transportation facilities;

(7) Public involvement carried out for the statewide planning process with public involvement carried out for the metropolitan planning process;

(8) Public involvement carried out for planning with public involvement carried out for project development;

(9) Transportation planning carried out by the State with Federal, State, and local environmental resource planning that substantially affects transportation actions;

(10) Transportation planning with financial planning;

(11) Transportation planning with analysis of potential corridors for preservation;

(12) Transportation planning with analysis of social, economic, employment, energy, environmental, and housing and community development effects of transportation actions; and

(13) Transportation planning carried out by the State to meet the requirements of 23 U.S.C. 135 with transportation planning to meet other Federal requirements including the State rail plan.

(b) The degree of coordination should be based on the scale and complexity of many issues including transportation problems, land use, employment, economic, environmental, and housing and community development objectives, and other circumstances statewide or in subareas within the State.

§ 450.212 Public involvement.

(a) Public involvement processes shall be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement. The processes shall provide for:

(1) Early and continuing public involvement opportunities throughout the transportation planning and programming process;

(2) Timely information about transportation issues and processes to citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, other interested parties and segments of the community affected by transportation plans, programs, and projects;

(3) Reasonable public access to technical and policy information used in the development of the plan and STIP;

(4) Adequate public notice of public involvement activities and time for public review and comment at key decision points, including but not limited to action on the plan and STIP;

(5) A process for demonstrating explicit consideration and response to public input during the planning and program development process;

(6) A process for seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households which may face challenges accessing employment and other amenities;

(7) Periodic review of the effectiveness of the public involvement process to ensure that the process provides full and open access to all and revision of the process as necessary.

(b) Public involvement activities carried out in a metropolitan area in response to metropolitan planning requirements in § 450.322(c) or § 450.324(c) may by agreement of the State and the MPO satisfy the requirements of this section.

(c) During initial development and major revisions of the statewide transportation plan required under § 450.214, the State shall provide citizens, affected public agencies and jurisdictions, employee representatives of transportation and other affected agencies, private and public providers of transportation, and other interested parties a reasonable opportunity to comment on the proposed plan. The proposed plan shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment. Likewise, the official statewide transportation plan (see § 450.214(d)) shall be published, with reasonable notification of its availability, or otherwise made readily available for public information.

(d) During development and major revision of the statewide transportation improvement program required under § 450.216, the Governor shall provide citizens, affected public agencies and jurisdictions, employee representatives of transportation or other affected agencies, private providers of transportation, and other interested parties, a reasonable opportunity for review and comment on the proposed program. The proposed program shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment. The approved program (see § 450.220(c)) if it differs significantly from the proposed program, shall be published, with reasonable notification of its availability, or otherwise made readily available for public information.

(e) The time provided for public review and comment for minor revisions to the statewide transportation plan or statewide transportation improvement program will be determined by the State and local officials based on the complexity of the revisions.

(f) The State shall, as appropriate, provide for public comment on existing and proposed procedures for public involvement throughout the statewide transportation planning and programming process. As a minimum, the State shall publish procedures and allow 45 days for public review and written comment before the procedures and any major revisions to existing procedures are adopted.

(g) The public involvement processes will be considered by the FHWA and the FTA as they make the planning finding required in § 450.220(b) to assure that full and open access is provided to the decision making process.

§ 450.214 Statewide transportation plan.

(a) The State shall develop a statewide transportation plan for all areas of the State.

(b) The plan shall:

(1) Be intermodal (including consideration and provision, as applicable, of elements and connections of and between rail, commercial motor vehicle, waterway, and aviation facilities, particularly with respect to intercity travel) and statewide in scope in order to facilitate the efficient movement of people and goods;

(2) Be reasonably consistent in time horizon among its elements, but cover a period of at least 20 years;

(3) Contain, as an element, a plan for bicycle transportation, pedestrian walkways and trails which is appropriately interconnected with other modes;

(4) Be coordinated with the metropolitan transportation plans required under 23 U.S.C. 134;

(5) Reference, summarize or contain any applicable short range planning studies, strategic planning and/or policy studies, transportation need studies, management system reports and any statements of policies, goals and objectives regarding issues such as transportation, economic development, housing, social and environmental effects, energy, etc., that were significant to development of the plan; and

(6) Reference, summarize or contain information on the availability of financial and other resources needed to carry out the plan.

(c) In developing the plan, the State shall:

(1) Cooperate with the MPOs on the portions of the plan affecting metropolitan planning areas;

(2) Cooperate with the Indian tribal government and the Secretary of the Interior on the portions of the plan affecting areas of the State under the jurisdiction of an Indian tribal government;

(3) Provide for public involvement as required under § 450.212;

(4) Provide for substantive consideration and analysis as appropriate of specified factors as required under § 450.208; and

(5) Provide for coordination as required under § 450.210.

(d) The State shall provide and carryout a mechanism to establish the document, or documents, comprising the plan as the official statewide transportation plan.

(e) The plan shall be continually evaluated and periodically updated as appropriate using the procedures in this section for development and establishment of the plan.

§ 450.216 Statewide transportation improvement program (STIP).

(a) Each State shall develop a statewide transportation improvement program for all areas of the State. In case of difficulties in developing the STIP portion for a particular area, e.g., metropolitan area, Indian tribal lands, etc., a partial STIP covering the rest of the State may be developed. The portion of the STIP in a metropolitan planning area (the metropolitan TIP developed pursuant to subpart C of this part) shall be developed in cooperation with the MPO. To assist this process, the State will need to provide MPOs with estimates of available Federal and State funds which the MPO can utilize in developing the metropolitan TIP. Metropolitan planning area TIPs shall be included without modification in the STIP, directly or by reference, once approved by the MPO and the Governor and after needed conformity findings are made. Metropolitan TIPs in nonattainment and maintenance areas are subject to the FHWA and the FTA conformity findings before their inclusion in the STIP. In nonattainment and maintenance areas outside metropolitan planning areas, Federal findings of conformity must be made prior to placing projects in the STIP. The State shall notify the appropriate MPO, local jurisdictions, Federal land agency, Indian tribal government, etc. when a TIP including projects under the jurisdiction of the agency has been included in the STIP. All title 23 and Federal Transit Act fund recipients will share information as projects in the STIP are implemented. The Governor shall provide for public involvement in development of the STIP as required by § 450.212. In addition, the STIP shall:

(1) Include a list of priority transportation projects proposed to be carried out in the first 3 years of the STIP. Since each TIP is approved by the Governor, the TIP priorities will dictate STIP priorities for each individual metropolitan area. As a minimum, the lists shall group the projects that are to be undertaken in each of the years, e.g., year 1, year 2, year 3;

(2) Cover a period of not less than 3 years, but may at State discretion cover a longer period. If the STIP covers more than 3 years, the projects in the additional years will be considered by the FHWA and the FTA only as informational;

(3) Contain only projects consistent with the statewide plan developed under § 450.214;

(4) In nonattainment and maintenance areas, contain only transportation projects found to conform, or from programs that conform, to the requirements contained in 40 CFR part 51;

(5) Be financially constrained by year and include sufficient financial information to demonstrate which projects are to be implemented using current revenues and which projects are to be implemented using proposed revenue sources while the system as a whole is being adequately operated and maintained. In nonattainment and maintenance areas, projects included in the first two years of the current STIP/TIP shall be limited to those for which funds are available or committed. In the case of proposed funding sources, strategies for ensuring their availability shall be identified;

(6) Contain all capital and non-capital transportation projects (including transportation enhancements, Federal lands highways projects, trails projects, pedestrian walkways, and bicycle transportation facilities), or identified phases of transportation projects, proposed for funding under the Federal Transit Act (49 U.S.C. app. 1602, 1607a, 1612 and 1614) and/or title 23, U.S.C. excluding:

(i) Safety projects funded under section 402 of the Surface Transportation Assistance Act of 1982, as amended (49 U.S.C. app. 2302);

(ii) IVHS planning grants funded under section 6055(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914);

(iii) Transit planning grants funded under section 8 or 26 of the Federal Transit Act (49 U.S.C. app. 1607 and 1622);

(iv) Metropolitan planning projects funded under 23 U.S.C. 104(f);

(v) State planning and research projects funded under 23 U.S.C. 307(c)(1) (except those funded with NHS, STP and minimum allocation (MA) funds that the State and MPO for a metropolitan area agree should be in the TIP and consequently must be in the STIP); and

(vi) Emergency relief projects (except those involving substantial functional, locational or capacity changes);

(7) Contain all regionally significant transportation projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded with title 23, U.S.C. or Federal Transit Act funds, e.g., addition of an interchange to the Interstate System with State, local and/or private funds, demonstration projects not funded under title 23, U.S.C., or the Federal Transit Act. (The STIP should, for information purposes, include all regionally significant transportation projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA. It should also include, for information purposes, if appropriate and cited in any TIPs, all regionally significant projects, to be funded with non-Federal funds);

(8) Include for each project the following:

(i) Sufficient descriptive material (i.e., type of work, termini, length, etc.) to identify the project or phase;

(ii) Estimated total cost;

(iii) The amount of Federal funds proposed to be obligated during each program year;

(iv) For the first year, the proposed category of Federal funds and source(s) of non-Federal funds;

(v) For the second and third years, the likely category or possible categories of Federal funds and sources of non-Federal funds;

(vi) Identification of the agencies responsible for carrying out the project; and

(9) For non-metropolitan areas, include in the first year only those projects which have been selected in accordance with the project selection requirements in § 450.222(c).

(b) 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 51.

(c) Projects in any of the first three years of the STIP may be moved to any other of the first three years of the STIP subject to the project selection requirements of § 450.222.

(d) The STIP may be amended at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this section (for STIP development), in § 450.212 (for public involvement) and in § 450.220 (for the FHWA and the FTA approval).

§ 450.218 Funding.

Funds provided under sections 8, 9, 18, and 26(a)(2) of the Federal Transit Act and 23 U.S.C. 104(b)(1), 104(b)(3), 104(f)(3) and 307(c)(1) may be used to accomplish activities in this subpart.

§ 450.220 Approvals.

(a) At least every two years, each State shall submit the entire proposed STIP, and amendments as necessary, concurrently 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. 135, section 8(q) of the Federal Transit Act and this part;

(2) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794;

(3) Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914) regarding the involvement of disadvantaged business enterprises in the FHWA and the FTA funded projects (sec. 105(f), Pub. L. 97–424, 96 Stat. 2100; 49 CFR part 23);

(4) The provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101–336, 104 Stat. 327, as amended) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38);

(5) The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities; and

(6) 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)).

(b) The FHWA and the FTA Administrators, in consultation with, where applicable, Federal lands agencies, will review the STIP or amendment and jointly make a finding as to the extent the projects in the STIP are based on a planning process that meets or substantially meets the requirements of title 23, U.S.C., the Federal Transit Act and subparts A, B and C of this part.

(c) If, upon review, the FHWA and the FTA Administrators jointly determine that the STIP or amendment meet, to an acceptable degree, the requirements of 23 U.S.C. 135 and these regulations (including subpart C where a metropolitan TIP is involved), they will approve the STIP. Approval action will take one of the following forms, as appropriate:

(1) Joint approval of the STIP;

(2) Joint approval of the STIP subject to certain corrective actions being taken;

(3) Joint approval of the STIP as the basis for approval of identified categories of projects; and/or

(4) Under special circumstances, joint approval of a partial STIP covering only a portion of the State.

(d) The joint approval period for a new STIP or amended STIP will not exceed two years. Where the State demonstrates that extenuating circumstances will delay the submittal of a new STIP or amended STIP for approval, FHWA and FTA will consider and take appropriate action on requests to extend the approval beyond two years for all or part of the STIP for a limited period of time. Where the request involves projects in a metropolitan planning area(s), the affected MPO(s) must concur in the request and if the delay was due to the development and approval of the TIP, the affected MPO(s) must provide supporting information for the request. If nonattainment and/or maintenance areas are involved, a request for an extension cannot be granted if the conformity determination on the TIP is no longer valid under EPA's conformity regulations (40 CFR part 51).

(e) If, upon review, the FHWA and the FTA Administrators jointly determine that the STIP or amendment does not substantially meet the requirements of 23 U.S.C. 135 and this part for any identified categories of projects, they will not approve the STIP.

(f) The FHWA and the FTA will notify the State of actions taken under this section.

(g) Where necessary in order to maintain or establish operations, the Federal Transit Administrator and/or the Federal Highway Administrator 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 for implementation.

(a) Except as provided in §§ 450.220(f) and 450.216(a)(7), only projects included in the Federally approved STIP shall be eligible for funds administered by the FHWA or the FTA.

(b) In metropolitan planning areas, transportation projects requiring title 23 or Federal Transit Act funds administered by the FHWA or the FTA shall be selected in accordance with procedures established pursuant to the project selection portion of the metropolitan planning regulation in subpart C of this part.

(c) Outside metropolitan planning areas, transportation projects undertaken on the National Highway System with title 23 funds and under the bridge and Interstate maintenance programs shall be selected by the State in consultation with the affected local officials. Federal lands highway projects shall be selected in accordance with 23 U.S.C. 204. Other transportation projects undertaken with funds administered by the FHWA shall be selected by the State in cooperation with the affected local officials, and projects undertaken with Federal Transit Act funds shall be selected by the State in cooperation with the appropriate affected local officials and transit operators.

(d) 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 project selection action is required for the implementing agency to proceed with these projects except that if appropriated Federal funds available are significantly less than the authorized amounts, § 450.332(c) provides for a revised list of "agreed to" projects to be developed upon the request of the State, MPO, or transit operators. If an implementing agency wishes to proceed with a project in the second and third year of the STIP, the specific project selection procedures stated in paragraphs (b) and (c) of this section must be used. Expedited selection procedures which provide for the advancement of projects from the second or third years of the STIP may be used if agreed to by all the parties involved in the selection.

§ 450.224 Phase-in of new requirements.

The State shall, by January 1, 1995, identify the official statewide transportation plan, described under § 450.214, to be used as a basis for subsequently approved STIPs. Until such a plan is identified, but no later than January 1, 1995, the State may identify existing plans and policies which can serve as the official interim plan. STIP development shall be based upon a transportation plan which serves as the official plan (including an interim plan, if appropriate, prior to January 1, 1995, provided that all factors identified in § 450.208 are considered).

Subpart C—Metropolitan Transportation Planning and Programming

§ 450.300 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 134 and section 8 of the Federal Transit Act, as amended, which require that a Metropolitan Planning Organization (MPO) be designated for each urbanized area and that the metropolitan area has a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs that consider all transportation modes and supports metropolitan community development and social goals. These plans and programs shall lead to the development and operation of an integrated, intermodal transportation system that facilitates the efficient, economic movement of people and goods.

§ 450.302 Applicability.

The provisions of this subpart are applicable to agencies involved in the transportation planning, program development, and project selection 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) are used in this part as so defined.

§ 450.306 Metropolitan planning organization: Designations and redesignation.

(a) Designations of metropolitan planning organizations (MPOs) made after December 18, 1991, shall be by agreement among the Governor(s) and units of general purpose local governments representing 75 percent of the affected metropolitan population (including the central city or cities as defined by the Bureau of the Census), or in accordance with procedures established by applicable State or local law. To the extent possible, only one MPO shall be designated for each UZA or group of contiguous UZAs. More than one MPO may be designated within an UZA only if the Governor(s) determines that the size and complexity of the UZA make designation of more than one MPO appropriate.

(b) The designation shall clearly identify the policy body that is the forum for cooperative decisionmaking that will be taking the required approval actions as the MPO.

(c) To the extent possible, the MPO designated should be established under specific State legislation, State enabling legislation, or by interstate compact, and shall have authority to carry out metropolitan transportation planning.

(d) Redesignation (designation of a new MPO(s) to replace an existing MPO) shall occur by agreement of the Governor and affected local units of government representing 75 percent of the population in the entire metropolitan area. The central city(ies) must be among the units of local government agreeing to the redesignation.

(e) Nothing in this subpart shall be deemed to prohibit the MPO from utilizing the staff resources of other agencies to carry out selected elements of the planning process.

(f) Existing MPO designations remain valid until a new MPO is redesignated, unless revoked by the Governor and local units of government representing 75 percent of the population in the area served by the existing MPO (the central city(ies) must be among those desiring to revoke the MPO designation), or as otherwise provided under State or local procedures. If the Governor and local officials decide to redesignate an existing MPO, but do not formally revoke the existing MPO designation, the existing MPO remains in effect until a new MPO is formally designated.

(g) Redesignation of an MPO in a multistate metropolitan area requires the approval of the Governor of each State and local officials representing 75 percent of the population in the entire metropolitan planning area. The local officials in the central city(ies) must be among those agreeing to the redesignation.

(h) Redesignation of an MPO covering more than one UZA requires the approval of the Governor and local officials representing 75 percent of the population in the metropolitan planning area covered by the current MPO; the local officials in the central city(ies) in each urbanized area must be among those agreeing to the redesignation.

(i) The voting membership of an MPO policy body designated/redesignated subsequent to December 18, 1991, and serving a TMA, must include representation of local elected officials, officials of agencies that administer or operate major modes or systems of transportation, e.g., transit operators, sponsors of major local airports, maritime ports, rail operators, etc. (including all transportation agencies that were included in the MPO on June 1, 1991), and appropriate State officials. Where agencies that operate other major modes of transportation do not already have a voice on existing MPOs, the MPOs (in cooperation with the States) are encouraged to provide such agencies a voice in the decisionmaking process, including representation/membership on the policy body and/or other appropriate committees. Further, where appropriate, existing MPOs should increase the representation of local elected officials on the policy board and other committees as a means for encouraging their greater involvement in MPO processes. Adding such representation to an MPO will not, in itself, constitute a redesignation action.

(j) Where the metropolitan planning area boundaries for a previously designated MPO need to be expanded, the membership on the MPO policy body and other committees, should be reviewed to ensure that the added area has appropriate representation.

(k) Adding membership (e.g., local elected officials and operators of major modes or systems of transportation, or representatives of newly urbanized areas) to the policy body or expansion of the metropolitan planning area does not automatically require redesignation of the MPO. To the extent possible, it is encouraged that this be done without a formal redesignation. The Governor and MPO shall review the previous MPO designation, State and local law, MPO bylaws, etc., to determine if this can be accomplished without a formal redesignation. If redesignation is considered necessary, the existing MPO will remain in effect until a new MPO is formally designated or the existing designation is formally revoked in accordance with the procedures of this section.

§ 450.308 Metropolitan planning organization: Metropolitan planning area boundaries.

(a) The metropolitan planning area boundary shall, as a minimum, cover the UZA(s) and the contiguous geographic area(s) likely to become urbanized within the twenty year forecast period covered by the transportation plan described in § 450.322 of this part. The boundary may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census. For geographic areas designated as nonattainment or maintenance areas (as created by the Clean Air Act Amendments of 1990 (CAAA)) for transportation related pollutants under the CAA, the boundaries of the metropolitan planning area shall include at least the boundaries of the nonattainment or maintenance areas, except as otherwise provided by agreement between the MPO and the Governor under the procedures specified in § 450.310(f) of this part. In the absence of a formal agreement between the Governor and the MPO to reduce the metropolitan planning area to an area less than the boundaries of the nonattainment or maintenance area, the entire nonattainment or maintenance area is subject to the applicable provisions of this part. Where a portion of the nonattainment or maintenance area is excluded from the metropolitan planning area boundary, the STP funds suballocated to urbanized areas greater than 200,000 in population shall not be utilized for projects outside the metropolitan planning area boundary.

(b) The metropolitan planning area for a new UZA served by an existing or new MPO shall be established in accordance with these criteria. The current planning area boundaries for previously designated UZAs shall be reviewed and modified if necessary to comply with these criteria.

(c) In addition to the criteria in paragraph (a) of this section, the planning areas currently in use for all transportation modes should be reviewed before establishing the metropolitan planning area boundary. Where appropriate, adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes, reduces access disadvantages experienced by modal systems, and promotes efficient overall transportation investment strategies.

(d) Approval of metropolitan planning area boundaries by the FHWA or the FTA is not required. However, metropolitan planning area boundary maps must be submitted to the FHWA and the FTA after their approval by the MPO and the Governor.

§ 450.310 Metropolitan planning organization: Agreements.

(a) The responsibilities for cooperatively carrying out transportation planning (including corridor and subarea studies) and programming shall be clearly identified in an agreement or memorandum of understanding between the State and the MPO.

(b) There shall be an agreement between the MPO and operators of publicly owned transit services which specifies cooperative procedures for carrying out transportation planning (including corridor and subarea studies) and programming as required by this subpart.

(c) In nonattainment or maintenance areas, if the MPO is not designated for air quality planning under section 174 of the Clean Air Act (42 U.S.C. 7504), there shall be an agreement between the MPO and the designated agency describing their respective roles and responsibilities for air quality related transportation planning.

(d) To the extent possible, there shall be one cooperative agreement containing the understandings required by paragraphs (a) through (c) of this section among the State, MPO, publicly owned operators of mass transportation services, and air quality agencies.

(e) Where the parties involved agree, the requirement for agreements specified in paragraphs (a), (b), and (c) of this section may be satisfied by including the responsibilities and procedures for carrying out a cooperative process in the unified planning work program or a prospectus as defined in § 450.314(c).

(f) If the metropolitan planning area does not include the entire nonattainment or maintenance area, there shall be an 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 metropolitan planning area but within the nonattainment or maintenance area. The agreement also must indicate how the total transportation related emissions for the nonattainment or maintenance area, including areas both within and outside the metropolitan planning area, will be treated for the purposes of determining conformity in accordance with the U.S. EPA conformity regulation (40 CFR part 51). The agreement shall address policy mechanisms for resolving conflicts concerning transportation related emissions that may arise between the metropolitan planning area and the portion of the nonattainment or maintenance area outside the metropolitan planning area. Proposals to exclude a portion of the nonattainment or maintenance area from the planning area boundary shall be coordinated with the FHWA, the FTA, the EPA, and the State air quality agency before a final decision is made.

(g) Where more than one MPO has authority within a metropolitan planning area or a nonattainment or maintenance area, there shall be an agreement between the State department(s) of transportation and the MPOs describing how the processes will be coordinated to assure the development of an overall transportation plan for the metropolitan planning area. In metropolitan planning areas that are nonattainment or maintenance areas, the agreement shall include State and local air quality agencies. The agreement shall address policy mechanisms for resolving potential conflicts that may arise between the MPOs, e.g., issues related to the exclusion of a portion of the nonattainment area from the planning area boundary.

(h) For all requirements specified in paragraphs (a) through (g) of this section, existing agreements shall be reviewed for compliance and reaffirmed or modified as necessary to ensure participation by all appropriate modes.

§ 450.312 Metropolitan transportation planning: Responsibilities, cooperation, and coordination.

(a) The MPO in cooperation with the State and with operators of publicly owned transit services shall be responsible for carrying out the metropolitan transportation planning process. The MPO, the State and transit operator(s) shall cooperatively determine their mutual responsibilities in the conduct of the planning process, including corridor refinement studies, described in §§ 450.316 through 450.318. They shall cooperatively develop the unified planning work program, transportation plan, and transportation improvement program specified in §§ 450.314 through 450.318. In addition, the development of the plan and TIP shall be coordinated with other providers of transportation, e.g., sponsors of regional airports, maritime port operators, rail freight operators, etc.

(b) The MPO shall approve the metropolitan transportation plan and its periodic updates. The MPO and the Governor shall approve the metropolitan transportation improvement program and any amendments.

(c) In nonattainment or maintenance areas, the MPO shall coordinate the development of the transportation plan with the SIP development process including the development of the transportation control measures. The MPO shall develop or assist in developing the transportation control measures.

(d) In nonattainment or maintenance areas for transportation related pollutants, the MPO shall not approve any transportation plan or program which does not conform with the SIP, as determined in accordance with the U.S. EPA conformity regulation (40 CFR Part 51).

(e) If more than one MPO has authority in a metropolitan planning area (including multi-State metropolitan planning areas) or in an area which is designated as nonattainment or maintenance for transportation related pollutants, the MPOs and the Governor(s) shall cooperatively establish the boundaries of the metropolitan planning area (including the twenty year planning horizon and relationship to the nonattainment or maintenance areas) and the respective jurisdictional responsibilities of each MPO. The MPOs shall consult with each other and the State(s) to assure the preparation of integrated plans and transportation improvement programs for the entire metropolitan planning area. An individual MPO plan and program may be developed separately. However, each plan and program must be consistent with the plans and programs of other MPOs in the metropolitan planning area. For the overall metropolitan planning area, the individual MPO planning process shall reflect coordinated data collection, analysis and development. In those areas where this provision is applicable, coordination efforts shall be initiated and the process and outcomes documented in subsequent transmittals of the UPWP and various planning products (the plan, TIP, etc.) to the State, the FHWA, and the FTA.

(f) The Secretary must designate as transportation management areas all UZAs over 200,000 population as determined by the most recent decennial census. The Secretary designated TMAs by publishing a notice in the **Federal Register**. Copies of this notice may be obtained from the FHWA Metropolitan Planning Division or Office of Planning FTA. The TMAs so designated and those designated subsequently by the FHWA and the FTA (including those designated upon request of the MPO and the Governor) must comply with the special requirements applicable to such areas regarding congestion management systems, project selection, and certification. The TMA designation applies to the entire metropolitan planning area boundary. If a metropolitan planning area encompasses a TMA and other UZA(s), the designation applies to the entire metropolitan planning area regardless of the population of constituent UZAs.

(g) As required by 23 CFR part 500, the required management systems shall be developed cooperatively by the State, the MPOs and transit operators for each metropolitan planning area. In TMAs, the congestion management system will be developed as part of the metropolitan transportation planning process.

(h) The State shall cooperatively participate in the development of metropolitan transportation plans. The relationship of the statewide transportation plan and the metropolitan plan is specified in subpart B of this part.

(i) Where a metropolitan planning area includes Federal public lands and/or Indian tribal lands, the affected Federal agencies and Indian tribal governments shall be involved appropriately in the development of transportation plans and programs.

§ 450.314 Metropolitan transportation planning process: Unified planning work programs.

(a) In TMAs, the MPO(s) in cooperation with the State and operators of publicly owned transit shall develop unified planning work programs (UPWPs) that meet the requirements of 23 CFR part 420, subpart A, and:

(1) Discuss the planning priorities facing the metropolitan planning area and describe all metropolitan transportation and transportation-related air quality planning activities (including the corridor and subarea studies discussed in § 450.318) anticipated within the area during the next one or two year period, regardless of funding sources or agencies conducting activities, in sufficient detail to indicate who will perform the work, the schedule for completing it and the products that will be produced;

(2) Document planning activities to be performed with funds provided under title 23, U.S.C., and the Federal Transit Act.

(b) Arrangements may be made with the FHWA and the FTA to combine the UPWP requirements with the work program for other Federal sources of planning funds.

(c) The metropolitan transportation planning process may include the development of a prospectus that establishes a multiyear framework within which the UPWP is accomplished. The prospectus may be used to satisfy the requirements of § 450.310 and paragraph (a)(1) of this section.

(d) In areas not designated as TMAs, the MPO in cooperation with the State and transit operators, with the approval of the FHWA and the FTA, may prepare a simplified statement of work, in lieu of a UPWP, that describes who will perform the work and the work that will be accomplished using Federal funds. If a simplified statement of work is used, it may be submitted as part of the Statewide planning work program, in accordance with 23 CFR part 420.

§ 450.316 Metropolitan transportation planning process: Elements.

(a) Section 134(f) of title 23, U.S.C., and Federal Transit Act section 8(f) (49 U.S.C. app. 1607(f)) list 15 factors that must be considered as part of the planning process for all metropolitan areas. The following factors shall be explicitly considered, analyzed as appropriate, and reflected in the planning process products:

(1) Preservation of existing transportation facilities and, where practical, ways to meet transportation needs by using existing transportation facilities more efficiently;

(2) Consistency of transportation planning with applicable Federal, State, and local energy conservation programs, goals, and objectives;

(3) The need to relieve congestion and prevent congestion from occurring where it does not yet occur including:

(i) The consideration of congestion management strategies or actions which improve the mobility of people and goods in all phases of the planning process; and

(ii) In TMAs, a congestion management system that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operation management strategies (e.g., various elements of IVHS) shall be developed in accordance with § 450.320;

(4) The likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs with the provisions of all applicable short- and long-term land use and development plans (the analysis should include projections of metropolitan planning area economic, demographic, environmental protection, growth management, and land use activities consistent with metropolitan and local/central city development goals (community, economic, housing, etc.), and projections of potential transportation demands based on the interrelated level of activity in these areas);

(5) Programming of expenditures for transportation enhancement activities as required under 23 U.S.C. 133;

(6) The effects of all transportation projects to be undertaken within the metropolitan planning area, without regard to the source of funding (the analysis shall consider the effectiveness, cost effectiveness, and financing of alternative investments in meeting transportation demand and supporting the overall efficiency and effectiveness of transportation system performance and related impacts on community/central city goals regarding social and economic development, housing, and employment);

(7) International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations (supporting technical efforts should provide an analysis of goods and services movement problem areas, as determined in cooperation with appropriate private sector involvement, including, but not limited to, addressing interconnected transportation access and service needs of intermodal facilities);

(8) Connectivity of roads within metropolitan planning areas with roads outside of those areas;

(9) Transportation needs identified through the use of the management systems required under 23 U.S.C. 303 (strategies identified under each management system will be analyzed during the development of the transportation plan, including its financial component, for possible inclusion in the metropolitan plan and TIP);

(10) Preservation of rights-of-way for construction of future transportation projects, including future transportation corridors;

(11) Enhancement of the efficient movement of freight;

(12) The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavement (operating and maintenance costs must be considered in analyzing transportation alternatives);

(13) The overall social, economic, energy, and environmental effects of transportation decisions (including consideration of the effects and impacts of the plan on the human, natural and man-made environment such as housing, employment and community development, consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and appropriate emphasis on transportation-related air quality problems in support of the requirements of 23 U.S.C. 109(h), and section 14 of the Federal Transit Act (49 U.S.C. 1610), section 4(f) of the DOT Act (49 U.S.C. 303) and section 174(b) of the Clean Air Act (42 U.S.C. 7504(b)));

(14) Expansion, enhancement, and increased use of transit services; and

(15) Capital investments that would result in increased security in transit systems.

(b) In addition, the metropolitan transportation planning process shall:

(1) Include a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs and meets the requirements and criteria specified as follows:

(i) Require a minimum public comment period of 45 days before the public involvement process is initially adopted or revised;

(ii) Provide timely information about transportation issues and processes to citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, other interested parties and segments of the community affected by transportation plans, programs and projects (including but not limited to central city and other local jurisdiction concerns);

(iii) Provide reasonable public access to technical and policy information used in the development of plans and TIPs and open public meetings where matters related to the Federal-aid highway and transit programs are being considered;

(iv) Require adequate public notice of public involvement activities and time for public review and comment at key decision points, including, but not limited to, approval of plans and TIPs (in nonattainment areas, classified as serious and above, the comment period shall be at least 30 days for the plan, TIP and major amendment(s));

(v) Demonstrate explicit consideration and response to public input received during the planning and program development processes;

(vi) Seek out and consider the needs of those traditionally underserved by existing transportation systems, including but not limited to low-income and minority households;

(vii) When significant written and oral comments are received on the draft transportation plan or TIP (including the financial plan) as a result of the public involvement process or the interagency consultation process required under the U.S. EPA's conformity regulations, a summary, analysis, and report on the disposition of comments shall be made part of the final plan and TIP;

(viii) If the final transportation plan or TIP differs significantly from the one which was made available for public comment by the MPO and raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts, an additional opportunity for public comment on the revised plan or TIP shall be made available;

(ix) Public involvement processes shall be periodically reviewed by the MPO in terms of their effectiveness in assuring that the process provides full and open access to all;

(x) These procedures will be reviewed by the FHWA and the FTA during certification reviews for TMAs, and as otherwise necessary for all MPOs, to assure that full and open access is provided to MPO decisionmaking processes;

(xi) Metropolitan public involvement processes shall be coordinated with statewide public involvement processes wherever possible to enhance public consideration of the issues, plans, and programs and reduce redundancies and costs;

(2) Be consistent with Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794, which ensure that no person shall, on the grounds of race, color, sex, national origin, or physical handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program receiving Federal assistance from the United States Department of Transportation;

(3) Identify actions necessary to comply with the Americans With Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and U.S. DOT regulations "Transportation for Individuals With Disabilities" (49 CFR parts 27, 37, and 38);

(4) Provide for the involvement of traffic, ridesharing, parking, transportation safety and enforcement agencies; commuter rail operators; airport and port authorities; toll authorities; appropriate private transportation providers, and where appropriate city officials; and

(5) Provide for the involvement of local, State, and Federal environment resource and permit agencies as appropriate.

(c) In attainment areas not designated as TMAs simplified procedures for the development of plans and programs, if considered appropriate, shall be proposed by the MPO in cooperation with the State and transit operator, and submitted by the State for approval by the FHWA and the FTA. In developing proposed simplified planning procedures, consideration shall be given to the transportation problems in the area and their complexity, the growth rate of the area (e.g., fast, moderate or slow), the appropriateness of the factors specified for consideration in this subpart including air quality, and the desirability of continuing any planning process that has already been established. Areas experiencing fast growth should give consideration to a planning process that addresses all of the general requirements specified in this subpart. As a minimum, all areas employing a simplified planning process will need to develop a transportation plan to be approved by the MPO and a TIP to be approved by the MPO and the Governor.

(d) The metropolitan transportation planning process shall include preparation of technical and other reports to assure documentation of the development, refinement, and update of the transportation plan. The reports shall be reasonably available to interested parties, consistent with § 450.316(b)(1).

§ 450.318 Metropolitan transportation planning process: Major metropolitan transportation investments.

(a) Where the need for a major metropolitan transportation investment is identified, and Federal funds are potentially involved, major investment (corridor or subarea) studies shall be undertaken to develop or refine the plan and lead to decisions by the MPO, in cooperation with participating agencies, on the design concept and scope of the investment. Where the studies have not been completed prior to plan approval, the provisions of § 450.322(b)(8) apply.

(b) When any of the implementing agencies or the MPO wish to initiate a major investment study, a meeting will be convened to determine the extent of the analyses and agency roles in a cooperative process which involves the MPO, the State department of transportation, public transit operators, environmental, resource and permit agencies, local officials, the FHWA and the FTA and where appropriate community development agencies, major governmental housing bodies, and such other related agencies as may be impacted by the proposed scope of analysis. A reasonable opportunity, consistent with § 450.316(b)(1), shall be provided for citizens and interested parties including affected public agencies, representatives of transportation agency employees, and private providers of transportation to participate in the cooperative process. This cooperative process shall establish the range of alternatives to be studied, such as alternative modes and technologies (including intelligent vehicle and highway systems), general alignment, number of lanes, the degree of demand management, and operating characteristics.

(c) To the extent appropriate as determined under paragraph (b) of this section, major investment studies shall evaluate the effectiveness and cost-effectiveness of alternative investments or strategies in attaining local, State and national goals and objectives. The analysis shall consider the direct and indirect costs of reasonable alternatives and such factors as mobility improvements; social, economic, and environmental effects; safety; operating efficiencies; land use and economic development; financing; and energy consumption.

(d) These major investment studies will serve as the "alternatives analyses" required by section 3(i)(1)(A) of the Federal Transit Act (49 U.S.C. app. 1602(i)) for certain projects for which discretionary section 3 "New Start" funding is being sought. The studies will also be used as the primary source of information for the other section 3(i)(1)(A) Secretarial findings on cost-effectiveness, local financial commitment and capacity, mobility improvements, environmental benefits, economic development, operating efficiency, etc.

(e) These major investment studies also will, when appropriate, serve as the analysis of demand reduction and operational management strategies pursuant to 23 CFR 500.509.

(f) A major investment study will include environmental studies which will be used for environmental documents as described in paragraphs (f)(1) and (2) of this section:

(1) As a minimum the participating agencies will use the major investment study as input to an environmental impact statement or environmental assessment prepared subsequent to the completion of the study. In such a case, the major investment study reports shall document the consideration given to alternatives and their impacts; or

(2) The participating agencies may elect to develop a draft environmental impact statement or environmental assessment as part of the major investment study. At any time after the completion of the study and the inclusion of the major transportation investment in the plan and the TIP the participating agencies may request the development of final environmental decision documents required under NEPA for such major transportation investments, culminating in the execution of a Record of Decision or Finding of No Significant Impact by the FHWA and/or the FTA.

(g) Major investment studies may lead to decisions that modify the project design concept and scope assumed in the plan development process. In this case, the study shall lead to the specification of a project's design concept and scope in sufficient detail to meet the requirements of the U.S. EPA conformity regulations (40 CFR part 51).

(h) Major investment studies are eligible for funds authorized under sections 8, 9 and 26 of the Federal Transit Act (49 U.S.C. app. 1607, 16072, and 1622) and planning and capital funds apportioned under title 23, U.S.C., and shall be included in the UPWP. If CMAQ, STP, NHS, or other capital funds administered by the FHWA are utilized for this purpose, the study must also be included in the TIP.

(i) Where the environmental process has been completed and a Record of Decision or Finding of No Significant Impact has been signed, § 450.318 does not apply. Where the environmental process has been initiated but not completed, the FHWA and the FTA shall be consulted on appropriate modifications to meet the requirements of this section.

§ 450.320 Metropolitan transportation planning process: Relation to management systems.

(a) As required by the provisions of the management system regulations 23 CFR part 500, within all metropolitan planning areas, the congestion management, public transportation, and intermodal management systems, to the extent appropriate, shall be part of the metropolitan transportation planning process required under the provisions of 23 U.S.C. 134 and 49 U.S.C. app. 1607.

(b) In TMAs designated as nonattainment for ozone or carbon monoxide, Federal funds may not be programmed for any project that will result in a significant increase in carrying capacity for single occupant vehicles (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 results from a congestion management system (CMS) meeting the requirements of 23 CFR part 500, subpart E. Such projects shall incorporate all reasonably available strategies to manage the SOV facility effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies identified under 23 CFR 500.505(e), as appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself, shall be committed to by the State and the MPO for implementation in a timely manner, but no later than the completion date for the SOV project. Projects that had advanced beyond the NEPA stage prior to April 6, 1992, and which are actively advancing to implementation, e.g., right-of-way acquisition has been approved, shall be deemed programmed and not subject to this provision.

(c) In TMAs, the planning process must include the development of a CMS that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operational management strategies and meets the requirements of 23 CFR part 500, subpart E.

(d) The effectiveness of the management systems in enhancing transportation investment decisions and improving the overall efficiency of the metropolitan area's transportation systems and facilities shall be evaluated periodically, preferably as part of the metropolitan planning process.

§ 450.322 Metropolitan transportation planning process: Transportation plan.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing at least a twenty year planning horizon. The plan shall include both long-range and short-range strategies/actions that lead to the development of an integrated intermodal transportation system that facilitates the efficient movement of people and goods. The transportation plan shall be reviewed and updated at least triennially in nonattainment and maintenance areas and at least every five years in attainment areas to confirm its validity and its consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period. The transportation plan must be approved by the MPO.

(b) In addition, the plan shall:

(1) Identify the projected transportation demand of persons and goods in the metropolitan planning area over the period of the plan;

(2) Identify adopted congestion management strategies including, as appropriate, traffic operations, ridesharing, pedestrian and bicycle facilities, alternative work schedules, freight movement options, high occupancy vehicle treatments, telecommuting, and public transportation improvements (including regulatory, pricing, management, and operational options), that demonstrate a systematic approach in addressing current and future transportation demand;

(3) Identify pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217(g);

(4) Reflect the consideration given to the results of the management systems, including in TMAs that are nonattainment areas for carbon monoxide and ozone, identification of SOV projects that result from a congestion management system that meets the requirements of 23 CFR part 500, subpart E;

(5) Assess capital investment and other measures necessary to preserve the existing transportation system (including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities) and make the most efficient use of existing transportation facilities to relieve vehicular congestion and enhance the mobility of people and goods;

(6) Include design concept and scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of the source of funding, in nonattainment and maintenance areas to permit conformity determinations under the U.S. EPA conformity regulations at 40 CFR part 51. In all areas, all proposed improvements shall be described in sufficient detail to develop cost estimates;

(7) Reflect a multimodal evaluation of the transportation, socioeconomic, environmental, and financial impact of the overall plan, including all major transportation investments in accordance with § 450.318;

(8) For major transportation investments for which analyses are not complete, indicate that the design concept and scope (mode and alignment) have not been fully determined and will require further analysis. The plan shall identify such study corridors and subareas and may stipulate either a set of assumptions (assumed alternatives) concerning the proposed improvements or a no-build condition pending the completion of a corridor or subarea level analysis under § 450.318. In nonattainment and maintenance areas, the set of assumed alternatives shall be in sufficient detail to permit plan conformity determinations under the U.S. EPA conformity regulations (40 CFR part 51);

(9) Reflect, to the extent that they exist, consideration of: the area's comprehensive long-range land use plan and metropolitan development objectives; national, State, and local housing goals and strategies, community development and employment plans and strategies, and environmental resource plans; local, State, and national goals and objectives such as linking low income households with employment opportunities; and the area's overall social, economic, environmental, and energy conservation goals and objectives;

(10) Indicate, as appropriate, proposed transportation enhancement activities as defined in 23 U.S.C. 101(a); and

(11) Include a financial plan that demonstrates the consistency of proposed transportation investments with already available and projected sources of revenue. The financial plan shall compare the estimated revenue from existing and proposed funding sources that can reasonably be expected to be available for transportation uses, and the estimated costs of constructing, maintaining and operating the total (existing plus planned) transportation system over the period of the plan. The estimated revenue by existing revenue source (local, State, and Federal and private) available for transportation projects shall be determined and any shortfalls identified. Proposed new revenues and/or revenue sources to cover shortfalls shall be identified, including strategies for ensuring their availability for proposed investments. Existing and proposed revenues shall cover all forecasted capital, operating, and maintenance costs. All cost and revenue projections shall be based on the data reflecting the existing situation and historical trends. For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of projects and programs to reach air quality compliance.

(c) There must be adequate opportunity for public official (including elected officials) and citizen involvement in the development of the transportation plan before it is approved by the MPO, in accordance with the requirements of § 450.316(b)(1). Such procedures shall include opportunities for interested parties (including citizens, affected public agencies, representatives of transportation agency employees, and private providers of transportation) to be involved in the early stages of the plan development/update process. The procedures shall include publication of the proposed plan or other methods to make it readily available for public review and comment and, in nonattainment TMAs, an opportunity for at least one formal public meeting annually to review planning assumptions and the plan development process with interested parties and the general public. The procedures also shall include publication of the approved plan or other methods to make it readily available for information purposes.

(d) In nonattainment and maintenance areas for transportation related pollutants, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any new/revised plan in accordance with the Clean Air Act and the EPA conformity regulations (40 CFR part 51).

(e) Although transportation plans do not need to be approved by the FHWA or the FTA, copies of any new/revised plans must be provided to each agency.

§ 450.324 Transportation improvement program: General.

(a) The metropolitan transportation planning process shall include development of a transportation improvement program (TIP) for the metropolitan planning area by the MPO in cooperation with the State and public transit operators.

(b) The TIP must be updated at least every two years and approved by the MPO and the Governor. The frequency and cycle for updating the TIP must be compatible with the STIP development and approval process. Since the TIP becomes part of the STIP, the TIP lapses when the FHWA and FTA approval for the STIP lapses. In the case of extenuating circumstances, FHWA and FTA will consider and take appropriate action on requests to extend the STIP approval period for all or part of the STIP in accordance with § 450.220(d). Although metropolitan TIPs, unlike statewide TIPs, do not need to be approved by the FHWA or the FTA, copies of any new or amended TIPs must be provided to each agency. Additionally, in nonattainment and maintenance areas for transportation related pollutants, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any new or amended TIPs (unless the amendment consists entirely of exempt projects) in accordance with the Clean Air Act requirements and the EPA conformity regulations (40 CFR part 51).

(c) There must be reasonable opportunity for public comment in accordance with the requirements of § 450.316(b)(1) and, in nonattainment TMAs, an opportunity for at least one formal public meeting during the TIP development process. This public meeting may be combined with the public meeting required under § 450.322(c). The proposed TIP shall be published or otherwise made readily available for review and comment. Similarly, the approved TIP shall be published or otherwise made readily available for information purposes.

(d) The TIP shall cover a period of not less than 3 years, but may cover a longer period if it identifies priorities and financial information for the additional years. The TIP must include a priority list of projects to be carried out in the first three years. As a minimum, the priority list shall group the projects that are to be undertaken in each of the years, i.e., year 1, year 2, year 3. In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP in accordance with the U.S. EPA conformity regulation (40 CFR part 51) and shall provide for their timely implementation.

(e) The TIP shall be financially constrained by year and include a financial plan that demonstrates which projects can be implemented using current revenue sources and which projects are to be implemented using proposed revenue sources (while the existing transportation system is being adequately operated and maintained). The financial plan shall be developed by the MPO in cooperation with the State and the transit operator. The State and the transit operator must provide MPOs with estimates of available Federal and State funds which the MPOs shall utilize in developing financial plans. It is expected that the State would develop this information as part of the STIP development process and that the estimates would be refined through this process. Only projects for which construction and 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 analysis, the MPO shall take into account all projects and strategies funded under title 23, U.S.C., and the Federal Transit Act, other Federal funds, local sources, State assistance, and private participation. In nonattainment and maintenance areas, projects included for the first two years of the current TIP shall be limited to those for which funds are available or committed.

(f) The TIP shall include:

(1) All transportation projects, or identified phases of a project, (including pedestrian walkways, bicycle transportation facilities and transportation enhancement projects) within the metropolitan planning area proposed for funding under title 23, U.S.C., (including Federal Lands Highway projects) and the Federal Transit Act, excluding safety projects funded under 23 U.S.C. 402, emergency relief projects (except those involving substantial functional, locational and capacity changes), and planning and research activities (except those funded with NHS, STP, and/or MA funds). Planning and research activities funded with NHS, STP and/or MA funds, other than those used for major investment studies, may be excluded from the TIP by agreement of the State and the MPO;

(2) Only projects that are consistent with the transportation plan;

(3) All regionally significant transportation projects for which an FHWA or the FTA approval is required whether or not the projects are to be funded with title 23, U.S.C., or Federal Transit Act funds, e.g., addition of an interchange to the Interstate System with State, local, and/or private funds, demonstration projects not funded under title 23, U.S.C., or the Federal Transit Act, etc.;

(4) For informational purposes and air quality analysis in nonattainment and maintenance areas, all regionally significant transportation projects proposed to be funded with Federal funds, including intermodal facilities, not covered in paragraphs (f)(1) or (f)(3) of this section; and

(5) For informational purposes and air quality analysis in nonattainment and maintenance areas, all regionally significant projects to be funded with non-Federal funds.

(g) With respect to each project under paragraph (f) of this section the TIP shall include:

(1) Sufficient descriptive material (i.e., type of work, termini, length, etc.) to identify the project or phase;

(2) Estimated total cost;

(3) The amount of Federal funds proposed to be obligated during each program year;

(4) Proposed source of Federal and non-Federal funds;

(5) Identification of the recipient/subrecipient and State and local agencies responsible for carrying out the project;

(6) In nonattainment and maintenance areas, identification of those projects which are identified as TCMs in the applicable SIP; and

(7) In areas with Americans with Disabilities Act required Paratransit and key station plans, identification of those projects which will implement the plans.

(h) In nonattainment and maintenance areas, projects included shall be specified in sufficient detail (design concept and scope) to permit air quality analysis in accordance with the U.S. EPA conformity requirements (40 CFR part 51).

(i) Projects proposed for FHWA and/or FTA funding that are not considered by the State and MPO to be of appropriate scale for individual identification in a given program year may be grouped by function, geographic area, and work type using applicable classifications under 23 CFR 771.117 (c) and (d). In nonattainment and maintenance areas, classifications must be consistent with the exempt project classifications contained in the U.S. EPA conformity requirements (40 CFR part 51).

(j) Projects utilizing Federal funds that have been allocated to the area pursuant to 23 U.S.C. 133(d)(3)(E) shall be identified.

(k) The total Federal share of projects included in the TIP proposed for funding under section 9 of the Federal Transit Act (49 U.S.C. app. 1607a) may not exceed section 9 authorized funding levels available to the area for the program year.

(l) Procedures or agreements that distribute suballocated Surface Transportation Program or section 9 funds to individual jurisdictions or modes within the metropolitan area by predetermined percentages or formulas are inconsistent with the legislative provisions that require MPOs in cooperation with the State and transit operators 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 planning process.

(m) For the purpose of including Federal Transit Act section 3 funded projects in a TIP the following approach shall be followed:

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

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

(n) As a management tool for monitoring progress in implementing the transportation plan, the TIP shall:

(1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including intermodal 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;

(3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, including the reasons for any significant delays in the planned implementation and strategies for ensuring their advancement at the earliest possible time; and

(4) In nonattainment and maintenance areas, include a list of all projects found to conform in a previous TIP and are now part of the base case for the purpose of air quality conformity analyses. Projects shall be included in this list until construction or acquisition has been fully authorized, except when a three-year period has elapsed subsequent to the NEPA approval without any major action taking place to advance the project.

(o) In order to maintain or establish operations, in the absence of an approved metropolitan TIP, the FTA and/or the FHWA Administrators, as appropriate, may approve operating assistance.

§ 450.326 Transportation improvement program: Modification.

The TIP may be modified at any time consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation related pollutants if the TIP is amended by adding or deleting projects which contribute to and/or reduce transportation related emissions or replaced with a new TIP, new conformity determinations by the MPO and the FHWA and the FTA will be necessary. Public involvement procedures consistent with § 450.316(b)(1) shall be utilized in amending the TIP, except that these procedures are not required for TIP amendments that only involve projects of the type covered in § 450.324(i).

§ 450.328 Transportation improvement program: Relationship to statewide TIP.

(a) After approval by the MPO and the Governor, the TIP shall be included without modification, directly or by reference, in the STIP program required under 23 U.S.C. 135 and consistent with § 450.220, except that in nonattainment and maintenance areas, a conformity finding by the FHWA and the FTA must be made before it is included in the STIP. After approval by the MPO and the Governor, a copy shall be provided to the FHWA and the FTA.

(b) The State shall notify the appropriate MPO and Federal Lands Highways Program agencies, e.g., Bureau of Indian Affairs and/or National Park Service, when a TIP including projects under the jurisdiction of these agencies has been included in the STIP.

§ 450.330 Transportation improvement program: Action required by FHWA/FTA.

(a) The FHWA and the FTA must jointly find that each metropolitan TIP is based on a continuing, comprehensive transportation process carried on cooperatively by the States, MPOs and transit operators in accordance with the provisions of 23 U.S.C. 134 and section 8 of the Federal Transit Act (49 U.S.C. app. 1607). This finding shall be based on the self-certification statement submitted by the State and MPO under § 450.334 and upon other reviews as deemed necessary by the FHWA and the FTA.

(b) In nonattainment and maintenance areas, the FHWA and the FTA must also jointly find that the metropolitan TIP conforms with the adopted SIP and that priority has been given to the timely implementation of transportation control measures contained in the SIP in accordance with 40 CFR part 51. As part of their review in nonattainment areas requiring TCMs, the FHWA and the FTA will specifically consider any comments relating to the financial plans for the plan and TIP contained in the summary of significant comments required under § 450.316(b). If the TIP is found to be in nonconformance with the SIP, the TIP shall be returned to the Governor and the MPO with the joint finding. If the TIP is found to conform with the SIP, the Governor/MPO shall be notified of the joint finding. After the FHWA and the FTA find the TIP to be in conformance, the TIP shall be incorporated, without modification, into the STIP, directly or by reference.

§ 450.332 Project selection for implementation.

(a) In areas not designated as TMAs and when § 450.332(c) does not apply, projects to be implemented using title 23 funds other than Federal lands projects or Federal Transit Act funds shall be selected by the State and/or the transit operator, in cooperation with the MPO from the approved metropolitan TIP. Federal Lands Highways program projects shall be selected in accordance with 23 U.S.C. 204.

(b) In areas designated as TMAs where § 450.332(c) does not apply, all title 23 and Federal Transit Act funded projects, except projects on the NHS and projects funded under the bridge, interstate maintenance, and Federal Lands Highways programs, shall be selected by the MPO in consultation with the State and transit operator from the approved metropolitan TIP and in accordance with the priorities in the approved metropolitan TIP. Projects on the NHS, and projects funded under the bridge and Interstate maintenance programs shall be selected by the State in cooperation with the MPO, from the approved metropolitan TIP. Federal Lands Highway Program projects shall be selected in accordance with 23 U.S.C. 204.

(c) Once a TIP that meets the requirements of § 450.324 has been developed and approved, the first year of the TIP shall constitute an "agreed to" list of projects for project selection purposes and no further project selection action is required for the implementing agency to proceed with projects, except where the appropriated Federal funds available to the metropolitan planning area are significantly less than the authorized amounts. In this case, a revised "agreed to" list of projects shall be jointly developed by the MPO, State, and the transit operator if requested by the MPO, State, or the transit operator. If the State or transit operator wishes to proceed with a project in the second or third year of the TIP, the specific project selection procedures stated in paragraphs (a) and (b) of this section must be used unless the MPO, State, and transit operator jointly develop expedited project selection procedures to provide for the advancement of projects from the second or third year of the TIP.

(d) Projects not included in the Federally approved STIP will not be eligible for funding with title 23, U.S.C., or Federal Transit Act funds.

(e) In nonattainment and maintenance areas, priority will be given to the timely implementation of TCMs contained in the applicable SIP in accordance with the U.S. EPA conformity regulations at 40 CFR part 51.

§ 450.334 Metropolitan transportation planning process: Certification.

(a) The State and the MPO shall annually certify to the FHWA and the FTA that the planning process is addressing the major issues facing the area and is being conducted in accordance with all applicable requirements of:

(1) Section 134 of title 23, U.S.C., section 8 of the Federal Transit Act (49 U.S.C. app. 1607) and this part;

(2) Sections 174 and 176 (c) and (d) of the Clean Air Act (42 U.S.C. 7504, 7506 (c) and (d));

(3) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794;

(4) Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240) regarding the involvement of disadvantaged business enterprises in the FHWA and the FTA funded planning projects (sec. 105(f), Pub. L. 97–424, 96 Stat. 2100; 49 CFR part 23); and

(5) The provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101–336, 104 Stat. 327, as amended) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38).

(b) The FHWA and the FTA jointly will review and evaluate the transportation planning process for each TMA (as appropriate but no less than once every three years) to determine if the process meets the requirements of this subpart.

(c) In TMAs that are nonattainment or maintenance areas for transportation related pollutants, the FHWA and the FTA will also review and evaluate the transportation planning process to assure that the MPO has an adequate process to ensure conformity of plans and programs in accordance with procedures contained in 40 CFR part 51.

(d) Upon the review and evaluation conducted under paragraphs (b) and (c) of this section, if the FHWA and the FTA jointly determine that the transportation planning process in a TMA meets or substantially meets the requirements of this part, they will take one of the following actions, as appropriate:

(1) Jointly certify the transportation planning process;

(2) Jointly certify the transportation planning process subject to certain specified corrective actions being taken; or

(3) Jointly certify the planning process as the basis for approval of only those categories of programs or projects that the Administrators may jointly determine and subject to certain specified corrective actions being taken.

(e) A certification action under this section will remain in effect for three years unless a new certification determination is made sooner.

(f) If, upon the review and evaluation conducted under paragraph (b) or (c) of this section, the FHWA and the FTA jointly determine that the transportation planning process in a TMA does not substantially meet the requirements, they may take the following action as appropriate, if after September 30, 1993, the transportation planning process is not certified:

(1) Withhold in whole or in part the apportionment attributed to the relevant metropolitan planning area under 23 U.S.C. 133(d)(3), capital funds apportioned under section 9 of the Federal Transit Act, and section 3 funds under the Federal Transit Act (49 U.S.C. 1607(a)); or

(2) Withhold approval of all or certain categories of projects.

(g) If a transportation planning process remains uncertified for more than two consecutive years after September 30, 1994, 20 percent of the apportionment attributed to the metropolitan planning area under 23 U.S.C. 133(d)(3) and capital funds apportioned under the formula program of section 9 of the Federal Transit Act (49 U.S.C. app. 1607a) will be withheld.

(h) The State and the MPO shall be notified of the actions taken under paragraphs (f) and (g) of this section. Upon full, joint certification by the FHWA and the FTA, all funds withheld will be restored to the metropolitan area, unless they have lapsed.

§ 450.336 Phase-in of new requirements.

(a) Except for reflecting the consideration given the results of the management systems, the planning process and plans in nonattainment areas requiring TCMs shall comply, to the extent possible, with the requirements of this subpart by October 1, 1994. All other metropolitan areas shall comply to the extent possible with the requirements of this subpart by December 18, 1994. Where time does not permit a quantitative analysis of certain factors, a qualitative analysis of those factors will be acceptable. If a forecast period of less than twenty years is acceptable for SIP development and air quality conformity purposes, that same time period will be acceptable for transportation planning. The initial plan update shall be financially feasible, taking into account capital costs and the funds reasonably available for capital improvements, as well as addressing to the extent possible the costs of and revenues available for operating and maintenance of the transportation system. Where TCMs are required, the plan update process shall be coordinated with the process for developing TCMs. The planning process for subsequent updates of the plan and the updated plans shall comply with the requirements of this subpart. Plan updates performed in all areas must consider the results of the management systems (specified in 23 CFR part 500) as they become available. The plan shall reflect this consideration.

(b)(1) During the period prior to the full implementation of the CMS in a TMA, the MPO in cooperation with the State, the public transit operators, and other operators of major modes of transportation shall identify the location of the most serious congestion problems in the metropolitan area and proceed with the development of actions to address these problems.

(2) Prior to the full implementation of a CMS, an adequate interim CMS in a TMA designated as nonattainment for carbon monoxide and/or ozone shall, as a minimum, include a process that results in an appropriate analysis of all reasonably available (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that will result in a significant increase in SOV capacity is proposed. This analysis must demonstrate how far such strategies can go in eliminating the need for additional SOV capacity in the corridor. If the analysis demonstrates that additional SOV capacity is warranted, then all reasonable strategies to manage the facility effectively (or to facilitate its management in the future) shall be incorporated into the proposed facility. Other travel demand reduction and operational management strategies appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself must be committed to by the State and the MPO for implementation in a timely manner but no later than completion of construction of the SOV facility. If the area does not already have a traffic management and carpool/vanpool program, the establishment of such programs must be a part of the commitment.

(3) In TMAs that are nonattainment for carbon monoxide and/or ozone, the MPO, a State and/or transit operator may not advance a project utilizing Federal funds that provides a significant capacity increase for SOVs (adding general purpose lanes, with the exception of safety improvements or the elimination of bottlenecks, or a new highway on a new location) beyond the NEPA process unless an interim CMS is in place that meets the criteria in paragraphs (b)(1) and (b)(2) of this section and the project results from this interim CMS.

(4) Projects that are part of or consistent with a State mandated congestion management system/plan are not subject to the requirements in paragraphs (b)(1) and (b)(2) of this section.

(5) Projects advanced beyond the NEPA process as of April 6, 1992 and which are being implemented, e.g., right-of-way acquisition has been approved, will be deemed to be programmed and not subject to this requirement.

(6) At such time as a final CMS is fully operational the provisions of § 450.320(b) apply.

49 CFR Chapter VI

PART 613—PLANNING ASSISTANCE AND STANDARDS

2. The authority citation for part 613 is added and the authority citations for subparts A, B, and C are removed, to read as follows:

Authority: 23 U.S.C 104(f), 105, 134, 217, 307, 315 and 324; 42 U.S.C. 3334, 4233, 4332, 7410 et seq; 49 U.S.C. app. 1602, 1603, 1604, 1605, 1607, 1607a, 1612, and 1622; and 49 CFR 1.48(b), 1.51(f) and 21.7(a).

3. Subparts A and B of part 613 are revised to read as follows:

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. 23 CFR part 450, subpart C, requires a metropolitan planning organization (MPO) be designated for each urbanized area and that the metropolitan area have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs that consider all transportation modes. These plans and programs shall lead to the development of an integrated, intermodal metropolitan transportation system that facilitates the efficient, economic movement of people and goods.

Subpart B—Statewide Transportation Planning and Programming

§ 613.200 Statewide transportation planning and programming.

The regulations in 23 CFR part 450, subpart B, should be followed in complying with the requirements of this subpart. 23 CFR part 450, subpart B, requires each State to carry out an intermodal statewide transportation planning process, including the development of a statewide transportation plan and transportation improvement program that facilitates the efficient, economic movement of people and goods in all areas of the State, including those areas subject to the requirements of 23 U.S.C. 135 and sections 3, 5, 8, 9 and 26 of the Federal Transit Act (49 U.S.C. app. 1602, 1604, 1607, 1607a, and 1622).

[FR Doc. 93-26411 Filed 10-22-93; 3:16 pm]

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federal register

Thursday
October 28, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Oglala Sioux Tribe and State of South Dakota: Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Oglala Sioux Tribe and the State of South Dakota Gaming Compact of 1993, which was enacted on August 25, 1993.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: October 14, 1993.

Ada E. Deer,

Acting for Assistant Secretary—Indian Affairs, Marshall M. Cutsforth.

[FR Doc. 93–26508 Filed 10–27–93; 8:45 am]

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Thursday
October 28, 1993

Part IV

Department of Education

34 CFR Part 650
Jacob K. Javits Fellowship Program; Rule

DEPARTMENT OF EDUCATION

34 CFR Part 650

RIN 1840-AB93

Jacob K. Javits Fellowship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Jacob K. Javits Fellowship Program. These amendments are needed to implement new statutory provisions enacted in the Higher Education Amendments of 1992 (Pub. L. 102-325). This program supports National Education Goal 5 which calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Diana Hayman, U.S. Department of Education, 400 Maryland Avenue SW., room 4025, ROB-3, Washington, DC 20202-5251. Telephone: (202) 708-9415. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These final regulations implement statutory changes to part C of title IX of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992 (Pub. L. 102-325), enacted July 23, 1992. The regulations also make other changes to improve the administration and management of the program.

On July 14, 1993, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** (58 FR 37890). The only differences between the NPRM and these final regulations are technical changes, including a change to § 650.2(d)(1) that adds permanent residents of the United States to the list of eligible individuals who are pursuing a doctoral degree that will not lead to an academic career.

Public Comment

In the NPRM the Secretary invited comments on the proposed regulations. The only comment that the Secretary received suggested a change the Secretary is not legally authorized to make under the applicable statutory authority. Except for technical changes, the Secretary has made no changes in these regulations since publication of the NPRM.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 650

Colleges and universities, Education, Fellowships, Grant program, Reporting and recordkeeping.

(Catalog of Federal Domestic Assistance Number 84.170—Jacob K. Javits Fellowship Program)

Dated: October 19, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 650 to read as follows:

PART 650—JACOB K. JAVITS FELLOWSHIP PROGRAM

Subpart A—General

Authority: 20 U.S.C. 1134, 1134h-1134k-l, unless otherwise noted.

Subpart A—General

§ 650.1 What is the Jacob K. Javits Fellowship Program?

(a) Under the Jacob K. Javits Fellowship Program the Secretary awards fellowships to students of superior ability selected on the basis of demonstrated achievement and exceptional promise, for study at the doctoral level in selected fields of the arts, humanities, and social sciences.

(Authority: 20 U.S.C. 1134h)

(b) Students awarded fellowships under this program are called Jacob K. Javits Fellows.

(Authority: 20 U.S.C. 1134h)

§ 650.2 Who is eligible to receive a fellowship?

An individual is eligible to receive a fellowship if the individual—

(a) Is enrolled at an institution of higher education, other than a school or department of divinity, in the program of study leading to a doctoral degree in the academic field for which the fellowship is awarded;

(b) Meets the eligibility requirements established by the Fellowship Board;

(c) Is not ineligible to receive assistance under 34 CFR 75.60, as added on July 8, 1992 (57 FR 30328, 30337); and

(d) (1) Is pursuing a doctoral degree that will not lead to an academic career and is—

(i) A citizen or national of the United States;

(ii) A permanent resident of the United States;

(iii) In the United States for other than a temporary purpose and intends to become a permanent resident; or

(iv) A permanent resident of the Trust Territory of the Pacific Islands; or

(2) Is pursuing a doctoral degree that will lead to an academic career and is a citizen of the United States.

(Authority: 20 U.S.C. 1134, 1134h–1134k-1)

§ 650.3 What regulations apply to the Jacob K. Javits Fellowship Program?

The following regulations apply to this program:

(a) The regulations in this part 650.

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs), except for the following:

(i) Subpart C (How to Apply for a Grant);

(ii) Subpart D (How Grants Are Made); and

(iii) Sections 75.580 through 75.592 of subpart E.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations), except for the terms "grantee" and "recipient."

(4) 34 CFR part 82 (New Restrictions on Lobbying).

(5) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(6) 34 CFR part 86 (Drug-Free Schools and Campuses).

(Authority: 20 U.S.C. 1134h)

§ 650.4 What definitions apply to the Jacob K. Javits Fellowship Program?

The following definitions apply to terms used in this part:

Academic year means the 12-month period beginning with the fall instructional term of the institution of higher education.

Act means the Higher Education Act of 1965, as amended.

Department means any program, unit or any other administrative subdivision of an institution of higher education that—

(1) Directly administers or supervises post-baccalaureate instruction in a specific discipline; and

(2) Has the authority to award academic course credit acceptable to meet degree requirements at an institution of higher education.

Fellow means a recipient of a Jacob K. Javits fellowship under this part.

Fellowship means an award made to a person for graduate study under this part.

Fellowship Board means the Jacob K. Javits Fellowship Program Fellowship Board, composed of individual representatives of both public and private institutions of higher education who are appointed by the Secretary to establish general policies for the program and oversee its operation.

Financial need means the fellow's financial need as determined under part F of title IV of the HEA, for the period of the fellow's enrollment in the approved academic field of study for which the fellowship was awarded.

Grantee means an institution of higher education that administers a fellowship award under this part.

HEA means the Higher Education Act of 1965, as amended.

Institution means an institution of higher education.

Institution of higher education means an institution of higher education, other than a school or department of divinity, as defined in section 1201(a) of the HEA.

Institutional payment means the amount paid by the Secretary to the institution of higher education in which the fellow is enrolled to be applied against the tuition and fees required of the fellow by the institution as part of the fellow's instructional program.

Knows or has reason to know means that a person with respect to a statement—

(1) Has actual knowledge that the statement is false or fictitious;

(2) Acts in deliberate ignorance of the truth or falsity of the statement; or

(3) Acts in reckless disregard of the truth or falsity of the statement.

Recipient means an institution of higher education that administers a fellowship award under this part.

Satisfactory progress means that the fellow meets or exceeds the institution's criteria and standards established for all doctoral students' continued status as applicants for the doctoral degree in the academic field of study for which the fellowship was awarded.

School or department of divinity means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter into some other religious vocation, or to prepare them to teach theological subjects.

Secretary means Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Stipend means the amount paid to an individual awarded a fellowship, including an allowance for subsistence and other expenses for the individual and his or her dependents.

(Authority: 20 U.S.C. 1134h–1134k)

§ 650.5 What does a fellowship award include?

The Secretary awards fellowships consisting of the following:

(a) A stipend paid to the fellow, based upon an annual determination of the fellow's financial need, as described in § 650.42.

(b) An annual payment made to the institution in which the fellow is enrolled as described in § 650.41.

(Authority: 20 U.S.C. 1134j)

Subpart B—How Does an Individual Apply for a Fellowship?

§ 650.10 How does an individual apply for a fellowship?

An individual shall apply to the Secretary for a fellowship award in response to an application notice published by the Secretary in the Federal Register.

(Authority: 20 U.S.C. 1134h)

Subpart C—How Are Fellows Selected?

§ 650.20 What are the selection procedures?

(a) The Fellowship Board establishes criteria for the selection of fellows.

(b) Each year the Fellowship Board selects specific fields of study, and the number of fellows in each field (within the humanities, arts and social sciences), for which fellowships will be awarded.

(c) The Fellowship Board appoints panels of distinguished individuals in each field to evaluate applications.

(d) The Secretary may make awards of the fellowships each year in two or more stages, taking into account at each stage the amount of funds remaining after the level of funding for awards previously made has been established or adjusted.

(Authority: 20 U.S.C. 1134i)

Subpart D—What Conditions Must be Met By Fellows?

§ 650.30 Where may fellows study?

A fellow may use the fellowship only for enrollment in a doctoral program at an institution of higher education, other than a school or department of divinity, which is accredited by an accrediting agency or association recognized by the Secretary, which accepts the fellow for graduate study, and which has agreed to comply with the provisions of this part applicable to institutions.

(Authority: 20 U.S.C. 1134h-1134k)

§ 650.31 How does an individual accept a fellowship?

(a) An individual notified by the Secretary of selection as a fellow shall inform the Secretary of the individual's acceptance in the manner and time prescribed by the Secretary in the notification.

(b) If an individual fails to comply with the provisions of paragraph (a) of this section, the Secretary treats the individual's failure to comply as a refusal of the fellowship.

(Authority: 20 U.S.C. 1134h)

§ 650.32 How does the Secretary withdraw an offer of a fellowship?

(a) The Secretary withdraws an offer of a fellowship to an individual only if the Secretary determines that the individual submitted fraudulent information on the application.

(b) The Secretary considers the application to contain fraudulent information if the application contains a statement that—

(1) The applicant knows or has reason to know—

(i) Asserts a material fact that is false or fictitious; or

(ii) Is false or fictitious because it omits a material fact that the person making the statement has a duty to include in the statement; and

(2) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

(Authority: 20 U.S.C. 1134j)

§ 650.33 What is the duration of a fellowship?

(a) An individual may receive a fellowship for a doctoral degree program of study for a total of 48 months or the time required for receiving the doctoral degree, whichever is less.

(b) (1) An individual may receive a fellowship for no more than 24 months for dissertation work, without the prior approval of the Secretary.

(2) A fellow may apply to the Secretary for an additional period of fellowship support for dissertation work. The fellow's application must include—

(i) The specific facts detailing the reasons why the additional period of dissertation work support is necessary;

(ii) A certification by the institution that it is aware of the fellow's application and that the fellow has attained satisfactory progress in the fellow's academic studies; and

(iii) A recommendation from the institution that the additional period of fellowship support for dissertation work is necessary.

(c) A fellow who maintains satisfactory progress in the program of study for which the fellowship was awarded may have the fellowship renewed annually for the total length of time described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1134h, 1134k)

§ 650.34 What conditions must be met by fellows?

In order to continue to receive payments under a fellowship, a fellow shall—

(a) Maintain satisfactory progress in the program for which the fellowship was awarded as determined by the institution of higher education;

(b) Devote essentially full time to study or research in the field in which the fellowship was awarded, as determined by the institution of higher education;

(c) Not engage in gainful employment during the period of the fellowship except on a part-time basis, for the institution of higher education at which the fellowship was awarded, in teaching, research, or similar activities approved by the Secretary; and

(d) Begin study under the fellowship in the academic year specified in the fellowship award.

(Authority: 20 U.S.C. 1134h–1134k)

§ 650.35 May fellowship tenure be interrupted?

(a) An institution of higher education may allow a fellow to interrupt study for a period not to exceed 12 months, but only if the interruption of study is—

(1) For the purpose of work, travel, or independent study, if the independent study is away from the institution and supportive of the fellow's academic program; and

(2) Approved by the institution of higher education.

(b) A fellow may continue to receive payments during the period of interruption only if the fellow's interruption of study is for the purpose of travel or independent study that is supportive of the fellow's academic program.

(c) A fellow may not receive payments during the period of interruption if the fellow's interruption of study is for the purpose of travel that is not supportive of the fellow's academic program, or work, whether supportive of the fellow's academic program or not.

(d) The Secretary makes a pro rata institutional payment to the institution of higher education in which the fellow is enrolled during the period the fellow receives payments as described in paragraph (b) of this section.

(Authority: 20 U.S.C. 1134h)

§ 650.36 May fellows make changes in institution or field of study?

After an award is made, a fellow may not make any change in the field of study or institution attended without the prior approval of the Secretary.

(Authority: 20 U.S.C. 1134k)

§ 650.37 What records and reports are required from fellows?

Each individual who is awarded a fellowship shall keep such records and submit such reports as are required by the Secretary.

(Authority: 20 U.S.C. 1134k)

Subpart E—What Are The Administrative Responsibilities of The Institution?

§ 650.40 What institutional agreements are needed?

Students enrolled in an otherwise eligible institution of higher education may receive fellowships only if the institution enters into an agreement with the Secretary to comply with the provisions of this part.

(Authority: 20 U.S.C. 1134h-1134k)

§ 650.41 How are institutional payments to be administered?

(a) With respect to the awards made for the academic year 1993–1994, the Secretary makes a payment of $9,000 to the institution of higher education for each individual awarded a fellowship for pursuing a course of study at the institution. The Secretary adjusts the amount of the institutional payment annually thereafter in accordance with inflation as determined by the U.S. Department of Labor's Consumer Price Index for the previous calendar year.

(b) If the institution of higher education charges and collects amounts from a fellow for tuition or other expenses required by the institution as part of the fellow's instructional program, the Secretary deducts that amount from the institutional payment.

(c) If the fellow is enrolled for less than a full academic year, the Secretary pays the institution a pro rata share of the allowance.

(Authority: 20 U.S.C. 1134j)

§ 650.42 How are stipends to be administered?

(a) The institution annually shall calculate the amount of a fellow's financial need in the same manner as that in which the institution calculates its students' financial need under part F of title IV of the HEA.

(b) For a fellowship initially awarded for an academic year prior to the academic year 1993–1994, the institution shall pay the fellow a stipend in the amount of the fellow's financial need or $10,000, whichever is less.

(c) For a fellowship initially awarded for the academic year 1993–1994 or any succeeding academic year, the institution shall pay the fellow a stipend at a level of support equal to that provided by the National Science Foundation graduate fellowships, except that the amount must be adjusted as necessary so as not to exceed the fellow's demonstrated level of financial need.

(Authority: 20 U.S.C. 1134j)

§ 650.43 How are disbursement and return of grant award funds made?

(a) An institution shall disburse a stipend to a fellow no less frequently than once per academic term. If the fellowship is vacated or discontinued, the institution shall return any unexpended funds to the Secretary at such time and in such manner as the Secretary may require.

(b) If a fellow withdraws from an institution before completion of an academic term, the institution shall refund to the Secretary a prorated portion of the institutional payment that it received with respect to that fellow. The institution shall return those funds to the Secretary at such time and in such manner as the Secretary may require.

(c) A fellow who withdraws from an institution before completion of an academic term for which the fellow received a stipend installment shall return a prorated portion of the stipend installment to the institution at such time and in such manner as the Secretary may require.

(Authority: 20 U.S.C. 1134j)

§ 650.44 What records and reports are required from institutions?

(a) An institution shall provide to the Secretary, prior to receiving funds for disbursement to a fellow, a certification from an appropriate official at the institution stating whether that fellow is making satisfactory progress in, and is devoting essentially full time to the program for which the fellowship was awarded.

(b) An institution shall keep such records as are necessary to establish the timing and amount of all disbursements of stipends.

(Approved by the Office of Management and Budget under control number 1840–0562)

(Authority: 20 U.S.C. 1134k)

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