

WSDOT/MPO/RTPO Reference Materials

Selected Federal & State Planning
Requirements

August 2019



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DEFINITIONS IN FEDERAL LAW

These definitions apply to MPOs and WSDOT and are from Title 23 U.S.C. (United States Code) and contain those laws in effect on June 6, 2019

23 USC §101. Definitions and declaration of policy

(a) Definitions.—In this title, the following definitions apply:

(1) Apportionment.—The term “apportionment” includes unexpended apportionments made under prior authorization laws.

(2) Asset Management.—The term "asset management" means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the lifecycle of the assets at minimum practicable cost.

(3) Carpool project.— The term "carpool project" means any project to encourage the use of carpools and vanpools, including provision of carpooling opportunities to the elderly and individuals with disabilities, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, designating existing facilities for use for preferential parking for carpools, and real-time ridesharing projects, such as projects where drivers, using an electronic transfer of funds, recover costs directly associated with the trip provided through the use of location technology to quantify those direct costs, subject to the condition that the cost recovered does not exceed the cost of the trip provided.

(4) Construction.—The term “construction” means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway, including bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments and costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program. Such term includes—

(A) preliminary engineering, engineering, and design-related services directly relating to the construction of a highway project, including engineering, design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic control in accordance with specifications of the National Oceanic and Atmospheric Administration), and architectural-related services;

(B) reconstruction, resurfacing, restoration, rehabilitation, and preservation;

(C) acquisition of rights-of-way;

(D) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(E) elimination of hazards of railway grade crossings;

(F) elimination of roadside hazards;

(G) improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

(H) capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

(5) County.—The term “county” includes corresponding units of government under any other name in States that do not have county organizations and, in those States in which the county government does not have jurisdiction over highways, any local government unit vested with jurisdiction over local highways.

(6) Federal-aid highway.—The term “Federal-aid highway” means a highway eligible for assistance under this chapter other than a highway classified as a local road or rural minor collector.

(7) Federal Lands Access Transportation Facility.—The term “Federal Lands access transportation facility” means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title or maintenance responsibility is vested in a State, county, town, township, tribal, municipal, or local government.

(8) Federal Lands Transportation Facility.—The term “Federal lands transportation facility” means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title and maintenance responsibility is vested in the Federal Government, and that appears on the national Federal lands transportation facility inventory described in section 203(c).

(9) Forest development roads and trails.—The term “forest development roads and trails” means forest roads and trails under the jurisdiction of the Forest Service.

(10) Forest road or trail.—The term “forest road or trail” means a road or trail wholly or partly within, or adjacent to, and serving the National Forest System that is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

(11) Highway.—The term “highway” includes—

(A) a road, street, and parkway;

(B) a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway; and

(C) a portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State transportation department, including such

facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel.

(12) Interstate System.—The term “Interstate System” means the Dwight D. Eisenhower National System of Interstate and Defense Highways described in section 103(c).

(13) Maintenance.—The term “maintenance” means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.

(14) Maintenance area.—The term “maintenance area” means an area that was designated as a nonattainment area, but was later redesignated by the Administrator of the Environmental Protection Agency as an attainment area, under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

(15) National Highway Freight Network.—The term “National Highway Freight Network” means the National Highway Freight Network established under section 167.

(16) National Highway System.—The term “National Highway System” means the Federal-aid highway system described in section 103(b).

(17) Operating costs for traffic monitoring, management, and control.—The term “operating costs for traffic monitoring, management, and control” includes labor costs, administrative costs, costs of utilities and rent, and other costs associated with the continuous operation of traffic control, such as integrated traffic control systems, incident management programs, and traffic control centers.

(18) Operational improvement.—The term “operational improvement”—

(A) means (i) a capital improvement for installation of traffic surveillance and control equipment, computerized signal systems, motorist information systems, integrated traffic control systems, incident management programs, and transportation demand management facilities, strategies, and programs, and (ii) such other capital improvements to public roads as the Secretary may designate, by regulation; and

(B) does not include resurfacing, restoring, or rehabilitating improvements, construction of additional lanes, interchanges, and grade separations, and construction of a new facility on a new location.

(19) Project.—The term “project” means any undertaking eligible for assistance under this title.

(20) Project agreement.—The term “project agreement” means the formal instrument to be executed by the State transportation department and the Secretary as required by section 106.

(21) Public authority.—The term “public authority” means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

(22) Public road.—The term “public road” means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

(23) Rural areas.—The term “rural areas” means all areas of a State not included in urban areas.

(24) Safety improvement project.—The term “safety improvement project” means a strategy, activity, or project on a public road that is consistent with the State strategic highway safety plan and corrects or improves a roadway feature that constitutes a hazard to road users or addresses a highway safety problem.

(25) Secretary.—The term “Secretary” means Secretary of Transportation.

(26) State.—The term “State” means any of the 50 States, the District of Columbia, or Puerto Rico.

(27) State funds.—The term “State funds” includes funds raised under the authority of the State or any political or other subdivision thereof, and made available for expenditure under the direct control of the State transportation department.

(28) State Strategic Highway Safety Plan.—The term "State strategic highway safety plan" has the same meaning given such term in section 148(a).

(29) State transportation department.—The term “State transportation department” means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

(30) Transportation systems management and operations.—

(A) In general.—The term "transportation systems management and operations" means integrated strategies to optimize the performance of existing infrastructure through the implementation of multimodal and intermodal, cross-jurisdictional systems, services, and projects designed to preserve capacity and improve security, safety, and reliability of the transportation system.

(B) Inclusions.—The term “transportation systems management and operations” includes—

(i) actions such as traffic detection and surveillance, corridor management, freeway management, arterial management, active transportation and demand management, work zone management, emergency management, traveler information services, congestion pricing, parking management, automated enforcement, traffic control, commercial vehicle operations, freight management, and coordination of highway, rail, transit, bicycle, and pedestrian operations; and

(ii) coordination of the implementation of regional transportation system management and operations investments (such as traffic incident management, traveler information services, emergency management, roadway weather management, intelligent transportation systems, communication networks, and information sharing systems) requiring agreements, integration, and interoperability to achieve targeted system performance, reliability, safety, and customer service levels.

(31) Tribal Transportation Facility.—The term "tribal transportation facility" means a public highway, road, bridge, trail, or transit system that is located on or provides access to tribal

land and appears on the national tribal transportation facility inventory described in section 202(b)(1).

(32) Truck Stop Electrification System.—The term "truck stop electrification system" means a system that delivers heat, air conditioning, electricity, or communications to a heavy-duty vehicle.

(33) Urban Area.—The term "urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urban place designated by the Bureau of the Census, except in the case of cities in the State of Maine and in the State of New Hampshire.

(34) Urbanized Area.—The term "urbanized area" means an area with a population of 50,000 or more designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urbanized area within a State as designated by the Bureau of the Census.

DEFINITIONS IN CODE OF FEDERAL REGULATIONS (CFR)

These definitions apply to MPOs and WSDOT and are from Title 23: Highways, Part 450 – Planning Assistance and Standards, from e-CFR current as of June 6, 2019.

Subpart A—Transportation Planning and Programming Definitions

§ 450.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

§ 450.102 Applicability.

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

§ 450.104 Definitions.

Unless otherwise specified, the definitions in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are applicable to this part.

Administrative modification means a minor revision to a long-range statewide or metropolitan transportation plan, Transportation Improvement Program (TIP), or Statewide Transportation Improvement Program (STIP) that includes minor changes to project/project phase costs, minor changes to funding sources of previously included projects, and minor changes to project/project phase initiation dates. An administrative modification is a revision that does not require public review and comment, a redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas).

Amendment means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that involves a major change to a project included in a metropolitan transportation plan, TIP, or STIP, including the addition or deletion of a project or a major change in project cost, project/project phase initiation dates, or a major change in design concept or design scope (e.g., changing project termini or the number of through traffic lanes or changing the number of stations in the case of fixed guideway transit projects). Changes to projects that are included only for illustrative purposes do not require an amendment. An amendment is a revision that requires public review and comment and a redemonstration of fiscal constraint. If an amendment involves “non-exempt” projects in nonattainment and maintenance areas, a conformity determination is required.

Asset management means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the lifecycle of the assets at minimum practicable cost.

Attainment area means any geographic area in which levels of a given criteria air pollutant (e.g., ozone, carbon monoxide, PM₁₀, PM_{2.5}, and nitrogen dioxide) meet the health-based

National Ambient Air Quality Standards (NAAQS) for that pollutant. An area may be an attainment area for one pollutant and a nonattainment area for others. A “maintenance area” (see definition in this section) is not considered an attainment area for transportation planning purposes.

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

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

Conformity means a Clean Air Act (42 U.S.C. 7506(c)) requirement that ensures that Federal funding and approval are given to transportation plans, programs and projects that are consistent with the air quality goals established by a State Implementation Plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any required interim emission reductions or other milestones in any nonattainment or maintenance area. The transportation conformity regulations (40 CFR part 93, subpart A) sets forth policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities.

Conformity lapse means, pursuant to section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)), as amended, that the conformity determination for a metropolitan transportation plan or TIP has expired and thus there is no currently conforming metropolitan transportation plan or TIP.

Congestion Management Process means a systematic approach required in transportation management areas (TMAs) that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 U.S.C., and title 49 U.S.C., through the use of travel demand reduction and operational management strategies.

Consideration means that one or more parties takes into account the opinions, action, and relevant information from other parties in making a decision or determining a course of action.

Consultation means that one or more parties confer with other identified parties in accordance with an established process and, prior to taking action(s), considers the views of the other parties and periodically informs them about action(s) taken. This definition does not apply to the “consultation” performed by the States and the Metropolitan Planning Organizations (MPOs) in comparing the long-range statewide transportation plan and the metropolitan transportation plan, respectively, to State and tribal conservation plans or maps or inventories of natural or historic resources (see section 450.216(j) and sections 450.324(g)(1) and (g)(2)).

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

Coordinated public transit-human services transportation plan means a locally developed, coordinated transportation plan that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes, provides strategies for meeting those local needs, and prioritizes transportation services for funding and implementation.

Coordination means the cooperative development of plans, programs, and schedules among agencies and entities with legal standing and adjustment of such plans, programs, and schedules to achieve general consistency, as appropriate.

Design concept means the type of facility identified for a transportation improvement project (e.g., freeway, expressway, arterial highway, grade-separated highway, toll road, reserved right-of-way rail transit, mixed-traffic rail transit, or busway).

Design scope means the aspects that will affect the proposed facility's impact on the region, usually as they relate to vehicle or person carrying capacity and control (e.g. number of lanes or tracks to be constructed or added, length of project, signalization, safety features, access control including approximate number and location of interchanges, or preferential treatment for high-occupancy vehicles).

Designated recipient means an entity designated, in accordance with the planning process under 49 U.S.C. 5303 and 5304, by the Governor of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under 49 U.S.C. 5336 that are attributable to urbanized areas of 200,000 or more in population, or a State or regional authority if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation.

Environmental mitigation activities means strategies, policies, programs, and actions that, over time, will serve to avoid, minimize, rectify, reduce or eliminate impacts to environmental resources associated with the implementation of a long-range statewide transportation plan or metropolitan transportation plan.

Expedited Grant Agreement (EGA) means a contract that defines the scope of a Small Starts project, the Federal financial contribution, and other terms and conditions, in accordance with 49 U.S.C. 5309(h)(7).

Federal land management agency means units of the Federal Government currently responsible for the administration of public lands (e.g., U.S. Forest Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and the National Park Service).

Federally funded non-emergency transportation services means transportation services provided to the general public, including those with special transport needs, by public transit, private non-profit service providers, and private third-party contractors to public agencies.

Financial plan means documentation required to be included with a metropolitan transportation plan and TIP (and optional for the long-range statewide transportation plan and STIP) that demonstrates the consistency between reasonably available and projected sources of Federal, State, local, and private revenues and the costs of implementing proposed transportation system improvements.

Financially constrained or Fiscal constraint means that the metropolitan transportation plan, TIP, and STIP includes sufficient financial information for demonstrating that projects in the metropolitan transportation plan, TIP, and STIP can be implemented using committed, available, or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is being adequately operated and maintained. For the TIP and the STIP, financial constraint/fiscal constraint applies to each program year. Additionally, projects in air quality nonattainment and maintenance areas can be included in the first 2 years of the TIP and STIP only if funds are “available” or “committed.”

Freight shippers means any entity that routinely transport cargo from one location to another by providers of freight transportation services or by their own operations, involving one or more travel modes.

Full Funding Grant Agreement (FFGA) means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding New Starts projects as required by 49 U.S.C. 5309(k)(2).

Governor means the Governor of any of the 50 States or the Commonwealth of Puerto Rico or the Mayor of the District of Columbia.

Highway Safety Improvement Program (HSIP) means a State safety program with the purpose to reduce fatalities and serious injuries on all public roads through the implementation of the provisions of 23 U.S.C. 130, 148, and 150 including the development of a Strategic Highway Safety Plan (SHSP), Railway-Highway Crossings Program, and program of highway safety improvement projects.

Illustrative project means an additional transportation project that may be included in a financial plan for a metropolitan transportation plan, TIP, or STIP if reasonable additional resources were to become available.

Indian Tribal government means a duly formed governing body for an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges

to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, Public Law 103-454.

Intelligent Transportation System (ITS) means electronics, photonics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

Interim metropolitan transportation plan means a transportation plan composed of projects eligible to proceed under a conformity lapse and otherwise meeting all other applicable provisions of this part, including approval by the MPO.

Interim Transportation Improvement Program (TIP) means a TIP composed of projects eligible to proceed under a conformity lapse and otherwise meeting all other applicable provisions of this part, including approval by the MPO and the Governor.

Long-range statewide transportation plan means the official, statewide, multimodal, transportation plan covering a period of no less than 20 years developed through the statewide transportation planning process.

Maintenance area means any geographic region of the United States that the Environmental Protection Agency (EPA) previously designated as a nonattainment area for one or more pollutants pursuant to the Clean Air Act Amendments of 1990, and subsequently redesignated as an attainment area subject to the requirement to develop a maintenance plan under section 175A of the Clean Air Act, as amended (42 U.S.C. 7505a).

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

Metropolitan Planning Agreement means a written agreement between the MPO, the State(s), and the providers of public transportation serving the metropolitan planning area that describes how they will work cooperatively to meet their mutual responsibilities in carrying out the metropolitan transportation planning process.

Metropolitan Planning Area (MPA) means the geographic area determined by agreement between the MPO for the area and the Governor, in which the metropolitan transportation planning process is carried out.

Metropolitan Planning Organization (MPO) means the policy board of an organization created and designated to carry out the metropolitan transportation planning process.

Metropolitan Transportation Plan means the official multimodal transportation plan addressing no less than a 20-year planning horizon that the MPO develops, adopts, and updates through the metropolitan transportation planning process.

National Ambient Air Quality Standard (NAAQS) means those standards established pursuant to section 109 of the Clean Air Act (42 U.S.C. 7409).

Nonattainment area means any geographic region of the United States that EPA designates as a nonattainment area under section 107 of the Clean Air Act (42 U.S.C. 7407) for any pollutants for which an NAAQS exists.

Nonmetropolitan area means a geographic area outside a designated metropolitan planning area.

Nonmetropolitan local officials means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.

Obligated projects means strategies and projects funded under title 23 U.S.C. and title 49 U.S.C. Chapter 53 for which the State or designated recipient authorized and committed the supporting Federal funds in preceding or current program years, and authorized by the FHWA or awarded as a grant by the FTA.

Operational and management strategies means actions and strategies aimed at improving the performance of existing and planned transportation facilities to relieve congestion and maximize the safety and mobility of people and goods.

Performance measure refers to “Measure” as defined in 23 CFR 490.101.

Performance metric refers to “Metric” as defined in 23 CFR 490.101.

Performance target refers to “Target” as defined in 23 CFR 490.101.

Project selection means the procedures followed by MPOs, States, and public transportation operators to advance projects from the first 4 years of an approved TIP and/or STIP to implementation, in accordance with agreed upon procedures.

Provider of freight transportation services means any entity that transports or otherwise facilitates the movement of cargo from one location to another for others or for itself.

Public transportation agency safety plan means a comprehensive plan established by a State or recipient of funds under Title 49, Chapter 53 and in accordance with 49 U.S.C. 5329(d).

Public transportation operator means the public entity or government-approved authority that participates in the continuing, cooperative, and comprehensive transportation planning process in accordance with 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304, and is a recipient of Federal funds under title 49 U.S.C. Chapter 53 for transportation by a conveyance that provides

regular and continuing general or special transportation to the public, but does not include sightseeing, school bus, charter, certain types of shuttle service, intercity bus transportation, or intercity passenger rail transportation provided by Amtrak.

Regional ITS architecture means a regional framework for ensuring institutional agreement and technical integration for the implementation of ITS projects or groups of projects.

Regionally significant project means a transportation project (other than projects that may be grouped in the TIP and/or STIP or exempt projects as defined in EPA's transportation conformity regulations (40 CFR part 93, subpart A)) that is on a facility that serves regional transportation needs (such as access to and from the area outside the region; major activity centers in the region; major planned developments such as new retail malls, sports complexes, or employment centers; or transportation terminals) and would normally be included in the modeling of the metropolitan area's transportation network. At a minimum, this includes all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

Regional Transportation Planning Organization (RTPO) means a policy board of nonmetropolitan local officials or their designees created to carry out the regional transportation planning process.

Revision means a change to a long-range statewide or metropolitan transportation plan, TIP, or STIP that occurs between scheduled periodic updates. A major revision is an "amendment" while a minor revision is an "administrative modification."

Scenario planning means a planning process that evaluates the effects of alternative policies, plans and/or programs on the future of a community or region. This activity should provide information to decision makers as they develop the transportation plan.

State means any one of the 50 States, the District of Columbia, or Puerto Rico.

State Implementation Plan (SIP) means, as defined in section 302(q) of the Clean Air Act (CAA) (42 U.S.C. 7602(q)), the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110 of the CAA (42 U.S.C. 7410), or promulgated under section 110(c) of the CAA (42 U.S.C. 7410(c)), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the CAA (42 U.S.C. 7601(d)) and which implements the relevant requirements of the CAA.

Statewide Transportation Improvement Program (STIP) means a statewide prioritized listing/program of transportation projects covering a period of 4 years that is consistent with the long-range statewide transportation plan, metropolitan transportation plans, and TIPs, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53.

Strategic Highway Safety Plan means a comprehensive, multiyear, data-driven plan, developed by a State DOT in accordance with the 23 U.S.C. 148.

Transit Asset Management Plan means a plan that includes an inventory of capital assets, a condition assessment of inventoried assets, a decision support tool, and a prioritization of investments.

Transit Asset Management System means a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively, throughout the life cycles of those assets.

Transportation Control Measure (TCM) means any measure that is specifically identified and committed to in the applicable SIP, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA section 176(c)(8), that is either one of the types listed in section 108 of the CAA (42 U.S.C. 7408) or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures that control the emissions from vehicles under fixed traffic conditions are not TCMs.

Transportation Improvement Program (TIP) means a prioritized listing/program of transportation projects covering a period of 4 years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53.

Transportation Management Area (TMA) means an urbanized area with a population over 200,000, as defined by the Bureau of the Census and designated by the Secretary of Transportation, or any additional area where TMA designation is requested by the Governor and the MPO and designated by the Secretary of Transportation.

Unified Planning Work Program (UPWP) means a statement of work identifying the planning priorities and activities to be carried out within a metropolitan planning area. At a minimum, a UPWP includes a description of the planning work and resulting products, who will perform the work, time frames for completing the work, the cost of the work, and the source(s) of funds.

Update means making current a long-range statewide transportation plan, metropolitan transportation plan, TIP, or STIP through a comprehensive review. Updates require public review and comment, a 20-year horizon for metropolitan transportation plans and long-range statewide transportation plans, a 4-year program period for TIPs and STIPs, demonstration of fiscal constraint (except for long-range statewide transportation plans), and a conformity determination (for metropolitan transportation plans and TIPs in nonattainment and maintenance areas).

Urbanized area (UZA) means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

Users of public transportation means any person, or groups representing such persons, who use transportation open to the general public, other than taxis and other privately funded and operated vehicles.

Visualization techniques means methods used by States and MPOs in the development of transportation plans and programs with the public, elected and appointed officials, and other stakeholders in a clear and easily accessible format such as GIS- or web-based surveys, inventories, maps, pictures, and/or displays identifying features such as roadway rights of way, transit, intermodal, and non-motorized transportation facilities, historic and cultural resources, natural resources, and environmentally sensitive areas, to promote improved understanding of existing or proposed transportation plans and programs.

ADMINISTRATION OF FHWA PLANNING AND RESEARCH FUNDS

From Title 23: Highways, Part 420 – Planning and Research Planning and Program Administration from e-CFR current as of June 6, 2019

Subpart A—Administration of FHWA Planning and Research Funds

§ 420.101 What is the purpose of this part?

This part prescribes the Federal Highway Administration (FHWA) policies and procedures for the administration of activities undertaken by State departments of transportation (State DOTs) and their subrecipients, including metropolitan planning organizations (MPOs), with FHWA planning and research funds. Subpart A identifies the administrative requirements that apply to use of FHWA planning and research funds both for planning and for research, development, and technology transfer (RD&T) activities. Subpart B describes the policies and procedures that relate to the approval and authorization of RD&T work programs. The requirements in this part supplement those in 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and 49 CFR part 19, Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

§ 420.103 How does the FHWA define the terms used in this part?

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

FHWA planning and research funds include:

- (1) State planning and research (SPR) funds (the two percent set aside of funds apportioned or allocated to a State DOT for activities authorized under 23 U.S.C. 505);
- (2) Metropolitan planning (PL) funds (the one percent of funds authorized under 23 U.S.C. 104(f) to carry out the provisions of 23 U.S.C. 134);
- (3) National highway system (NHS) funds authorized under 23 U.S.C. 104(b)(1) used for transportation planning in accordance with 23 U.S.C. 134 and 135, highway research and planning in accordance with 23 U.S.C. 505, highway-related technology transfer activities, or development and establishment of management systems under 23 U.S.C. 303;
- (4) Surface transportation program (STP) funds authorized under 23 U.S.C. 104(b)(3) used for highway and transit research and development and technology transfer programs, surface transportation planning programs, or development and establishment of management systems under 23 U.S.C. 303; and
- (5) Minimum guarantee (MG) funds authorized under 23 U.S.C. 505 used for transportation planning and research, development and technology transfer activities that are eligible under title 23, U.S.C.

Grant agreement means a legal instrument reflecting a relationship between an awarding agency and a recipient or subrecipient when the principal purpose of the relationship is to transfer a thing of value to the recipient or subrecipient to carry out a public purpose of support or stimulation authorized by a law instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the awarding agency.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5305 must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for a metropolitan planning area.

National Cooperative Highway Research Program (NCHRP) means the cooperative RD&T program directed toward solving problems of national or regional significance identified by State DOTs and the FHWA, and administered by the Transportation Research Board, National Academy of Sciences.

Procurement contract means a legal instrument reflecting a relationship between an awarding agency and a recipient or subrecipient when the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the awarding agency.

State Department of Transportation (State DOT) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

Transportation management area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) and designated by the Secretary of Transportation or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Secretary of Transportation.

Transportation pooled fund study means a planning, research, development, or technology transfer activity administered by the FHWA, a lead State DOT, or other organization that is supported by two or more participants and that addresses an issue of significant or widespread interest related to highway, public, or intermodal transportation. A transportation pooled fund study is intended to address a new area or provide information that will complement or advance previous investigations of the subject matter.

Work program means a periodic statement of proposed work, covering no less than one year, and estimated costs that documents eligible activities to be undertaken by State DOTs and/or their subrecipients with FHWA planning and research funds.

§ 420.105 What is the FHWA's policy on use of FHWA planning and research funds?

(a) If the FHWA determines that planning activities of national significance, identified in paragraph (b) of this section, and the requirements of 23 U.S.C. 134, 135, 303, and 505 are being adequately addressed, the FHWA will allow State DOTs and MPOs:

(1) Maximum possible flexibility in the use of FHWA planning and research funds to meet highway and local public transportation planning and RD&T needs at the national, State, and local levels while ensuring legal use of such funds and avoiding unnecessary duplication of efforts; and

(2) To determine which eligible planning and RD&T activities they desire to support with FHWA planning and research funds and at what funding level.

(b) The State DOTs must provide data that support the FHWA's responsibilities to the Congress and to the public. These data include, but are not limited to, information required for: preparing proposed legislation and reports to the Congress; evaluating the extent, performance, condition, and use of the Nation's transportation systems; analyzing existing and proposed Federal-aid funding methods and levels and the assignment of user cost responsibility; maintaining a critical information base on fuel availability, use, and revenues generated; and calculating apportionment factors.

(c) The policy in paragraph (a) of this section does not remove the FHWA's responsibility and authority to determine which activities are eligible for funding. Activities proposed to be funded with FHWA planning and research funds by the State DOTs and their subrecipients shall be documented and submitted for FHWA approval and authorization as prescribed in §§420.111 and 420.113. (The information collection requirements in paragraph (b) of §420.105 have been approved by the Office of Management and Budget (OMB) under control numbers 2125–0028 and 2125–0032.)

§ 420.107 What is the minimum required expenditure of State planning and research funds for research development and technology transfer?

(a) A State DOT must expend no less than 25 percent of its annual SPR funds on RD&T activities relating to highway, public transportation, and intermodal transportation systems in accordance with the provisions of 23 U.S.C. 505(b), unless a State DOT certifies, and the FHWA accepts the State DOT's certification, that total expenditures by the State DOT during the fiscal year for transportation planning under 23 U.S.C. 134 and 135 will exceed 75 percent of the amount apportioned for the fiscal year.

(b) Prior to submitting a request for an exception to the 25 percent requirement, the State DOT must ensure that:

(1) The additional planning activities are essential, and there are no other reasonable options available for funding these planning activities (including the use of NHS, STP, MG, or FTA State planning and research funds (49 U.S.C. 5313(b)) or by deferment of lower priority planning activities);

(2) The planning activities have a higher priority than RD&T activities in the overall needs of the State DOT for a given fiscal year; and

(3) The total level of effort by the State DOT in RD&T (using both Federal and State funds) is adequate.

(c) If the State DOT chooses to pursue an exception, it must send the request, along with supporting justification, to the FHWA Division Administrator for action by the FHWA Associate

Administrator for Research, Development, and Technology. The Associate Administrator's decision will be based upon the following considerations:

(1) Whether the State DOT has a process for identifying RD&T needs and for implementing a viable RD&T program.

(2) Whether the State DOT is contributing to cooperative RD&T programs or activities, such as the National Cooperative Highway Research Program, the Transportation Research Board, and transportation pooled fund studies.

(3) Whether the State DOT is using SPR funds for technology transfer and for transit or intermodal research and development to help meet the 25 percent minimum requirement.

(4) Whether the State DOT can demonstrate that it will meet the requirement or substantially increase its RD&T expenditures over a multi-year period, if an exception is granted for the fiscal year.

(5) Whether Federal funds needed for planning exceed the 75 percent limit for the fiscal year and whether any unused planning funds are available from previous fiscal years.

(d) If the FHWA Associate Administrator for Research, Development, and Technology approves the State DOT's request for an exception, the exception is valid only for that fiscal year's funds. A new request must be submitted and approved for subsequent fiscal year funds.

§ 420.109 What are the requirements for distribution of metropolitan planning funds?

(a) The State DOTs shall make all PL funds authorized by 23 U.S.C. 104(f) available to the MPOs in accordance with a formula developed by the State DOT, in consultation with the MPOs, and approved by the FHWA Division Administrator. The formula may allow for a portion of the PL funds to be used by the State DOT, or other agency agreed to by the State DOT and the MPOs, for activities that benefit all MPOs in the State, but State DOTs shall not use any PL funds for grant or subgrant administration. The formula may also provide for a portion of the funds to be made available for discretionary grants to MPOs to supplement their annual amount received under the distribution formula.

(b) In developing the formula for distributing PL funds, the State DOT shall consider population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of 23 U.S.C. 134 and other applicable requirements of Federal law.

(c) The State DOTs shall inform the MPOs and the FHWA Division Office of the amounts allocated to each MPO as soon as possible after PL funds have been apportioned by the FHWA to the State DOTs.

(d) If the State DOT, in a State receiving the minimum apportionment of PL funds under the provisions of 23 U.S.C. 104(f)(2), determines that the share of funds to be allocated to any MPO results in the MPO receiving more funds than necessary to carry out the provisions of 23 U.S.C. 134, the State DOT may, after considering the views of the affected MPO(s) and with the approval of the FHWA Division Administrator, use those funds for transportation planning outside of metropolitan planning areas.

(e) In accordance with the provisions of 23 U.S.C. 134(n), any PL funds not needed for carrying out the metropolitan planning provisions of 23 U.S.C. 134 in any State may be made available by the MPO(s) to the State DOT for funding statewide planning activities under 23 U.S.C. 135, subject to approval by the FHWA Division Administrator.

(f) Any State PL fund distribution formula that does not meet the requirements of paragraphs (a) and (b) of this section shall be brought into conformance with those requirements before distribution on any new apportionment of PL funds.

§ 420.111 What are the documentation requirements for use of FHWA planning and research funds?

(a) Proposed use of FHWA planning and research funds must be documented by the State DOTs and subrecipients in a work program, or other document that describes the work to be accomplished, that is acceptable to the FHWA Division Administrator. Statewide, metropolitan, other transportation planning activities, and transportation RD&T activities may be documented in separate programs, paired in various combinations, or brought together as a single work program. The expenditure of PL funds for transportation planning outside of metropolitan planning areas under §420.109(d) may be included in the work program for statewide transportation planning activities or in a separate work program submitted by the State DOT.

(b) (1) A work program(s) for transportation planning activities must include a description of work to be accomplished and cost estimates by activity or task. In addition, each work program must include a summary that shows:

- (i) Federal share by type of fund;
- (ii) Matching rate by type of fund;
- (iii) State and/or local matching share; and
- (iv) Other State or local funds.

(2) Additional information on metropolitan planning area work programs is contained in 23 CFR part 450. Additional information on RD&T work program content and format is contained in subpart B of this part.

(c) In areas not designated as TMAs, a simplified statement of work that describes who will perform the work and the work that will be accomplished using Federal funds may be used in lieu of a work program. If a simplified statement of work is used, it may be submitted separately or as part of the Statewide planning work program.

(d) The State DOTs that use separate Federal-aid projects in accordance with paragraph (a) of this section must submit an overall summary that identifies the amounts and sources of FHWA planning and research funds available, matching funds, and the amounts budgeted for each activity (e.g., statewide planning, RD&T, each metropolitan area, contributions to NCHRP and transportation pooled fund studies, etc.).

(e) The State DOTs and MPOs also are encouraged to include cost estimates for transportation planning, research, development, and technology transfer related activities funded with other Federal or State and/or local funds; particularly for producing the FHWA-required data specified in paragraph (b) of §420.105, for planning for other transportation modes, and for air quality

planning activities in areas designated as non-attainment for transportation-related pollutants in their work programs. The MPOs in TMAs must include such information in their work programs. (The information collection requirements in §§420.111 have been approved by the OMB and assigned control numbers 2125–0039 for States and 2132–0529 for MPOs.)

§ 420.113 What costs are eligible?

(a) Costs will be eligible for FHWA participation provided that the costs:

- (1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;
- (2) Are verifiable from the State DOT's or the subrecipient's records;
- (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR 18.22;
- (4) Are included in the approved budget, or amendment thereto; and
- (5) Were not incurred prior to FHWA authorization.

(b) Indirect costs of State DOTs and their subrecipients are allowable if supported by a cost allocation plan and indirect cost proposal prepared, submitted (if required), and approved by the cognizant or oversight agency in accordance with the OMB requirements applicable to the State DOT or subrecipient specified in 49 CFR 18.22(b).

§ 420.115 What are the FHWA approval and authorization requirements?

(a) The State DOT and its subrecipients must obtain approval and authorization to proceed prior to beginning work on activities to be undertaken with FHWA planning and research funds. Such approvals and authorizations should be based on final work programs or other documents that describe the work to be performed. The State DOT and its subrecipients also must obtain prior approval for budget and programmatic changes as specified in 49 CFR 18.30 or 49 CFR 19.25 and for those items of allowable costs which require approval in accordance with the cost principles specified in 49 CFR 18.22(b) applicable to the entity expending the funds.

(b) Authorization to proceed with the FHWA funded work in whole or in part is a contractual obligation of the Federal government pursuant to 23 U.S.C. 106 and requires that appropriate funds be available for the full Federal share of the cost of work authorized. Those State DOTs that do not have sufficient FHWA planning and research funds or obligation authority available to obligate the full Federal share of a work program or project may utilize the advance construction provisions of 23 U.S.C. 115(a) in accordance with the requirements of 23 CFR part 630, subpart G. The State DOTs that do not meet the advance construction provisions, or do not wish to utilize them, may request authorization to proceed with that portion of the work for which FHWA planning and research funds are available. In the latter case, authorization to proceed may be given for either selected work activities or for a portion of the program period, but such authorization does not constitute a commitment by the FHWA to fund the remaining portion of the work if additional funds do become available.

(c) A project agreement must be executed by the State DOT and the FHWA Division Office for each statewide transportation planning, metropolitan planning area, or RD&T work program,

individual activity or study, or any combination administered as a single Federal-aid project. The project agreement may be executed concurrent with or after authorization has been given by the FHWA Division Administrator to proceed with the work in whole or in part. In the event that the project agreement is executed for only part of the work, the project agreement must be amended when authorization is given to proceed with additional work.

(The information collection requirements in §420.115(c) have been approved by the OMB and assigned control numbers 2125–0529)

§ 420.117 What are the program monitoring and reporting requirements?

(a) In accordance with 49 CFR 18.40, the State DOT shall monitor all activities performed by its staff or by subrecipients with FHWA planning and research funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met.

(b)(1) The State DOT must submit performance and expenditure reports, including a report from each subrecipient, that contain as a minimum:

- (i) Comparison of actual performance with established goals;
- (ii) Progress in meeting schedules;
- (iii) Status of expenditures in a format compatible with the work program, including a comparison of budgeted (approved) amounts and actual costs incurred;
- (iv) Cost overruns or underruns;
- (v) Approved work program revisions; and
- (vi) Other pertinent supporting data.

(2) Additional information on reporting requirements for individual RD&T studies is contained in subpart B of this part.

(c) Reports required by paragraph (b) of this section shall be annual unless more frequent reporting is determined to be necessary by the FHWA Division Administrator. The FHWA may not require more frequent than quarterly reporting unless the criteria in 49 CFR 18.12 or 49 CFR 19.14 are met. Reports are due 90 days after the end of the reporting period for annual and final reports and no later than 30 days after the end of the reporting period for other reports.

(d) Events that have significant impact on the work must be reported as soon as they become known. The types of events or conditions that require reporting include: problems, delays, or adverse conditions that will materially affect the ability to attain program objectives. This disclosure must be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(e) Suitable reports that document the results of activities performed with FHWA planning and research funds must be prepared by the State DOT or subrecipient and submitted for approval by the FHWA Division Administrator prior to publication. The FHWA Division Administrator may waive this requirement for prior approval. The FHWA's approval of reports constitutes acceptance of such reports as evidence of work performed but does not imply endorsement of a report's findings or recommendations. Reports prepared for FHWA-funded work must include appropriate credit references and disclaimer statements.

(The information collection requirements in §420.117 have been approved by the OMB and assigned control numbers 2125–0039 for States and 2132–0529 for MPOs.)

§ 420.119 What are the fiscal requirements?

(a) The maximum rate of Federal participation for FHWA planning and research funds shall be as prescribed in title 23, U.S.C., for the specific class of funds used (*i.e.*, SPR, PL, NHS, STP, or MG) except as specified in paragraph (d) of this section. The provisions of 49 CFR 18.24 or 49 CFR 19.23 are applicable to any necessary matching of FHWA planning and research funds.

(b) The value of third party in-kind contributions may be accepted as the match for FHWA planning and research funds, in accordance with the provisions of 49 CFR 18.24(a)(2) or 49 CFR 19.23(a) and may be on either a total planning work program basis or for specific line items or projects. The use of third party in-kind contributions must be identified in the original work program/scope of work and the grant/subgrant agreement, or amendments thereto. The use of third-party in-kind contributions must be approved in advance by the FHWA Division Administrator and may not be made retroactive prior to approval of the work program/scope of work or an amendment thereto. The State DOT or subrecipient is responsible for ensuring that the following additional criteria are met:

- (1) The third party performing the work agrees to allow the value of the work to be used as the match;
- (2) The cost of the third party work is not paid for by other Federal funds or used as a match for other federally funded grants/subgrants;
- (3) The work performed by the third party is an eligible transportation planning or RD&T related activity that benefits the federally funded work;
- (4) The third party costs (*i.e.*, salaries, fringe benefits, etc.) are allowable under the applicable Office of Management and Budget (OMB) cost principles (*i.e.*, OMB Circular A–21, A–87, or A–122),¹
- (5) The third party work is performed during the period to which the matching requirement applies;
- (6) The third party in-kind contributions are verifiable from the records of the State DOT or subrecipient and these records show how the value placed on third party in-kind contributions was derived; and
- (7) If the total amount of third party expenditures at the end of the program period is not sufficient to match the total expenditure of Federal funds by the recipient/subrecipient, the recipient/subrecipient will need to make up any shortfall with its own funds.

(c) In accordance with the provisions of 23 U.S.C. 120(j), toll revenues that are generated and used by public, quasi-public, and private agencies to build, improve, or maintain highways,

¹ OMB Circulars are available on the Internet at <https://www.whitehouse.gov/omb/information-for-agencies/circulars/>

bridges, or tunnels that serve the public purpose of interstate commerce may be used as a credit for the non-Federal share of an FHWA planning and research funded project.

(d) In accordance with 23 U.S.C. 505(c) or 23 U.S.C. 104(f)(3), the requirement for matching SPR or PL funds may be waived if the FHWA determines the interests of the Federal-aid highway program would be best served. Waiver of the matching requirement is intended to encourage State DOTs and/or MPOs to pool SPR and/or PL funds to address national or regional high priority planning or RD&T problems that would benefit multiple States and/or MPOs. Requests for waiver of matching requirements must be submitted to the FHWA headquarters office for approval by the Associate Administrator for Planning and Environment (for planning activities) or the Associate Administrator for Research, Development, and Technology (for RD&T activities). The matching requirement may not be waived for NHS, STP, or MG funds.

(e) NHS, STP, or MG funds used for eligible planning and RD&T purposes must be identified separately from SPR or PL funds in the work program(s) and must be administered and accounted for separately for fiscal purposes. In accordance with the statewide and metropolitan planning process requirements for fiscally constrained transportation improvement program (TIPs) planning or RD&T activities funded with NHS, STP, or MG funds must be included in the Statewide and/or metropolitan TIP(s) unless the State DOT and MPO (for a metropolitan area) agree that they may be excluded from the TIP.

(f) Payment shall be made in accordance with the provisions of 49 CFR 18.21 or 49 CFR 19.22.

§ 420.121 What other requirements apply to the administration of FHWA planning and research funds?

(a) *Audits.* Audits of the State DOTs and their subrecipients shall be performed in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.² Audits of for-profit contractors are to be performed in accordance with State DOT or subrecipient contract administration procedures.

(b) *Copyrights.* The State DOTs and their subrecipients may copyright any books, publications, or other copyrightable materials developed in the course of the FHWA planning and research funded project. The FHWA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

(c) *Disadvantaged business enterprises.* The State DOTs must administer the transportation planning and RD&T program(s) consistent with their overall efforts to implement section 1001(b) of the Transportation Equity Act for the 21st Century (Pub. L.105-178) and 49 CFR part 26 regarding disadvantaged business enterprises.

² See footnote 1.

(d) *Drug free workplace.* In accordance with the provisions of 49 CFR part 29, subpart F, State DOTs must certify to the FHWA that they will provide a drug free workplace. This requirement may be satisfied through the annual certification for the Federal-aid highway program.

(e) *Equipment.* Acquisition, use, and disposition of equipment purchased with FHWA planning and research funds by the State DOTs must be in accordance with 49 CFR 18.32(b). Local government subrecipients of State DOTs must follow the procedures specified by the State DOT. Universities, hospitals, and other non-profit organizations must follow the procedures in 49 CFR 19.34.

(f) *Financial management systems.* The financial management systems of the State DOTs and their local government subrecipients must be in accordance with the provisions of 49 CFR 18.20(a). The financial management systems of universities, hospitals, and other non-profit organizations must be in accordance with 49 CFR 19.21.

(g) *Lobbying.* The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities are applicable to all tiers of recipients of FHWA planning and research funds.

(h) *Nondiscrimination.* The nondiscrimination provisions of 23 CFR parts 200 and 230 and 49 CFR part 21, with respect to Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987, apply to all programs and activities of recipients, subrecipients, and contractors receiving FHWA planning and research funds whether or not those programs or activities are federally funded.

(i) *Patents.* The State DOTs and their subrecipients are subject to the provisions of 37 CFR part 401 governing patents and inventions and must include or cite the standard patent rights clause at 37 CFR 401.14, except for §401.14(g), in all subgrants or contracts. In addition, State DOTs and their subrecipients must include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work: "The subgrantee or contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the subgrantee's or contractor's subject inventions."

(j) *Procurement.* Procedures for the procurement of property and services with FHWA planning and research funds by the State DOTs must be in accordance with 49 CFR 18.36(a) and (i) and, if applicable, 18.36(t). Local government subrecipients of State DOTs must follow the procedures specified by the State DOT. Universities, hospitals, and other non-profit organizations must follow the procedures in 49 CFR 19.40 through 19.48. The State DOTs and their subrecipients must not use FHWA funds for procurements from persons (as defined in 49 CFR 29.105) who have been debarred or suspended in accordance with the provisions of 49 CFR part 29, subparts A through E.

(k) *Program income.* Program income, as defined in 49 CFR 18.25(b) or 49 CFR 19.24, must be shown and deducted from total expenditures to determine the Federal share to be reimbursed, unless the FHWA Division Administrator has given prior approval to use the program income to perform additional eligible work or as the non-Federal match.

(l) *Record retention.* Recordkeeping and retention requirements must be in accordance with 49 CFR 18.42 or 49 CFR 19.53.

(m) *Subgrants to local governments.* The State DOTs and subrecipients are responsible for administering FHWA planning and research funds passed through to MPOs and local governments, for ensuring that such funds are expended for eligible activities, and for ensuring that the funds are administered in accordance with this part, 49 CFR part 18, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments, and applicable OMB cost principles. The State DOTs shall follow State laws and procedures when awarding and administering subgrants to MPOs and local governments and must ensure that the requirements of 49 CFR 18.37(a) have been satisfied.

(n) *Subgrants to universities, hospitals, and other non-profit organizations.* The State DOTs and subrecipients are responsible for ensuring that FHWA planning and research funds passed through to universities, hospitals, and other non-profit organizations are expended for eligible activities and for ensuring that the funds are administered in accordance with this part, 49 CFR part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and applicable OMB cost principles.

(o) *Suspension and debarment.* (1) The State DOTs and their subrecipients shall not award grants or cooperative agreements to entities who are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 of February 18, 1986 (3 CFR, 1986 Comp., p. 189); and

(2) The State DOTs and their subrecipients shall comply with the provisions of 49 CFR part 29, subparts A through E, for procurements from persons (as defined in 49 CFR 29.105) who have been debarred or suspended.

(p) *Supplies.* Acquisition and disposition of supplies acquired by the State DOTs and their subrecipients with FHWA planning and research funds must be in accordance with 49 CFR 18.33 or 49 CFR 19.35.

STATEWIDE PLANNING REQUIREMENTS IN FEDERAL LAW

From Title 23 USC, Highways, Chapter 1 – Federal Aid-Highways, Subchapter I-General Provisions contains those laws in effect on June 6, 2019

§ 135. Statewide and nonmetropolitan transportation planning

(a) General Requirements.

(1) DEVELOPMENT OF PLANS AND PROGRAMS.— Subject to section 134, to accomplish the objectives stated in section 134(a), each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State.

(2) CONTENTS.—The statewide transportation plan and the transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

(3) PROCESS OF DEVELOPMENT.—The process for developing the statewide plan and the transportation improvement program shall provide for consideration of all modes of transportation and the policies stated in section 134(a), and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(b) Coordination With Metropolitan Planning; State Implementation Plan.

A State shall—

(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 134 for metropolitan areas of the State and with statewide trade and economic development planning activities and related multistate planning efforts; and

(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

(c) Interstate Agreements.

(1) IN GENERAL.—The consent of Congress is granted to two or more States entering into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

(2) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(d) Scope of Planning Process.

(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will—

- (A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;
- (B) increase the safety of the transportation system for motorized and nonmotorized users;
- (C) increase the security of the transportation system for motorized and nonmotorized users;
- (D) increase the accessibility and mobility of people and freight;
- (E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;
- (F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;
- (G) promote efficient system management and operation; and
- (H) emphasize the preservation of the existing transportation system;
- (I) improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and
- (J) enhance travel and tourism.

(2) Performance-based approach.-

(A) IN GENERAL.—The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in section 150(b) of this title and the general purposes described in section 5301 of title 49.

(B) Performance targets.-

(i) Surface transportation performance targets.-

(I) In general.-Each State shall establish performance targets that address the performance measures described in section 150(c), where applicable, to use in tracking progress towards attainment of critical outcomes for the State.

(II) Coordination.-Selection of performance targets by a State shall be coordinated with the relevant metropolitan planning organizations to ensure consistency, to the maximum extent practicable.

(ii) Public transportation performance targets.-In areas not represented by a metropolitan planning organization, selection of performance targets by a State shall

be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with sections 5326(c) and 5329(d) of title 49.

(C) Integration of other performance-based plans.-A State shall integrate into the statewide transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in this paragraph, in other State transportation plans and transportation processes, as well as any plans developed pursuant to chapter 53 of title 49 by providers of public transportation in areas not represented by a metropolitan planning organization required as part of a performance-based program.

(D) Use of performance measures and targets.-The performance measures and targets established under this paragraph shall be considered by a State when developing policies, programs, and investment priorities reflected in the statewide transportation plan and statewide transportation improvement program.

(3) FAILURE TO CONSIDER FACTORS.—The failure to take into consideration the factors specified in paragraphs (1) and (2) shall not be subject to review by any court under this title, chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, a statewide transportation improvement program, a project or strategy, or the certification of a planning process.

(e) Additional Requirements.

In carrying out planning under this section, each State shall consider, at a minimum—

- (1) with respect to nonmetropolitan areas, cooperate with affected local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (m);
- (2) consider the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and
- (3) consider coordination of transportation plans, the transportation improvement program, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

(f) Long-Range Statewide Transportation Plan.

(1) DEVELOPMENT.—Each State shall develop a long-range statewide transportation plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

(2) CONSULTATION WITH GOVERNMENTS.—

(A) METROPOLITAN AREAS.—The statewide transportation plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134.

(B) NONMETROPOLITAN AREAS.— (i) In general.-With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in cooperation with affected nonmetropolitan officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (m).

(ii) Role of secretary.—The Secretary shall not review or approve the consultation process in each State.

(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

(i) IN GENERAL.—The long-range transportation plan shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.

(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve comparison of transportation plans to State and tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

(3) PARTICIPATION BY INTERESTED PARTIES.—

(A) IN GENERAL.— In developing the statewide transportation plan, the State shall provide to-

(i) nonmetropolitan local elected officials or, if applicable, through regional transportation planning organizations described in subsection (m), an opportunity to participate in accordance with subparagraph (B)(i); and

(ii) citizens, affected public agencies, representatives of public transportation employees, public ports, freight shippers, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as a carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties a reasonable opportunity to comment on the proposed plan.

(B) METHODS.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—

(i) develop and document a consultative process to carry out subparagraph (A)(i) that is separate and discrete from the public involvement process developed under clause (ii);

(ii) hold any public meetings at convenient and accessible locations and times;

(iii) employ visualization techniques to describe plans; and

(iv) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

(4) MITIGATION ACTIVITIES.—

- (A) IN GENERAL.—A long-range transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.
- (B) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.
- (5) FINANCIAL PLAN.—The statewide transportation plan may include –
- (A) a financial plan that-
- (i) demonstrates how the adopted statewide transportation plan can be implemented;
 - (ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan; and
 - (iii) recommends any additional financing strategies for needed projects and programs; and
- (B) for illustrative purposes, additional projects that would be included in the adopted statewide transportation plan if reasonable additional resources beyond those identified in the financial plan were available.
- (6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (5).
- (7) PERFORMANCE-BASED APPROACH.—The statewide transportation plan shall include-
- (A) a description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with subsection (d)(2); and
- (B) a system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in subsection (d)(2), including progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports;
- (8) EXISTING SYSTEM.— The statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system, including consideration of the role that intercity buses may play in reducing congestion, pollution, and energy consumption in a cost-effective manner and strategies and investments that preserve and enhance intercity bus systems, including systems that are privately owned and operated.
- (9) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

(g) Statewide Transportation Improvement Program.

(1) DEVELOPMENT.—

(A) IN GENERAL.-Each State shall develop a statewide transportation improvement program for all areas of the State.

(B) DURATION AND UPDATING OF PROGRAM.-Each program developed under subparagraph (A) shall cover a period of 4 years and shall be updated every 4 years or more frequently if the Governor of the State elects to update more frequently.

(2) CONSULTATION WITH GOVERNMENTS.—

(A) METROPOLITAN AREAS.-With respect to each metropolitan area in the State, the program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134.

(B) NONMETROPOLITAN AREAS.-

(i) IN GENERAL.-With respect to each nonmetropolitan area in the State, the program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (m).

(ii) ROLE OF SECRETARY.-The Secretary shall not review or approve the specific consultation process in the State.

(C) INDIAN TRIBAL AREAS.-With respect to each area of the State under the jurisdiction of an Indian tribal government, the program shall be developed in consultation with the tribal government and the Secretary of the Interior.

(3) PARTICIPATION BY INTERESTED PARTIES.— In developing the program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, public ports, freight shippers, private providers of transportation (including intercity bus operators), providers of freight transportation services, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the proposed program.

(4) PERFORMANCE TARGET ACHIEVEMENT.-A statewide transportation improvement program shall include, to the maximum extent practicable, a discussion of the anticipated effect of the statewide transportation improvement program toward achieving the performance targets established in the statewide transportation plan, linking investment priorities to those performance targets.

(5) INCLUDED PROJECTS.—

(A) IN GENERAL.—A transportation improvement program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

(B) LISTING OF PROJECTS.—

(i) In general.-An annual listing of projects for which funds have been obligated for the preceding year in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review.

(ii) Funding categories.-The listing described in clause (i) shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

(C) PROJECTS UNDER CHAPTER 2.—

(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in one line item or identified individually in the transportation improvement program.

(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project shall be—

(i) consistent with the statewide transportation plan developed under this section for the State;

(ii) identical to the project or phase of the project as described in an approved metropolitan transportation plan; and

(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act, if the project is carried out in an area designated as nonattainment for ozone, particulate matter, or carbon monoxide under such Act.

(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.— The transportation improvement program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(F) FINANCIAL PLAN.—

(i) IN GENERAL.-The transportation improvement program may include a financial plan that demonstrates how the approved transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the transportation improvement program, and recommends any additional financing strategies for needed projects and programs.

(ii) ADDITIONAL PROJECTS.-The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.

(i) NO REQUIRED SELECTION. Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F).

(ii) REQUIRED ACTION BY THE SECRETARY. Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F) for inclusion in an approved transportation improvement program.

(H) PRIORITIES. The transportation improvement program shall reflect the priorities for programming and expenditures of funds, including transportation enhancement activities, required by this title and chapter 53 of title 49.

(6) PROJECT SELECTION FOR AREAS OF LESS THAN 50,000 POPULATION.

(A) IN GENERAL.-Projects carried out in areas with populations of less than 50,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under this title or under sections 5310 and 5311 of title 49), by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (m).

(B) OTHER PROJECTS.-Projects carried out in areas with populations of less than 50,000 individuals on the National Highway System or under the bridge program or the Interstate maintenance program under this title or under sections 5310, 5311, 5316,² and 5317 ² of title 49 shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

(7) TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL. Every 4 years, a transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary if based on a current planning finding.

(8) PLANNING FINDING. A finding shall be made by the Secretary at least every 4 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 134.

(9) MODIFICATIONS TO PROJECT PRIORITY. Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.

(h) Performance-based Planning Processes Evaluation.

(1) IN GENERAL.-The Secretary shall establish criteria to evaluate the effectiveness of the performance-based planning processes of States, taking into consideration the following:

(A) The extent to which the State is making progress toward achieving, the performance targets described in subsection (d)(2), taking into account whether the State developed appropriate performance targets.

(B) The extent to which the State has made transportation investments that are efficient and cost-effective.

(C) The extent to which the State-

(i) has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable; and

(ii) provides reports allowing the public to access the information being collected in a format that allows the public to meaningfully assess the performance of the State.

(2) REPORT.-

(A) In general.-Not later than 5 years after the date of enactment of the MAP-21, the Secretary shall submit to Congress a report evaluating-

(i) the overall effectiveness of performance-based planning as a tool for guiding transportation investments; and

(ii) the effectiveness of the performance-based planning process of each State.

(B) Publication.-The report under subparagraph (A) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

(i) Funding.

Funds apportioned under paragraphs (5)(D) and (6) of section 104(b) of this title and set aside under section 5305(g) of title 49 shall be available to carry out this section.

(j) Treatment Of Certain State Laws As Congestion Management Processes.

For purposes of this section and section 134, and sections 5303 and 5304 of title 49, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process under this section and section 134, and sections 5303 and 5304 of title 49, if the Secretary finds that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of this section and section 134 and sections 5303 and 5304 of title 49, as appropriate.

(k) Continuation Of Current Review Practice.

Since the statewide transportation plan and the transportation improvement program described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the statewide transportation plans and the transportation improvement program are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning statewide transportation plans or the transportation improvement program described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan or statewide transportation plan or the transportation improvement program described in this section shall not be considered to be a Federal action subject to review under such Act.

(l) Schedule for Implementation.-

The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for States. The Secretary shall not require a State to deviate from its established planning update cycle to

implement changes made by this section. States shall reflect changes made to their transportation plan or transportation improvement program updates not later than 2 years after the date of issuance of guidance by the Secretary under this subsection.

(m) Designation of Regional Transportation Planning Organizations.-

(1) IN GENERAL.-To carry out the transportation planning process required by this section, a State may establish and designate regional transportation planning organizations to enhance the planning, coordination, and implementation of statewide strategic long-range transportation plans and transportation improvement programs, with an emphasis on addressing the needs of nonmetropolitan areas of the State.

(2) STRUCTURE.-A regional transportation planning organization shall be established as a multijurisdictional organization of nonmetropolitan local officials or their designees who volunteer for such organization and representatives of local transportation systems who volunteer for such organization.

(3) REQUIREMENTS.-A regional transportation planning organization shall establish, at a minimum-

(A) a policy committee, the majority of which shall consist of nonmetropolitan local officials, or their designees, and, as appropriate, additional representatives from the State, private business, transportation service providers, economic development practitioners, and the public in the region; and

(B) a fiscal and administrative agent, such as an existing regional planning and development organization, to provide professional planning, management, and administrative support.

(4) DUTIES.-The duties of a regional transportation planning organization shall include-

(A) developing and maintaining, in cooperation with the State, regional long-range multimodal transportation plans;

(B) developing a regional transportation improvement program for consideration by the State;

(C) fostering the coordination of local planning, land use, and economic development plans with State, regional, and local transportation plans and programs;

(D) providing technical assistance to local officials;

(E) participating in national, multistate, and State policy and planning development processes to ensure the regional and local input of nonmetropolitan areas;

(F) providing a forum for public participation in the statewide and regional transportation planning processes;

(G) considering and sharing plans and programs with neighboring regional transportation planning organizations, metropolitan planning organizations, and, where appropriate, tribal organizations; and

(H) conducting other duties, as necessary, to support and enhance the statewide planning process under subsection (d).

(5) STATES WITHOUT REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS.-If a State chooses not to establish or designate a regional transportation planning organization, the State shall consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.

STATEWIDE PLANNING REQUIREMENTS FEDERAL REGULATIONS

Title 23: Highways, Part 450 – Planning Assistance and Standards, from e-CFR current as of June 6, 2019.

Subpart B—Statewide Transportation Planning and Programming

§ 450.200 Purpose.

The purpose of this subpart is to implement the provisions of 23 U.S.C. 135, 23 U.S.C. 150, and 49 U.S.C. 5304, as amended, which require each State to carry out a continuing, cooperative, and comprehensive performance-based statewide multimodal transportation planning process, including the development of a long-range statewide transportation plan and STIP, that facilitates the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, including intercity bus facilities and commuter van pool providers) and that fosters economic growth and development within and between States and urbanized areas, and take into consideration resiliency needs while minimizing transportation-related fuel consumption and air pollution in all areas of the State, including those areas subject to the metropolitan transportation planning requirements of 23 U.S.C. 134 and 49 U.S.C. 5303.

§ 450.202 Applicability.

The provisions of this subpart are applicable to States and any other organizations or entities (e.g., MPOs, RTPOs, and public transportation operators) that are responsible for satisfying the requirements for transportation plans and programs throughout the State pursuant to 23 U.S.C. 135 and 49 U.S.C. 5304.

§ 450.204 Definitions.

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

§ 450.206 Scope of the statewide transportation planning process.

(a) Each State shall carry out a continuing, cooperative, and comprehensive statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will address the following factors:

- (1) Support the economic vitality of the United States, the States, metropolitan areas, and non-metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;
- (2) Increase the safety of the transportation system for motorized and non-motorized users;
- (3) Increase the security of the transportation system for motorized and non-motorized users;
- (4) Increase accessibility and mobility of people and freight;

- (5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;
- (6) Enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;
- (7) Promote efficient system management and operation;
- (8) Emphasize the preservation of the existing transportation system;
- (9) Improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and
- (10) Enhance travel and tourism.

(b) Consideration of the planning factors in paragraph (a) of this section shall be reflected, as appropriate, in the statewide transportation planning process. The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation systems development, land use, employment, economic development, human and natural environment (including Section 4(f) properties as defined in 23 CFR 774.17), and housing and community development.

(c) Performance-based approach.

(1) The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301.

(2) Each State shall select and establish performance targets in coordination with the relevant MPOs to ensure consistency to the maximum extent practicable. The targets shall address the performance areas described in 23 U.S.C. 150(c), and the measures established under 23 CFR part 490, where applicable, to use in tracking progress toward attainment of critical outcomes for the State. States shall establish performance targets that reflect the measures identified in 23 U.S.C. 150(c) not later than 1 year after the effective date of the DOT final rule on performance measures. Each State shall select and establish targets under this paragraph in accordance with the appropriate target setting framework established at 23 CFR part 490.

(3) In areas not represented by an MPO, the selection of public transportation performance targets by a State shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with the performance targets that public transportation providers establish under 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d).

(4) A State shall integrate into the statewide transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in this section, in other State transportation plans and transportation processes, as well as any plans developed pursuant to chapter 53 of title 49 by providers of public transportation in areas not represented by an MPO required as part of a performance-based program. Examples of such plans and processes include the HSIP, SHSP, the State Asset

Management Plan for the National Highway System (NHS), the State Freight Plan (if the State has one), the Transit Asset Management Plan, and the Public Transportation Agency Safety Plan.

(5) A State shall consider the performance measures and targets established under this paragraph when developing policies, programs, and investment priorities reflected in the long-range statewide transportation plan and statewide transportation improvement program.

(d) The failure to consider any factor specified in paragraph (a) or (c) of this section shall not be subject to review by any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5 U.S.C. Chapter 5, or title 5 U.S.C. Chapter 7 in any matter affecting a long-range statewide transportation plan, STIP, project or strategy, or the statewide transportation planning process findings.

(e) Funds provided under 23 U.S.C. 505 and 49 U.S.C. 5305(e) are available to the State to accomplish activities described in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(2) and 49 U.S.C. 5307, 5310, and 5311 may also be used for statewide transportation planning. A State shall document statewide transportation planning activities performed with funds provided under title 23 U.S.C. and title 49 U.S.C. Chapter 53 in a statewide planning work program in accordance with the provisions of 23 CFR part 420. The work program should include a discussion of the transportation planning priorities facing the State.

§ 450.208 Coordination of planning process activities.

(a) In carrying out the statewide transportation planning process, each State shall, at a minimum:

- (1) Coordinate planning carried out under this subpart with the metropolitan transportation planning activities carried out under subpart C of this part for metropolitan areas of the State. The State is encouraged to rely on information, studies, or analyses provided by MPOs for portions of the transportation system located in metropolitan planning areas;
- (2) Coordinate planning carried out under this subpart with statewide trade and economic development planning activities and related multistate planning efforts;
- (3) Consider the concerns of Federal land management agencies that have jurisdiction over land within the boundaries of the State;
- (4) Cooperate with affected local elected and appointed officials with responsibilities for transportation, or, if applicable, through RTPOs described in section 450.210(d) in nonmetropolitan areas;
- (5) Consider the concerns of Indian Tribal governments that have jurisdiction over land within the boundaries of the State;
- (6) Consider related planning activities being conducted outside of metropolitan planning areas and between States; and
- (7) Coordinate data collection and analyses with MPOs and public transportation operators to support statewide transportation planning and programming priorities and decisions.

(b) The State air quality agency shall coordinate with the State department of transportation (State DOT) to develop the transportation portion of the State Implementation Plan (SIP) consistent with the Clean Air Act (42 U.S.C. 7401 et seq.).

(c) Two or more States may enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities under this subpart related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective. The right to alter, amend, or repeal interstate compacts entered into under this part is expressly reserved.

(d) States may use any one or more of the management systems (in whole or in part) described in 23 CFR part 500.

(e) In carrying out the statewide transportation planning process, States should apply asset management principles and techniques consistent with the State Asset Management Plan for the NHS and the Transit Asset Management Plan, and Public Transportation Agency Safety Plan in establishing planning goals, defining STIP priorities, and assessing transportation investment decisions, including transportation system safety, operations, preservation, and maintenance.

(f) For non-NHS highways, States may apply principles and techniques consistent with other asset management plans to the transportation planning and programming processes, as appropriate.

(g) The statewide transportation planning process shall (to the maximum extent practicable) be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(h) Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310 should be coordinated and consistent with the statewide transportation planning process.

§ 450.210 Interested parties, public involvement, and consultation.

(a) In carrying out the statewide transportation planning process, including development of the long-range statewide transportation plan and the STIP, the State shall develop and use a documented public involvement process that provides opportunities for public review and comment at key decision points.

(1) The State's public involvement process at a minimum shall:

(i) Establish early and continuous public involvement opportunities that provide timely information about transportation issues and decisionmaking processes to individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, private providers of transportation (including intercity bus operators), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties;

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

(iii) Provide adequate public notice of public involvement activities and time for public review and comment at key decision points, including but not limited to a reasonable opportunity to comment on the proposed long-range statewide transportation plan and STIP;

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

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

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

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

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

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

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

(3) With respect to the setting of targets, nothing in this part precludes a State from considering comments made as part of the State's public involvement process.

(b) The State shall provide for nonmetropolitan local official participation in the development of the long-range statewide transportation plan and the STIP. The State shall have a documented process(es) for cooperating with nonmetropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation that is separate and discrete from the public involvement process and provides an opportunity for their participation in the development of the long-range statewide transportation plan and the STIP. Although the FHWA and the FTA shall not review or approve this cooperative process(es), the State shall provide copies of the process document(s) to the FHWA and the FTA for informational purposes.

(1) At least once every 5 years, the State shall review and solicit comments from nonmetropolitan local officials and other interested parties for a period of not less than 60 calendar days regarding the effectiveness of the cooperative process and any proposed changes. The State shall direct a specific request for comments to the State association of

counties, State municipal league, regional planning agencies, or directly to nonmetropolitan local officials.

(2) The State, at its discretion, is responsible for determining whether to adopt any proposed changes. If a proposed change is not adopted, the State shall make publicly available its reasons for not accepting the proposed change, including notification to nonmetropolitan local officials or their associations.

(c) For each area of the State under the jurisdiction of an Indian Tribal government, the State shall develop the long-range statewide transportation plan and STIP in consultation with the Tribal government and the Secretary of Interior. States shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with Indian Tribal governments and Federal land management agencies in the development of the long-range statewide transportation plan and the STIP.

(d) To carry out the transportation planning process required by this section, a Governor may establish and designate RTPOs to enhance the planning, coordination, and implementation of the long-range statewide transportation plan and STIP, with an emphasis on addressing the needs of nonmetropolitan areas of the State. In order to be treated as an RTPO for purposes of this Part, any existing regional planning organization must be established and designated as an RTPO under this section.

(1) Where established, an RTPO shall be a multijurisdictional organization of nonmetropolitan local officials or their designees who volunteer for such organization and representatives of local transportation systems who volunteer for such organization.

(2) An RTPO shall establish, at a minimum:

(i) A policy committee, the majority of which shall consist of nonmetropolitan local officials, or their designees, and, as appropriate, additional representatives from the State, private business, transportation service providers, economic development practitioners, and the public in the region; and

(ii) A fiscal and administrative agent, such as an existing regional planning and development organization, to provide professional planning, management, and administrative support.

(3) The duties of an RTPO shall include:

(i) Developing and maintaining, in cooperation with the State, regional long-range multimodal transportation plans;

(ii) Developing a regional TIP for consideration by the State;

(iii) Fostering the coordination of local planning, land use, and economic development plans with State, regional, and local transportation plans and programs;

(iv) Providing technical assistance to local officials;

(v) Participating in national, multistate, and State policy and planning development processes to ensure the regional and local input of nonmetropolitan areas;

(vi) Providing a forum for public participation in the statewide and regional transportation planning processes;

(vii) Considering and sharing plans and programs with neighboring RTPOs, MPOs, and, where appropriate, Indian Tribal Governments; and

(viii) Conducting other duties, as necessary, to support and enhance the statewide planning process under § 450.206.

(4) If a State chooses not to establish or designate an RTPO, the State shall consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.

§ 450.212 Transportation planning studies and project development.

(a) Pursuant to section 1308 of the Transportation Equity Act for the 21st Century, TEA–21 (Pub. L. 105–178), a State(s), MPO(s), or public transportation operator(s) may undertake a multimodal, systems-level corridor or subarea planning study as part of the statewide transportation planning process. To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the State(s), MPO(s), and/or public transportation operator(s). The results or decisions of these transportation planning studies may be used as part of the overall project development process consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) and associated implementing regulations (23 CFR part 771 and 40 CFR parts 1500–1508). Specifically, these corridor or subarea studies may result in producing any of the following for a proposed transportation project:

(1) Purpose and need or goals and objective statement(s);

(2) General travel corridor and/or general mode(s) definition (e.g., highway, transit, or a highway/transit combination);

(3) Preliminary screening of alternatives and elimination of unreasonable alternatives;

(4) Basic description of the environmental setting; and/or

(5) Preliminary identification of environmental impacts and environmental mitigation.

(b) Publicly available documents or other source material produced by, or in support of, the transportation planning process described in this subpart may be incorporated directly or by reference into subsequent NEPA documents, in accordance with 40 CFR 1502.21, if:

(1) The NEPA lead agencies agree that such incorporation will aid in establishing or evaluating the purpose and need for the Federal action, reasonable alternatives, cumulative or other impacts on the human and natural environment, or mitigation of these impacts; and

(2) The systems-level, corridor, or subarea planning study is conducted with:

(i) Involvement of interested State, local, Tribal, and Federal agencies;

(ii) Public review;

(iii) Reasonable opportunity to comment during the statewide transportation planning process and development of the corridor or subarea planning study;

(iv) Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process and can be appended to or referenced in the NEPA document; and

(v) The review of the FHWA and the FTA, as appropriate.

(c) By agreement of the NEPA lead agencies, the above integration may be accomplished through tiering (as described in 40 CFR 1502.20), incorporating the subarea or corridor planning study into the draft Environmental Impact Statement or Environmental Assessment, or other means that the NEPA lead agencies deem appropriate. Additional information to further explain the linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part, including an explanation that is non-binding guidance material. The guidance in Appendix A applies only to paragraphs (a)-(c) in this section.

(d) In addition to the process for incorporation directly or by reference outlined in paragraph (b) of this section, an additional authority for integrating planning products into the environmental review process exists in 23 U.S.C. 168. As provided in 23 U.S.C. 168(f):

(1) The statutory authority in 23 U.S.C. 168 shall not be construed to limit in any way the continued use of processes established under other parts of this section or under an authority established outside this part, and the use of one of the processes in this section does not preclude the subsequent use of another process in this section or an authority outside of this part.

(2) The statute does not restrict the initiation of the environmental review process during planning.

§ 450.214 Development of programmatic mitigation plans.

(a) A State may utilize the optional framework in this section to develop programmatic mitigation plans as part of the statewide transportation planning process to address the potential environmental impacts of future transportation projects. The State in consultation with FHWA and/or FTA and with the agency or agencies with jurisdiction and special expertise over the resources being addressed in the plan, will determine:

(1) Scope. (i) A State may develop a programmatic mitigation plan on a local, regional, ecosystem, watershed, statewide or similar scale.

(ii) The plan may encompass multiple environmental resources within a defined geographic area(s) or may focus on a specific type(s) of resource(s) such as aquatic resources, parkland, or wildlife habitat.

(iii) The plan may address or consider impacts from all projects in a defined geographic area(s) or may focus on a specific type(s) of project(s).

(2) Contents. The programmatic mitigation plan may include:

(i) An assessment of the existing condition of natural and human environmental resources within the area covered by the plan, including an assessment of historic and recent trends and/or any potential threats to those resources.

(ii) An identification of economic, social, and natural and human environmental resources within the geographic area that may be impacted and considered for mitigation. Examples

of these resources include wetlands, streams, rivers, stormwater, parklands, cultural resources, historic resources, farmlands, archeological resources, threatened or endangered species, and critical habitat. This may include the identification of areas of high conservation concern or value, and thus worthy of avoidance.

(iii) An inventory of existing or planned environmental resource banks for the impacted resource categories such as wetland, stream, stormwater, habitat, species, and an inventory of federally, State, or locally approved in-lieu-of-fee programs.

(iv) An assessment of potential opportunities to improve the overall quality of the identified environmental resources through strategic mitigation for impacts of transportation projects, which may include the prioritization of parcels or areas for acquisition and/or potential resource banking sites.

(v) An adoption or development of standard measures or operating procedures for mitigating certain types of impacts; establishment of parameters for determining or calculating appropriate mitigation for certain types of impacts, such as mitigation ratios, or criteria for determining appropriate mitigation sites.

(vi) Adaptive management procedures, such as protocols or procedures that involve monitoring actual impacts against predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring.

(vii) Acknowledgment of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.

(b) A State may adopt a programmatic mitigation plan developed pursuant to paragraph (a), or developed pursuant to an alternative process as provided for in paragraph (f) of this section through the following process:

(1) Consult with each agency with jurisdiction over the environmental resources considered in the programmatic mitigation plan;

(2) Make available a draft of the programmatic mitigation plan for review and comment by appropriate environmental resource agencies and the public;

(3) Consider comments received from such agencies and the public on the draft plan; and

(4) Address such comments in the final programmatic mitigation plan.

(c) A State may integrate a programmatic mitigation plan with other plans, including, watershed plans, ecosystem plans, species recovery plans, growth management plans, State Wildlife Action Plans, and land use plans.

(d) If a programmatic mitigation plan has been adopted pursuant to paragraph (b), any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project shall give substantial weight to the recommendations in the programmatic mitigation plan when carrying out its responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA) or other Federal environmental law

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

(f) Nothing in this section prohibits the development, as part of or separate from the transportation planning process, of a programmatic mitigation plan independent of the framework described in paragraph (a) of this section. Further, nothing in this section prohibits the adoption of a programmatic mitigation plan in the statewide and nonmetropolitan transportation planning process that was developed under another authority, independent of the framework described in paragraph (a).

§ 450.216 Development and content of the long-range statewide transportation plan.

(a) The State shall develop a long-range statewide transportation plan, with a minimum 20-year forecast period at the time of adoption, that provides for the development and implementation of the multimodal transportation system for the State. The long-range statewide transportation plan shall consider and include, as applicable, elements and connections between public transportation, non-motorized modes, rail, commercial motor vehicle, waterway, and aviation facilities, particularly with respect to intercity travel.

(b) The long-range statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system. The long-range statewide transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the State's transportation system.

(c) The long-range statewide transportation plan shall reference, summarize, or contain any applicable short-range planning studies; strategic planning and/or policy studies; transportation needs studies; management systems reports; emergency relief and disaster preparedness plans; and any statements of policies, goals, and objectives on issues (e.g., transportation, safety, economic development, social and environmental effects, or energy) that were relevant to the development of the long-range statewide transportation plan.

(d) The long-range statewide transportation plan should integrate the priorities, goals, countermeasures, strategies, or projects contained in the HSIP, including the SHSP, required under 23 U.S.C. 148, the Public Transportation Agency Safety Plan required under 49 U.S.C. 5329(d), or an Interim Agency Safety Plan in accordance with 49 CFR part 659, as in effect until completion of the Public Transportation Agency Safety Plan.

(e) The long-range statewide transportation plan should include a security element that incorporates or summarizes the priorities, goals, or projects set forth in other transit safety and security planning and review processes, plans, and programs, as appropriate.

(f) The statewide transportation plan shall include:

- (1) A description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with § 450.206(c); and
- (2) A system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in § 450.206(c), including progress achieved by the MPO(s) in meeting the performance targets in comparison with system performance recorded in previous reports.

(g) Within each metropolitan area of the State, the long-range statewide transportation plan shall be developed in cooperation with the affected MPOs.

(h) For nonmetropolitan areas, the State shall develop the long-range statewide transportation plan in cooperation with affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through RTPOs described in § 450.210(d) using the State's cooperative process(es) established under § 450.210(b).

(i) For each area of the State under the jurisdiction of an Indian Tribal government, the State shall develop the long-range statewide transportation plan in consultation with the Tribal government and the Secretary of the Interior consistent with § 450.210(c).

(j) The State shall develop the long-range statewide transportation plan as appropriate, in consultation with State, Tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation. This consultation shall involve comparison of transportation plans to State and Tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

(k) A long-range statewide transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the long-range statewide transportation plan. The discussion may focus on policies, programs, or strategies, rather than at the project level. The State shall develop the discussion in consultation with applicable Federal, State, regional, local and Tribal land management, wildlife, and regulatory agencies. The State may establish reasonable timeframes for performing this consultation.

(l) In developing and updating the long-range statewide transportation plan, the State shall provide:

(1) To nonmetropolitan local elected officials, or, if applicable, through RTPOs described in § 450.210(d), an opportunity to participate in accordance with § 450.216(h); and

(2) To individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, private providers of transportation (including intercity bus operators, employer-based cash-out program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed long-range statewide transportation plan. In carrying out these requirements, the State shall, use the public involvement process described under § 450.210(a).

(m) The long-range statewide transportation plan may include a financial plan that demonstrates how the adopted long-range statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. In addition, for illustrative purposes, the financial plan may include additional projects

that the State would include in the adopted long-range statewide transportation plan if additional resources beyond those identified in the financial plan were to become available. The financial plan may include an assessment of the appropriateness of innovative finance techniques (for example, tolling, pricing, bonding, public-private partnerships, or other strategies) as revenue sources.

(n) The State is not required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (m) of this section.

(o) The State shall publish or otherwise make available the long-range statewide transportation plan for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.210(a).

(p) The State shall continually evaluate, revise, and periodically update the long-range statewide transportation plan, as appropriate, using the procedures in this section for development and establishment of the long-range statewide transportation plan.

(q) Copies of any new or amended long-range statewide transportation plan documents shall be provided to the FHWA and the FTA for informational purposes.

§ 450.218 Development and content of the statewide transportation improvement program (STIP).

(a) At least every four years, the State shall submit an updated STIP concurrently to the FHWA and the FTA for joint approval. The STIP shall cover a period of no less than 4 years and shall be updated at least every 4 years, or more frequently if the Governor of the State elects a more frequent update cycle. However, if the STIP covers more than 4 years, the FHWA and the FTA will consider the projects in the additional years as informational. In case of difficulties developing a portion of the STIP for a particular area (e.g., metropolitan planning area, nonattainment or maintenance area, or Indian Tribal lands), the State may develop a partial STIP covering the rest of the State.

(b) For each metropolitan area in the State, the State shall develop the STIP in cooperation with the MPO designated for the metropolitan area. The State shall include each metropolitan TIP without change in the STIP, directly or by reference, after approval of the TIP by the MPO and the Governor. A metropolitan TIP in a nonattainment or maintenance area is subject to a FHWA/FTA conformity finding before inclusion in the STIP. In areas outside a metropolitan planning area but within an air quality nonattainment or maintenance area containing any part of a metropolitan area, projects must be included in the regional emissions analysis that supported the conformity determination of the associated metropolitan TIP before they are added to the STIP.

(c) For each nonmetropolitan area in the State, the State shall develop the STIP in cooperation with affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through RTPOs described in § 450.210(d) using the State's consultation process(es) established under § 450.210(b).

(d) For each area of the State under the jurisdiction of an Indian Tribal government, the STIP shall be developed in consultation with the Tribal government and the Secretary of the Interior.

(e) Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program TIPs shall be included without change in the STIP, directly or by reference, once approved by the FHWA pursuant to 23 U.S.C. 201 (c)(4).

(f) The Governor shall provide all interested parties with a reasonable opportunity to comment on the proposed STIP as required by § 450.210(a).

(g) The STIP shall include capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the State proposed for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53 (including transportation alternatives and associated transit improvements; Tribal Transportation Program projects, Federal Lands Transportation Program projects, and Federal Lands Access Program projects; HSIP projects; trails projects; and accessible pedestrian walkways and bicycle facilities), except the following that may be included:

- (1) Safety projects funded under 23 U.S.C. 402 and 49 U.S.C. 31102;
- (2) Metropolitan planning projects funded under 23 U.S.C. 104(d) and 49 U.S.C. 5305(d);
- (3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);
- (4) State planning and research projects funded with Surface Transportation Program funds;
- (5) Emergency relief projects (except those involving substantial functional, locational, or capacity changes);
- (6) Research, development, demonstration, and deployment projects funded under 49 U.S.C. 5312, and technical assistance and standards development projects funded under 49 U.S.C. 5314;
- (7) Project management oversight projects funded under 49 U.S.C. 5327; and
- (8) State safety oversight programs funded under 49 U.S.C. 5329.

(h) The STIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded with 23 U.S.C. Chapters 1 and 2 or title 49 U.S.C. Chapter 53 funds (e.g., addition of an interchange to the Interstate System with State, local, and/or private funds, and congressionally designated projects not funded under title 23 U.S.C. or title 49 U.S.C. Chapter 53). For informational and conformity purposes, the STIP shall include (if appropriate and included in any TIPs) all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA, as well as all regionally significant projects to be funded with non-Federal funds.

(i) The STIP shall include for each project or phase (e.g., preliminary engineering, environment/NEPA, right-of-way, design, or construction) the following:

- (1) Sufficient descriptive material (i.e., type of work, termini, and length) to identify the project or phase;
- (2) Estimated total project cost or a project cost range, which may extend beyond the 4 years of the STIP;
- (3) The amount of Federal funds proposed to be obligated during each program year. For the first year, this includes the proposed category of Federal funds and source(s) of non-Federal

funds. For the second, third, and fourth years, this includes the likely category or possible categories of Federal funds and sources of non-Federal funds; and

(4) Identification of the agencies responsible for carrying out the project or phase.

(j) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, project classifications must be consistent with the “exempt project” classifications contained in the EPA’s transportation conformity regulations (40 CFR part 93, subpart A). In addition, projects proposed for funding under title 23 U.S.C. Chapter 2 that are not regionally significant may be grouped in one line item or identified individually in the STIP.

(k) Each project or project phase included in the STIP shall be consistent with the long-range statewide transportation plan developed under § 450.216 and, in metropolitan planning areas, consistent with an approved metropolitan transportation plan developed under § 450.322.

(l) The STIP may include a financial plan that demonstrates how the approved STIP can be implemented, indicates resources from public and private sources that are reasonably expected to be available to carry out the STIP, and recommends any additional financing strategies for needed projects and programs. In addition, for illustrative purposes, the financial plan may include additional projects that would be included in the adopted STIP if reasonable additional resources beyond those identified in the financial plan were to become available. The State is not required to select any project from the illustrative list for implementation, and projects on the illustrative list cannot be advanced to implementation without an action by the FHWA and the FTA on the STIP. Revenue and cost estimates for the STIP must use an inflation rate to reflect “year of expenditure dollars,” based on reasonable financial principles and information, developed cooperatively by the State, MPOs, and public transportation operators.

(m) In nonattainment and maintenance areas, projects included in the first 2 years of the STIP shall be limited to those for which funds are available or committed. Financial constraint of the STIP shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, while federally supported facilities are being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified in the financial plan consistent with paragraph (l) of this section. For purposes of transportation operations and maintenance, the STIP shall include financial information containing system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. 5302).

(n) Projects in any of the first 4 years of the STIP may be advanced in place of another project in the first 4 years of the STIP, subject to the project selection requirements of § 450. 222. In addition, subject to FHWA/FTA approval (see § 450. 220), the State may revise the STIP at any time under procedures agreed to by the State, MPO(s), and public transportation operators consistent with the STIP development procedures established in this section, as well as the

procedures for participation by interested parties (see § 450.210(a)). Changes that affect fiscal constraint must take place by amendment of the STIP.

(o) The STIP shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(p) In cases where the FHWA and the FTA find a STIP to be fiscally constrained, and a revenue source is subsequently removed or substantially reduced (i.e., by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. However, in such cases, the FHWA and the FTA will not act on an updated or amended STIP that does not reflect the changed revenue situation.

(q) A STIP shall include, to the maximum extent practicable, a discussion of the anticipated effect of the STIP toward achieving the performance targets identified by the State in the statewide transportation plan or other State performance-based plan(s), linking investment priorities to those performance targets.

§ 450.220 Self-certifications, Federal findings, and Federal approvals.

(a) At least every 4 years, the State shall submit an updated STIP concurrently to the FHWA and the FTA for joint approval. The State must also submit STIP amendments to the FHWA and the FTA for joint approval. At the time the entire proposed STIP or STIP amendments are submitted to the FHWA and the FTA for joint approval, the State shall certify that the transportation planning process is being carried out in accordance with all applicable requirements of:

- (1) 23 U.S.C. 134 and 135, 49 U.S.C. 5303 and 5304, and this part;
- (2) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-1) and 49 CFR part 21;
- (3) 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;
- (4) Section 1101(b) of the FAST Act (Pub. L. 114-357) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in DOT funded projects;
- (5) 23 CFR part 230, regarding implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;
- (6) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and 49 CFR parts 27, 37, and 38;
- (7) In States containing nonattainment and maintenance areas, sections 174 and 176(c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506(c) and (d)) and 40 CFR part 93;
- (8) The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
- (9) 23 U.S.C. 324, regarding the prohibition of discrimination based on gender; and
- (10) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.

(b) The FHWA and the FTA shall review the STIP or the amended STIP, and make a joint finding on the extent to which the STIP is based on a statewide transportation planning process that meets or substantially meets the requirements of 23 U.S.C. 134 and 135, 49 U.S.C. 5303 and 5304, and subparts A, B, and C of this part. Approval of the STIP by the FHWA and the FTA, in its entirety or in part, will be based upon the results of this joint finding.

(1) If the FHWA and the FTA determine that the STIP or amended STIP is based on a statewide transportation planning process that meets or substantially meets the requirements of 23 U.S.C. 135, 49 U.S.C. 5304, and this part, the FHWA and the FTA may jointly:

- (i) Approve the entire STIP;
- (ii) Approve the STIP subject to certain corrective actions by the State; or
- (iii) Under special circumstances, approve a partial STIP covering only a portion of the State.

(2) If the FHWA and the FTA jointly determine and document in the planning finding that a submitted STIP or amended STIP does not substantially meet the requirements of 23 U.S.C. 135, 49 U.S.C. 5304, and this part for any identified categories of projects, the FHWA and the FTA will not approve the STIP.

(c) The approval period for a new or amended STIP shall not exceed 4 years. If a State demonstrates, in writing, that extenuating circumstances will delay the submittal of a new or amended STIP past its update deadline, the FHWA and the FTA will consider and take appropriate action on a request to extend the approval beyond 4 years for all or part of the STIP for a period not to exceed 180 calendar days. In these cases, priority consideration will be given to projects and strategies involving the operation and management of the multimodal transportation system. Where the request involves projects in a metropolitan planning area(s), the affected MPO(s) must concur in the request. If the delay was due to the development and approval of a metropolitan TIP(s), the affected MPO(s) must provide supporting information, in writing, for the request.

(d) Where necessary in order to maintain or establish highway and transit operations, the FHWA and the FTA may approve operating assistance for specific projects or programs, even though the projects or programs may not be included in an approved STIP.

§ 450.222 Project selection from the STIP.

- (a) Except as provided in § 450.218(g) and § 450.220(d), only projects in a FHWA/FTA approved STIP are eligible for funds administered by the FHWA or the FTA.
- (b) In metropolitan planning areas, transportation projects proposed for funds administered by the FHWA or the FTA shall be selected from the approved STIP in accordance with project selection procedures provided in § 450.332.
- (c) In nonmetropolitan areas, with the exclusion of specific projects as described in this section, the State shall select projects from the approved STIP in cooperation with the affected nonmetropolitan local officials, or if applicable, through RTPOs described in § 450.210(e). The State shall select transportation projects undertaken on the NHS, under the Bridge and Interstate Maintenance programs in title 23 U.S.C. and under sections 5310 and 5311 of title

49 U.S.C. Chapter 53 from the approved STIP in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

(d) Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects shall be selected from the approved STIP in accordance with the procedures developed pursuant to 23 U.S.C. 201, 202, 203, and 204.

(e) The projects in the first year of an approved STIP shall constitute an “agreed to” list of projects for subsequent scheduling and implementation. No further action under paragraphs (b) through (d) of this section is required for the implementing agency to proceed with these projects. If Federal funds available are significantly less than the authorized amounts, or where there is significant shifting of projects among years, § 450.332(a) provides for a revised list of “agreed to” projects to be developed upon the request of the State, MPO, or public transportation operator(s). If an implementing agency wishes to proceed with a project in the second, third, or fourth year of the STIP, the procedures in paragraphs (b) through (d) of this section or expedited procedures that provide for the advancement of projects from the second, third, or fourth years of the STIP may be used, if agreed to by all parties involved in the selection process.

§ 450.224 Applicability of NEPA to statewide transportation plans and programs.

Any decision by the Secretary concerning a long-range statewide transportation plan or STIP developed through the processes provided for in 23 U.S.C. 135, 49 U.S.C. 5304, and this subpart shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

§ 450.226 Phase-in of new requirements.

(a) Prior to May 27, 2018, a State may adopt a long-range statewide transportation plan that has been developed using the SAFETEA-LU requirements or the provisions and requirements of this part. On or after May 27, 2018, a State may only adopt a long-range statewide transportation plan that it has developed according to the provisions and requirements of this part.

(b) Prior to May 27, 2018 (2 years after the publication date of this rule), FHWA/FTA may approve a STIP update or amendment that has been developed using the SAFETEA-LU requirements or the provisions and requirements of this part. On or after May 27, 2018, FHWA/FTA may only approve a STIP update or amendment that a State has developed according to the provisions and requirements of this part, regardless of when the State developed the STIP.

(c) On and after May 27, 2018 (2 years after the publication date of this rule), the FHWA and the FTA will take action on an updated or amended STIP developed under the provisions of this part, even if the State has not yet adopted a new long-range statewide transportation plan under the provisions of this part, as long as the underlying transportation planning process is consistent with the requirements in the MAP-21.

(d) On or after May 27, 2018, a State may make an administrative modification to a STIP that conforms to either the SAFETEA-LU requirements or to the provisions and requirements of this part.

(e) Two years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, FHWA/FTA will only approve an updated or amended STIP that is based on a statewide transportation planning process that meets the performance-based planning requirements in this part and in such a rule.

(f) Prior to 2 years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, a State may adopt a long-range statewide transportation plan that it has developed using the SAFETEA-LU requirements or the performance-based provisions and requirements of this part and in such a rule. Two years on or after the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, a State may only adopt a long-range statewide transportation plan that it has developed according to the performance-based provisions and requirements of this part and in such a rule.

METROPOLITAN PLANNING REQUIREMENTS IN FEDERAL LAW

From Title 23: Highways, Chapter 1- Federal-Aid Highways, Subchapter I-General Provisions. Provisions contains those laws in effect on June 6, 2019

§ 134. Metropolitan transportation planning

(a) Policy.—It is in the national interest to

- (1) encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and
- (2) encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 135(d).

(b) Definitions. In this section and section 135, the following definitions apply:

- (1) METROPOLITAN PLANNING AREA.—The term ‘metropolitan planning area’ means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).
- (2) METROPOLITAN PLANNING ORGANIZATION.—The term ‘metropolitan planning organization’ means the policy board of an organization created as a result of the designation process in subsection (d).
- (3) NONMETROPOLITAN AREA.—The term ‘nonmetropolitan area’ means a geographic area outside designated metropolitan planning areas.
- (4) NONMETROPOLITAN LOCAL OFFICIAL.—The term ‘nonmetropolitan local official’ means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.
- (5) REGIONAL TRANSPORTATION PLANNING ORGANIZATION. — The term "regional transportation planning organization" means a policy board of an organization established as the result of a designation under section 135(m).
- (6) TIP.—The term ‘TIP’ means a transportation improvement program developed by a metropolitan planning organization under subsection (j).
- (7) URBANIZED AREA.—The term ‘urbanized area’ means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

(c) General Requirements.

(1) DEVELOPMENT OF LONG-RANGE PLANS AND TIPS.—To accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs for metropolitan planning areas of the State.

(2) CONTENTS.— The plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities and commuter vanpool providers) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and TIPs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(d) Designation Of Metropolitan Planning Organizations.

(1) IN GENERAL.—To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 individuals—

(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as named by the Bureau of the Census); or

(B) in accordance with procedures established by applicable State or local law.

(2) STRUCTURE.— Not later than 2 years after the date of enactment of MAP-21, each metropolitan planning organization that serves an area designated as a transportation management area shall consist of-

(A) local elected officials;

(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and

(C) appropriate State officials.

(3) REPRESENTATION.—

(A) IN GENERAL. —Designation or selection of officials or representatives under paragraph (2) shall be determined by the metropolitan planning organization according to the bylaws or enabling statute of the organization.

(B) PUBLIC TRANSPORTATION REPRESENTATIVE. — Subject to the bylaws or enabling statute of the metropolitan planning organization, a representative of a provider of public transportation may also serve as a representative of a local municipality.

(C) POWERS OF CERTAIN ELECTED OFFICIALS. — An official described in paragraph (2)(B) shall have responsibilities, actions, duties, voting rights, and any other authority commensurate with other officials described in paragraph (2).

(4) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities to—

(A) develop the plans and TIPs for adoption by a metropolitan planning organization; and

(B) develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

(5) CONTINUING DESIGNATION.—A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (6).

(6) REDESIGNATION PROCEDURES.—

(A) IN GENERAL. —A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city (based on population) as named by the Bureau of the Census) as appropriate to carry out this section.

(B) RESTRUCTURING. — A metropolitan planning organization may be restructured to meet the requirements of paragraph (2) without undertaking a redesignation.

(7) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

(e) Metropolitan Planning Area Boundaries.

(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

(2) INCLUDED AREA.—Each metropolitan planning area—

(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.—The designation by the Bureau of the Census of new urbanized areas

within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—

(A) IN GENERAL. —Notwithstanding paragraph (2), except as provided in subparagraph (B), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the SAFETEA–LU, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained;

(B) EXCEPTION. — The boundaries described in subparagraph (A) may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (d)(6).

(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.— In the case of an urbanized area designated after the date of enactment of the SAFETEA–LU, as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

(A) shall be established in the manner described in subsection (d)(1);

(B) shall encompass the areas described in paragraph (2)(A);

(C) may encompass the areas described in paragraph (2)(B); and

(D) may address any nonattainment area identified under the Clean Air Act for ozone or carbon monoxide.

(f) Coordination In Multistate Areas.

(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

(2) INTERSTATE COMPACTS.—The consent of Congress is granted to any two or more States—

(A) to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(3) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(g) MPO Consultation In Plan And Tip Coordination.

(1) NONATTAINMENT AREAS.—If more than one metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and TIPs required by this section.

(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE MPOS.—If a transportation improvement, funded from the Highway Trust Fund or authorized under chapter 53 of title 49, is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans and TIPs regarding the transportation improvement.

(3) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—

(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities.

(B) REQUIREMENTS. — Under the metropolitan planning process, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by-

- (i) recipients of assistance under chapter 53 of title 49;
- (ii) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and
- (iii) recipients of assistance under section 204.

(h) Scope Of Planning Process.

(1) IN GENERAL.—The metropolitan planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will—

- (A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;
- (B) increase the safety of the transportation system for motorized and nonmotorized users;
- (C) increase the security of the transportation system for motorized and nonmotorized users;
- (D) increase the accessibility and mobility of people and for freight;
- (E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;
- (F) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;
- (G) promote efficient system management and operation;
- (H) emphasize the preservation of the existing transportation system;

(I) improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and

(J) enhance travel and tourism.

(2) PERFORMANCE-BASED APPROACH. —

(A) IN GENERAL.— The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in section 150(b) of this title and the general purposes described in section 5301 of title 49.

(B) PERFORMANCE TARGETS. —

(i) SURFACE TRANSPORTATION PERFORMANCE TARGETS. —

(I) IN GENERAL.— Each metropolitan planning organization shall establish performance targets that address the performance measures described in section 150(c), where applicable, to use in tracking progress towards attainment of critical outcomes for the region of the metropolitan planning organization.

(II) COORDINATION. — Selection of performance targets by a metropolitan planning organization shall be coordinated with the relevant State to ensure consistency, to the maximum extent practicable.

(ii) PUBLIC TRANSPORTATION PERFORMANCE TARGETS. — Selection of performance targets by a metropolitan planning organization shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with sections 5326(c) and 5329(d) of title 49.

(C) TIMING. — Each metropolitan planning organization shall establish the performance targets under subparagraph (B) not later than 180 days after the date on which the relevant State or provider of public transportation establishes the performance targets.

(D) INTERGRATION OF OTHER PERFORMANCE-BASED PLANS. — A metropolitan planning organization shall integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other State transportation plans and transportation processes, as well as any plans developed under [chapter 53 of title 49](#) by providers of public transportation, required as part of a performance-based program.

(3) FAILURE TO CONSIDER FACTORS.— The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title or [chapter 53 of title 49](#), [subchapter II of chapter 5 of title 5](#), or [chapter 7 of title 5](#) in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

(i) Development Of Transportation Plan.

(1) REQUIREMENTS. —

(A) IN GENERAL.— Each metropolitan planning organization shall prepare and update a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection.

(B) FREQUENCY. —

(i) IN GENERAL. —The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

(I) Any area designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

(II) Any area that was nonattainment and subsequently designated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)) and that is subject to a maintenance plan under section 175A of that Act (42 U.S.C. 7505a).

(ii) OTHER AREAS. —In the case of any other area required to have a transportation plan in accordance with the requirements of this subsection, the metropolitan planning organization shall prepare and update such plan every 5 years unless the metropolitan planning organization elects to update more frequently.

(2) TRANSPORTATION PLAN.—A transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

(A) IDENTIFICATION OF TRANSPORTATION FACILITIES.—

(i) IN GENERAL. — An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions.

(ii) FACTORS. — In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as the factors relate to a 20-year forecast period.

(B) PERFORMANCE MEASURES AND TARGETS. —A description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with subsection (h)(2).

(C) SYSTEM PERFORMANCE REPORT. —A system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in subsection (h)(2), including-

(i) progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports; and

(ii) for metropolitan planning organizations that voluntarily elect to develop multiple scenarios, an analysis of how the preferred scenario has improved the conditions and performance of the transportation system and how changes in local policies and investments have impacted the costs necessary to achieve the identified performance targets.

(D) MITIGATION ACTIVITIES.—

(i) IN GENERAL.—A long-range transportation plan shall include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

(ii) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

(E) FINANCIAL PLAN.—

- (i) IN GENERAL. —A financial plan that-
 - (I) demonstrates how the adopted transportation plan can be implemented;
 - (II) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan; and
 - (III) recommends any additional financing strategies for needed projects and programs.
- (ii) INCLUSIONS.—The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.
- (iii) COOPERATIVE DEVELOPMENT.—For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

(F) OPERATIONAL AND MANAGEMENT STRATEGIES.— Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods.

(G) CAPITAL INVESTMENT AND OTHER STRATEGIES.— Capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure, provide for multimodal capacity increases based on regional priorities and needs, and reduce the vulnerability of the existing transportation infrastructure to natural disasters.

(H) TRANSPORTATION AND TRANSIT ENHANCEMENT ACTIVITIES.— Proposed transportation and transit enhancement activities including consideration of the role that intercity buses may play in reducing congestion, pollution, and energy consumption in a cost-effective manner and strategies and investments that preserve and enhance intercity bus systems, including systems that are privately owned and operated.

(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.— In metropolitan areas that are in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of a

transportation plan with the process for development of the transportation control measures of the State implementation plan required by that Act.

(4) OPTIONAL SCENARIO DEVELOPMENT. —

(A) IN GENERAL.—A metropolitan planning organization may, while fitting the needs and complexity of its community, voluntarily elect to develop multiple scenarios for consideration as part of the development of the metropolitan transportation plan, in accordance with subparagraph (B).

(B) RECOMMENDED COMPONENTS.—A metropolitan planning organization that chooses to develop multiple scenarios under subparagraph (A) shall be encouraged to consider-

- (i) potential regional investment strategies for the planning horizon;
- (ii) assumed distribution of population and employment;
- (iii) a scenario that, to the maximum extent practicable, maintains baseline conditions for the performance measures identified in subsection (h)(2);
- (iv) a scenario that improves the baseline conditions for as many of the performance measures identified in subsection (h)(2) as possible;
- (v) revenue constrained scenarios based on the total revenues expected to be available over the forecast period of the plan; and
- (vi) estimated costs and potential revenues available to support each scenario.

(C) METRICS.—In addition to the performance measures identified in section 150(c), metropolitan planning organizations may evaluate scenarios developed under this paragraph using locally-developed measures.

(5) CONSULTATION.—

(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

(B) ISSUES.—The consultation shall involve, as appropriate—

- (i) comparison of transportation plans with State conservation plans or maps, if available; or
- (ii) comparison of transportation plans to inventories of natural or historic resources, if available.

(6) PARTICIPATION BY INTERESTED PARTIES.—

(A) IN GENERAL.— -Each metropolitan planning organization shall provide citizens, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as a carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), representatives of users of public

transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan.

(B) CONTENTS OF PARTICIPATION PLAN.—A participation plan—

- (i) shall be developed in consultation with all interested parties; and
- (ii) shall provide that all interested parties have reasonable opportunities to comment on the contents of the transportation plan.

(C) METHODS.—In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

- (i) hold any public meetings at convenient and accessible locations and times;
- (ii) employ visualization techniques to describe plans; and
- (iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

(7) PUBLICATION.—A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the metropolitan planning organization and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

(8) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.— Notwithstanding paragraph (2)(E), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(E).

(j) Metropolitan TIP.

(1) DEVELOPMENT.—

(A) IN GENERAL.—In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the metropolitan planning area that-

- (i) contains projects consistent with the current metropolitan transportation plan;
- (ii) reflects the investment priorities established in the current metropolitan transportation plan; and
- (iii) once implemented, is designed to make progress toward achieving the performance targets established under subsection (h)(2).

(B) OPPORTUNITY FOR COMMENT.—In developing the TIP, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

(C) FUNDING ESTIMATES.—For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

(D) UPDATING AND APPROVAL.—The TIP shall be-

- (i) updated at least once every 4 years; and
- (ii) shall be approved by the metropolitan planning organization and the Governor.

(2) CONTENTS.—

(A) PRIORITY LIST.—The TIP shall include a priority list of proposed federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.

(B) FINANCIAL PLAN.—The TIP shall include a financial plan that—

- (i) demonstrates how the TIP can be implemented;
- (ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;
- (iii) identifies innovative financing techniques to finance projects, programs, and strategies; and
- (iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

(C) DESCRIPTIONS.—Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.

(D) PERFORMANCE TARGET ACHIEVEMENT.—The transportation improvement program shall include, to the maximum extent practicable, a description of the anticipated effect of the transportation improvement program toward achieving the performance targets established in the metropolitan transportation plan, linking investment priorities to those performance targets.

(3) INCLUDED PROJECTS.—

(A) PROJECTS UNDER THIS TITLE AND CHAPTER 53 OF TITLE 49.—A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under chapter 1 of this title and chapter 53 of title 49.

(B) PROJECTS UNDER CHAPTER 2.—

- (i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

- (ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in one line item or identified individually in the transportation improvement program.
- (C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be consistent with the long-range transportation plan developed under subsection (i) for the area.
- (D) REQUIREMENT OF ANTICIPATED FULL FUNDING.— The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.
- (4) NOTICE AND COMMENT.—Before approving a TIP, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).
- (5) SELECTION OF PROJECTS.—
- (A) IN GENERAL.—Except as otherwise provided in subsection (k)(4) and in addition to the TIP development required under paragraph (1), the selection of federally funded projects in metropolitan areas shall be carried out, from the approved TIP—
- (i) by—
- (I) in the case of projects under this title, the State; and
- (II) in the case of projects under chapter 53 of title 49, the designated recipients of public transportation funding; and
- (ii) in cooperation with the metropolitan planning organization.
- (B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the program.
- (6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—
- (A) NO REQUIRED SELECTION.—Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).
- (B) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved TIP.
- (7) PUBLICATION.—
- (A) PUBLICATION OF TIPS.—A TIP involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—

(i) **IN GENERAL.**—An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and metropolitan planning organization for public review.

(ii) **REQUIREMENT.**—The listing shall be consistent with the categories identified in the TIP.

(k) Transportation Management Areas.

(1) IDENTIFICATION AND DESIGNATION.—

(A) **REQUIRED IDENTIFICATION.**—The Secretary shall identify as a transportation management area each urbanized area (as defined by the Bureau of the Census) with a population of over 200,000 individuals.

(B) **DESIGNATIONS ON REQUEST.**—The Secretary shall designate any additional area as a transportation management area on the request of the Governor and the metropolitan planning organization designated for the area.

(2) **TRANSPORTATION PLANS.**—In a metropolitan planning area serving a transportation management area, transportation plans shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and public transportation operators.

(3) CONGESTION MANAGEMENT PROCESS.—

(A) **IN GENERAL.**—Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under this title and chapter 53 of title 49 through the use of travel demand reduction and operational management strategies.

(B) **SCHEDULE.**—The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner than 1 year after the identification of a transportation management area.

(C) **CONGESTION MANAGEMENT PLAN.**—A metropolitan planning organization serving a transportation management area may develop a plan that includes projects and strategies that will be considered in the TIP of such metropolitan planning organization. Such plan shall-

(i) develop regional goals to reduce vehicle miles traveled during peak commuting hours and improve transportation connections between areas with high job concentration and areas with high concentrations of low-income households;

(ii) identify existing public transportation services, employer-based commuter programs, and other existing transportation services that support access to jobs in the region; and

(iii) identify proposed projects and programs to reduce congestion and increase job access opportunities.

(D) PARTICIPATION.—In developing the plan under subparagraph (C), a metropolitan planning organization shall consult with employers, private and nonprofit providers of public transportation, transportation management organizations, and organizations that provide job access reverse commute projects or job-related services to low-income individuals.

(4) SELECTION OF PROJECTS.—

(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under this title (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under chapter 53 of title 49 shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator.

(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects carried out within the boundaries of a metropolitan planning area serving a transportation management area on the National Highway System and projects carried out within such boundaries under the bridge program or the Interstate maintenance program under this title shall be selected for implementation from the approved TIP by the State in cooperation with the metropolitan planning organization designated for the area.

(5) CERTIFICATION.—

(A) IN GENERAL.—The Secretary shall—

(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with applicable provisions of Federal law; and

(ii) subject to subparagraph (B), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan planning process.

(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

(i) the transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

(ii) there is a TIP for the metropolitan planning area that has been approved by the metropolitan planning organization and the Governor.

(C) EFFECT OF FAILURE TO CERTIFY.—

(i) WITHHOLDING OF PROJECT FUNDS.—If a metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under this title and chapter 53 of title 49.

(ii) RESTORATION OF WITHHELD FUNDS.—The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan planning process is certified by the Secretary.

(D) REVIEW OF CERTIFICATION.—In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

(l) Report on Performance-Based Planning Processes.

(1) IN GENERAL.— The Secretary shall submit to Congress a report on the effectiveness of the performance-based planning processes of metropolitan planning organizations under this section, taking into consideration the requirements of this subsection.

(2) REPORT.—Not later than 5 years after the date of enactment of the MAP–21, the Secretary shall submit to Congress a report evaluating-

(A) the overall effectiveness of performance-based planning as a tool for guiding transportation investments;

(B) the effectiveness of the performance-based planning process of each metropolitan planning organization under this section;

(C) the extent to which metropolitan planning organizations have achieved, or are currently making substantial progress toward achieving, the performance targets specified under this section and whether metropolitan planning organizations are developing meaningful performance targets; and

(D) the technical capacity of metropolitan planning organizations that operate within a metropolitan planning area with a population of 200,000 or less and their ability to carry out the requirements of this section.

(3) PUBLICATION.—The report under paragraph (2) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

(m) Abbreviated Plans For Certain Areas.

(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and TIP for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans or TIPs for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act.

(n) Additional Requirements For Certain Nonattainment Areas.

(1) IN GENERAL.—Notwithstanding any other provisions of this title or chapter 53 of title 49, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

(2) APPLICABILITY.—This subsection applies to a nonattainment area within the metropolitan planning area boundaries determined under subsection (e).

(o) Limitation On Statutory Construction.

Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this title or chapter 53 of title 49.

(p) Funding.

Funds apportioned under paragraphs (5)(D) and (6) of section 104(b) of this title or section 5305(g) of title 49 shall be available to carry out this section.

(q) Continuation Of Current Review Practice.

Since plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in plans and TIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and TIPs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a plan or TIP described in this section shall not be considered to be a Federal action subject to review under such Act.

(r) Bi-State Metropolitan Planning Organization.

(1) DEFINITION OF BI-STATE MPO REGION.—In this subsection, the term "Bi-State MPO Region" has the meaning given the term "region" in subsection (a) of Article II of the Lake Tahoe Regional Planning Compact (Public Law 96–551; 94 Stat. 3234).

(2) TREATMENT.—For the purpose of this title, the Bi-State MPO Region shall be treated as-

- (A) a metropolitan planning organization;
- (B) a transportation management area under subsection (k); and
- (C) an urbanized area, which is comprised of a population of 145,000 in the State of California and a population of 65,000 in the State of Nevada.

(3) SUBALLOCATED FUNDING.—

(A) PLANNING.—In determining the amounts under subparagraph (A) of section 133(d)(1) that shall be obligated for a fiscal year in the States of California and Nevada

under clauses (i), (ii), and (iii) of that subparagraph, the Secretary shall, for each of those States-

(i) calculate the population under each of those clauses;

(ii) decrease the amount under section 133(d)(1)(A)(iii) by the population specified in paragraph (2) of this subsection for the Bi-State MPO Region in that State; and

(iii) increase the amount under section 133(d)(1)(A)(i) by the population specified in paragraph (2) of this subsection for the Bi-State MPO Region in that State.

(B) STBGP Set Aside.—In determining the amounts under paragraph (2) of section 133(h) that shall be obligated for a fiscal year in the States of California and Nevada, the Secretary shall, for the purpose of that subsection, calculate the populations for each of those States in a manner consistent with subparagraph (A).

METROPOLITAN PLANNING REQUIREMENTS FEDERAL REGULATIONS

Title 23: Highways, Part 450 – Planning Assistance and Standards, from e-CFR current as of June 5, 2019.

Subpart C—Metropolitan Transportation Planning and Programming

§ 450.300 Purpose.

The purposes of this subpart are to implement the provisions of 23 U.S.C. 134, 23 U.S.C. 150, and 49 U.S.C. 5303, as amended, which:

- (a) Set forth the national policy that the MPO designated for each urbanized area is to carry out a continuing, cooperative, and comprehensive performance-based multimodal transportation planning process, including the development of a metropolitan transportation plan and a TIP, that encourages and promotes the safe and efficient development, management, and operation of surface transportation systems to serve the mobility needs of people and freight (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities and commuter vanpool providers) fosters economic growth and development, and takes into consideration resiliency needs, while minimizing transportation-related fuel consumption and air pollution; and
- (b) Encourages continued development and improvement of metropolitan transportation planning processes guided by the planning factors set forth in 23 U.S.C. 134(h) and 49 U.S.C. 5303(h).

§ 450.302 Applicability.

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

§ 450.304 Definitions.

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

§ 450.306 Scope of the metropolitan transportation planning process.

- (a) To accomplish the objectives in § 450.300 and § 450.306(b), metropolitan planning organizations designated under § 450.310, in cooperation with the State and public transportation operators, shall develop long-range transportation plans and TIPs through a performance-driven, outcome-based approach to planning for metropolitan areas of the State.
- (b) The metropolitan transportation planning process shall be continuous, cooperative, and comprehensive, and provide for consideration and implementation of projects, strategies, and services that will address the following factors:

- (1) Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;
- (2) Increase the safety of the transportation system for motorized and non-motorized users;
- (3) Increase the security of the transportation system for motorized and non-motorized users;
- (4) Increase accessibility and mobility of people and freight;
- (5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;
- (6) Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;
- (7) Promote efficient system management and operation;
- (8) Emphasize the preservation of the existing transportation system;
- (9) Improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and
- (10) Enhance travel and tourism.

(c) Consideration of the planning factors in paragraph (b) of this section shall be reflected, as appropriate, in the metropolitan transportation planning process. The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation system development, land use, employment, economic development, human and natural environment (including Section 4(f) properties as defined in 23 CFR 774.17), and housing and community development.

(d) Performance-based approach. (1) The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301(c).

(2) Establishment of performance targets by metropolitan planning organizations. (i) Each metropolitan planning organization shall establish performance targets that address the performance measures or standards established under 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c), and 49 U.S.C. 5329(d) to use in tracking progress toward attainment of critical outcomes for the region of the metropolitan planning organization.

(ii) The selection of targets that address performance measures described in 23 U.S.C. 150(c) shall be in accordance with the appropriate target setting framework established at 23 CFR part 490, and shall be coordinated with the relevant State(s) to ensure consistency, to the maximum extent practicable.

(iii) The selection of performance targets that address performance measures described in 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d) shall be coordinated, to the maximum extent practicable, with public transportation providers to ensure consistency with the performance targets that public transportation providers establish under 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d).

(3) Each MPO shall establish the performance targets under paragraph (d)(2) of this section not later than 180 days after the date on which the relevant State or provider of public transportation establishes the performance targets.

(4) An MPO shall integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other State transportation plans and transportation processes, as well as any plans developed under 49 U.S.C. chapter 53 by providers of public transportation, required as part of a performance-based program including:

(i) The State asset management plan for the NHS, as defined in 23 U.S.C. 119(e) and the Transit Asset Management Plan, as discussed in 49 U.S.C. 5326;

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

(iii) The Public Transportation Agency Safety Plan in 49 U.S.C. 5329(d);

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

(v) The Congestion Mitigation and Air Quality Improvement Program performance plan in 23 U.S.C. 149(l), as applicable;

(vi) Appropriate (metropolitan) portions of the State Freight Plan (MAP-21 section 1118);

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

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

(e) The failure to consider any factor specified in paragraph (b) or (d) of this section shall not be reviewable by any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5, U.S.C. Chapter 5, or title 5 U.S.C. Chapter 7 in any matter affecting a metropolitan transportation plan, TIP, a project or strategy, or the certification of a metropolitan transportation planning process.

(f) An MPO shall carry out the metropolitan transportation planning process in coordination with the statewide transportation planning process required by 23 U.S.C. 135 and 49 U.S.C. 5304.

(g) The metropolitan transportation planning process shall (to the maximum extent practicable) be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(h) Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310, should be coordinated and consistent with the metropolitan transportation planning process.

(i) In an urbanized area not designated as a TMA that is an air quality attainment area, the MPO(s) may propose and submit to the FHWA and the FTA for approval a procedure for developing an abbreviated metropolitan transportation plan and TIP. In developing proposed simplified planning procedures, consideration shall be given to whether the abbreviated metropolitan transportation plan and TIP will achieve the purposes of 23 U.S.C. 134, 49 U.S.C.

5303, and this part, taking into account the complexity of the transportation problems in the area. The MPO shall develop simplified procedures in cooperation with the State(s) and public transportation operator(s).

§ 450.308 Funding for transportation planning and unified planning work programs.

(a) Funds provided under 23 U.S.C. 104(d), 49 U.S.C. 5305(d), and 49 U.S.C. 5307, are available to MPOs to accomplish activities described in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(2) and 23 U.S.C. 505 may also be provided to MPOs for metropolitan transportation planning. At the option of the State and operators of public transportation, funds provided under 49 U.S.C. 5305(e) may also be provided to MPOs for activities that support metropolitan transportation planning. In addition, an MPO serving an urbanized area with a population over 200,000, as designated by the Bureau of the Census, may at its discretion use funds sub-allocated under 23 U.S.C. 133(d)(4) for metropolitan transportation planning activities.

(b) An MPO shall document metropolitan transportation planning activities performed with funds provided under title 23 U.S.C. and title 49 U.S.C. Chapter 53 in a unified planning work program (UPWP) or simplified statement of work in accordance with the provisions of this section and 23 CFR part 420.

(c) Except as provided in paragraph (d) of this section, each MPO, in cooperation with the State(s) and public transportation operator(s), shall develop a UPWP that includes a discussion of the planning priorities facing the MPA. The UPWP shall identify work proposed for the next 1- or 2-year period by major activity and task (including activities that address the planning factors in § 450.306(b)), in sufficient detail to indicate who (e.g., MPO, State, public transportation operator, local government, or consultant) will perform the work, the schedule for completing the work, the resulting products, the proposed funding by activity/task, and a summary of the total amounts and sources of Federal and matching funds.

(d) With the prior approval of the State and the FHWA and the FTA, an MPO in an area not designated as a TMA may prepare a simplified statement of work, in cooperation with the State(s) and the public transportation operator(s), in lieu of a UPWP. A simplified statement of work shall include a description of the major activities to be performed during the next 1- or 2-year period, who (e.g., State, MPO, public transportation operator, local government, or consultant) will perform the work, the resulting products, and a summary of the total amounts and sources of Federal and matching funds. If a simplified statement of work is used, it may be submitted as part of the State's planning work program, in accordance with 23 CFR part 420.

(e) Arrangements may be made with the FHWA and the FTA to combine the UPWP or simplified statement of work with the work program(s) for other Federal planning funds.

(f) Administrative requirements for UPWPs and simplified statements of work are contained in 23 CFR part 420 and FTA Circular C8100, as amended (Program Guidance for Metropolitan Planning and State Planning and Research Program Grants).

§ 450.310 Metropolitan planning organization designation and redesignation.

(a) To carry out the metropolitan transportation planning process under this subpart, an MPO shall be designated for each urbanized area with a population of more than 50,000 individuals (as determined by the Bureau of the Census).

(b) MPO designation shall be made by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city, based on population, as named by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

(c) The FHWA and the FTA shall identify as a TMA each urbanized area with a population of over 200,000 individuals, as defined by the Bureau of the Census. The FHWA and the FTA shall also designate any urbanized area as a TMA on the request of the Governor and the MPO designated for that area.

(d) TMA structure:

(1) Not later than October 1, 2014, each metropolitan planning organization that serves a designated TMA shall consist of:

(i) Local elected officials;

(ii) Officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and

(iii) Appropriate State officials.

(2) An MPO may be restructured to meet the requirements of this paragraph (d) without undertaking a redesignation.

(3) Representation. (i) Designation or selection of officials or representatives under paragraph (d)(1) of this section shall be determined by the MPO according to the bylaws or enabling statute of the organization.

(ii) Subject to the bylaws or enabling statute of the MPO, a representative of a provider of public transportation may also serve as a representative of a local municipality.

(iii) An official described in paragraph (d)(1)(ii) shall have responsibilities, actions, duties, voting rights, and any other authority commensurate with other officials described in paragraph (d)(1) of this section.

(4) Nothing in this section shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

(i) To develop the plans and TIPs for adoption by an MPO; and

(ii) To develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

(e) To the extent possible, only one MPO shall be designated for each urbanized area or group of contiguous urbanized areas. More than one MPO may be designated to serve an urbanized area only if the Governor(s) and the existing MPO, if applicable, determine that the size and complexity of the urbanized area make designation of more than one MPO appropriate. In those

cases where two or more MPOs serve the same urbanized area, the MPOs shall establish official, written agreements that clearly identify areas of coordination and the division of transportation planning responsibilities among the MPOs.

(f) Nothing in this subpart shall be deemed to prohibit an MPO from using the staff resources of other agencies, non-profit organizations, or contractors to carry out selected elements of the metropolitan transportation planning process.

(g) An MPO designation shall remain in effect until an official redesignation has been made in accordance with this section.

(h) An existing MPO may be redesignated only by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(i) For the purposes of redesignation, units of general purpose local government may be defined as elected officials from each unit of general purpose local government located within the metropolitan planning area served by the existing MPO.

(j) Redesignation of an MPO (in accordance with the provisions of this section) is required whenever the existing MPO proposes to make:

(1) A substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general purpose local government served by the MPO, and the State(s); or

(2) A substantial change in the decisionmaking authority or responsibility of the MPO, or in decisionmaking procedures established under MPO by-laws.

(k) Redesignation of an MPO serving a multistate metropolitan planning area requires agreement between the Governors of each State served by the existing MPO and units of general purpose local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(l) The following changes to an MPO do not require a redesignation (as long as they do not trigger a substantial change as described in paragraph (j) of this section):

(1) The identification of a new urbanized area (as determined by the Bureau of the Census) within an existing metropolitan planning area;

(2) Adding members to the MPO that represent new units of general purpose local government resulting from expansion of the metropolitan planning area;

(3) Adding members to satisfy the specific membership requirements described in paragraph (d) of this section for an MPO that serves a TMA; or

(4) Periodic rotation of members representing units of general-purpose local government, as established under MPO by-laws.

(m) Each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs shall, to the extent practicable, provide coordinated transportation planning for the entire MPA. The consent of Congress is granted to any two or more States to:

- (1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under 23 U.S.C. 134 and 49 U.S.C. 5303 as the activities pertain to interstate areas and localities within the States; and
- (2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

§ 450.312 Metropolitan planning area boundaries.

(a) The boundaries of a metropolitan planning area (MPA) shall be determined by agreement between the MPO and the Governor.

- (1) At a minimum, the MPA boundaries shall encompass the entire existing urbanized area (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan.
- (2) The MPA boundaries may be further expanded to encompass the entire metropolitan statistical area or combined statistical area, as defined by the Office of Management and Budget.

(b) An MPO that serves an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of August 10, 2005, shall retain the MPA boundary that existed on August 10, 2005. The MPA boundaries for such MPOs may only be adjusted by agreement of the Governor and the affected MPO in accordance with the redesignation procedures described in § 450.310(h). The MPA boundary for an MPO that serves an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) after August 10, 2005, may be established to coincide with the designated boundaries of the ozone and/or carbon monoxide nonattainment area, in accordance with the requirements in § 450.310(b).

(c) An MPA boundary may encompass more than one urbanized area.

(d) MPA boundaries may be established to coincide with the geography of regional economic development and growth forecasting areas.

(e) Identification of new urbanized areas within an existing metropolitan planning area by the Bureau of the Census shall not require redesignation of the existing MPO.

(f) Where the boundaries of the urbanized area or MPA extend across two or more States, the Governors with responsibility for a portion of the multistate area, the appropriate MPO(s), and the public transportation operator(s) are strongly encouraged to coordinate transportation planning for the entire multistate area.

(g) The MPA boundaries shall not overlap with each other.

(h) Where part of an urbanized area served by one MPO extends into an adjacent MPA, the MPOs shall, at a minimum, establish written agreements that clearly identify areas of coordination and the division of transportation planning responsibilities among and between the MPOs. Alternatively, the MPOs may adjust their existing boundaries so that the entire urbanized area lies within only one MPA. Boundary adjustments that change the composition of the MPO may require redesignation of one or more such MPOs.

(i) The MPO (in cooperation with the State and public transportation operator(s)) shall review the MPA boundaries after each Census to determine if existing MPA boundaries meet the minimum statutory requirements for new and updated urbanized area(s), and shall adjust them as necessary. As appropriate, additional adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes, improves access to modal systems, and promotes efficient overall transportation investment strategies.

(j) Following MPA boundary approval by the MPO and the Governor, the MPA boundary descriptions shall be provided for informational purposes to the FHWA and the FTA. The MPA boundary descriptions shall be submitted either as a geo-spatial database or described in sufficient detail to enable the boundaries to be accurately delineated on a map.

§ 450.314 Metropolitan planning agreements.

(a) The MPO, the State(s), and the providers of public transportation shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO, the State(s), and the providers of public transportation serving the MPA. To the extent possible, a single agreement between all responsible parties should be developed. The written agreement(s) shall include specific provisions for the development of financial plans that support the metropolitan transportation plan (see § 450.324) and the metropolitan TIP (see § 450.326), and development of the annual listing of obligated projects (see § 450.334).

(b) The MPO, the State(s), and the providers of public transportation should periodically review and update the agreement, as appropriate, to reflect effective changes.

(c) If the MPA does not include the entire nonattainment or maintenance area, there shall be a written agreement among the State department of transportation, State air quality agency, affected local agencies, and the MPO describing the process for cooperative planning and analysis of all projects outside the MPA within the nonattainment or maintenance area. The agreement must also indicate how the total transportation-related emissions for the nonattainment or maintenance area, including areas outside the MPA, will be treated for the purposes of determining conformity in accordance with the EPA's transportation conformity regulations (40 CFR part 93, subpart A). The agreement shall address policy mechanisms for resolving conflicts concerning transportation-related emissions that may arise between the MPA and the portion of the nonattainment or maintenance area outside the MPA.

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

(e) If more than one MPO has been designated to serve an urbanized area, there shall be a written agreement among the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of consistent metropolitan transportation plans and TIPs across the MPA boundaries, particularly in cases in which a proposed transportation investment extends across the boundaries of more than one MPA. If any part of the urbanized area is a nonattainment or maintenance area, the agreement also shall include State and local air quality agencies. The metropolitan transportation planning processes for affected MPOs should, to the maximum extent possible, reflect coordinated data collection, analysis, and planning assumptions across the MPAs. Alternatively, a single metropolitan transportation plan and/or TIP for the entire urbanized area may be developed jointly by the MPOs in cooperation with their respective planning partners. Coordination efforts and outcomes shall be documented in subsequent transmittals of the UPWP and other planning products, including the metropolitan transportation plan and TIP, to the State(s), the FHWA, and the FTA.

(f) Where the boundaries of the urbanized area or MPA extend across two or more States, the Governors with responsibility for a portion of the multistate area, the appropriate MPO(s), and the public transportation operator(s) shall coordinate transportation planning for the entire multistate area. States involved in such multistate transportation planning may:

- (1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and
- (2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(g) If part of an urbanized area that has been designated as a TMA overlaps into an adjacent MPA serving an urbanized area that is not designated as a TMA, the adjacent urbanized area shall not be treated as a TMA. However, a written agreement shall be established between the MPOs with MPA boundaries including a portion of the TMA, which clearly identifies the roles and responsibilities of each MPO in meeting specific TMA requirements (e.g., congestion management process, Surface Transportation Program funds suballocated to the urbanized area over 200,000 population, and project selection).

(h)(1) The MPO(s), State(s), and the providers of public transportation shall jointly agree upon and develop specific written provisions for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO (see § 450.306(d)), and the collection of data for the State asset management plan for the NHS for each of the following circumstances:

- (i) When one MPO serves an urbanized area,
- (ii) When more than one MPO serves an urbanized area, and
- (iii) When an urbanized area that has been designated as a TMA overlaps into an adjacent MPA serving an urbanized area that is not a TMA.

(2) These provisions shall be documented either:

(i) As part of the metropolitan planning agreements required under paragraphs (a), (e), and (g) of this section, or

(ii) Documented in some other means outside of the metropolitan planning agreements as determined cooperatively by the MPO(s), State(s), and providers of public transportation.

§ 450.316 Interested parties, participation, and consultation.

(a) The MPO shall develop and use a documented participation plan that defines a process for providing individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.

(1) The MPO shall develop the participation plan in consultation with all interested parties and shall, at a minimum, describe explicit procedures, strategies, and desired outcomes for:

(i) Providing adequate public notice of public participation activities and time for public review and comment at key decision points, including a reasonable opportunity to comment on the proposed metropolitan transportation plan and the TIP;

(ii) Providing timely notice and reasonable access to information about transportation issues and processes;

(iii) Employing visualization techniques to describe metropolitan transportation plans and TIPs;

(iv) Making public information (technical information and meeting notices) available in electronically accessible formats and means, such as the World Wide Web;

(v) Holding any public meetings at convenient and accessible locations and times;

(vi) Demonstrating explicit consideration and response to public input received during the development of the metropolitan transportation plan and the TIP;

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

(viii) Providing an additional opportunity for public comment, if the final metropolitan transportation plan or TIP differs significantly from the version that was made available for public comment by the MPO and raises new material issues that interested parties could not reasonably have foreseen from the public involvement efforts;

(ix) Coordinating with the statewide transportation planning public involvement and consultation processes under subpart B of this part; and

(x) Periodically reviewing the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process.

(2) When significant written and oral comments are received on the draft metropolitan transportation plan and TIP (including the financial plans) as a result of the participation process in this section or the interagency consultation process required under the EPA transportation conformity regulations (40 CFR part 93, subpart A), a summary, analysis, and report on the disposition of comments shall be made as part of the final metropolitan transportation plan and TIP.

(3) A minimum public comment period of 45 calendar days shall be provided before the initial or revised participation plan is adopted by the MPO. Copies of the approved participation plan shall be provided to the FHWA and the FTA for informational purposes and shall be posted on the World Wide Web, to the maximum extent practicable.

(b) In developing metropolitan transportation plans and TIPs, the MPO should consult with agencies and officials responsible for other planning activities within the MPA that are affected by transportation (including State and local planned growth, economic development, tourism, natural disaster risk reduction, environmental protection, airport operations, or freight movements) or coordinate its planning process (to the maximum extent practicable) with such planning activities. In addition, the MPO shall develop the metropolitan transportation plans and TIPs with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the area that are provided by:

(1) Recipients of assistance under title 49 U.S.C. Chapter 53;

(2) Governmental agencies and non-profit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the U.S. Department of Transportation to provide non-emergency transportation services; and

(3) Recipients of assistance under 23 U.S.C. 201-204.

(c) When the MPA includes Indian Tribal lands, the MPO shall appropriately involve the Indian Tribal government(s) in the development of the metropolitan transportation plan and the TIP.

(d) When the MPA includes Federal public lands, the MPO shall appropriately involve the Federal land management agencies in the development of the metropolitan transportation plan and the TIP.

(e) MPOs shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with other governments and agencies, as defined in paragraphs (b), (c), and (d) of this section, which may be included in the agreement(s) developed under § 450.314.

§ 450.318 Transportation planning studies and project development.

(a) Pursuant to section 1308 of the Transportation Equity Act for the 21st Century, TEA-21 (Pub. L. 105-178), an MPO(s), State(s), or public transportation operator(s) may undertake a multimodal, systems-level corridor or subarea planning study as part of the metropolitan transportation planning process. To the extent practicable, development of these transportation

planning studies shall involve consultation with, or joint efforts among, the MPO(s), State(s), and/or public transportation operator(s). The results or decisions of these transportation planning studies may be used as part of the overall project development process consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) and associated implementing regulations (23 CFR part 771 and 40 CFR parts 1500-1508). Specifically, these corridor or subarea studies may result in producing any of the following for a proposed transportation project:

- (1) Purpose and need or goals and objective statement(s);
- (2) General travel corridor and/or general mode(s) definition (e.g., highway, transit, or a highway/transit combination);
- (3) Preliminary screening of alternatives and elimination of unreasonable alternatives;
- (4) Basic description of the environmental setting; and/or
- (5) Preliminary identification of environmental impacts and environmental mitigation.

(b) Publicly available documents or other source material produced by, or in support of, the transportation planning process described in this subpart may be incorporated directly or by reference into subsequent NEPA documents, in accordance with 40 CFR 1502.21, if:

- (1) The NEPA lead agencies agree that such incorporation will aid in establishing or evaluating the purpose and need for the Federal action, reasonable alternatives, cumulative or other impacts on the human and natural environment, or mitigation of these impacts; and
- (2) The systems-level, corridor, or subarea planning study is conducted with:
 - (i) Involvement of interested State, local, Tribal, and Federal agencies;
 - (ii) Public review;
 - (iii) Reasonable opportunity to comment during the metropolitan transportation planning process and development of the corridor or subarea planning study;
 - (iv) Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process and can be appended to or referenced in the NEPA document; and
 - (v) The review of the FHWA and the FTA, as appropriate.

(c) By agreement of the NEPA lead agencies, the above integration may be accomplished through tiering (as described in 40 CFR 1502.20), incorporating the subarea or corridor planning study into the draft Environmental Impact Statement (EIS) or Environmental Assessment, or other means that the NEPA lead agencies deem appropriate.

(d) Additional information to further explain the linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part, including an explanation that it is non-binding guidance material. The guidance in Appendix A applies only to paragraphs (a)-(c) in this section.

(e) In addition to the process for incorporation directly or by reference outlined in paragraph (b) of this section, an additional authority for integrating planning products into the environmental review process exists in 23 U.S.C. 168. As provided in 23 U.S.C. 168(f):

(1) The statutory authority in 23 U.S.C. 168 shall not be construed to limit in any way the continued use of processes established under other parts of this section or under an authority established outside of this part, and the use of one of the processes in this section does not preclude the subsequent use of another process in this section or an authority outside of this part.

(2) The statute does not restrict the initiation of the environmental review process during planning.

§ 450.320 Development of programmatic mitigation plans.

(a) An MPO may utilize the optional framework in this section to develop programmatic mitigation plans as part of the metropolitan transportation planning process to address the potential environmental impacts of future transportation projects. The MPO, in consultation with the FHWA and/or the FTA and with the agency or agencies with jurisdiction and special expertise over the resources being addressed in the plan, will determine:

(1) Scope. (i) An MPO may develop a programmatic mitigation plan on a local, regional, ecosystem, watershed, statewide or similar scale.

(ii) The plan may encompass multiple environmental resources within a defined geographic area(s) or may focus on a specific type(s) of resource(s) such as aquatic resources, parkland, or wildlife habitat.

(iii) The plan may address or consider impacts from all projects in a defined geographic area(s) or may focus on a specific type(s) of project(s).

(2) Contents. The programmatic mitigation plan may include:

(i) An assessment of the existing condition of natural and human environmental resources within the area covered by the plan, including an assessment of historic and recent trends and/or any potential threats to those resources.

(ii) An identification of economic, social, and natural and human environmental resources within the geographic area that may be impacted and considered for mitigation. Examples of these resources include wetlands, streams, rivers, stormwater, parklands, cultural resources, historic resources, farmlands, archeological resources, threatened or endangered species, and critical habitat. This may include the identification of areas of high conservation concern or value and thus worthy of avoidance.

(iii) An inventory of existing or planned environmental resource banks for the impacted resource categories such as wetland, stream, stormwater, habitat, species, and an inventory of federally, State, or locally approved in-lieu-of-fee programs.

(iv) An assessment of potential opportunities to improve the overall quality of the identified environmental resources through strategic mitigation for impacts of transportation projects which may include the prioritization of parcels or areas for acquisition and/or potential resource banking sites.

(v) An adoption or development of standard measures or operating procedures for mitigating certain types of impacts; establishment of parameters for determining or

calculating appropriate mitigation for certain types of impacts, such as mitigation ratios, or criteria for determining appropriate mitigation sites.

(vi) Adaptive management procedures, such as protocols or procedures that involve monitoring actual impacts against predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring.

(vii) Acknowledgement of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.

(b) A MPO may adopt a programmatic mitigation plan developed pursuant to paragraph (a), or developed pursuant to an alternative process as provided for in paragraph (f) of this section through the following process:

(1) Consult with each agency with jurisdiction over the environmental resources considered in the programmatic mitigation plan;

(2) Make available a draft of the programmatic mitigation plan for review and comment by appropriate environmental resource agencies and the public;

(3) Consider comments received from such agencies and the public on the draft plan; and

(4) Address such comments in the final programmatic mitigation plan.

(c) A programmatic mitigation plan may be integrated with other plans, including watershed plans, ecosystem plans, species recovery plans, growth management plans, State Wildlife Action Plans, and land use plans.

(d) If a programmatic mitigation plan has been adopted pursuant to paragraph (b), any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project shall give substantial weight to the recommendations in the programmatic mitigation plan when carrying out its responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA) or other Federal environmental law.

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

(f) Nothing in this section prohibits the development, as part of or separate from the transportation planning process, of a programmatic mitigation plan independent of the framework described in paragraph (a) of this section. Further, nothing in this section prohibits the adoption of a programmatic mitigation plan in the metropolitan planning process that was developed under another authority, independent of the framework described in paragraph (a).

§ 450.322 Congestion management process in transportation management areas.

(a) The transportation planning process in a TMA shall address congestion management through a process that provides for safe and effective integrated management and operation of the multimodal transportation system, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53 through the use of travel demand reduction (including intercity bus operators, employer-based commuting programs such as a carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), job access projects, and operational management strategies.

(b) The development of a congestion management process should result in multimodal system performance measures and strategies that can be reflected in the metropolitan transportation plan and the TIP.

(c) The level of system performance deemed acceptable by State and local transportation officials may vary by type of transportation facility, geographic location (metropolitan area or subarea), and/or time of day. In addition, consideration should be given to strategies that manage demand, reduce single occupant vehicle (SOV) travel, improve transportation system management and operations, and improve efficient service integration within and across modes, including highway, transit, passenger and freight rail operations, and non-motorized transport. Where the addition of general purpose lanes is determined to be an appropriate congestion management strategy, explicit consideration is to be given to the incorporation of appropriate features into the SOV project to facilitate future demand management strategies and operational improvements that will maintain the functional integrity and safety of those lanes.

(d) The congestion management process shall be developed, established, and implemented as part of the metropolitan transportation planning process that includes coordination with transportation system management and operations activities. The congestion management process shall include:

(1) Methods to monitor and evaluate the performance of the multimodal transportation system, identify the underlying causes of recurring and non-recurring congestion, identify and evaluate alternative strategies, provide information supporting the implementation of actions, and evaluate the effectiveness of implemented actions;

(2) Definition of congestion management objectives and appropriate performance measures to assess the extent of congestion and support the evaluation of the effectiveness of congestion reduction and mobility enhancement strategies for the movement of people and goods. Since levels of acceptable system performance may vary among local communities, performance measures should be tailored to the specific needs of the area and established cooperatively by the State(s), affected MPO(s), and local officials in consultation with the operators of major modes of transportation in the coverage area, including providers of public transportation;

(3) Establishment of a coordinated program for data collection and system performance monitoring to define the extent and duration of congestion, to contribute in determining the causes of congestion, and evaluate the efficiency and effectiveness of implemented actions. To the extent possible, this data collection program should be coordinated with existing data sources (including archived operational/ITS data) and coordinated with operations managers in the metropolitan area;

(4) Identification and evaluation of the anticipated performance and expected benefits of appropriate congestion management strategies that will contribute to the more effective use and improved safety of existing and future transportation systems based on the established performance measures. The following categories of strategies, or combinations of strategies, are some examples of what should be appropriately considered for each area:

(i) Demand management measures, including growth management, and congestion pricing;

- (ii) Traffic operational improvements;
- (iii) Public transportation improvements;
- (iv) ITS technologies as related to the regional ITS architecture; and
- (v) Where necessary, additional system capacity.

(5) Identification of an implementation schedule, implementation responsibilities, and possible funding sources for each strategy (or combination of strategies) proposed for implementation; and

(6) Implementation of a process for periodic assessment of the effectiveness of implemented strategies, in terms of the area's established performance measures. The results of this evaluation shall be provided to decision makers and the public to provide guidance on selection of effective strategies for future implementation.

(e) In a TMA designated as nonattainment area for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be programmed for any project that will result in a significant increase in the carrying capacity for SOVs (i.e., a new general purpose highway on a new location or adding general purpose lanes, with the exception of safety improvements or the elimination of bottlenecks), unless the project is addressed through a congestion management process meeting the requirements of this section.

(f) In TMAs designated as nonattainment for ozone or carbon monoxide, the congestion management process shall provide an appropriate analysis of reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that will result in a significant increase in capacity for SOVs (as described in paragraph (d) of this section) is proposed to be advanced with Federal funds. If the analysis demonstrates that travel demand reduction and operational management strategies cannot fully satisfy the need for additional capacity in the corridor and additional SOV capacity is warranted, then the congestion management process shall identify all reasonable strategies to manage the SOV facility safely and effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself, shall also be identified through the congestion management process. All identified reasonable travel demand reduction and operational management strategies shall be incorporated into the SOV project or committed to by the State and MPO for implementation.

(g) State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process, if the FHWA and the FTA find that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of 23 U.S.C. 134 and 49 U.S.C. 5303.

(h) Congestion management plan. A MPO serving a TMA may develop a plan that includes projects and strategies that will be considered in the TIP of such MPO.

- (1) Such plan shall:

- (i) Develop regional goals to reduce vehicle miles traveled during peak commuting hours and improve transportation connections between areas with high job concentration and areas with high concentrations of low-income households;
- (ii) Identify existing public transportation services, employer based commuter programs, and other existing transportation services that support access to jobs in the region; and
- (iii) Identify proposed projects and programs to reduce congestion and increase job access opportunities.

(2) In developing the congestion management plan, an MPO shall consult with employers, private and nonprofit providers of public transportation, transportation management organizations, and organizations that provide job access reverse commute projects or job-related services to low-income individuals.

§ 450.324 Development and content of the metropolitan transportation plan.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing no less than a 20-year planning horizon as of the effective date. In formulating the transportation plan, the MPO shall consider factors described in § 450.306 as the factors relate to a minimum 20-year forecast period. In nonattainment and maintenance areas, the effective date of the transportation plan shall be the date of a conformity determination issued by the FHWA and the FTA. In attainment areas, the effective date of the transportation plan shall be its date of adoption by the MPO.

(b) The transportation plan shall include both long-range and short-range strategies/actions that provide for the development of an integrated multimodal transportation system (including accessible pedestrian walkways and bicycle transportation facilities) to facilitate the safe and efficient movement of people and goods in addressing current and future transportation demand.

(c) The MPO shall review and update the transportation plan at least every 4 years in air quality nonattainment and maintenance areas and at least every 5 years in attainment areas to confirm the transportation plan's validity and consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period to at least a 20-year planning horizon. In addition, the MPO may revise the transportation plan at any time using the procedures in this section without a requirement to extend the horizon year. The MPO shall approve the transportation plan (and any revisions) and submit it for information purposes to the Governor. Copies of any updated or revised transportation plans must be provided to the FHWA and the FTA.

(d) In metropolitan areas that are in nonattainment for ozone or carbon monoxide, the MPO shall coordinate the development of the metropolitan transportation plan with the process for developing transportation control measures (TCMs) in a State Implementation Plan (SIP).

(e) The MPO, the State(s), and the public transportation operator(s) shall validate data used in preparing other existing modal plans for providing input to the transportation plan. In updating the transportation plan, the MPO shall base the update on the latest available estimates and assumptions for population, land use, travel, employment, congestion, and economic activity.

The MPO shall approve transportation plan contents and supporting analyses produced by a transportation plan update.

(f) The metropolitan transportation plan shall, at a minimum, include:

- (1) The current and projected transportation demand of persons and goods in the metropolitan planning area over the period of the transportation plan;
- (2) Existing and proposed transportation facilities (including major roadways, public transportation facilities, intercity bus facilities, multimodal and intermodal facilities, nonmotorized transportation facilities (e.g., pedestrian walkways and bicycle facilities), and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions over the period of the transportation plan.
- (3) A description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with § 450.306(d).
- (4) A system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in § 450.306(d), including—
 - (i) Progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports, including baseline data; and
 - (ii) For metropolitan planning organizations that voluntarily elect to develop multiple scenarios, an analysis of how the preferred scenario has improved the conditions and performance of the transportation system and how changes in local policies and investments have impacted the costs necessary to achieve the identified performance targets.
- (5) Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;
- (6) Consideration of the results of the congestion management process in TMAs that meet the requirements of this subpart, including the identification of SOV projects that result from a congestion management process in TMAs that are nonattainment for ozone or carbon monoxide.
- (7) Assessment of capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure, provide for multimodal capacity increases based on regional priorities and needs, and reduce the vulnerability of the existing transportation infrastructure to natural disasters. The metropolitan transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the metropolitan area's transportation system.
- (8) Transportation and transit enhancement activities, including consideration of the role that intercity buses may play in reducing congestion, pollution, and energy consumption in a cost-

effective manner and strategies and investments that preserve and enhance intercity bus systems, including systems that are privately owned and operated, and including transportation alternatives, as defined in 23 U.S.C. 101(a), and associated transit improvements, as described in 49 U.S.C. 5302(a), as appropriate;

(9) Design concept and design scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of funding source, in nonattainment and maintenance areas for conformity determinations under the EPA's transportation conformity regulations (40 CFR part 93, subpart A). In all areas (regardless of air quality designation), all proposed improvements shall be described in sufficient detail to develop cost estimates;

(10) A discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan. The discussion may focus on policies, programs, or strategies, rather than at the project level. The MPO shall develop the discussion in consultation with applicable Federal, State, and Tribal land management, wildlife, and regulatory agencies. The MPO may establish reasonable timeframes for performing this consultation;

(11) A financial plan that demonstrates how the adopted transportation plan can be implemented.

(i) For purposes of transportation system operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain the Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).

(ii) For the purpose of developing the metropolitan transportation plan, the MPO, public transportation operator(s), and State shall cooperatively develop estimates of funds that will be available to support metropolitan transportation plan implementation, as required under § 450.314(a). All necessary financial resources from public and private sources that are reasonably expected to be made available to carry out the transportation plan shall be identified.

(iii) The financial plan shall include recommendations on any additional financing strategies to fund projects and programs included in the metropolitan transportation plan. In the case of new funding sources, strategies for ensuring their availability shall be identified. The financial plan may include an assessment of the appropriateness of innovative finance techniques (for example, tolling, pricing, bonding, public private partnerships, or other strategies) as revenue sources for projects in the plan.

(iv) In developing the financial plan, the MPO shall take into account all projects and strategies proposed for funding under title 23 U.S.C., title 49 U.S.C. Chapter 53 or with other Federal funds; State assistance; local sources; and private participation. Revenue and cost estimates that support the metropolitan transportation plan must use an inflation rate(s) to reflect "year of expenditure dollars," based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s).

(v) For the outer years of the metropolitan transportation plan (i.e., beyond the first 10 years), the financial plan may reflect aggregate cost ranges/cost bands, as long as the future funding source(s) is reasonably expected to be available to support the projected cost ranges/cost bands.

(vi) For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of TCMs in the applicable SIP.

(vii) For illustrative purposes, the financial plan may include additional projects that would be included in the adopted transportation plan if additional resources beyond those identified in the financial plan were to become available.

(viii) In cases that the FHWA and the FTA find a metropolitan transportation plan to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (i.e., by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint; however, in such cases, the FHWA and the FTA will not act on an updated or amended metropolitan transportation plan that does not reflect the changed revenue situation.

(12) Pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217(g).

(g) The MPO shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of the transportation plan. The consultation shall involve, as appropriate:

- (1) Comparison of transportation plans with State conservation plans or maps, if available; or
- (2) Comparison of transportation plans to inventories of natural or historic resources, if available.

(h) The metropolitan transportation plan should integrate the priorities, goals, countermeasures, strategies, or projects for the metropolitan planning area contained in the HSIP, including the SHSP required under 23 U.S.C. 148, the Public Transportation Agency Safety Plan required under 49 U.S.C. 5329(d), or an Interim Agency Safety Plan in accordance with 49 CFR part 659, as in effect until completion of the Public Transportation Agency Safety Plan, and may incorporate or reference applicable emergency relief and disaster preparedness plans and strategies and policies that support homeland security, as appropriate, to safeguard the personal security of all motorized and non-motorized users.

(i) An MPO may, while fitting the needs and complexity of its community, voluntarily elect to develop multiple scenarios for consideration as part of the development of the metropolitan transportation plan.

(1) An MPO that chooses to develop multiple scenarios under this paragraph (i) is encouraged to consider:

- (i) Potential regional investment strategies for the planning horizon;
- (ii) Assumed distribution of population and employment;

(iii) A scenario that, to the maximum extent practicable, maintains baseline conditions for the performance areas identified in § 450.306(d) and measures established under 23 CFR part 490;

(iv) A scenario that improves the baseline conditions for as many of the performance measures identified in § 450.306(d) as possible;

(v) Revenue constrained scenarios based on the total revenues expected to be available over the forecast period of the plan; and

(vi) Estimated costs and potential revenues available to support each scenario.

(2) In addition to the performance areas identified in 23 U.S.C. 150(c), 49 U.S.C. 5326(c), and 5329(d), and the measures established under 23 CFR part 490, MPOs may evaluate scenarios developed under this paragraph using locally developed measures.

(j) The MPO shall provide individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as carpool program, vanpool program, transit benefit program, parking cashout program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan using the participation plan developed under § 450.316(a).

(k) The MPO shall publish or otherwise make readily available the metropolitan transportation plan for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

(l) A State or MPO is not required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (f)(11) of this section.

(m) In nonattainment and maintenance areas for transportation-related pollutants, the MPO, as well as the FHWA and the FTA, must make a conformity determination on any updated or amended transportation plan in accordance with the Clean Air Act and the EPA transportation conformity regulations (40 CFR part 93, subpart A). A 12-month conformity lapse grace period will be implemented when an area misses an applicable deadline, in accordance with the Clean Air Act and the transportation conformity regulations (40 CFR part 93, subpart A). At the end of this 12-month grace period, the existing conformity determination will lapse. During a conformity lapse, MPOs can prepare an interim metropolitan transportation plan as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim metropolitan transportation plan consisting of eligible projects from, or consistent with, the most recent conforming transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93, subpart A. An interim metropolitan transportation plan containing eligible projects that are not from, or consistent with, the most recent conforming transportation plan and TIP must meet all the requirements of this section.

§ 450.326 Development and content of the transportation improvement program (TIP).

(a) The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall reflect the investment priorities established in the current metropolitan transportation plan and shall cover a period of no less than 4 years, be updated at least every 4 years, and be approved by the MPO and the Governor. However, if the TIP covers more than 4 years, the FHWA and the FTA will consider the projects in the additional years as informational. The MPO may update the TIP more frequently, but the cycle for updating the TIP must be compatible with the STIP development and approval process. The TIP expires when the FHWA/FTA approval of the STIP expires. Copies of any updated or revised TIPs must be provided to the FHWA and the FTA. In nonattainment and maintenance areas subject to transportation conformity requirements, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any updated or amended TIP, in accordance with the Clean Air Act requirements and the EPA's transportation conformity regulations (40 CFR part 93, subpart A).

(b) The MPO shall provide all interested parties with a reasonable opportunity to comment on the proposed TIP as required by § 450.316(a). In addition, in nonattainment area TMAs, the MPO shall provide at least one formal public meeting during the TIP development process, which should be addressed through the participation plan described in § 450.316(a). In addition, the MPO shall publish or otherwise make readily available the TIP for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.316(a).

(c) The TIP shall be designed such that once implemented, it makes progress toward achieving the performance targets established under § 450.306(d).

(d) The TIP shall include, to the maximum extent practicable, a description of the anticipated effect of the TIP toward achieving the performance targets identified in the metropolitan transportation plan, linking investment priorities to those performance targets.

(e) The TIP shall include capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the metropolitan planning area proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53 (including transportation alternatives; associated transit improvements; Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects; HSIP projects; trails projects; accessible pedestrian walkways; and bicycle facilities), except the following that may be included:

- (1) Safety projects funded under 23 U.S.C. 402 and 49 U.S.C. 31102;
- (2) Metropolitan planning projects funded under 23 U.S.C. 104(d), and 49 U.S.C. 5305(d);
- (3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);
- (4) At the discretion of the State and MPO, metropolitan planning projects funded with Surface Transportation Program funds;
- (5) Emergency relief projects (except those involving substantial functional, locational, or capacity changes);
- (6) National planning and research projects funded under 49 U.S.C. 5314; and

(7) Project management oversight projects funded under 49 U.S.C. 5327.

(f) The TIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded under title 23 U.S.C. Chapters 1 and 2 or title 49 U.S.C. Chapter 53 (e.g., addition of an interchange to the Interstate System with State, local, and/or private funds and congressionally designated projects not funded under 23 U.S.C. or 49 U.S.C. Chapter 53). For public information and conformity purposes, the TIP shall include all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA, as well as all regionally significant projects to be funded with non-Federal funds.

(g) The TIP shall include, for each project or phase (e.g., preliminary engineering, environment/NEPA, right-of-way, design, or construction), the following:

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

(2) Estimated total project cost, which may extend beyond the 4 years of the TIP;

(3) The amount of Federal funds proposed to be obligated during each program year for the project or phase (for the first year, this includes the proposed category of Federal funds and source(s) of non-Federal funds. For the second, third, and fourth years, this includes the likely category or possible categories of Federal funds and sources of non-Federal funds);

(4) Identification of the agencies responsible for carrying out the project or phase;

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

(6) In nonattainment and maintenance areas, included projects shall be specified in sufficient detail (design concept and scope) for air quality analysis in accordance with the EPA transportation conformity regulations (40 CFR part 93, subpart A); and

(7) In areas with Americans with Disabilities Act required paratransit and key station plans, identification of those projects that will implement these plans.

(h) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, project classifications must be consistent with the "exempt project" classifications contained in the EPA transportation conformity regulations (40 CFR part 93, subpart A). In addition, projects proposed for funding under title 23 U.S.C. Chapter 2 that are not regionally significant may be grouped in one line item or identified individually in the TIP.

(i) Each project or project phase included in the TIP shall be consistent with the approved metropolitan transportation plan.

(j) The TIP shall include a financial plan that demonstrates how the approved TIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the TIP, and recommends any additional financing strategies for needed projects and programs. In developing the TIP, the MPO, State(s), and public

transportation operator(s) shall cooperatively develop estimates of funds that are reasonably expected to be available to support TIP implementation in accordance with § 450.314(a). Only projects for which construction or operating funds can reasonably be expected to be available may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial plan, the MPO shall take into account all projects and strategies funded under title 23 U.S.C., title 49 U.S.C. Chapter 53, and other Federal funds; and regionally significant projects that are not federally funded. For purposes of transportation operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(6)) and public transportation (as defined by title 49 U.S.C. Chapter 53). In addition, for illustrative purposes, the financial plan may include additional projects that would be included in the TIP if reasonable additional resources beyond those identified in the financial plan were to become available. Revenue and cost estimates for the TIP must use an inflation rate(s) to reflect “year of expenditure dollars,” based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s).

(k) The TIP shall include a project, or a phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. In nonattainment and maintenance areas, projects included in the first 2 years of the TIP shall be limited to those for which funds are available or committed. For the TIP, financial constraint shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, while federally supported facilities are being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified in the financial plan consistent with paragraph (h) of this section. In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP in accordance with the EPA transportation conformity regulations (40 CFR part 93, subpart A) and shall provide for their timely implementation.

(l) In cases that the FHWA and the FTA find a TIP to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (i.e., by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. However, in such cases, the FHWA and the FTA will not act on an updated or amended TIP that does not reflect the changed revenue situation.

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

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

- (1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including multimodal trade-offs) for inclusion in the TIP and any changes in priorities from previous TIPs;
- (2) List major projects from the previous TIP that were implemented and identify any significant delays in the planned implementation of major projects; and
- (3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, in accordance with 40 CFR part 93.

(o) In metropolitan nonattainment and maintenance areas, a 12-month conformity lapse grace period will be implemented when an area misses an applicable deadline, according to the Clean Air Act and the transportation conformity regulations (40 CFR part 93, subpart A). At the end of this 12-month grace period, the existing conformity determination will lapse. During a conformity lapse, MPOs may prepare an interim TIP as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim TIP consisting of eligible projects from, or consistent with, the most recent conforming metropolitan transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93. An interim TIP containing eligible projects that are not from, or consistent with, the most recent conforming transportation plan and TIP must meet all the requirements of this section.

(p) Projects in any of the first 4 years of the TIP may be advanced in place of another project in the first 4 years of the TIP, subject to the project selection requirements of § 450.332. In addition, the MPO may revise the TIP at any time under procedures agreed to by the State, MPO(s), and public transportation operator(s) consistent with the TIP development procedures established in this section, as well as the procedures for the MPO participation plan (see § 450.316(a)) and FHWA/FTA actions on the TIP (see § 450.330).

§ 450.328 TIP revisions and relationship to the STIP.

(a) An MPO may revise the TIP at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation-related pollutants, if a TIP amendment involves non-exempt projects (per 40 CFR part 93), or is replaced with an updated TIP, the MPO and the FHWA and the FTA must make a new conformity determination. In all areas, changes that affect fiscal constraint must take place by amendment of the TIP. Public participation procedures consistent with §450.316(a) shall be utilized in revising the TIP, except that these procedures are not required for administrative modifications.

(b) After approval by the MPO and the Governor, the TIP shall be included without change, directly or by reference, in the STIP required under 23 U.S.C. 135. In nonattainment and maintenance areas, a conformity finding on the TIP must be made by the FHWA and the FTA before it is included in the STIP. A copy of the approved TIP shall be provided to the FHWA and the FTA.

(c) The State shall notify the MPO and Federal land management agencies when a TIP including projects under the jurisdiction of these agencies has been included in the STIP.

§ 450.330 TIP action by the FHWA and the FTA.

(a) The FHWA and the FTA shall jointly find that each metropolitan TIP is consistent with the metropolitan transportation plan produced by the continuing and comprehensive transportation process carried on cooperatively by the MPO(s), the State(s), and the public transportation operator(s) in accordance with 23 U.S.C. 134 and 49 U.S.C. 5303. This finding shall be based on the self-certification statement submitted by the State and MPO under §450.336, a review of the metropolitan transportation plan by the FHWA and the FTA, and upon other reviews as deemed necessary by the FHWA and the FTA.

(b) In nonattainment and maintenance areas, the MPO, as well as the FHWA and the FTA, shall determine conformity of any updated or amended TIP, in accordance with 40 CFR part 93. After the FHWA and the FTA issue a conformity determination on the TIP, the TIP shall be incorporated, without change, into the STIP, directly or by reference.

(c) If the metropolitan transportation plan has not been updated in accordance with the cycles defined in §450.324(c), projects may only be advanced from a TIP that was approved and found to conform (in nonattainment and maintenance areas) prior to expiration of the metropolitan transportation plan and meets the TIP update requirements of §450.326(a). Until the MPO approves (in attainment areas) or the FHWA/FTA issues a conformity determination on (in nonattainment and maintenance areas) the updated metropolitan transportation plan, the TIP may not be amended.

(d) In the case of extenuating circumstances, the FHWA and the FTA will consider and take appropriate action on requests to extend the STIP approval period for all or part of the TIP in accordance with §450.220(b).

(e) If an illustrative project is included in the TIP, no Federal action may be taken on that project by the FHWA and the FTA until it is formally included in the financially constrained and conforming metropolitan transportation plan and TIP.

(f) Where necessary in order to maintain or establish operations, the FHWA and the FTA may approve highway and transit operating assistance for specific projects or programs, even though the projects or programs may not be included in an approved TIP.

§ 450.332 Project selection from the TIP.

(a) Once a TIP that meets the requirements of 23 U.S.C. 134(j), 49 U.S.C. 5303(j), and § 450.326 has been developed and approved, the first year of the TIP will constitute an “agreed to” list of projects for project selection purposes and no further project selection action is required for the implementing agency to proceed with projects, except where the appropriated Federal funds available to the metropolitan planning area are significantly less than the authorized amounts or where there are significant shifting of projects between years. In this case, the MPO, the State, and the public transportation operator(s) if requested by the MPO, the State, or the public transportation operator(s) shall jointly develop a revised “agreed to” list of projects. If the State or public transportation operator(s) wishes to proceed with a project in the second, third, or fourth year of the TIP, the specific project selection procedures stated in paragraphs (b) and (c) of this section must be used unless the MPO, the State, and the public

transportation operator(s) jointly develop expedited project selection procedures to provide for the advancement of projects from the second, third, or fourth years of the TIP.

(b) In metropolitan areas not designated as TMAs, the State and/or the public transportation operator(s), in cooperation with the MPO shall select projects to be implemented using title 23 U.S.C. funds (other than Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects) or funds under title 49 U.S.C. Chapter 53, from the approved metropolitan TIP. Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 201, 202, 203, and 204.

(c) In areas designated as TMAs, the MPO shall select all 23 U.S.C. and 49 U.S.C. Chapter 53 funded projects (excluding projects on the NHS and Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program) in consultation with the State and public transportation operator(s) from the approved TIP and in accordance with the priorities in the approved TIP. The State shall select projects on the NHS in cooperation with the MPO, from the approved TIP. Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 201, 202, 203, and 204.

(d) Except as provided in § 450.326(e) and § 450.330(f), projects not included in the federally approved STIP are not eligible for funding with funds under title 23 U.S.C. or 49 U.S.C. Chapter 53.

(e) In nonattainment and maintenance areas, priority shall be given to the timely implementation of TCMs contained in the applicable SIP in accordance with the EPA transportation conformity regulations (40 CFR part 93, subpart A).

§ 450.334 Annual listing of obligated projects.

(a) In metropolitan planning areas, on an annual basis, no later than 90 calendar days following the end of the program year, the State, public transportation operator(s), and the MPO shall cooperatively develop a listing of projects (including investments in pedestrian walkways and bicycle transportation facilities) for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year.

(b) The listing shall be prepared in accordance with §450.314(a) and shall include all federally funded projects authorized or revised to increase obligations in the preceding program year, and shall at a minimum include the TIP information under §450.326(g)(1) and (4) and identify, for each project, the amount of Federal funds requested in the TIP, the Federal funding that was obligated during the preceding year, and the Federal funding remaining and available for subsequent years.

(c) The listing shall be published or otherwise made available in accordance with the MPO's public participation criteria for the TIP.

§ 450.336 Self-certifications and Federal certifications.

(a) For all MPAs, concurrent with the submittal of the entire proposed TIP to the FHWA and the FTA as part of the STIP approval, the State and the MPO shall certify at least every 4 years that

the metropolitan transportation planning process is being carried out in accordance with all applicable requirements including:

- (1) 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart;
 - (2) In nonattainment and maintenance areas, sections 174 and 176(c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506(c) and (d)) and 40 CFR part 93;
 - (3) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-1) and 49 CFR part 21;
 - (4) 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;
 - (5) Section 1101(b) of the FAST Act (Pub. L. 114-357) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in DOT funded projects;
 - (6) 23 CFR part 230, regarding the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;
 - (7) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and 49 CFR parts 27, 37, and 38;
 - (8) The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
 - (9) Section 324 of title 23 U.S.C. regarding the prohibition of discrimination based on gender; and
 - (10) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.
- (b) In TMAs, the FHWA and the FTA jointly shall review and evaluate the transportation planning process for each TMA no less than once every 4 years to determine if the process meets the requirements of applicable provisions of Federal law and this subpart.
- (1) After review and evaluation of the TMA planning process, the FHWA and FTA shall take one of the following actions:
 - (i) If the process meets the requirements of this part and the MPO and the Governor have approved a TIP, jointly certify the transportation planning process;
 - (ii) If the process substantially meets the requirements of this part and the MPO and the Governor have approved a TIP, jointly certify the transportation planning process subject to certain specified corrective actions being taken; or
 - (iii) If the process does not meet the requirements of this part, jointly certify the planning process as the basis for approval of only those categories of programs or projects that the FHWA and the FTA jointly determine, subject to certain specified corrective actions being taken.
 - (2) If, upon the review and evaluation conducted under paragraph (b)(1)(iii) of this section, the FHWA and the FTA do not certify the transportation planning process in a TMA, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the MPO for projects funded under title 23 U.S.C. and title 49 U.S.C.

Chapter 53 in addition to corrective actions and funding restrictions. The withheld funds shall be restored to the MPA when the metropolitan transportation planning process is certified by the FHWA and FTA, unless the funds have lapsed.

(3) A certification of the TMA planning process will remain in effect for 4 years unless a new certification determination is made sooner by the FHWA and the FTA or a shorter term is specified in the certification report.

(4) In conducting a certification review, the FHWA and the FTA shall provide opportunities for public involvement within the metropolitan planning area under review. The FHWA and the FTA shall consider the public input received in arriving at a decision on a certification action.

(5) The FHWA and the FTA shall notify the MPO(s), the State(s), and public transportation operator(s) of the actions taken under paragraphs (b)(1) and (b)(2) of this section. The FHWA and the FTA will update the certification status of the TMA when evidence of satisfactory completion of a corrective action(s) is provided to the FHWA and the FTA.

§ 450.338 Applicability of NEPA to metropolitan transportation plans and programs.

Any decision by the Secretary concerning a metropolitan transportation plan or TIP developed through the processes provided for in 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart shall not be considered to be a Federal action subject to review under NEPA.

§ 450.340 Phase-in of new requirements.

(a) Prior to May 27, 2018, an MPO may adopt a metropolitan transportation plan that has been developed using the SAFETEA-LU requirements or the provisions and requirements of this part. On or after May 27, 2018, an MPO may not adopt a metropolitan transportation plan that has not been developed according to the provisions and requirements of this part.

(b) Prior to May 27, 2018 (2 years after the publication date of this rule), FHWA/FTA may determine the conformity of, or approve as part of a STIP, a TIP that has been developed using SAFETEA-LU requirements or the provisions and requirements of this part. On or after May 27, 2018 (2 years after the publication date of this rule), FHWA/FTA may only determine the conformity of, or approve as part of a STIP, a TIP that has been developed according to the provisions and requirements of this part, regardless of when the MPO developed the TIP.

(c) On and after May 27, 2018 (2 years after the issuance date of this rule), the FHWA and the FTA will take action (i.e., conformity determinations and STIP approvals) on an updated or amended TIP developed under the provisions of this part, even if the MPO has not yet adopted a new metropolitan transportation plan under the provisions of this part, as long as the underlying transportation planning process is consistent with the requirements in the MAP-21.

(d) On or after May 27, 2018 (2 years after the publication date of this rule), an MPO may make an administrative modification to a TIP that conforms to either the SAFETEA-LU or to the provisions and requirements of this part.

(e) Two years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, and 49 U.S.C. 5329 FHWA/FTA will only determine the conformity of, or approve as part of a STIP, a TIP that is based on a metropolitan transportation

planning process that meets the performance based planning requirements in this part and in such a rule.

(f) Prior to 2 years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, an MPO may adopt a metropolitan transportation plan that has been developed using the SAFETEA-LU requirements or the performance-based planning requirements of this part and in such a rule. Two years on or after the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, an MPO may only adopt a metropolitan transportation plan that has been developed according to the performance-based provisions and requirements of this part and in such a rule.

(g) A newly designated TMA shall implement the congestion management process described in § 450.322 within 18 months of designation.

GRANT REQUIREMENTS IN FEDERAL LAW

*From Title 2, Subtitle A, Chapter II —Office of Management and Budget Guidance from e-CFR
Data current as of June 5, 2019*

Subpart D—Post Federal Award Requirements

§ 200.328 Monitoring and reporting program performance.

(a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also §200.331 Requirements for pass-through entities.

(b) *Non-construction performance reports.* The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(2) The non-Federal entity must submit performance reports using OMB-approved government wide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and

analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(e) The Federal awarding agency may make site visits as warranted by program needs.

(f) The Federal awarding agency may waive any performance report required by this part if not needed.

TRAFFIC MONITORING SYSTEM REQUIREMENTS IN FEDERAL REGULATIONS

From Title 23: Highways, Part 500 – Management and Monitoring Systems e-from CFR Data current as of June 5, 2019

Subpart A—Management Systems

§ 500.101 Purpose.

The purpose of this part is to implement the requirements of 23 U.S.C. 303(a) which directs the Secretary of Transportation (the Secretary) to issue regulations for State development, establishment, and implementation of systems for managing highway pavement of Federal-aid highways (PMS), bridges on and off Federal-aid highways (BMS), highway safety (SMS), traffic congestion (CMS), public transportation facilities and equipment (PTMS), and intermodal transportation facilities and systems (IMS). This regulation also implements 23 U.S.C. 303(b) which directs the Secretary to issue guidelines and requirements for State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment (TMS).

§ 500.102 Policy.

(a) Federal, State, and local governments are under increasing pressure to balance their budgets and, at the same time, respond to public demands for quality services. Along with the need to invest in America's future, this leaves transportation agencies with the task of trying to manage current transportation systems as cost-effectively as possible to meet evolving, as well as backlog needs. The use of existing or new transportation management systems provides a framework for cost-effective decision making that emphasizes enhanced service at reduced public and private life-cycle cost. The primary outcome of transportation management systems is improved system performance and safety. The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) strongly encourage implementation of transportation management systems consistent with State, metropolitan planning organization, transit operator, or local government needs.

(b) Whether the systems are developed under the provisions of this part or under a State's own procedures, the following categories of FHWA administered funds may be used for development, establishment, and implementation of any of the management systems and the traffic monitoring system: National highway system; surface transportation program; State planning and research and metropolitan planning funds (including the optional use of minimum allocation funds authorized under 23 U.S.C. 157(c) and restoration funds authorized under §202(f) of the National Highway System Designation Act of 1995 (Pub.L. 104–59) for carrying out the provisions of 23 U.S.C. 307(c)(1) and 23 U.S.C. 134(a)); congestion mitigation and air quality improvement program funds for those management systems that can be shown to contribute to the attainment of a national ambient air quality standard; and apportioned bridge

funds for development and establishment of the bridge management system. The following categories of FTA administered funds may be used for development, establishment, and implementation of the CMS, PTMS, IMS, and TMS: Metropolitan planning; State planning and research, and formula transit funds.

§ 500.103 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

Federal-aid highways means those highways eligible for assistance under title 23, U.S.C., except those functionally classified as local or rural minor collectors.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decision making for a metropolitan planning area.

National Highway System (NHS) means the system of highways designated and approved in accordance with the provisions of 23 U.S.C. 103(b).

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

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).

§ 500.104 State option.

Except as specified in §500.105 (a) and (b), a State may elect at any time not to implement any one or more of the management systems required under 23 U.S.C. 303, in whole or in part.

§ 500.105 Requirements.

(a) The metropolitan transportation planning process (23 U.S.C. 134 and 49 U.S.C. 5303–5005) in TMAs shall include a CMS that meets the requirements of §500.109 of this regulation.

(b) States shall develop, establish, and implement a TMS that meets the requirements of subpart B of this regulation.

(c) Any of the management systems that the State chooses to implement under 23 U.S.C. 303 and this regulation shall be developed in cooperation with MPOs in metropolitan areas, affected agencies receiving assistance under the Federal Transit Act (49 U.S.C., Chapter 53), and other agencies (including private owners and operators) that have responsibility for operation of the affected transportation systems or facilities.

(d) The results (e.g., policies, programs, projects, etc.) of any of the management systems that a State chooses to develop under 23 U.S.C. 303 and this regulation shall be considered in the development of metropolitan and statewide transportation plans and improvement programs and in making project selection decisions under title 23, U.S.C., and under the Federal Transit Act. Plans and programs adopted after September 30, 1997, shall demonstrate compliance with this requirement.

§ 500.106 PMS. (*Pavement Management System*)

An effective PMS for Federal-aid highways is a systematic process that provides information for use in implementing cost-effective pavement reconstruction, rehabilitation, and preventative maintenance programs and that results in pavements designed to accommodate current and forecasted traffic in a safe, durable, and cost-effective manner. The PMS should be based on the “AASHTO Guidelines for Pavement Management Systems.”¹

¹ *AASHTO Guidelines for Pavement Management Systems*, July 1990, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 249, Washington, D.C. 20001. Available for inspection as prescribed in 49 CFR part 7, appendix D.

§ 500.107 BMS. (*Bridge Management System*)

An effective BMS for bridges on and off Federal-aid highways that should be based on the “AASHTO Guidelines for Bridge Management Systems”² and that supplies analyses and summaries of data, uses mathematical models to make forecasts and recommendations, and provides the means by which alternative policies and programs may be efficiently considered. An effective BMS should include, as a minimum, formal procedures for:

² *AASHTO Guidelines for Bridge Management Systems*, 1992, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 249, Washington, D.C. 20001. Available for inspection as prescribed in 49 CFR part 7, appendix D.

- (a) Collecting, processing, and updating data;
- (b) Predicting deterioration;
- (c) Identifying alternative actions;
- (d) Predicting costs;
- (e) Determining optimal policies;
- (f) Performing short- and long-term budget forecasting; and
- (g) Recommending programs and schedules for implementation within policy and budget constraints.

§ 500.108 SMS. (*Safety Management System*)

An SMS is a systematic process with the goal of reducing the number and severity of traffic crashes by ensuring that all opportunities to improve highway safety are identified, considered, implemented as appropriate, and evaluated in all phases of highway planning, design, construction, maintenance, and operation and by providing information for selecting and implementing effective highway safety strategies and projects. The development of the SMS

may be based on the guidance in “Safety Management Systems: Good Practices for Development and Implementation.”³ An effective SMS should include, at a minimum:

- (a) Communication, coordination, and cooperation among the organizations responsible for the roadway, human, and vehicle safety elements;
- (b) A focal point for coordination of the development, establishment, and implementation of the SMS among the agencies responsible for these major safety elements;
- (c) Establishment of short- and long-term highway safety goals to address identified safety problems;
- (d) Collection, analysis, and linkage of highway safety data;
- (e) Identification of the safety responsibilities of units and positions;
- (f) Public information and education activities; and
- (g) Identification of skills, resources, and training needs to implement highway safety programs.

§ 500.109 CMS. (Congestion Management System)

(a) For purposes of this part, congestion means the level at which transportation system performance is unacceptable due to excessive travel times and delays. Congestion management means the application of strategies to improve system performance and reliability by reducing the adverse impacts of congestion on the movement of people and goods in a region. A congestion management system or process is a systematic and regionally accepted approach for managing congestion that provides accurate, up-to-date information on transportation system operations and performance and assesses alternative strategies for congestion management that meet State and local needs.

(b) The development of a congestion management system or process should result in performance measures and strategies that can be integrated into transportation plans and programs. The level of system performance deemed acceptable by State and local officials may vary by type of transportation facility, geographic location (metropolitan area or subarea and/or non-metropolitan area), and/or time of day. In both metropolitan and non-metropolitan areas, consideration needs to be given to strategies that manage demand, reduce single occupant vehicle (SOV) travel, and improve transportation system management and operations. Where the addition of general purpose lanes is determined to be an appropriate congestion management strategy, explicit consideration is to be given to the incorporation of appropriate features into the SOV project to facilitate future demand management strategies and operational improvements that will maintain the functional integrity of those lanes.

³ *Safety Management Systems: Good Practices for Development and Implementation*, FHWA and NHTSA, May 1996. Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

RTPO REQUIREMENTS IN STATE LAWS (RCW)

From chapter 47.80 RCW, current as of August 1, 2019.

Regional transportation planning organizations

47.80.010 Findings — Declaration.

The legislature finds that while the transportation system in Washington is owned and operated by numerous public jurisdictions, it should function as one interconnected and coordinated system. Transportation planning, at all jurisdictional levels, should be coordinated with local comprehensive plans. Further, local jurisdictions and the state should cooperate to achieve both statewide and local transportation goals. To facilitate this coordination and cooperation among state and local jurisdictions, the legislature declares it to be in the state's interest to establish a coordinated planning program for regional transportation systems and facilities throughout the state.

[1990 1st ex.s. c 17 § 53.]

47.80.011 Legislative intent.

The legislature recognizes that recent legislative enactments have significantly added to the complexity of and to the potential for benefits from integrated transportation and comprehensive planning and that there is currently a unique opportunity for integration of local comprehensive plans and regional goals with state and local transportation programs. Further, approaches to transportation demand management initiatives and local and state transportation funding can be better coordinated to insure an efficient, effective transportation system that insures mobility and accessibility, and addresses community needs.

The legislature further finds that transportation and land use share a critical relationship that policymakers can better utilize to address regional strategies.

Prudent and cost-effective investment by the state and by local governments in highway facilities, local streets and arterials, rail facilities, marine facilities, nonmotorized transportation facilities and systems, public transit systems, transportation system management, transportation demand management, and the development of high capacity transit systems can help to effectively address mobility needs. Such investment can also enhance local and state objectives for effective comprehensive planning, economic development strategies, and clean air policies.

The legislature finds that addressing public initiatives regarding transportation and comprehensive planning necessitates an innovative approach. Improved integration between transportation and comprehensive planning among public institutions, particularly in the state's largest metropolitan areas is considered by the state to be imperative, and to have significant benefit to the citizens of Washington.

[1994 c 158 § 1.]

47.80.020 Regional transportation planning organizations authorized.

The legislature hereby authorizes creation of regional transportation planning organizations within the state. Each regional transportation planning organization shall be formed through the voluntary association of local governments within a county, or within geographically contiguous counties. Each organization shall:

- (1) Encompass at least one complete county;
- (2) (a) Have a population of at least one hundred thousand, (b) have a population of at least seventy-five thousand and contain a Washington state ferries terminal, (c) have a population of at least forty thousand and cover a geographic area of at least five thousand square miles, or (d) contain a minimum of three counties; and
- (3) Have as members all counties within the region, and at least sixty percent of the cities and towns within the region representing a minimum of seventy-five percent of the cities' and towns' population.

The state department of transportation must verify that each regional transportation planning organization conforms with the requirements of this section.

In urbanized areas, the regional transportation planning organization is the same as the metropolitan planning organization designated for federal transportation planning purposes.

[2017 c 68 § 1; 2016 c 27 § 1; 1990 1st ex.s. c 17 § 54.]

47.80.023 Duties.

Each regional transportation planning organization shall have the following duties:

- (1) Prepare and periodically update a transportation strategy for the region. The strategy shall address alternative transportation modes and transportation demand management measures in regional corridors and shall recommend preferred transportation policies to implement adopted growth strategies. The strategy shall serve as a guide in preparation of the regional transportation plan.
- (2) Prepare a regional transportation plan as set forth in RCW 47.80.030 that is consistent with countywide planning policies if such have been adopted pursuant to chapter 36.70A RCW, with county, city, and town comprehensive plans, and state transportation plans.
- (3) Certify by December 31, 1996, that the transportation elements of comprehensive plans adopted by counties, cities, and towns within the region reflect the guidelines and principles developed pursuant to RCW 47.80.026, are consistent with the adopted regional transportation plan, and, where appropriate, conform with the requirements of RCW 36.70A.070.
- (4) Where appropriate, certify that countywide planning policies adopted under RCW 36.70A.210 and the adopted regional transportation plan are consistent.
- (5) Develop, in cooperation with the department of transportation, operators of public transportation services and local governments within the region, a six-year regional transportation improvement program which proposes regionally significant transportation projects and programs and transportation demand management measures. The regional transportation improvement program shall be based on the programs, projects, and transportation demand management measures of regional significance as identified by transit

agencies, cities, and counties pursuant to RCW 35.58.2795, 35.77.010, and 36.81.121, respectively, and any recommended programs or projects identified by the agency council on coordinated transportation, as provided in chapter 47.06B RCW, that advance special needs coordinated transportation as defined in RCW 47.06B.012. The program shall include a priority list of projects and programs, project segments and programs, transportation demand management measures, and a specific financial plan that demonstrates how the transportation improvement program can be funded. The program shall be updated at least every two years for the ensuing six-year period.

(6) Include specific opportunities and projects to advance special needs coordinated transportation, as defined in RCW 47.06B.012, in the coordinated transit-human services transportation plan, after providing opportunity for public comment.

(7) Designate a lead planning agency to coordinate preparation of the regional transportation plan and carry out the other responsibilities of the organization. The lead planning agency may be a regional organization, a component county, city, or town agency, or the appropriate Washington state department of transportation district office.

(8) Review level of service methodologies used by cities and counties planning under chapter 36.70A RCW to promote a consistent regional evaluation of transportation facilities and corridors.

(9) Work with cities, counties, transit agencies, the department of transportation, and others to develop level of service standards or alternative transportation performance measures.

(10) Submit to the agency council on coordinated transportation, as provided in chapter 47.06B RCW, beginning on July 1, 2007, and every four years thereafter, an updated plan that includes the elements identified by the council. Each regional transportation planning organization must submit to the council every two years a prioritized regional human service and transportation project list.

[2009 c 515 § 15; 2007 c 421 § 5; 1998 c 171 § 8; 1994 c 158 § 2.]

47.80.026 Comprehensive plans, transportation guidelines, and principles.

Each regional transportation planning organization, with cooperation from component cities, towns, and counties, shall establish guidelines and principles by July 1, 1995, that provide specific direction for the development and evaluation of the transportation elements of comprehensive plans, where such plans exist, and to assure that state, regional, and local goals for the development of transportation systems are met. These guidelines and principles shall address at a minimum the relationship between transportation systems and the following factors: Concentration of economic activity, residential density, development corridors and urban design that, where appropriate, supports high capacity transit, freight transportation and port access, development patterns that promote pedestrian and nonmotorized transportation, circulation systems, access to regional systems, effective and efficient highway systems, the ability of transportation facilities and programs to retain existing and attract new jobs and private investment and to accommodate growth in demand, transportation demand management, joint and mixed use developments, present and future railroad right-of-way corridor utilization, and intermodal connections.

Examples shall be published by the organization to assist local governments in interpreting and explaining the requirements of this section.

[1994 c 158 § 3.]

47.80.030 Regional transportation plan — Contents, review, use.

(1) Each regional transportation planning organization shall develop in cooperation with the department of transportation, providers of public transportation and high capacity transportation, ports, and local governments within the region, adopt, and periodically update a regional transportation plan that:

(a) Is based on a least cost planning methodology that identifies the most cost-effective facilities, services, and programs;

(b) Identifies existing or planned transportation facilities, services, and programs, including but not limited to major roadways including state highways and regional arterials, transit and nonmotorized services and facilities, multimodal and intermodal facilities, marine ports and airports, railroads, and noncapital programs including transportation demand management that should function as an integrated regional transportation system, giving emphasis to those facilities, services, and programs that exhibit one or more of the following characteristics:

(i) Crosses member county lines;

(ii) Is or will be used by a significant number of people who live or work outside the county in which the facility, service, or project is located;

(iii) Significant impacts are expected to be felt in more than one county;

(iv) Potentially adverse impacts of the facility, service, program, or project can be better avoided or mitigated through adherence to regional policies;

(v) Transportation needs addressed by a project have been identified by the regional transportation planning process and the remedy is deemed to have regional significance; and

(vi) Provides for system continuity;

(c) Establishes level of service standards for state highways and state ferry routes, with the exception of transportation facilities of statewide significance as defined in RCW 47.06.140. These regionally established level of service standards for state highways and state ferries shall be developed jointly with the department of transportation, to encourage consistency across jurisdictions. In establishing level of service standards for state highways and state ferries, consideration shall be given for the necessary balance between providing for the free interjurisdictional movement of people and goods and the needs of local commuters using state facilities;

(d) Includes a financial plan demonstrating how the regional transportation plan can be implemented, indicating resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommending any innovative financing techniques to finance needed facilities, services, and programs;

(e) Assesses regional development patterns, capital investment and other measures necessary to:

(i) Ensure the preservation of the existing regional 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, railroad systems and corridors, and nonmotorized facilities; and

(ii) Make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods;

(f) Sets forth a proposed regional transportation approach, including capital investments, service improvements, programs, and transportation demand management measures to guide the development of the integrated, multimodal regional transportation system. For regional growth centers, the approach must address transportation concurrency strategies required under RCW 36.70A.070 and include a measurement of vehicle level of service for off-peak periods and total multimodal capacity for peak periods; and

(g) Where appropriate, sets forth the relationship of high capacity transportation providers and other public transit providers with regard to responsibility for, and the coordination between, services and facilities.

(2) The organization shall review the regional transportation plan biennially for currency and forward the adopted plan along with documentation of the biennial review to the state department of transportation.

(3) All transportation projects, programs, and transportation demand management measures within the region that have an impact upon regional facilities or services must be consistent with the plan and with the adopted regional growth and transportation strategies.

[2005 c 328 § 2; 1998 c 171 § 9; 1994 c 158 § 4; 1990 1st ex.s. c 17 § 55.]

47.80.040 Transportation policy boards.

Each regional transportation planning organization shall create a transportation policy board. Transportation policy boards shall provide policy advice to the regional transportation planning organization and shall allow representatives of major employers within the region, the department of transportation, transit districts, port districts, and member cities, towns, and counties within the region to participate in policy making. Any members of the house of representatives or the state senate whose districts are wholly or partly within the boundaries of the regional transportation planning organization are considered ex officio, nonvoting policy board members of the regional transportation planning organization. This does not preclude legislators from becoming full-time, voting board members.

[2003 c 351 § 1; 1990 1st ex.s. c 17 § 56.]

47.80.050 Allocation of regional transportation planning funds.

(1) Biennial appropriations to the department of transportation to carry out the regional transportation planning program shall set forth the amounts to be allocated as follows:

- (a) A base amount per county for each county within each regional transportation planning organization, to be distributed to the lead planning agency;
 - (b) An amount to be distributed to each lead planning agency on a per capita basis; and
 - (c) An amount to be administered by the department of transportation as a discretionary grant program for special regional planning projects, including grants to allow counties which have significant transportation interests in common with an adjoining region to also participate in that region's planning efforts.
- (2) In order for a regional transportation planning organization to be eligible to receive state funds that are appropriated for regional transportation planning organizations, a regional transportation planning organization must provide a reasonable opportunity for voting membership to federally recognized tribes that hold reservation or trust lands within the planning area of the regional transportation planning organization. Any federally recognized tribe that holds reservation or trust land within the planning area of a regional transportation planning organization and does not have voting membership in the regional transportation planning organization must be offered voting membership in the regional transportation planning organization every two years or when the composition of the board of the regional transportation planning organization is modified in an interlocal agreement.

47.80.060 Executive board membership.

In order to qualify for state planning funds available to regional transportation planning organizations, the regional transportation planning organizations containing any county with a population in excess of one million shall provide voting membership on its executive board to the state transportation commission, the state department of transportation, the four largest public port districts within the region as determined by gross operating revenues, any incorporated principal city of a metropolitan statistical area within the region, as designated by the United States census bureau, and any incorporated city within the region with a population in excess of eighty thousand. It shall further assure that at least fifty percent of the county and city local elected officials who serve on the executive board also serve on transit agency boards or on a regional transit authority.

[2007 c 511 § 1; 2005 c 334 § 1; 1992 c 101 § 31.]

47.80.070 Statewide consistency.

In order to ensure statewide consistency in the regional transportation planning process, the state department of transportation, in conformance with chapter 34.05 RCW, shall:

- (1) In cooperation with regional transportation planning organizations, establish minimum standards for development of a regional transportation plan;
- (2) Facilitate coordination between regional transportation planning organizations; and
- (3) Through the regional transportation planning process, and through state planning efforts as required by RCW 47.01.071, identify and jointly plan improvements and strategies within those corridors important to moving people and goods on a regional or statewide basis.

[1994 c 158 § 5.]

47.80.080 Majority vote on state matters.

When voting on matters solely affecting Washington state, a regional transportation planning organization must obtain a majority vote of the Washington residents serving as members of the regional transportation planning organization before a matter may be adopted.

[2003 c 351 § 2.]

47.80.090 Regional transportation planning organizations — Electric vehicle infrastructure.

(1) A regional transportation planning organization containing any county with a population in excess of one million in collaboration with representatives from the department of ecology, the department of commerce, local governments, and the office of regulatory assistance must seek federal or private funding for the planning for, deployment of, or regulations concerning electric vehicle infrastructure. These efforts should include:

(a) Development of short-term and long-term plans outlining how state, regional, and local government construction may include electric vehicle infrastructure in publicly available off-street parking and government fleet vehicle parking, including what ratios of charge spots to parking may be appropriate based on location or type of facility or building;

(b) Consultations with the state building code council and the department of labor and industries to coordinate the plans with state standards for new residential, commercial, and industrial buildings to ensure that the appropriate electric circuitry is installed to support electric vehicle infrastructure;

(c) Consultation with the workforce development council and the student achievement council to ensure the development of appropriate educational and training opportunities for citizens of the state in support of the transition of some portion of vehicular transportation from combustion to electric vehicles;

(d) Development of an implementation plan for counties with a population greater than five hundred thousand with the goal of having public and private parking spaces, in the aggregate, be ten percent electric vehicle ready by December 31, 2018; and

(e) Development of model ordinances and guidance for local governments for siting and installing electric vehicle infrastructure, in particular battery charging stations, and appropriate handling, recycling, and storage of electric vehicle batteries and equipment.

(2) These plans and any recommendations developed as a result of the consultations required by this section must be submitted to the legislature by December 31, 2010, or as soon as reasonably practicable after the securing of any federal or private funding. Priority will be given to the activities in subsection (1)(e) of this section and any ordinances or guidance that is developed will be submitted to the legislature, the department of commerce, and affected local governments prior to December 31, 2010, if completed.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles,

which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

[2009 c 459 § 2.]

47.80.902 Captions not part of law — 1994 c 158.

Captions used in this act do not constitute any part of the law.

[1994 c 158 § 11.]

47.80.903 Severability — 1994 c 158.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1994 c 158 § 12.]

47.80.904 Effective date — 1994 c 158.

This act shall take effect July 1, 1994.

RTPO REQUIREMENTS IN STATE RULES (WAC)

From Chapter 468-86 WAC, last updated 4/15/97.

RTPO planning standards and guidelines

468-86-010. Authority.

The regional transportation planning program was authorized by the 1990 legislature as part of the state's Growth Management Act. The program is contained in chapter 47.80 RCW, with funding appropriations made as part of the Department of Transportation Appropriations Act.

468-86-020. Purpose/intent.

(1) The regional transportation planning program creates a formal mechanism for local governments and the state to coordinate transportation planning for regional transportation facilities. The act authorized the creation of regional transportation planning organizations (RTPO) by local governments to coordinate transportation planning among jurisdictions and develop a regional transportation plan. The regional transportation planning program is available to all counties and cities statewide (RCW 47.80.020).

(2) The legislature has authorized a grant program to fund this work. The department has the authority to administer this grant program, and to develop in cooperation with the RTPOs:

- (a) Minimum planning standards for the development of a regional transportation plan;
- (b) The RTPO regional transportation improvement program;
- (c) Planning guidelines and principles;
- (d) Certification standards for the transportation portion of local comprehensive plans and county-wide planning policies;
- (e) The adoption of LOS standards on state transportation facilities; and
- (f) RTPO regional transportation strategies.

(3) The purpose of the minimum planning standards is to guide RTPOs in the use of the regional transportation planning grants, and in the development of planning products under the program. Work proposed by each regional transportation planning organization shall be included in a work program that demonstrates adherence to the planning standards within this chapter. The intent of the department is to provide guidance that is sufficient to ensure a minimum level of consistency across the state, while providing flexibility for regions to meet specific mobility needs.

(4) The department will achieve this purpose through the establishment of these rules and through the cooperative development and maintenance of a set of RTPO planning standards and guidelines. Copies of these standards and guidelines will be available through the department's transportation planning office.

468-86-030. Definitions.

"Consistency" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

"Department" means the department of transportation (WSDOT).

"Least cost planning" means a process of comparing direct and indirect costs of demand and supply options to meet transportation goals and/or policies where the intent of the process is to identify the most cost-effective mix of options.

"Level of service" means an established minimum capacity for both transit and regional arterials that must be provided per unit of demand or other appropriate measure of need.

"Organization" means regional transportation planning organization (RTPO).

"Region" means the area that includes the local jurisdictions that comprise the regional transportation planning organization.

"Urbanized area" means those areas designated as such by the U.S. Bureau of the Census.

"Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

468-86-040. Determining the region.

Local governments should decide the geographic extent and composition of their region. The region should reflect common transportation concerns and a willingness among the local governments to work together in a cooperative planning process.

468-86-050. Establishing the organization.

(1) A regional transportation planning organization is a voluntary association of local governments within the region. It shall be a formal organization formed through an interlocal agreement that establishes the organization, defines duties and relationships, and includes a transportation policy board. The establishment of a technical advisory committee (TAC) is recommended. The RTPO must determine its own structure to ensure equitable and acceptable representation by member governments. Regions are encouraged to seek native American tribal involvement.

468-86-060. Relationship to MPOs.

The federal government requires a regional transportation planning process in urbanized areas with over fifty thousand population. This process is carried out by metropolitan planning organizations (MPOs) that have been jointly designated by local governments and the state. The intent is that the regional transportation planning program be integrated with the metropolitan planning organization program in these urbanized areas. RCW 47.80.020 requires that RTPOs shall be the same organization as that designated as the MPO. The regional transportation planning program provides the opportunity for transportation planning in rural areas within the RTPO. The department intends to jointly administer these two programs.

468-86-070 Designation procedures.

(1) Local governments desiring participation in the regional transportation planning program must submit an RTPO designation package to WSDOT. This information is necessary for

WSDOT to verify that the RTPO meets the requirements of RCW 47.80.020. This package shall contain the following items:

- (a) A description of the region;
- (b) A formal designation of the RTPO, in the form of a resolution or other legal declaration;
- (c) A list of all RTPO member local governments;
- (d) A copy of the interlocal agreement that will govern RTPO operations;
- (e) A formal designation by the RTPO of the lead planning agency; and
- (f) A description of the RTPO's transportation policy board.

(2) WSDOT has the responsibility of verifying that RTPOs designated by local governments meet the state requirements. The most recent annual OFM population data will be used to verify population figures. WSDOT will review the RTPO designation package, make a finding of verification, and concur with or deny the local designation. Once verified, the RTPO may proceed in carrying out its duties and may receive regional transportation planning formula grants. If significant changes are made in the structure of the RTPO, WSDOT may request that another designation package be submitted for verification review.

468-86-080. Least-cost planning methodology.

The methodology shall consider direct and indirect costs and benefits for all reasonable options to meet planning goals and objectives. The methodology shall treat demand and supply resources on a consistent and integrated basis. The regional transportation planning organizations shall consult the guidelines set forth by the department for implementing a least-cost planning methodology. Regional transportation plans should incrementally incorporate least-cost planning methodologies as these concepts are developed. The regional transportation plan adopted after July 1, 2000, shall be based on a least-cost planning methodology appropriate to the region.

468-86-090. Regional transportation goals and objectives.

The regional transportation planning program is meant to foster an ongoing transportation planning and decision-making process that actively plans for the improvement of regional transportation systems and coordinates this process among jurisdictions. The goals and objectives of the regional transportation plan should incorporate existing transportation related county-wide planning policies or multicounty transportation related planning policies where adopted and adhere to the following principles:

- (1) Build upon applicable portions of the existing local comprehensive plan and process and promote the establishment of a regional perspective into the local comprehensive plan;
- (2) Encourage partnerships between federal, state, local and tribal governments, special districts, the private sector, the general public, and other interest groups during conception, technical analysis, policy development, and decision processes in developing, updating, and maintaining the regional transportation plan;
- (3) Ensure early and continuous public involvement from conceptual planning through decision making;

- (4) Shall be ongoing, and incorporate short and long range multimodal planning activities to address major capacity expansion and operational improvements to the regional transportation system;
- (5) Use regionally coordinated, valid and consistent technical methods and data should be used in identifying and analyzing needs;
- (6) Consider environmental impacts related to the development of regional transportation policies and facilities and;
- (7) Address the policies regarding the coordination of transportation planning among regional jurisdictions, including the relationship between regional transportation planning, local comprehensive planning and state transportation planning.

Within these principles, regions shall develop their own ongoing planning process for the development and refinement of the regional transportation plan, and provide a forum for the discussion of regional transportation planning issues.

468-86-100. Regional transportation strategy.

Each regional transportation planning organization shall develop a regional transportation strategy. The strategy should identify alternative transportation modes within the region and recommend policies to:

- (1) Address each transportation mode;
- (2) Address intermodal connections between modes; and
- (3) Address transportation demand management where required.

The regional transportation strategy is intended to guide development of the regional transportation plan and any periodic updates.

Adopted multicounty and county-wide planning policies and policies from local comprehensive plans that are regional in scope and regionally consistent should provide the basis for the regional transportation strategy. The regional transportation strategy should be periodically reviewed and updated as necessary to reflect changing priorities or to maintain regional consistency.

468-86-110. Needs, deficiencies, data requirements, and coordinated regional transportation and land use assumptions.

- (1) The following components shall be developed and incorporated in the RTP:
 - (a) An inventory of existing regional transportation facilities and services, including physical, operational, and usage characteristics of the regional transportation system;
 - (b) An evaluation of current facilities and services, comparing current usage, and operational characteristics to level of service standards, and identification of regional transportation needs;
 - (c) Forecasts of future travel demand, based on the regional transportation strategy and local comprehensive plans;

(d) Identification of future regional transportation system deficiencies, comparing future travel needs for movement of people and goods to available facilities and services; and

(e) Coordinated common regional assumptions (growth, population, employment, mode split, etc.,) among local jurisdictions for the development of all transportation models to ensure consistency within the RTPO, and:

(i) These common regional assumptions shall recognize the planning requirements of the state's Growth Management Act, and;

(ii) Be consistent with population forecasts prepared by the office of financial management.

(2) Performance monitoring. An integral part of the regional transportation plan is monitoring the performance of the regional transportation system over time. This information is necessary to determine the success of plan implementation and the effect of the desired improvements on the performance of the regional transportation system. Each RTPO shall describe their performance monitoring system in the regional transportation plan. The performance monitoring measures shall include traffic volumes and vehicle miles of travel (VMT) at a minimum and can include, but are not limited to, travel time, speed, safety standards and other measures. Performance monitoring measures should be coordinated and measurable on a consistent basis throughout the RTPO.

(3) Regional development patterns and investments. The regional transportation plan shall include a general assessment of regional development patterns and investments. This analysis is intended to provide direction and background information for updates of the regional transportation plan. The RTP updates shall be based upon a general retrospective discussion of current land use and transportation patterns and their relationship to the region's goals and objectives and elsewhere in the regional transportation plan. Current and projected development patterns and the expected magnitudes and time frame in which these developments are expected to occur should be reviewed and evaluated against the regional growth and transportation strategies. If the regional growth and transportation strategies have changed or current and projected development can be shown to be inconsistent, the plan should be updated to reflect these changes, or development policies should be updated to assure consistency and continuity of transportation and land use issues within the region. The region's interrelationships between growth and transportation should be discussed along with strategies such as access control, development of heritage corridors, and other measures designed to maintain current and proposed development patterns consistent with the regional transportation plan and the transportation and land use elements of local comprehensive plans.

468-86-120. Financial component.

The financial component shall include the following:

(1) An analysis of funding capacity including an inventory of revenue sources for regional transportation improvements, and probable funding levels available for regional transportation improvements from each source;

(2) Probable funding comparisons with identified current and future needs, including identified funding shortfalls; and

(3) If funding shortfalls are identified, an analysis of additional funding resources to make up the shortfall, or a reassessment of the regional transportation strategies, at a minimum, to ensure that transportation needs fall within probable funding levels.

468-86-130 Proposed future transportation network.

Based upon the identified needs and probable funding levels within the region, the proposed future transportation network defines specific facility or service improvements, transportation system management strategies, and demand management strategies proposed for implementation on the regional transportation system. The plan shall identify priority levels for these improvements to guide local jurisdictions and the state in implementation and development of the regional transportation improvement program.

468-86-140. High capacity transit and public transportation interrelationships.

Within those RTPOs where there is an existing or proposed high capacity transit system, the regional transportation plan shall discuss the relationship between the high capacity transit system and conventional public transit system. This could include policies to maintain coordinated arrivals and departures of interconnecting routes, coordination with other multimodal transportation centers, and other strategies targeted at improving these intermodal relationships over time.

468-86-150. Certification.

(1) By December 31, 1996, each RTPO shall certify, that the transportation element of all comprehensive plans for cities and counties planning under the Growth Management Act:

- (a) Reflect the transportation guidelines and principles established in the regional transportation plan;
- (b) Are consistent with the adopted regional transportation plan; and
- (c) Conform with the requirements of RCW 36.70A.070.

(2) Each RTPO shall also certify that county-wide planning policies adopted under RCW 36.70A.210 and the adopted regional transportation plan are consistent.

(3) Regions shall cooperatively define and establish measures and processes to determine regional consistency with the adopted regional transportation plan.

468-86-160. Regional transportation improvement program.

(1) Each RTPO shall compile a regional transportation improvement program (TIP) at least once every two years. The regional TIP shall:

- (a) Be developed on a cooperative basis by local government agencies, public transit agencies, and the department of transportation within each region;
- (b) Consist of a list of regionally significant transportation projects and programs including projects proposed for construction and transportation demand management measures proposed to be implemented during each year for the next six-year period;
- (c) Consist of regionally significant projects included in the local six-year transit development plans and six-year comprehensive transportation programs required by RCW 35.58.2795, 35.77.010, and 36.81.121 for transit agencies, cities, towns, and counties;

- (d) Include all proposed WSDOT projects in the region;
 - (e) Include only projects consistent with the regional transportation plan;
 - (f) Include a financial section outlining:
 - (i) Sources of funding reasonably expected to be received for each year of the ensuing three-year period; and
 - (ii) All assumptions and explanations supporting the expected levels of funding consistent with information included in the financial component of the regional transportation plan.
- (2) The six-year regional TIP developed by each RTPO is intended for use as a planning document and shall be available at the lead planning agency office of the RTPO.