



# Federal Register

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**Wednesday,  
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## **Part III**

### **Department of Transportation**

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**Federal Highway Administration  
23 CFR Parts 450 and 500**

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**Federal Transit Administration  
49 CFR Part 613**

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**Statewide Transportation Planning;  
Metropolitan Transportation Planning;  
Final Rule**

transportation planning process. This section continues to allow NEPA studies to be initiated, even during the Alternative Analysis/corridor study process.

Another concern was that this section permits the elimination of alternatives but does not provide for the selection of a preferred alternative. Additionally, a subsequent comment indicated that this section does not require the consideration of all reasonable alternatives. As is permitted by the Council on Environmental Quality's regulations, a project sponsor can select a preferred alternative at any time in the project development process but the overall environmental analysis cannot be slanted to support the preferred alternative nor does the identification of a preferred alternative eliminate the requirement to study all reasonable alternatives as part of the environmental analysis. The FHWA and the FTA believe that the rule allows for State DOTs, MPOs and public transportation operators who choose to use planning studies as part of the overall project development process to eliminate alternatives as well as select preferred alternatives, as appropriate. Therefore, no change was made to the rule.

These comments also pointed out that the FTA requires alternatives analysis for New Starts project, but no comparable requirement is specified for highway projects. Unlike FTA's formula funded programs, New Starts has a competition based eligibility requirement and, as such, the FTA requires a level of evaluation and analysis to screen the potential myriad requests they receive for limited funds. Traditionally, applicants select proposed highway projects as part of FHWA's formula funded programs. When Congress authorizes a competition-based highway program similar to New Starts, the FHWA has established criteria to evaluate and select projects that are eligible for those funds.

It was also noted that § 450.322 (Development and content of the metropolitan transportation plan) requires (in nonattainment and maintenance areas) design concept and scope be identified for projects. This comment raises several issues relative to actual application of the transportation planning process more than the regulation itself. For transportation demand modeling purposes and to meet the requirements of this part, the MPO and/or State DOT uses basic tools (e.g. engineering, capacity, past history, etc.) to identify the design concept and scope of a project, without conducting a formal corridor study. These early

decisions are generally made on a broad corridor basis and will be refined as the project advances towards implementation. The commenter appears to favor this section of the rule being mandatory rather than permissive in an attempt to further the state of the practice of planning. Encouragement and incentives for good transportation planning were proffered by the commenter as tools to be used to increase the desirability of conducting corridor studies. The FHWA and the FTA believe Appendix A provides this encouragement and incentives for good transportation planning in identifying ways to utilize planning corridor studies and thereby reduce the amount of repetitive work in the NEPA process. We appreciate the support for the concepts in this section, but, based on all the comments received, find that it is most appropriate for this section to remain voluntary and permissive.

#### **Section 450.320 Congestion Management Process in Transportation Management Areas**

The docket included more than 25 documents that contained almost 30 comments on this section with about one-third from State DOTs, one-fifth from national and regional advocacy organizations, half from MPOs and COGs, and the rest from transit operators.

On May 16, 2006, the U.S. Secretary of Transportation announced a national initiative to address congestion related to highway, freight and aviation.<sup>13</sup> The intent of the "National Strategy to Reduce Congestion on America's Transportation Network" is to provide a blueprint for Federal, State and local officials to tackle congestion. USDOT encourages the States and MPO(s) to seek Urban Partnership Agreements with a handful of communities willing to demonstrate new congestion relief strategies and encourages states to pass legislation giving the private sector a broader opportunity to invest in transportation. It calls for more widespread deployment of new operational technologies and practices that end traffic tie-ups, designates new interstate "corridors of the future,"

<sup>13</sup> Speaking before the National Retail Federation's annual conference on May 16, 2006, in Washington, DC, former U.S. Transportation Secretary Norman Mineta unveiled a new plan to reduce congestion plaguing America's roads, rails and airports. The National Strategy to Reduce Congestion on America's Transportation Network includes a number of initiatives designed to reduce transportation congestion. The transcript of these remarks is available at the following URL: <http://www.dot.gov/affairs/minetas051606.htm>.

targets port and border congestion, and expands aviation capacity.

U.S. DOT encourages State DOTs and MPOs to consider and implement strategies, specifically related to highway and transit operations and expansion, freight, transportation pricing, other vehicle-based charges techniques, congestion pricing, electronic toll collection, quick crash removal, etc. The mechanism that the State DOTs and MPOs employ to explore these strategies is within their discretion. The USDOT will focus its resources, funding, staff and technology to cut traffic jams and relieve freight bottlenecks.

A few commenters reiterated that the congestion management process (CMP) should result in multimodal system performance measures and strategies. The FHWA and the FTA note that existing language reflects the multimodal nature of the CMP. Existing language (§ 450.320(a)(2)) specifically allows for the appropriate performance measures for the CMP to be determined 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.

Most of the comments pointed out that the provisions of § 450.320(e) pertaining to projects that add significant new carrying capacity for Single Occupant Vehicles (SOVs) applies in "Carbon Monoxide (CO) and Ozone Nonattainment TMAs," but does not apply to TMAs in air quality maintenance areas. The FHWA and the FTA agree and have clarified the language in paragraph (e). We also clarified that this provision applies to projects "to be advanced with Federal funds."

Several commenters asked for a clarification regarding what CMP requirements apply in air quality maintenance and attainment areas, as opposed to the requirements in air quality nonattainment areas. The CMP requirements for all TMA areas (attainment, maintenance and nonattainment) are identified in § 450.320(a), § 450.320(b), § 450.320(c), and § 450.320(f). Additional CMP requirements that apply only to non-attainment TMA areas (for ozone and carbon monoxide) are identified in § 450.320(d) and § 450.320(e).

Another commenter asked for clarification regarding the exact requirements for a CMP and how the CMP is integrated with the metropolitan transportation plan. As noted above, the specific CMP requirements for all TMAs, regardless of air quality status, are identified in this section. The CMP

in this section is not described as, nor intended to be, a stand-alone process, but an integral element of the transportation planning process. To reinforce the integration of the CMP and the metropolitan transportation plan, § 450.322(f)(4) requires that the metropolitan transportation plan shall include “consideration of the results of the congestion management process in TMA that meet the requirements of this subpart, including the identification of SOV projects that result from a congestion management process in TMA that are nonattainment for carbon monoxide or ozone.”

One commenter asked for examples of the reasonable travel demand reduction and operational management strategies as required in § 450.320(e). Examples of such strategies include, but are not limited to: Transportation demand management measures such as car and vanpooling, flexible work hours, compressed work weeks and telecommuting; Roadway system operational improvements, such as improved traffic signal coordination, pavement markings and intersection improvements, and incident management programs; Public transit system capital and operational improvements; Access management program; New or improved sidewalks and designated bicycle lanes; and Land use policies/regulations to encourage more efficient patterns of commercial or residential development in defined growth areas.

#### *Section 450.322 Development and Content of the Metropolitan Transportation Plan*

There were over 160 separate comments on this section, mostly from MPOs and COGs, followed by national and regional advocacy organizations and State DOTs. A number of comments also came from public transportation providers with the remainder coming from local government agencies, the general public or other sources.

Several MPOs and COGs and national and regional advocacy organizations that commented on this section asked for clarification regarding the 20-year planning horizon in paragraph (a). The FHWA and the FTA want to provide MPOs flexibility on how to treat the metropolitan transportation plan at the time of a revision. The actual effective date of a metropolitan transportation plan update may be dependent upon several factors, including the intent of the MPO, the magnitude of the metropolitan transportation plan revision and whether conformity needs to be determined. To specifically indicate in the final rule when a

“revision” may be considered a full “update” could result in limiting flexibility. For more information on this topic, refer to the “Definitions” section of this rule.

A small number of MPOs and COGs and national and regional advocacy organizations that commented on this section asked for clarification in paragraph (b) between long-range and short-range strategies. The FHWA and the FTA carried forward the language regarding short and long-range strategies from the October 1993 planning rule. Generally, long-range are those strategies and actions expected to be implemented beyond 10 years.

A small number of national and regional advocacy organizations also commented that the transportation demand referenced in paragraph (b) should be balanced with the environment and other factors. The FHWA and the FTA find that the balance with environmental concerns is adequately raised in other parts of the rule both in this section and in § 450.306 (Scope of the metropolitan transportation planning process).

A small number of MPOs that commented on this section wrote in support of paragraph (c) relating to the cycles for reviews and updates. The FHWA and the FTA note that this paragraph revises and supercedes the April 12, 2005, guidance on “Plan Horizons” allowing MPOs to “revise the metropolitan transportation plan at any time using the procedures in this section without a requirement to extend the horizon year.”

A small number of State DOTs and national and regional advocacy organizations that commented on this section said in regard to paragraph (d) that the proposed language limits consultation between State air quality agencies and MPOs in ozone and carbon monoxide (CO) nonattainment and maintenance areas. Transportation control measures (TCMs) can apply to all pollutants so this section should refer to all types of nonattainment and maintenance areas.

Paragraph (d) addresses the MPO’s coordination in the development of the TCMs in a SIP in ozone and CO nonattainment areas, pursuant to 49 U.S.C 5303(i)(3). The FHWA and the FTA are clarifying in the final rule the role of the MPO in the development of SIP TCMs, to be more consistent with the statute. Similar coordination is encouraged in the development of SIP TCMs in ozone and CO maintenance areas, as well as particulate matter and nitrogen dioxide nonattainment and maintenance areas. The FHWA and the FTA had proposed additional language

in paragraph (d) that specified that the MPO, State air quality agency and the EPA must concur on the equivalency of any substitute TCM before an existing SIP TCM is replaced under section 176(c)(8) of the Clean Air Act (42 U.S.C. 7506(c)(8)). After consultation with the EPA, this language was deemed unnecessary for the final planning regulations. The EPA has determined that revising the transportation conformity regulations is not necessary to implement the TCM substitution provision in Section 6011(d) of the SAFETEA-LU. The EPA believes that the new Clean Air Act provision contains sufficient detail to allow the provision to be implemented without further regulation. The EPA, the FHWA, and the FTA issued joint guidance on February 14, 2006, that describes how TCM substitutions can occur under the statute.<sup>14</sup>

A small number of State DOTs and a few MPOs and COGs that commented on this section said in regard to paragraph (e) that the requirement for “agreement” is too stringent. The FHWA and the FTA find that a “cooperative” planning process requires agreement among the major planning partners on what assumptions to adopt and what data and analyses to employ to forecast future travel demand. If a State or transit operator conducts a major planning study within the MPO planning boundaries, it is critical that the assumptions and data used in that planning study be considered valid by other planning partners and be consistent with data the MPO will employ to develop its travel models or otherwise develop growth projections in population, employment, land use, and other key factors that affect future travel demand. Both consultation and agreement on those assumptions/data are crucial to this process. However, the FHWA and the FTA also understand that the proposed text may be considered overly restrictive. We eliminated the phrase “the transportation plan update process shall include a mechanism for ensuring that \* \* \* agree \* \* \*” and replaced it with “the MPO, the State(s), and the public transportation operator(s) shall validate \* \* \*” The FHWA and the FTA believe that the requirement “validate data” provides more flexibility than “including a mechanism.”

<sup>14</sup>This joint guidance entitled, “Interim Guidance for Implementing the Transportation Conformity Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,” dated February 14, 2006, is available via the Internet at the following URL: <http://www.fhwa.dot.gov/environment/conformity/sec6011guidmemo.htm>.

improvement program (STIP), § 450.322 (Development and content of the metropolitan transportation plan), and § 450.324 (Development and content of the transportation improvement program). These key features are: (1) Treatment of highway and transit operations and maintenance costs and revenues; (2) use of “year of expenditure dollars” in developing cost and revenue estimates; and (3) use of “cost ranges/cost bands” in the outer years of the metropolitan transportation plan.

Regarding the treatment of highway and transit operations and maintenance costs and revenues, the FHWA and the FTA realize that the 1993 planning rule and the NPRM interchangeably referred to the transportation system as either “existing,” “total,” or “entire.”

Several State DOTs, MPOs and COGs, national and regional advocacy organizations, and others expressed concern and confusion over these terms. Many commenters called into question the statutory authority for the FHWA and the FTA to focus on State and local government investments to operate and maintain the “system” as part of fiscal constraint and financial plans supporting transportation plans and programs. However, the statute, as amended by the SAFETEA-LU (23 U.S.C. 134(i)(2)(C) and 49 U.S.C. 5303(i)(2)(C)), requires that the financial element of a metropolitan transportation plan “demonstrates how the adopted transportation plan can be implemented” and “indicates resources from public and private sources” that can be “reasonably anticipated to implement the plan.” A metropolitan transportation plan, as it is developed, must include consideration and recognition of how all the pieces of the regional transportation system will integrate, function and operate, not just those facilities which are or could be funded with Federal resources. To focus solely on the Federally-funded portion of the transportation system could create greater demands on limited Federal resources or jeopardize the value of the Federal investments made within that metropolitan area. Furthermore, outside the transportation planning process, there is a longstanding Federal requirement that States properly maintain, or cause to be maintained, any projects constructed under the Federal-aid Highway Program (23 U.S.C. 116).

Additionally, the FHWA and the FTA believe that the fundamental premise behind the wording in the October 28, 1993 planning rule regarding highway and transit operations and maintenance (58 FR 58040) remains sound.

However, for purposes of clarity and consistency, § 450.216(n), § 450.322(f)(10), and § 450.324(i) have been revised to better describe “the system” as 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). As background, 23 U.S.C. 101(a)(5) defines “Federal-aid highways” as “a highway eligible for assistance other than a highway classified as a local road or rural minor collector.” Additionally, these sections clarify that the financial plans supporting the metropolitan transportation plan and TIP and the financial information supporting the STIP are to be based on systems-level estimates of costs and revenue sources 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. Chapter 53).

Regarding the use of “year of expenditure dollars” in developing cost and revenue estimates, the FHWA and the FTA jointly issued “Interim FHWA/FTA Guidance on Fiscal Constraint for STIPs, TIPs, and Metropolitan Plans” on June 30, 2005.<sup>22</sup> This Interim Guidance indicated that financial forecasts (for costs and revenues) to support the metropolitan transportation plan, TIP, and STIP may: (a) Rely on a “constant dollar” base year or (b) utilize an inflation rate(s) to reflect “year expenditure.” The FHWA and the FTA will be developing and issuing revised guidance on fiscal constraint and financial planning for transportation plans and programs soon after this rule is published. In Appendix B, the FHWA and the FTA proposed to exclusively require the use of “year of expenditure dollars” to better reflect the time-based value of money. This is particularly crucial for large-scale projects with construction/implementation dates stretching into the future. Because the transportation planning process serves as the beginning point of the larger “project continuum” (i.e., moving from concept through construction, and later operations and maintenance), the FHWA and the FTA strongly believe that early disclosure of revenue and cost estimates reflecting time and inflation provides a truer set of expectations and future “reality” to the public. However, most of the State DOTs, a few of the national and regional advocacy

organizations and some MPOs and COGs, commented that they should not be required to use “year of expenditure dollars.”

The FHWA and the FTA considered these comments and included in § 450.216(h), § 450.322(f)(10), and § 450.324(d) that “year of expenditure dollars” shall be used “to the extent practicable.” While this language expresses the desire of the FHWA and the FTA for revenue and cost estimates to be reflected in “year of expenditure dollars,” an opportunity to use “constant dollars” has been retained.

Regarding the use of “cost ranges/cost bands” in the outer years of the metropolitan transportation plan, the FHWA and the FTA jointly issued “Interim Guidance on Fiscal Constraint for STIPs, TIPs, and Metropolitan Plans” on June 30, 2005. The FHWA and the FTA will be developing and issuing revised guidance on fiscal constraint and financial planning for transportation plans and programs soon after this rule is published. The Interim Guidance indicated that 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. In the NPRM, the FHWA and the FTA proposed to provide this option to MPOs in developing fiscally-constrained metropolitan transportation plans. We have included this option in this rule because we believe it gives MPOs maximum flexibility to broadly define a large-scale transportation issue or problem to be addressed in the future that does not predispose a NEPA decision, while, at the same time, calling for the definition of a future funding source(s) that encompasses the planning-level “cost range/cost band.”

### 23 CFR Part 500

#### Section 500.109 Congestion Management Systems

Few docket documents specifically referenced this section. However, the docket included more than 25 documents that contained almost 30 comments on § 450.320 (Congestion management process in transportation management areas) which is relevant to this section.

As was mentioned, on May 16, 2006, the U.S. Secretary of Transportation announced a national initiative to address congestion related to highway, freight and aviation. The intent of the “National Strategy to Reduce Congestion on America’s Transportation

<sup>22</sup> This joint guidance, “Interim FHWA/FTA Guidance on Fiscal Constraint for STIPs, TIPs and Metropolitan Plans,” dated June 27, 2005, is available via the Internet at the following URL: <http://www.fhwa.dot.gov/planning/fcindex.htm>.

Network” is to provide a blueprint for Federal, State and local officials to tackle congestion. The States and MPO(s) are encouraged to seek Urban Partnership Agreements with a handful of communities willing to demonstrate new congestion relief strategies and encourages States to pass legislation giving the private sector a broader opportunity to invest in transportation. It calls for more widespread deployment of new operational technologies and practices that end traffic tie ups, designates new interstate “corridors of the future,” targets port and border congestion, and expands aviation capacity.

U.S. DOT encourages the State DOTs and MPOs to consider and implement strategies, specifically related to highway and transit operations and expansion, freight, transportation pricing, other vehicle-based charges techniques, etc. The mechanism that the State DOTs and MPOs employ to explore these strategies is within their discretion. The U.S. DOT will focus its resources, funding, staff and technology to cut traffic jams and relieve freight bottlenecks.

A few comments were received reiterating that the CMP should result in multimodal system performance measures and strategies. The FHWA and the FTA note that existing language reflects the multimodal nature of the CMP. Specifically, § 450.320(a)(2) allows for the appropriate performance measures for the CMP to be determined 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.

Several commenters asked for a clarification with regards to what CMP requirements apply in air quality attainment areas, as opposed to the requirements in air quality nonattainment areas. The CMP requirements for all TMA areas (attainment and nonattainment) are identified in §§ 450.320(a), 450.320(b), 450.320(c), and 450.320(f). Additional CMP requirements that apply only to nonattainment TMA areas (for CO and ozone) are identified in § 450.320(d) and § 450.320(e).

**49 CFR Part 613**

The NPRM proposed to simplify FTA’s cross-reference in 49 CFR Part 613 to 23 CFR Part 450. Because there may be references to the three subparts in 49 CFR Part 613 in various other regulatory and guidance documents, FTA has made technical changes to what was proposed in the NPRM to retain the names of the subparts in this part the same as they were prior to this rule. This will reduce confusion by keeping the names of the subparts the same, but still allowing for the cross-reference simplification and alignment of identical regulatory requirements that FTA had proposed.

**Distribution Tables**

The NPRM proposed to clarify and revise the regulation’s section headings to use plainer language. These changes have been made. For ease of reference, two distribution tables are provided for the current sections and the proposed sections as follows. The first distribution table indicates changes in section numbering and titles. The second provides details within each section.

SECTION TITLE AND NUMBER

Old section	New section	
<i>Subpart A</i>		
450.100 Purpose .....	450.100 Purpose.	
450.102 Applicability .....	450.102 Applicability.	
450.104 Definitions .....	450.104 Definitions.	
<i>Subpart B</i>		
450.200 Purpose .....	450.200 Purpose.	
450.202 Applicability .....	450.202 Applicability.	
450.204 Definitions .....	450.204 Definitions.	
450.206 Statewide transportation planning process: General requirements.	450.206 Scope of the statewide transportation planning process.	
450.208 Statewide transportation planning process: Factors .....	450.208 Coordination of planning process activities.	
450.210 Coordination .....	450.210 Interested parties, public involvement, and consultation.	
450.212 Public involvement .....	450.212 Transportation planning studies and project development.	
450.214 Statewide transportation plan .....	450.214 Development and content of the long-range statewide transportation plan.	
450.216 Statewide transportation .....	450.216 Development and content of the statewide transportation improvement program (STIP).	
450.218 Funding .....	450.218 Self-certifications, Federal improvement program (STIP), findings, and Federal approvals.	
450.220 Approvals .....	450.220 Project selection from the STIP.	
450.222 Project selection for implementation .....	450.222 Applicability of NEPA to statewide transportation plans and programs.	
<i>Subpart C</i>		
450.300 Purpose .....	450.300 Phase-in of new requirements.	
450.302 Applicability .....	<i>Subpart C</i>	
450.304 Definitions .....	450.300 Purpose.	
450.306 Metropolitan planning organizations: Designation and redesignation.	450.302 Applicability.	
450.308 Metropolitan planning organization: Metropolitan planning boundary.	450.304 Definitions.	
450.310 Metropolitan planning organization: planning agreements .....	450.306 Scope of the metropolitan transportation planning process.	
450.312 Metropolitan transportation planning: Responsibilities, cooperation, and coordination.	450.308 Funding for transportation planning and unified planning work programs.	
450.314 Metropolitan transportation planning process: Unified planning work programs.	450.310 Metropolitan planning organization designation and redesignation.	
	450.312 Metropolitan planning area boundaries.	
	450.314 Metropolitan planning agreements.	

given criteria air pollutant (e.g., ozone, carbon monoxide, PM10, PM2.5, and nitrogen dioxide) meet the health-based National Ambient Air Quality Standards (NAAQS) for that pollutant. An area may be an attainment area for one pollutant and a nonattainment area for others. A "maintenance area" (see definition below) is not considered an attainment area for transportation planning purposes.

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

*Committed funds* means funds that have been dedicated or obligated for transportation purposes. For State funds that are not dedicated to transportation purposes, only those funds over which the Governor has control may be considered "committed." Approval of a TIP by the Governor is considered a commitment of those funds over which the Governor has control. For local or private sources of funds not dedicated to or historically used for transportation purposes (including donations of property), a commitment in writing (e.g., letter of intent) by the responsible official or body having control of the funds may be considered a commitment. For projects involving 49 U.S.C. 5309 funding, execution of a Full Funding Grant Agreement (or equivalent) or a Project Construction Grant Agreement with the USDOT shall be considered a multi-year 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. The transportation conformity rule (40 CFR part 93) 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 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 MPOs in comparing the long-range statewide transportation plan and the metropolitan transportation plan, respectively, to State and Tribal conservation plans or maps or inventories of natural or historic resources (see § 450.214(i) and § 450.322(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, 5304, and 5306, by the chief executive officer 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 transportation management areas (TMAs) identified under 49 U.S.C. 5303, or a State 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, actions, and activities that, over time, will serve to avoid, minimize, or compensate for (by replacing or providing substitute resources) the impacts to or disruption of elements of the human and natural environment associated with the implementation of a long-range statewide transportation plan or metropolitan transportation plan. The human and natural environment includes, for example, neighborhoods and communities, homes and businesses, cultural resources, parks and recreation areas, wetlands and water sources, forested and other natural areas, agricultural areas, endangered and threatened species, and the ambient air. The environmental mitigation strategies and activities are intended to be regional in scope, and may not necessarily address potential project-level impacts.

*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

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) For transit fixed guideway projects requiring an Alternatives Analysis (49 U.S.C. 5309(d) and (e)), the Alternatives Analysis described in 49 CFR part 611 constitutes the planning required by section 1308 of the TEA-21. The Alternatives Analysis may or may not be combined with the preparation of a NEPA document (e.g., a draft EIS). When an Alternatives Analysis is separate from the preparation of a NEPA document, the results of the Alternatives Analysis may be used during a subsequent environmental review process as described in paragraph (a).

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

**§ 450.320 Congestion management process in transportation management areas.**

(a) The transportation planning process in a TMA shall address congestion management through a process that provides for safe and effective integrated management and operation of the multimodal transportation system, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53 through the use of travel demand reduction and operational management strategies.

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

(c) 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 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;

(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 decisionmakers and the public to provide guidance on selection of effective strategies for future implementation.

(d) 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.

(e) 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.

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

#### **§ 450.322 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 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 lead to the development of an integrated multimodal transportation system 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 four years in air quality nonattainment and maintenance areas and at least every five 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 transportation plan (and any revisions) shall be approved by the MPO and submitted 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 utilized 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 projected transportation demand of persons and goods in the metropolitan planning area over the period of the transportation plan;

(2) Existing and proposed transportation facilities (including major roadways, transit, multimodal and intermodal facilities, 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. In addition, the locally preferred alternative selected from an Alternatives Analysis under the FTA's Capital Investment Grant program (49 U.S.C. 5309 and 49 CFR part 611) needs to be adopted as part of the metropolitan transportation plan as a condition for funding under 49 U.S.C. 5309;

(3) 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;

(4) 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;

(5) Assessment of capital investment and other strategies to preserve the existing and projected future metropolitan transportation



resource agencies also provide efficiencies in acquiring and sharing the data and information needed for both transportation planning and NEPA work.

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

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

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

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

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

Both the FHWA and the FTA offer a variety of transportation planning, public involvement, and NEPA courses through the National Highway Institute and/or the National Transit Institute. Of particular note is the Linking Planning and NEPA Workshop, which provides a forum and facilitated group discussion among and between State DOT; MPO; Federal, Tribal,

and State environmental, regulatory, and resource agencies; and FHWA/FTA representatives (at both the executive and program manager levels) to develop a State-specific action plan that will provide for strengthened linkages between the transportation planning and NEPA processes.

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

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

#### IV. Additional Information on this Topic

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

### PART 500—MANAGEMENT AND MONITORING SYSTEMS

- 2. Revise the authority citation for part 500 to read as follows:

**Authority:** 23 U.S.C. 134, 135, 303, and 315; 49 U.S.C. 5303-5305; 23 CFR 1.32; and 49 CFR 1.48 and 1.51.

- 3. Revise § 500.109 to read as follows:

#### § 500.109 CMS.

(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.

### Title 49—Transportation

- 4. The authority citation for part 613 continues to read as follows:

**Authority:** 23 U.S.C. 134, 135, and 217(g); 42 U.S.C. 3334, 4233, 4332, 7410 et seq; 49 U.S.C. 5303-5306, 5323(k); and 49 CFR 1.48(b), 1.51(f) and 21.7(a).

- 5. Revise Subpart A and Subpart B of 49 CFR part 613 to read as follows:

### Part 613—METROPOLITAN AND STATEWIDE PLANNING

#### Subpart A—Metropolitan Transportation Planning and Programming

Sec.

613.100 Metropolitan transportation planning and programming.

#### Subpart B—Statewide Transportation Planning and Programming

Sec.

613.200 Statewide transportation planning and programming.