

Federal Highway Administration, DOT

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and strategies for ensuring their advancement at the earliest possible time; and

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

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

§ 450.326 Transportation improvement program: Modification.

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

§ 450.328 Transportation improvement program: Relationship to statewide TIP.

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

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

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

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

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

§ 450.332 Project selection for implementation.

(a) In areas not designated as TMAs and when § 450.332(c) does not apply, projects to be implemented using title 23 funds other than Federal lands projects or Federal Transit Act funds

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shall be selected by the State and/or the transit operator, in cooperation with the MPO from the approved metropolitan TIP. Federal Lands Highways program projects shall be selected in accordance with 23 U.S.C. 204.

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

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

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

(e) In nonattainment and maintenance areas, priority will be given to

the timely implementation of TCMs contained in the applicable SIP in accordance with the U.S. EPA conformity regulations at 40 CFR part 51.

§ 450.334 Metropolitan transportation planning process: Certification.

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

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

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

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

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

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

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

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

(d) Upon the review and evaluation conducted under paragraphs (b) and (c) of this section, if the FHWA and the