



**ASSOCIATION of
METROPOLITAN
PLANNING
ORGANIZATIONS**

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U.S. Department of Transportation
Dockets Management Facility
Room PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590

Attn: Docket Number FHWA-2005-22986

**Re: Proposed Rules on Metropolitan and Statewide Transportation Planning –
Comments of the Association of Metropolitan Planning Organizations
(AMPO)**

On behalf of the members of the Association of Metropolitan Planning Organizations (AMPO), we would like to thank the United States Department of Transportation (USDOT) for providing stakeholders with the opportunity to comment on the proposed Metropolitan and Statewide Planning Rules, 71 Fed. Reg. 33510 (June 9, 2006).

AMPO is a member-based trade association responsible for providing policy and technical assistance to its' member Metropolitan Planning Organizations (MPOs). On behalf of its members, AMPO welcomes this rulemaking to provide additional clarification and instruction as our member MPOs work to implement Congress' goals as set forth in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59 (August 10, 2005) (SAFETEA-LU) into existing planning processes.

MPOs are federally constituted planning bodies representing local and regional interests in the transportation planning process. MPOs are vested by Congress with the authority to plan for regional and national transportation needs by developing metropolitan transportation plans (MTPs) and transportation improvement programs (TIPs) and by setting funding priorities for highway, transit, safety and security projects receiving Federal

aid. MPOs are legislatively mandated for urban areas with populations of 50,000 or more. Nationwide, 385 MPOs represent urban populations ranging from 50,000 to 19 million.

Democratically elected officials accountable to local and regional constituencies govern MPOs. Thus, MPOs are truly responsive to the demands and desires of the region. MPOs conduct the planning process in conjunction with government agencies and a broad array of public and private stakeholders. Given the importance of transportation infrastructure to economic growth, security, and sustainability, MPOs are an inextricable part of the U.S. economy.

We are pleased that overall, the proposed rules comport with the SAFETEA-LU legislation. As USDOT notes, “[c]lose adherence to the legislative mandate” is key to good rulemaking. 71 Fed. Reg. at 33512. The few areas where the proposed rules seem to depart from congressional intent are discussed below.

AMPO also strongly supports USDOT’s recognition that the planning process must remain flexible and tailored to the particular local and regional needs of various areas of the country, as determined by stakeholders. Given the diversity of our members, we are pleased that MPOs will be able to rely on the proposed rules for overall requirements, but will then continue to rely on their own expertise in their metropolitan areas to make the process work effectively. We have MPO members that represent metropolitan areas that barely meet the federal population minimums. Our smallest MPO members may only have one full-time staff person. At the other end of the spectrum, several of our MPO members represent the largest metropolitan areas in the United States. These MPOs may have staffs of one hundred or more people. Furthermore, many of our smaller members do not have Travel Modelers or other technical staff members and often have to hire consultants for much of their technical work. By contrast, our larger members often have many highly capable technical staff members and rely on those individuals to develop their technical priorities. What works for one MPO or one metropolitan area may not work for another, and our individual MPO members are in the best position to determine what is most effective in their regions.

GENERAL COMMENTS

As noted, AMPO is pleased that the proposed regulations generally adhere to SAFETEA-LU’s statutory language and congressional intent. However, we do have some general concerns regarding this rulemaking that we believe must be addressed.

Appendices A & B

AMPO strongly opposes the inclusion of guidance documents as appendices to a rulemaking.

While the Linking Planning and NEPA and Fiscal Constraint guidance documents provide useful guidance to our members, we strongly object to their inclusion in a formal rule for several reasons. First, rather than establishing generally applicable requirements, the

guidance addresses implementation of legal requirements in illustrative discussion directed at various evolving practical situations that may (or may not) arise and at a level of detail that is inappropriate for a general rule. Second, attaching guidance to a rulemaking creates ambiguity as to whether the attached guidance is part of the rule (and therefore subject to formal notice and comment rulemaking procedures and potential challenges) or, alternatively, merely attached as a convenience to the public. If the guidance is considered part of the rule, USDOT would lose the flexibility to adjust and refine the guidance as new questions, situations, or issues arise needing illustration. Third, given the limitations of written language, having two separate documents addressing the same issue sets up potential conflicts in the interpretation of the rule versus the guidance. In short, establishing these documents as part of a rule rather than as guidance undermines the very purpose of the guidance and potentially opens up FHWA, FTA, the MPOs, and the States to litigation challenges based upon selective interpretation of short passages rather than a holistic reading of the documents in their entirety.

Furthermore, the Office of the Federal Register (OFR) imposes strict requirements on the use of appendices in rules and proposed rules. The OFR's *Document Drafting Handbook* includes the following admonition:

Use an appendix to present Supplemental, background, or explanatory information which illustrates or amplifies a rule that is complete in itself; [or] Forms or charts which illustrate the regulatory text. **You may not use the appendix as a substitute for regulatory text. Present regulatory material as an amendment to the CFR [Code of Federal Regulations], not disguised as an appendix.** Material in an appendix may not: Amend or affect existing portions of CFR text; or Introduce new requirements or restrictions into your regulations.¹

Thus, the inclusion of these two documents as appendices does not comport with the restrictions imposed on appendices by the OFR and the appendices should be removed from the proposed rule.

USDOT intends Appendix A to be purely voluntary, and says so in the language of the guidance itself. Thus, by definition, according to the C.F.R., this document should not be included as an Appendix to the rule.

Recommendation: Remove Appendices A and B from the proposed rule and retain those documents as informal agency guidance, with the flexibility to develop additional guidance as needed. Include language in the rule that indicates that this guidance is available on the USDOT website.

Consultation Requirements

In the statute, SAFETEA-LU refers to “all interested parties” in the context of development of a participation plan and opportunity to comment. (23 U.S.C. 134(i)(5)(B)(i) –

¹ OFR, *Document Drafting Handbook* Section 7.8, pp. 267-268 (emphasis added).

development of participation plan; 23 U.S.C. 134(i)(5)(B)(ii) – reasonable opportunity to comment). AMPO requests additional clarification on the term *interested* and would appreciate such clarification in the proposed rule. As it stands currently, the term *interested*, could be interpreted as parties who express an interest (i.e., those who bother to show up) in contrast to affected parties or specified stakeholders. AMPO respectfully requests that FHWA take a practical approach and define “all interested parties” as something less than literally “all” and focus on parties that chose to join in the process, provided the planning process was sufficiently advertised such that parties should have known about the process.

Recommendation: Practically define “all interested parties” to focus on parties who choose to participate in the planning process.

Additional Definitions

Throughout the proposed rule, terms such as “shall”, “should”, and “encouraged to” are used to indicate the level of requirement. These terms are not defined. AMPO suggests that FHWA include these terms in proposed §450.104 to clarify that, where applicable to MPOs, (1) the term “shall” denotes a mandatory requirement that is imposed by SAFETEA-LU or other law; (2) the term “should” denotes a discretionary requirement that is committed to the discretion, judgment, and/or selection of the MPO within the context of the 3C planning process and (3) “encouraged to” denotes a voluntary action that should be considered by the MPO but does not impose any binding legal or procedural requirement.

Recommendation: Define the terms such as “shall”, “should”, and “encouraged to” consistent with the above discussion and incorporate those definitions into §450.104.

Implementation Deadline

When Congress enacted SAFETEA-LU, it included language that spoke directly to the timeline for SAFETEA-LU implementation. Specifically, SAFETEA-LU §3005(b) reads as follows:

Schedule for Implementation – The Secretary [of Transportation] 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 and metropolitan planning organizations. The Secretary **shall not require a State or metropolitan planning organization to deviate from its established planning update cycle** to implement changes made by this section. **Beginning July 1, 2007**, State or metropolitan planning organization plan or program **updates** shall reflect changes made by this section.²

² See Pub. L. 109-59 (August 10, 2005) (emphasis added), codified at 23 U.S.C. §134. Section 3006(b), entitled “Statewide Planning”, contains identical language with regard to implementation timing.

Section 3005(b), read as a whole, clearly conveys Congressional intent that planning processes begun under existing TEA-21 procedures should continue to completion under TEA-21 procedures, even if federal approvals are finalized after the July 1, 2007 deadline. This is a common sense approach that recognizes that the planning process is a multi-year effort, built on public participation plans and inter-agency consultation procedures and schedules that are established at the beginning of the planning cycle. It is not practical for MPOs to change procedures mid-course; nor is there any reason to do so, as the planning process is continuous, and thus Congress recognized that the new SAFETEA-LU procedures should be phased in with the next planning cycle, rather than forcing MPOs to re-start planning cycles already underway. Congress chose its language carefully, directing USDOT to avoid any implementation schedule that would cause MPOs to “deviate” from in-process planning. Congress similarly recognized that it would take some time for USDOT to develop regulations and for MPOs and States to incorporate the new changes in to the planning process *after* those regulations are promulgated. Therefore, Congress specified that SAFETEA-LU procedures should be phased in “beginning” July 1, 2007.

The proposed rule, while somewhat ambiguously worded, could be read to deviate from Section 3005(b) in significant respects. First, the initial sentence of proposed §450.338(a) provides: “Prior to July 1, 2007, metropolitan transportation plans and TIPs under development since August 10, 2005 may be completed under TEA-21 requirements.”³ AMPO agrees with this proposed language to the extent that USDOT recognizes that MTP or TIP development started under TEA-21 procedures must be allowed to be completed under such procedures (although MPOs may phase-in new SAFETEA-LU procedures on a voluntary basis, where doing so would not disrupt the established planning process). However, there is no statutory basis to limit SAFETEA-LU’s phase-in period to MTPs or TIPs “under development since August 10, 2005”, nor has USDOT pointed to any logical need for such a restriction. That clause should be removed as confusing and inconsistent with the statute. As an example, a literal reading of the proposed language would mean that a MTP or TIP planning process that starts after August 10, 2005, and is completed before July 1, 2007 would have to be fully SAFETEA-LU compliant. This result cannot be reconciled with Congress’ use of the phrase “beginning July 1, 2007” and is contrary to legislative intent. As noted, AMPO supports the second sentence of §450.338(a), which recognizes that early implementation can be accomplished on a voluntary basis.

Recommendation: To comport with statutory intent, the first sentence of Section 450.338(a) should read: “Metropolitan transportation plans and TIPs under development prior to July 1, 2007 may be completed under TEA-21 requirements.”

Proposed §450.338(b) appears to require that all federal approvals and MPO adoption of MTPs and TIPs developed under TEA-21 procedures be completed before July 1, 2007 even if the bulk of the planning cycle occurs prior to July 1, 2007. We believe this merits further clarification. As noted, SAFETEA-LU Section 3005 anticipates that planning cycles begun under TEA-21 procedures must be allowed to be completed under TEA-21 procedures according to previously established planning cycles. Any requirement that the planning cycle be compressed, such that either (1) all approvals are completed before July 1, 2007 or (2)

³ 71 Fed. Reg. at 33550.

that the planning process change mid-stream from TEA-21 procedures to SAFETEA-LU procedures, deviates from Congressional intent. The conflict between the proposed rule and the statute is exemplified by the last clause of proposed §450.338(b), which asserts that SAFETEA-LU procedures “shall take effect, regardless of when the metropolitan transportation plan or TIP were developed.” This language ignores Congress’ directive that SAFETEA-LU requirements should be phased in “beginning” July 1, 2007 and that phase-in “shall not require a State or metropolitan planning organization to deviate from its established planning update cycle.”⁴

The practical effect of USDOT’s current interpretation is that it will force MPOs who anticipate needing federal approvals of plans or TIPs shortly after July 1, 2007 to alter their planning process well prior to July 1, 2007 in order to accommodate SAFETEA-LU changes. In some cases, these mid-course changes will have to be made even before the planning regulations are finalized. This is made more difficult by the fact that federal approvals, including any needed conformity determination, are completely outside of MPO control and may be unduly delayed, making it practically impossible to meet the increased demands of SAFETEA-LU by the July 1 deadline.

Furthermore, the fact that final substantive rules or guidance have yet to be promulgated could create situations where MPOs follow the SAFETEA-LU legislation and existing agency guidance in good faith, yet, through subsequent changes in rules or guidance, are forced to significantly alter a part of the planning process at the eleventh hour. Because of the length of time required to complete the planning process, this is a real danger that must be addressed. Certainly, AMPO would encourage MPOs to make every reasonable effort to incorporate the planning provisions of SAFETEA-LU into their update processes to the extent that requirements can be anticipated based on legislative language and guidance. Rather than forcing mid-course changes, the planning regulations should provide that, in the event planning regulations or subsequent guidance are issued or adopted after an update cycle begins, MPOs should make an assessment of whether any additional requirements can be reasonably incorporated into the update process without undue burden, and if so, MPOs should be encouraged to incorporate said requirements and procedures. However, the decision as to what procedures can be reasonably incorporated early should be left to the sound discretion of the MPO, and thus ultimately to the elected officials and stakeholders who participate in the planning process.

In short, any phase-in schedule must consider when MTPs and TIPs began their development and must accommodate existing planning cycles. Certainly, many MPOs may elect to phase in SAFETEA-LU provisions earlier than required by law and AMPO encourages them to do so. Resource and practicality issues, however, may substantially impact how long prior to the July 1, 2007 deadline an MPO is able to fully implement SAFETEA-LU. A rule that imposes requirements “regardless” of existing planning cycles and before July 1, 2007 would be illegal.

Recommendation: Delete proposed Section 450.338(b) as it is inconsistent with SAFETEA-LU.

⁴ 23 U.S.C. §134.

Proposed §450.338(c) would require amendments made after the July 1 deadline to TIPs and MTPs enacted prior to July 1, 2007 to undergo a complete re-adoption of the MTP and TIP to make them SAFETEA-LU compliant. Such a requirement has no basis in statute, as SAFETEA-LU §3005(b) is addressed only to “updates” - not amendments. Requiring a TIP or MTP re-adoption for minor amendments would substantially burden MPOs.

Recommendation: Delete the word “amendment” from proposed Section 450.338.

In sum, July 1, 2007 is less than one year away. While we are pleased to see proposed rules regarding the Metropolitan Planning Process, we are concerned that MPOs will have little time to rely on final rules prior to a July 1, 2007 deadline. Additionally, because the metropolitan transportation planning process is ongoing, converting Congress’ phased-in implementation schedule into a rigid deadline would make it difficult for MPOs to engage in a comprehensive planning process prior to a complete understanding of the process at hand.

PREAMBLE

The United States Department of Transportation specifically invites comments on several questions as they relate to the TIP:

1. Should the agencies require MPOs that are submitting TIP amendments to demonstrate that funds are “available and committed” for projects identified both in the year that the TIP is submitted and in the following year?
2. Should MPOs be required to prepare an “agreed to” list of projects at the beginning of each of the four years in the TIP, rather than just in the first year?
3. Should a TIP amendment be required to move a project between years in the TIP if an “agreed to” list is required for each year?⁵

These questions speak directly to the ability of the MPOs to manage the metropolitan transportation planning process.

AMPO opposes all of the implied changes above as these proposed changes would go beyond statutory authority and run counter to Congressional intent in SAFETEA-LU. MPOs have established processes for such things as TIP management and current statutory and regulatory language adequately meets the demands of these processes. The proposed rule does not provide any apparent advantage or rationale for the changes suggested by these questions.

Furthermore, in order for the MPO process to run smoothly, the MPO must be able to move projects between years of the TIP without a TIP amendment. Due to various practical

⁵ See 71 Fed. Reg. at 33524-33525.

necessities and planning needs, projects are frequently shifted between TIP years. Regulations that would require an amendment every time this occurs would not only slow down the MPO process but would also reduce process flexibility, given the substantial requirements necessary for a full TIP amendment. Given the existing challenges associated with rising costs, the planning process must be streamlined and efficient. These suggested changes would only work to slow down the process, making it increasingly difficult for MPOs to meet the growing needs of the metropolitan transportation system.

SUBPART A – TRANSPORTATION PLANNING AND PROGRAMMING **DEFINITIONS**

The remainder of our comments will track the proposed rule on a section-by-section basis.

§450.104 - Definitions

AMPO appreciates the effort that the USDOT has put into the definition section of the proposed rule. We believe that clear definitions are integral to the effective implementation of SAFETEA-LU. We do, however, believe that additional clarification is necessary to further streamline and improve the metropolitan transportation planning process.

The terms *cooperation* and *coordination* imply a level of agreement and joint decision-making involving more than one agency, as identified throughout the proposed rules. Currently, no resolution mechanism is identified when those agencies cannot agree on a given issue or are unresponsive after consultation (for example, a consulting agency is slow to provide requested data). Further guidance in this area that would clarify protocols for dispute resolution would be extremely helpful to practitioners. USDOT could look to certain states that are already incorporating dispute resolution into their planning processes for assistance in drafting this guidance.

Recommendation: Issue separate guidance on dispute resolution mechanisms for any planning requirement involving joint decision making or sharing of information.

The definition term *consideration* should also be clarified to make explicit that, although the proposed planning rules require decision-making entities to confer and take other views into consideration during the planning process, the consultation process does not alter the ultimate decision-making authority for MTP and TIP adoptions and other planning decisions, as set forth in SAFETEA-LU.

Recommendation: Add the following sentence to the end of the definition of *Consideration*: “The consultation process does not alter any decision making authority or responsibilities under applicable law.”

AMPO also proposes that the USDOT expand the definition of *amendment*, particularly for the TIP. There seems to be a gap between what is defined as an *administrative modification* and what is defined as an *amendment*. Additional clarification would greatly assist practitioners.

Recommendation: Revise the definition of *Amendment* to read: “Amendment means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that adds or deletes a regionally significant project, or a substantial change in the cost, design concept, or design scope of a regionally significant project.”

SUBPART B – STATEWIDE TRANSPORTATION PLANNING AND PROGRAMMING

§450.210 Interested Parties, Public Involvement & Consultation

AMPO appreciates the inclusion of non-metropolitan local elected officials in the planning process, however we are concerned that this section does make specific reference to the involvement of non-metropolitan local elected officials but does not make specific reference to MPOs as interested parties in the statewide transportation planning process. Just as MPOs are specifically referenced in §450.216(b) to ensure MPO involvement in the development of the Statewide Transportation Improvement Program (STIP) and §450.214(f) to ensure MPO involvement in the development of the long-range State Transportation Plan, MPOs should be referenced in the State’s development of the STIP particularly as this involvement relates to state programming and funding policies as well as other statewide processes which may impact MPOs.

Recommendation: In Section 450.210(b), change the language to read “The State shall provide for MPO and non-metropolitan local elected official participation in the development of the long-range statewide transportation plan and the STIP.”

§450.214 Development and Content of the Long-Range Statewide Transportation Plan

Subsection (l) of this regulation focuses on the Financial Plan. AMPO supports this regulation in that it encourages the inclusion of a financial plan in long-range statewide plans to demonstrate how a long-range statewide plan is implemented. States fulfilling this requirement will provide MPOs with a better understanding of how DOTs select projects. Much of the new requirements in SAFETEA-LU speak to streamlining of process. Transparency between the States and the MPOs is a key component of process streamlining.

§450.216 Development and Content of the Statewide Transportation Improvement Program

Subsection (l) states, “The STIP **may** include a financial plan that demonstrates how the approved STIP can be implemented...”⁶ AMPO proposes that the regulation change the term *may* to *shall*. A financial plan at the State planning level would be very helpful to MPO decision-makers in understanding how the program is constrained and the extent of the demand for new revenue. Additional financial information at the State level will not only

⁶ Emphasis added.

improve the statewide planning process but will also improve the metropolitan transportation planning process.

Recommendation: Change the term from *may* to *shall* in proposed Section 450.216.

§450.218 Self-Certification, Federal Findings, and Federal Approvals

The USDOT requested comment on whether States should be required to prepare an “agreed to” list of projects for each of the four years of the STIP. AMPO believes that it is important to balance the need to provide the state with reasonable flexibility to manage its transportation program while simultaneously maintaining the integrity of the STIP. It is reasonable to require “agreed to” projects lists for the first year of the STIP, but not for subsequent years. Project phases in the first year should be well defined as to schedule and cost, and should not require further action for implementation. Requiring an “agreed to” list of projects for all of the years of the STIP is a cumbersome requirement, and significantly reduces the State’s flexibility. This requirement goes beyond Congressional intent and should be removed from the proposed rule.

Recommendation: Require an “agreed to” list of projects for the first year of the STIP only.

§450.224 Phase-In of New Requirements

The proposed regulations would require STIPs that are completed after July 1, 2007 to be SAFETEA-LU compliant. This does not take into consideration a STIP’s inclusion of TIPs adopted and approved prior to the July 1, 2007 deadline. AMPO recommends that the phase-in requirement for STIPs should recognize and grandfather TIPs developed under TEA-21 approved prior to July 1, 2007. For example, one MPO’s scheduled adoption of a 2008 – 2013 TIP in June 2007 will only be valid for three months given the State schedule. This creates significant budgetary and process inefficiency.

Furthermore, many practitioners are uncertain as to whether an MPO would be able to amend a SAFETEA-LU compliant TIP if the STIP is not SAFETEA-LU compliant. AMPO requests further clarification on this issue.

Recommendation: Include language in the proposed rule that states, “The phase-in requirement for STIPs should grandfather TIPs approved under TEA-21 incorporated into a SAFETEA-LU compliant TIP”. In this way, TIPs approved prior to the July 1, 2007 implementation deadline will still be valid, even if the State’s actions force adoption of a SAFETEA-LU compliant STIP because the adoption takes place after the July 1, 2007 deadline.

Recommendation: Clarify that an MPO will be able to amend a SAFETEA-LU compliant TIP even if the STIP is not SAFETEA-LU compliant.

SUBPART C – METROPOLITAN TRANSPORTATION PLANNING AND PROGRAMMING

§450.306 – Scope of the Metropolitan Transportation Planning Process

Proposed §450.306(a)(3) would require MPOs to: “Increase the ability of the transportation system to support **homeland security and to safeguard the personal security of all motorized and non-motorized users.**”⁷

AMPO believes that the language in the proposed rule exceeds the statutory requirements of Section 23 U.S.C. 134(h)(1)(C) of SAFETEA-LU, which states: “[MPOs shall consider projects that] increase the security of the transportation system for motorized and nonmotorized users.” The proposed rule goes beyond this statutory obligation by adding language regarding the support of homeland security. While this is a laudable goal, it is often beyond the scope of the metropolitan planning process. As such, AMPO suggests that the language in the proposed rule remain consistent with the statutory language, and the phrase “support homeland security” in the proposed rule should be removed completely.

Recommendation: Delete the phrase “support homeland security” from proposed Section 450.306.

Subparts (e-h) of this section contain elements that carry a range of conditionals. For example, consistency with the ITS regional architecture is a “shall” condition; consistency with the Coordinated Public Transit-Human Services Transportation Plan and the Strategic Highway Safety Plan are “should” conditions; and application of asset management principles and techniques is an “encouraged to” condition. Given the differences in regulatory language, AMPO reiterates the usefulness of including definitions of each of these conditionals in the definition section of the proposed rule so as to assist practitioners. Certainly, AMPO also believes that it is important for the conditionals in the regulatory language to appropriately reflect statutory language. Furthermore, given the wide range of differences in terms, perhaps it would be most useful for the USDOT to promulgate additional clarifying guidance on this issue that would aid practitioners throughout the planning process. AMPO would be happy to assist the USDOT with this process.

Recommendation: See general comments regarding proposed definitions for “should”, “shall”, and “encouraged to”.

Sections (i&j) of the proposed rule offer distinctions for Transportation Management Areas (TMAs) and non-TMAs. SAFETEA-LU and its regulations continue a trend where the roles and responsibilities of MPOs vary according to whether an MPO is a TMA or not (particularly with respect to the extent of documentation and working relationships with the State DOT on the selection of projects for the TIP). *See also §450.308(d) and §450.330(b&c).* AMPO recommends that FHWA provide a concise synopsis in the form of guidance that

⁷ Emphasis added.

clarifies the roles of TMAs and non-TMAs with respect to differences in processes expected by the USDOT. AMPO would be happy to provide assistance to USDOT in this matter.

Recommendation: Issue additional guidance that clarifies the roles and responsibilities of TMAs and non-TMAs.

§450.310 Metropolitan Planning Organization Designation and Redesignation

AMPO believes that the proposed regulation improves the existing regulations in part by deleting the “revocation” provision that was in the regulations but deleted earlier in TEA-21 reauthorization language. AMPO suggests that the language in the March 30, 2005 guidance issued by FHWA and FTA be added to the regulation preamble, which states, “The idea behind these more restrictive criteria for redesignation is that State authorities should not be allowed to unilaterally abolish and redesignate an MPO without the willing agreement of the local governments for whom the MPO was originally designated.”⁸

AMPO is, however, concerned about the vague language in subsection (l)(1&2), which says redesignation is required if “(1) There is 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) There is a **substantial change** in the decision-making authority or responsibility of the MPO, or in decision-making procedures established under MPO by-laws.”⁹ AMPO believes that additional clarification is needed regarding the term *substantial*. We also believe that additional clarification is required to define whether changes are *substantial* or not.

Recommendation: Provide a definition of *substantial* and guidance as to what is considered to be a *substantial change*.

Furthermore, in subpart (c), the language of the proposed rule says that the MPO “should be designated, to the extent possible, under specific State legislation, State enabling legislation, or by interstate compact, and shall have authority to carry out transportation planning for the entire area it serves.” AMPO requests additional clarification on this subpart, given the challenges for local units of government in understanding the process and role of the MPO.

Overall, AMPO is concerned about the proposed changes to the redesignation process and its impact on MPOs. We respectfully request additional information in this area.

Recommendation: USDOT should promulgate subsequent guidance on this issue that would clarify the redesignation process in its entirety.

§450.314 Metropolitan Planning Agreements (MPAs)

⁸ See March 30, 2005 Guidance entitled *FHWA/FTA Guidance on Designation and Redesignation of Metropolitan Planning Organizations*.

⁹ Emphasis added.

AMPO welcomes the specificity of the provision in (a)(1) that requires metropolitan planning agreements to include language on the cooperative provision of information for financial plans for the MTP and the TIP and for information for the annual list of obligated projects. We are, however, concerned about the methods for acquiring this information. The acquisition process has been an on-going problem for many MPOs and ultimately, this additional requirement will mean the revision and re-establishment of many Memoranda of Understanding (MOUs) on this subject. This would place a significant additional burden on the MPOs and their planning processes.

Recommendation: Issue subsequent guidance on MPAs that eases the burden on acquiring information.

§450.316 Interested Parties, Participation, and Consultation

AMPO supports the statutory and regulatory language that broadens consultation, outreach and visualization efforts, and we appreciate the recognition in the preamble by FHWA and FTA that it would be counterproductive to prescribe visualization techniques and electronic access. Congressional intent to provide the public and stakeholder groups (including the historically underserved) with accessible, useful, and understandable information can certainly be met while allowing for a broad range of resources among MPOs and leaving room for evolving technology that could ultimately improve the participation process.

The proposed regulatory language, in general, properly echoes Congress' requirement that MPOs should provide stakeholders with "reasonable opportunity" to participate in the metropolitan planning process and to consult with sister agencies where "appropriate" and coordinate "to the maximum extent practicable."¹⁰ Congress' careful choice of phrasing in SAFETEA-LU reflects an understanding that MPOs can only encourage, but cannot force, stakeholders and other agencies and officials to participate in the planning process, to share information, or to timely respond to requests. SAFETEA-LU also recognizes that metropolitan areas have widely different characteristics and needs, and that "one size does not fit all." Therefore, Congress was clear that the 3-C planning process should be tailored "to the degree appropriate, based on the complexity of the transportation problems to be addressed."¹¹

The proposed regulations and their implementation should maintain SAFETEA-LU's flexibility for MPOs to move the planning process along after reasonable efforts. For example, if an MPO makes reasonable efforts to obtain information, plans or data from a resource agency, the MPO should be able to rely on whatever information that agency provides, and should not be criticized or penalized if the agency fails to provide complete information. Such a policy is consistent with SAFETEA-LU's caveat that the level of interaction "appropriate" and consideration of information that is "available" define the consultation process.¹² Inherent in this standard of reasonableness is the principle that the

¹⁰ See 23 U.S.C. §134(g)(3) (MPOs may consult and coordinate with other planning officials "to the maximum extent practicable"); 23 U.S.C. §134(i)(4) (MPOs shall consult as appropriate with resource agencies); 23 U.S.C. §134(i)(5) and (j)(1)(B) and (j)(4) (MPOs shall give stakeholders reasonable opportunity to participate).

¹¹ See 23 U.S.C. §134(c)(3).

¹² See 23 U.S.C. §134(i)(4)(B).

planning process, including participation and consultation, is the means by which MPOs and others consider the planning factors set out in 23 U.S.C. §134(h). Thus, the requirement that MPOs undertake a reasonable and appropriately tailored planning process must be applied in that context, and is subject to the limits of SAFETEA-LU, including the limitation on disruptive legal challenges in 23 U.S.C. §134(h)(2).

Although the proposed regulations generally follow SAFETEA-LU's guiding principles, the proposed language is inconsistent with SAFETEA-LU in several important respects that must be rectified. First, the phrase "including but not limited to" in proposed §450.316(a)(1)(i) modifying reasonable opportunity to comment must be removed. SAFETEA-LU §6005 requires that MPOs develop a public participation process that gives stakeholders a "reasonable opportunity to comment on the transportation plan" through public meetings, visualization and outreach. AMPO and its members agree that stakeholder participation is a welcome and essential part of the planning process. Stakeholders are also represented within MPO governing structures through their elected officials. However, to the extent that the proposed regulations attempt to broaden the obligations established by Congress and require something else beyond reasonable opportunity to comment, USDOT would exceed its statutory authority. Because the phrase is ambiguous and unnecessary, it should be removed.

Recommendation: Remove the phrase "including but not limited to" from proposed Section 450.316(a)(1)(i).

Second, while AMPO fully supports consultation with agencies and officials responsible for other planning activities, as set forth in SAFETEA-LU, that consultation is discretionary and within the reasonable decision-making of the particular MPO to determine the level of need for the particular region and planning needs. Section 6005 of SAFETEA-LU authorizes USDOT to "encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities," but provides no authority to mandate such.¹³ Accordingly, the regulatory language at proposed §450.316(b) should be modified to reflect the discretion vested in MPOs for inter-agency consultation.

Recommendation: Change "shall" to "should" in the first sentence of proposed Section 450.316(b).

§450.318 Transportation Planning Studies and Project Development

In general, AMPO fully supports the concept of allowing planning documents to be used in the NEPA review process, where appropriate. However, SAFETEA-LU does not require MPOs to prepare documents that are "NEPA-ready" or to alter the planning process in any way to accommodate project-specific NEPA review. In fact, the language in §450.318(a) states, "The results of these transportation planning studies **may** be incorporated into the overall project development process to the extent that they meet the requirements of the National Environmental Policy Act".¹⁴ Accordingly, the standards for incorporating the

¹³ See 23 U.S.C. §134(g)(3).

¹⁴ Emphasis added.

results of corridor or subarea planning studies into the decision-making process for subsequent project-specific NEPA analyses need not be addressed in the transportation planning regulations, and should be left to discretionary agreements between MPOs, NEPA lead agencies and project sponsors, guided by the Council on Environmental Quality's NEPA regulations at 23 C.F.R. Part 771 and 40 C.F.R. Part 1500 *et seq.* The complexity of the NEPA process demands highly specific and detailed information that may rise above the detail demanded by the MPO process. We are reluctant to have the NEPA lead agency rely on this information without express consultation with the MPO. Because the MPO is responsible for producing planning documents that could be used in subsequent project-level decision-making, the NEPA lead agency should effectively consult with the MPO to agree upon the appropriate level of detail and standards of analysis.

The regulatory language in subpart (b)(1) states that “publicly available documents produced by, or in support of, the transportation planning process described in this subpart may be incorporated by reference into subsequent NEPA documents, in accordance with 40 C.F.R. 1502.21, to the extent that: (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.” AMPO respectfully requests additional clarification regarding what actually constitutes an agreement by the NEPA lead agency that the incorporation will aid in the NEPA process. This should be done by future guidance rather than in the planning rule because, as noted, any such agreement is entirely discretionary and not dictated by SAFETEA-LU's planning provisions. We recognize that this language is designed to assist in streamlining the NEPA process but we are concerned that the process of incorporating documents by reference into a NEPA document not be left solely to the discretion of the NEPA lead agencies. AMPO does not read the proposed regulations at §450.318 to require any action or effort by MPOs other than what a particular MPO might voluntarily undertake by agreement.

Recommendation: Provide guidance that establishes a process for the incorporation of MPO documents into the NEPA process.

Subpart (b)(2)(iii) provides stakeholders with a “**continual** opportunity to comment during the metropolitan transportation planning process.”¹⁵ While AMPO believes that it is appropriate to provide ample time for comment, having a term such as *continual* in the language of the rule prevents the establishment of a closing date for comments. Rather, the term *reasonable* would offer the opportunity to establish an appropriate deadline.

Recommendation: Replace the term *continual* with the term *reasonable*.

§450.320 Congestion Management Process in Transportation Management Areas

AMPO is pleased that the new requirements focus on the Congestion Management Process rather than the Congestion Management System. We support both the continued emphasis on Congestion Management Process data as a core component of the planning process and

¹⁵ Emphasis added.

the specification of traffic operational improvements as a priority strategy to reduce congestion. We believe that it is appropriate for the USDOT to promulgate further guidance on the Congestion Management Process in order to provide MPOs with a clear picture of the expectations for this process, given that this is a change in statutory requirements.

Recommendation: Provide separate guidance on the Congestion Management Process that further explains how it will work and its incorporation into the MPO planning process.

§450.320(c) concludes with the phrase “The congestion management process shall include:” and then provides a list in §450.320(c)(1)-(6) of the items to be included. AMPO interprets §450.320(c)(1) to offer items to be included with §450.320(c)(2)-(6) elaborating on the items mentioned in §450.320(c)(1). We believe that it is appropriate for USDOT to recognize paragraphs (2)-(6) as elaboration as it would provide a more streamlined approach to the FHWA divisions during the certification process.

Recommendation: Include additional language at the end of §450.320(c)(1) of the proposed rule that states, “Subsections §450.320(c)(2)-(6) elaborate on these topics.”

AMPO appreciates the flexibility built into the Congestion Management Process, implied by the absence of any comment on a time frame. AMPO believes, however, that if the intent is to create flexibility in the process that such flexibility should be made more explicit.

Recommendation: Add a new subpart (g) to §450.320 that states, “The Congestion Management Process is *ongoing* and should be treated as such.”

§450.322 Development and Content of the Metropolitan Transportation Plan

§450.322(f)(2) (National and Regional Needs)

In subpart (f)(2) the proposed rule states “The metropolitan transportation plan, shall, at a minimum, include...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.” AMPO supports that this regulation would require metropolitan transportation plans to give emphasis to those facilities that serve important national and regional transportation functions over the period of the transportation plan. This regulation supports the MPOs’ efforts to recognize a strategic transportation system to serve as the basis for allocating limited transportation resources.

§450.322(f)(7) (Environmental Mitigation)

The language of the proposed regulation states “A discussion of potential environmental mitigation activities and potential areas to carry out these activities...” departs substantially from SAFETEA-LU §6001 by omitting the critical phrase “types of” which precedes “potential environmental mitigation activities.” This departure from statutory language dramatically alters the meaning of the regulation, and would require a level of detail that is not appropriate in a MTP. By omitting this phrase, the proposed regulation substantially broadens the requirements of the planning process to include any and all potential environmental mitigation activities. This is well beyond the scope of the planning process and should be rectified by remaining consistent with the language in the statute.

Recommendation: Include the phrase “types of” before the phrase “potential environmental mitigation activities and potential areas to carry out these activities” in Section 450.322(f)(7).

§450.322(f)(10) (Financial Plan and Fiscal Constraint)

AMPO supports the changes to the development of the transportation plan and hopes that these changes will help to streamline the MPO planning process. We are, however, concerned about the discrepancy between the plan, which focuses on major facilities, and a financial plan that focuses on Operations and Maintenance. We believe that it will be very difficult for MPOs to dissect a comprehensive financial plan in order to focus only on major facilities. It remains unclear as to exactly what the MPO role would be and we have several questions regarding this requirement. First, when the plan only includes regional projects, does it also have to include Operations & Maintenance for regional Operations & Maintenance only? Furthermore, will MPOs be required to assess the adequacy of Operations & Maintenance budgets? This would place a new and undue burden on the MPOs, especially in larger areas. Finally, if State and Local money is paying for Operations & Maintenance of both regional and local facilities from a unified local budget, what is the role of the MPO, given that the MPO programs federal dollars? MPOs cannot control Operations & Maintenance and the statutory language does not require MPOs to audit Operations & Maintenance expenditures, therefore the planning process should not be subject to challenges on the basis of disagreement over adequate maintenance levels.

Recommendation: Provide subsequent guidance as to how Operations and Maintenance plays in to the Financial Plan.

Additionally, in subpart (f)(10), the proposed rule states “A financial plan that demonstrates how the adopted transportation plan can be implemented, while operating and maintaining existing facilities and services.” AMPO respectfully requests that this phrase be defined more clearly. While the intent (do not build unless you can afford to operate and maintain) is appropriate, the reach of the statement is unclear. Does it apply to all public roads or a subset of public roads? Does it imply that all existing public transit services or traveler information activities will be maintained for the twenty-year planning period? Does it require that the MPO collect Operations & Maintenance budget information from every local government within the Metropolitan Planning Area? It could meet the intent of fiscal constraint by limiting “operating and maintaining” to higher level facilities, or facilities and services of regional importance. Overall, AMPO believes that additional clarification is

needed in order to effectively apprise practitioners how operating and maintaining the existing system plays into the MPO planning process.

Recommendation: Limit the MPO responsibility to develop a financial plan that focuses exclusively on Operations & Maintenance of higher-level facilities, or facilities and services of regional importance.

§450.322(h) (Safety)

AMPO requests additional guidance on the involvement of the MPO in the Strategic Highway Safety Plan. We recognize the important role that the MPO plays in the development of this plan but we have already faced several challenges to this process. For example, the deadline for the Strategic Highway Safety Plan is not consistent with the deadline for implementation of the new planning requirements.

Recommendation: Issue further guidance on the role of the MPO in the Strategic Highway Safety Plan.

Not only does proposed §450.322(h) note the incorporation of safety into the transportation planning process, but it also mentions security, stating, “The metropolitan transportation plan should include...emergency relief and disaster preparedness plans and strategies and policies that support homeland security and safeguard the personal security of all motorized and non-motorized users.” AMPO believes that the expectation of the MPO in security planning is for consultation with appropriate state, local and regional agencies. The MPO may serve as a clearinghouse for transportation security plans developed by other state, local, and regional agencies. The transportation plan will identify means to support these security plans in consultation with the state designated agency for Homeland Security. The MPO and the State’s designated agency for Homeland Security will work together on this effort. The transportation plan will document the consultation process and opportunities to advance security planning in the region. We do not believe, however, that the MPO is responsible for adopting a regional security plan. Formal approval or adoption of any security element of the MTP by these agencies is not required.

If, however, this is not the intended interpretation, the regulations should clarify the expectations of the MPO in security planning, including a definition of the elements that define emergency relief and disaster preparedness relative to transportation planning, and the desired relationship of FHWA and FTA between the regional transportation plan and regional security planning.

Recommendation: Clarify that the role of the MPO is that of consultation in security planning.

§450.324 Development and Content of the Transportation Improvement Program

Both §450.322 and §450.324 focus on the documentation of the MTP and the TIP. AMPO believes that the regulations as written create a significant overlap between documentation for the TIP and other required documentation such as the duplication of MTP financial plan

information, the provision for allowing a TIP illustrative list in addition to an MTP illustrative list, the requirement for including a list of major projects implemented in the previous TIP in the current TIP, which simply repeats the annual list in situations where the TIP is updated annually. The MTP document (and other documents produced as a result of other requirements of the metropolitan planning process) should not be duplicated wholesale in the TIP. The TIP is a straightforward programming document focused on facilitating project implementation and should not include extraneous interim data available in other sources produced as part of the RTP development process.

Recommendation: Keep the TIP as a straightforward programming document that facilitates project implementation rather than a wholesale repository of duplicated information.

AMPO supports public review of both the TIP and the STIP throughout the metropolitan planning process. However, proposed §450.324(e)(1) states: “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...” We respectfully suggest that it is often difficult for members of the public who are reviewing a TIP or a STIP to know enough about the project from the minimal information provided.

Recommendation: Add the phrase “sufficient descriptive information to facilitate public review” in order to further improve the public involvement process.

AMPO’s comments on proposed §450.322, as set forth above, relating to public participation, consultation, financial planning and other issues common to the plan and TIP development processes are also relevant to proposed §450.324, and are incorporated here by reference.

§450.326 TIP Revisions and Relationship to the STIP

The language in the preamble on page 33524 under §450.326 “TIP Revisions and Relationship to the STIP” states, “...moving a project or a phase of a project from year five or later of a TIP to the first four years would constitute an amendment that would require a new conformity determination.” AMPO believes that this requirement is too prescriptive. We suggest that the trigger for a new conformity determination should be whether a project moves from the MTP to the TIP or if the change would cause the open-to-traffic year of a project to cross a conformity analysis year. If an MPO develops a TIP longer than five years and the network years used for a conformity analysis are not impacted and the TIP remains a fiscally constrained subset of the MTP, a new conformity determination should not be required. This would provide flexibility in those areas that choose to develop a TIP that covers more than four years. Some of our members rely on six-year TIPs and are concerned that the language as written may require an MPO to determine conformity when it would not otherwise have to go through the conformity process.

Recommendation: Change the trigger for a new conformity determination to either:
1) A project moves from the MTP to the TIP or 2) The change would cause the open-to-traffic year of a project to cross a conformity analysis year.

§450.330 Project Selection from the TIP

The USDOT requested comment on subpart (a) as to whether MPOs should be required to prepare an “agreed to” list for each of the four years of the TIP. AMPO believes that it is important to balance the need to give the MPO and each of its member agencies reasonable flexibility to manage the transportation program while maintaining the integrity of the TIP. We would argue that it is reasonable to require “agreed to” project lists for the first year of the TIP, but not for subsequent years. If an MPO updates its TIP annually, then the first year of the TIP should fulfill the definition of the “agreed to” list.

Recommendation: Incorporate language that states “an MPO is required to prepare an *agreed to* list of projects for the first year of the TIP only.”

Subpart (c) offers information regarding the process for TIP implementation as it relates to other agencies. AMPO supports additional clarification of the intended differences in project selection roles of MPOs and DOTs for two groups of funding sources:

1. For the purpose of selecting all 23 C.F.R. and 49 U.S.C. Chapter 53 funded projects (excluding National Highway System, Bridge, Interstate Maintenance, and Federal Lands), the MPO selects projects in **consultation** with State and public Transportation partners.
2. National Highway System, Bridge, and Interstate Maintenance projects are to be selected by the State in **cooperation** with the MPO.

AMPO maintains that consultation prescribes a less involved level of interaction. The word “consultation” with regard to the definition listed in §450.104 indicates that parties will “confer” and “prior to taking action(s), consider the views of other parties.” AMPO maintains, however, that working in cooperation, or partnership, requires a higher level of interaction. Cooperation, as defined in §450.104 indicates the parties will work in partnership to “achieve a common goal or objective”. AMPO requests additional clarification on the intended differences between these areas as applied to particular planning obligations.

Recommendation: The USDOT should offer subsequent informal guidance as to the intended differences between these two areas.

Furthermore, MPOs face fundamental institutional challenges because of the misunderstanding by many States and MPOs that differential project selection authority by fund source pertains to TIP development. As a result, AMPO would request additional clarification regarding this issue in the proposed regulation.

Recommendation: Include an additional clarifying sentence at the end of subpart (c) that states “The authority established in this section for selection of projects *from* an

approved TIP does not contradict or negate the responsibility assigned to the MPO, in cooperation with the State(s) and any affected public transportation operator(s), to *develop* the TIP for the metropolitan area.

§450.332 Annual Listing of Obligated Projects

Subpart (a) describes the process for the MPO to cooperatively develop the list of projects. The language would require that “in metropolitan areas, on an annual basis, no later than 90 calendar days following the end of the State program year, the State, public transportation operator(s), and the MPO shall cooperatively develop a listing of projects...” While the proposed language ties this task to the end of the State program year, AMPO recommends that the language should, at least permissively, allow for the use of the Federal Fiscal Year. For example, in New York, the State program year begins on April 1st, but the TIPs and STIP are necessarily constructed on a fiscal year basis. Having to list project obligations and compare them to the TIP on a State program year basis would require additional and unnecessary effort by the MPO.

Recommendation: Include the phrase “or the Federal Fiscal year” after the phrase “State program year”.

§450.338 Phase-in of New Requirements

Please see AMPO’s comments on this important topic as discussed in the General Comments section. Those comments are incorporated here by reference.

APPENDICES

Appendix A – Linking the Transportation Planning and NEPA Processes

AMPO strongly objects to the incorporation of guidance into the proposed regulations. When the guidance document attached as Appendix A was released, it was released as guidance, and therefore it did not require the level of process that is required when promulgating a rule. As such, by adding it to the appendix of the proposed rule, and giving it the force of law, USDOT has effectively undermined the document’s purpose as guidance. Furthermore, if this appendix is law rather than guidance, it opens up FHWA and FTA, not to mention States and MPOs, to litigation. Additionally, because of the organic nature of guidance, it is always easier to make changes to guidance to fit with evolving practices as compared to changing a rule, which would require significant effort on the part of the USDOT and would ultimately limit the effectiveness of this guidance, because it would be much more difficult to revise and update it to fit the changing needs of the States and the MPOs.

AMPO would also like to reiterate that using MPO studies and information to form purpose and need for the NEPA process is optional, and is not required. While we support FHWA and FTA’s overall approach to linking planning and NEPA, including flexibility for States and MPOs to determine what parts of the planning process could be used in the NEPA

process, we are extremely concerned with the approach that FHWA and FTA have taken to implement this practice. We reiterate that MPOs do not prepare their studies and collect their data with the expectation that this information will be used in the NEPA process. NEPA demands high level of data and studies, many of which are beyond the scope of the MPO process. As such, if a NEPA lead agency opts to rely on data collected by an MPO or a study completed by the MPO, AMPO would urge the NEPA lead agency to consult with the MPO in order to fully understand the limitations of the data and/or the study so that the NEPA lead agency can effectively form a well-thought-out NEPA analysis.

If the MPO begins the study with the expectation that the data will be incorporated into the NEPA process at the purpose and need stage, then the MPO acknowledges that it is prepared to handle the informational requirements necessary to move the process forward. AMPO agrees that NEPA streamlining is a laudable goal, but it is imperative for the MPO to know whether such a study will be incorporated in to the NEPA process prior to entering in to such a study.

Recommendation: Remove Appendix A from the proposed rule. If an MPO agrees that its study will be incorporated into the NEPA process, then the NEPA lead agency should work effectively with the MPO to fulfill the requirements of the purpose and need part of the NEPA study. If, however, the MPO does not undertake the study with the expectation that such a study will be incorporated into the NEPA process, the MPO should not have to incorporate it as such.

Appendix B – Fiscal Constraint of Transportation Plans and Programs

As mentioned, we are concerned about the process for inserting this guidance into the proposed rule as an appendix. By including this as part of a rule, rather than as a separate guidance document, the USDOT again exposes itself, the States, and the MPOs, to potential legal challenges based on this language. While AMPO believes that fiscal constraint lends substantial credibility to the MPO planning process, we are concerned that the increasing inflexibility associated with including this language in the proposed rule leaves little room for planning process evolution. We are not interested in a return to “wish-listing” of projects. Rather, we want to continue the currently highly credible planning process while simultaneously leaving the potential for improvements available to practitioners. We believe that the guidance that the USDOT issued achieved this goal and that there is no further need to include this in the proposed rule.

Although overall, we are pleased with the language on guidance (as it long as it remains as such), we are concerned about the requirement that in order for a fiscal constraint finding to be made, there must be a determination that the “*existing system is being adequately operated and maintained.*” Such a requirement lends itself to challenges at the MPO, the State, and the Federal level. Not only will States and MPOs be required to make a determination regarding their projects, but they will also be required to ensure that the entire transportation system is being adequately operated and maintained. These additional requirements have no statutory basis and will create significant regulatory burdens. Furthermore, if this requirement is incorporated into rule, various groups that believe “adequate” should actually mean

“optimal” would call the definition of “adequate” into question across the country. We believe that this is a wholly unrealistic expectation, given the complex nature of transportation finance. Few transportation systems work at optimal levels and the expectation that fiscal constraint requirements will lead to optimization of transit systems, for example, is a lofty goal at best.

This far-reaching requirement to ensure that the entire transportation system is adequately operated and maintained would compel States and MPOs to compile cost and revenue data for the entire system in order to determine whether there is enough money available to fund projects in a MTP, TIP, or STIP. The fact that this could include all modes, conceivably even ports, rail, and air - not just highways and transit - only makes it more destructive to the transportation planning process.

AMPO also believes that the proposed regulations go too far by requiring that plans, TIPs, and STIPs must reflect estimated “year of expenditure” dollars. Not only does this requirement have no basis in statute, but it also unfairly places an additional burden on the MPOs and the States. AMPO requests that the USDOT allow States and MPOs to apply either “year of expenditure” dollars or “present day dollars” in their financial forecasts as long as there is consistency between the expression of project costs and revenues. States and MPOs should be allowed to make this determination, based on their data and the specific characteristics of their regions. AMPO understands that the purpose of this guidance is to define realistic costs of mega-projects. If this is the intended result, then the guidance should say so. The overly broad expansion to include long range plans under the umbrella of fiscal constraint is overly burdensome and unnecessary.

* * *

On behalf of the members of the Association of Metropolitan Planning Organizations, we would like to thank you for the opportunity to submit comments on the Proposed Statewide and Metropolitan Planning Rule. We look forward to receiving your responses to our comments and we would be happy to provide you with any additional clarification that you may need. Should you have any questions, please contact Deborah Singer, AMPO Legislative Counsel at dsinger@ampo.org or 202.296.7051. We look forward to working with the USDOT on continuing the SAFETEA-LU implementation process.

Sincerely,



DeLania Hardy, Executive Director
Association of Metropolitan Planning Organizations