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U.S. Department of Transportation
Dockets Management Facility, Room PL-401
400 Seventh Street, SW
Washington, DC 20590

[Docket No. Federal Highway Administration (FHWA)-2005-22986]

Thank you for the opportunity to offer comments on the Notice of Proposed Rulemaking to 23 Code of Federal Regulations (CFR) Parts 450 and 500, and 49 CFR Part 613 related to Statewide Transportation Planning and Metropolitan Transportation Planning [Docket No. FHWA-2005-22986].

The California Department of Transportation (Department) agrees that rulemaking is needed in order to incorporate the modified planning requirements currently in statute from Transportation Equity Act for the 21st Century and Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). In many areas, the proposed regulations closely reflect the statutory language and have minimized the creation of new requirements. However, in several areas the proposed regulations are inconsistent with or unjustified by the underlying statutes. We have pointed out significant concerns in this letter and have also enclosed section-by-section comments. In addition, these concerns and comments include input from California's regional agency partners.

As stated above, the Department has significant concerns about the following areas:

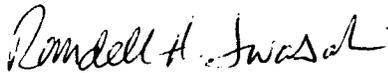
- **Appendices.** The proposed regulations incorporate two existing guidance documents as appendices. We strongly object to incorporating these guidance documents into the regulations. Giving guidance the status of regulations will open these issues up to litigation challenges. It will also make it more difficult for guidance to be modified in response to evolving practices which limits the effectiveness of the guidance.
- **Fiscal Constraint.** The proposed regulations, together with the guidance in Appendix B, escalate the recent trend toward an increasingly bureaucratic proscriptive and inflexible approach to fiscal constraint. The fiscal constraint requirement was established to ensure that plans, Transportation Improvement Programs (TIPs), and Statewide Transportation Improvement Programs (STIPs) are based on reasonable estimates of the revenues available to implement them. The fiscal constraint requirement was never intended to substitute for a state's budgeting process, nor was it intended to be a comprehensive financial management system for tracking revenues and expenditures.

In addition, we are concerned about requiring fiscal constraint analyses to take into account all costs and revenues for operating the "entire transportation system." This interpretation has no basis in the statute and would result in unjustified federal intrusion into state and local decision-making. Also, we think the addition of requiring the projects be listed in the TIP at the time of Advance Construction (AC) and at the time the project is converted from AC, is overly burdensome and confusing to the public.

- **Phase-In Provisions.** The proposed regulations require amendments to TIPs, STIPs, and plans submitted on or after July 1, 2007, be SAFETEA-LU compliant. The statutory deadline for compliance with the SAFETEA-LU planning requirements clearly implies the date for compliance is determined by the next established planning update cycle and not the submission of plan, TIP or STIP amendments. The regulation should be consistent with the statute and only require that plans, TIPs and STIPs submitted after July 1, 2007, be SAFETEA-LU compliant. Without this change the Department and its Metropolitan Planning Organizations will need to update their TIPs as of July 1, 2007, after updating them on October 1, 2006, resulting in a change in the established update cycle. This is contrary to statute.

We urge the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) to consider and address all of these concerns in the final version of the proposed regulation. We look forward to working with FHWA and FTA in continuing to clarify and strengthen regulations related to transportation planning.

Sincerely,



 WILL KEMPTON
Director

Enclosure

- c: Eric L. Swedlund, Office of Governor Arnold Schwarzenegger
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Gene Fong, Federal Highway Administration
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MPO Executive Directors
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**California Department of Transportation Comments
on Proposed Statewide and Metropolitan Planning Regulations
Docket No. Federal Highway Administration-2005-22986**

**Enclosure
SECTION-BY-SECTION COMMENTS**

450.104 – Definitions

“Administrative modification,” “Amendment,” “Revision,” and “Update”. We are recommending changes to clarify these four definitions. In our recommendations, an administrative modification is defined as a “minor” change and, an amendment is defined as a “major” change. This is a simple, straightforward distinction that will be readily understandable by the public. Our proposal includes the following elements:

- 1 The definition of “administrative modification” should define a “minor change” as; (1) a minor change in project cost, design concept, or scope of an included project (2) any change in funding source, project year, or initiation date of an included project or, (3) any change to a group listed project. An agency can also make a change to the project year for a Transportation Improvement Program (TIP) or a Statewide Transportation Improvement Program (STIP) without an administrative action, or amendment, if they have an Expedited Project Selection Procedure in place. The definition of “administrative modification” should specifically acknowledge that the only process required for such a change is after-the-fact notification, as appropriate, of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). There should not be public involvement or other procedural requirements for an administrative modification. Such a change is, by definition, minor, and thus does not warrant the procedural burdens that are appropriate for an amendment. Please note that we also have recommended a conforming change to Section 450.326(a).

- 2 The definition of “amendment” should define a “major change” as the addition or deletion of, or a major change in the design concept, scope, or cost of, any project that is required to be included in a metropolitan plan, TIP, or STIP. This definition should clarify that changes in projects which are included only for illustrative or informational purposes, do not require an amendment. The definition of “amendment” should specifically state that an amendment requires public involvement, fiscal constraint, and conformity “only to the extent that they are affected by the amendment.” For example, an amendment should not require a comprehensive re-demonstration of fiscal constraint on the entire plan, TIP, or STIP. In addition, we recommend allowing States and Metropolitan Planning Organization’s (MPO) themselves to develop, in consultation with FHWA and FTA, the criteria for determining a “major change.”

- 1 The definition of “revisions” should provide that the criteria for determining whether a change is “major” or “minor” should be determined in accordance with criteria developed by each State or MPO, as applicable, in consultation with FHWA and FTA. This change will allow for the definition of an amendment to be tailored to the circumstances of each State and MPO.
- 2 The concept of an “amendment” should be defined differently for statewide plans, because these plans are not subject to fiscal constraint requirements. It is not necessary to address statewide plans in the definitions of “administrative modification” or “revision.”
- 3 The definition of “update” should not include the phrase “in order to meet the regular schedule as prescribed by Federal statute.” The statute defines an outer limit, not a regular “schedule,” for updates. Many states will update more frequently than the statute requires. Deleting the phrase “in order to meet the regular schedule as prescribed by Federal statute” will better reflect the statute, without substantively altering the definition.

“Committed funds”. Committed Local and Private Funds - The definition of committed funds states that local or private sources of funds not dedicated or historically used for transportation purposes cannot be placed in the first two years of the TIP unless a written commitment of the funds has been made. We are concerned that this language could place a rigid bureaucratic obstacle in the way of innovative finance arrangements, which often cannot be finalized until all project planning, including programming in the TIP, has been completed. We strongly urge that language be added to this section to provide maximum flexibility for use of innovative transportation funding which has been strongly supported by Congress.

“Congestion management process”. The definition captures California's current direction and work with metropolitan planning agencies and local jurisdictions.

“Financially constrained or Fiscal Constraint”. The definition of “financially constrained or fiscal constraint” should be modified in two ways.

- The phrase “each program year in” should be deleted. This allows the flexibility to demonstrate a finding of fiscal constraint for the overall document rather than specific to each year.
- The phrase “by source” should be deleted because there is no statutory basis for this new requirement. Many projects qualify for multiple sources of federal funding; States and MPOs must have the flexibility to alter the mix of funding sources used for individual projects without re-opening fiscal constraint.
- The phrase “while the existing system is adequately operated and maintained” also should be deleted. We think that this demonstration for adequate operation and maintenance should be included in the financial plan for the regional included in the statewide transportation plan and not be required as part of the fiscal

constraint demonstration for the TIP or STIP.

“Financial plans”. The definition of “financial plans” should be modified in three ways.

- The proposed definition implies that a financial plan is required for a STIP which is not the case. The definition should be modified to make it clear that a financial plan is optional for a STIP.
- The definition should specifically recognize that a financial plan is required to address only the projects included in the plan, TIP, or STIP, excluding illustrative projects and not including projects listed for informational purposes.

“Management system”. The definition captures our intent, however, inclusion of the concept of "corridors" is recommended. For example the last sentence could be modified to say ".....implemented strategies and actions at a corridor and system level".

“Operational and management strategies”. The definition captures our intent.

“Regionally significant project”. The definition of a “regionally significant project” was modified by the addition of the phrase “capacity expanding projects.” The definition of a “regionally significant project” is important because – in Section 450.104 of the proposed regulations – an “amendment” is defined to include the addition or deletion of a regionally significant project from a plan, TIP, or STIP, and an amendment triggers the need to re-determine both conformity and fiscal constraint. We recommend removing the last sentence of this definition as it conflicts with the definition for “regionally significant project” that has already been established in the conformity regulations. Regionally significant projects are determined in the conformity process.

“Transportation Management Area (TMA)”. The definition is understood, however the existing regulations require the provisions congestion management systems to apply to the entire MPO area and not just the TMA. The prior regulation is preferable for California given the complexity and of the metropolitan areas, rapidity of population growth, growth in vehicle miles of travel, and in congestion.

450.206 – Scope of the statewide transportation planning process

Section 450.206 – Scope of the statewide transportation planning process. The inclusion of strategies and services with projects in section (a) is applauded. The addition of "actions" to this section is encouraged. Section (a) (7) is additionally strongly supported, promoting efficient system management and operation. This State is emphasizing efficient system management and operations at the corridor and system level as a first priority. Inclusion in Section (b) of performance measures is highly supported and underscores this State's commitment to inculcating performance measurement into plans and practices.

450.208 – Coordination of planning process activities

450.208(a) (7) – This section specifically supports this State's emphasis on data collection and analysis. The section is vital to the NPRM and effectiveness for statewide and metropolitan planning.

450.208(b) – This section requires State air agencies to coordinate with State transportation agencies in developing the transportation portions of the State Implementation Plan under the Clean Air Act. This provision duplicates provisions of the Clean Air Act and EPA's conformity regulations (40 Code of Federal Regulations (CFR) 51 and 40 CFR 93). In addition, it lays requirements on air agencies in transportation regulations that the air agencies are unlikely to know about and are arguably not enforceable by U.S. DOT. What is the statutory basis for this paragraph as applied in the DOT's Planning regulations?

450.208(h) – In the "Section by Section" discussion, the last paragraph of this section states: "Paragraph (h) is proposed to promote consistency between the statewide transportation planning process and the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, as well as with the Regional Transit Security Strategy as required by the Department of Homeland Security." Guidance has not been issued on the "Regional Transit Security Strategy." Are the transit operators responsible for the development of this security strategy? Additional clarification other than a brief description in Subpart A of the Notice of Proposed Rulemaking should be provided.

450.214 – Development and content of the long-range statewide transportation plan

450.214(a) (b) – Inclusion of operations and management strategies, investments, procedures, and other measures in this section is applauded. Inclusion of the word "actions" is also recommended.

450.216 – Development and content of the STIP

450.216(a) – Projects Included in STIP. Section 450.216(a) states that if the STIP covers more than four years, "FHWA and the FTA will consider the projects in the additional years as informational." We recommend changing this sentence to read, "FHWA and the FTA will consider the projects in the additional years as informational (unless otherwise requested by the State)." This change will allow FHWA/FTA-approved STIP to include a period of more than four years, if requested by a State. The benefit of including the fifth year is that it will allow the flexibility to advance projects from the fifth year into the fourth year to replace projects that were not able to go forward on schedule thus assuring the State does not lose any obligation authority at the end of the fourth year. This will not change the requirement to update a STIP at least once every four years.

450.216(i) – Category and source of funds in STIP. The existing regulations require the "proposed category of Federal funds and source(s) of non-Federal funds" to be provided for each project for the first year of the STIP; for the second and third years, the

regulations require only that the STIP identify the “*likely category or possible categories* of Federal funds and sources of non-Federal funds.” Section 450.216(i) of the proposed regulations takes away this flexibility, by requiring the STIP to identify “[t]he *amount of funds proposed to be obligated during each program year* for the project or phase, *by sources of Federal and non-Federal funds.*” There is no statutory justification for imposing this more restrictive requirement. Section 450.216(i) should be modified to preserve the flexibility allowed under existing regulations.

450.216(l) – Reference to Appendix B. We recommend deleting the last sentence, which refers to Appendix B for guidance on fiscal constraint. We strongly object to incorporating this guidance document into the regulations. Giving guidance the status of regulations –and the force of law – will open up FHWA and FTA and thus States and MPOs to litigation challenges based on a selective reading of short passages in these lengthy documents. It will also make it more difficult for this guidance to be modified in response to evolving practices, which limits the effectiveness of the guidance. We strongly urge FHWA and FTA to keep the guidance as guidance.

450.216(m) – Fiscal Constraint “By Year”; Projects Included for “Informational Purposes”. We recommend deleting the phrase “by year” from this paragraph. This phrase is redundant, because any demonstration of fiscal constraint for a STIP necessarily involves consideration of the timing of projects and revenues. This requirement is not backed by statute. The statute simply requires the TIP and STIP be constrained over the entire period of the program document. In addition, this phrase is problematic because it implies that any shifting projects between years of a STIP could require re-demonstration of fiscal constraint – which would be extremely burdensome and would not serve the purposes of the fiscal constraint requirement.

450.216(o) – Fiscal Constraint for STIP Amendments. We recommend deleting the sentence that says, “All changes that affect fiscal constraint must take place by amendment of the STIP.” The regulations state elsewhere that any *amendment* requires *re-demonstration of fiscal constraint*. (See the definition of amendment in 450.104.) It would be circular to state that any change “affecting fiscal constraint” requires an amendment. To avoid confusion, the regulations should use the definition of amendment as the “trigger” for determining when a fiscal constraint finding is needed; it should not be stated the other way around.

We also recommend changing the first sentence to “Projects in any of the years of the recognized STIP may be moved in place of another project in the recognized STIP”. This is in line with allowing the STIP to be more than a four-year STIP.

450.216 – Preamble: “Available or Committed” Funding. The preamble invites comments on “whether the agencies should require States submitting STIP amendments to demonstrate that funds are ‘available or committed’ for projects identified in the STIP in the year the STIP amendment is submitted and the following year.” We oppose this potential change in the regulations. This change could effectively require a *comprehensive re-analysis of the financial assumptions underlying the entire STIP every*

time there is an amendment, no matter how small. This would not be possible due to the fact that MPO TIPs are amended for statewide programs at different times after the initial update and it is not possible to line all the TIP amendments up at one time. The fiscal constraint analysis for a STIP amendment should focus on the incremental costs and revenues associated with the amendment; it should not re-open the entire plan.

450.218 – Self-certifications, Federal findings, and Federal approvals

450.218(a) – Approval of Amendments. This section would require joint approval by FHWA and FTA for all amendments to STIP. The current regulations require joint approval “as necessary,” which allows flexibility to seek approval from FHWA or FTA individually for amendments that only affect projects within the authority of that agency. The flexibility provided under the existing regulations must be retained. Requiring joint approval for every amendment would greatly slow down the approval process for amendments, impose new workloads on FHWA and FTA (particularly FTA), and provide no significant benefit to the public.

450.218(d) – Operating Assistance for Highway and Transit Projects. Section 450.218(d) would allow transit operating funding to be approved even if not in the STIP; it would not allow this flexibility for highway projects. By contrast, existing 450.220(g) allows this flexibility for both highway and transit projects and programs. There is no justification for allowing this flexibility for transit projects but not highway projects. The California Department of Transportation (Caltrans) urges FHWA and FTA to retain the existing language on this issue.

Section 450.220 - Project Selection from the STIP

450.220(e) – “Agreed-to list” for all Four Years. Section 450.220(e) retains the existing language in Section 450.222(d), which provides that the projects in the first year of a STIP constitute an “agreed-to” list. The agreed-to list means that no further project selection action is required (under the planning regulations) in order for the State to move forward with those projects. The preamble invites comment on “whether States should be required to prepare an ‘agreed-to’ list of projects at the beginning of each of the four years in the STIP, rather than only the first year,” and also invites comment on “whether a STIP amendment should be required to move a project between years in the STIP, if an “agreed-to” list is required for each year.” We oppose both of those changes.

This language is contrary to congressional intent because it would result in updates every year rather than every four years as mandated by congress. In addition, the ability to move a project between years of a STIP, without a STIP amendment, is absolutely essential to the smooth functioning of a State’s program. Because of funding, environmental reviews, and other factors, projects are frequently shifted across years within the STIP. Requiring an amendment every time such a shift is made would drastically reduce States’ flexibility. This flexibility to move projects is currently allowed by the implementation of the expedited procedures in Section 450.220. In addition, we propose that projects can be moved within any years of the STIP assuming the STIP can

be recognized for a period of more than four years.

450.224 – Phase-in of new requirements

Section 450.224(a) – Approval Prior to July 1, 2007 Deadline. We recommend two changes to this paragraph:

- The ability to approve a plan or STIP under pre-Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU) requirements should not be limited to amendments or updates that were under development as of August 10, 2005. The opportunity to complete an amendment based on pre SAFETEA-LU requirements should be allowed until the agencies update their documents based on their established planning cycle. If this change is not made agencies will be forced to deviate from their established planning cycles. This is contrary to statute and congressional intent.
- The new four-year update cycle should be applied to any plan or STIP updates approved after August 10, 2005, (the date of enactment of SAFETEA-LU). This principle was recognized by FHWA and FTA in guidance issued on May 2, 2006, just before this rulemaking was published. The guidance states that “States and MPOs may take advantage of the new four year cycle for transportation plans and programs in non-attainment areas, even if they have not met other SAFETEA-LU planning requirements.” It is unclear why regulations deviate from FHWA and FTA’s own guidance. In any event, we strongly support interpretation in the guidance, which allows any update approved after enactment of SAFETEA-LU to trigger the new four-year update cycle.

450.224(b) – Action Required Before Deadline. This section requires the FHWA/FTA conformity determination to be completed before the July 1, 2007, deadline for any plans, TIPs, or STIPs in non-attainment or maintenance areas. The statute did not set a deadline for conformity determinations; it set a deadline for the planning process. See the discussion for Section 450.224(a).

450.224(c) – Applicability to Amendments. This section applies to the July 1, 2007, deadline to “updates or amendments.” The statute states, “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 and metropolitan planning organization plan and program updates shall reflect changes made by this section.” The statutory deadline for compliance with the SAFETEA-LU planning requirements clearly implies the date for compliance is determined by the next established planning update cycle. States and MPOs have established planning update cycles for both the plan and the program. Amendments to the plan and program are not considered updates and are done between the established program cycles. The regulation should be consistent with the statute and only require that plans, TIPs and STIPs submitted after July 1, 2007 be SAFTEA-LU compliant. If the regulations keep the requirement that all amendments submitted after July 1, 2007,

must comply with SAFETEA-LU, the States and MPOs will need to update their current TIPs and STIPs, thus deviating from their established update cycles. Congress specifically wrote in statute deviating from the established update cycle cannot be required by the Secretary.

MPOs and States should be allowed to amend their TIPs and STIPs based on the approved Transportation Act that they were initially approved under. The subsequent program update and amendments to that update would then be required to be SAFETEA-LU compliant. Without this change, Caltrans and its MPOs will need to update their TIP as of July 1, 2007, after updating it on October 1, 2006. The normal update cycle would be October 1, 2008. Updating the TIP and STIP as of July 1, 2007, would deviate from the normal update cycle which the Secretary is expressly forbidden from requiring. We strongly oppose the statute interpretation for the July 1, 2007; phase in requirements in regulation by FHWA and FTA.

Section 450.306 – Scope of metropolitan transportation planning process

See comments for Section 450.206.

Section 450.312 – Metropolitan planning area boundaries

450.312 (b) - Appears to limit flexibility in adjusting Metropolitan Planning Area (MPA) boundaries where multiple MPAs exist within one non-attainment area. In such cases (of which the major example is in California), boundaries are frozen at the existing boundaries, and any need or desire for adjustment requires that a single MPO be designated for the entire non-attainment area. What is the statutory basis for this? While we don't anticipate any near-term adjustments of MPA boundaries in the affected area, it does severely limit flexibility to adjust existing MPA boundaries in the area for management and other reasons.

Section 450.314 – Metropolitan planning agreements

450.314 (a) - This section states: "*The MPO, the State(s), and the public transportation operator(s) shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in a written agreement among the MPO, the State(s), and the public transportation operator(s) serving the MPO.*" Current federal regulations require the State and each MPO have a planning/programming Memorandum of Understanding (MOU). Each MPO in turn, is required to have an MOU with the public transit operators within their respective regions.

Will this proposed new requirement negate the need for the MOUs currently in place? In addition, will this proposal require one MOU between the State, MPO and public transit operators? If that were the case, the list of items in the MOU would be very extensive since it would encompass a large range of needs between those three entities.

Lastly, the NPRM states this proposed MOU should include “*provisions for consulting with officials responsible for other types of planning affected by transportation.*” This would include “*State and local planned growth, economic development, environmental protection, airport operations, freight movements, safety/security operations, and providers of non-emergency transportation services receiving financial assistance...*” This is a large group. How would States or MPOs identify some of these agencies such as providers of non-emergency transportation services receiving financial assistance?

Section 450.316 – Interested parties, participation, and consultation

450.316 (b) – This section states: “In developing the Metropolitan Transportation Plans and the TIPs, the MPO shall consult as appropriate, with agencies and officials responsible for other planning activities within the MPA that are affected by transportation.” Such consultation includes Natural Resource Agencies. However, it is not clear if Natural Resource Agencies are required to respond in a timely manner, if contacts or liaisons are available, if Resource Agencies are mandated by SAFETEA-LU legislation to participate in these consultations, and if they have the resources and staff to provide the information, data, maps and other documents requested by MPOs.

Section 450.320 – Congestion management process in transportation management areas

450.320 (e) - We suggest that “*all*” be deleted in paragraph (e): “*In non-attainment and maintenance area TMAs, the congestion management process shall provide an appropriate analysis of ~~all~~ 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 Single Occupancy Vehicles (SOV)....*”

450.320 (f)(6) – This section states: “Design concept and design scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of funding source, in non-attainment and maintenance areas for conformity determination under the Environmental Protection Agency’s (EPA’s) transportation conformity rule (40 CFR 93). In all areas (regardless of air quality designation), all proposed improvements shall be described in sufficient detail to develop cost estimates”: Where does the federal authority exist to require MPOs include a description of all existing and proposed transportation facilities within the MPA in non-attainment and maintenance areas? Would this require the MPO to identify projects on or near local streets and roads that are either State or locally funded? Are privately owned “transportation facilities” included in this requirement? If so, we request the definition of transportation facilities be defined not to include privately owned facilities such as toll roads, railroad terminals or freight facilities.

450.322 – Development and content of the metropolitan transportation plan

450.322(f) (3 and 4) – The provisions in this section specifically on operational and management strategies and the congestion management system are strongly supported.

The State is pleased to see the emphasis on operations and system management.
450.322(f) (10) – Financial Plan for a Metropolitan Plan. We are recommending three changes to this paragraph:

- The requirements for a financial plan should be revised to clarify that the financial plan is only required to address projects that are included in the long-range plan; it should not be required to address the financing of projects that are entirely outside the plan, nor should it be required to address the financing for projects that are included in the plan for informational purposes.
- The cross-reference to the fiscal constraint guidance in Appendix B should be removed, because that appendix should not be included in the regulations.

450.322(f) (7) – Environmental mitigation measures. Do Particulate Matter (PM) measures from the State Implementation Plan (SIP) or other environmental plans/documents need to be listed here? If listed here only, would PM measures be subject to tracking for timely implementation under the Conformity Rule (40 CFR 93) as they are if described in the SIP or project-level environmental documents?

450.324 – Development and content of the transportation improvement program (TIP)

450.324(a) – Projects included in TIP. Please see our comments on Section 450.216(a) above. We are recommending a parallel change in this section for TIPs. This change would allow the FHWA/FTA-approved TIP to include a period of more than four years, if requested by an MPO. The benefit of including the fifth year is that it would allow the flexibility to advance projects from the fifth year into the fourth year to replace projects that were not able to go forward on schedule. This would not change the requirement to update a TIP at least once every four years.

450.324(h) – Projects considered in financial plan for a TIP. The requirements for a financial plan in a TIP should be revised to clarify that the TIP financial plan is only required to address projects that are included in the TIP; the rest of the financial plan information, including the operation and maintenance of the existing system, is part of the overall financial plan information for the plan.

450.324(i) – Financial constraint requirements for a TIP. This paragraph should be modified in three ways:

- The requirement to demonstrate fiscal constraint “by source” should be omitted. This requirement is not mandated by statute and is not included in existing regulations. It unnecessarily limits flexibility.
- The phrase “shall be demonstrated and maintained by year and” should be deleted. This allows the flexibility to demonstrate a finding of fiscal constraint for the overall document rather than specific to each year.

- The cross-reference to fiscal constraint guidance Appendix B should be deleted, because that guidance should not be incorporated into the regulations.
- A sentence should be added to clarify that projects included in a TIP for informational purposes do not have to be considered in making a fiscal constraint finding for the TIP.

450.324 – Preamble – “Available or Committed” Funds. The preamble for this section invites comments on “whether the agencies should require MPOs submitting TIP amendments to demonstrate that funds are ‘available or committed’ for projects identified in the TIP in the year the TIP amendment is submitted and the following year.” We oppose this potential change in the regulations. This change would effectively require a comprehensive re-analysis of the financial assumptions underlying the entire TIP every time there is an amendment no matter how small. The fiscal constraint analysis for a TIP amendment should focus on the *incremental* costs and revenues associated with the amendment; it should not re-open the entire plan.

450.326 – TIP revisions and relationship to the STIP

450.326(a) – Public Involvement for Administrative Modifications; Fiscal Constraint for an Amendment. This section states that public involvement procedures must be used for any administrative modification, except for those involving only projects covered in Section 450.324(f) (projects that may be shown as a grouped line item). We oppose this requirement. By definition, an administrative modification involves minor changes in a TIP. There is no reason to require public involvement for these minor changes. We recommend changing the language to state, without qualification, that public participation procedures “are not required for administrative modifications.” In addition, for the reasons stated above in our comments on Section 450.216(o), we recommend deleting the phrase “changes that affect fiscal constraint must take place by amendment of the TIP.”

450.328 – TIP action by the FHWA and the FTA

450.328(f) – Operating Assistance for Highway and Transit Projects. Section 450.328(f) would allow transit operating funding to be approved even if not in the TIP; it would not allow this flexibility for highway projects. By contrast, existing 450.324(o) allows this flexibility for both highway and transit projects and programs. There is no justification for allowing this flexibility for transit projects but not highway projects. Caltrans urges FHWA and FTA to retain the existing language on this issue

450.330 – Project selection from STIP

The preamble requests comments on the above section. Please see the discussion under Section 450.220. As with STIPs, Caltrans opposes any requirement to prepare an “agreed to” list of projects at the beginning of each year within the TIP. We recommend retaining the existing language, which requires an “agreed to” list only at the beginning of the first year of the TIP.

450.332 – Annual listing of obligated projects

We suggest deleting “no later than 90 calendar days following the end of the State program year” because it would be best to align it with the obligation authority cycle. It would be better to state as “an annual date agreed to by the MPOs, State and FHWA” or “no later than 90 calendar days following the end of the federal fiscal year.”

450.338 – Phase-in of new requirements

Please see the discussion under Section 450.224 regarding the phase-in requirements for the statewide planning process. We are recommending the same changes regarding the phase-in requirements for the metropolitan planning process.

Appendix A to Part 450 – Linking the Transportation Planning and NEPA Processes

In accordance with the California Environmental Quality Act (CEQA), all MPOs in our State prepare an environmental document for their Long Range Plans that comply with CEQA. We suggest that if Appendix A is left in the final rulemaking, a provision acknowledging stricter State environmental regulations be identified in the regulation.

Appendix B to Part 450 – Fiscal Constraint of Transportation Plans and Programs (Revised)

First and foremost, we think this guidance should be removed from regulation and the current May 2005, guidance should be rescinded and re-issued. We also are recommending that FHWA and FTA immediately rescind the May 2005, fiscal constraint guidance and replace it with interim guidance that directs field offices to comply with the fiscal constraint provisions of the statute, as written, until new guidance can be issued following completion of this rulemaking. While rescinding this guidance will create some uncertainty, it is preferable to having the guidance remain in effect because the guidance is so contrary to the intent of the statute and has not had input from affected agencies.

Assuming new guidance is issued we have the following comments to the current guidance:

- 1 *Fiscal Constraint for an Amendment Should Focus on the Incremental Changes Associated with the Amendment* - Section 450.104 (in the definition of “amendment” and “updated”) states that a fiscal constraint finding is required for any amendment or update to a metropolitan plan, TIP, or STIP. Appendix B further provides that FHWA and FTA will not approve an amendment or update if there has been a change in revenue conditions or costs for projects in the plan, TIP, or STIP. Appendix B, at page 33537, states that: “Importantly, the FHWA and FTA will not act on new or amended metropolitan transportation plans, TIPs, or STIPs unless they reflect the changed revenue situation. The same policy

applies if project costs or operations/maintenance cost estimates change after a metropolitan transportation plan, TIP, or STIP are adopted.” We strongly object to the language in the guidance. The regulations and guidance should preserve the necessary flexibility by expressly allowing a fiscal constraint finding for an amendment to be based on the incremental cost and incremental revenue associated with the amendment; comprehensive review of all costs and all revenues should be required only when a plan, TIP, or STIP is updated. Since updates are required at least every four years, and often occur more frequently, they provide a sufficient opportunity to review the revenue and cost assumptions underlying the entire plan, TIP, or STIP.

- 2 *Financial Forecasts Should Not Have to be Made in “Year of Expenditure” Dollars* - Appendix B of the proposed regulations states in several places that metropolitan plans, TIPs and STIPs must reflect estimated “year of expenditure dollars.” This requirement has no basis in the statute. The expression of project costs and forecasts of revenues in either “year of expenditure dollars” or “present day dollars” are both valid approaches and as long as there is consistency between the expression of project costs and revenues, the choice should be left to the discretion of the parties.
- 3 *Examples of “Reasonable” and “Unreasonable” Revenue Forecasts are Simplistic and Should be Omitted* - Appendix B provides examples of “unreasonable” revenue assumptions as guidance for determining the reasonableness of States’ and MPOs’ revenue forecasts. These examples are overly simplistic and insensitive to the diverse conditions that may exist in individual States. There may be cases in which it is in fact reasonable to assume a sharp increase in revenues or to assume that a previously rejected ballot measure will be approved. These are complex issues involving judgments about political and electoral outcomes – issues far outside the expertise of FHWA and FTA field office personnel. Rather than providing simplistic examples, the guidance should direct FHWA and FTA personnel to show deference to State and local officials’ forecasts of State and local revenues particularly where those forecasts are based on judgments about likely political and electoral outcomes at the State and local level.
- 4 *Advance Construction Should be Addressed at a Program Level not Tracked in the TIP or STIP on a Project Basis* - Appendix B requires advance construction (AC) projects to be shown twice in the TIP or STIP: once at the time of initial authorization of the AC project, and then again when the AC project is converted to Federal funds. In practice, AC is used as a cash flow management device which is best understood and tracked at the program level – in terms of the total amount of AC being used – rather than being tracked at the project level. In addition, any effort to show each individual project in the TIP and STIP when it is converted to Federal funding adds no value, and would be confusing and misleading to the public. Furthermore, rather than being converted all at once, a single project is often partially converted at multiple points which would require

multiple project entries which would be confusing and misleading to the public. We recommend revising the guidance to allow AC to be discussed in general terms in the text of the TIP and STIP and including a list of projects that may be converted from AC to Federal funds as part of an appendix in the STIP. This would be in line with what we think is the congressional intent for the use and management of AC as an innovative finance tool.

- 5 *Flexibility Should be Provided in Grouping Projects by Funding Categories for Purposes of Fiscal Constraint* - The interim guidance on fiscal constraint (issued in May 2005) included spreadsheets that called for a breakdown of revenues and expenses in funding sub-categories (within each of the core Federal funding programs). These spreadsheets are rarely used in practice, as they are not an effective tool for fiscal constraint. While the spreadsheets were not mandated in the guidance, and are not included in the NPRM, many States have experienced increasing demands from FHWA Division Offices for more detailed accounting of revenues and costs. The American Association of State Highway and Transportation Officials urges FHWA and FTA to include language in the preamble and regulations that specifically preserves flexibility for States and MPOs to adopt a method for demonstrating fiscal constraint that is appropriate in scale and complexity to the circumstances of that State or metropolitan area.
- 6 *Operations and Maintenance should only be required on the Federally funded system not on the Entire System* - The proposed regulations state in several places that a fiscal constraint finding can be made only if there is a determination that the “existing system is being adequately operated and maintained.” Appendix B specifically states that this finding must take into account the cost of operating the “entire transportation system,” including transit systems and local roads. This language has no basis in the statute and has the potential to create significant regulatory burdens. This interpretation has no basis in the statute, and would result in unjustified federal intrusion into State and local decision-making. We oppose this requirement even in guidance.