



OHIO DEPARTMENT OF TRANSPORTATION

Division of Planning, Office of Environmental Services
1980 West Broad Street, Columbus, Ohio 43223

August 21, 2006

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

Re: FHWA Docket No. FHWA-2005-22986

Docket Manager:

The Ohio Department of Transportation (ODOT) appreciates the opportunity to submit comments on the notice of proposed guidance on statewide and metropolitan transportation planning regulations, of Section 6001 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETA-LU), which were published in the Federal Register on June 9, 2006 (FHWA Docket No. FHWA-2005-22896).

ODOT supports Federal Highway Administration's (FHWA) efforts to provide guidance on the SAFETA-LU Section 6001 process. Overall, we found the guidance very helpful in most areas. However, there are several areas in which we have significant concerns. These include:

- **Appendices.** The proposed regulations incorporate two existing guidance documents as appendices – one on linking planning and NEPA processes, and one on fiscal constraint. We strongly object to incorporating these guidance documents into the regulations. These appendices and all references to them must be removed. Incorporating guidance into regulations limits the effectiveness of the guidance and basically does not encourage flexibility. Any changes that would be needed to the guidance would also have to go through new rule making, again, limiting flexibility to change and adjust as needed. We strongly urge FHWA and FTA to keep the guidance as guidance and not make it a part of these proposed regulations.
- **Fiscal Constraint.** ODOT is very concerned about requiring fiscal constraint analyses to take into account *all* costs and revenues for operating the “entire

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transportation system.” This interpretation has no basis in the statute, and would result in a bureaucratic, prescriptive, and inflexible approach to fiscal constraint that is an unjustified and unneeded federal intrusion into State and local decision-making. The fiscal constraint requirement, in statute, focuses on the availability of funding for *projects included in a metropolitan plan, TIP, or STIP*. The language developed in this regulation should be consistent with the statute. There is no need to reduce flexibility or put limits on the statute.

ODOT’s Specific Comments:

450.104 – Definitions

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

- 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. There is no statutory basis for requiring a finding of adequate operations and maintenance as part of a fiscal constraint determination. For further explanation, see Part I-A above.

“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.

450.206 – Scope of the statewide transportation planning process

- 450.206(b) – “Scale and Complexity” of Issues. Section 450.206(b) includes new language that requires the planning factors to be reflected in “all aspects” of the statewide planning process. This language was inserted in place of the existing 450.208(b), which requires consideration of the “scale and complexity of many issues” in determining the “degree of consideration and analysis” of the planning factors. We strongly recommend retaining this existing language, because it explicitly recognizes the need for flexibility. In addition, we suggest deleting the phrase “all aspects,” since it is unnecessary and could be construed as requiring consideration of individual planning factors in contexts where they are inapplicable.

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450.208 – Coordination of planning process activities

- 450.208(a)(2) – Coordination with “Statewide Trade and Economic Development Activities”. Section 450.208(a)(2) requires coordination with “statewide trade and economic development planning activities and related multistate planning efforts.” The regulations should not require “coordination” with private-sector groups. Private interest groups will have opportunities to engage the process during normal public involvement during the planning process. All views will be considered.
- 450.208(f) – Consistency with ITS Architecture. Section 450.208(f) states that the statewide transportation planning process “shall be consistent with applicable regional intelligent transportation systems (ITS) architectures.” Proper planning needs to be conducted to ensure consistency with other plans to the best of our abilities. However, statewide *Transportation* planning should not be the vehicle to ensure all plans are consistent. There is no statutory basis for requiring consistency with any of these other plans. ODOT recommends the use of the word “should consider” instead of “shall be consistent with” in this paragraph.
- 450.208 (g) and (h). Same comment as above applies here.

450.210 – Interested Parties, Public Involvement, and Consultation

- 450.210(a) – Requirements for “Documented” Public Involvement Process
Section 450.210(a) requires States to “develop and use a *documented* public involvement process” as part of its statewide transportation planning process. Requiring a documented process makes the public involvement process less flexible and more bureaucratic. Focus needs to be placed on the stakeholders and flexibility needs to exist to adjust to the needs of the public. Please remove this requirement.

450.212 Transportation planning studies and project development

- 450.212(a) – Conducting Corridor or Subarea Studies. The results of corridor or subarea studies should not have to “meet the requirements of NEPA” in order to be relied upon in the NEPA process. This wording could lead a reader to think that all planning studies must meet the detail equivalent to NEPA during planning. Section 450.212(b) of the proposed regulation contains more flexible language and should be used.
- 450.212(b) – Criteria for Incorporating Planning Products in NEPA Process. Section 450.212(b) establishes a flexible set of criteria for determining the extent to which the results of the planning process can be incorporated into the NEPA process. In general, we support these criteria and recommend that they be used instead of the standard proposed in 450.212(a). We have recommended the following wording changes in this paragraph:

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- The first sentence should refer to incorporating “the results of” the planning process, rather than incorporating “documents” from the planning process. The “results” could include not just documents, but *decisions* – e.g., a decision to establish certain goals, which could be relied upon in developing a purpose and need in NEPA.
- The reference to a “continual opportunity” in 450.212(b)(2)(iii) should be changed to a “reasonable opportunity” for comment during the planning process. The term “reasonable opportunity” was used in the MIS regulation (existing 450.318), and also is used repeatedly in these proposed regulations. To avoid implying that a higher standard is required in this context, the term “reasonable opportunity” should be used here as well.
- 450.318 – Transportation planning studies and project development. Comments above apply to this section as well.

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

- 450.214(l). The draft language implies that a financial plan is required for a STIP, which is not the case. Fiscal constraint covers all necessary elements of a STIP, making a requirement for a financial plan is not necessary.

450.216 – Development and content of the statewide transportation improvement program (STIP)

- 450.216(l). The draft language implies that a financial plan is required for a STIP, which is not the case. Fiscal constraint covers all necessary elements of a STIP, making a requirement for a financial plan is not necessary.
- 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.” (emphasis added) 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.*” (emphasis added). 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(m)- STIP Fiscal Constraint Full Funding of Phase; “By Year;” Entire System. Section 450.216(m) requires full funding of project or phase for inclusion in the STIP. The wording is unclear whether the full funding applies to the project as a whole, or to the identified phase to be included in the STIP. We recommend clarifying that this requirement applies only to the identified phase included in the STIP. The regulation should not require commitment of full funding to all project phases if only some phases are included in the STIP. In addition, we recommend that the phrase “by year” be deleted from this paragraph. This phrase is not necessary because any demonstration of fiscal constraint for a four-year STIP involves consideration of the timing of projects and revenues. This phrase also implies that any shifting of projects between years of a STIP could require redemonstration of fiscal constraint, which would be extremely burdensome and would not serve the purposes of the fiscal constraint requirement. We also recommend deletion of the phrase “while the entire transportation system is being adequately operated and maintained.” As noted earlier, there is no basis in the statute for this interpretation.
- 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 redemonstration of fiscal constraint. 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.

Section 450.220 Project Selection From the STIP

- Requiring a State to submit an agreed-to list at the beginning of each of the four years of the STIP unnecessarily limits flexibility. This should be an option, not a requirement.
- The ability to move a project between years of a STIP, without a STIP amendment, is absolutely essential to the efficient management of ODOT’s program. Although ODOT is very pro-active and has a high on-time delivery of our program, things occur (funding changes, environmental and design changes/delays, etc.) that require projects to be moved from one year to another within a STIP. This section requires an amendment every time such a shift is made. This change would drastically reduce ODOT’s flexibility and cause delays that could possibly impact fiscal constraint and conformity analyses. Our program

cannot afford this type of impact. An amendment should not be required for simply moving a project between years of an approved STIP.

Section 6001 is very important to ODOT and the success of our program. We have participated in the development and review of comments developed by the American Association of State Highway and Transportation Officials (AASHTO). ODOT supports AASHTO's submitted comments.

Questions regarding this communication may be directed to Timothy M. Hill, Administrator, Office of Environmental Services, Ohio Department of Transportation; via phone number 614-644-0377 or email at Tim.Hill@dot.state.oh.us and to Jennifer Townley, Administrator, Office of Systems Planning and Program Management, Ohio Department of Transportation; via phone number 614-466-7493 or email at Jennifer.Townley@dot.state.oh.us.

Respectfully,

A handwritten signature in blue ink, appearing to read "Howard Wood". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Howard Wood
Deputy Director,
Division of Planning
Ohio Department of Transportation