
TESTIMONY
OF
STAFF OF THE
REGIONAL TRANSPORTATION COMMISSION
OF CLARK COUNTY, NEVADA

Before The
UNITED STATES
NUCLEAR WASTE TECHNICAL REVIEW BOARD



AMARGOSA VALLEY, NEVADA
AUGUST 17 1990

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EXHIBIT 1
23 CFR 450 SUBPART A--URBAN
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AMARGOSA VALLEY,
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I am Lee Gibson, Planning Coordinator of the Regional Transportation Commission (RTC) of Clark County, Nevada. RTC's address is 301 East Clark Avenue, Suite 300, Las Vegas, Nevada 89101. On behalf of the RTC, I would like to welcome the members of the Technical Review Board to Nevada and thank you for this opportunity to share concerns of staff.

RTC is involved in nuclear waste planning activities through an interlocal agreement with the Clark County Nuclear Waste Program. Clark County, the designated affected local government, assists RTC to ensure that transportation-related planning activities meet with the requirements I am about to discuss.

The RTC is an independent commission made up of representatives of governments from all of Clark County. We are designated the Metropolitan Planning Organization by the State of Nevada pursuant to USDOT regulations. As such, we are the organization concerned with all aspects of transportation for the largest population concentration in the State of Nevada, some 760,000 persons.

As the Metropolitan Planning Organization, RTC is responsible for maintaining a comprehensive, coordinated, and continuing transportation planning process as required by 23 CFR 450.100 to 200 (Attached as Exhibit 1). Compliance with these regulations maintains Clark County's eligibility for Federal funding for highway and transit improvements. RTC continually assesses the effect of projected urban development on future travel requirements. This allows our agency to plan for the efficient movement of persons and goods through the Las Vegas Valley in a timely manner. It also allows our elected leaders to work with and plan the effective use of federal funds programmed for highway, transit, rail, and aviation improvements. The RTC has a local responsibility for all aspects of the transportation planning process.

The prospective movement of high level nuclear waste through our

area is of interest to us from a transportation planning perspective. Specifically, we are concerned with the direct effects involving choice of mode; timing of shipment flows; daily, monthly, and annual volumes; vehicular operating characteristics; alternate routes; and contingency plans. Contingency plans are particularly important to the RTC. Even if the Department of Energy produces route plans that do not traverse Clark County, events may occur that require the shipment of nuclear waste on a temporary basis through our jurisdiction.

The transportation issues associated with the repository also must be related to the overall condition of the transportation system within Southern Nevada. As current rapid growth escalates, citizens feel greater and greater frustration with the transportation system. Elected leaders are now attempting to address transportation issues through a new program of revenue sources that will allow local government to implement highway and transit solutions in accordance with Clark County's transportation requirements. DOE should recognize that these attempts to deal with transportation issues are taking place at a time when:

- 1) Baseline conditions changed daily.
- 2) Planning efforts are only now addressing the appropriate solutions.
- 3) The repository may induce changes that effect the planning, design, operation, and institutional process that local government now uses to address transportation development.

In the opinion of RTC staff, Yucca Mountain transportation research needs must now focus on baseline studies that document operational issues, population risks, and institutional relations. An urgent need exists to establish the basis for assessing these impacts due to Yucca Mountain activities before characterization work resumes. These baseline studies would be linked not only to Yucca Mountain transportation effects, but also socioeconomic aspects (both internal and external to the project) and institutional issues that may surface.

The institutional issues are critical. The latitude given to local government with respect to conducting studies of the effects of the Yucca Mountain Project are ill-defined. Section 5032 of the Nuclear Waste Policy Amendments Act of 1987, authorizing federal payments to local affected governments, is couched in general terms that authorize local entities to carry out studies appropriate to their situation at their discretion. It is RTC's experience that Federal-local relations may become strained when such general terminology is used as program guidelines. To correct this situation one of two courses of action may be followed:

- (1) Allow local government the initiative to develop their own research programs that incorporate citizen concerns within the

context of the repository and local issues. This would require a great deal of trust by DOE in local government judgement. However, local governments would be responsible for the outcome; General Accounting Office visits would focus on the local grantees.

- (2) DOE could participate in a policy oversight and management role in local government research activity through issuance of regulations and directives modelled, for example, on those of the Urban Mass Transportation Administration (UMTA).

Consequences of the first action for RTC would include that our mission as the MPO would be greatly enhanced. The RTC's ability to coordinate the transportation issues with local concerns would be greatly improved. For example, RTC would be better able to fully integrate and adapt existing analytical tools to meet the effects of the repository in a comprehensive fashion. DOE would of course lose substantial control over the grant program. However, local government would carry the burden for ensuring that control is exercised pursuant to grant contracts and all applicable federal statutes.

Should the second course be chosen, DOE would gain a greater appreciation of local concerns regarding the transportation of high level nuclear waste. DOE would have to assume a more proactive position and even possibly participate as other Federal agencies do in the 3C planning process. For example, DOE may require that extremely detailed work plans, progress reports, and compliances be submitted. It would also be necessary for DOE to actively investigate policy issues and direct the local effort more closely. Of course, the regulations and sensitivities pertaining to oversight may make this inappropriate.

RTC staff looks forward to continuing to work with the DOE on this matter of such crucial interest for the future of Southern Nevada. Thank you again for the opportunity to share the thoughts of the staff of the Regional Transportation Commission with you today here in Amargosa Valley.

federal register

Thursday
June 30, 1983

Part VI

Department of Transportation

**Federal Highway Administration
Urban Mass Transportation Administration**

Urban Transportation Planning; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation
Administration

23 CFR Part 450

49 CFR Part 613

Urban Transportation Planning

AGENCY: Federal Highway
Administration (FHWA) and Urban
Mass Transportation Administration
(UMTA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of this document is to issue amendments to existing regulations governing transportation planning under FHWA and UMTA grant programs. These amendments are intended to: (1) increase flexibility at the State and local level; (2) reduce redtape and simplify administration of the planning process; and (3) shift certain responsibilities from the Federal to the State and local level while maintaining an appropriate Federal oversight role.

DATE: These final amendments are effective on August 1, 1983. For additional information, see

"SUPPLEMENTARY INFORMATION".

FOR FURTHER INFORMATION CONTACT: FHWA: Sam W. P. Rea, Jr., Urban Planning and Transportation Management Division, (202) 426-2961, or Jerry Boone, Office of the Chief Counsel, (202) 426-0761; or UMTA: Robert Kirkland, Office of Planning Assistance, (202) 426-2360, or Anthony Anderson, Office of the Chief Counsel, (202) 426-4011, all located at 400 Seventh Street, SW., Washington, D.C. 20590. FHWA office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday; UMTA office hours are from 8:30 a.m. to 5:00 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This document amends the FHWA/UMTA regulations for urban transportation planning (23 CFR Part 450 and 49 CFR Part 613). The provisions of 23 CFR Part 450, Subparts A and B are incorporated into 49 CFR Part 613.

Effective Dates

These final amendments are effective on August 1, 1983. This final rule allows for several simplified procedures to be instituted at the option of State and/or local officials. As such, implementation schedules are not prescribed. However, FHWA and UMTA should be advised as soon as possible of any procedural changes instituted by State and local officials. Section 450.114 institutes a

required State/metropolitan planning organization certification. This certification must accompany all transportation improvement programs/annual (or biennial) elements submitted to FHWA and UMTA after the effective date of this rule. Any difficulties in meeting this requirement should be brought to FHWA and UMTA's attention for resolution on a case-by-case basis.

OMB Control Numbers: 2132-0031 and 2132-0528.

Paperwork Reduction Act

The information collection requirements contained in this regulation (sections 450.108 and 450.110) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control numbers 2132-0031 and 2132-0528.

Background

On September 17, 1975, FHWA and UMTA jointly issued final regulations (40 FR 42978) implementing the urban transportation planning process mandated by the Federal-Aid Highway Act and the Urban Mass Transportation Act of 1964 (UMT Act), as amended. The statutes require a continuing, comprehensive and cooperative (3C) transportation planning process in all urban areas of more than 50,000 population.

Proposed amendments to the urban transportation planning regulations were published for notice and comment on October 30, 1980 (45 FR 71990). Final amendments and a request for additional public comments were published on January 19, 1981 (46 FR 5702). These amendments were originally scheduled to take effect on February 18, 1981. On February 4, 1981, the DOT postponed the effective date until March 31, 1981 (46 FR 10708). This action was taken pursuant to the President's memorandum of January 29, 1981, which, among other things, directed executive agencies to postpone for 60 days the effective dates of regulations which had been issued but were scheduled to become effective during the 60-day period following issuance of the memorandum. As a result of their initial review of the postponed amendments, the FHWA and UMTA decided to postpone the effective date further in order to provide sufficient time for full and appropriate review and revision of the subject amendments (46 FR 19233, March 30, 1981).

Based on their review of the postponed amendments and the

comments submitted to the public docket, FHWA and UMTA decided to withdraw those amendments. In their place, interim final regulations were issued on August 8, 1981 (46 FR 40170) which incorporated only those provisions of the withdrawn amendments which: (1) reduced redtape and streamlined the planning process for areas under 200,000 population; (2) incorporated recent legislative changes; and (3) clarified the purpose of transportation system management (TSM) and several other aspects of the planning process.

As part of FHWA and UMTA's continuing efforts to evaluate their programs, a comprehensive review of the urban transportation planning process was undertaken to determine what further changes should be made in the process. This review considered the shift in Federal priorities away from transit operating assistance and towards maintaining existing highway and transit systems, as well as the President's efforts to reduce Federal intrusion in areas of essentially State and local interest. Neither FHWA nor UMTA has any preconceived positions on the issues under review. The only assumption used to guide the review was that the Federal role would be reduced in areas of essentially State and local interest. The purpose of the comprehensive review was to analyze the various aspects of the transportation planning process and to recommend any changes which would improve the existing delivery of transportation programs to States and local areas with a minimum of Federal involvement.

While this review had been a joint FHWA/UMTA effort, it also had been the subject of extensive participation by national interest groups and the public. Major national associations made suggestions on issues to be addressed, and these suggestions were helpful in preparing an "issues and options" paper, entitled, "Solicitation of Public Comment on the Appropriate Federal Role in Urban Transportation Planning." A notice of availability and request for public comment was published in the Federal Register on December 17, 1981 (46 FR 61531), and an official docket was established to receive comments (FHWA Docket 81-10). This paper served as the vehicle to solicit public comment on specific issues as well as to solicit recommendations on issues not addressed in the paper.

The public comments on the "issues and options" paper clearly indicated that the Federal role in the urban transportation planning process needed reconsideration, especially in regard to

the smaller urbanized areas (those urbanized areas with populations of less than 200,000). This general conclusion was also reflected in the comments from the staffs of both FHWA and UMTA. Further, the experience of FHWA and UMTA in administering the urban transportation planning program authorized by the Federal-Aid Highway and Urban Mass Transportation Act, and the growing technical abilities of the States and local agencies added support to the position that administrative and regulatory revisions to the federally mandated urban transportation planning requirements must be considered. A detailed summary of the comments is included in the regulatory evaluation.

As a result of the comprehensive review, FHWA and UMTA proposed amendments to the urban transportation planning regulations in a notice of proposed rulemaking (NPRM) published in the Federal Register on August 28, 1982 (47 FR 37758).

The preamble to the NPRM discussed its overall policy direction under the major subject areas of the "Issues and options" paper: Federal Planning Requirement Threshold; Roles and Responsibilities; Planning and Project Implementation; Technical Requirements; Certification; and Federal Funding for the Planning Process. The specific proposals were discussed in detail under the heading, Section-by-Section Analysis, and are restated in this preamble under the same heading.

This final rule is intended, as was the NPRM, to reduce the role of the Federal Government in urban transportation planning to the maximum extent possible under governing statutes. This is accomplished by: (1) Providing for greater State and local flexibility in administering the planning process and associated Federal funds; (2) clarifying the intent with respect to the flexibility of institutional relationships; and (3) eliminating most of the non-regulatory language from the regulation.

This regulation presents a further reduced Federal role, based on a clearer distinction between Federal requirements and good planning practices. FHWA and UMTA intend to continue to provide technical assistance to advance good planning and programming practices. Formalized training courses, as well as on-site visits on an "as requested" basis, will be provided along with other forms of technical assistance.

Disposition of Comments

In response to the notice of proposed rulemaking (NPRM), one hundred-forty seven comments were received including 66 from metropolitan planning

organizations and regional planning agencies, 36 from State departments of transportation, 9 from transit operators and authorities, 16 from State and local governments, 11 from Federal agencies, private citizens and other interested parties, and 9 from national organizations and groups which represent groups such as State and local governments, transit operators, and metropolitan planning organizations.

The majority of the comment were very positive and supported the general purpose of the proposed revisions, that is, to provide more flexibility to State and local officials and to streamline the planning process. While many comments supported the reduction in prescriptive provisions proposed in the NPRM, they believed that several proposed provisions needed clarification and further explanation. Several commenters criticized certain proposed revisions and questioned the basis for these actions.

In the preparation of the final rule set forth below, consideration was given to the concerns mentioned earlier and all other commenters received insofar as they relate to the scope of the NPRM. Comments received after October 23, 1982, (close of comment period) also were considered to the extent that time allowed. The majority of the changes are for the purposes of clarification although several comments did result in substantive alterations to the regulations. The Surface Transportation Assistance Act of 1982, Pub. L. 97-424, required some changes to the NPRM, due to the change to the capital and operating assistance grant programs authorized by amendments to the Urban Mass Transportation Act.

Section-by-Section Analysis

Each section of this final rule is discussed in detail below.

The existing Subpart B to 23 CFR Part 450, "Metropolitan Planning Funds" (40 FR 38151, August 27, 1975, as amended at 46 FR 40176, August 8, 1981) is not affected in any way by this rulemaking action. However, the proposal presented in the NPRM to redesignate this subpart as Subpart C is made final.

The existing appendices regarding transportation system management and simplified procedures in areas under 200,000 population were deleted from the August 28, 1982 NPRM since they are advisory. For that reason those appendices have also been deleted from this final rule. The FHWA and UMTA will continue to provide advice and guidance on these issues, but intend to do so in a non-regulatory manner.

23 CFR 450 Subpart A—Urban Transportation Planning

Section 450.100 Purpose.

This section states that this subpart implements the urban transportation planning requirements of 23 U.S.C. 134 and Section 8 of the Urban Mass Transportation Act of 1964, as amended. The section is unchanged from that proposed in the NPRM.

Section 450.102 Applicability.

This section states that the provisions of this subpart apply to the transportation planning process in urbanized areas and is identical to that in the NPRM.

Section 450.104 Definition.

Section 450.104 defines the terms used in this part. As proposed, the definitions of the terms, "Highway Safety," "Interstate Substitution Projects" and "Interstate System Projects," are no longer included because these terms are defined elsewhere in 23 CFR or are no longer used in this regulation.

The term "Designated Section 9 Recipient" is added to the final rule in recognition of changes to UMTA programs brought about by the Surface Transportation Assistance Act of 1982.

The proposal in the NPRM to allow for an annual element to cover a period of up to two years was widely accepted. However, several commenters recommended that the term, "annual element", be changed to reflect this increased flexibility. The FHWA and UMTA decided to use the term "annual (or biennial) element" in this rule and expect State and local officials will use either "annual element" or "biennial element" depending upon the program period used. The definition is modified slightly to reflect this change.

As proposed in the NPRM, the revision to the definition of the "metropolitan planning organization" is made final. This proposal made more general the wording regarding membership and is meant to be less prescriptive. Also, the last sentence under the term, "metropolitan planning organization," which recommends "that principal elected officials of general purpose local government be represented on the metropolitan planning organization," is deleted since it duplicates paragraph (b) in Section 450.109. Further discussion on these other items directly affecting the metropolitan planning organization is contained in the following section.

Section 450.108 Metropolitan planning organization.

Section 450.108, which provides for the designation of the metropolitan planning organization, is not changed from that proposed in the NPRM. It is intended to follow closely 23 U.S.C. 134(b)(2) and 49 U.S.C. 1607(b)(3) so that the intent of Congress with regard to the designation of metropolitan planning organizations is explicitly recognized.

A number of the commenters expressed concern that the important role of local elected officials was being reduced. This concern was directed at proposed changes to this section as well as sections 450.108 regarding funding, 450.112 regarding participant responsibilities, and 450.208 regarding project selection. These specific concerns are addressed in the discussion in this preamble under each of these sections.

The specific concerns expressed mostly by commenters from local governments and regional planning agencies under Sections 450.108 and 450.104 regard the deletion of the requirement that principal elected officials of general purpose local government have adequate representation on the metropolitan planning organization and that the metropolitan planning organization be defined as, "a forum of cooperative transportation decisionmaking by principal elected officials of general purpose local government." Several U.S. Senators also expressed this same concern.

The FHWA and UMTA strongly believe that local officials involvement in the 3C planning process, through the metropolitan planning organization, is important. The changes proposed in the NPRM were not intended to reflect any change in this belief. Rather, this rule was changed to rely primarily upon the statutory requirements with minimum administrative interpretation to allow the widest latitude possible in the designation of metropolitan planning organizations. Therefore, the provisions of 23 U.S.C. 134 and Section 8 of the UMT Act (49 U.S.C. 1607) are emphasized. These provisions call for the designation of a metropolitan planning organization to be "... by agreement among the units of general purpose local government and the Governor."

Local government involvement in the designation or redesignation of a metropolitan planning organization constitutes a substantial and important role for local officials in structuring the 3C process. The FHWA and UMTA strongly believe that the metropolitan

planning organization should adequately represent local elected officials and the implementing agencies, but that decisions such as who should serve on the metropolitan planning organization should be made by local governments and not be mandated by the Federal Government. This representation would be determined at the time of designation or redesignation and does not prohibit appointed officials, such as representatives of the State DOT or local public transit operators, from being voting members of the metropolitan planning organization.

As stated in the NPRM, FHWA and UMTA do not anticipate significant organizational or functional changes being made to existing arrangements as a result of these amendments, which reduce Federal prescription on what responsibilities the organizations or partners in the process must assume as long as there is mutual agreement.

Section 450.108 Urban transportation planning process: Funding.

This new section incorporates various provisions of several sections of the existing regulation and provides the program requirements for the use of FHWA and UMTA planning funds to carry out the urban transportation planning process.

The UMTA has decided to retain the provision proposed in the NPRM giving States the option of receiving and allocating its Section 8 funds for those urbanized areas below the 200,000 population threshold. In response to the concerns of several commenters regarding funding of those small urbanized areas where they are part of larger metropolitan planning organizations, the final regulation has been changed to recognize that groups of urbanized areas under a single metropolitan planning organization with an aggregate population of 200,000 or more should continue to receive funds through the metropolitan planning organization. In addition, many of the smaller urbanized areas were concerned that the draft rule would allow States to opt unilaterally to retain Section 8 funds and spend them for the benefit of the small urbanized areas, rather than passing them through for the direct use by those metropolitan planning organizations. Although States would not be precluded from spending these funds for the benefit of the small urbanized areas, it could only be done with the concurrence of the designated metropolitan planning organization. The final rule has been changed to clarify this point. The UMTA intends that the States allocate the Section 8 funds among small urbanized areas annually

in collaboration with the metropolitan planning organizations in lieu of it being done at the Federal level by UMTA, but there is no intent that the States co-opt the program in these areas. This provision creates a potential for allocation of combined FHWA and UMTA planning funds which is more sensitive to local needs by building on the States current allocation of FHWA planning funds based on a formula approved by FHWA. The FHWA and UMTA also encourage State and local officials to work together to ensure consistent and timely delivery of funds. The FHWA and UMTA are working together to ensure the same at the Federal level.

The reference to 23 U.S.C. 104(f)(3) is included in this regulation as it was in the proposed rule to ensure that the intent of Congress is followed in regard to the administration of PL funds. This section does not prohibit the administration and/or expenditure of PL funds by another organization as allowed under § 450.108(e) so long as agreed to by the metropolitan planning organization. The FHWA strongly encourages such latitude be used, especially in the smaller urbanized areas.

In an effort to reduce the Federal presence in the administration of the planning process in urbanized areas with less than 200,000 population, the FHWA and UMTA proposed in the NPRM that a unified planning work program (UPWP) need not be developed for these areas; rather, planning tasks for these areas would be documented as agreed to by the State and the metropolitan planning organization. This provision was welcomed by most commenters who addressed the issue and has been retained in the final rule. The FHWA and UMTA believe that it is appropriate to provide State and local officials with the flexibility to determine the planning activities that are to be done, who would do the work, and how the funds would be expended without specifying how this information is documented.

In order to strengthen UMTA's long standing advocacy of appropriate transit operator involvement in the planning process, § 450.108(f) of the NPRM was replaced by § 450.108(e) in this final rule to specifically address and encourage fund pass through and the sharing of appropriate work responsibilities by the metropolitan planning organization and transit operators. The FHWA continues to allow pass through of PL funds to other agencies but emphasizes that, in all urbanized areas, the metropolitan planning organization must agree to the

use of PL funds made available to the metropolitan planning organization by the State in accordance with 23 U.S.C. 104(f)(3) and 23 CFR 450.108(a).

Finally, § 450.108 has been modified to reflect provisions of Section 9(j) of Title III of the Surface Transportation Assistance Act of 1982 which provides for the expenditure of Section 9 or 9A grant funds for planning purposes. This Act was passed after the NPRM was published. To assure that planning conducted with Section 9 or 9A funds by designated recipient is fully coordinated with, and a part of the 3C process, § 450.108(c) has been modified to require that Section 9 or 9A funded planning activities be included in the UPWP for areas of over 200,000 population and that the designated recipient be included in the work program development process. Similarly, § 450.108(d) has been modified to require that Section 9 or 9A funds used for planning purposes be included in the description of activities for areas of less than 200,000 population.

Section 450.110 Urban transportation planning process: Products.

Section 450.110 is identical to that proposed in the NPRM except that paragraph (a) has been changed slightly to be more consistent with statutory language.

As proposed in the NPRM, this section combined and simplified several sections of the existing regulation. The FHWA and UMTA are reducing the product requirements to the minimum necessary to permit Federal stewardship: (1) A transportation plan (without the requirement for long- and short-range elements), and (2) the TIP and its annual (or biennial) element. Consequently, State and local officials will have maximum flexibility in developing and endorsing these products. A planning work program will continue to be required under section 450.108 to support the request for PL and Section 8 funds needed to perform these activities and prepare these products.

Several commenters were concerned by the lack of guidance presented in this section, especially with regard to the transportation plan. The FHWA and UMTA continue to believe that many of the existing provisions are advisory and, therefore, have been removed from the regulation.

Several commenters were concerned with the issue of the geographic scope of planning, which was not specifically addressed in the NPRM. The existing regulations require the planning process to cover, "as a minimum, the urbanized area and the area likely to be urbanized in the period covered by the long-range element of the transportation plan." 23

U.S.C. 134 and 49 U.S.C. 1607 require that area which lies within the urbanized area boundary (as defined by the Bureau of the Census) is the minimum geographic area to be covered by the 3C process. The statutory requirement is reflected in § 450.100, "Purpose," and section 450.102, "Applicability," of this final rule. Defining a geographic area larger than this minimum is permitted. It should be determined by State and local officials and consider such factors as the areas which will be urbanized in the foreseeable future, representation on a metropolitan planning organization, jurisdictional boundaries, as well as the current and future transportation system and transportation issues in the area. The FHWA and UMTA do not intend to prescribe the outer boundaries of the urban transportation planning area but expect that State and local officials will establish appropriate geographic boundaries for the urban transportation planning process.

Several commenters also were concerned that FHWA and UMTA, by eliminating specific requirements for long- and short-range elements of the plan were de-emphasizing an orderly flow of the planning and project development process from general systems analysis through analysis of alternatives to project selection and implementation. This is not the case. Several commenters also believed that the "regional" nature of the planning process would be lost without a Federal requirement for a long-range element. The FHWA and UMTA believe the planning process has matured to the extent that neither time horizons nor specific plan elements have to be specified in Federal regulations and anticipate that without this specificity, the transportation plan will be more responsive to each area's situation, and result, therefore, in more useful products of the planning process.

Paragraph (c) has been retained in this final rule to indicate that the planning process may also include other planning and project development activities, as determined by State and local officials, in addition to those indicated in paragraphs (a) and (b). The FHWA and UMTA believe that while the 3C process is mandated by Federal law its objective is to insure that important State and local transportation issues are adequately addressed.

Section 450.112 Urban transportation planning process: Participant responsibilities.

This section is retained as proposed in the NPRM. It provides for the metropolitan planning organization, the

State and publicly owned operators of mass transportation services to mutually determine their roles and responsibilities for developing the products of the urban transportation planning process. This change gives the principal participants greater flexibility in determining their appropriate roles and is intended to eliminate the perception that there are regulatory restrictions regarding the involvement of implementing agencies in the urban transportation planning process. This change also eliminates the existing requirement for an annual endorsement of the transportation plan and TIP/annual (or biennial) element. Since these may not change significantly from year to year, an annual endorsement may be an unnecessary burden. Endorsement of the transportation plan will only be necessary when significant changes occur and endorsement of the TIP/annual (or biennial) element will be required when a new or revised TIP/annual (or biennial) element is submitted to FHWA and UMTA. The FHWA and UMTA encourage the use of simplified procedures for revising the annual (or biennial) element.

The Federal requirements prescribed by section 450.108 of the existing regulation for agreements between the metropolitan planning organization, State, and transit operators, as necessary, are eliminated since these requirements are an unnecessary Federal intrusion.

While most of the commenters supported the increased flexibility afforded State and local officials, a number of commenters believed that without a federally prescribed "lead agency" or explicit Federal support for a particular assignment of responsibilities, major disagreements among the parties could result in a stalemate. As stated earlier, this regulation provides State and local officials with increased flexibility to carry out the 3C process with a minimum Federal role. Inherent with this increased flexibility is the responsibility to reconcile their differences.

Section 450.114 Urban transportation process: Certification.

In keeping with the goal of reducing the Federal presence in urban transportation planning, FHWA and UMTA proposed in the NPRM that the current procedures for Federal certification of the planning process be eliminated and that the State and the Metropolitan planning organization certify that the planning process complies with all applicable Federal laws and regulations. This section of the

NPRM also required that the planning process be consistent with other Federal laws and that the process include activities to support the development and implementation of the TIP, transportation plan and subsequent project development activities as necessary and to the degree appropriate.

The existing section concerning certification (§ 450.212) and elements (§ 450.120) are combined as proposed in the NPRM to clarify what the State/metropolitan planning organization certification action should address. Furthermore, the list of technical activities included in the existing regulation was considered to be advisory and, therefore, was deleted from the NPRM. For that same reason, the list is not included in this final rule.

The commenters were very supportive of this State/metropolitan planning organization certification as proposed. Therefore, FHWA and UMTA decided to retain this provision as proposed, except for the changes noted below.

Several commenters recommended that the certification action be based on criteria established by FHWA and UMTA. FHWA and UMTA believe that this final rule in fact contains the criteria and do not intend to provide a more explicit interpretation except as included in this preamble. To do so would detract from the responsibility of State and local officials to assess the adequacy of the urban transportation planning process. FHWA and UMTA believe that this final rule provides adequate interpretation of the applicable statutes.

Paragraph (a) has been revised to emphasize that the urban transportation planning process must also include activities to support the implementation as well as the development of the transportation plan and TIP.

Paragraph (b) of the NPRM regarding the State/metropolitan planning organization certification provision has been revised in the final rule. Subparagraph (b)(4) of the NPRM has been deleted since the statutory requirements it references (23 U.S.C. 109(h), 49 U.S.C. 1604(b)(2), and 49 U.S.C. 1610, regarding social, economic and environmental impacts) address areas already covered by 23 U.S.C. 134 and 49 U.S.C. 1607 and are project level requirements. Also, the references to 49 U.S.C. 1602(d) and 1610(b) in paragraph (c) are deleted for the same reasons.

Subparagraph (b)(4) regarding the elderly and handicapped provision is not subject to the State/metropolitan planning organization certification as proposed in the NPRM, since 49 CFR Part 27, the regulation implementing this

requirement, already requires a separate certification action.

A new subparagraph (b)(3) is added to reflect changes concerning minority business enterprises brought about by the Surface Transportation Assistance Act of 1982 Pub. L. 97-424, Section 105(f). The planning process should take into account the need to comply with the requirements of Section 105(f) regarding involvement of minority business enterprises in FHWA and UMTA funded projects.

The two requirements addressed by the State/metropolitan planning organization certification action are:

The urban transportation planning process requirements of 23 U.S.C. 134 and 49 U.S.C. 1607 and requirements of this final rule; and

The transportation planning and programming-related requirements contained in Sections 174 and 176 (c) and (d) of the Clean Air Act. Implementing regulations are contained in 23 CFR Part 770 and 49 CFR Part 623.

The urban transportation planning process requirements are included to provide the State and local officials increased responsibility in carrying out the urban transportation planning process. This certification action is intended to provide a focal point for the State/metropolitan planning organization assessment of the planning process. The Clean Air Act requirements are included because of the relationship between urban transportation planning and transportation related air quality planning as presently identified in the Clean Air Act, as amended.

Several commenters questioned the differences between these two requirements and the two requirements included in section 450.114(c) and (d) of the NPRM regarding private enterprise and civil rights. These commenters were concerned that FHWA and UMTA were giving greater emphasis to these two requirements because they were specifically cited outside of the self-certification provisions. This was the intent; FHWA and UMTA continue to believe that these two statutory provisions require additional Federal attention outside of the State/metropolitan planning organization certification procedures.

This certification action is intended to be a simple statement that the requirements of 23 CFR Part 450 have been met (i.e., "We certify that the requirements of 23 CFR 450.114(c) are met.") A more elaborate submittal (i.e., with supporting documentation) is acceptable but not required by FHWA or UMTA. Since the certification action is to reflect the current planning process, it is to be submitted to FHWA and

UMTA at the time a new TIP, including the annual (or biennial) element, is submitted to the Federal Government, but no less frequently than 4 years. This requirement is not intended to mandate when the actual certification action is to take place. However, FHWA and UMTA expect that development and preparation of the TIP, including the annual (or biennial) element being submitted, is based on a currently certified process and that, at a minimum, a statement to this effect should accompany the TIP. The FHWA and UMTA want to stress that the certification procedures should be determined by the State and metropolitan planning organization. FHWA and UMTA encourage a joint single action, although it is not required.

Institution of the State/metropolitan planning organization self certification does not relieve FHWA and UMTA of their oversight responsibilities and the necessity of making statutory findings discussed under § 450.212 "Program Approval." The FHWA and UMTA will still conduct appropriate, independent reviews as a basis for these findings. The State/metropolitan planning organization self certification, and these reviews will assist FHWA and UMTA in meeting their statutory responsibilities.

The State/metropolitan planning organization certification is not an optional requirement. Therefore, some action must be taken in order for FHWA and UMTA to make subsequent program and project approvals under § 450.212. However, failure of either party to certify full compliance does not, by itself, necessarily trigger a negative finding by either FHWA or UMTA. In such cases FHWA and UMTA intend to discuss the situation with the parties involved to determine the cause of their action as well as possible remedies. Other factors which also form the basis for the Federal finding, such as a properly developed and endorsed TIP, a plan and work program, will also be considered during these discussions.

Deficiencies in the process identified by State and local officials are to be corrected according to their own proposals, within a reasonable self-imposed time frame.

23 CFR 450 Subpart B—Transportation Improvement Program

Section 450.200 Purpose.

This section is retained as proposed in the NPRM. The NPRM proposal differed from the existing regulation by dropping the language, "and to prescribe guidelines for the selection by implementing agencies of annual

programs of projects to be advanced in urbanized areas." This language is no longer necessary since the prescriptive provisions included in the existing regulation regarding project initiation are eliminated (see section 450.208).

Section 450.202 Applicability.

Section 450.202 states the types of projects to which this rule applies. The projects are categorized by the various Federal funding programs. Projects under the Highway Bridge Replacement and Rehabilitation (HBRR) Program (23 U.S.C. 144), and the Sections 9 and 9A transit program created by the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1607a and 1607a-1) have been added to those that were listed in the NPRM. Although the Interstate 4R program was technically included in the existing regulation, under the general citation for the Interstate System (23 U.S.C. 104(b)(5)), there was some confusion because it was not explicitly identified in the NPRM. This has been clarified by including the specific reference to the Interstate 4R program in this section.

The FHWA believes the HBRR program should be subject to the urban transportation planning process because major bridge reconstruction projects in urbanized areas may have potential regional impact and intergovernmental interest. While the FHWA believes that these types of bridge projects are being included in the TIP process because they most likely are located on a roadway designated as part of a Federal-aid system, the direct citation of the program in this section should make it clear that the regulation does apply. Many areas already include those classes of projects in their TIP and annual element.

The Section 9 program (and the Section 9A program through fiscal year 1983) are also added. These programs are subject to the urban transportation planning process by virtue of the self-certification requirement contained in section 9(e)(3)(C) of the UMTA Act. Information regarding the Section 9A program was published by UMTA in the January 24, 1983, Federal Register, (48 FR 3300) and in UMTA Circular C-9020.1 of February 2, 1983. Information regarding the Section 9 program will be published in the Federal Register prior to October 1, 1983.

Several commenters questioned the need to retain the provision that projects "serving" (as opposed to "in") urbanized areas be included. The FHWA and UMTA believe that many transportation improvements are constructed or instituted for the sole purpose of serving the needs of a specific urbanized area.

Transit routes, carpool and vanpool lanes, and park-and-ride lots, are a few examples of the types which would be outside of an urbanized area's boundaries but whose primary purpose is to serve the transportation needs of the urbanized areas.

Paragraph (b) has been changed to allow the State, upon agreement in writing with the metropolitan planning organization, to propose Federal-aid primary, Interstate (including 4R) and HBRR projects (but not Federal-aid urban system projects, Interstate substitution projects or UMTA-funded projects) for implementation in the statewide program of projects (105 program), without these projects being drawn from the annual (or biennial) element of the TIP if they are repair, safety, or localized traffic operation projects that do not alter the functional traffic capacity or capability of the facilities being improved.

This revised paragraph expands the provisions in the NPRM which covered only highway safety-related projects that are included in the State prepared highway safety improvement program under 23 CFR 924. The reference to the highway safety improvement program is eliminated from this final rule since safety-related projects are now covered by this optional provision.

The FHWA has decided to expand the provision to include, in addition to highway safety improvement projects, other projects which are not of significant scale to warrant the same level of effort required for projects with greater regional impact. Quite often, these improvements evolve from the statewide or systemwide program to maintain and improve the condition and safety of existing streets and highways. The FHWA believes that these types of projects need not be on the TIP, including the annual (or biennial) element, to assure adequate transportation planning and programming under 23 U.S.C. 134(a). This optional and flexible provision does not exempt these types of projects from being based on the 3C process and FHWA fully intends to continue to exercise its statutory authority under 23 U.S.C. 134(a) which requires the Secretary to make such a finding.

The FHWA anticipates that this optional provision will be used primarily to address categories of projects (as opposed to individual projects) and will be exercised in concert with simplified procedures to update the TIP and annual (or biennial) element under Section 450.204(c) and the procedures to select projects for inclusion in the annual (or biennial) element under 450.208(e)(4).

FHWA stresses that: (1) This provision applies only to the certain types or categories of projects described earlier and, (2) the State/metropolitan planning organization agreement is a key requirement. Regarding the project types, the State should make FHWA aware of the exclusion that the State intends to apply as early as possible. This early action is intended: (a) To provide FHWA with sufficient time to alert the State to any concerns FHWA may have regarding the types of projects (or categories of projects) proposed to be covered by this provision, and (b) to preclude the delay of the projects when the 105 program or an amendment to it is formally submitted to FHWA.

Regarding the agreement requirement, the State should clearly indicate how it was accomplished (e.g., copies of the correspondence). FHWA fully expects the agreement to be made sufficiently in advance of the preparation of the annual statewide program of projects under 23 U.S.C. 105 or any proposed amendment to an approved program of projects. This provision allows for the agreement to be effective for several years, however, the State's notification to both FHWA and the metropolitan planning organization is to be on the same cycle as 105 program actions, and projects (or categories of projects) should be identified whenever possible in the same detail that they will be described in the 105 program of projects.

The existing requirement that the State notify the appropriate metropolitan planning organization of 105 program actions taken on projects (or categories of projects) in each urbanized area is retained as § 450.210(d).

Section 450.204 Transportation Improvement Program: General.

This section is retained in identical form as proposed in the NPRM except that paragraph (d)(2) is changed slightly to indicate clearly that FHWA does not take any approval action on the TIP, including the annual (or biennial) element but rather uses it as a basis for meeting the applicable air quality procedures contained in 23 CFR Part 770 and as a basis for the subsequent review and approval of the statewide program of projects under 23 U.S.C. 106. As proposed in the NPRM, this section incorporated sections 450.314, "Annual element modification," and 450.316, "Action required by the metropolitan planning organization."

*n 450.208 Annual (or biennial)
nt: Project selection.*

The proposal to eliminate § 450.310, "Annual element: Project Initiation" and replace it with § 450.208 has been retained in this final rule. Several commenters opposed this proposal, believing that the authority for selecting Federal-aid urban system projects mandated by 23 U.S.C. 105(d) was being ignored. The FHWA and the UMTA do not believe that this is the case. Section 450.310 provided for an administratively determined procedure for initiating all projects, not just Federal-aid urban system projects, which FHWA and UMTA believe is too prescriptive and goes beyond the statutory requirements.

Section 105(d) of 23 U.S.C. does not refer to project initiation; it states in pertinent part that Federal-aid urban system projects "... be selected by the appropriate local officials with the concurrence of the State highway department ..."

The statutory requirement is explicitly acknowledged in section 450.208(a)(2). Also the statutory requirement regarding the selection of Interstate substitution projects by responsible local officials, contained in 23 U.S.C. 103(e)(4) and 23 R 476 is acknowledged in

50.208(a)(3). The FHWA and UMTA believe that the specific procedures to meet these statutory provisions should be decided by the local officials and not prescribed by the Federal Government. The FHWA and UMTA also believe that endorsement of the annual (or biennial) element by the metropolitan planning organization will be evidence that local officials have in fact selected the Federal-aid urban system projects as well as the Interstate substitution projects on the annual (or biennial) element. Paragraph (b) to § 450.208 has been added to recognize this concern.

*Section 450.208 Annual (or biennial)
element: Content.*

The only change to this section from that proposed in the NPRM is made to clarify paragraph (b)(1) that project phases as well as complete projects may be proposed in the annual (or biennial) element. The word "phase" replaces "stage" which appears in the existing regulation and the NPRM in order to use the term which appears in 23 CFR Part 650.

Several commenters suggested that either the TIP or the annual element be eliminated, while others gave strong support to inclusion of both the TIP and the annual element. The proposal in the NPRM to allow for an annual element to cover a period of up to two years was widely accepted. These were similar

comments received on the "Issues and options" paper. Based on these comments, FHWA and UMTA believe that the relationship between the TIP and the annual (or biennial) element and their role in the project development process need to be clarified.

The annual (or biennial) element is simply the list of transportation improvement projects proposed for implementation during the first year (or 2 years) of the program period of the TIP. Projects in the annual (or biennial) element are generally described in greater detail than those in the TIP. This description is to be based on the factors included in section 450.208(b) and is necessary for subsequent Federal program approvals.

This TIP provides continuity between the transportation planning process, the transportation plan and the projects included in the annual (or biennial) element. As such, the TIP provides a framework in which to place, in perspective, those projects which are proposed for implementation with the policies and strategies of the area described in the transportation plan (not necessarily discrete projects).

While longer range projects and subsequent phases of a project are to be included in the TIP, there is no requirement that those improvements selected for inclusion in the annual (or biennial) element must have appeared first in the out years of the TIP. However, as the schedule for a project (or improvement) in the TIP advances, its description should be refined to the level of detail needed to allow it to be included in the annual (or biennial) element.

Metropolitan planning organization endorsement of the TIP (which includes the annual (or biennial) element) is a prerequisite for subsequent FHWA and UMTA approvals of the programs of projects. In addition, the metropolitan planning organization endorsement of the annual (or biennial) element constitutes the selection of projects by local officials pursuant to 23 U.S.C. 105(d) and 103(e)(4). One endorsement action satisfies both requirements.

*Section 450.210 Selection of projects
for implementation.*

The only substantive changes made to this section relate to the addition of the HBRR projects to the applicability section. (450.202(a)(6)) and optional exclusion allowed under § 450.202(b). Both of these are discussed in detail in this preamble under § 450.202.

The NPRM proposed that an already existing exemption which currently applies to Interstate and primary projects be extended to apply to

Federal-aid urban system projects. This proposal has been made final. This provision permits proposed urban system projects, for which substantial commitment of Federal funding has been made, to be included in the statewide program of projects under 23 U.S.C. 105 without having been in the current annual (or biennial) element. These projects may be included in the 105 program only if (1) they have already received Federal approval for right-of-way acquisition or federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded and (2) previous phases of such project or projects were included in an annual (or biennial) element endorsed by the metropolitan planning organization. This provision does not affect those urban system projects which, as of the effective date of this final rule, have already received Federal authorization to acquire right-of-way or Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded.

This provision is based on the rationale behind the existing regulatory provision that the commitment of substantial resources for a project which has advanced through the planning process to later phases of development should be considered, in effect, committed to that project from a planning standpoint. This concept has been extended to similar urban system projects.

Several commenters objected to this proposal on the grounds that they believed it makes the priority setting process of the metropolitan planning organization meaningless and thwarts the planning of when and if projects will advance. The FHWA and UMTA do not share this view since these projects must be included in a metropolitan planning organization endorsed annual (or biennial) element and receive Federal approval either for right-of-way acquisition, construction or implementation prior to reaching such an advanced stage of development.

It should be noted that this exemption is not intended to circumvent the role of local officials in the urban transportation planning process, especially with respect to the selection of Federal-aid urban system projects. If this exemption is used, § 450.210(b)(3)(iii) requires that the state must submit a statement with the 105 program of projects which includes for each applicable project or group of projects the views of the metropolitan planning organization and indicates how

the requirements of 23 U.S.C. 134(a) have been met. In addition, § 450.210(d) requires the State to notify the metropolitan planning organization of the disposition of the projects on the annual (or biennial) element as well as those projects included on the 105 program of projects under either this exemption or the optional provision provided under § 450.202(b).

Paragraph (c) of this section has been changed from the NPRM to specifically acknowledge that the agreement between the State and metropolitan planning organization under § 450.202(b) will satisfy the requirement that the projects or categories of projects affected by the agreement are based on the 3C process.

Section 450.212 Program approval.

Two changes are made to this section from that proposed in the NPRM. The first change is the addition of the clause "and Interstate substitution projects" to paragraph (a). This is done to acknowledge that these projects are not identified on the statewide program of projects prepared pursuant to 23 U.S.C. 105 but are to be based on the planning process. This omission was identified by several commenters.

The second change is the addition of HBRR projects to the FHWA approval under paragraph (a)(4).

Several commenters pointed out that a reference to FHWA's air quality-related responsibilities under 23 CFR Part 770, "Air Quality Conformity and Priority Procedures for use in Federal-Aid Highway and Federally Funded Transit Programs" was not included in this section. FHWA decided that a reference to 23 CFR Part 770 is more appropriate § 450.204(d)(2). As was stated in the earlier explanation of § 450.204, FHWA reviews the TIP when it is submitted, but does not take any approval action.

Other Considerations

The NPRM indicated that FHWA and UMTA were evaluating the merits of having certification acceptance (23 CFR Part 640) apply to the 3C planning process and requested comments accordingly. Based on the comments received FHWA and UMTA have decided not to take any action at this time to include the 3C process under the certification acceptance provisions.

Administrative Matters

These amendments are considered to be significant under the regulatory policies and procedures of the Department of Transportation because they involve important departmental policy. A regulatory evaluation has been prepared and is available for inspection

in the rulemaking docket (No. 82-10, Room 4205). Copies of the regulatory evaluation may be obtained by contacting Mr. Sam W. P. Rea, Jr., at the address provided above under the heading "For Further Information Contact." The FHWA and UMTA have determined that this final rule does not constitute a major rule under the criteria of Executive Order 12291. These amendments reduce burdens imposed on State and local governments in the conduct of urban transportation planning and will not have a significant economic impact. Accordingly, under the criteria of the Regulatory Flexibility Act, it is certified that these amendments will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 23 CFR Part 450 and 49 CFR Part 613

Grant programs—transportation, Highways and roads, Mass transportation, Urban transportation planning.

In consideration of the foregoing, the FHWA and UMTA hereby amend Chapter I of Title 23, Code of Federal Regulations, and Chapter VI of Title 49, Code of Federal Regulations, as set forth below:

1. Part 450, Subpart A of 23 CFR is revised to read as follows:

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Urban Transportation Planning

- Sec.
- 450.100 Purpose.
 - 450.102 Applicability.
 - 450.104 Definitions.
 - 450.106 Metropolitan planning organization.
 - 450.108 Urban transportation planning process: Funding.
 - 450.110 Urban transportation planning process: Products.
 - 450.112 Urban transportation planning process: Participant responsibilities.
 - 450.114 Urban transportation planning process: Certification.

Authority: 23 U.S.C. 104(f)(3), 134 and 314; Secs. 3, 5, 8, 9, and 9A of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1802, 1804, 1807, 1807a, and 1807a-1); Secs. 174 and 176 of the Clean Air Act (42 U.S.C. 7504 and 7506); and 49 CFR 1.46(b) and 151.

Subpart A—Urban Transportation Planning

§ 450.100 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 134, and Section 8 of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1807), which requires that each urbanized area, as a condition to the

receipt of Federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area. These plans and programs support transportation improvements and subsequent project development activities in the area.

§ 450.102 Applicability.

The provisions of this subpart are applicable to the transportation planning process in urbanized areas.

§ 450.104 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

(b) As used in this part:

(1) "Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

(2) "Designated Section 9 Recipient" means that organization designated in accordance with Section 9(m) or 5(b)(1) of the UMT Act, as amended, as being responsible for receiving and dispensing Section 9 and/or Section 8 funds.

(3) "Metropolitan planning organization" means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(1), 5(l), 8(a) and (c) and 9(e)(3)(G) of the UMT Act (49 U.S.C. 1802(e)(1), 1804(1), 1807(a) and (c) and 1807a(e)(3)(G)). The metropolitan planning organization is the forum for cooperative transportation decisionmaking.

(4) "Annual (or biennial) element" means a list of transportation improvement projects proposed for implementation during the first year (or 2 years) of the program period.

(5) "Transportation improvement program (TIP)" means a staged multiyear program of transportation improvements including an annual (or biennial) element.

§ 450.106 Metropolitan planning organization.

(a) Designation of a metropolitan planning organization shall be made by agreement among the units of general purpose local government and the Governor. To the extent possible, only one metropolitan planning organization should be designated for each urbanized area or group of contiguous urbanized areas.

(b) Principal elected officials of general purpose local governments shall be represented on the metropolitan planning organization to the extent agreed to pursuant to paragraph (a) of this section.

§ 450.108 Urban transportation planning process: Funding.

(a) Funds authorized by 23 U.S.C. 104(f) shall be made available by the State to the metropolitan planning organization, as required by 23 U.S.C. 104(f)(3).

(b) Funds authorized by Section 8 of the UMT Act (49 U.S.C. 1607) shall be made available to the metropolitan planning organization, to the extent possible, in urbanized areas with populations of 200,000 or more or where the metropolitan planning organization represents a group of contiguous or related urbanized areas with an aggregate population of 200,000 or more. In urbanized areas with populations below 200,000, such funds shall be made available to the State, at the State's option, to allocate among such urbanized areas, or with respect to any given urbanized area, to use for the benefit of such area with the concurrence of the metropolitan planning organization. If the State does not elect this option, these funds shall be made available directly to the metropolitan planning organization, to the extent possible.

(c) In urbanized areas with populations of 200,000 or more, the State, metropolitan planning organization, and designated Section 9 or 9A funds recipient, where Section 9 or 9A funds are used for planning purposes, shall develop a unified planning work program (UPWP) which describes urban transportation and transportation related planning activities anticipated in the area during the next 1- or 2-year period including the planning work to be performed with Federal planning assistance and with funds available under Section 9 or 9A, if any. The UPWP shall be endorsed by the metropolitan planning organization. (OMB Control Number 2132-0031)

(d) In urbanized areas with populations below 200,000, the State and the metropolitan planning organization (and where Section 9 or 9A funds are to be used for planning, the designated recipient) shall cooperatively describe and document how Federal planning funds and funds available under Section 9 or 9A if any, would be expended for planning in each area, who would do the work and what work in general would be done. The work proposed shall be endorsed by the metropolitan planning organization.

(e) The staff resources of other agencies (such as the State, local government and transit operator staff) may be utilized where appropriate to carry out the planning process, including the activities funded with Federal planning funds, through contractual agreements.

§ 450.110 Urban transportation planning process: Products.

The urban transportation planning process shall include the development of:

(a) A transportation plan describing policies, strategies and facilities or changes in facilities proposed. The transportation plan shall be formulated according to the requirements of 23 U.S.C. 134 and Section 8 of the UMT Act (49 U.S.C. 1607) which include and analysis of transportation system management strategies to make more efficient use of existing transportation systems.

(b) A transportation improvement program (TIP) including an annual (or biennial) element as prescribed in Subpart B of this part. The program shall be a staged multiyear program of transportation improvement projects consistent with the transportation plan. (OMB Control Number 2132-0629)

(c) Other planning and project development activities deemed necessary by State and local officials to assist in addressing transportation issues in the area.

§ 450.112 Urban transportation planning process: Participant responsibilities.

(a) The metropolitan planning organization, the State, and publicly owned operators of mass transportation services shall determine their mutual responsibilities in the development of the planning work program, transportation plan and TIP specified in Sections 450.108 and 450.110.

(b) The metropolitan planning organization shall endorse the transportation plan and TIP required by Sections 450.110 and 450.204. These endorsements are prerequisites for the approval of programs of projects in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), Section 8(c) of the UMT Act (49 U.S.C. 1607(c)), and Subpart B of this part.

§ 450.114 Urban transportation planning process: Certification.

(a) The urban transportation planning process shall include activities to support the development and implementation of a transportation plan and TIP/annual (or biennial) element and subsequent project development activities, including the environmental

impact assessment process. These activities shall be included as necessary and to the degree appropriate for the size of the metropolitan area and the complexity of its transportation problems.

(b) The planning process shall be consistent with:

(1) Sections 8(e) and 3(e) (49 U.S.C. 1607 and 1602(e)) of the UMT Act concerning involvement of the appropriate public and private transportation providers;

(2) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 334 and 29 U.S.C. 794.

(3) Section 105(f) of the Surface Transportation Assistance Act of 1982 regarding the involvement of minority business enterprises in FHWA and UMTA funded projects (Pub. L. 97-424, Section 105(f); 49 CFR Part 23); and

(4) Section 16 of the UMT Act (49 U.S.C. 1612), Section 165(b) of the Federal-Aid Highway Act of 1973, as amended, and 49 CFR Part 27, which call for special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons.

(c) At the time the TIP/annual (or biennial) element is submitted, the State and the metropolitan planning organization shall certify that the planning process is being carried on in conformance with all applicable requirements of:

(1) 23 U.S.C. 134, Section 8 of the UMT Act (49 U.S.C. 1607) and these regulations;

(2) Sections 174 and 178 (c) and (d) of the Clean Air Act (42 U.S.C. 7504, 7506 (c) and (d)).

Subpart B (§§ 450.200-450.208) Redesignated as Subpart C (§§ 450.300-450.308).

2. Part 450, Subpart B, Metropolitan Planning Funds, (40 FR 38151, August 27, 1975, as amended) is redesignated as Part 450, Subpart C.

The sections are renumbered as follows:

| Former section | New section |
|----------------|-------------|
| 450.200 | 450.300 |
| 450.202 | 450.302 |
| 450.204 | 450.304 |
| 450.208 | 450.308 |

3. Former Part 450, Subpart C is redesignated as Part 450, Subpart B and revised to read as follows:

Subpart B—Transportation Improvement Program

Sec. 450.200 Purpose.

Sec.

450.202 Applicability.

450.204 Transportation Improvement Program: General.

450.206 Annual (or biennial) element Project selection.

450.208 Annual (or biennial) element Content.

450.210 Selection of projects for implementation.

450.212 Program approval.

Authority: 23 U.S.C. 103, 134(a), and 135(b); Sections 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); Sections 174 and 176 of the Clean Air Act (42 U.S.C. 7504 and 7506); and 49 CFR 1.48(b) and 1.51.

Subpart B—Transportation Improvement Program

§ 450.200 Purpose.

The purpose of this subpart is to establish regulations for the development, content, and processing of a cooperatively developed transportation improvement program (TIP) in urbanized areas.

§ 450.202 Applicability.

(a) The provisions of this subpart shall be applicable to projects in or serving urbanized areas with funds made available under:

- (1) 23 U.S.C. 104(b)(6) (urban system projects);
 - (2) 23 U.S.C. 103(e)(4) (Interstate substitution projects);
 - (3) Sections 3, 5, 8, and 9A of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1602, 1604, 1607a and 1607a-1) (UMTA capital and operating assistance projects);
 - (4) 23 U.S.C. 104(b)(1) (projects on extensions of primary systems in urbanized areas), except as provided in this subpart
 - (5) 23 U.S.C. 104(b)(5) (A) and (B) (projects on the Interstate System), except as provided in this subpart.
 - (6) 23 U.S.C. 144 (highway bridge replacement and rehabilitation projects), except as provided in this subpart.
- (b) Projects under paragraphs (a) (4), (5) and (6) of this section which are for resurfacing, restoration, rehabilitation, reconstruction (4R), or highway safety improvement; and which will not alter the functional traffic capacity or capability of the facility being improved may be excluded from the TIP including its annual (or biennial) element by agreement between the State and the metropolitan planning organization.

§ 450.204 Transportation Improvement Program: General.

(a) The TIP, including the annual (or biennial) element, shall be developed by the metropolitan planning organization, the State and publicly owned operators of mass transportation services in

cooperation with recipients authorized under Sections 3, 8, or 9A of the UMT Act (49 U.S.C. 1604, 1607a or 1607a-1).

(b) The TIP shall as a minimum: (1) Consist of improvements from the transportation plan developed under Section 450.110(a) and recommended for Federal funding during the program period;

(2) Cover a period of not less than 3 years;

(3) Indicate the area's priorities; and

(4) Include realistic estimates of the total costs and revenues for the program period.

(c) The metropolitan planning organization endorsement of the TIP including the annual (or biennial) element is a prerequisite for the approval of programs of projects in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), and Section 8(c) of the UMT Act (49 U.S.C. 1607(c)). The State, metropolitan planning organization, and publicly owned operators of mass transportation services are encouraged to develop simplified procedures for updating or modifying an endorsed annual (or biennial) element.

(d) The TIP including the annual (or biennial) element shall be submitted:

- (1) To the Governor and the Urban Mass Transportation Administrator, and
- (2) Through the State to the Federal Highway Administrator for use as a basis for meeting the applicable air quality procedures contained in 23 CFR Part 770 and for the subsequent approval of the statewide program of projects under 23 U.S.C. 105 in accordance with § 450.212 and 23 CFR Part 630.

§ 450.206 Annual (or biennial) element: Project selection.

(a) Federally funded projects shall be selected for inclusion in the annual (or biennial) element at all phases in the development of the transportation improvement for which program action is proposed. The projects to be included in the annual (or biennial) element of the TIP shall be selected in accordance with:

- (1) State and local law;
- (2) 23 U.S.C. 105(d) regarding the selection of urban system projects by the appropriate local officials with concurrence of the State highway department;
- (3) 23 U.S.C. 103(e)(4) and 23 CFR Part 478 regarding the selection of Interstate substitution projects by the responsible local officials; and
- (4) Procedures acceptable to the State highway department, the metropolitan planning organization, and local public transit operating officials.

(b) The endorsement of the annual (or biennial) element of the TIP by the metropolitan planning organization constitutes the selection of the projects by local officials pursuant to 23 U.S.C. 105(d) and 23 U.S.C. 103(e)(4).

§ 450.208 Annual (or biennial) element: Content.

(a) Except as provided in Section 450.210(b)(3) and (4), the annual (or biennial) element shall contain projects selected under Section 450.206 and endorsed under § 450.204.

(b) With respect to each project under paragraph (a) of this section the annual (or biennial) element shall include:

- (1) Identification of the projects, including the phase of phases proposed for implementation.
- (2) Estimated total cost and the amount of Federal funds proposed to be obligated during the program period.
- (3) Proposed source of Federal and non-Federal matching funds; and
- (4) Identification of the recipient and State and local agencies responsible for carrying out the project.

(c) Projects proposed for Federal funding that are not considered to be of appropriate scale for individual inclusion in the annual (or biennial) element may be grouped by functional classification, geographic area or work type.

(d) The annual (or biennial) element shall be reasonably consistent with the amount of Federal funds expected to be available to the area. Federal funds that have been allocated to the area pursuant to 23 U.S.C. 150 shall be identified.

(e) The total Federal share of projects included in the annual (or biennial) element and proposed for funding under Sections 3, 8, or 9A of the UMT Act (49 U.S.C. 1604, 1607a and 1607a-1) may not exceed apportioned Section 3, 8, or 9A funds available to the urbanized area during the program year (or 2 years).

§ 450.210 Selection of projects for implementation.

(a) The projects proposed to be implemented with Federal assistance under Sections 3, 5, 9 and 9A of the UMT Act (49 U.S.C. 1602, 1604, 1607a and 1607a-1) and nonhighway public mass transit projects under 23 U.S.C. 103(e)(4) shall be those contained in the annual (or biennial) element of the TIP submitted to the Urban Mass Transportation Administrator.

(b) Upon receipt of the TIP, the State shall include in the statewide program of projects required under 23 U.S.C. 105:

- (1) Those projects drawn from the annual (or biennial) element and

proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid urban system) in which the State concurs; provided, however, that in case any where the State does not concur in a nonhighway public mass transit project, a statement describing the reasons for the nonconcurrence shall accompany the statewide program of projects.

(2) Those projects drawn from the annual (or biennial) element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Interstate System projects in urbanized areas); and 23 U.S.C. 144 (highway bridge replacement and rehabilitation projects), in which it concurs;

(3) Those projects not drawn from the annual (or biennial) element that are proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid highway urban system), 23 U.S.C. 104(b)(1) (Projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Projects on the Interstate System) provided that:

(i) Previous phases of such project or projects were selected pursuant to Section 450.206, and advanced;

(ii) Such project or projects are for highway transportation improvements for which there has been a Federal authorization to acquire right-of-way or Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded; and

(iii) A statement accompanies the statewide program of projects which includes for such projects the views of the metropolitan planning organization and indicates how the requirements of 23 U.S.C. 134(a) have been met; and

(4) Those projects not drawn from the annual (or biennial) element that were excluded under section 450.202(b) and are proposed to be implemented.

(c) The preparation and endorsement of the TIP, the selection of projects in accordance with this subpart, and the agreement under section 450.202(b), if any, will meet the requirements of 23 U.S.C. 105(d), 23 U.S.C. 134(a) and Section 8(c) of the UMT Act (49 U.S.C. 1607(c)).

(d) The State shall notify the appropriate metropolitan planning organizations of the 23 U.S.C. 105 program actions taken on projects in each urbanized area.

§ 450.212 Program approval

(a) Upon the determination by the Federal Highway Administrator and the

Urban Mass Transportation Administrator that the TIP or portion thereof is in conformance with this subpart and that the planning process is in conformance with Subpart A, programs of projects and Interstate Substitution projects selected for implementation under §§ 450.210 and 450.206, respectively will be considered for approval as follows:

(1) Federal-aid urban system projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by:

(i) The Federal Highway Administrator with respect to highway projects;

(ii) The Urban Mass Transportation Administrator with respect to nonhighway public mass transit projects; and

(iii) The Federal Highway Administrator and the Urban Mass Transportation Administrator jointly in any case where the statewide program of projects submitted pursuant to 23 U.S.C. 105 does not include all Federal-aid urban system nonhighway public mass transit projects contained in the annual (or biennial) element.

(2) Interstate substitution nonhighway public mass transit projects included in the annual (or biennial) element will be approved by the Urban Mass Transportation Administrator.

(3) Projects proposed to be implemented under Sections 3, 8, 9, and 8A of the UMT Act (49 U.S.C. 1602, 1604, 1607a and 1607a-1) included in the annual (or biennial) element will be approved by the Urban Mass Transportation Administrator after considering any comments received from the Governor within 30 days of the submittal required by § 450.204(d)(1).

(4) Federal-aid urban extensions of primary projects, Interstate projects and highway bridge replacement and rehabilitation projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by the Federal Highway Administrator.

(b) Approvals by the Federal Highway Administrator or joint approvals by the Federal Highway Administrator and Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with 23 CFR Part 630, Subpart A. These approvals will constitute:

(1) The approval required under 23 U.S.C. 105; and

(2) A finding that the projects are based on a continuing, comprehensive transportation planning process carried on cooperatively by the States and local communities in accordance with the provisions of 23 U.S.C. 134.

(c) Approvals by the Urban Mass Transportation Administrator will be in

accordance with the provisions of this subpart. These approvals will constitute:

(1) The approval required under Section 8(c) of the UMT Act (49 U.S.C. 1607(c));

(2) A finding that the program is based on a continuing, cooperative and comprehensive transportation planning process carried on in accordance with the provisions of Section 8 of the UMT Act (49 U.S.C. 1607), as applicable;

(3) A finding that the projects are needed to carry out a program for a unified officially coordinated urban transportation system in accordance with the provisions of Section 3(e)(1), 5(l), or 8(c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(l) or 1607(c)), as applicable; and

(4) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP in accordance with procedures in 49 CFR Part 623.

Part 613 of 49 CFR is amended as set forth below:

PART 613—PLANNING ASSISTANCE AND STANDARDS

4. Subpart A of Part 613 is revised as set forth below:

Subpart A—Urban Transportation Planning

§ 613.100 Urban transportation planning.

The urban transportation planning regulations implementing 23 U.S.C. 134 and Section 8 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607), which require comprehensive planning of transportation improvements which are set forth in 23 CFR Part 450, Subpart A, are incorporated into this subpart.

(23 U.S.C. 104(f)(3), 134 and 313; sec. 2, 3, 8, 9, and 8A of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, 1607, 1607a and 1607a-1); secs. 174 and 177 of the Clean Air Act (42 U.S.C. 7504 and 7508); and 49 CFR 1.48(b) and 1.51)

5. Subpart B of Part 613 is revised as set forth below:

Subpart B—Transportation Improvement Program

§ 613.200 Transportation improvement program.

The transportation improvement program regulations establishing guidelines for the development, content, and processing of a cooperatively developed transportation improvement program in urbanized areas which are set forth in 23 CFR Part 450, Subpart B are incorporated into this subpart.

(23 U.S.C. 106, 134(e), and 135(b); secs. 2, 8, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); secs. 174, and 176 of the Clean Air Act (42 U.S.C. 7504, and 7506); and 49 CFR 1.48(b) and 1.81)
(Catalog of Federal Domestic Assistance Program Numbers 20.308, Highway Research Planning, and Construction; 20.800 Urban

Mass Transportation Capital Grants; 20.501, Urban Mass Transportation Capital Improvement Loans, and 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants. The provisions of OMB Circular No. A-88 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs)

Issued on June 27, 1981.
R. A. Barabart,
Federal Highway Administrator, Federal
Highway Administration.
Arthur E. Toole, Jr.,
Urban Mass Transportation Administrator,
Urban Mass Transportation Administration.
PRT Doc. 20-17728 Filed 6-28-81 9:45 am
GALLIES CODE 4810-22-81

EXHIBIT 2
AGREEMENT CREATING REGIONAL TRANSPORTATION
COMMISSION OF CLARK COUNTY

THIS AGREEMENT, made and entered into by and between the STATE OF NEVADA acting by and through its Department of Transportation, hereinafter referred to as STATE; COUNTY OF CLARK, a political subdivision of the State of Nevada, hereinafter referred to as COUNTY; the CITY OF LAS VEGAS, hereinafter referred to as LAS VEGAS; the CITY OF NORTH LAS VEGAS, hereinafter referred to as NORTH LAS VEGAS; the CITY OF HENDERSON; hereinafter referred to as HENDERSON; the CITY OF BOULDER CITY hereinafter referred to as BOULDER CITY; and the Clark County Regional Transportation Commission, hereinafter referred to as TRANSPORTATION COMMISSION.

WITNESSETH

WHEREAS, STATE, pursuant to the provisions of NRS 408.245, assents to and accepts the provisions of the Federal Highway Act and all amendatory legislation and

WHEREAS, the Federal Highway Administration, the Urban Mass Transportation Administration, the Federal Department of Housing and Urban Development and other federal agencies may have funds available to assist STATE and local governments in solving planning problems resulting from the increasing concentration of population in urban areas and to facilitate comprehensive planning for urban development including coordinated transportation systems on a continuing basis by such governments; and

WHEREAS, pursuant to NRS 277.180, STATE has power to enter into a cooperative agreement with COUNTY, LAS VEGAS, NORTH LAS VEGAS, HENDERSON, BOULDER CITY and TRANSPORTATION COMMISSION, to effectuate and carry out programs contemplated and provided by the United States Government or its various agencies, in conjunction with local programs; and

WHEREAS, pursuant to NRS 277.180, COUNTY may enter into cooperative agreements to expedite and make more efficient, planning processes with respect to construction, reconstruction, control and management of all transportation facilities; and

WHEREAS, LAS VEGAS, NORTH LAS VEGAS, and HENDERSON pursuant to the Statutes of Nevada, are special charter cities; BOULDER CITY was incorporated pursuant to NRS Chapter 267; TRANSPORTATION COMMISSION was established by NRS Chapter 373; are all

decided for their best interest, and the transportation planning process is an
intentional, and

WHEREAS, pursuant to said power and authority, STATE, COUNTY, LAS VEGAS, NORTH
LAS VEGAS, HENDERSON, DOULDER CITY, and TRANSPORTATION COMMISSION, enter into this
cooperative agreement for the maintenance of a comprehensive, cooperative and con-
tinuing transportation planning process in Clark County with a view of maintaining
transportation planning related to comprehensive planning for the area and harmoni-
ous with the citizens' desires for community development goals in a continuing
planning process which will be mutually advantageous to all contracting parties;
and

WHEREAS, the Regional Transportation Plan has been completed and is in the con-
tinual update phase as per the Integrated Cooperative Agreement of January 5, 1965
between the STATE, COUNTY, LAS VEGAS, NORTH LAS VEGAS, HENDERSON; and

WHEREAS, the Governor of the State of Nevada on July 1, 1961 designated TRANS-
PORTATION COMMISSION the official Metropolitan Planning Organization of the Clark
County area, to be responsible for all transportation planning grants for the Clark
County area; pursuant to the provisions of Title 23 U.S.C. 134 and Title 49 U.S.C.
1607 as amended by Federal Public Law 95-599 enacted November 6, 1978 and cited as
the Surface Transportation Act of 1978; and

WHEREAS, all previous agreements, resolutions, and memorandums of understanding
involving regional transportation planning are superseded by this cooperative
agreement.

NOW, THEREFORE, in consideration of the premises and the covenants contained
herein, and pursuant to the authority of NRS Chapter 277, it is agreed by and
between the parties hereto as follows:

OBJECTIVES

The objective of this agreement is to maintain a comprehensive, continuing, co-
operative transportation planning process as related to comprehensive planning; and
to provide for the continual orderly development of these plans.

Regional Transportation Commission

The Clark County Transportation Study Policy Committee is hereby dissolved and the TRANSPORTATION COMMISSION shall function as the decision making board, and shall be composed of representatives selected in accordance with NRS 373 as follows:

- Two from the Board of County Commissioners of Clark County.
- Two from the governing body of the largest city in Clark County.
- One from the governing body of each additional city in the county which is a party to this agreement.

The Director of the Nevada Department of Transportation shall be an ex-officio member for participation in planning. The Division Administrator of the Federal Highway Administration shall act in an advisory capacity.

Planning Technical Committee

To foster the comprehensive and cooperative intent of transportation planning, the TRANSPORTATION COMMISSION shall be aided by a Planning Technical Committee which shall function in an advisory capacity to the TRANSPORTATION COMMISSION, and shall be composed of the same number of representatives selected in the same manner as the TRANSPORTATION COMMISSION with the following additional organizations represented each with one member; all members shall be voting members:

- Nevada Department of Transportation.
- United States Department of Transportation.
- McCarran International Airport.
- Economic Opportunity Board of Clark County.
- The private transit sector in Clark County.
- Clark County School District.
- The taxicab industry of Clark County.

Citizen Participation Program

In order for transportation planning to remain sensitive to community needs and desires, a citizen participation program shall be utilized. Various methods of providing citizen input may be employed when deemed necessary and appropriate. These may include but not be limited to town meetings, public hearings, workshops, civic groups' meeting, and newsletters. A Citizen Advisory Committee shall func-

composed of no more than twenty members. Members presently serving shall continue to serve until the next ensuing December 31 of an even-numbered year. Their successors shall serve for terms of two years and vacancies shall be filled for the unexpired term by the TRANSPORTATION COMMISSION.

Staff

The TRANSPORTATION COMMISSION shall maintain a planning division staff to complete the requirements of the Transportation Section of the Overall Work Program adopted by TRANSPORTATION COMMISSION.

OVERALL RESPONSIBILITIES

Transportation Planning

The TRANSPORTATION COMMISSION, as the designated Metropolitan Planning Organization, shall be responsible for the maintenance of a comprehensive, continuing, and cooperative transportation planning process as related to comprehensive planning, and as such, shall be responsible for all transportation planning grants for the study area whose boundaries shall be Clark County.

Federal-Aid Urban Boundaries

The TRANSPORTATION COMMISSION, in cooperation with STATE, shall be responsible for the development, maintenance, and approval of the Federal-Aid Urban Boundaries within the study area.

Federal-Aid Urban Street and Highway System

The TRANSPORTATION COMMISSION, in cooperation with STATE, shall be responsible for designating the project priorities on the urban system within the Federal-Aid Urban Boundaries, consistent within the guidelines governing the Transportation Improvement Program.

Transportation Improvement Program

The TRANSPORTATION COMMISSION shall be responsible for annually compiling, reviewing the planning consistency of, and adopting, the Transportation Improvement Program for the study area. The Transportation Improvement Program is a staged three to five year program of regional transportation improvement projects, estimated costs, and responsible agencies.

The TRANSPORTATION COMMISSION shall be responsible for the annual development, maintenance, adoption, and administration of the Overall Work Program as required by the 23 code of Federal Regulations, 450.115 and herein incorporated by reference. The Overall Work Program is a program budget document within which the comprehensive metropolitan planning process is defined so that federal and state planning requirements can be met. Approvals of consulting agreements shall be governed by the appropriate provisions of OMB Circular A-102 and FHWA 1-7-2.

AUDITS AND INSPECTION

The TRANSPORTATION COMMISSION shall permit the STATE and the Federal Highway Administration to audit the books, records, and accounts of the TRANSPORTATION COMMISSION pertaining to the Overall Work Program. In addition, the TRANSPORTATION COMMISSION will present to the STATE the results of any independent audit, review and or inspection of the Overall Work Program prepared by or for the TRANSPORTATION COMMISSION.

RECORD RETENTION

The TRANSPORTATION COMMISSION shall provide and maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at the administrative offices of the TRANSPORTATION COMMISSION at all reasonable times during the tenure of this AGREEMENT and for three (3) years from the date of final payment to the COMMISSION for work accomplished under the Overall Work Program. Such materials will be made available for inspection by authorized representatives of the STATE or the Federal Highway Administration, and copies thereof shall be furnished if requested.

COPYRIGHTING OF MATERIAL

THE TRANSPORTATION COMMISSION shall be free to copyright material developed under the contract. It is further agreed that the STATE and Federal Highway Administration reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work which may be accomplished under this Agreement for government purposes.

All project reports published by the TRANSPORTATION COMMISSION shall contain a credit reference to the State of Nevada, Department of Transportation and shall indicate that such report or publication has been "prepared in cooperation with the U.S. Department of Transportation, Federal Highway Administration, and the Nevada Department of Transportation."

Project, shall indicate that such report or publication has been prepared in cooperation with the Regional Transportation Commission."

NONDISCRIMINATION

The parties hereto shall comply with all applicable requirements of the following regulations relative to nondiscrimination:

- (a) Title VI of the 1964 Civil Rights Act.
- (b) 49 Code of Federal Regulations, Part 21, "Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964."
- (c) 49 Code of Federal Regulations, Part 23, "Participation by Minority Business Enterprises in Department of Transportation Programs."
- (d) 49 Code of Federal Regulations, Part 23 Federal Register 45281 (7/13/80) "Guidance for Implementing DOT Rules Creating a Minority Business Enterprises Program in DOT Financial Assistance Programs."
- (e) 49 Code of Federal Regulations, Part 27, "Non-discrimination on the Basis of Handicap."
- (f) 23 Code of Federal Regulations, Section 710.405(b) regarding sex discrimination.

LIABILITY FOR ACTIONS OF OTHER PARTY

No party shall incur legal liability for the actions of the other under terms and conditions of this contract. Each party shall be solely and entirely responsible for its act and the actions of its employees and agents under this contract.

FINANCES

Funds from federal, state and local sources eligible to support the transportation planning process shall be administered by the TRANSPORTATION COMMISSION in accordance with the rules and regulations of the funding agencies.

The TRANSPORTATION COMMISSION shall establish a separate fund to provide funding for the transportation planning process and to match federal transportation planning funds.

of the non-federal share of the total project cost, except STATE funds shall not exceed the amount appropriated and apportioned for this purpose. The TRANSPORTATION COMMISSION agrees that it will provide, from sources other than STATE or Federal funds, to cover the balance of the work defined in the Overall Work Program. The STATE's share of the costs as indicated in the Overall Work Program must be expended in the program year indicated. The STATE obligation to provide STATE funds lapses at the end of each program year as indicated in the approved Overall Work Program. All project costs shall be properly identified and shall be guided by the provisions of OMB Circular A-102, as well as the requirements of the COMMISSION and DEPARTMENT accounting systems. Eligible costs as well as methods for documenting those costs attributable to the Project contracting requirements, shall be governed by the current provision of:

- (a) Federal Management Circular 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments."
- (b) Office of Management and Budget (OMB) Circular A-102, "Uniform Administrative Requirements for Grant-in-Aid to State and Local Governments," including all applicable attachments.
- (c) Federal-aid Highway Program Manual 1-7-2, "Payment Procedures."

The TRANSPORTATION COMMISSION shall invoice STATE quarterly for expenses incurred and reimbursable from the Federal Highway Administration. The TRANSPORTATION COMMISSION shall requisition the Urban Mass Transportation Administration quarterly for expenses incurred and reimbursable therefrom.

Quarterly and year end reports accounting for the expenditure of all funds and services included as part of the Transportation Section of the Overall Work Program shall be submitted for review by the TRANSPORTATION COMMISSION.

The TRANSPORTATION COMMISSION may disburse planning monies for the purposes hereinabove set forth without submitting agreements to the other individual parties to this Cooperative Agreement.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals as of the day and year indicated.

1
COUNTY OF CLAY

Attest: [Signature]
County Clerk

CITY OF CLAY
By: [Signature]
Mayor

ATTEST:
[Signature]
LUCETTA BOWMAN, County Clerk

COUNTY OF CLAY
By: [Signature]
TRAILA BOWMAN, Chairman

Date: July 3, 1981

ATTEST:
[Signature]
CAROL ANN HAWLEY, City Clerk

CITY OF LAS VEGAS
By: [Signature]
WILLIAM S. BALLAGE, Mayor

Date: May 19, 1981

ATTEST:
[Signature]
LETTER BORDEN, City Clerk

CITY OF NORTH LAS VEGAS
By: [Signature]
JAMES SHERMAN, Mayor

Date: June 29, 1983

ATTEST:
[Signature]
BONNIE WOODRUFF, City Clerk

CITY OF EDWARDS
By: [Signature]
Mayor

Date: July 6, 1983

ATTEST:
[Signature]
DEE GILES, City Clerk

CITY OF EDWARDS CITY
By: [Signature]
EDWARDS CITY, Mayor

Date: _____

Entered [Signature]
Main Service 4-2-83



[Handwritten Signature]
LENA A. [unclear] [unclear]

DATE: March 10, 1993

APPROVED AS TO FORM:

[Handwritten Signature]
MELVIN B. [unclear]
Deputy District Attorney

[Redacted]

[Faint text]

[Faint text]