

Chapter III: STIP Regulatory Framework

A. Federal Regulations and Policy

States are required to carry out a continuing, comprehensive, cooperative, and intermodal statewide transportation planning process. Part of this process is developing a statewide transportation plan and statewide transportation improvement program (STIP). Title 23 of the Code of Federal Regulations (CFR) governs implementation of federal transportation law by the Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration of the US Department of Transportation (USDOT). Part 450 of 23 CFR documents the requirement for the statewide transportation plan and statewide transportation improvement program. The description offered here is based on rules in place today. Congress passed SAFETEA-LU in 2005, the transportation funding authorization act that will guide investment in transportation for the next several years and the federal rules will need to be updated to reflect changes made by that Act.

1. REQUIRED ELEMENTS

23 CFR Part 450.214 requires that each state develop a transportation plan that considers all modes of transportation and the connections between them, and is statewide in scope in order to facilitate the efficient movement of people and goods. The plan must cover a period of at least 20 years.

The code also requires that states develop a STIP. Like the transportation plan, the STIP must cover all areas of the state. It must account for a period of at least three years, although it may cover a longer period. However, the FHWA and Federal Transit Administration (FTA) will consider projects beyond three years as informational only. The STIP must include a list of priority transportation projects proposed to be carried out in the first three years, grouped by year. All projects must be consistent with the statewide transportation plan and, if in an air quality nonattainment or maintenance area, projects must be consistent with federal Clean Air Act as Amended (40 CFR Part 51) (CAAA) requirements.

The STIP must be financially constrained by year, meaning that all funding sources and revenues must be identified for each project in each year of the STIP. The STIP must include sufficient financial information to ensure that the transportation system is being adequately operated and maintained. It must contain all capital and non-capital transportation projects proposed for funding under Title 23 US Code (USC) and the Federal Transit Act (specific exclusions excepted), all regionally significant transportation projects regardless of funding source, and all projects requiring an action by FHWA or FTA. In other words, the STIP may not include a wish-list of projects; it may only include projects for which there is available funding.

For each project, the STIP must include the following information:

- 1) sufficient description to identify the project or phase;
- 2) estimated total cost;
- 3) the amount of federal funds to be obligated during each program year;
- 4) for the first year, the proposed category of federal funds and sources of non-federal funds;
- 5) for the second and third years, the likely categories of federal funds and sources of non-federal funds; and
- 6) the agencies responsible for carrying out the project.

The federal regulations regarding STIP public involvement state that public involvement must be proactive, provide opportunities for early and ongoing involvement, and continue throughout the transportation planning and programming process. The state must comply with the requirements set out in Title VI of the Civil Rights Act, and the Executive Order pertaining to Environmental Justice.

2. COORDINATION WITH METROPOLITAN PLANNING ORGANIZATIONS, LOCAL JURISDICTIONS, AND OTHER AGENCIES

Federal code requires that the state coordinate with the metropolitan planning organization (MPO) on the portion of the STIP that contains projects in the metropolitan planning area. It is a joint responsibility of the MPO, state, and transit operator to cooperatively develop estimates of funds that are reasonably expected to be available to support the Metropolitan Transportation Improvement Program (MTIP) development. Once approved by the MPO and the Governor, MTIPs are to be included in the STIP without modification, either directly or by reference. It is the state's responsibility to notify the MPO, local jurisdictions, federal land agency, tribal government, and others when its TIP has been included in the STIP. In addition, all Title 23 USC and Federal Transit Act fund recipients must share information as projects in the STIP are implemented.

MTIPs in air quality nonattainment and maintenance areas are subject to FHWA and FTA air quality conformity findings as prescribed by the CAAA before they can be included in the STIP. In air quality nonattainment and maintenance areas outside metropolitan planning areas, federal findings of conformity must be made prior to inclusion in the STIP.

The state must conduct a public involvement process according to 23 CFR Part 450.212. Requirements include providing early and continuing public involvement opportunities, timely information about transportation issues and processes to all affected and interested agencies and parties, adequate public notice of public involvement activities, and a process for considering and responding to public input.

The state is also required to provide for public involvement on existing and proposed procedures for public involvement. Before procedures or any major revisions to existing procedures are adopted there must be a 45-day period for public review and written comment.

3. METROPOLITAN TRANSPORTATION PLANNING

MPOs must be formed for urbanized areas with a population of 50,000 or more, and the MPO boundaries must encompass at least the urbanized area and those areas expected to be urbanized within the 20-year forecast period covered by the transportation plan. The boundary may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the U.S. Bureau of the Census. The boundaries must also include air quality nonattainment or maintenance areas, if applicable, unless another boundary has been agreed upon by the Governor and the MPO (23 CFR 450.308, 23 CFR 450.310(f)).

Consistent with federal code, MPO designation in Oregon is established under specific state legislation that gives the MPO authority to conduct metropolitan transportation planning. 23 CFR Part 450.306 provides the parameters under which MPOs can be designated, redesignated or expanded, and lists the required representation of the voting membership of an MPO.

The state and MPO enter into an agreement or memorandum of understanding that identifies responsibilities for cooperatively carrying out transportation planning and programming. The MPO and operators of publicly owned transit services and air quality agencies also develop cooperative agreements for carrying out the metropolitan transportation planning process. MPOs must prepare unified planning work programs (UPWPs) in cooperation with the state and transit operators. If the metropolitan planning area includes federal public lands and/or tribal lands, affected federal agencies and tribal governments participate in the development of transportation plans and programs. Urbanized areas with populations over 200,000 are designated Transportation Management Areas (TMAs), in addition to their MPO status. This means that they have some further regulations to meet and that they receive some of their funding directly from the federal government based on a national formula. Smaller MPO areas are funded through their state department of transportation's (DOT) allocations. Both kinds of MPOs work closely with their State DOTs on funding, priorities, planning, and projects.

According to 23 CFR 450.316 (2005), the metropolitan transportation planning process must consider 15 different factors, including the following.

- Preservation of existing transportation facilities
- The need to relieve and prevent congestion
- The effect of transportation policy on land use and development
- Preservation of right-of-way

- Enhancement of efficient freight movement
- Consistency with federal, state, and local energy conservation programs, among others

MPOs are responsible for developing a transportation plan addressing at least a 20-year planning horizon, usually referred to as a Regional Transportation Plan (RTP). The plan must include both long-range and short-range strategies and actions that lead to the development of an integrated intermodal transportation system. The required elements of an RTP are in 23 CFR 450.322. Notably, there must be adequate opportunity for public official and citizen involvement in the development of the transportation plan before it is approved by the MPO.

Federally required elements of the metropolitan transportation planning process include developing an MTIP (23 CFR 450.324). The MTIP must be updated at least every two years and be approved by the MPO and the Governor. Because the MTIP becomes part of the STIP, the frequency and cycle of the update must be compatible with the STIP development and approval process. As with their RTP, the MPO must provide reasonable opportunity for public involvement in the development of the MTIP.

The MTIP covers a period of at least three years, and may cover a longer period if it identifies priorities and financial information for the additional years. It must include a priority list of projects to be undertaken in the first three years, with the projects grouped by year. The MTIP must be financially constrained by year. It must include a financial plan that demonstrates which projects can be implemented using current revenue sources, and which will be implemented using proposed revenue sources. Like the STIP, the total project costs in each year of the MTIP must not exceed expected available funding.

The MTIP must include all transportation projects within the metropolitan planning area proposed for funding under USC Title 23 and the Federal Transit Act. Only projects that are consistent with the RTP can be included. All regionally significant transportation projects for which an FHWA or FTA approval is required must be included, regardless of funding source. For air quality analysis in nonattainment and maintenance areas, the MTIP must contain all regionally significant projects, regardless of funding source.

In addition, the MTIP must include the following information for each project:

- 1) sufficient description to identify the project or phase;
- 2) estimated total cost;
- 3) the amount of federal funds proposed to be obligated during each program year;
- 4) proposed source of federal and non-federal funds;
- 5) the agencies responsible for carrying out the project;

- 6) in air quality nonattainment and maintenance areas, identification of projects that are transportation control measures in the applicable state air quality implementation plan; and
- 7) in areas with Americans with Disabilities Act required paratransit and key station plans, identification of projects which will implement the plans.

B. State Regulations and Policy

Oregon Revised Statutes (ORS) Chapter 184 establishes the Oregon Transportation Commission (OTC) and defines the organization of the Oregon Department of Transportation (ODOT). The OTC determines the policies of operation for ODOT. ODOT receives all federal funds that are allocated to Oregon for transportation programs and services, except funds for aviation programs and services, which are administered by the Oregon Department of Aviation.

The OTC's primary responsibility is to develop and maintain a statewide transportation policy and a comprehensive, long-range plan for a safe, multimodal transportation system. The plan must include airports, highways, mass transit, pipelines, ports, railways, and waterways. Oregon's long-range transportation plan is known as the Oregon Transportation Plan (OTP). The OTP is accompanied by several more specific plans, known as modal plans. These include the Oregon Highway Plan and the Public Transportation Plan.

ODOT's public involvement policy is more stringent than the federal regulation. It requires that the Department provide a 45-day public review of the draft STIP, and a 45-day public review of any major revision of the approved STIP; that the Department provide statewide opportunities for public comment on the draft STIP by scheduling at least two public meetings in each of ODOT's five regions prior to adoption of the program by the OTC; and that the Department consider all public comment on the draft STIP prior to adoption of the program by the OTC.

Area Commissions on Transportation (ACTs) are advisory bodies to the OTC and provide a critical communication link between ODOT and local governments, the business community, and the public. ACTs propose and comment on policy set by the OTC, propose and endorse programs and projects, and provide an avenue to the OTC for citizens with transportation concerns. Information about Oregon's ACTs can be found on ODOT's web site at http://www.oregon.gov/ODOT/COMM/act_main.shtml.

Oregon law requires integrated land use and transportation planning. The Transportation Planning Rule (TPR), codified in Oregon Administrative Rules (OAR) 660 Division 12, requires ODOT to identify a system of transportation facilities and services adequate to meet identified state transportation needs and to prepare a transportation system plan (TSP). The OTC's adoption of the OTP and its accompanying modal plans satisfies this requirement. The TPR implements Statewide Planning Goal 12 – Transportation and promotes the development of safe, convenient,

and economic transportation systems that are designed in part to reduce reliance on the automobile. This rule explains how local governments and state agencies responsible for transportation planning may demonstrate compliance with Goal 12.

ODOT is required to prepare, adopt and amend a state TSP in accordance with ORS 184.618 and OAR 660 Division 12. Cities with populations greater than 2,500, counties, MPOs and regional planning areas also are required to prepare TSPs in conformance with these rules. Adoption of a TSP constitutes a land use decision regarding the need for transportation facilities. Findings of compliance with applicable statewide planning goals are required at the time of adoption. It should be noted, however, that the development and adoption of an MTIP and the STIP is not a land use action as defined in ORS 197. Compliance findings with state and local land use goals and policies are not required for adopting a MTIP or the STIP.

The TPR requires the following:

- Determination of transportation needs relevant to the planning area
- Evaluation and selection of transportation system alternatives. The TSP is based on evaluation of potential impacts of system alternatives that meet the need.
- Transportation financing program
- Transportation project development may involve land use decision-making to the extent that issues of compliance with applicable land use requirements on a particular project remain outstanding. This may require preparing other documents, such as environmental analyses pursuant to National Environmental Policy Act (NEPA) or a Goal 2 exception, prior to commencing work on a project.
- Amendments to functional plans, comprehensive plans, and land use regulations that significantly affect a transportation facility must assure that allowed land uses are consistent with the function, capacity, and performance standards of the facility.
- Transportation improvements on rural land.

C. Local/Regional Policy

Each MPO has authority to conduct metropolitan transportation planning, pursuant to 23 CFR Part 450 Subpart C. MPOs also have their own guidelines concerning the MTIP development process.

ODOT has guidelines to assist local jurisdictions to prepare and/or update TSPs to comply with the requirements of the TPR. ODOT publishes these guidelines to help local jurisdictions identify potential projects through the TSP process, to position themselves to compete for limited transportation dollars, and to ensure the quality of the project identification analysis.

ACTs and other regional advisory groups assess project readiness while prioritizing Modernization, Preservation, and Bridge projects. The major sources of funding are the State Highway Fund (USC Title 23) and the Federal Transit Act. To a lesser degree, federal forest receipts and other small discretionary programs administered by the state and federal governments can be used for transportation. Local funds dedicated to transportation include, among others, system development charges (SDCs), transportation impact fees, dedicated property tax levies, bonded debt tax levies, local fuel taxes, payroll taxes, and parking meter revenue.

D. STIP Approval

Every two years Oregon submits the final STIP to the OTC for adoption. It is then submitted concurrently to the FHWA and FTA for approval. The state must certify that the planning process is carried out in accordance with the requirements of USC Title 23, the Federal Transit Act, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Clean Air Act, federal transportation legislation specifying involvement of Disadvantaged Business enterprises in projects receiving FHWA and FTA funding, and 49 CFR Part 20 restrictions on lobbying. Once the STIP is formally approved, the projects are eligible for funds administered by the FHWA and/or FTA. More detailed information on the STIP development and approval process is included in [Chapter VII – STIP Approval and Adoption Process](#).