



U.S. Department
of Transportation
Federal Highway
Administration

New York Division

January 25, 2008

Federal Highway Administration
O'Brien Federal Building, Suite 719
Albany, NY 12207

Federal Transit Administration
One Bowling Green, Room 420
New York, NY 10004-1415

In Reply Refer To:
HPD-NY
FTA-TRO-II

Mr. Joel Ettinger
Executive Director
New York Metropolitan Transportation Council
199 Water Street, Floor 22
New York, NY 10038

Dear Mr. Ettinger,

It has come to our attention that NYMTC's current operating procedures for amending the Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP) are not consistent with our regulations, 49 CFR Part 450 *Statewide Transportation Planning; Metropolitan Transportation Planning; Final Rule*, which were issued on February 14, 2007. These regulations supersede any procedures adopted prior to the passage of the regulation and where there is an inconsistency between NYMTC adopted procedures and the later federal regulation must be adhered to by NYMTC..

We have been working with your staff, and they have requested guidance on these regulations, specifically, they have requested guidance for determining whether a change to TIP/STIP would be considered an administrative modification or an amendment. The purpose of this letter is to provide information on relevant definitions and guidance on what would trigger an amendment of the TIP and STIP.

The distinction between an administrative modification and an amendment is important because there are significantly different metropolitan planning organization (MPO) actions required by an administrative modification versus an amendment. An administrative modification is a revision that does not require public review and comment, re-demonstration of fiscal constraint, or a conformity determination, whereas an amendment is a revision that requires public review and comment, re-demonstration of fiscal constraint, and/or a conformity determination.

Please refer to the attached definitions of "Revision," "Amendment," "Administrative modification," and "Project Selection." These can also be found in 49 CFR Part 450, Subpart

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A, §450.104. In accordance with these definitions, the following cases require an amendment for federally funded projects:

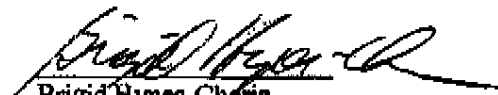
- Changes that affect fiscal constraint
- Addition of a project to the TIP/STIP
 - For example, a non-federally funded project that becomes, in part or whole, federally funded; this is considered a new project
- Deletion of a project from the TIP/STIP
- Major change in project cost, including but not limited to:
 - Adding a new source of funds/deleting a fund source
 - Adding a new project phase/deleting a project phase
- Major change in project/project phase initiation dates
- Major change to a project's design concept or scope, such as change in the number of through traffic lanes or change in project termini

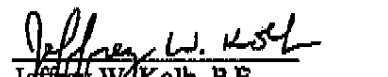
Federal transportation planning regulations do not prescribe specific thresholds for determining a "major" or "minor" change, which are terms used by NYMTC. Therefore NYMTC should work with FHWA and FTA to identify thresholds for determining a major change that would be consistent with the intent of the regulation.

Based on our review of NYMTC's current TIP amendment procedures, it is clear that the procedures do not comply with the February 14, 2007 Metropolitan and Statewide Planning Regulations. We recognize that NYMTC has been operating under these long standing procedures, however, NYMTC and the three TCCs' operating procedures must be consistent with the regulation in all actions that occur after their effective date, whether or not you have formally changed your procedures.

Particular areas of concern that we have heard are with the threshold of what constitutes a major change and the public involvement procedures for amending the TIP. Nancy Danzig and Rob Griffith of our staffs are available to provide any assistance NYMTC needs to update the TIP amendment procedures.

Sincerely,


 Brigid Hynes-Cherif
 Regional Administrator
 Federal Transit Administration
 Region II


 Jeffrey W. Kolb, P.E.
 Division Administrator
 Federal Highway Administration
 New York Division

cc: Robert Zerillo, NYSDOT

Attachment
49 CFR Part 450, Subpart A, §450.104 Definitions

Revision means a change to a long-range statewide or metropolitan transportation plan, TIP, or STIP that occurs between scheduled periodic updates. A major revision is an "amendment," while a minor revision is an "administrative modification." (72 FR 7264)

Amendment means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that involves a major change to a project included in a metropolitan transportation plan, TIP, or STIP, including the addition or deletion of a project or a major change in project cost, project/project phase initiation dates, or a major change in design concept or design scope (e.g., changing project termini or the number of through traffic lanes). Changes to projects that are included only for illustrative purposes do not require an amendment. An amendment is a revision that requires public review and comment, redemonstration of fiscal constraint, or a conformity determination (for metropolitan transportation plans and TIPs involving "non-exempt" projects in nonattainment and maintenance areas). In the context of a long-range statewide transportation plan, an amendment is a revision approved by the State in accordance with its public involvement process. (72 FR 7261)

Administrative modification means a minor revision to a long-range statewide or metropolitan transportation plan, Transportation Improvement Program (TIP), or Statewide Transportation Improvement Program (STIP) that includes minor changes to project/project phase costs, minor changes to funding sources of previously-included projects, and minor changes to project/project phase initiation dates. An administrative modification is a revision that does not require public review and comment, redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas). (72 FR 7261)

Project Selection means the procedures followed by MPOs, States, and public transportation operators to advance projects from the first four years of an approved TIP and/or STIP to implementation, in accordance with agreed upon procedures. (72 FR 7263)