

# AASHTO

## FHWA/FTA Notice of Proposed Rulemaking on Statewide and Metropolitan Transportation Planning

### Briefing Paper for AASHTO Work Group on Planning NPRM June 5, 2014

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#### I. Timeline

- June 2, 2014: NPRM published in Federal Register
- June 2, 2014: Policy guidance on MPO representation published in Federal Register
- June 13, 2014: USDOT webinar on NPRM (at 1:00pm Eastern)
- Sept. 2, 2014: Deadline for comments

#### II. Reference Materials

- Full text of NPRM:  
<https://www.federalregister.gov/articles/2014/06/02/2014-12155/statewide-and-nonmetropolitan-transportation-planning-metropolitan-transportation-planning>
- Policy guidance on MPO representation:  
<https://www.federalregister.gov/articles/2014/06/02/2014-12163/policy-guidance-on-metropolitan-planning-organization-mpo-representation>
- Registration for USDOT webinar on NPRM:  
<https://www.nhi.fhwa.dot.gov/resources/webconference/viewconference.aspx?webconfid=27686>

#### III. Key Issues

The NPRM proposes to update the statewide and metropolitan transportation planning regulations to reflect changes made in MAP-21. The changes address six main topics:

- Performance Measurement
- Planning in Non-Metropolitan Areas
- MPO Membership
- Scenario Planning
- Programmatic Mitigation Plans
- Planning-NEPA Linkage

## A. Performance Measurement

MAP-21 requires USDOT to establish a national set of performance measures addressing safety, infrastructure condition, congestion, system reliability, emissions, and freight movement. Once the performance measures are developed, States and MPOs will be required to set performance targets at the statewide and metropolitan levels, respectively, and will be required to address those targets in their plans and TIPs/STIPs, and report on their progress toward those targets. MAP-21 requires States to “coordinate” with MPOs in setting the targets; it also requires States to coordinate with public transportation providers in urbanized areas not represented by MPOs.<sup>1</sup>

The performance measures themselves are being developed through separate rulemakings. This NPRM addresses the implementation of performance measures as part of statewide and metropolitan planning. Key provisions include:

- Setting of Targets - “Coordination” Requirement. “The proposed regulatory changes in §§ 450.206 and 450.306 mandate States and MPOs, respectively, to **coordinate their targets** with each other to ensure consistency, to the maximum extent practicable. In addition, for transit-related targets, States and MPOs would need to **coordinate their targets** relating to safety and state of good repair with providers of public transportation to ensure consistency with other performance-based provisions applicable to transit providers, to the maximum extent practicable. This coordination through the planning process should help align MPO and State decisionmaking and advance performance outcomes for the States.” (31788).
- Inclusion of Targets in Transportation Plans. “Once performance targets are selected, MAP-21 requires that MPOs reflect those targets in their metropolitan transportation plans and encourages States to do the same. Accordingly, this NPRM proposes that, in their transportation plans, **MPOs would need to describe these performance targets**, evaluate the condition and performance of the transportation system, and report on progress toward the achievement of their performance targets. In addition, **States should include** similar information in their transportation plans.”
- Integration with Other Plans. “The MAP-21 performance-related provisions also require States, MPOs, and public transportation providers to develop other performance-based plans and processes or impose new requirements on existing performance-based plans and processes.<sup>2</sup> ... This NPRM proposes in §§ 450.206 and 450.306 that MPOs and States integrate the goals, objectives, performance measures, and targets of these other performance plans and processes into their planning process. This integration would help

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<sup>1</sup> See 23 USC 135(d)(2)(B)(i) (“Selection of performance targets by a State shall be coordinated with the relevant metropolitan planning organizations to ensure consistency, to the maximum extent practicable.”); 23 USC 135(d)(2)(B)(ii) (“In urbanized areas not represented by a metropolitan planning organization, selection of performance targets by a State shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with sections 5326(c) and 5329(d) of title 49.”).

<sup>2</sup> The required plans include (1) CMAQ performance plan, (2) strategic highway safety plan, (3) public transportation agency safety plan, and (4) highway and transit asset management plans. In addition, States have the option of developing a State freight plan.

ensure that key performance elements of these other performance plans are considered as part of the investment decisionmaking process.”

- Revisions to Metropolitan Planning Agreements. “In this NPRM, FHWA and FTA propose to amend § 450.314 to require that MPOs include a description in their metropolitan planning agreements that identifies how the parties would cooperatively implement these performance-based planning provisions. The amended metropolitan planning agreements would identify the coordinated processes for the collection of performance data, the selection of performance targets for the metropolitan area, the reporting of metropolitan area targets, and the reporting of actual system performance related to those targets. The agreements would also describe the roles and responsibilities for the collection of data for the NHS. Including this description is critical because of the new requirements for a State asset management plan for the NHS and establishment of performance measures and targets.”

The NPRM specifically requests comment on the following issues:

Issues regarding target-setting:

- What obstacles do States, MPO and transit providers foresee to the coordination among them that is necessary in order to establish targets?
- What mechanisms currently exist or could be created to facilitate coordination?
- What role should FHWA and FTA play in assisting States, MPOs and transit providers in complying with these new target-setting requirements?
- What mechanisms exist or could be created to share data effectively amongst States, MPOs and transit providers?
- For those States, MPOs and transit providers that already utilize some type of performance management framework, are there best practices that they can share?

Issues regarding MPO coordination:

- ... how regional planning coordination can be further improved in situations where multiple MPOs serve one or several adjacent urbanized areas.
- ... additional mechanisms that could be created to improve regional coordination in situations where there may be multiple MPOs serving a common urbanized area or adjacent urbanized areas.

**B. Planning in Non-Metropolitan Areas**

MAP-21 modified several provisions in 23 USC 135 (statewide planning) regarding consultation transportation planning in non-metropolitan areas. One of the changes in MAP-21 included a

new provision that allows, but does not require, designation of “regional transportation planning organizations” (RTPOs) in non-metropolitan areas. See 23 USC 135(m).

Key provisions in the NPRM include:

- “Consultation” Requirement Changed to “Cooperation”. “Prior to MAP-21, when developing the long-range statewide transportation plan and the STIP, the State was required to consult with nonmetropolitan local officials, which meant that the State would confer with nonmetropolitan local officials and consider their views. Under MAP-21 and these proposed regulations, States retain decisionmaking authority, but **would be required to cooperate** with nonmetropolitan local officials, which means that they would be required to work together to achieve a common outcome. Changing from “consultation” to “cooperation” means States would need to work more closely with nonmetropolitan local officials in the development of the long-range statewide transportation plan and the STIP.”
- Designation and Duties of RTPOs. “To support States’ efforts to cooperate with nonmetropolitan areas, MAP-21 provides a more formal framework for States to optionally designate and establish RTPOs. ... The MAP-21 codifies this best practice by formally providing for RTPOs. This NPRM proposes in § 450.210 that States **may** designate and establish RTPOs, and that the **duties of the RTPO include the development and maintenance of regional long-range multimodal transportation plans and regional TIPS** and fostering the coordination of local planning. These regional plans and programs, along with public involvement, would assist the State in development of the long-range statewide transportation plan and the STIP.”

### C. MPO Membership

MAP-21 amended 23 USC 134 to include a specific requirement that MPO boards include representation by “providers of public transportation.”<sup>3</sup> The NPRM proposes to implement this change by amending 23 CFR 450.310. It also requires that public transportation providers be given “equal decision-making rights” - without specifying what that would involve.

- Requirement to Include Public Transportation Agency on MPO Board. “The MAP-21 specifically identifies in this list [of required MPO members] representatives of providers of public transportation. This proposal would add representatives of providers of public transportation to the list of officials in § 450.310. This NPRM proposes that representatives of providers of public transportation would have **equal decisionmaking rights and authorities as other officials** who are on the policy board of an MPO that serves a TMA. It is **up to the MPO, in cooperation with providers of public transportation, to determine how this representation will be structured and established**. The MPOs can restructure to meet this requirement **without being redesignated** by the Governor and local officials.”

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<sup>3</sup> 23 USC 134(d)(1)(B).

The NPRM would implement this requirement by amending 23 CFR 450.310(d)(1). The NPRM specifically requests comments on the following issues relating to MPO membership:

- Should the regulations clarify who appropriate “officials” may be?
- Can staff members or other alternates be substituted for the “officials” identified in paragraph (d)(1)?
- Can an official in paragraph (d)(1) serve in multiple capacities on the MPO board, e.g., can a local elected official or State official also serve as a representative of a major mode of transportation?
- Should the regulations provide more specificity on how each of the officials identified in paragraph (d)(1) should be represented on the MPO?
- Should the regulations include more information about MPO structure and governance?

#### **D. Scenario Planning**

MAP-21 amended 23 USC 134 to allow MPOs to conduct “scenario planning” as part of the metropolitan transportation planning process. There is no analogous provision in 23 USC 135 with regard to statewide planning. The NPRM implements this provision by amending 23 CFR 450.324 to allow the option of scenario planning. It also adds a new definition of that term.

- Option to Conduct “Scenario Planning” in Metropolitan Areas. “[T]his NPRM proposes in § 450.324 that MPOs may use scenario planning during the development of their metropolitan transportation plans. ... Scenario planning may consider potential regional investment strategies, distribution of population and employment, land use, future climate scenarios, system performance measures including locally developed measures, and the relationship between investments and local priorities. A defining characteristic of successful scenario planning is that it actively involves the public, the business community, and elected officials on a broad scale, educating them about, and incorporating their values and feedback into future plans.”
- New definition of “Scenario Planning.” The NPRM would add the following new definition:

Scenario planning means a planning process that evaluates the effects of alternative policies, plans and/or programs on the future of a community or region. This activity should provide information to decision makers as they develop the transportation plan.

## **E. Programmatic Mitigation Plans**

MAP-21 established a new provision, 23 USC 169, which authorized the development of programmatic mitigation plans as part of statewide or metropolitan planning. The NPRM implements this provision by amending both 23 CFR 450.214 and 450.320. It also revises the definition of “environmental mitigation activities” for clarity.

- States and MPOs’ Option to Prepare Programmatic Mitigation Plans. “The MAP-21 creates a new statutory framework for the optional development of programmatic mitigation plans as part of the planning process for use during the environmental review process.... Prior to the passage of MAP-21, States and MPOs could develop programmatic environmental mitigation plans as part of the statewide metropolitan transportation planning processes. These new provisions would create a regulatory framework for States’ and MPOs’ possible development of programmatic environmental plans, including the scope, contents, and process for developing these plans. **The proposed new §§ 450.214 and 450.320 would provide guidance on the use of the programmatic mitigation plan during the project development and environmental review process....”**
- Revised Definition of “Environmental Mitigation Activities.” The definition of this term would be updated “to provide a more readable, streamlined definition ... without changing the substance of the definition.” The proposed definition is:

Environmental mitigation activities means strategies, policies, programs, and actions that, over time, will serve to avoid, minimize, rectify, reduce or eliminate impacts to environmental resources associated with the implementation of a long-range statewide transportation plan or metropolitan transportation plan.

## **F. Planning-NEPA Linkage**

Prior to MAP-21, the metropolitan planning regulations included a provision - 23 CFR 450.318 - that provided for linking transportation planning and the NEPA process. That provision allows decisions and analyses produced in the planning process to be adopted for use in the NEPA process, including decision on purpose and need and range of alternatives. Appendix A to the regulations provided guidance on planning-NEPA linkage. Section 1310 of MAP-21 provided authority in statute for planning-NEPA linkage by creating a new 23 USC 168. The planning-NEPA linkage language in Section 1310 of MAP-21 differs somewhat from the framework in the existing regulations.

This NPRM does not implement the new planning-NEPA linkage framework created in Section 1310 of MAP-21; it defers that issue to future rulemaking or guidance. The only change made to the planning-NEPA linkage regulation and guidance is a technical change - removing the reference to an “Alternatives Analysis” for transit projects, because that term is no longer used in statute.

- Will Address Section 1310 of MAP-21 in Later Rulemaking. “MAP-21 section 1310 broadens this practice [of planning-NEPA linkage] by creating 23 U.S.C. 168, which provides additional statutory authority for linking planning and the environmental review process. The FHWA and FTA propose to retain § 450.212 without revision. The agencies will address implementation of section 1310 and any needed updates to provisions on pre-MAP-21 integration authorities through separate rulemaking or guidance.”
- Removing references to “Alternatives Analysis”. “The FHWA and FTA propose to delete paragraph (d) [in 450.318] due to revisions made to 49 U.S.C. 5309 by MAP-21. More specifically, MAP-21 removed the requirement for a stand-alone alternatives analysis for projects that seek Section 5309(d) or (e) funding.”