



October 2, 2014

Docket Management Facility  
U.S. Department of Transportation  
1200 New Jersey Avenue S.E.  
Washington, DC 20590

Re: Docket No. FHWA-2013-0037

To the Docket Comment Record:

The Association of Metropolitan Planning Organizations (AMPO) and the National Association of Regional Councils (NARC) are pleased to offer the following joint comments regarding the Notice of Proposed Rulemaking (NPRM) from the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) related to Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning. We thank the U.S. Department of Transportation (USDOT) and its dedicated staff for their hard work and coordination with stakeholders in the development of this NPRM. We believe that implementing a performance-based transportation planning process to support national goals can be done without significantly altering the MPO process or reducing the local autonomy that is the fundamental basis of the nation's transportation program.

We appreciate the opportunity to present these comments to you, and look forward to continuing to work with FHWA and FTA to develop the final rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Joanna L. Turner". The signature is fluid and cursive, written over a light blue horizontal line.

Joanna L. Turner, Executive Director  
National Association of Regional Councils

A handwritten signature in black ink, appearing to read "DeLania Hardy". The signature is fluid and cursive, written over a light blue horizontal line.

DeLania Hardy, Executive Director  
Association of Metropolitan Planning Organizations

## A. General Comments

- The transition to performance-based planning and programming will be challenging. The regulations should support the expanded partnerships between MPOs, States and transit providers while recognizing the range of differing structures, organizations and priorities.
- We recommend a single effective date for every final rule pertaining to transportation performance measures. This NPRM specifically references several other performance-based rules that will be released at a future date. The inability to consider all of the rules together makes it very difficult to anticipate some of the issues that may arise relative to what is covered in this rulemaking.
- The final rule should seek to reduce, wherever possible, the cost and labor burden of data collection, analysis and any related activities under this NPRM. MPOs face an extremely constrained funding situation, and the final rule (and any subsequent rules) should take this fact into account. Many MPOs are concerned that the rule will result in an unfunded mandate if it does not provide the commensurate funding, time, and flexibility for MPOs to address the requirements under the rule.
- In a 2010 report by FHWA, approximately 50% of MPOs reported that existing federal resources were insufficient to complete the current 3-C planning and programming process. Without adequate resources to conduct the performance-based planning expected by Congress and anticipated in this rule, MPO's may fall short of meeting the intended purpose of MAP-21.
- We strongly disagree with the agencies' interpretation of MAP-21's language regarding representation of providers of public transportation on MPO boards. This interpretation improperly imposes a prescriptive, burdensome change to MPO voting structures as reflected in both the proposed rulemaking and the agencies' accompanying policy guidance. This change is not warranted by MAP-21 and would be inconsistent with Congressional intent.

## B. Sectional Analysis

### Sec. 450-104 – Definitions

**Conformity** - The proposed rule revises the definition of conformity used in the existing rule by adding the phrase “or any required interim emission reductions or other milestones in any area.” The use of the term “any area” could lead to confusion. AMPO suggests the phrase “or any required interim emission reductions or other milestones as included in an adequate or approved SIP in a nonattainment or maintenance area.”

**Major Modes of Transportation** - As proposed, the definition is overly broad and could be



read to include all forms of transportation, including non-major modes. MPOs are in the best position to define for themselves what constitutes a “major mode of transportation.” We suggest striking this definition, and instead continue to work with each MPO to determine what major modes exist in their region.

### **Sec. 450.218 - Development and Content of the Statewide Transportation Improvement Program (STIP)**

(c) We support the change that elevates the relationship between a State and nonmetropolitan local officials from consulting to cooperating as it relates to development of the STIP.

### **Sec. 450.306 Scope of the Metropolitan Transportation Planning Process**

(d)(4) We are concerned with the meaning of “integrate” in this context. The term is not defined in MAP-21, nor in §450.104. FHWA and FTA may presume that MPOs will accept, without change, the content of these various statewide plans. While MPOs may have been involved as stakeholders in the development of some of these State plans, the State plans may not reflect the policies or priorities of the MPOs. This contradicts longstanding federal policy empowering MPO boards to cooperatively establish priorities in their metropolitan area.

In addition, this requirement appears to be in conflict with Section 450.306(d)(2)(ii) and (iii), which state that the selection of targets that address performance measures should be consistent with the State and providers of public transportation “to the maximum extent practicable.” Given the potential for conflict between State plans and MPO priorities, we believe the standard in both cases should be “to the maximum extent practicable.”

### **Sec. 450.310 Metropolitan Planning Organization Designation and Redesignation**

MAP-21 did not change the designation process of MPO policy boards. The NPRM proposes that transit representatives have equal decision-making rights and authorities as other officials who are on the MPO policy board. Yet the NPRM clearly states, “It is up to the MPO, in cooperation with providers of public transportation, to determine how the representation will be structured and established.” The MPO should determine the authorities and rights of its policy board members.

The regulations and guidance must avoid being unnecessarily prescriptive. The regulations should reaffirm the authority and autonomy of MPOs. It should allow as much latitude as possible for the many ways that transit is currently successfully represented on MPO Boards. The regulations must recognize that many MPOs are subject to state laws governing the MPO policy board membership and that compliance may require amendments to state law. At a minimum, the rule must include an appropriate amount of



time for these MPOs to work with their states to adjust policy boards if necessary.

**Should the regulations clarify who appropriate “officials” may be? No.** Each MPO is in the best position to determine for themselves the appropriate officials under 450.310(d)(1)(ii). Any additional clarification in the regulations should only serve to affirm MPO flexibility as reflected in the statute.

**Can staff members or other alternates be substituted for the “officials” identified in paragraph (d)(1)? Yes.** Each MPO should be allowed to decide for themselves the most appropriate “official” to serve on their policy boards under 450.310(d)(1)(ii). We encourage maximum flexibility in this regard.

**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? Yes.** We recommend each MPO have maximum flexibility to decide for themselves the best approach to compliance. We disagree with the FHWA/FTA approach as outlined in the Policy Guidance (79 FR 31214), which would unnecessarily restrict MPO decision-making by disallowing local elected officials that serve on both the MPO board and the board of a transit agency from fulfilling the Congressional requirement that MPOs include representation by providers of public transportation. Local elected officials that serve in both capacities can fulfill both roles to the satisfaction of the Congressional intent.

**Should the regulations provide more specificity on how each of the officials identified in paragraph (d)(1) should be represented on the MPO? No.** For decades, MPOs have successfully met the requirements to ensure representation of appropriate officials on their boards. No additional specificity is necessary in this regard.

**Should the regulations include more information about MPO structure and governance? No.** MPOs were created in part to be responsive to the needs of local communities and provide a voice for local elected officials to determine how federal transportation dollars would be invested. As a result, each MPO was established and currently operates as a reflection of the communities they are designed to serve. This process works well.

**(d)(3)** We seek clarification as to the “long-standing interpretation” outlined in this section. The statutory language plainly states that this section shall not interfere with the authority of an MPO under any state law in effect on December 8, 1991. In the discussion section of the NPRM, however, FHWA/FTA outlines a three-part rule that appears to go well beyond this plain reading. We have found no evidence of the long-standing interpretation as presented. As such, we request that FHWA/FTA rely on the statutory language and clarify that any MPO operating under a state statute on that date is exempt

from the requirements of 450.310(d)(1).

### **Sec. 450.314 Metropolitan Planning Agreements**

(a) & (b) Taken together, these sections would significantly expand the elements, *and participants*, required in metropolitan planning agreements and likely result in more frequent changes to these documents. The additional elements added by this NPRM will require data and analytical tools that are not readily available. In addition, amending these agreements can be a difficult – and oftentimes expensive – process. There are less formal avenues through which agreements between parties can be reached that would provide for greater flexibility and therefore be less onerous for all parties. The changes anticipated by these sections, which are not included in MAP-21, are unnecessarily burdensome for all parties and should be reconsidered or removed.

### **Sec. 450.320 Development of Programmatic Mitigation Plans**

MAP-21 allows programmatic mitigation both through the State and MPO planning process, as well as outside of them. The proposed rule, however, limits the mitigation to within the planning process. The development of programmatic mitigation plans should not be limited to the statewide and metropolitan planning processes. (a)(2) To maintain maximum flexibility for MPOs under this section, FHWA and FTA should clarify that a programmatic mitigation plan may include the elements listed, but is not limited to those elements.

(Did we agree to retain the NEPA provision or that Congress needs to change the law to make it effective?)

### **Sec. 450.324 Development and Content of the Metropolitan Transportation Plan**

We support the voluntary option for MPOs to utilize scenario planning in the development of a metropolitan transportation plan. Many MPOs have been using this tool already, and will continue to do so. We recommend that certification of the planning process should not be impacted by an MPO choosing to use all or a single provision under this section. The use of scenario planning must not be a factor in the certification process.

### **Sec. 450.340 Phase-In of New Requirements**

We recommend that the new performance-based requirements established in this and other related rules have a single effective date. To do otherwise could create undue confusion and make the implementation of the performance program far more difficult and potentially less effective.