



September 2, 2014
Via Electronic Docket

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

RE: Notice of Proposed Rulemaking – Statewide, Nonmetropolitan, and Metropolitan Transportation Planning – Docket No. FHWA-2013-0037 (FHWA RIN 2125-AF52; FTA RIN 2132-AB10), 79 Fed. Reg. 31784

I. Introduction

The Association of Metropolitan Planning Organizations (AMPO) is pleased to offer the following comments and recommendations to the proposed rulemaking on Statewide, Nonmetropolitan, and Metropolitan Transportation Planning to the U.S Department of Transportation's (USDOT) Federal Highway Administration (FHWA) and Federal Transit Administration (FTA). AMPO thanks the USDOT and its dedicated staff for their hard work and coordination with stakeholders.

As the notice of proposed rulemaking (NPRM) states in the executive summary, the Moving Ahead for Progress in the 21st Century Act (MAP-21) legislation leaves the planning process framework largely untouched. MAP-21 includes, however, key changes requiring States, MPOs and providers of public transportation to establish and use a performance based approach that supports national goals. The proposed rule affirms the statute's intent of linking investment priorities to achieving performance targets while requiring coordination between States, MPOs, and providers of public transportation.

As part of AMPO's preparation of these comments, a large number of AMPO members provided feedback and recommendations through an internal survey covering key provisions in the rule affecting MPOs. The diversity of responses reinforce our position that MPOs, large and small, need the maximum flexibility and resources to meet new requirements.

II. Overarching Comments on the Proposed Rulemaking

AMPO provides the following overarching comments on the proposed rulemaking:

- The transition to performance based planning will be challenging. These regulations should support the new partnerships of States, MPOs and transit providers while recognizing the range of differing structures, organizations and priorities.
- The regulations should strive to avoid adding unfunded burdens of data collection and analysis. They should avoid imposing ramifications for not meeting targets in a time of such uncertain funding.

- AMPO strongly disagrees with the agencies' interpretation of MAP-21's language regarding representation of providers of public transportation on MPO boards. This interpretation improperly reads into the federal-state relationship 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.

III. Responses to Specific Sections in the NPRM

Definitions (Regulatory Section 450.104)

- 1) In Section 450.104, 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."
- 2) In Section 450.104, the proposed rule includes a new definition of "major modes of transportation." The definition is added to clarify the use of the term as it relates to the changes in structure to each MPO serving a TMA, which now includes providers of public transportation. The new definition is too broad and could apply to any mode of transportation or non-major forms of public or private (on behalf of a public agency) transportation providers. If the goal of the proposed definition is to provide clarity for the addition of providers of public transportation within the structure of an MPO, then the definition should be narrowly focused on major providers of public transportation. AMPO recommends that MPOs continue to determine what constitutes a "major mode of transportation" and strike the new definition. USDOT should continue to work with MPOs to specifically define a "major mode" as it pertains to operators of modes that represent a significant amount of travel and the associated need for facilities and services.

Performance Based Planning and Programming (Regulatory Sections 450.306; 450.314; 450.318; 450.322; 450.324; 450.326; 450.332, and 450.340)

- 1) Section 450.306(d)(4) states, "An MPO shall integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other State transportation plans and transportation processes..." AMPO recognizes the statutory language from MAP-21 §1201(h)(2)(D). 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 the local officials on MPO boards to establish priorities in their metropolitan area.
- 2) Performance Management regulations should utilize existing data collection and reporting mechanisms whenever possible and not create standards outside of the existing structure. Creating new data collection and reporting requirements would be expensive, unclear, potentially duplicative, and ultimately counterproductive.
- 3) These regulations must recognize the challenge and obstacles of varying requirements, timelines and priorities for States, MPOs and public transportation providers. This includes the differences

in fiscal constraint requirements for State and MPO plans. The rulemaking should address the related planning cycles and durations for State, MPO and public transportation provider plans.

- 4) A performance driven outcome based approach should be judged on system-wide performance, not project-by-project. Achieving progress should be conducted on a long-term basis to better match lengthy project delivery timelines.
- 5) USDOT should set a single effective date for all MAP-21 performance measure rules or other rulemakings affecting metropolitan planning. If States, MPOs, and providers of public transportation are to coordinate on measures, targets, and investments, then all measures need to be final and in effect.
- 6) States, MPOs, and public transportation providers should not be judged on achievement of goals with varying targets set by jurisdictions and/or states or possible outcomes related to future funding uncertainties. There should be no financial consequences or additional reporting requirements for not achieving established targets under these circumstances.

Funding for Non-Metropolitan Planning Purposes (Regulatory Sections 450.208 and 450.210)

- 1) AMPO strongly recommends restrictions on diverting metropolitan planning funds (PL) for non-metropolitan planning requirements.

Metropolitan Planning Agreements (Regulatory Sections 450.314)

- 1) AMPO strongly recommends against expanding the universe of providers of public transportation required to be included in the Metropolitan Planning Agreements (MPA).

Scenario Planning (Regulatory Sections 450.324)

- 1) AMPO supports the voluntary use of scenario planning, but recommends 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.

Programmatic Mitigation (Regulatory Sections 450.320)

- 1) 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 process.

MPO Designation and Redesignation (Regulatory Sections 450.310)

- 1) MAP-21 did not change the designation process of MPO policy boards. The regulations and/or guidance must avoid being unnecessarily prescriptive. It should allow as much latitude as possible for the many ways that transit is currently, successfully represented on MPO Boards.
- 2) 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 more time for these MPOs to work with their states to adjust policy boards if necessary.

- 3) The NPRM proposes that transit representatives have equal decisionmaking rights and authorities as other officials who are on the MPO policy board. However, the NPRM 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. This is consistent with the intent of MAP-21.
- 4) The regulations should not include more MPO structure and governance requirements. AMPO recommends that MPOs continue to determine if staff members or other alternates meet the representation requirements.

IV. Conclusion

Metropolitan transportation planning is rooted in a cooperative and collaborative relationship with our partners at the State level, within the public transportation arena, as well as with other stakeholders. AMPO believes that developing the FHWA/FTA regulatory provisions to meet the spirit and intent of MAP-21 must continue in this fashion. MPOs, large and small, need the support and resources from federal and State governments to implement the new planning rules. Without this support, MPOs will not achieve the desired, and needed, success.

Metropolitan areas have many transportation needs and choose to address these needs in a variety of ways. Flexibility is required to establish reasonable and appropriate targets. Additionally, the MPO fiscal constraint requirements must be considered as performance based planning is implemented. This rule must be integrated with others related to MAP-21. A single effective date predicated on reauthorization of MAP-21, including sufficient planning funds, is paramount.

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. 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.

Thank you for the opportunity to provide our input and comments. We look forward to working with FHWA/FTA and USDOT to implement MAP-21's performance provisions.

Should you have any questions or seek further input from AMPO on the information provided, please contact me at (202) 634-3680 or at dhardy@ampo.org.

Respectfully submitted,



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