

FHWA, FTA Release Long-Awaited Rewrite of Planning Rules

In what's easily the most comprehensive revision of federal transportation planning regulations since ISTEA took effect in the early 1990s, the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) issued new regulations governing the federally required transportation planning processes of states and metropolitan planning organizations (MPOs). Published in the May 27, 2016, Federal Register, this rule becomes effective June 27, 2016, and will be in full effect by the end of 2018.

It should go without saying that if you're a transportation planner at an MPO or state department of transportation, you should read this rule closely. For the full text of the Federal Register notice of this rule's publication, go to <https://www.federalregister.gov/articles/2016/05/27/2016-11964/statewide-and-nonmetropolitan-transportation-planning-metropolitan-transportation-planning>. As this rule starts to take effect, FHWA and FTA will continue to post information on their respective websites, <http://www.fhwa.dot.gov/planning/> (FHWA), <https://www.transit.dot.gov/regulations-and-guidance/transportation-planning/transportation-planning> (FTA), and <https://planning.dot.gov> (the joint FHWA-FTA Transportation Planning Capacity Building site).

If you're not a transportation planner, you still should know much of the information in this rule, as it has the potential to change the landscape for many urban and rural transit services, and can change the opportunities and rules of engagement for many transportation system users, advocates and other stakeholders.

The following summary is not an official statement or interpretation from FHWA, FTA or any other federal government agency. It's simply the result of CTAA's own reading and analysis of the new FHWA/FTA planning rule.

Why did FHWA and FTA issue this rule?

The main reason for this transportation planning rule is that MAP-21 (the surface transportation authorizing legislation enacted in 2012) requires a number of transformational changes in how states and MPOs are to carry out their planning responsibilities in order to make use of federal highway and transit funds. After much stakeholder engagement and internal analysis, FHWA and FTA issued their proposed regulations for statewide and metropolitan transportation planning on June 2, 2014, and issued proposed regulations regarding transportation planning and environmental reviews on September 10, 2014. Those proposed regulations have been combined into this final rule, along with a few regulatory modifications required under the more recently enacted FAST Act surface transportation authorization.

What are the major topics of this rule?

1. Performance-Based Planning and Programming

Among planners, the most dramatic change brought about by this rule is the requirement that transportation planning becomes a “performance-driven, outcome-based program that provides for a greater level of transparency and accountability, improved project decisionmaking, and more efficient investment of Federal transportation funds,” as stated by FHWA and FTA.

Performance-based transportation planning and programming has been employed in various ways for years by many states and MPOs. Now it’s enshrined in federal law and regulation.

In brief, this approach starts in a “top-down” fashion, with FHWA and FTA setting a number of national goals and performance measures in key areas: highway safety, transit safety, pavement and bridge condition, transit assets’ state of good repair, congestion, reliability of the National Highway System, air quality and environmental sustainability, and freight movement. Once these federal measures are set, states will have to begin setting 2- and 4-year targets by which to show how their plans are progressing toward meeting the various performance goals, and MPOs will have to follow suit no more than six months after states have set their performance targets.

Although FHWA and FTA are prohibited from establishing performance measures beyond those required under MAP-21, states and MPOs are allowed to add more measures to the federally mandated list. While not required under these rules, some MPOs have found that it is most efficient simply to cast all of their planning activities in a performance-driven light, and are using performance-based approaches for such things as transit system performance, public engagement, environmental justice analysis, pedestrian and bicycle mobility, housing and land use, et al.

For more information on performance-based transportation planning and programming, visit FHWA’s Transportation Performance Management site at <http://www.fhwa.dot.gov/tpm/>. Also, CTAA helped with the development of FHWA’s *Performance-Based Planning and Programming Guidebook*, published in September 2013. You can access this guide online at http://www.fhwa.dot.gov/planning/performance_based_planning/pbpp_guidebook/. The fact that this guide predates the new planning regulations works in its favor, as it focuses on the practices of performance-based planning, rather than the regulatory details.

2. New Emphasis on Rural Transportation Planning

Prior to MAP-21, all transportation planning outside of urbanized areas was the responsibility of states’ departments of transportation. For many years, some states had

delegated aspects of transportation planning and programming to sub-state regional or rural planning organizations, but this was never recognized in federal law or regulation.

Now, states have the option for formally designating Regional Transportation Planning Organizations with responsibility for transportation planning and programming outside those states' urbanized areas. States are not required to use these RTPOs, and it's possible some states may continue the informal use of rural planning groups as they've done in past years. But for those states opting for these formal relationships and responsibilities, the rule specifies the details of how this is supposed to work.

3. Expanding the Pool of Participating Planning Partners

MAP-21 and the FAST Act have added parties who must be part of states' and MPOs' transportation planning processes. To that end, states now will have to prepare public involvement plans (a similar requirement for MPOs has long been in effect), with nearly a dozen required elements of coordination among planning partners and processes. The longstanding requirement for states to cooperate with nonmetropolitan local officials in developing statewide transportation plans is given greater rigor in this rule.

The statutory requirement that public transit interests be represented on MPOs' boards or policy committees now is reflected in the rule, as is the expectation set by the FAST Act, that a broad range of private providers of transportation, along with many other stakeholder interests, be afforded meaningful input into statewide and metropolitan transportation planning processes.

This involvement of transportation providers takes different forms for states and MPOs.

In the statewide planning process, the rule reads, "The State's public involvement process [for carrying out the statewide transportation planning process] at a minimum shall...[establish] early and continuous public involvement opportunities that provide timely information about transportation issues and decisionmaking processes to individuals, affected public agencies, representatives of public transportation employees, ... private providers of transportation (including intercity bus operators), representatives of users of public transportation, ... and other interested parties" at 23 CFR 450.210(a)(1)(i).

In the metropolitan planning process, the rule reads, "The MPO shall develop and use a documented participation plan defines a process for providing individuals, affected public agencies, representatives of public transportation employees, ... private providers of transportation (including intercity bus operators, employer-based commuting programs, such as carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), representatives of users of public transportation, ... and other interested parties with opportunities to be involved in the metropolitan transportation planning process" at 23 CFR 450.316(a).

For both states and MPOs, there now is a specific requirement that statewide and metropolitan plans be coordinated with the public transit-human services transportation

plans required under FTA's Section 5310 program. The specific language on this point is worth noting: "Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310, should be coordinated and consistent with the statewide transportation planning process" at 23 CFR 450.208(h), and "Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310, should be coordinated and consistent with the metropolitan transportation planning process" at 23 CFR 450.306(h).

The requirement that MPOs consider both governmental and non-governmental human services transportation in their areas when developing metropolitan transportation plans and TIPs remains in force.

If You're Not A Planner, How Does This Rule Affect You?

Even if you're not responsible for carrying out statewide or metropolitan transportation planning, this rule may have some effects on your day-to-day professional life. For one thing, the emphasis on performance-based planning is sure to change the way your state or MPO relates to the transportation plans and programs that you care about and carry out.

It looks like this rule may affect certain types of organizations in various ways. What follows is speculative, and general, so if you're concerned with specific regulatory requirements, it's important to read the rule, and follow up as appropriate with FHWA and/or FTA. The following are some selected, significant changes under the new rule:

If you're a rural public transit provider....

- The state is required to coordinate with you as it develops its performance targets under this rule.
- If your state is establishing Regional Transportation Planning Organizations, you should expect to be involved in the process of RTPPO designation, and you should expect to be included in the planning and programming that the RTPPO is performing.
- Your compliance with FTA's asset management and safety rules should feed into your state's performance-based long-range transportation plan and statewide transportation improvement program (STIP).
- If you're involved with the state's Section 5310 program, you can expect to see that program's required coordinated public transit-human services transportation plan be coordinated and consistent with the state's performance-based long-range transportation plan and STIP.

If you're a public transit provider in an urbanized area of less than 200,000 population....

- Your compliance with FTA's asset management and safety rules should feed into your MPO's performance-based metropolitan transportation plan and transportation improvement program (TIP).
- If you're involved with the Section 5310 program, you can expect to see that program's required coordinated public transit-human services transportation plan be coordinated and consistent with your area's performance-based metropolitan transportation plan and TIP.

If you're a public transit provider in an urbanized area of more than 200,000 population....

- If you're involved with the Section 5310 program, you can expect to see that program's required coordinated public transit-human services transportation plan be coordinated and consistent with your area's performance-based metropolitan transportation plan and TIP.
- You (or some representative of the public transit providers in your urbanized area) will be involved in the governance of your MPO.

If you're an MPO in an urbanized area of less than 200,000 population....

- You must read the rule closely, as it will affect almost everything about how you carry out your transportation planning and programming.
- You can expect to see that your planning-based performance measures and targets will need to be included in your state's long-range transportation plan.
- You'll be setting goals and performance measures, consistent with those established by your state, and using this performance-based approach in the development of your metropolitan transportation plan and TIP.
- You may want to review your current public participation plan; it's likely you will need to expand that process to include more parties.
- If you're involved with the Section 5310 program, you can expect to see that program's required coordinated public transit-human services transportation plan be coordinated and consistent with your performance-based metropolitan transportation plan and TIP.

If you're an MPO in an urbanized area of more than 200,000 population....

- You must read the rule closely, as it will affect almost everything about how you carry out your transportation planning and programming.
- You can expect to see that your planning-based performance measures and targets will need to be included in your state's long-range transportation plan.
- You'll be setting goals and performance measures, consistent with those established by your state, and using this performance-based approach in the development of your metropolitan transportation plan and TIP.
- You may want to review your current public participation plan; it's likely you will need to expand that process to include more parties.

- You may need to make organizational changes to assure transit representation in your governance and policy setting.
- You should examine the rule's requirements concerning congestion management, and if you're in a non-attainment area, you should examine the rule's requirements concerning Clean Air Act conformity.
- If you're involved with the Section 5310 program, you can expect to see that program's required coordinated public transit-human services transportation plan be coordinated and consistent with your performance-based metropolitan transportation plan and TIP.

If you're a rural/regional transportation planner

- Since this is a brand-new feature of law and regulation, you should study these sections of the rule closely, working with your state as appropriate to carry out RTPO designations and work activities, if your state chooses to designate RTPOs. In case you're curious, here's the exact language from the rule on states' use of RTPOs, found at 23 CFR 450.210(d):

(d) To carry out the transportation planning process required by this section, a Governor may establish and designate RTPOs to enhance the planning, coordination, and implementation of the long-range statewide transportation plan and STIP, with an emphasis on addressing the needs of nonmetropolitan areas of the State. In order to be treated as an RTPO for purposes of this Part, any existing regional planning organization must be established and designated as an RTPO under this section.

(1) Where established, an RTPO shall be a multijurisdictional organization of nonmetropolitan local officials or their designees who volunteer for such organization and representatives of local transportation systems who volunteer for such organization.

(2) An RTPO shall establish, at a minimum:

(i) A policy committee, the majority of which shall consist of nonmetropolitan local officials, or their designees, and, as appropriate, additional representatives from the State, private business, transportation service providers, economic development practitioners, and the public in the region; and

(ii) A fiscal and administrative agent, such as an existing regional planning and development organization, to provide professional planning, management, and administrative support.

(3) The duties of an RTPO shall include:

(i) Developing and maintaining, in cooperation with the State, regional long-range multimodal transportation plans;

(ii) Developing a regional TIP for consideration by the State;

(iii) Fostering the coordination of local planning, land use, and economic development plans with State, regional, and local transportation plans and programs;

(iv) Providing technical assistance to local officials;

(v) Participating in national, multistate, and State policy and planning development processes to ensure the regional and local input of nonmetropolitan areas;

(vi) Providing a forum for public participation in the statewide and regional transportation planning processes;

(vii) Considering and sharing plans and programs with neighboring RTPOs, MPOs, and, where appropriate, Indian Tribal Governments; and

(viii) Conducting other duties, as necessary, to support and enhance the statewide planning process under § 450.206.

(4) If a State chooses not to establish or designate an RTPO, the State shall consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.

There's a lot more in this rule, too

While the above analysis focuses on topics of greatest interest to most transit providers and planners, there are other aspects in this rule that can be very important to certain audiences in certain situations. Among other topics, these include:

- The new planning regulations also address a number of changes in how transportation planning and programming is expected to address environmental issues, including conformity with the Clean Air Act, compliance with NEPA, etc.
- There is a lot of prescriptive language for MPOs and states concerning what should appear in long-range transportation plans, TIPs, STIPs and related documents.
- While most of the planning factors remain unchanged from before MAP-21, the FAST Act required the addition of “resiliency” as a component of states’ and MPOs’ planning factors. Specifically, this factor is defined as “Improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation” (at 23 CFR 450.206(a)(9) for states, and at 23 CFR 450.306(b)(9) for MPOs).

What about those performance measures? Won't that mean more of a data collection and reporting burden for me?

For all this attention that performance-based planning and programming rightfully is receiving these days, we're still waiting for FTA and FHWA to nail down most of the national performance measures. Without those, it's difficult to know quite what to expect in terms of individual agencies' data collection and reporting burdens. Data don't invent themselves, so there will be some burden somewhere, although FTA and FHWA have been encouraged to use or adapt existing data sets and processes as much as possible to satisfy the goals of this national performance-based planning approach.

Not all of the statutory performance goals and measures apply to everyone, but they all start with national goals and measures issued by FHWA and FTA. Note that of all the transportation performance measurement areas required by MAP-21, only the highway safety measures have been established thus far. Here is CTAA's effort to list the measures, with their status as of June 2016, and with regulatory citations to help stay abreast of these various measures:

- Safety performance on all public roads (FINALIZED at 23 CFR 490.207)
 - Number of fatalities
 - Number of serious injuries
 - Fatality rate, per vehicle miles traveled
 - Rate of serious injuries, per vehicle miles traveled
 - Number of non-motorized fatalities and non-motorized serious injuries
- Pavement condition on the Interstate Highway System (proposed at 23 CFR 490.307; not yet adopted)
 - Percentage of pavements on the Interstate System in Good condition
 - Percentage of pavements on the Interstate System in Poor condition
- Pavement condition on the National Highway System, other than the Interstate Highway System (proposed at 23 CFR 490.307; not yet adopted)
 - Percentage of pavements on the non-Interstate NHS in Good condition
 - Percentage of pavements on the non-Interstate NHS in Poor condition
- Bridge condition on the National Highway System (proposed at 23 CFR 490.407; not yet adopted)
 - Percentage of NHS bridges classified as in Good condition
 - Percentage of NHS bridges classified as in Fair condition
 - Percentage of NHS bridges classified as in Poor condition
- Performance on the Interstate Highway System (proposed at 23 CFR 490.507; not yet adopted)
 - Percent of the Interstate System providing for Reliable Travel Times
 - Percent of the Interstate System where Peak Hour Travel Times in urbanized areas over 1,000,000 in population meet expectations
- Performance on the National Highway System, other than the Interstate Highway System (proposed at 23 CFR 490.507; not yet adopted)
 - Percent of the non-Interstate NHS providing for Reliable Travel Times
 - Percent of the non-Interstate NHS where Peak Hour Travel Times in urbanized areas over 1,000,000 in population meet expectations
- Traffic congestion (proposed at 23 CFR 490.707; not yet adopted)

- Annual House of Excessive Delay Per Capita
- On-road mobile source emissions (proposed at 23 CFR 490.807; not yet adopted)
 - Total Emissions Reduction
- Freight movement on the Interstate Highway System (proposed at 23 CFR 490.607; not yet adopted)
 - Percent of the Interstate System Mileage providing for Reliable Truck Travel Times
 - Percent of the Interstate System Mileage Uncongested
- State of good repair of transit assets (proposed at 49 CFR 625.43; not yet adopted)
 - Percentage of non-revenue, support-service and maintenance vehicles that have met or exceeded their useful life benchmark
 - Percentage of revenue vehicles in each asset class that have met or exceeded their useful life benchmark within that asset class
 - Percentage of track segments, signal, and systems with performance restrictions
 - Percentage of facilities within an asset class, rated below condition 3 on the TERM scale
- Public transit safety performance (included by reference in proposed 49 CFR 670.31; this rule has not yet been adopted, nor does it appear the suggested national public transportation safety plan, or the suggested plan's performance criteria yet been proposed)
 - [These performance measures apparently have yet to be proposed]

For more information....

- Read the planning rule at <https://www.federalregister.gov/articles/2016/05/27/2016-11964/statewide-and-nonmetropolitan-transportation-planning-metropolitan-transportation-planning>
- CTAA's point of contact for more information, or for possible technical assistance on aspects of this rule, is Chris Zeilinger. You can reach Chris by phone at 202-250-4108, or by email at Zeilinger@ctaa.org