NOTICE OF FINAL RULEMAKING:
Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning
Date Effective: June 27, 2016
[Federal Register Notice, here]

OVERVIEW

Nearly two years after the Federal Highway Administration (FHWA) released a notice of proposed rulemaking (NPRM) to implement transportation planning regulations (see T4America summary here), FHWA released the final rulemaking on May 27, 2016.

The final rule implements MAP-21’s statutory planning requirements for state departments of transportation (DOTs) and metropolitan planning organizations (MPOs) that include:

- integrating a performance-based approach into planning and programming,
- requiring DOTs to have a higher level of involvement with nonmetropolitan local officials,
- providing a process for the creation of regional transportation planning organizations (RTPOs),
- changing the structure of representation at large MPOs,
- encouraging voluntary scenario planning,
- providing new authority for the integration of the planning and environmental review processes, and
- codifying the process for programmatic mitigation plans.

After the NPRM had been released, Congress passed a five-year surface transportation authorization known as the FAST Act (see T4America blog post here). In relation to this rulemaking, the FAST Act left the provisions from MAP-21 largely unchanged.

The final rule includes a notable positive change. T4America’s summary of the proposed rule highlighted that coordinated performance-based planning between states and MPOs is more likely to succeed if both entities are required to fulfill all the planning requirements. This was changed in the final rule so that both states and MPOs are held to the same standard for their long-range transportation plans.

This rule is one of ten interrelated rulemakings to establish the performance planning requirements established under MAP-21. The National Highway Traffic Safety Administration (NHTSA) has issued one rule pertaining to highway safety grant programs, and FHWA intends to issue a total of six rules pertaining to federal-aid highway programs, while FTA intends to issue a total of three rules pertaining to public transportation programs. These interrelated rulemakings will establish performance measures for state DOTs, MPOs and transit agencies to use to carry out Federal-aid transportation.
PROVISIONS OF THE FINAL STATEWIDE, NONMETROPOLITAN, AND METROPOLITAN PLANNING RULE

Performance-based Planning and Programming

Under the final rule, state DOTs, MPOs, and operators of public transportation are required to establish targets in key national performance areas. Both MPOs and DOTs are required to reflect their performance targets in their respective long-range transportation plans as well as link the investment priorities in their Statewide Transportation Improvement Program (STIP) and Transportation Improvement Program (TIP) to the achievement of performance targets.

Originally, the NPRM encouraged but did not require state DOTs to reflect performance targets in their long-range transportation plan. The stronger language included in the final rule corresponds to requirements established under the FAST Act. This means that both MPOs and DOTs are required to describe their performance targets, evaluate the condition and performance of the transportation system, and report on their progress towards achieving their performance targets in their long-range plans.

The final rule does not require MPOs or DOTs to consider elements of their performance-based plans when they are developing their long-range transportation plans, STIPs and TIPs. This language was removed in response to multiple commenters and in the hopes of allowing DOTs and MPOs greater flexibility as to how they integrate performance-based planning into their planning processes.

The final rule also loosened requirements for DOTs in carrying out the statewide transportation planning process. Instead of being required, DOTs are now just encouraged to apply asset management principles and techniques consistent with the State Asset Management Plan for the National Highway System (NHS), the Transit Asset Management Plan, and the Public Transportation Safety Plan. In addition, the final rule does not require that state DOTs select and establish performance targets in coordination with Federal Lands Management agencies, as was proposed in the NPRM.

To provide clarification, the final rule notes that the rule’s requirements for DOTs to involve members of the public and nonmetropolitan local officials in developing the state’s long-range plan and the STIP does not preclude a DOT from considering comments made as part of the DOT’s public involvement process.

Originally, the NPRM proposed to amend metropolitan planning agreements – a written agreement describing the mutual responsibilities in the MPO process for the affected MPO, state(s), and public transportation provider(s) in the region – to require that these compacts be updated to include a description of how the MPO and state DOT will cooperatively implement the performance-based plans.
and targets. Under the final rule, MPOs, state DOTs and providers of public transportation are provided the option of documenting this either as part of the metropolitan planning agreements or some other jointly agreed upon document as determined cooperatively by the MPO(s), state DOT(s), and providers of public transportation.

Requirements regarding the document's contents remain unchanged from the NPRM. The document should identify the processes for the collection of performance data, the selection of performance targets for the metropolitan area, the reporting of metropolitan area targets, the reporting of actual system performance related to those targets, and the roles and responsibilities for the collection of data for the national highway system.

Nonmetropolitan Transportation Planning & RTPOs

The new emphasis on the importance of nonmetropolitan transportation planning and the process for state DOTs to use if they choose to designate and establish regional transportation planning organizations (RTPOs) remains largely unchanged from the NPRM. The final rule does include stronger language by requiring DOTs to cooperate with local officials or RTPOs, instead of just consult with them. Also, the final rule does not include a change to the definition of “consideration” as proposed in the NPRM.

Under the rule, a state DOT may choose to retain its existing rural planning organizations (RPO). However, in order to be treated as an RTPO under this regulation, any existing RPO must be established and designated as an RTPO in accordance with the required structure and responsibilities outlined in the rule.

Structure of Representation at Large MPOs & Scenario Planning

On the same day that the NPRM was released, FHWA and FTA released policy guidance implementing MAP-21’s requirement that MPOs need to include public transportation representation on their policy boards. This final rule supersedes that policy guidance and retains the same language, finalizing the requirements outlined in the policy guidance and NPRM. A small change removed the definition of "major modes of transportation" from the final rule, allowing MPOs to define what constitutes a major mode in their region so that those modes are included appropriately in the MPO structure.

As proposed in the NPRM, the final rule encourages MPOs to voluntarily use scenario planning during the development of the metropolitan transportation plans.

Planning and Environmental Review Processes & Mitigation Plans

The final rule incorporates a new framework, as established in MAP-21 and amended under the FAST Act, that supports the use of planning products and decisions during the environmental review process.

In addition, the final rule provides an optional framework for MPOs and states that choose to develop programmatic mitigation plans as part of, or separately from, their planning process. As amended under the FAST Act, a federal agency responsible for environmental reviews “shall give substantial weight to” the recommendations in a state DOT or MPO programmatic mitigation plan when carrying out its responsibilities under NEPA or "other Federal environmental law."
OTHER CONFORMING CHANGES TO THE FAST ACT

To support the FAST Act’s minor amendments to the planning process, this final rule requires that, as part of the planning process, both state DOTs and MPOs:

• take into consideration resiliency needs;
• both provide early, continuous involvement opportunities to and allow for comment from additional parties, which include public ports, intercity bus operators, and private providers, including private intercity bus operators, employer based cash-out programs, shuttle bus programs, or telework programs;
• take into consideration the role of intercity buses in reducing congestion, pollution, and energy consumption;
• consider intermodal facilities that support intercity transportation including intercity bus facilities and commuter vanpool providers; and
• include planning factors in the plan’s scope that enhance travel and tourism, and improve resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts from the surface transportation system.

The final rule provides MPO’s serving transportation management areas (TMA’s) with an optional framework for developing a congestion management plan. The rule also states that MPOs should consult with tourism and natural disaster risk reduction officials when developing their transportation plans and TIPs.

EFFECTIVE DATES

This planning rule will become effective starting June 27, 2016.

FHWA has decided to phase in the effective dates for the final rules for the performance measures so that each of the rules will have individual effective dates. This allows FHWA and the states to begin implementing some of the performance requirements much sooner than waiting for the rulemaking process to be complete for all the rules.

ADDITIONAL INFORMATION

FHWA will be holding a webinar to provide specific details of this final rule on June 14, 2016 at 1:00pm eastern time. The webinar is open to the public and interested parties can register here.