



## National Association of Regional Councils

1666 Connecticut Avenue, NW ~ Suite 300  
Washington, DC 20009  
202.986.1032 ~ 202.986.1038 (fax)  
[www.narc.org](http://www.narc.org)

Docket Management Facility  
United States Department of Transportation  
400 7<sup>th</sup> Street SW, Room PL-401  
Washington, DC 20590

Dear Docket Clerk,

The National Association of Regional Councils (NARC) is pleased to submit the attached comments to the Federal Register for docket FHWA-2005-22986, Statewide Transportation Planning; Metropolitan Transportation Planning.

On behalf of our member Councils of Government and Metropolitan Planning Organizations, NARC has raised several concerns with the proposed rules as a whole. Further, we discuss specific items in detail, organized by their order in the NPRM.

We appreciate the open and cooperative rulemaking process that FHWA and FTA have engaged in. I hope that you will give every consideration to our comments.

Sincerely,

Cameron Moore  
Executive Director  
National Association of Regional Councils

## **General Comments**

### Appendix A- Linking Planning and NEPA

It is inappropriate for FHWA/FTA to include this section as an add-on to the rest of this rulemaking. The text lacks statutory and code references, is written without proper notation, and does not correspond with existing provisions in the rule. If FHWA/FTA decide to issue a separate, stand-alone rulemaking on Linking Planning and NEPA in the future, NARC and many of its members will strongly support it. However, we do not support including it as an appendix to the Statewide/Metropolitan Transportation Planning rules.

### Appendix B- Fiscal Constraint

This appendix—and all references to it—must be eliminated from the NPRM. The topics discussed in it extend far beyond the statutory requirements on fiscal constraint and unnecessarily complicate the effort required on the part of COGs/MPOs to develop financial plans.

### MTP vs. TIP

NARC is concerned that the rule places undue emphasis on the Transportation Improvement Program. The NPRM mandates the process of drafting and maintaining the TIP duplicates work already being done in the Metropolitan Transportation Plan. According to statute, the TIP is intended to be a straightforward list of projects planned for construction over the ensuing four years, along with an analysis of expected capital. Rules should not make the TIP unduly complex by mandating extraneous analysis of current conditions, compliance with ancillary legislation (i.e.- ADA, Clean Water Act), or analysis of goals in plans such as State Highway Safety Plans or Coordinated Human Services Public Transit Service Delivery Plans. The proper place for data analysis and compliance analysis should be the Metropolitan Transportation Plan. NARC urges FHWA/FTA to revise all sections relating to the STIP/TIP for duplicative requirements.

### Access to Financial Information

The rule should make reference to the open access of accounting systems throughout the rule, especially in § 450.332: Annual Listing of Obligated Projects, § 450.324: Development and content of the transportation improvement program, and § 450.216: Development and content of the statewide transportation improvement program. MPOs are required to develop financial plans and account for Federal spending on transportation infrastructure. Despite their duties, MPOs are not guaranteed access to the best information available on financial obligations. Specifically, many MPOs are not guaranteed access to the Federal Financial Management Information System (FMIS). This system contains the most up-to-date financial information on Federal expenditures. MPOs in several states are not connected at all to the FMIS system, while others provide only limited access. USDOT and States must be required to provide MPOs with this information.

### Security

One of the new planning factors relates to the security of the transportation system (§ 450.306 (a) (3)). While it is important to consider security when planning the transportation system, it is nearly impossible for an MPO to take the lead in a comprehensive security infrastructure strategy. This is because a comprehensive infrastructure security plan will usually extend beyond the boundary of an MPO and include other infrastructure needs that are outside of the MPOs purview, such as seaports/airports, electrical systems, and water systems. Language needs to be added (particularly in § 450.322 (h)) that clearly places comprehensive security planning duties under the direction of States. However, states should have the option to assign all or part of the planning work to MPOs who express a willingness and capacity to perform the work.

### Flexibility with NEPA

The regulations should provide flexibility on NEPA requirements with respect to transportation studies. A MPO's focus should be on developing corridor and sub-area studies that provide useful information for the development of transportation plans. NEPA analysis comes later in the approval process.

### Rural Transportation Planning Organizations

Rural Transportation Planning Organizations (RTPOs or RPOs) are established by law in many states. Even though RTPOs are not recognized in Federal law, they nonetheless are an important vehicle for local control of Federal transportation dollars. In order to enhance the level of coordination, it is important for RTPOs to be recognized throughout the rules as stakeholders and interested parties in the transportation planning process in states where they are established by law.

### Public Transportation Operator(s)

This term appears in the rule—particularly in Subpart C—but it is not defined in SAFETEA-LU or in Subpart A of the NPRM. FHWA/FTA must define this term in the final rule. NARC is concerned that a wide variety of transit agencies, contractors, and private companies may try to claim rights and privileges for themselves based on this undefined term. In NARC's opinion, a "Public Transportation Provider" should mean the agency that acts as the designated recipient or predominant sub-recipient of planning funding under 49 U.S.C. 5303, 49 U.S.C. 5304, 49 U.S.C. 5305 or 49 U.S.C. 5307. Further, a public transit agency that sits on the board of an MPO should automatically be identified as a Public Transportation Operator for the purposes of these rules.

### Ongoing Evaluation of MPO Chairmanship

As we move forward with the implementation of SAFETEA-LU, NARC requests a FHWA/FTA evaluation of the leadership posts on MPO boards. NARC's assertion is that MPO Board Chairs should be local elected officials, if applicable. Non-metropolitan or non-elected officials who serve as board chairs may have conflicts of interest that undermine the local control of transportation funding.

## **Subpart A- Definitions**

Design concept- In the examples of a design concept, the term “collectors” should be added. Collectors are sometimes built with Federal funds, particularly in areas with small population or on the exurban fringe.

Design scope- In the examples of design scope, a description of bicycle and pedestrian facilities associated with the planned road facility should be permitted, at the discretion of the MPO or state.

Add “Rural Transportation Planning Organizations”- In certain states where these agencies are established by state law, these organizations are responsible for planning transportation improvements in non-metropolitan areas. As appropriate, non-metropolitan local elected officials with oversight of these agencies should qualify for consultation privileges. Following is a suggested definition:

“Rural Transportation Planning Organization means an agency established by state law and/or interlocal agreement to perform planning tasks for transportation projects funded with Federal money.”

Add “Public Transportation Provider”- FHWA/FTA must define this term in the final rule. See discussion above.

## Subpart B- Statewide Planning

### Purpose: Sec. 450.200

§ 450.200 NARC strongly supports the wording of this section.

### Coordination of planning process activities: Sec. 450.208

§ 450.208 (a) (1) In Subpart A of this NPRM, the word “coordinate” is defined as the synchronization of plans, schedules, and programs to achieve consistency and common goals. According to statute, MPOs (and particularly TMAs) are given programmatic control over their metropolitan area for all SAFETEA-LU programs except the National Highway System, Interstate Maintenance, and Bridge programs. State Departments of Transportation must be required to respect the MPO’s programmatic responsibility by incorporating MPO-developed studies, surveys, and analysis into the state transportation planning process. The incorporation of MPO-developed materials should not be optional, which is what this paragraph suggests. The word “encouraged” in the last sentence should be replaced with “required.”

§ 450.208 (a) (4) This paragraph should mention the existence of Rural Transportation Planning Organizations (RTPOs), if such agencies are established by state law. Sample language for this paragraph follows: “(4) Consider the concerns of local elected and appointed officials with responsibilities for transportation in non-metropolitan areas, including officials from Rural Transportation Planning Organizations, if authorized by state law.”

§ 450.208 (a) (6) This paragraph should contain instruction as to the level of consultation/coordination between neighboring states when an MPO encompasses area in more than one state.

### Interested parties, public involvement, and consultation: Sec. 450.210

§ 450.210 (a) (1) (i) Add Metropolitan Planning Organizations to this paragraph. Even though “public agencies” is listed, NARC prefers to see a direct reference to MPOs. MPOs are the primary partner in the planning process for Federal money, and their views should be taken into account.

§ 450.210 (a) (1) (ii) Delete “reasonable” and replace with “all.” All technical and policy information used in the process should be available to MPOs, local governments, and the public in general at their request. This is important to the transparency of the planning process.

§ 450.210 (b) This section should be extended to include the active participation of rural transportation planning organizations and the local officials charged with their oversight. Below is the replacement text for this section, with changed noted in **bold**, and deletions indicated with ~~strikethrough~~:

(b) The State shall provide for non-metropolitan local official participation in the development of the long-range statewide transportation plan and the STIP. **The State and non-metropolitan local officials shall cooperatively develop a documented process for incorporating input from** non-metropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation that is separate and discrete from the public involvement process and provides an opportunity for their participation in the development of the long-range statewide transportation plan and the STIP. Although the FHWA and the FTA shall not review or approve this consultation process(es), copies of the process document(s) shall be provided to the FHWA and the FTA for informational purposes.

(1) At least once every ~~five~~ **three** years (as of February 24, 2006), the State shall review and solicit comments from non-metropolitan local officials and other interested parties for a period of not less than 60 calendar days regarding the effectiveness of the consultation process and any proposed revisions. A specific request for comments shall be directed to the State association of counties, State municipal league, regional planning agencies, **Rural Transportation Planning Organizations (if authorized by state law)**, ~~or~~ **and** directly to non-metropolitan local officials.

(2) The State, **in cooperation with non-metropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation** ~~with at its discretion,~~ shall ~~be responsible for determining whether to~~ adopt any proposed revisions. If a proposed revision is not adopted, the State shall make publicly available its reasons for not accepting the proposed revision, including notification to non-metropolitan local officials or their associations.

Transportation planning studies and project development: Sec. 450.212

§ 450.212(b)(2)(iii) – The word “continual” suggests that the process is constantly open to commentary and is never truly complete or finalized. The word “continual” should be replaced with “reasonable.” There should be reasonable opportunity to comment on the development of a corridor or sub-area planning study undertaken during the metropolitan planning process.

Development and content of the long-range statewide transportation plan: Sec. 450.214

§ 450.214 (f) NARC strongly supports the existing language of paragraph (f). We believe that states should coordinate with MPOs to build the transportation system and pursue common goals.

§ 450.214 (g) This paragraph should include direct reference to Rural Transportation Planning Organizations, if they are authorized by state statute.

Development and content of the statewide transportation improvement program (STIP):  
Sec. 450.216

§ 450.216 (a) and (l) Illustrative Projects and TIPs Extending beyond 4 years- NARC strongly supports the inclusion of this term into the rules on State Transportation Improvement Programs. It is important for planners to visualize and plan for a comprehensive transportation system. It is important that MPOs and State DOTs identify projects that expand capacity and enhance mobility, even if these projects cannot be built within the 4-year timeframe. These “illustrative” and “long-range” projects can serve to motivate policy-makers, the private sector, and government agencies to find funding for them.

§ 450.216 (b) NARC strongly supports the language in this paragraph. It properly recognizes the MPO-developed Transportation Improvement Program (TIP) to be the official program of projects for a metropolitan area, not subject to interpretation or alteration by the state.

§ 450.216 (c) This paragraph should include direct reference to Rural Transportation Planning Organizations, if they are authorized by state statute.

§ 450.216 (k) NARC strongly supports the language of this paragraph. It properly recognizes the Metropolitan Transportation Plan as the official transportation plan of a metropolitan area, not subject to state interpretation or alteration.

§ 450.216 (h) This paragraph should be clarified to indicate that only **transportation** projects of regional significance need be listed for informational purposes.

## **Subpart C- Metropolitan Planning**

### Scope of the metropolitan transportation planning process: Sec. 450.306

§ 450.306 (a), § 450.306 (b), § 450.306 (c), § 450.306 (d), § 450.306 (e), § 450.306 (f), § 450.306 (g), § 450.306 (h)- NARC strongly supports the language found in these paragraphs.

§ 450.306 (i) This paragraph is confusing, and should be separated to describe the following conditions: A) The designation of a new TMA in areas with fewer than 200,000 people and; B) Adding additional land area to an existing TMA. Both conditions should require the approval of the Governor and the area's MPO.

§ 450.306 (j) The rule needs to provide more information on what plan components must be included in the abbreviated metropolitan transportation plan and TIP. Particularly, clarification is needed on whether abbreviated plans require a full analysis of existing State Highway Safety Plans, Coordinated Human Services Public Transit Service Delivery Plans, Regional Transit Security Strategies, or ITS Architectures.

### Metropolitan planning organization designation and redesignation: Sec. 450.310

§ 450.310 (a) NARC believes that urbanized areas should only be identified through the decennial (every 10 years) Census. The Bureau of the Census conducts many studies using several different methods. A new Census tool being developed—known as the American Community Survey (ACS)—collects information on an annual basis. NARC is concerned that the boundary of urbanized areas could change frequently due to data collection in the ACS or in other surveys. Therefore, this paragraph should state that the urbanized area designation should come only from the decennial Census.

§ 450.310 (b), § 450.310 (i), and § 450.310 (j) More information is needed on what to do when the largest unit of local government in an urbanized area is not an incorporated city. In some areas, unincorporated counties may have a larger population than any incorporated city. This is particularly true of counties that are granted home-rule authority or have joined with a city to form a consolidated city-county government. What right does a county or consolidated city-county have in establishing or re-designating a MPO?

§ 450.310 (d) The first sentence of this paragraph has a typo. The word “as” is needed before “TMA.”

### Metropolitan planning agreements: Sec. 450.314

§ 450.314 (a) (2) NARC feels that “seaport operations” should be added to the list of local officials/agencies listed in this paragraph. Further, NARC feels that “State and

local planned growth” should be clarified to reflect agencies responsible for setting land use policy or regional planning agencies and development districts.

§ 450.314 (a), § 450.314 (d), § 450.314 (e) and § 450.314 (f)- These sections mandate a written, cooperative agreement between MPOs and public transit service providers. NARC is concerned about the lack of a definition of “public transportation provider.” We would prefer to see this term defined in Subpart A of the rule, so that the definition is consistent throughout the NPRM. Note that NARC has suggested a definition for this term in our comments on Subpart A. NARC believes that MPOs should be required to coordinate only with the designated recipient(s) or predominant sub-recipient(s) of funding under 49 U.S.C. 5303, 5304, 5305 (Metropolitan and Statewide Planning) or 5307 (Urbanized Area Formula). Specifically, NARC is concerned that the process of coordination with every agency and company that provides public transit service could improperly delay or sidetrack the planning process. The proper place for minor service providers and contract service providers to be heard is in the process of drafting Coordinated Human Services-Public Transit Service Delivery Plans.

Interested parties, participation, and consultation: Sec. 450.316

§ 450.316 (a) (1) (ii) The term “reasonable” needs to be defined in this paragraph. NARC believes that it should be defined as *Generally available or retained for public use in a public facility*. Further, NARC is concerned about the staff time and cost of reproducing and distributing materials. NARC believes that MPOs should not be financially responsible for the reproduction, mailing, or summarization of these materials.

§ 450.316 (a) (1) (iii) Please give acceptable examples of visualization techniques.

§ 450.316 (a) (1) (iv) This provision is taken word-for-word from SAFETEA-LU. However, the final rule should discuss the topic of publication by electronic means in greater depth. Following are some questions to address: a) What if a MPO does not have a web site? b) If an MPO is experiencing technical or administrative difficulties with an existing website, are they permitted to proceed with their public participation process and subsequent approval of the MTP/TIP? c) If materials are made available as email attachments or on CD-ROM, would this meet the requirements of this paragraph?

§ 450.316 (a) (1) (vii) What level—if any—of translation service is required of MPOs?

§ 450.316 (a) (3) NARC remains concerned about MPOs that do not have a website (or have a disabled website) will not be able to proceed with adoption of their PPP.

Transportation planning studies and project development: Sec. 450.318

§ 450.318(b)(2)(iii) The word “continual” suggests that the process is constantly open to commentary and is never truly complete or finalized. The word “continual” should be replaced with “reasonable” or the whole sentence should make reference to existing public participation plans.

Development and content of the transportation improvement program (TIP): Sec. 450.324

§ 450.324 (d) This paragraph should be clear that only transportation projects need be listed in the TIP. In particular, the word “transportation” should be added in the last sentence, which refers to projects that are not funded by FHWA or FTA.

§ 450.324 (h) Language needs to be added that clearly places the responsibility for comprehensive security planning under the direction of States. States should be permitted to contract with MPOs who are capable and willing to perform planning work in this area.

§ 450.324 (h) In this paragraph, MPOs are required to develop a financial plan that estimates future funding. Clarification is needed on “reasonable expectation.” Federal transportation funds are only approved by Congress one year in advance. NARC reiterates its position that the Federal Management Information System (FMIS) should be available to MPOs to assist them in compiling financial plans.

§ 450.324 (h) NARC endorses the idea of “illustrative projects” in the TIP. We believe that their presence can serve as an impetus for local, state, and Federal policy-makers to dedicate funding toward a project.

§ 450.324 (h) Remove “operation and maintenance of the existing system” from this paragraph. Including operations and maintenance in the financial plan has no basis in statute. The TIP should be a list of capital projects to be undertaken by the MPO. Operations and Maintenance—if they are done by the MPO at all—are included in other plans and documents.

§ 450.324 (h) and § 450.324 (i) Eliminate references to Appendix B (Fiscal Constraint)

§ 450.324 (j) (1) In this paragraph, delete the words “criteria and.” NARC believes that MPOs should have a process for prioritizing items on the TIP, but not all MPOs will have written selection criteria. Some MPOs prioritize items in the TIP based upon items that are difficult or impossible to write in criteria, such as public meetings, public opinion polls or local government requests.

Development and content of the metropolitan transportation plan: Sec. 450.322

§ 450.322 (f) (7) includes a discussion of potential environmental mitigation activities and related items. NARC wants the final rule to maintain flexibility in the requirements of this provision such that planning efforts related to green infrastructure, open space, and conservation could serve as a component mitigation plan, at the discretion of the MPO.

#### Project selection from the TIP: Sec. 450.330

§ 450.330 (a) In this paragraph, the words *agreed to* are placed in quotation. This suggests that the first year of the TIP is not a truly final list of projects. According to statute, the first year of the TIP is the final list of projects to be undertaken during the next fiscal year. The quotation marks should be deleted from this paragraph.

§ 450.330 (a) This paragraph makes reference to situations where Federal appropriations fall short of authorized amounts. In these situations, the State and public transportation operator(s) are afforded additional control over the list of projects in the first year of the TIP that extends beyond their authority under statute and other sections of the planning rules. This additional control is granted by the use of the word “jointly,” a term which implies equal decision-making for each participant. MPOs are solely responsible for drafting the TIP and approving it. Therefore, NARC strongly urges FHWA/FTA to replace the word “jointly” with “cooperatively.” Using the term “cooperatively” would match the terminology found in other parts of the NPRM.

§ 450.330 (a) This paragraph makes reference to situations where there is a “significant shifting of projects between years.” In these situations, the State and the public transportation operator(s) are afforded undue control over the first year of the TIP. *Only* an MPO can approve changes that would result in a significant shifting of projects between years. It makes little sense—and has no basis in statute or rules—for the State and/or public transportation operator(s) to step in during these situations and assert control over local elected officials. This is yet another reason to replace the term “jointly” with the term “cooperatively.” NARC believes that the State, public transportation operators, and any other stakeholders must play a role in any changes to the TIP, but only the MPO, acting through its board of local officials, should have approval control over changes to the TIP.

#### Annual listing of obligated projects: Sec. 450.332

§ 450.332(a) The Annual Listing of Obligated Projects should be due 90 days after the end of the *Federal fiscal year* instead of the state program year. Each state has a different program year end date, which often does not match with the Federal fiscal year end. It is much simpler and more accurate for MPOs to publish the list of obligated projects at the end of the Federal fiscal year. Statute [6001(j)(7)] does not specify whether the Annual

Listing is due after the end of the Federal fiscal year or at the end of the state program year.

Self-certifications and Federal certifications: Sec. 450.334

§ 450.334 (b) (2) This section describes how TMAs could have funding withheld due to a finding of inadequacy in the metropolitan planning process. NARC's concern is that there is no requirement for when FHWA and FTA will revisit the certification. We assert that FHWA and FTA must immediately begin a reevaluation of the finding of non-compliance upon the request of a TMA/MPO.