



MEMORANDUM

TO: TPB Technical Committee
FROM: Eric Randall, TPB Transportation Engineer
SUBJECT: Update on Federal Rulemaking and the Performance-Based Planning and Programming Requirements
DATE: October 28, 2016

This memorandum provides an update for the TPB Technical Committee on federal rulemaking and the performance-based planning and programming (PBPP) requirements under the federal surface transportation act Moving Ahead for Progress in the 21st Century (MAP-21) and continued in the Fixing America's Surface Transportation Act (FAST Act).

MPO COORDINATION AND PLANNING AREA REFORM PROPOSED RULE

A Notice of Proposed Rulemaking (NPRM) for Metropolitan Planning Organization Coordination and Planning Area Reform¹ was published on June 27, 2016. The proposed rule would revise transportation planning regulations, including the extent of the planning area and requirements for the CLRP, TIP, and performance targets, in a way that could significantly affect the TPB. Comments on the NPRM were due by August 26 and the TPB submitted a comment letter.

On September 23, the FHWA and FTA issued a 30-day extension to the period for comments, through October 24. In the extension notice², the federal agencies announced they were seeking additional comments on several issues, including

- Specific and detailed comments that contribute to the understanding of the impact of the proposed requirements for unified planning products where multiple MPOs serve the same urbanized area;
- Potential exceptions that should be included in the final rule, and criteria for applying such exceptions; and
- Specific and detailed comments on the expected costs of implementing the proposed rule.

TPB staff submitted a comment letter responding to these additional questions (see attached).

PBPP RULEMAKING SCHEDULE

The following is the anticipated schedule for rulemaking in support of the performance-based planning and programming (PBPP) requirements.

Recent Rulemakings:

- The Transit Asset Management final rule was published in the Federal Register on July 26 and became effective October 1, 2016.

¹ <https://www.gpo.gov/fdsys/pkg/FR-2016-06-27/pdf/2016-14854.pdf>

² <https://www.gpo.gov/fdsys/pkg/FR-2016-09-23/pdf/2016-22907.pdf>

- Note: a clarification was issued by FTA that previous information, which stated that initial targets would have to be reported in the National Transit Database (NTD) by January 30, 2017, was incorrect. The rule does not require initial targets to be reported. However, all other requirements, including the setting of targets by the Accountable Executive by January 1, 2017 and MPO approval of targets within 180 days following are still extent.
- The Highway Asset Management Plan final rule was published in the Federal Register on October 24, 2016, and becomes effective October 2, 2017.³ The rule requires States to develop and implement asset management plans for bridge and pavements condition.

Upcoming Rulemakings:

- The Transit Safety Agency final rule is anticipated to be issued in January 2017 (a two month delay from previous).
- The Pavement and Bridge Condition final rules are anticipated in late November or early December 2016.

PBPP ACTIVITIES

TPB staff is continuing collaboration with DDOT, MDOT, and VDOT, as well as with WMATA and other providers of public transportation, for each performance area. The status of each of the five areas is as follows.

A. Planning

The final Statewide and Metropolitan Planning Rule provides more direction and guidance on requirements for the performance-based planning and programming provisions, including forecasting performance, target-setting, documentation in the CLRP and TIP, and an annual System Performance Report. TPB staff are working to review the final rule and identify how to implement the new requirements.

To implement PBPP, there is a requirement for each MPO, highway agency, and providers of public transportation in the region to jointly agree upon and document in writing the coordinated processes for:

- Collection of performance data
- Selection of performance targets for the metropolitan area
- Reporting of metropolitan area targets
- Reporting of actual system performance (related to those targets).

TPB staff are working to send a formal communication to each stakeholder to begin discussion on the above requirement, including a request for participation and a proposed process.

B. Highway Safety

State DOTs submitted their new Highway Safety Plans in August. TPB staff have collected the latest data from each and are working to refine it for the metropolitan planning area. Coordination with the State DOTs continues through participation in webinars and workshops. The State DOTs will set targets by August 2017 and targets-setting by the TPB should occur within six months thereafter.

³ <https://www.gpo.gov/fdsys/pkg/FR-2016-10-24/pdf/2016-25117.pdf>

C. Highway Conditions

Publication of the final rule for highway pavement condition and bridge condition rulemaking is anticipated in November/December 2016. The State DOTs are also working on their asset management plans which will inform the planning of highway and bridge preservation projects.

TPB staff have completed an analysis of the 2015 Bridge and Pavement data. TPB staff will provide an updated analysis of highway and bridge condition data for the metropolitan planning area in the coming months following coordination and discussion with the State DOTs.

State DOTs were required to submit an Initial System Performance Report to FHWA by October 1. TPB has collected these responses from the three State DOTs and will synthesize and distribute relevant information.

D. Congestion / System Performance

TPB staff continue to evaluate the feasibility of conducting a sensitivity analysis on several proposed congestion measures to determine the impact on regional performance. Several of the measures need data that are currently unavailable (e.g., speed limit for every road segment) or action by the State DOTs (e.g., establishing desired travel time for each road segment). TPB staff are coordinating with State DOTs on collecting and/or determining this data.

E. Transit Assets and Safety

The final transit safety rules are expected in the next several months. Once published, they will be discussed at the TPB Regional Public Transportation Subcommittee and the Technical Committee.

The final transit asset management rule became effective October 1, 2016. The rule applies to almost every transit provider in the region. The accountable executive for each provider needs to set performance targets by January 1, 2017. TPB staff will collect the performance and targets from each provider and work to synthesize these for subsequent target setting for the metropolitan planning area by the board, likely in the May 2017 timeframe.



National Capital Region
Transportation Planning Board

October 24, 2016

The Honorable Gregory G. Nadeau
Administrator
Federal Highway Administration (FHWA)
U.S. Department of Transportation (USDOT)
1200 New Jersey Avenue SE
Washington, DC 20590

Carolyn Flowers
Acting Administrator
Federal Transit Administration (FTA)
U.S. Department of Transportation (USDOT)
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Follow-up Comments as Requested on Proposed Metropolitan Planning Organization Coordination and Planning Area Reform Rule [Docket No. FHWA-2016-0016]

Dear Administrator Nadeau and Acting Administrator Flowers:

Thank you for reopening the comment period on the Notice of Proposed Rulemaking (NPRM) on “Metropolitan Planning Organization Coordination and Planning Area Reform.” As the TPB conveyed in its earlier comments (dated 8/26/16) on this proposed change, the negative unintended consequences of the new requirements would significantly outweigh their real or perceived benefits. At that time, the TPB respectfully requested that USDOT withdraw the NRPM and work with individual MPOs and States to remedy specific instances in which a lack of coordination might be hindering the metropolitan transportation planning process. The TPB appreciates this opportunity to further quantify and assess the negative consequences of these proposed changes.

The follow-up comments that TPB staff is providing today provide additional information on the following three points as jointly requested by FHWA and FTA on September 23, 2016:

- Potential impacts of the proposed requirements on unified planning products where multiple metropolitan planning organizations (MPOs) serve the same urbanized area.
- Suggested criteria for applying exceptions to the proposed requirements.
- Quantification of the expected costs of implementing the proposed rule.

The comments provided in this letter reflect the TPB’s unique perspective as an MPO made up of state and local transportation officials and elected representatives from three state-level jurisdictions, 22 city and county governments, and a handful of regional agencies. The TPB spends roughly one-third of its annual \$15 million MPO budget on coordinating the input, review, and approval of its members in developing the three federally required planning documents: the Financially Constrained Long-Range Plan (CLRPP) which is the TPB’s Metropolitan Transportation Plan, the Transportation Improvement Program (TIP), and the air quality conformity determination. It also coordinates with several nearby MPOs in accordance with formal coordination agreements and

arrangements established to ensure that the metropolitan transportation planning process meets federal requirements for being continuous, cooperative, and comprehensive.

For the purposes of the TPB's assessment of the impacts and costs of USDOT's proposed rulemaking, the following assumptions were made about how the rules would most likely be carried out in the National Capital Region:

- *Assumption #1: The nine existing MPOs that currently serve what would become a new Washington-Baltimore-Philadelphia "Super-MPA" would remain intact.*

The new federal rules could require the creation of a new metropolitan planning area (MPA) spanning at least six state-level jurisdictions from Virginia to New Jersey (see Attachment 1). Depending on one's interpretation of the new rules, the new "Super-MPA" could stretch north all the way to Massachusetts. The mobility needs, local transportation and land use planning policies and priorities, and availability and appropriateness of different travel modes would vary immensely across a region of this size. Given this variation, the TPB staff is confident that the Governors and MPOs would agree to keep the multiple MPOs that currently exist intact. Agreements already exist among state DOTs in this region to address overlapping urbanized areas, and TPB staff would expect that to continue.

- *Assumption #2: The nine MPOs would have to develop a process for a single, unified Financially Constrained Long-Range Transportation Plan (CLRPP), Transportation Improvement Program (TIP), and air quality conformity determination.*

The proposed rule requires a unified set of planning products from multiple MPOs in a super-MPA. This coordination and consultation would have to occur among these MPOs and its localities to develop a process for a single set of planning documents. The nine MPOs within the "super-MPA" would then need to jointly develop a single Financially Constrained Long-Range Plan (CLRPP) and Transportation Improvement Program (TIP) for the MPA, jointly establish a set of performance targets for the MPA through the Performance-Based Planning and Programming (PBPP) requirements, and jointly agree on a process for making a single air quality conformity determination on the joint CLRPP and TIP.

- *Assumption #3: The TPB, in the spirit of the new rule, would endeavor to maintain a similar level of coordination with the state and local members and agencies of the new "Super-MPA" as it does today.*

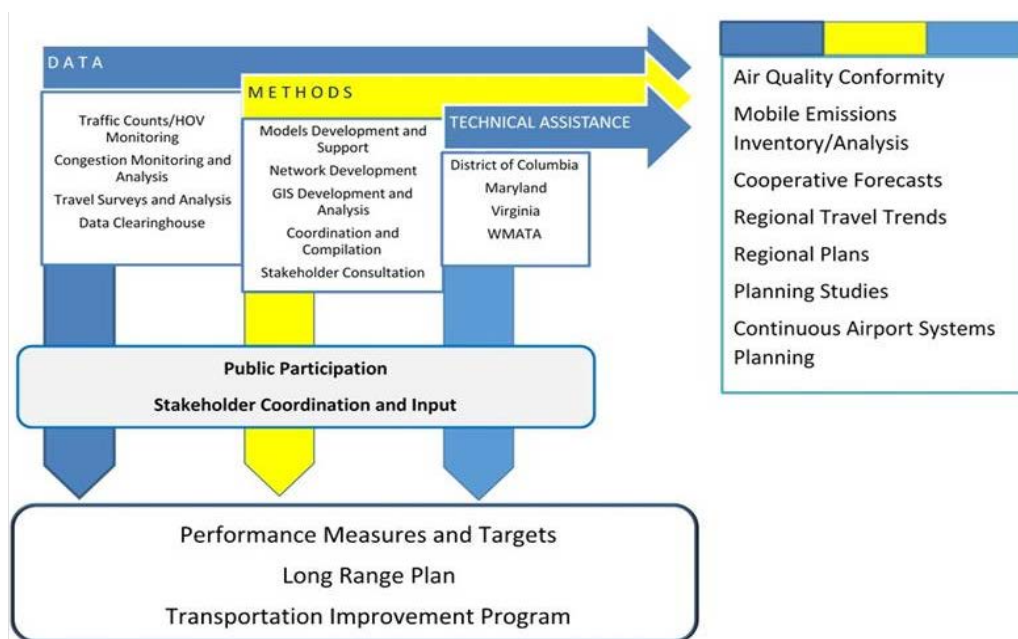
As a multi-state MPO since 1966, the TPB has an established coordination process with the District of Columbia, Maryland, and Virginia that is both extensive and comprehensive. In addition to the three state-level jurisdictions, this process also includes 22 local jurisdictions and numerous other state and regional agencies. The TPB's existing level of coordination required the development of a thorough understanding of the planning and programming authorities, and the TPB established processes within each member jurisdiction, the state agencies, and the MPO to carry out the MPO activities. Relationship building with dozens/hundreds of individual staff at the state and local level has occurred over time, which includes the establishment and maintenance of comfortable working relationships and the development of mutual respect and trust. These relationships require daily and weekly efforts to organize and attend regular meetings, and to devote extra time to the "back-and-forth" it takes to address any given concern or issue, for each member. Good coordination requires extensive staff time to prepare materials for meetings, and to conduct phone calls

and webinars. While this investment of relationship-building has been effective, including enabling the TPB to develop its key policy frameworks (the TPB Vision and the Regional Transportation Priorities Plan) and to regularly develop a regional CLRP and TIP, it requires a significant commitment of human and fiscal resources from all parties involved. Under the new proposed rule, the TPB would expect to maintain a similar level of coordination with the state and local members and agencies of the new “Super-MPA.”

- *Assumption #4: Every element of the Unified Planning Work Program (UPWP) would support the development of the three unified planning products for the “Super-MPA.”*

Every element of the TPB’s existing Unified Planning Work Program supports the development of the CLRP, TIP, air quality conformity determination, and performance-based planning and programming activities for the National Capital Region. This includes data collection, methods development, public participation, stakeholder involvement, management of 15 standing committees, and development of six functional plans (see Figure 1). Under the new rules, every element of the UPWP would support the development of a unified Metropolitan Transportation Plan, TIP, and air quality determination for the “Super-MPA.”

Figure 1
Overview of Planning Products and Supporting Processes in the TPB’s Unified Planning Work Program (UPWP)



- *Assumption #5: Implementation of the new rules would require one-time start-up costs as well as ongoing annual costs.*

The cost of the new activities and development of the new processes necessary to meet the requirements would be significant. Once the processes and agreements to proceed were in place, the costs would then decrease and become more consistent on an annual basis.

POTENTIAL IMPACTS OF THE PROPOSED REQUIREMENTS

The potential impacts of the new requirements under this proposed rule focus primarily on the difficult task of convening and coordinating the input of large, diverse groups of people, including the public, to develop projects, programs, and priorities in a way that conforms with applicable laws and enables progress to achieving needed improvements. The metropolitan planning products required under federal law contain a seemingly infinite number of moving parts, all intricately timed and woven together by professional transportation staff who then have the job of educating the elected officials who formally act to approve the products. Consensus-building is a delicately balanced dance, and adding new performers to the act can add an exponential degree of complexity to an already complicated process. This added complexity has the immediate and direct consequence of slowing the delivery or compromising the quality of the planning products themselves. It is wholly unclear to the TPB what if any improvements such changes to the process would actually yield.

Below are the potential impacts of the proposed requirements as they relate to the development of specific planning products:

- The CLRP and TIP would have to be “unified” with at least eight other MPOs and up to 400 localities all with different product timeframes, planning horizons, travel patterns, political boundaries, policy guidance and different State and local budget cycles, with little value added to the process.
- At least seven Governors and the Mayor of DC would have to sign agreement(s) for unifying the planning products as well as coordinating data collection methods and planning assumptions. Agreements, especially complex agreements, can take years to develop and approve.
- Development of an agreement or agreements for unifying the inputs and data assumptions necessary to conduct a minimum of eight different conformity determinations would be extremely challenging and impractical.
- A “Super-MPA” would create areas with different attainment statuses for different pollutants, and different timeframes for conformity.
- Developing a common investment strategy for the current TPB area as required under performance-based planning and programming is challenging enough as it is; expanding this to eight other MPOs and possibly 400 localities would significantly delay implementation of this USDOT priority.

Below are additional potential impacts not directly related to the development of specific planning products:

- Implementation of the rule would overwhelm staff at State DOTs, FHWA, and FTA offices, MPOs, State air agencies, local jurisdictions, and elected officials, with little value added to the metropolitan planning process.
- Due to the length of time that coordination on a large scale would add to the process, slow MPO approvals could delay the implementation of key transportation investments and improvements critical to each region’s economy.

- The extra work created through this process would distract MPOs and State DOTs from focusing on achieving the goals set forth in the FAST Act, including performance-based planning and programming, and other USDOT priorities such as Ladders of Opportunity.
- This rule would create an unpredictable planning boundary that could change significantly every ten years, potentially undermining the 20-year long-range transportation planning process.

Table 1 below provides a description of each of the planning products or process that the proposed rule would require a “Super-MPA” to unify. A description of the complexity involved in each product/process and the challenges to creating unified products is also provided. Table 1 further demonstrates the difficulty in unifying products given that these products are dependent upon so many other elements in the TPB’s Unified Planning Work Program (UPWP).

Table 1
Description of Planning Products and Challenges to Unifying for a “Super-MPA”

	Financially Constrained Long-Range Transportation Plan (CLRP)	Transportation Improvement Program (TIP)	Conformity Determination	Performance-Based Planning and Programming (PBPP)
Description	The TPB’s Plan includes over 500 projects for highway, transit and bike/pedestrian improvements totaling more than \$240 billion (including operations and maintenance funding).	The TPB’s TIP identifies a total of \$11 billion in funding commitments from 75 different sources for more than 300 projects. Twelve state and local Federal-aid recipients depend upon the TIP. The TPB does not receive federal funding to improve infrastructure (few exceptions).	An analysis of mobile source emissions for the Plan and TIP for each criteria pollutant the region is in nonattainment for based on the federal standards to ensure pollutants remain below approved regional limits.	Development of performance measurements and targets with three State DOTs and multiple transit agencies for areas such as safety, bridges, congestion, and transit assets. The PBPP will report and integrate into the TIP and CLRP.
Timeframe	The TPB’s Plan covers 2016 to 2040	6-year period; 2017 to 2022	2017, 2025, 2030, and 2040	2018, with 1-year, 2-year, and 4-years goals.
Update or Amendment Cycle	Updated every 4 years and usually amended annually	Updated every 2 years; amended or modified 30 to 80 times a year	Analysis is conducted annually (every time the CLRP is amended)	Annual and biennial updates for measurement and target-setting
Coordination Occurring in National Capital Region	The TPB engages with multiple levels of decision-makers in three state-level jurisdictions, with the regional transit agency (WMATA), and 22 local governments to identify CLRP and TIP		The TPB coordinates with a regional air quality committee that includes three state air agencies and three state DOTs on	Agreement on PBPP responsibilities and target-setting process with three States.

	<p>projects (the TPB does not typically receive direct funding for infrastructure improvements).</p> <p>Building consensus around TPB policy principles and transportation priorities for the CLRP and TIP took more than three years.</p> <p>Ongoing coordination must occur because the twelve funding agencies operate under different budget cycles which triggers ongoing amendments or updates.</p>	<p>federally mandated plans and the analysis.</p> <p>An established interagency consultation process is used to agree on the inputs, assumptions, analysis tools.</p>	
<p>Impacts and Challenges for Unifying Product within a Super-MPA</p>	<p>The CLRP and TIP would have to be “unified” with at least eight other MPOs and up to 400 localities all with different product timeframes, planning horizons, travel patterns, political boundaries, policy guidance and different State and local budget cycles, with little value added to the process.</p> <p>At least seven Governors and the D.C. Mayor would have to sign agreement(s) for unifying the planning products as well as coordinating data collection methods and planning assumptions, agreements which would take years to develop.</p>	<p>A “Super-MPA” would create areas with different attainment statuses for different pollutants, and different timeframes for conformity. Development of an agreement for unifying the inputs and data assumptions necessary to conduct a minimum of eight different conformity determinations would be extremely challenging and impractical.</p>	<p>Developing a common investment strategy for the current TPB area as required is challenging enough as it is; expanding this to eight other MPOs and possibly 400 localities would significantly delay implementation of this USDOT priority.</p>

(Comments continue on following page)

EXCEPTIONS THAT SHOULD BE INCLUDED IN A FINAL RULE

The TPB maintains its earlier request that the proposed rule be withdrawn. However, should USDOT move towards implementation, the TPB recommends the following criteria to apply for exceptions to the rule. The criteria could apply to both the proposed requirement for a single MPO and a single MPA, as well as for the unified planning product requirements.

An MPO or MPA would be exempt from the proposed rule if any of the following criteria are met:

- The population of an Urbanized Area is greater than 300,000 based on current data or 20-year forecasts;
- The population contained in an Urbanized Area that overlaps into another MPA is less than 10 percent of the total population in an MPO's MPA; and/or
- Coordinated planning arrangements, which could be in the form of agreements or letters, exist and define roles and responsibilities for MPOs serving an Urbanized Area.

In regards to the process for exceptions, the TPB recommends that the relevant Governor(s) and MPO(s) would submit letters to FHWA district and FTA region offices describing how the MPO or MPA meets one or more the criteria for exceptions and that these FHWA and FTA offices acknowledge the exception.

EXPECTED COSTS OF IMPLEMENTING THE PROPOSED RULE

The TPB's Unified Planning Work Program (UPWP) is developed and approved annually by FHWA and FTA. The FY 2017 UPWP budget is \$15.6 million and of that, approximately \$5 million (or 30 percent of the annual budget) is estimated to pay for coordination activities and to develop and maintain current multi-state unified planning products.

The TPB estimates that the start-up costs to meet the new requirements could range from \$3.5 to \$5 million per year, in addition to the normal annual MPO business costs. Depending on how long it takes to establish the new processes—and the TPB's experience is that it can take up to three years to accomplish large consensus-based efforts—the start-up cost could be \$10- to \$15 million. Once established, the TPB estimates that maintaining and carrying out the new processes could require a 10- to 15-percent increase in costs, or \$1.5 to \$2 million annually.

For TPB members, stakeholder participation is not reimbursed using Metropolitan Planning funds. Therefore, these costs do not reflect stakeholder time spent in coordination efforts. This is a hidden, additional burden that all TPB members would have to shoulder when participating in the metropolitan planning process of a larger and more complex MPA. This would effectively reduce their ability to be fully involved in the metropolitan planning process.

Mr. Nadeau and Ms. Flowers
October 24, 2016

SUMMARY

In summary, the TPB has been a leader in coordination for over 50 years across political boundaries in a large metropolitan area. However, the proposed rule would create a super-metropolitan planning area (MPA) with planning products that would have to be coordinated from southern Virginia to New Jersey or even Massachusetts. The impacts of implementing this rule would be far-reaching, its new requirements would add very little if any value to the metropolitan planning process, and the price-tag would be significant. The new rule could even unintentionally hinder the ability of the affected MPOs to effectively and efficiently conduct metropolitan planning and facilitate project delivery by unnecessarily burdening MPOs with rules for unified planning products that defy logic, overwhelm staff at State DOTs, State air agencies, local jurisdictions, and elected officials, and create an unpredictable planning boundary that could change every ten years—all of which could severely undermine the long-range planning process.

If you have any questions or would like to discuss this matter further, please contact me at lerickson@mwkog.org or (202) 962-3319. Please also feel free to reach out to TPB Staff Director Kanti Srikanth at ksrikanth@mwkog.org or (202) 962-3257.

Sincerely,

A handwritten signature in blue ink that reads "Lyn Erickson". The signature is written in a cursive, flowing style.

Lyn Erickson, AICP
TPB Plan Development and Coordination Director

ATTACHMENT 1. National Capital Region - MPO and Urbanized Area Boundaries, 2010 Census (smoothed)

