



September 29, 2014

Docket Management Facility  
US Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Subject: FHWA Docket Number FHWA-2013-0037  
Proposed Rules for Statewide and Nonmetropolitan Transportation Planning;  
Metropolitan Transportation Planning, 23 CFR 450

The Montana Department of Transportation (MDT) respectfully submits the following comments in response to the Federal Highway Administration's (FHWA) proposed statewide and nonmetropolitan transportation planning; metropolitan transportation planning rules to address provisions in the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21).

As a member of the American Association of State Highway and Transportation Officials (AASHTO), we have invested extensive staff time into the development of the AASHTO comments filed on the docket and provide our broad support for these comments. MDT also fully endorses the comments filed jointly by the state transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming. With that said, we want to ensure preservation of a state administered, federally assisted program, preservation of state flexibility in delivering its programs, and limiting burden on states as FHWA works thru the MAP-21 rulemaking process.

The following comments are provided with these principles in mind.

**1. The Rule Must Retain State Authority in Target Setting and Reporting**

MAP-21 was clear in stating that each State shall set performance targets for the performance measures developed by FHWA. Congress reserved this authority for the states, and implementation of the planning and performance management provisions shouldn't be used by FHWA as an opportunity to add requirements not mandated by statute. Needs, resources, and conditions vary widely between states; it is essential that States have the flexibility to set targets.

In general, provisions that restrict the states' authority to set targets and reporting, including the reference for states to establish targets in accordance with a "target setting framework" should be deleted from the final rule.

**2. Statewide Transportation Planning Process and Long-range Statewide Transportation Plan.**

MAP-21 maintains the flexibility for States to determine the content in their long-range transportation plan, including whether to create a "policy" or "project" based plan. However, the rule infringes on this flexibility by directing the states to reference other transportation plans, coordinate targets with federal land management agencies, and to apply asset management principles consistent with the NHS Asset Management Plan.

The direction for referencing these other plans, coordinating target setting with federal land management agencies, inclusion of the NHS Asset Management Plan principles, and any other rule provisions for the long-range statewide plan that go beyond the requirements in Title 23 USC Section 135 should be deleted from the final rule.

**3. Statewide Transportation Improvement Program (STIP) and Performance Management**

The final rule should clearly describe that States have the discretion of using a program level discussion for meeting the requirement to identify the anticipated impact the STIP will have on achieving performance targets. Additionally, the requirement that the STIP be “informed” by the financial plan and investment strategies identified in the NHS asset management plan is generally undefined and should be deleted from the final rule.

**4. Metropolitan Planning Agreements**

Updating metropolitan planning agreements involves extensive legal and executive review. The list of additional specific provisions included in this proposed rule goes beyond what is necessary, and describes activities more easily addressed and updated in less formal documents. These agreements are reviewed and updated when changes are made to regulations and when dictated by other circumstances, the direction to include the additional provisions in the agreement and for periodic reviews should be removed from the final rule.

**5. NEPA and Planning**

The process established in MAP-21 to expedite environmental reviews by allowing the NEPA process to adopt analyses and decisions made by States and MPOs during the transportation planning process is a much more complex and cumbersome process than exists in 23 CFR Part 450. MDT supports retention of the current Appendix A to Part 450.

**6. Definition of “Consideration”**

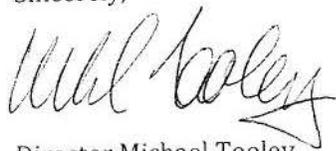
Adding “consequences” expands the long standing understanding of the intent of using the word “consideration”. It’s reasonable to expect that Congress did not intend to further burden states with additional workload when using “consideration”; FHWA should not be expanding the burden through rule making processes. “Consequences” should be removed from the definition.

**7. Support State Discretion - RTPO’S and Programmatic Mitigation Plans**

We support the language in the proposed rule recognizing that it is the State discretion to establish RTPOs and whether to undertake programmatic mitigation plans.

MDT appreciates the opportunity to comment on this rulemaking process. We encourage FHWA to be considerate of limiting state burden and costs, preserving state flexibility and authority for administering its programs as provided in Title 23 USC while allowing states to focus our efforts on those most critical to Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning as it continues this rulemaking process.

Sincerely,



Director Michael Tooley

Montana Department of Transportation