

AMENDMENTS TO FEDERAL TRANSPORTATION PLANNING LAW  
REQUIRE REGIONAL TRANSPORTATION PLANS TO “MINIMIZE FUEL  
CONSUMPTION”  
AND “AIR POLLUTION”

The federal requirements governing the development of regional and State transportation plans have evolved significantly since the enactment of SAFETEA-LU in 2005.

SAFETEA-LU added to federal transportation law new language directing Metropolitan Planning Organizations (MPOs) to adopt regional plans that “accomplish the objectives” of the planning process. Section 134 of the Federal Aid Highway Act has included language since ISTEA establishing four general objectives for the planning process, and requiring consideration of projects and strategies that will achieve more detailed planning factors. These objectives were retained in section 134, as amended by SAFETEA-LU:

- (a) Policy.--It is in the national interest to--*
- (1) encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and*
  - (2) encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 135(d).*

Until the 2005 amendments, however, this language had been understood to be largely hortatory without any mandatory action-forcing language. In the amended Title 23, section 134(c) (2005), the Act for the first time required that MPOs adopt transportation plans that “accomplish” these “objectives.”

- 1) Development of long-range plans and TIPs.-- To accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs for metropolitan planning areas of the State.*

Similar language in amended section 135(a)(1) required that the Statewide Transportation plan also “accomplish the objectives stated in section 134(a).”

In 2012, this general statutory framework was retained in MAP-21, but augmented with a new requirement to implement the planning objectives through the use of performance criteria.

- (a) POLICY.—It is in the national interest—*
- (1) to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and*

(2) to encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 135(d).

Again, Congress reenacted the requirement that transportation plans “accomplish” the planning objectives, but added new language requiring that transportation plans and transportation improvement programs be developed “through a performance-driven, outcome based approach to planning”:

(c) GENERAL REQUIREMENTS.—

(1) DEVELOPMENT OF LONG-RANGE PLANS AND TIPS.—To accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs through a performance-driven, outcome based approach to planning for metropolitan areas of the State.

This language on its face establishes a duty to accomplish all the objectives in subsection 134(a)(1) and (2). The general planning objectives in (a)(1) establish four broad criteria to be achieved by all transportation plans: 1) improve mobility, 2) foster economic growth and development, 3) minimize fuel consumption, and 4) minimize air pollution. These objectives allow discretion for determining how they are to be achieved, but do not allow the planning agencies discretion to adopt plans that fail to achieve progress with respect to one or more of the four objectives.

This new language links objectives in 134(a)(1), including the climate related objectives of “minimizing transportation-related fuel consumption and air pollution,” to both MPO plans and TIPs by requiring that MPOs “accomplish” these objectives by adopting performance criteria in the plan.

For State plans MAP-21 retains the requirement that the statewide plan “accomplish” the objectives in section 134(a)(1). See section 135(a)(1). In section 135(d), Congress also directs the states to use a performance-based approach:

(2) Performance-based approach. –

(A) In general. - The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in section 150(b) of this title and in section 5301(c) of title 49.

This general requirement governing the planning process is implemented through the requirements in 135(f) governing the contents of the Statewide transportation plan:

(7) Performance-based approach. - The statewide transportation plan should include –

(A) a description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with subsection (d)(2); and

(B) a system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in subsection (d)(2), including progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports; ....

The statutory objectives of “minimizing transportation-related fuel consumption and air pollution” were first enacted by ISTEA in 1991, but were supplemented in 2012 by the addition of Section 150(b) which declares it a national goal to “protect[] and enhance[]e the natural environment” –

(b) NATIONAL GOALS.—It is in the interest of the United States to focus the Federal-aid highway program on the following national goals:

(6) ENVIRONMENTAL SUSTAINABILITY.—To enhance the performance of the transportation system while protecting and enhancing the natural environment.

This goal to “protect[ ] and enhance[e] the natural environment” encompasses the long-standing objectives of the planning process to minimize fuel consumption and air pollution, but is substantially broader. Together, the original statutory objectives of the planning process dating from 1991, along with the more recently enacted broader national goal of protecting and enhancing the natural environment, provide ample authority for U.S.DOT to include minimizing greenhouse gases (GHGs) as an objective of the planning process. In the context of the Clean Air Act, the Supreme Court decided that GHGs are within the statutory definition of “air pollutants,” and therefore subject to emission standards under the Act for the regulation of motor vehicles. *Massachusetts v. U.S.EPA* (2007). Nothing in the transportation law suggests that Congress intended a different, more limited use of the term when it declared that an objective of the transportation planning process is to “minimize air pollution.”

The statute gives the Secretary three tools for reviewing MPO plans and TIPs to ensure that the statutory objectives are accomplished by the long-range plan and TIP.

First, section 135(g)(7) and (8) require that before approving the investments a State has included in its State TIP, “A finding shall be made by the Secretary at least every 4 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 134.” The finding must be “current” at the time of STIP approval. At a minimum, this requires that the Secretary find that the State and each MPO with a project in the STIP must have adopted a plan that “minimizes fuel consumption and air pollution,” and contains some performance-based criteria for determining how that objective will be accomplished. Section 135(f)(7).

Second, Section 150(c)(1) requires that the Secretary “shall promulgate a rulemaking that establishes performance measures and standards.” However, section 150(c)(3) directs that the Secretary must “(C) limit performance measures only to those described in this subsection.” The measures described in the subsection are limited to specific criteria such as pavement quality on interstate highways and traffic congestion as a factor related to control of diesel emissions under CMAQ. This limitation does not apply to “performance standards.” Thus there is an apparent distinction between the general authority to conduct a rulemaking to adopt “performance

measures and standards” in (c)(1), and the limitation on the adoption of “performance measures” in (c)(3)(C). The limitation does not explicitly apply to performance standards. Thus it appears that the general grant of rulemaking authority in (c)(1) allows the Secretary to adopt “performance standards” for other statutory criteria that govern the planning process that are not enumerated in (c)(3)(C), such as minimizing fuel consumption and air pollution, and the national goal of protecting and enhancing the natural environment. This rulemaking authority provides the Secretary with the opportunity to define what an MPO or state must show to demonstrate that its plan accomplishes the statutory objectives and the national goal. This includes establishing the criteria for approving the performance targets for GHG reductions adopted in a plan.

The third tool available to the Secretary for implementing performance-based planning is the requirement that States show how their investment decisions will achieve the performance targets in an MPO or State plan. Section 135(g)(4) requires that for a State program of projects to be approved for federal funding, the State must show in the TIP how investments included in the statewide TIP achieve the performance targets:

(4) Performance target achievement. - A statewide transportation improvement program shall include, to the maximum extent practicable, a discussion of the anticipated effect of the statewide transportation improvement program toward achieving the performance targets established in the statewide transportation plan, linking investment priorities to those performance targets.

The Secretary may not lawfully approve the State TIP and other products of the planning process if the MPO RTPs and TIPs incorporated into the State Transportation Plan and TIP do not satisfy these requirements.