

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Federal Transit Administration**

[FHWA/FTA Docket No. 94-27]

Interim Policy and Questions and Answers on Public Involvement in Transportation Decisionmaking

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This notice announces the joint FHWA and FTA Interim Policy on Public Involvement and Questions and Answers on Public Involvement in Transportation Decisionmaking. The Interim Policy outlines the principles the agencies intend to use in carrying out their responsibilities for assuring that State departments of transportation, metropolitan planning organizations, and transportation providers involve the public in transportation decisionmaking from the earliest stages of metropolitan and statewide transportation planning through federally-aided transportation project development and construction. The Questions and Answers on Public Involvement in Transportation Decisionmaking are agency guidance on public involvement.

DATES: Comments must be received on or before April 30, 1995.

ADDRESSES: Written comments should be sent to the Federal Highway Administration, Office of the Chief Counsel, Docket No. 94-27, Room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mrs. Florence W. Mills, Environmental Programs Branch (HEP-32), (202) 366-2062 or Mr. Robert J. Black, FHWA Office of the Chief Counsel (HCC-31), (202) 366-1359. For the FTA: Mrs. Jennifer L. Weeks, Resource Management Division (TGM-21), (202) 366-6510 or Mr. Scott A. Biehl, FTA Office of the Chief Counsel (TCC-40), (202) 366-4063. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Recent statutes and regulations have increased

both the FHWA's and the FTA's longstanding responsibility for public involvement in transportation decisionmaking. The metropolitan and statewide planning provisions in sections 1024, 1025, and 3012 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, 1955, 1962, and 2098, amended Title 23, U.S.C., and Title 49, U.S.C., chapter 53 (formerly the Federal Transit Act) by revising 23 U.S.C. 134 and the FTA's planning authorities. Title 23, U.S.C., and Title 49, U.S.C., govern the metropolitan transportation planning process. The ISTEA also established a new provision for statewide transportation planning at 23 U.S.C. 135. These statutes require that interested parties be afforded an opportunity for public comment on transportation plans and programs during the metropolitan and statewide transportation planning processes. The FHWA and the FTA revised their previous planning regulations to implement these changes and published the final regulations on October 28, 1993 (58 FR 58040). These planning regulations are found at 23 CFR Part 450.

There are three statutes and associated regulations governing public involvement during the environmental studies stage of highway and transit project development: (1) the National Environmental Policy Act (NEPA), Pub. L. 91-190, 83 Stat. 852, as amended (codified at 42 U.S.C. 4321 *et seq.*), implemented in regulations found at 40 CFR Parts 1500-1508; (2) 23 U.S.C 128; and (3) 23 U.S.C. 109(h). The FHWA and the FTA are in the early stages of revising their joint regulation on environmental impact and related procedures found in 23 CFR Part 771.

As part of an ongoing commitment to public involvement throughout the transportation planning and project development processes, the FHWA and the FTA are soliciting public input on this Interim Policy and guidance. The Interim Policy frames Federal policies on public involvement in actions of the FHWA and the FTA. The Questions and Answers provide additional information interpreting regulations with respect to public involvement. The FHWA and the FTA are particularly interested in comments on how their policy and guidance can effectively support State departments of transportation, metropolitan planning organizations, and transportation providers in developing and implementing locally effective public involvement processes and techniques which encompass all members of the public, including those who are currently under served by our

transportation system. The FHWA and the FTA also seek information on additional public involvement issues where guidance or technical information is needed. The two agencies are issuing this Interim Policy and guidance to start discussion on these topics. The Interim Policy and guidance are effective as of December 5, 1994. The final policy will reflect the comments received on the Interim Policy. Based on public and agency input, the two agencies will consider additional guidance in public involvement.

The text of the Interim Policy and the Questions and Answers follows.

FHWA/FTA Interim Policy on Public Involvement

"I know of no safe depository of the ultimate powers of society but the people themselves."—Thomas Jefferson
Secretary of Transportation Federico Peña's Strategic Plan establishes the objective of putting people first in all of the Department's endeavors. Consistent with this objective, it is the policy of the FHWA and the FTA to aggressively support proactive public involvement at all stages of planning and project development. State departments of transportation, metropolitan planning organizations, and transportation providers are required to develop, with the public, effective involvement processes which are custom-tailored to local conditions. The performance standards for these proactive public involvement processes include early and continuous involvement; reasonable public availability of technical and other information; collaborative input on alternatives, evaluation criteria, and mitigation needs; open public meetings where matters related to Federal-aid highway and transit programs are being considered; and open access to the decisionmaking process prior to closure.

To achieve these objectives, the FHWA and FTA commit to:

1. Promoting an active role for the public in the development of transportation plans, programs and projects from the early stages of the planning process through detailed project development.
2. Promoting the shared obligation of the public and decisionmakers to define goals and objectives for the State and/or metropolitan transportation system, to identify transportation and related problems, to develop alternatives to address the problems, and to evaluate the alternatives on the basis of collaboratively identified criteria.
3. Ensuring that the public is actively involved in the development of public involvement procedures in ways that go

beyond commenting on draft procedures.

4. Strongly encouraging the State departments of transportation, metropolitan planning organizations, and transportation providers to aggressively seek to identify and involve the affected and interested public, including those traditionally underserved by existing transportation systems and facilities.

5. Strongly encouraging planning and implementing agencies to use combinations of different public involvement techniques designed to meet the diverse needs of the broad public.

6. Sponsoring outreach, training and technical assistance, and providing information for Federal, State, regional, and local transportation agencies on effective public involvement procedures.

7. Ensuring that statewide and metropolitan planning work programs provide for effective public involvement.

8. Carefully evaluating public involvement processes and procedures to assess their success at meeting the performance requirements specified in the appropriate regulations during our joint certification reviews, metropolitan planning and conformity findings, State Transportation Improvement Program (STIP) approvals and project oversight. Gordon J. Linton, Administrator, Federal Transit Administration
Rodney E. Slater, Administrator, Federal Highway Administration

FHWA/FTA Questions and Answers on Public Involvement in Transportation Decisionmaking

This guidance responds to questions raised during the eight regional FHWA/FTA outreach meetings on the planning regulations (23 CFR 450) as well as at other meetings where the planning regulations have been discussed.

1. Why are changes in public involvement needed under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and related policies and regulations?

Public involvement in transportation investment decisionmaking is central to accomplishing the vision of the ISTEA. The legislation recognizes that transportation investment decisions have far-reaching effects and thus it requires that metropolitan and statewide transportation decisions consider a wide array of factors including land use impacts and "the overall social, economic, energy, and environmental effects of transportation decisions" (23 U.S.C. 134(f) and 135(c)). Many of these factors reflect community values and are

not easily quantifiable. Public input is essential in adequately considering them.

The legislation also recognizes the diversity of views on transportation problems and investment options. The ISTEA states that, prior to adopting plans or programs, the MPO or State DOT "shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, other affected employee representatives, and other interested parties with a reasonable opportunity to comment" (23 U.S.C. 134 and 135). Federal DOT policy and FHWA and FTA regulations build on these principles by requiring MPOs and State DOTs to establish their own continuing public involvement processes which actively seek involvement throughout transportation decisionmaking, from the earliest planning stages, including the identification of the purpose and need, through the development of a range of potential solutions, up to and including the decision to implement specific solutions. These regulations provide a basic set of performance standards indicating what the FHWA and FTA expect public involvement for plans, programs, major transportation investments, and transportation projects to achieve. In sum, the ISTEA and its implementing regulations envision an open decisionmaking process eliciting the input and active involvement of all affected individuals, groups, and communities, and addressing the full range of effects that the transportation investments may have on our communities and our lives.

2. What are some of the key considerations in planning for effective public involvement?

An effective public involvement process provides for an open exchange of information and ideas between the public and transportation decisionmakers. The overall objective of an area's public involvement process is that it be proactive, provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement (23 CFR 450.212(a) and 450.316(b)(1)). It also provides mechanisms for the agency or agencies to solicit public comments and ideas, identify circumstances and impacts which may not have been known or anticipated by public agencies, and, by doing so, to build support among the public who are stakeholders in transportation investments which impact their communities.

Six useful key elements in planning for effective public involvement are: (1)

Clearly-defined purpose and objectives for initiating a public dialogue on transportation plans, programs, and projects, (2) Identification of specifically who the affected public and other stakeholder groups are with respect to the plan(s), program(s), and project(s) under development, (3) Identification of techniques for engaging the public in the process, (4) Notification procedures which effectively target affected groups, (5) Education and assistance techniques which result in an accurate and full public understanding of the transportation problem, potential solutions, and obstacles and opportunities within various solutions to the problem, and, (6) Follow through by public agencies demonstrating that decisionmakers seriously considered public input.

3. What are the indicators of an effective public involvement process?

A good indicator of an effective public involvement process is a well informed public which feels it has opportunities to contribute input into transportation decisionmaking processes through a broad array of involvement opportunities at all stages of decisionmaking. In contrast, an ineffective process is one that relies on one or two public meetings or hearings to obtain input immediately prior to decisionmaking on developed draft plans and programs. Public meetings that are well attended, frequent news coverage on transportation issues, public forums where a broad representation of diverse interests is in attendance, and plans, TIPs, MIS alternatives, and project designs which reflect an understanding and consideration of public input are all indicators that the public involvement process is effective.

4. When should an agency update its public involvement process?

The planning regulations do not specify a schedule for updating public involvement processes. Rather, an existing process should be updated whenever conditions indicate that it is ineffective. The enhanced focus on public involvement in the ISTEA and the need for more proactive outreach than has been the case in the past, however, necessitate an evolutionary approach. The public involvement process should be an integral part of an agency's activities and its adequacy should be explicitly considered each time an agency makes major program changes, initiates new studies to identify solutions to transportation problems, and updates its plans.

5. How does the State DOT and/or MPO involve the public in developing or revising the public involvement process?

Involving the public in the development or revision of public involvement processes helps MPOs and State DOTs identify involvement approaches that work. Techniques for doing this include: distributing *easily understood materials* explaining why this involvement is important, holding *focus groups* on the transportation decisionmaking process, *brainstorming* with the public including members of the public who have not traditionally been involved in transportation decisions, inviting the community to participate in *presentations* on the short-term and long-term transportation challenges the region or State faces, and making presentations to civic organizations, senior citizens' groups, minority groups, and other public agencies who are stakeholders in transportation decisions (i.e., health and human services departments or economic development departments).

6. *Is the State DOT or MPO required to have a 45-day public comment period on revisions to its currently adopted public involvement process?*

Yes. The 45-day public comment period also applies to revisions to an adopted public involvement process. Processes adopted before November 23, 1993, must be reviewed and appropriately updated so they are consistent with the joint planning regulations. If the review finds that the previously adopted processes are consistent with the regulations but have not been subjected to the 45-day comment period, the State DOT or MPO must provide a 45-day comment period.

7. *How do FHWA and FTA define the "public"?*

The ISTEA specifically identifies various segments of the public and the transportation industry that must be given the opportunity to participate, including "*citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation and other interested parties*" (e.g., 23 U.S.C. 134(h)). The FHWA and FTA define the public broadly as including all individuals or groups who are potentially affected by transportation decisions. This includes anyone who resides in, has interest in, or does business in a given area which may be affected by transportation decisions. The public includes both individuals and organized groups. In addition, it is important to *provide similar opportunities for the participation of all private and public providers of transportation services*, including, but not limited to, the trucking and rail freight industries, rail passenger

industry, taxi cab operators, and all conventional and unconventional transit service operators. Finally, those *persons traditionally underserved by existing transportation systems* such as low income or minority households and the elderly should be explicitly encouraged to participate in the public involvement process.

8. *How should an agency identify and address the transportation needs of persons and groups who have been traditionally underserved by existing transportation systems?*

This presents a formidable challenge to transportation agencies because these individuals and groups often do not have the resources to travel to meetings, an ability to participate in meetings scheduled during their work hours, or an understanding of how or why to get involved in the transportation decisionmaking process.

The identification of these groups and individuals also presents a challenge. Transportation agencies should begin by identifying *organized groups* including persons with disabilities, minority community groups, ethnic groups and organizations, and Native Americans. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" directs Federal agencies to conduct existing programs so as to identify and address disproportionately high and adverse environmental effects on minority, low income, and Native American communities. Techniques and strategies to identify the transportation underserved include: *notices in non-English language newspapers; public service announcements on radio stations which tailor their programming to non-English speaking Americans; and fliers and notices on public involvement opportunities distributed to senior citizens' centers, minority neighborhoods, urban housing projects.*

Addressing the needs of these groups will require gaining a thorough understanding both of why they have been traditionally underserved and of what their current and future transportation needs are. Continuous interaction between these groups and transportation professionals will be critical to better serving their needs in the future.

9. *Who are the public and private providers and users of unconventional transportation services and how should they be included in the public involvement process?*

Unconventional mass transportation services include school buses; transportation for the elderly, persons with disabilities, and children in Head

Start; and other non-fixed route or unscheduled transportation. Both users and providers are members of the general public. Users of these unconventional transportation services tend to be underserved by the mainstream transportation system, and should be treated as such by the public involvement process. Traditionally, providers of unconventional transportation are social service agencies providing specialized, dedicated transit services (e.g., vans or buses) to fill gaps in the mobility needs of participants in certain public and private programs. These providers should be approached similarly to other public agencies. Their input should be sought out on effective ways to address transportation problems because they have experience in serving many of the traditionally underserved which traditional transportation agencies may not have. Other public and private transportation providers, which may or may not be considered to be "conventional," similarly need to be actively involved in MPO and State transportation decisionmaking. These may include trucking and rail freight carriers, representatives of transportation employees, and representatives of ports and airports. The creation of *special committees or advisory groups* may provide an organized structure to receive the input of transportation industry groups on an ongoing basis.

10. *How do the public involvement requirements for project development and the NEPA process apply to public involvement for major transportation investment studies (MIS)?*

An MPO's overall public involvement process should describe the approach to be used to involve the public in any MIS conducted in that metropolitan planning area, regardless of whether the lead agency for the MIS is the MPO itself, the State DOT, or the transit operator. *At the start of the interagency consultation*, the cooperating agencies need to *tailor a specific public involvement strategy for the MIS*. The strategy should engage the public in the consideration of the purpose and need for a major investment as well as in the development and evaluation of all alternatives. If the MIS incorporates development of a NEPA document, the public involvement strategy must comply with the public involvement provisions of 23 CFR Part 771 or 40 CFR Part 622.

11. *With respect to Federal Lands Agency projects (especially Indian Reservation Roads projects), how can the State DOT and MPO ensure that public involvement has taken place*

within the planning process in the STIP/TIP?

First, it is necessary for the State and MPO to provide for active involvement by the Federal Lands Agencies and Indian tribal governments in statewide or metropolitan transportation planning and programming. Such involvement allows all participants to coordinate plans and programs of projects under consideration by the various implementing agencies. However, when planning for the involvement of Indian tribal governments, it is important for agency staff to recognize and be sensitive to tribal customs and to the nationally recognized sovereignty of tribal governments. As a result, *tribal governments should be actively sought for participation in the development of metropolitan and State plans and programs as independent government bodies* rather than as specific minority groups.

Second, each of the Federal Lands Agencies has its own procedures for transportation planning that comply with guidance from the FHWA's Federal Lands Highway Office which administers the Federal Lands Highway Program. Public involvement may not always occur during the development of transportation improvement programs for each Federal Lands Agency or Indian tribe. Therefore, while metropolitan area public involvement on the metropolitan TIP can serve as a surrogate for public involvement on the STIP for that area, no such assumption can be made for a Federal Lands Agency or tribal TIP. Because the Federal Lands Agency or tribal public involvement process may not satisfy the State DOT or MPO public involvement process for transportation planning, the State DOT and MPO must determine whether other public involvement measures are needed.

Third, the State and MPO (with FHWA and FTA field offices, as appropriate) should *work proactively with the Federal Lands Agencies and Indian Tribal Governments* to gain an understanding of procedures regarding development of each agency's TIP. These procedures may vary considerably from agency to agency. Areas to examine include the schedule for TIP development; the format of the TIP; and plans for meeting with various groups, members of the public, and Tribal Governments during TIP development.

12. Does reasonable public access to technical and policy information include access to technical assumptions underlying the planning and emissions models used in carrying out transportation decisionmaking and air quality conformity determinations?

Yes. Under the ISTEA and related regulations, *the public must have reasonable access to technical assumptions and specifications used in planning and emissions models*. This includes access to input assumptions such as population projections, land use projections, fares, tolls, levels of service, the structure and specifications of travel demand and other evaluation tools. To the maximum extent possible, all technical information should be made available in formats which are easily accessible and understandable by the general public.

Special requests for raw data, data in specific formats, or requests for other information must be considered in terms of their reasonableness with respect to preparation time and costs. *Public involvement procedures should include parameters for determining reasonableness*. In order to facilitate public involvement yet conserve limited staff resources, State DOTs and MPOs should consider making information available to interested parties on a regular basis through communication tools such as: reports, electronic bulletin boards, computer disks, data compilations, briefings, question and answer sessions, and telephone hotlines. Reports or other written documents should be easily accessible to the public in public libraries, educational institutions, government offices, or other places and at times convenient to the public.

When the public agency receives a request to perform an analysis that it had not considered, the State DOT or MPO needs to make a determination as to the reasonableness of the request. If the State DOT or MPO decides to perform the analysis, it should make all relevant information available to all interested parties. If it decides not to include the analysis as part of its transportation decisionmaking, it should respond to the request by indicating why it decided not to do so. The early involvement of interested parties in the analytical process can facilitate early agreement on the scope and range of analyses to be conducted by the public agency.

When agency staff conducts analyses that are not required for the transportation planning process and on which non-Federal funds are used, the agency is not obligated to make such information available. State DOTs and MPOs are encouraged to make such information available, given the premise that transportation decisionmaking is an open process. Similarly, State DOTs and MPOs should review State and local regulations which may mandate that

such information be made available to the public.

13. How can State DOTs and MPOs demonstrate "explicit consideration and response to public input," as required by 23 CFR 450.212 and 23 CFR 450.316?

State DOTs and MPOs should incorporate input from the public into decisionmaking, when warranted, with the understanding that not all parties will get exactly what they want. However, *the public must receive assurance that its input is valued and considered* in decisionmaking so that it feels that the time and energy expended in getting involved is meaningful and worthwhile. To do this, State DOTs and MPOs should both *maintain records* of public involvement activities, input, comments, and concerns as well as *document requests* for information and responses to input received during the public involvement process. Agencies can keep records and provide feedback in a variety of ways. Techniques for providing feedback include: regularly published newsletters, special inserts into general circulation newspapers, radio programs, telephone hotlines with project updates, public access television programs, and reports or publications describing how projects or programs are progressing.

Under the Environmental Protection Agency's transportation conformity regulations (40 CFR 51), when an MPO receives significant comments on a metropolitan transportation plan or TIP from the public or through the interagency consultation process, it *must provide a summary, analysis, and report on how the comments were responded to as part of the final metropolitan transportation plan and TIP*.

14. What types of revisions to plans, TIPs, and STIPs do not require additional opportunity for public comment and/or publication under 23 CFR 450.316(b)(viii) and 23 CFR 450.212(d)?

Minor changes in plans, TIPs, and STIPs generally can be made after the MPO or State DOT has completed its public comment process without further opportunities for public involvement. Examples may include: minor changes in project scope or costs, and moving minor or non-controversial projects among the first 3 years of the TIP/STIP. However, MPOs and State DOTs should identify what are to be considered as minor changes, with the public, during the development of the public involvement process. What may appear to be minor to the public agency may not be considered minor to the public. This gives the public the chance to provide input on these definitions and

for a common understanding on the public involvement procedures to be used to deal with specific types of changes to TIPs and STIPs.

(23 U.S.C. 109(h), 128, and 315; 49 CFR 1.48; sections 1024, 1025, and 3012, Pub. L. 102-240, 105 Stat. 1914)

Issued on: January 19, 1995.
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Gordon J. Linton,
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[FR Doc. 95-2063 Filed 1-26-95; 8:45 am]
BILLING CODE 4910-22-P