



August 25, 2016

The Honorable Anthony Foxx
Secretary
United States Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590
Attn: Docket Management Facility

RE: Federal Register/Vol. 81, No. 123/Monday, June 27, 2016/Proposed Rules
Docket No. FHWA–2016–0016; FHWA RIN 2125–AF68; FTA RIN 2132–AB28;
Metropolitan Planning Organization Coordination and Planning Area Reform

Dear Secretary Foxx:

The Association of Metropolitan Planning Organizations (AMPO), National Association of Development Organizations (NADO), and National Association of Regional Councils (NARC) are pleased to offer the following analyses, comments, and responses to questions regarding the proposed *“revisions to the transportation planning regulations to promote more effective regional planning by States and metropolitan planning organizations (MPO)”* from the United States Department of Transportation (USDOT), the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA). For the reasons detailed within these comments, we respectfully request that USDOT withdraw the current NPRM.

As noted in the July 5, 2016 joint request from AMPO and the American Association of State Highway Transportations Officials (AASHTO) for extension of the comment period, the NPRM would make far-reaching changes to the planning processes, practices, and common understandings that have been in effect since MPOs were first introduced in the Federal Highway Act of 1962 and in federal regulation since 1993. The complexity of this NPRM was further noted in a joint request on July 8, 2016 from AMPO, NADO, and NARC for extension of the comment period. With the restricted timeline for comment, below we have attempted to summarize the concerns expressed by our member organizations. The problems outlined by our members are explained in some detail below, but will also be spelled out in greater detail in the comments submitted by MPOs from across the nation.

We feel there is a shared interest between USDOT and our members on this important issue. Improving regional planning is a goal our organizations and the organizations we represent are constantly striving to achieve. We welcome the opportunity to work with USDOT to cooperatively determine how best to improve coordination in transportation planning.

Overview

We appreciate the Secretary's stated interest in improving transportation planning. We agree that coordination between MPOs, states, providers of public transportation, and other necessary or interested parties should be carried out to the maximum extent practicable, and we welcome the opportunity to work with USDOT to cooperatively determine how best to improve coordination in transportation planning. We would like to better understand, through research or other means, USDOT's perspective on how pervasive this perceived lack of coordination is across the MPO community and to coordinate with USDOT to develop effective, efficient, and targeted solutions where required.

Our members have concluded this NPRM is highly problematic because:

1. The proposed changes to the planning process will be highly disruptive to existing and ongoing regulatory obligations, and create unknown and potentially problematic conflict with new performance management regulations currently being promulgated by the agencies.
2. The new requirements imposed by the NPRM will force MPOs to spend significant amounts of money, negatively impacting budgets and disrupting tasks to which funding was already designated. That 80 percent of the cost of meeting the NPRMs requirements can be reimbursed from federal funds is inconsequential because no new federal money will be made available. Fulfilling the NPRM's requirements would mean other things don't get done.
3. The additional costs imposed by the NPRM would far outweigh the benefits.

The NPRM would change the regulatory definition of Metropolitan Planning Area (MPA) from the area defined by the MPO and its Governor to one that requires it to include, at a minimum, the entire urbanized area and the contiguous area expected to become urbanized in the next twenty years. Under the NPRM, when multiple MPOs exist within these redrawn MPAs, the MPOs are mandated to either merge or produce unified planning documents – transportation plan, transportation improvement program (TIP), and performance targets – for the entire MPA. In consultation with our members, we have identified a host of challenges and problems with the approach proposed by USDOT.

During debate of both MAP-21 and the more recently passed FAST Act, AMPO, NADO, NARC, and other organizations submitted legislative recommendations to Congress regarding how to improve metropolitan, statewide, and nonmetropolitan transportation planning. MAP-21 established, for the first time, a performance-based planning process and made changes to the board structure of MPOs that serve transportation management areas. On May 27, 2016, USDOT released a planning final rule (docket # FHWA-2013-0037) integrating changes to the planning provisions contained in both MAP-21 and the FAST Act. Just one month later, USDOT released this current NPRM, proposing major new changes to the planning regulations that are not predicated upon any legislative language contained in the two most recent surface transportation authorization bills.

As an alternative to this NPRM, we suggest that USDOT coordinate with AMPO, NADO, NARC, our members, and other interested organizations to discuss methods to remedy the specific issues the Secretary, and FHWA/FTA have identified as hindering regional transportation planning. We recommend USDOT conduct in-person workshops and other outreach to learn how MPOs are addressing the concerns identified in the NPRM. To date, we are aware of no MPO that has failed to be certified, under previous or existing regulations, due to these concerns. Despite assertions to the contrary, the revisions that would result from this NPRM are significant and will have a major impact on the structure and operations of the nation's MPOs. Further, many of these proposed changes require statutory revisions to ensure the NPRM would not conflict with existing law.

Concerns the NPRM Raises for MPOs

The following are specific concerns this NPRM raises for the nation's MPOs. All of these are explored in the comments that follow.

- USDOT's proposal to require the creation of a single plan, a single TIP, and uniform performance targets is contrary to existing law.
- There is a lack of comprehensive research defining the breadth and depth of MPO coordination across the nation. Examples of collaboration of the type this NPRM seeks to establish are occurring across the country. Not only does effective collaboration occur under existing authority, there is significant concern that the NPRM could harm ongoing collaboration efforts.
- The NPRM's mandates are likely to shift significant resources away from MPOs' core planning functions, resulting in potential new financial burdens for MPOs and states, including but not limited to, staffing and administrative costs, technical support, and additional public outreach.
 - Calculating costs is challenging because there have been relatively few mergers of MPOs. However, one example from Connecticut resulted in \$1.7 million in direct costs, required 4,000 staff hours, and took several years to complete.

- The NPRM risks community identity and cohesion and threatens to overturn longstanding and locally developed political structures.
- The NPRM would likely diminish the local voice in the regional planning process, negatively impact local control of transportation resources, make public engagement more challenging, and cause significant problems for multistate MPOs. The NPRM also conflicts with state law in a number of places.
- The use of Census-designated urbanized areas ignores site-specific planning criteria and demographic data that are the foundation of sound regional and long-term planning.
- MPOs are concerned about the lack of specifics in the NPRM regarding the distribution of future planning funds and the effect on suballocation of Surface Transportation Block Grant Program (STBGP) and other funding.
- This NPRM fails to state how FTA 5307 funds would be accommodated and the process if two or more transit operators end up in the same MPO as a result of a merger.
- The NPRM creates potentially significant conflicts with other legislative requirements, in particular the Clean Air Act. The NRPM does little to anticipate these problems or discuss how this proposal will interplay with requirements of the Act.
 - The regional conformity process is likely to be significantly impacted by the NPRM's mandates. At a minimum, the NPRM would cause enormous coordination issues that will affect scheduling of planning products and conformity determinations, including resulting project and funding delays; create conflicts between transportation demand modeling processes, resulting in a more complicated process, delays, and higher costs; and, due to the need to produce a single conformity determination for each MPA, including a single plan and a single TIP, this NPRM would vastly complicate the conformity process and the mandated interagency consultation process required under the conformity rule.
- The NPRM will complicate the transition to performance-based planning
 - Releasing this NPRM separately from the Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning Final Rule issued on May 27, 2016 will complicate and delay implementation of the planning and performance-based regulations in affected metropolitan regions. The NPRM needs to be reconciled with directives in recent performance-based planning regulations that each MPO shall establish performance targets to address performance measures, reaffirming that individual MPOs establish targets independently of states and other MPOs.

USDOT’s Proposal to Mandate “Unified Planning Products” Is Contrary to 23 U.S.C. § 134¹

USDOT proposes mandating that MPOs operating within a single MPA must jointly produce a single plan, a single TIP, and uniform performance targets. However, 23 U.S.C. § 134 as a whole does not contemplate such unified planning documents; in fact, it contradicts the notion in multiple subsections. Therefore, the proposed rule is unlawful as written and must be withdrawn or substantially modified.

It is a fundamental principle of administrative law that an agency may not promulgate rules that are contrary to the statute from which they derive. See 5 U.S.C. § 706(2)(A); Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 842-44 (1984). When interpreting a statute, courts look to both the plain language and “[its] context . . . with a view to [its] place in the overall statutory scheme.” United States v. Wilson, 290 F.3d 347, 355 (D.C. Cir. 2002) (citations omitted) (quotation marks omitted). Here, the NPRM is contrary both generally to the practical framework of 23 U.S.C. § 134 and specifically to at least four of the section’s subsections.

The practical framework of 23 U.S.C. § 134 stems from the relationship between MPOs and the areas that they serve, MPAs. Each MPO produces a transportation plan, a TIP, and performance targets for the MPA to guide and implement the development of transportation for its constituents. See 23 U.S.C. §§ 134(b), 134(h)(2), 134(i), 134(j). When multiple MPOs exist in an MPA due to its size and complexity, see id. § 134(d)(7), the MPOs naturally must coordinate and consider the wider MPA when preparing their own planning documents. See id. §§ 134(f)(1), 134(g)(1). However, in the latter case, the NPRM relies on the basic requirement that MPOs prepare planning documents for their MPAs to extrapolate a complicated system that goes beyond the mere coordination contemplated in the statute. See id.

We disagree with the statutory justification used in the NPRM that proposes to create a strict mandate that such MPOs create a joint planning process that produces a single plan, a single TIP, and uniform performance targets for the entire MPA. As discussed below, such a joint planning process is not a simple endeavor; it costs a great deal of both time and money for two different MPOs, representing different constituencies, to agree upon every detail of a single plan, a single TIP, and uniform performance targets. If Congress had intended such a complicated, exhaustively integrated approach, it would have said so. See Whitman v. Am. Trucking Associations, 531 U.S. 457, 468 (2001) (“[Congress] does not . . . hide elephants in mouseholes.” (citations omitted)). That Congress did not even hint at such an ornate and comprehensive process demonstrates that it never contemplated it. See id. For this

¹ We acknowledge that 23 U.S.C. § 134 is duplicated at 49 U.S.C. § 5303. Throughout, we refer only to § 134 with the understanding that we also are referring to § 5303.

reason alone, the NPRM's attempt to create such a process based solely on the use of the MPA term is contrary to the statute's framework.

More specifically, at least four subsections of 23 U.S.C. § 134 demonstrate that the statute does not contemplate a mandate requiring multiple MPOs within an MPA to create a single set of planning documents. First and foremost, in the only subsection where § 134 contemplates the issue, Congress directs such MPOs to consult with one another in the coordination of their individual plans and TIPs. See 23 U.S.C. § 134(g) (“[E]ach metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the state in the coordination of plans and TIPs required by this section.”).² Significantly, Congress directs such MPOs to coordinate their respective plans and TIPs; it does not direct the MPOs to jointly produce a single plan and a single TIP.

Second and similarly, where multiple MPOs exist within an MPA due to division of the MPA by a state line, Congress only directs USDOT to “encourage” the Governors to “provide coordinated transportation planning for the entire metropolitan area.” 23 U.S.C. § 134(f)(1). While Congress does require the encouragement of coordination of planning between the multiple MPOs, it clearly does not require unified planning documents; nor does it authorize USDOT to mandate such unified planning documents.

Third, § 134(i) mandates that “each” MPO shall prepare a transportation plan. If Congress had intended to provide USDOT the discretion to require a single transportation plan per MPA, it would have allowed for that possibility in its language. It did not.

Fourth, Congress reaffirmed the requirement that each MPO must produce its own planning documents when it enacted § 134(h) in 2012, mandating that “each” MPO establish performance targets. Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 126 Stat 405, at § 1201 (July 6, 2012). Again, had Congress intended to provide USDOT the discretion to require a single transportation plan for an MPA, it would have allowed for that possibility in its language. That it did not do so in either subsection (h) or (i) is telling. See Diamond v. U.S. Agency for Int'l Dev., 108 F.3d 312, 316 (Fed. Cir. 1997) (“[C]ourts should assume that Congress was aware of the distinctions it was making and that it intended to make those distinctions.”); Miles v. Apex Marine Corp., 498 U.S. 19, 32 (1990) (“We assume that Congress is aware of existing law when it passes legislation.”)

² This subsection, when first enacted, was notably entitled solely “Coordination of MPO’s.” Intermodal Surface Transportation Efficiency Act Of 1991, P.L. 102–240, 105 Stat 1914, at § 1024(e) (Dec. 18, 1991).

Beyond the plain language of § 134, both USDOT's longstanding interpretation of the section and its unsuccessful efforts to induce Congress to enact sweeping revisions to the section confirm that USDOT's proposal to require unified planning documents is contrary to the existing law. The current statutory provisions under 23 U.S.C. § 134 have long been interpreted to mean that each MPO prepares a transportation plan and develops a TIP. Contrary to USDOT's assertion that it seeks to "*reinstate*" past regulations that once required a unified planning process, USDOT has always interpreted the statute to require MPOs within a single MPA to each produce their plans and TIPs while coordinating the content within. Indeed, the very regulation that the NPRM cites in support of its suggestion that unified planning documents were once required, 23 C.F.R. § 450.312(e) (1994), suggests the exact opposite. It reads:

The MPOs shall consult with each other and the state(s) to assure the preparation of integrated plans and transportation improvement programs for the entire metropolitan planning area. An individual MPO plan and program may be developed separately. However, each plan and program must be consistent with the plans and programs of other MPOs in the metropolitan planning area. For the overall metropolitan planning area, the individual MPO planning process shall reflect coordinated data collection, analysis and development.

Emphasis added.

The regulation's use of the plural "plans" and "programs" and its discussion of the "individual MPO planning process" underscore USDOT's longstanding expectation that each MPO would produce its own plan and TIP in coordination with other MPOs within the MPA; there is no language suggesting that MPOs were expected to jointly produce a single plan and a single TIP. This reading of 23 U.S.C. § 134 persisted in subsequent revisions to the regulations derived from 23 U.S.C. § 134, and still stands today. See 23 C.F.R. § 450.310(e) (2016).

Finally, besides USDOT's own longstanding interpretation of § 134, its recent attempt to persuade Congress to revise the section to require more unified planning within MPAs reveals USDOT's recognition that the statute, as written, does not allow USDOT to mandate unified planning. In 2015, as Congress was debating the reauthorization of MAP-21 (resulting in the FAST Act), USDOT proposed the GROW America Act as part of the President's fiscal year 2016 Budget Request. Section 1202 of the GROW America Act proposed the addition of several new provisions to 23 U.S.C. § 134, including:

- 1) A prohibition on the designation of new MPOs within a metropolitan statistical area (MSA) if another MPO already exists within the boundaries of the MSA;
- 2) A review every ten years in an MSA with multiple MPOs to determine and justify the continued necessity of the designation of multiple MPOs in the MSA;

- 3) A requirement that in instances where multiple MPOs exist within a single MSA, they cooperate with one another to develop a single plan and a single TIP to inform their own individual plan and TIP, and establish uniform performance targets; and
- 4) The designation and funding of high performing MPOs.

Conceptually, USDOT's proposed statutory provisions—which Congress notably chose not to enact, while enacting other changes to § 134—are virtually identical to the NPRM that it now proposes. By sending such legislative recommendations to Congress during the reauthorization process, USDOT acknowledged that its proposed rulemaking represents a significant change to metropolitan transportation planning that requires the enactment of substantially new statutory authority. It cannot now claim that such authorization already existed.

In sum, the current statutory framework and language, USDOT's longstanding interpretation of that language, and USDOT's recent attempt to dramatically revise the statute all lead to the same conclusion: the statute as written contemplates MPOs each preparing their own planning documents, even when those MPOs must consult and coordinate to ensure consistency within a shared MPA. Because the NPRM's plan to mandate unified planning directly contradicts that aspect of the statute, the proposed rule is unlawful and should be withdrawn or modified. See 5 U.S.C. § 706(2)(A); see also Pharm. Research & Manufacturers of Am. v. United States Dep't of Health & Human Servs., 138 F. Supp. 3d 31, 54 (D.D.C. 2015) (vacating statutory interpretation because statutory language and its context demonstrated that interpretation was contrary to statute).

Collaboration in Transportation Planning Already Occurs Across the Country

Our memberships are unaware of any comprehensive research into the breadth and depth of MPO coordination across the nation, and they are certainly unaware of anything other than anecdotal instances of coordination challenges. To the contrary, we are aware of several research reports with case studies of MPOs working across jurisdictional boundaries to improve coordination and planning processes. While there may be specific, but limited, instances where a lack of collaboration or disagreement have impeded progress on a program or project, we do not agree that a broad rewrite of the regulations that affects a substantial portion of MPOs is the correct method of improving the manner in which MPOs interact with one another. Our organizations stand ready to partner with USDOT and FHWA to complete research comprehensively documenting the state of MPO coordination across the nation, both good and bad, to inform efforts on whether and how to improve MPO coordination.

Improving regional planning is a goal our organizations and the organizations we represent are constantly striving to achieve. We believe, however, that the current proposal is not necessary to achieve this goal. We highlight below several examples of

ongoing coordination between MPOs, states, and transit agencies that are occurring under existing law.

- **The State of New Jersey**
 - The North Jersey Transportation Planning Authority (NJTPA), the Delaware Valley Regional Planning Commission (DVRPC), and the South Jersey Transportation Planning Organization (SJTPO) collectively cover all of the urbanized areas within the state, and work closely and coordinate with each other and with the state Department of Transportation and public transportation partners to provide transportation planning and decision-making services for the State of New Jersey.
 - In New Jersey, they have already each established planning agreements with each other, and with the state Department of Transportation and operators of public transportation, that identify the locations where urbanized areas overlap MPO boundaries, and specify the strategies that support cooperative decision making and the resolution of disagreements. They share data, information, and coordinate on plans and projects that cross MPO boundaries.
 - These organizations meet regularly with each other, with state partners, and with neighboring MPOs in other states through both formal programs such as the Central Jersey Transportation Forum or the Metropolitan Area Planning Forum, as well as through informal programs and coordination efforts.
- **Chicago Metropolitan Agency for Planning (CMAP) and Northwestern Indiana Regional Planning Commission (NIRPC)**
 - CMAP and NIRPC are members of each other's technical committee meetings.
 - Executive directors of both MPOs meet quarterly.
 - The cooperation between the two MPOs has fostered agreements that identify the respective responsibilities required to carry out the metropolitan planning process in that region.
- **Rockford Metropolitan Agency for Planning (RMAP) and the Stateline Area Transportation Study (SLATS)**
 - Cooperating under their own volition, and under current law, these two MPOs share data to ensure accurate travel demand modeling and also maintain non-voting members on its partner's technical committees.
- **Florida**
 - Of the 22 Florida MPOs impacted by the NPRM, all have entered into written agreements to coordinate with one or more nearby MPOs on a voluntary basis.
 - FHWA highlighted the successes of MPO coordination in Florida through the Every Day Counts program (EDC-3 Innovations) in 2016. The South East Florida Transportation Council (SEFTC) was found to exemplify best practices in multi-MPO cooperation and collaboration, which is largely due

- to their formalized planning efforts including freight planning and coordinated identification of project priorities.
- Florida's other MPOs have cooperated to generate other transportation planning products, including long-range transportation policy plans covering multiple MPO areas; shared goals and objectives; collaborative shared project priority lists; congestion management processes covering multiple MPO areas; multi-county freight plans.
 - All 27 Florida MPOs belong to the Florida MPO Advisory Council (MPOAC), which is a statewide forum for collaboration and statewide transportation policy development. The MPOAC meets quarterly and provides regular opportunities for the Florida DOT, FHWA and FTA to provide updates of national and statewide significance.

This is a very small sampling of the coordination currently occurring around the nation, under the existing regulatory structure. Establishing this level of coordination took a significant investment of resources. In some cases, the NPRM could reverse or alter longstanding arrangements that have served the regions well for years or decades. The NPRM appears not to consider these factors in calculating costs.

These examples demonstrate an impressive breadth of ongoing collaboration of the type this NPRM seeks to establish. Our organizations would be excited to work with USDOT to disseminate these examples and many others as best practices so other MPOs can learn from the good work that is currently underway. In addition, we could anticipate other opportunities, such as peer-to-peer learning opportunities and technical trainings, which could help MPOs that might be struggling in their efforts to collaborate with other MPOs or with their state DOT. We acknowledge this approach will also require a financial investment, but anticipate these efforts would be more efficient and effective at fostering the level of collaboration that USDOT seeks than this NPRM would accomplish, and do so with less disruption for existing MPOs.

The Proposed Rule Will Dramatically Shift MPOs' Limited Resources Away from Vital Planning Activities Toward Needlessly Complicated Coordination Across Disparate Regions

Direct Costs

We strongly disagree with the assertions made by FHWA and FTA regarding the cost of implementing this NPRM. As part of its regulatory analysis, FHWA and FTA state:

To the extent that there are any costs, 80 percent are directly reimbursable through Federal transportation funds allocated for metropolitan planning (23 U.S.C. 104(f) and 49 U.S.C. 5303(h)) and for

State planning and research (23 U.S.C. 505 and 49 U.S.C. 5313). Thus, the costs to the affected MPOs should be minimal.

MPOs and states that will be impacted will receive no additional federal planning funds to carry out the requirements of this NPRM. As a result, any federal funding spent implementing this NPRM will reduce the amount of planning (PL) funds for MPOs or state planning and research (SPR) funds for states to be used for the extensive responsibilities for which they are currently responsible.

In addition, USDOT provides no calculations or evidence to justify its assertion that costs will be minimal. There have been few mergers of MPOs, but in one case in Connecticut, the cost of the merger was an estimated \$1.7 million and took four years and many hundreds of person-hours to complete. If multiple MPOs remain within an MPA and are not merged, establishing new planning agreements, developing a unified planning process, and meeting the other requirements of the NPRM will also result in significant costs. There are also significant questions³ raised by our members as to the cost-benefit ratio of this NPRM. We encourage USDOT to take a much harder look at this proposal to determine the costs and whether it is reasonable to impose these costs in the absence of additional new federal funding. MPOs also noted their desire to do more detailed cost-benefit analysis for their organizations to implement this NPRM, but cited the brief comment period as an impediment to their ability to do so.

MPO Voice

USDOT contends the NPRM will strengthen the voice of MPOs, especially relative to state DOTs. We disagree. The more likely outcome of mandating MPO mergers or unified planning documents would be to lose the local voice in unworkable megaregions, weaken the voice of some urban areas that are subsumed within larger MPOs, and complicate the planning process.

Multistate Jurisdictions

This NPRM is particularly concerning where it would require joint planning documents in MPAs that cross state lines. There are current examples where MPOs cross state borders, and those MPOs and states manage the planning process accordingly. But this NPRM would expand substantially the number of states and MPOs required to carry out the complicated process of multistate planning. For the MPOs that already conduct planning across state lines, this NPRM would increase the number of states and MPOs with which they plan and place the additional burden of requiring joint planning documents with all of those entities. For many other MPOs, however, this NPRM would require them to do multistate planning for the first time, which creates

³ See *Appendix A – Unanswered Questions* at the end of this document for a list of the many questions that members feel remain unanswered about the NPRM.

significant additional burdens. Another particular challenge for multistate MPOs is the opening of metropolitan planning agreements, which this NPRM requires. This can take months or longer to complete across state boundaries. In the Chicago UZA, for example, CMAP and NIRPC operate under a Bi-State Planning Cooperative Agreement that took more than a year to complete and garner the signature of all relevant parties (including both states).

Local Control and Public Engagement

We also have significant concerns about the impact of this NPRM on local control of transportation resources and the public engagement process. As an example, in the greater Philadelphia region, because of the overlap of urbanized areas, the NPRM would link the Delaware Valley Regional Planning Commission (DVRPC) with as many as eight other MPOs in five states, extending from the Baltimore region up to and including the New York City/Northern New Jersey regions. If all of those MPOs merged, it is hard to see how such an enormous planning area effectively allows for input from local elected officials or the public into the plan development or project prioritization process. If the MPOs are retained, however, as the NPRM would allow, it would require that the remaining MPOs jointly produce a single plan, a single TIP, and uniform performance targets for this extended area. Given the diverse populations, travel trends, transportation needs, budgets, policies, and governance within this area, a single long-range plan would be meaningless, and a single TIP and unified performance measure targets would be all but impossible to achieve. Further, it is difficult to imagine how the public would have more input into a process that covers such a significant area.

Conflicts with State Laws

The NPRM would cause an unknown number of mergers, yet is silent on how these mergers could conflict with state laws regarding MPO board membership. When MAP-21 was signed into law, Congress required the policy board of an MPO representing a Transportation Management Area (TMA) to consist of officials of public agencies, “including providers of public transportation.” Without subsequent changes to 23 U.S.C. § 134 in the FAST Act, several states would have had to amend state laws to allow for additional members on MPO policy boards in order to accommodate the “transit representative.” This NPRM suffers from a similar flaw: many states will require changes to state law to permit policy boards to grow if MPOs are merged. Our organizations do not want the voice of smaller MPOs to be weakened if they are mandated to merge into a larger MPO. As with the transit representation rulemaking, similar changes may be required to assist MPOs in complying with the board structure changes and avoid noncompliance with the phase-in provisions of this NPRM. Consolidation at this level may also result in complications and challenges related to revisions to State Implementation Plans for air quality, as discussed elsewhere in these comments, changes to staggered metropolitan transportation plan adoption timeframes, and, at least in California, statewide climate change legislation (Senate Bill 375).

Census Determinations

The NPRM assumes that U.S. Census Bureau UZA designations are cohesive and represent a functional transportation planning region. This is not the case in many places, where UZAs do not necessarily reflect regional travel sheds, congestion patterns, air quality nonattainment and maintenance areas, political realities, or regional identities. UZAs are statistical tools defined by algorithm to identify areas of high population density and connectedness to adjacent areas of population density, making them a poor basis for transportation planning in areas where UZAs are immediately adjacent to one another and no longer relate to historical and political patterns of association.

The Boston UZA, for example, encompasses a huge area across three states and is adjacent to a half-dozen UZAs. The outer most reaches of the Boston UZA have very little connection to the UZA core with respect to transportation needs, except for intercity commuting. In much of New England and the northeast, adjacent UZAs effectively merge together, and designations are subject to change (by algorithm) from one Census to the next. Tying transportation planning processes and documents to UZAs would create an unstable planning region and introduce a great deal of confusion into the process.

In addition, the NPRM is silent on who will be responsible for establishing the 20-year growth projection and does not contain a consistent process or formula, which would be required to carry this out. Further, revisions to the urbanized area after each Census could require the redrawing of MPAs and MPO jurisdictions both now and in 2020, and then every ten years thereafter. This could result in continual mergers and redesignation processes and holds MPOs hostage to the Census process that defines UZAs.

The U.S. Census Bureau, in its final rule on Urban Area Criteria for the 2010 Census, published in the Federal Register on August 24, 2011, cautions against using UZAs for non-statistical/programmatic purposes. Further, the methods for determining urbanized area boundaries requires a degree of precision that can only be defined once development is in place, and cannot be forecast with precision.

For all of these reasons, and consistent with longstanding practice of FHWA and FTA, this part of the rule should be replaced with a more flexible framework that reflects the statute's empowerment of local and state officials to set MPA boundaries and that allows such officials to deviate from UZA boundaries when they do not align with regional planning realities (e.g., multiple, overlapping UZAs; unique regional travel patterns; historical and political boundaries, etc.).

The Proposed Rule Impractically Requires Differently Situated MPOs to Produce Joint Planning Documents Even When They Face Different Statutory Requirements

The NPRM raises concerns related to addressing air quality through the regional transportation conformity process, an already complicated, inter-agency regulatory scheme. In complex (multistate or multijurisdictional) air quality nonattainment areas (NAA) and maintenance areas, the NPRM's requirement for a single plan and a single TIP would presumably require a common or coordinated transportation conformity demonstration for the entire MPA, potentially including portions of multiple nonattainment and maintenance areas. MPOs in nonattainment or maintenance areas must demonstrate conformity of plans and TIPs at least every four years, while MPOs that are in attainment areas do not have this requirement, and have to update plans every five years. Requiring MPOs to merge or develop a single plan and a single TIP would result in a more frequent plan update for the MPO that is in attainment.

There is also concern that the NPRM's requirements would rescind the flexibility to demonstrate transportation conformity in subareas with state implementation plan (SIP) emissions budgets that was granted in 40 CFR 93.124 (d). This provision allows MPOs to demonstrate transportation conformity in the counties with SIP budgets independent of adjacent MPOs in shared nonattainment and maintenance areas. This independence allows for greater flexibility for states and MPOs to adjust project schedules and scope, relieves areas of unnecessary analysis, and allows state control of air quality goals, a benefit identified in the Clean Air Act.

Additionally, MPOs often conduct conformity determinations of their plans and TIPs more frequently than every four years, and do so on different schedules. Two MPOs, each in a different nonattainment or maintenance area, or in nonattainment or maintenance to different criteria pollutants, would face a complex situation when demonstrating conformity of a joint TIP or plan to meet various attainment deadlines, standards, or Motor Vehicle Emission Budgets. Another problem could arise when a nonattainment or maintenance area is smaller than the area covered by the MPA. The areas in attainment would be negatively impacted if the nonattainment or maintenance areas are not able to show conformity, as it would prevent the TIP and plan for the entire MPA from being implemented and delay projects from being implemented. The same concern would arise for a TIP or plan amendment, which would make attainment areas beholden to the ability of nonattainment or maintenance areas to show conformity, even if the amendment was for a project in an attainment area. The NPRM is also silent on who would be responsible for showing conformity for the single plan and the single TIP for an MPA, but would seem to require that one MPO be doing conformity for areas over which it has no jurisdiction.

The process of demonstrating transportation conformity includes a complex set of inputs such as planning assumptions, transportation demand model (TDM)

procedures, emissions analysis model assumptions and local data, and SIP emissions limitations. Each MPO uses different TDMs and post processors for their emissions analysis and various methods are used to estimate VMT, and collect, process, and maintain various types of travel, vehicle, and emissions data. Blending data from different MPOs and different models will be a challenge, and can create problems in meeting Motor Vehicle Emission Budgets established and approved for nonattainment or maintenance areas prior to this NPRM. MPOs could also choose to adopt a common TDM and standardize the planning assumptions used for the conformity demonstration. These options would both increase time and cost (as an example, DVRPC reports the current process requires four months to complete a TIP amendment and each run of a full regional conformity determination costs \$25,000, both of which are expected to increase under the NPRM).

In some regions, a coordinated air quality planning process between neighboring MPOs currently exists. One example is the Capital Area MPO in Raleigh and the Durham-Chapel Hill-Carrboro MPO in Durham. In this case, the MPOs use a single TDM developed for the region, which has been in place for several years. This will not be the case in many other areas. Furthermore, though CAMPO and DCHC worked together to develop a joint 2040 MTP and conduct air quality analysis, each MPO retained flexibility with regard to developing certain aspects of their plan for their respective MPO areas, and each MPO preserves its autonomy by having the authority to propose amendments to the plan.

Section-by-Section Analysis

Our overarching concerns relate to the entirety of the rule, and specific comments indicating no objection to proposed changes (many of which are not substantive or controversial) do not indicate any general lack of concerns or objections.

§ 450.104—Definitions:

Metropolitan Planning Agreement:

- Amends the definition by changing MPO to MPO(s)
 - We do not have objections to the proposed changes, because multiple MPOs are often party to a metropolitan planning agreement.

Metropolitan Planning Area:

- The NPRM would realign the regulatory language with the existing statutory language in defining an MPA.
 - Given that this definition has never been enforced by USDOT in the manner proposed, and that changes to the regulations in 2007 redefined the term to align it with common practice, we have significant concerns with the “tear off the Band-Aid” approach USDOT proposes in this NPRM. To the extent that any change is necessary in this regard, an approach that would allow for a more gentle movement back to the statutory definition in this regard would be more appropriate.

Metropolitan Transportation Plan:

- Amends the definition to reinforce the stated goal of requiring one plan for the entire MPA.
 - The current definition in the regulation is consistent with current law – each MPO develops its own plan. We support retaining the current definition.

Transportation Improvement Program (TIP):

- Amends the definition to reinforce the stated goal of requiring one TIP for the entire MPA.
 - The current definition in the regulation is consistent with current law – each MPO develops its own TIP. We support retaining the current definition.

§ 450.208—Coordination of Planning Process Activities:

- The current statewide transportation planning regulations require each state to, at a minimum, coordinate planning under subpart C of the regulations and “encourages” states to rely on transportation information, studies, and analyses provided by the MPO. The NPRM maintains this coordination but would “require” the state and MPO to coordinate on the information, studies, and analyses. This revision increases the degree to which the state and MPOs should coordinate versus the state relying on the MPO to supply the information.
 - This change should be considered as part of the congressional oversight of planning.

- The NPRM would require every MPO to open and amend their planning agreements to identify coordination strategies and include a dispute resolution process.
 - Current regulations do not prevent the inclusion of a dispute resolution process in a planning agreement. MPOs, states, and transit providers should continue to determine for themselves whether changes to their planning agreements are necessary.
 - Modifying a metropolitan planning agreement can be a challenging and difficult process, taking a year or more to complete. This is particularly true for multistate MPOs. For this reason, an action of this magnitude requires Congressional oversight.
 - USDOT proposes major changes to MPO operations, but provides no example of where the current process fails.

§ 450.218—Development and Content of the Statewide Transportation Improvement Program (STIP):

- Amends MPO to read MPO(s) in subsection (b).
 - We disagree with this change. Each MPO should remain responsible for creating its own TIP as per current regulations.

§ 450.226—Phase-In of New Requirements:

- Requires updated planning agreements between states, MPOs, and transit providers within two years of the date on which the rule becomes final, identifying coordination strategies that support cooperative decision-making, and the resolution of disagreements.
 - Current regulations require a periodic review and update of the agreement. Current law supports the flexibility of MPOs to work and coordinate with planning partners. We believe that current law is adequate to update planning agreements. Congress should determine if any new requirements are needed.

§ 450.300—Purpose:

- Amends the general purpose to clarify that an MPO planning process covers the MPA.
 - Unlike most other sections amended by this regulation, the NPRM does not amend MPO to MPO(s) in this section. There are existing cases where multiple MPOs serve a single UZA and prepare individual TIPs and plans.
 - Under current regulations, some MPOs have established working agreements to better coordinate with one another, and we believe this is a better approach to coordination than merging MPOs or MPAs.
 - Under current regulations the MPOs have the flexibility to determine how best to work together given circumstances that may differ from region to region or state to state.

§ 450.306—Scope of the Metropolitan Transportation Planning Process:

- Adds new paragraph (5) requiring that multiple MPOs within an MPA jointly establish performance targets.
 - The relevant enacted statute (23 U.S.C. § 134(h)(2)(B)(i)(I)) (codification of MAP-21 § 1201) requires each MPO to establish performance targets. There is no statutory requirement for multiple MPOs in a single MPA to jointly establish performance targets.
 - MAP-21 requires MPOs to coordinate their selection of performance targets with states and transit providers, to the maximum extent practicable. If Congress had determined that one set of targets within a planning area was integral to improving system performance, it would have required it in MAP-21; the fact that it did not is conclusive.
 - The NPRM proposes significant changes to the MAP-21 requirements; any changes along these lines should be debated and addressed during the reauthorization of the FAST Act.

- Amends subsection (i) by changing MPO to MPO(s). This section addresses the use of abbreviated plans and TIPs for non-TMA MPOs. NPRM further amends this section by striking “and this part” and replacing it with “*and these regulations.*”
 - No explanation is given for this change. USDOT should explain its reasoning behind this amendment and what it intends with these changes.
 - Would this change somehow apply more broadly to the “regulations” versus Part 450?

§ 450.310—Metropolitan Planning Organization Designation and Redesignation:

- Current subsection (e) regulates the designation and redesignation process of MPOs for an urbanized area. The Governor and the existing MPO make a determination to designate more than one MPO to serve a UZA based on whether the “*size and complexity of the urbanized area do make designation of more than one MPO appropriate.*” Further, if a new MPO is designated within the urbanized area, the MPOs establish written agreements to identify areas of coordination and the division of planning responsibilities.

- The NPRM strikes UZA throughout subsection (e) and replaces it with MPA. The NPRM argues that this change “*would reinforce the statutory principle that ordinarily only one MPO shall be designated for an MPA.*”
 - 23 U.S.C. § 134(d)(7) provides the authority to designate more than one MPO in an MPA to the Governor and the MPO based on a “*size and complexity*” determination. The NPRM refers to this as a “*limited exemption,*” but Congress included this provision in the law to accommodate anticipated urban growth.

- The NPRM also requires, where it is determined more than one MPO in an MPA is appropriate, that the Governor and affected MPOs “*by agreement shall jointly establish or adjust the boundaries for each MPO within the MPA.*”
 - There is no discussion of this provision, no definition of MPO boundary, and no indication to what end the MPO boundaries would be established or adjusted.
 - The provisions in this section are likely to have the consequence, intended or not, of preventing the designation of new MPOs. In urbanized areas in particular, there would be no reason or incentive to create a new MPO if their only reason to exist is to develop unified planning documents. There are examples where having more than one MPO in an urbanized area is appropriate and even advantageous, particularly in cases where local elected officials would otherwise feel like their interests would not be considered or their voice would be significantly diminished. Whether to designate an MPO is a decision that the statute specifically leaves to Governors and local elected officials, and that decision is made based on these and other locally-determined and considered factors. This NPRM contradicts this congressionally developed approach.

- The NPRM states: “*The proposed rule reflects the view, based on an interpretation of the planning statutes and on FHWA and FTA experiences, that when there are multiple MPOs within the same MPA, enhanced coordination and joint decision-making procedures are needed to ensure a coordinated and comprehensive planning process within the MPA.*”
 - FHWA and FTA should be transparent about the experiences that have led them to this conclusion.
 - Are the experiences referenced limited to a few MPOs or is the problem systemic?
 - Is “*enhanced coordination*” synonymous for joint planning products or does it refer to something else?

- Changes to the number of MPOs designated within an MPA are better suited to 23 C.F.R. § 450.312. Again, 23 U.S.C. § 134(d)(7) is clear that multiple MPOs may be designated within an MPA.
 - As the NPRM acknowledges, there are currently areas where multiple MPOs serve a single UZA. This demonstrates that Congress does not currently prohibit such an arrangement. If there are concerns about this, it is up to Congress to conduct appropriate oversight and amend the law if necessary. Amending UZA to MPA, as the NPRM would do, is a significant change in the planning process and should be addressed by Congress, not a regulatory action.

- To reinforce the requirement for a single plan and a single TIP, subsection (e) is further amended to require procedures for joint decision-making and dispute resolution.
 - Dispute resolution is allowable but not required in planning agreements by current statute. This should be addressed in the reauthorization of the FAST Act.
- The NPRM in (e) also requires a merger of MPOs in certain circumstances – *“If multiple MPOs were designated in a single MPA prior to this rule or in multiple MPAs that merged into a single MPA following a Decennial Census by the Bureau of the Census, and the Governor(s) and the existing MPOs determine that the size and complexity do not make the designation of more than one MPO in the MPA appropriate, then those MPOs must merge together in accordance with the redesignation procedures in this section.”*
 - Current regulations provide for the circumstance when an MPO may redesignate, or what actions MPOs may undertake when an urbanized area extends into an adjacent MPA, and requires (after each census) the MPO, state, and transit operator to review MPA boundaries and adjust the boundaries as necessary to meet minimum statutory requirements. The statutes do not require the merger of MPOs regardless of whether the Governor(s) and MPO(s) make a determination that size and complexity impact the number of MPOs. We feel strongly that such a major change deserves congressional review and oversight, and should not occur solely on the basis of regulatory action.
 - The regulation is silent on what is meant by “merger” and this leaves an open question as to whether this would require a joining of policy boards or if there is another intention implied.
- Amends subsection (m) by dropping MPA and inserting *“metropolitan area.”* Subsection (m) addresses multistate metropolitan areas. Rather than coordinate planning for the MPA the change would limit coordination to the metropolitan area.
 - The use of *“metropolitan area”* creates confusion and makes commenting on this revision difficult. There is no definition of this term in the regulations or statutes.

§ 450.312—Metropolitan Planning Area Boundaries:

- According to the NPRM, the amendments *“would reorganize, and make technical edits to, existing § 450.312.”* The definitional changes to MPA proposed in § 450.104 of the NPRM are consistent with the statutory definition. However, the NPRM changes what the MPA is at the very opening of this section. The NPRM reverses (a) and (1) in this section. The current statutes give the Governor and the MPO authority to establish any boundary as long as it includes the UZA and 20 years of projected growth. The NPRM leads with the minimum boundary and then permits the Governor and the MPO to agree on the boundary. The NPRM states the change

was made to “clarify and emphasize that an agreement between the Governor and an MPO concerning the boundaries of an MPA is subject to the minimum requirement that the MPA contain the entire existing urbanized area plus the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan.”

- We recommend that current regulation be retained to reduce confusion and align with current statutes.
- Adds a new (2) to require MPOs and the Governor to agree to MPA boundaries when two or more MPAs would otherwise include the same non-urbanized area that is expected to become urbanized within a 20-year forecast period. They are first encouraged to merge the MPAs, at which point a “*size and complexity*” determination would be required to determine if more than one MPO is appropriate. Barring a merger, however, the MPA boundaries would have to be redrawn, based on agreement between MPOs and relevant Governors, so the boundaries of the MPAs do not overlap.
 - The reestablishment of MPO boundaries could have serious effects on existing MPOs, particularly where the boundaries are the result of state legislation. In these cases, reestablishing these boundaries would require opening up existing laws in multiple states, and gaining the approval of as many as four Governors and neighboring MPOs.
 - Again, we would point out that current regulations provide a process for the Governors and MPOs to adjust boundaries. We recommend that revisions to this process, to the extent they are necessary, be made by Congress, not as part of a regulatory action.
- In subsection (b), the NPRM maintains the MPA boundaries that existed on August 10, 2005 for urbanized areas in nonattainment for ozone or carbon monoxide.
 - The NPRM makes no mention of either maintenance areas for ozone or carbon monoxide or areas that are designated as nonattainment or maintenance for PM10 or PM2.5, which are also criteria pollutants and subject to the conformity requirements. Are areas designated as maintenance areas for ozone or carbon monoxide also to retain their MPA boundaries? And what about areas that were designated either nonattainment or maintenance for PM10 or PM2.5? Are these areas also to retain their MPA boundaries?
- In subsection (c), the NPRM adds at the end - “An MPA boundary may encompass more than one urbanized area, but each urbanized area must be included in its entirety” (emphasis added). This would require Governors and MPOs to redraw MPA boundaries, which will in turn require them to make a “*size and complexity*” determination, which results in either a merger of MPOs or development, by the multiple MPOs, of a single plan, a single TIP, and uniform performance targets based on the NPRM changes to TIP, plans and targets.

- This provision runs counter to the stated goal of the NPRM, which, according to the summary, is to “*result in unified planning products for each urbanized area (UZA), even if there are multiple MPOs designated within that urban area.*” Allowing multiple UZAs within an MPA would result in unified planning products for the entire MPA, not for the individual UZAs this provision makes permissible within the MPA.
- In subsection (f), the NPRM strikes the reference to UZA or MPA and replaces them with “*multistate metropolitan areas*” to align with the statutes and historical uses of the term.
 - The use of “*multistate metropolitan area*” creates confusion and makes commenting on this revision difficult. There is no definition of this term in the regulations or statutes.
 - We request USDOT clarify that states are not limited to the actions listed in (f)(1) or (2).
- Current subsection (h) addresses the situation where part of UZA served by one MPO extends into an adjacent MPA. In this case, either the boundaries are adjusted or the MPOs divide transportation planning responsibilities. The NPRM replaces how to address the current situation and completely ignores the situation addressed under the current regulation. Instead, it replaces it with what to do when it has been determined that multiple MPOs are designated in a single MPA – establish written agreements identifying coordination process, establish procedures for joint decision-making, devise a dispute resolution process, develop a single plan and a single TIP for the entire MPA, and establish MPO boundaries within the MPA.
 - Does this change forbid the use of current (h), which allows joint responsibilities versus a requirement to redraw boundaries? Current regulations seem to allow MPAs that overlap to establish joint planning responsibilities as an alternative to redrawing boundaries despite (g). Requiring MPOs in an MPA that span multiple UZAs to create unified planning documents will lead to meaningless planning documents and a loss of many local voices in the planning process
 - The NPRM adds a requirement not found in current regulations – that MPOs in the same MPA develop “*procedures for joint decision-making and resolution of agreements.*” This section also adds a requirement for a “*joint decision-making process,*” a concept not found in statute or regulation.
 - This section contains a requirement for establishing MPO boundaries, a concept that is currently synonymous with MPA boundary. In separating MPA and MPO boundaries, the NPRM fails to conceptualize what the MPO boundary should be and for what purpose.
 - Taken together, these are significant changes to metropolitan transportation planning that require congressional oversight and approval.

- In subsection (i) the NPRM would continue the process of reviewing MPA boundaries after each Census to determine if the existing boundaries meet the minimum statutory requirements and adjusting them as necessary.
 - Current regulations support the flexibility that is embedded in the MPO process.
- The NPRM adds language to subsection (i) to define in more detail what is necessary under current law – that the boundaries encompass the entire existing UZA(s) plus the contiguous area expected to become urbanized within 20 years. The NPRM also adds a provision requiring that separate UZAs merged by Census into a larger, single UZA would trigger a requirement that the MPOs and the Governor “*redetermine*” the affected MPAs as a single MPA that includes the entire new UZA plus the contiguous area expected to become urbanized in the 20-year forecast. This would have to occur within 180 days, and the “redetermination” as a single MPA is not permissive – the regulation would mandate a merger of MPAs.
 - We note that 180 days is a very short timeframe in which the required analysis to determine 20-year growth boundaries and make a determination, possibly between multiple states and MPOs, as to how to merge the MPA. This section also does not take into account a possible appeals process of the UZA boundary designations that often follow the release of the Qualifying Urban Areas.
- If the merger of MPAs results in multiple MPOs within the merged MPA, the Governor and MPOs will make a “*size and complexity*” determination whether more than one MPO in the MPA is appropriate, which would lead to either MPOs merging or joint development of a single transportation plan, a single TIP, and uniform performance targets. The NPRM again raises the issue of “*MPO boundaries*” which is currently undefined in statute, current regulations, or the NPRM.
 - The amendments to subsection (i) are significant enough to require congressional action to implement. USDOT should make its case to Congress and provide examples justifying a change in statutory law. The NPRM does not cite any case studies or examples of where current law is not working to the satisfaction of states, MPOs, or transit providers.
- The NPRM proposes a new subsection (j) that would enumerate the situations in which an MPO and Governor are encouraged to consider merging MPAs.
 - This new section is appropriate and acceptable since it is limited to providing encouragement to adjust boundaries under certain circumstances and that may improve transportation planning.

§ 450.314—Metropolitan Planning Agreements:

- Changes to subsection (a) would require the opening and modification of planning agreements in some cases and the development of new planning agreements in others.

- Modifying a metropolitan planning agreement can be a challenging and difficult process, taking a year or more to complete. This is particularly true for multistate MPOs. For this reason, an action of this magnitude requires Congressional oversight.
- Current subsection (e) requires a written agreement to address planning coordination between multiple MPOs, the state, transit operators, and state and local air quality agencies as necessary, in a single UZA. Importantly, the current regulation would allow for the joint development a single plan and a single TIP when multiple MPOs exist within a single UZA.
- In subsection (e), the NPRM would replace UZA with MPA. With this change, the rule would further require that planning agreements ensure the development of a single plan and a single TIP for the MPA. If a transportation investment extends across two MPAs, the MPOs are required to coordinate to assure consistency in plans and TIPs. If more than one MPO has been designated to serve an MPA, the planning processes for affected MPOs must (currently: “should, to the maximum extent possible”) reflect coordinated data collection, analysis, and planning assumptions across the MPA.
 - Although the current regulations require that planning agreements include several elements, such as a financial plan and planning responsibilities, the requirement in the NPRM for development of a single plan and a single TIP for the MPA are changes that are not aligned with the statutory provisions of 23 U.S.C. § 134. These are revisions significant enough to require congressional oversight.
- Current subsection (f) addresses the circumstance where a UZA or MPA extends across two or more states, requiring, in such instances, coordination between Governors, MPOs, and transit operators and allowing for optional methods to coordinate such as agreements, compacts, or establishment of agencies. The NPRM strikes UZA and requires jointly developed “*planning products*” for the entire multistate MPA.
 - The NPRM does not define “*planning products.*” On the assumption this refers to the transportation plan, TIP, and performance targets, we note that this is an extremely burdensome requirement. By increasing the standard from a coordinated planning process to one that must result in jointly developed planning products, the level of complication is increased dramatically for the affected states and MPOs. In at least one case, this would require the development of unified planning products that are in parts of five different states.
- Current subsection (g) addresses where a UZA designated as a TMA overlaps into an adjacent MPA serving a non-TMA. The adjacent UZA is not treated as a TMA and the MPOs are required to establish a written agreement establishing roles. The

NPRM would “revise” (g) to read that if an MPA includes a TMA and a non-TMA, the non-TMA shall not be treated as a TMA, and if two or more MPOs exist within the MPA, they are required to establish roles and responsibilities in a written agreement.

- The current regulation acknowledges that FHWA has allowed UZA boundaries to cross over into adjacent MPAs. Now, FHWA seeks to remedy this, but is doing so without any new statutory authority. We suggest that FHWA and FTA continue to interpret this it has done so historically, and not remove the permissibility in this provision to allow UZAs to cross adjacent MPA boundaries when appropriate.
- Current subsection (h) addresses how MPOs, states, and transit operators will cooperate in developing and sharing information related to transportation performance management. The NPRM would strike the language allowing information sharing when a UZA designated as a TMA overlaps into an adjacent MPA serving an UZA that is not a TMA. By amending the provision in this way the regulations would no longer address the situation the existing regulation currently does.
 - The current regulation acknowledges that FHWA has allowed UZA boundaries to cross over into adjacent MPAs. Absent new statutory authority, we suggest that FHWA and FTA continue to interpret this as they have done so historically and not remove the permissibility in this provision to allow for UZAs to cross adjacent MPA boundaries when appropriate.

§ 450.316—Interested Parties, Participation, and Consultation:

- Amends MPO to MPO(s) in several paragraphs of the section.
 - We disagree with these changes. Each MPO is responsible for creating its own transportation plan and TIP as per current regulations. The consultation process should continue to reflect this.

§ 450.324—Development and Content of the Metropolitan Transportation Plan:

- The NPRM amends MPO to MPO(s) throughout the section.
 - We disagree with these changes. Each MPO is responsible for creating its own transportation plan as per current regulations. The plan development process should continue to reflect this.
- The NPRM adds a new subsection (c) that when more than one MPO is designated to serve an MPA, the MPOs are required to jointly develop a single plan for the MPA, jointly establish performance targets, and agree to a process for making a single conformity determination on the joint plan.
 - This amendment is not consistent with the statutory provisions of 23 U.S.C. § 134 that require each MPO to develop its own plan. A change of this magnitude requires congressional oversight and an amendment of the US Code if there is a compelling reason to change the metropolitan planning process.

- Most MPOs develop project selection criteria to program projects in their TIPs. These criteria have been developed and refined over several years to reflect priorities in each MPO region. For example, one MPO may have established project selection criteria that give a higher priority to selecting projects that address safety issues, while another MPO may have developed criteria that prioritize congestion relief or systems preservation projects. Development of these criteria has occurred through a process of public involvement and buy-in from decision-makers. The requirements of this NPRM would upset that balance by requiring MPOs with different project needs and priorities to merge their selection criteria.

§ 450.326—Development and content of the transportation improvement program (TIP):

- Amends MPO to MPO(s) throughout the section.
 - We disagree with these changes. Each MPO is responsible for creating its own TIP as per current regulations. The TIP development process should continue to reflect this.
- Amends subsection (a) to require that when more than one MPO is designated to serve an MPA, the MPOs shall jointly develop a single TIP for the MPA, and agree to a process for making a single conformity determination on the joint plan.
 - This amendment is not consistent with the statutory provisions of 23 U.S.C. § 134 that require each MPO to develop its own TIP. A change of this magnitude requires congressional oversight and an act of Congress if there is a compelling reason to change the metropolitan planning process.

§ 450.328—TIP Revisions and Relationship to the STIP:

- Amends MPO to MPO(s) throughout the section.
 - We disagree with these changes. Each MPO is responsible for creating its own TIP as per current regulations. The TIP development process should continue to reflect this.

§ 450.330—TIP Action by the FHWA and the FTA:

- Amends MPO to MPO(s) throughout the section.
 - We disagree with these changes. Each MPO is responsible for creating its own TIP as per current regulations. The TIP development process should continue to reflect this.

§ 450.332—Project Selection From the TIP:

- Amends MPO to MPO(s) throughout the section.
 - We disagree with these changes. Each MPO is responsible for creating its own TIP as per current regulations. The TIP development process should continue to reflect this.

§ 450.334—Annual Listing of Obligated Projects:

- Amends MPO to MPO(s) throughout the section.
 - We do not have objections to the proposed changes.

§ 450.336—Self-Certifications and Federal Certifications:

- Amends MPO to MPO(s) throughout the section.
 - We disagree with these changes. Each MPO is responsible for creating its own TIP as per current regulations. The TIP development process should continue to reflect this.

§ 450.340—Phase-In of New Requirements:

- Amends MPO to MPO(s) throughout the section.
 - We disagree with these changes. Each MPO is responsible for creating its own transportation plan as per current regulations. The phase-in should continue to reflect this.

- Adds a new subsection (h) - States and MPOs shall comply with the MPA boundary and MPO boundaries agreement provisions in § 450.310 and § 450.312; shall document the determination of the Governor and MPO(s) whether the size and complexity of the MPA make multiple MPOs appropriate; and shall comply with the requirements for jointly established performance targets, and a single plan and a single TIP for the entire MPA, before the next metropolitan transportation plan update that occurs on or after [date 2 years after the effective date of the final rule].
 - As discussed above, we believe that these revisions are significant changes that contradict the current statutory language. Any proposals to increase coordination between MPOs should be discussed first with the affected organizations that these revisions impact.

Response to Questions

Background—Coordination Between States and MPOs

Q: How can the Statewide and Non-metropolitan and Metropolitan Transportation Planning process provide stronger incentives to states and MPOs to manage transportation funding more effectively?

A: The establishment of a performance-based planning program in MAP-21 is intended, in part, to ensure the efficient deployment of limited federal transportation funding. We recommend that these provisions, which will themselves require significant resources from MPOs and states to deploy, be fully implemented and that a report to Congress be prepared to understand how they will improve planning coordination. During this period, USDOT should undertake a comprehensive study to review the metropolitan and statewide planning processes, aimed at informing Congress of areas where transportation planning could be improved, where the current planning process is working, and where MPOs and states have devised and implemented improvements on their own. Our organizations are ready to assist with that review.

§ 450.104—Definitions:

Q: FHWA and FTA specifically ask for comments on whether the rule ought to expressly address how states and MPOs should determine MPA boundaries where two or more MPAs are contiguous or can be expected to be contiguous in the near future. For example, should the rule provide that such MPAs must merge? Alternatively, should the rule allow the states and MPOs to tailor the MPA boundaries and the 20-year urbanization forecast to take the proximity of other MPAs into account?

A: Currently 23 C.F.R. § 450.312 requires an MPO, in cooperation with the state and public transportation operators, to review MPA boundaries after each Census to determine compliance with law and update them as necessary. Current law also requires that MPA boundaries not overlap with each other, and provides the necessary authority for boundaries to be adjusted. We support the authority in current law to review and adjust MPA boundaries as necessary, and do not support forcing MPAs to merge.

§ 450.226—Phase-In of New Requirements:

Q: The FHWA and FTA seek comments on the appropriateness of the proposed 2-year phase-in period.

A: Under a scenario where these regulations are finalized, we recommend that changes be phased in after the 2020 Census results are available. Only then should the 2-year

phase in begin. To do otherwise would cause major disruption immediately and then likely cause the same disruption a few years thereafter.

§ 450.306—Scope of the Metropolitan Transportation Planning Process:

Q: The FHWA and FTA request comments on the proposed language, and request ideas for alternatives that might better accomplish the goals embodied in the proposal.

A: Some MPOs have developed cooperative planning agreements that allow them to resolve disputes or reach mutual agreement on investing funds and planning projects. We suggest that USDOT consider, through workshops or similar outreach, the tools MPOs are currently using in instances where MPOs disagree or plans conflict. The existing regulatory process for amending and updating planning agreements allows MPOs to address the planning responsibilities as needed based on transportation conditions and needs in states, regions, counties, political subdivisions, and between interested parties. For additional ideas, please reference the list of examples of planning coordination contained in these comments (see section “Collaboration in Transportation Planning Already Occurs Across the Country”), and in other comments to the docket (notably, comments from the American Association of State Highway Transportation Officials).

§ 450.314—Metropolitan Planning Agreements:

Q: The FHWA and FTA seek comments on what, if any, exemptions ought to be contained in the rule from these requirements, and what criteria might be used for such an exemption.

A: Seeking input on exemptions to these requirements suggests that USDOT recognizes that these new requirements are not meant to address a systemic problem with the current metropolitan transportation planning regulations and that there may be a conflict with the current provisions of 23 U.S.C. § 134. We strongly encourage USDOT to set up a working group that includes both staff and elected officials from MPOs (large and small), states, and representatives from RTPOs to address any MPO coordination problems. Alternatively, USDOT should consider conducting regional workshops with MPOs and interested parties to delve into the questions that are raised by this NPRM. The outcome of these meetings may result in a jointly developed set of revisions that could be accomplished through either a future NPRM, guidance, or recommendations to Congress.

§ 450.324—Development and Content of the Metropolitan Transportation Plan:

Q: The FHWA and FTA seek comments on what, if any, exemptions ought to be contained in the rule from these requirements, and what criteria might be used for such an exemption.

A: Seeking input on exemptions to these requirements suggests that USDOT recognizes that these new requirements are not meant to address a systemic problem with the current metropolitan transportation planning regulations and that there may be a conflict with the current provisions of 23 U.S.C. § 134.

Q: The FHWA and FTA also request comments on the question whether additional changes are needed in FHWA and FTA regulations on performance measures and target setting (e.g., 23 CFR part 490) to cross-reference this new planning provision on target-setting.

A: We are currently commenting on the existing proposed rules for performance measures. We would suggest that these rules be finalized, implemented, and reported on before undertaking additional to performance measures and target setting.

§ 450.326—Development and content of the transportation improvement program (TIP):

Q: The FHWA and FTA seek comments on what, if any, exemptions ought to be contained in the rule from these requirements, and what criteria might be used for such an exemption.

A: Seeking input on exemptions to these requirements suggests that USDOT recognizes that these new requirements are not meant to address a systemic problem with the current metropolitan transportation planning regulations and that there may in fact be a conflict with the current provisions of 23 U.S.C. § 134. We strongly encourage USDOT to set up a working group that includes both staff and elected officials from MPOs (large and small), states, and representatives from RTPOs to address any MPO coordination problems. Alternatively, USDOT should consider conducting regional workshops with MPOs and interested parties to delve into the questions that are raised by this NPRM. The outcome of these meetings may result in a jointly developed set of revisions that could be accomplished through either a future NPRM, guidance, or recommendations to Congress.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures:

Q: The FHWA and FTA are seeking comments on what other options affected MPOs could exercise to reduce the overlap while meeting the statutory and regulatory requirements. The FHWA and FTA expect that such responses will reduce the number of MPOs ultimately affected by these coordination requirements.

A: We request that you withdraw this rulemaking, thereby bringing to zero the number of MPOs affected by this rule. Current regulation 23 C.F.R. § 450.312(g) prohibits

overlapping MPA boundaries and 23 C.F.R. § 450.312(i) requires the MPO, Governor, and transit operator to review MPA boundaries after each Census to determine if existing boundaries meet the minimum statutory requirements for new and updated UZAs, and requires them to adjust the boundaries as necessary. There is currently a process in place to address overlap. However, we suggest USDOT initiate a process to gather feedback and ideas from stakeholders to determine if the existing process fails to address overlap and identify problems and possible solutions. The outcome of this process could be used to develop a rulemaking that would provide significantly more incentives for MPOs to coordinate their planning activities.

Q: Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures, Page 41480: The FHWA and FTA seek comments and available data on the costs and benefits of the proposals of this rulemaking.

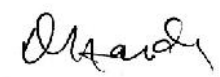
A: The NPRM contains little or no data justifying the changes it proposes, which we feel pose significant issues. There have been few mergers of MPOs, but in at least one case in Connecticut, the cost of the merger was an estimated \$1.7 million and took four years and many hundreds of person-hours to complete. There are also significant questions raised by our members as to the cost-benefit ratio of this NPRM. We encourage USDOT to take a much harder look at this proposal to determine the costs and whether it is reasonable to impose these costs in the absence of additional new funding.

Conclusion

We appreciate the opportunity to submit comments, responses, and suggestions to this proposed rule. We believe that many of the NPRM's proposed coordination revisions can be achieved under current law with the consent and agreement of the necessary parties. We welcome the opportunity for a dialogue with USDOT to better understand, why it has determined that revisions of this manner are necessary and to work with USDOT to address these perceived concerns regarding MPO collaboration. We feel strongly that the requirements regarding joint development of a single plan, a single TIP, and a uniform performance targets for the MPA should be addressed by Congress, as it would otherwise contradict current statutory requirements. If the intent is to limit the growth of or reduce the number of MPOs, we again strongly believe that Congress should address this issue if it sees fit, and that such significant changes in policy should not occur through the regulatory process. MPOs are the transportation voice of local government decision-makers and the forum for interested parties to participate. This one-size fits all approach will weaken, if not exclude, participation by interested parties and restrict the flexibility that MPOs currently have to make transportation decisions that reflect a coordinated planning process.

Again thank you for this opportunity to comment, and we look forward to working with you to address any concerns with metropolitan transportation planning and how coordination can be improved in the future. Our organizations stand ready to work with USDOT in whatever manner you require to consider a process that would improve transportation planning, increase the influence of regional planning entities, and ensure that any changes do not weigh too heavily on the nation's MPOs.

Sincerely,



DeLania Hardy
Executive Director
Association of Metropolitan
Planning Organizations



Joe C. McKinney
Executive Director
National Association of
Development Organizations



Leslie Wollack
Executive Director
National Association of
Regional Councils

Appendix A – Unanswered Questions

MPOs, state DOTs, and other stakeholders have asked important questions that are not answered in the NPRM and have not received adequate response from FHWA/FTA:

- How do the changes in this NPRM impact federal planning funds? Are they reduced in MPOs that merge? Increased?
- If two MPOs serving a TMA are merged is the suballocation of STBGP increased to the resulting MPO?
- What is the impact of this NPRM on the conformity process under the Clean Air Act?
- How would the boards of merged MPOs be determined?
 - What is the impact in states that limit the number of board members on an MPO?
- If MPOs serving TMAs are merged, would operators of public transportation lose a seat on a merged MPO board?
- What are the impacts to air quality if one MPO in attainment must jointly develop a single plan, a single TIP, and uniform performance targets with an MPO in nonattainment or maintenance?
- Will an MPO in attainment be subject to using CMAQ funds on projects addressing air quality when prior to this NPRM could use those funds for STBGP projects?
- The NPRM implies minimal costs for MPOs under this NPRM. On what data are you basing that assertion?
 - One of the few merger examples we have from Connecticut cost an estimated \$1.7 million, including more than 4,000 hours of staff time over four years. And both MPOs were willing participants in the merger. Costs could be even higher in more complicated instances, in particular where all parties are not in agreement about merging.
- What is the anticipated outcome in cases where the Governor(s) and MPOs cannot agree as to:
 - The shape of the MPA;
 - Whether MPAs should be merged;
 - Whether the size and complexity of an MPA makes it appropriate to have more than one MPO designated in an MPA;
 - In cases with more than two MPOs in an MPA, which MPOs should remain and which should be merged; and
 - The contents of the planning agreement, including the conflict resolution process.
- How does USDOT anticipate that TIPs will be compiled in MPAs with more than one MPO? How will the process of prioritization be accomplished? Does USDOT

anticipate a separate board-like entity, with representatives from the individual MPOs, to make these decisions?

- What changes to state law do you anticipate will be required to meet the requirements of the NPRM?
- Does FHWA anticipate states will have to redraw their own DOT regional/district office boundaries as a result? What other changes might have to occur?
- Who will be responsible for establishing the 20-year growth projection as required in the NPRM? Is there a process or formula currently in use to carry this out?
- The NPRM could result in MPAs that cover a significant amount of land. What impact do you anticipate this could have on public involvement in the planning process? Does this raise equity issues for those that could not travel a great distance to attend meetings and be involved in the process?
- Why were the multiple requests for an extension of the comment deadline not honored?
- What are the implications of the Census decision not to merge any UZAs during the 2010 census? Will there be more mergers that usual in 2020, and won't that have a more significant impact under this rule?
- In instances where the size of an MPA requires creating unified planning documents with, in some instances, 11 MPOs in as many as five states, how do you anticipate this could practically be accomplished?
- What happens if multiple MPOs within a newly drawn MPA fail to reach consensus on a TIP or plan? Does each plan, TIP, and TIP amendment require approval by each of the remaining MPOs?
- If MPOs cannot reach agreement, despite efforts at dispute resolution, on long range projects or other elements of a unified long range plan, will partial plan approvals be possible? If not, will the planning process have to be suspended?
- A unified TIP presumably would require a metropolitan-wide project prioritization process, in which proposed projects throughout the region are evaluated against all others. Or would this have to continue to take place within state boundaries given that federal transportation funds are allocated to states? If the latter is the case, how is the TIP to be developed as a unified document?
- In developing long range transportation plans, will fiscal constraint be judged for the region overall or for each MPO? How can this be accomplished given differing state fiscal assumptions and budgeting procedures?
- Regarding public participation requirements, will projects and issues concerning one MPO have to be the subject of public outreach and comment in the other MPOs to be included in the long range plan and TIP? Won't this constitute a wasteful use of MPO resources?