



The Florida Metropolitan Planning Organization Advisory Council

*Mayor Susan Haynie
Chairperson*

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Dockets Management Facility
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Docket No. FHWA-2013-0037
FHWA RIN 2125-AF52; FTA RIN 2132-AB10
Notice of Proposed Rulemaking (NPRM); request for comments
Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning
As published in the Federal Register, Friday, June 2, 2014

Docket Manger,

On behalf of the 26 member Metropolitan Planning Organizations (MPOs) of the Florida Metropolitan Planning Organization Advisory Council (MPOAC), I want to thank you for the opportunity to comment on the proposed statewide and nonmetropolitan transportation planning rule and the metropolitan transportation planning rule. Additionally, we commend and appreciate the efforts of the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) to reach out to interested parties through the numerous presentations and listening sessions held throughout the country. Your outreach efforts have undoubtedly resulted in proposed rules that broadly take into account the concerns and desires of a broad cross-section of interested parties.

Our comments are as follows:

SUPPLEMENTARY INFORMATION

III. Major Proposed Revisions to the Planning Rule

A. Performance-Based Planning and Programming

- Target-Setting – on page 31788 of the Notice of Proposed Rulemaking, FTA/FHWA requests comment on a series of questions pertaining to target-setting. We believe that, to the maximum extent feasible, an MPO should be provided the flexibility to develop and set targets that suits the unique needs of that specific metropolitan area and that strict rules should not be implemented.

That said, we do believe that it would be appropriate for the FHWA/FTA to provide clarifying language in the final rule as it relates to the target-setting questions asked in the NPRM, to the extent that the clarifying language provides for flexibility. Our comments relative to selected target-setting questions are as follows:

- What mechanisms currently exist or could be created to facilitate coordination? In Florida, three coordination mechanisms exist to facilitate coordination on target-setting:
 - The MPOAC is a forum specifically created to identify and resolve statewide transportation planning issues. Active participants in the MPOAC process include the FDOT, the states 26 MPOs, the FHWA Florida Division Office and the FTA Region IV. Other stakeholders are engaged as needed, including the states transit providers.
 - MPOs across the state have formed formal alliances of MPOs to address transportation planning issues at a multi-MPO level. Active participants in these MPO alliances include MPOs, FDOT Districts, transit providers, and the FHWA Florida Division Office.
 - The Florida Department of Transportation (FDOT) has formed a Statewide Mobility Performance Measures Task Team consisting of members from each FDOT District, small and large MPOs from each FDOT District, FDOT Central Office staff and staff from the FHWA Florida Division Office.

These three coordination mechanisms will be able to address target-setting coordination issues at the state and regional level and could serve as models for other states.

- What role should FHWA and FTA play in assisting States, MPOs and transit providers in complying with these new target-setting requirements? FHWA/FTA could conduct best practices research and share the results in regional and statewide forums and with individual MPOs during certification meetings. Additionally, FHWA/FTA should actively participate in ongoing processes established to set and implement performance targets in any given state. FHWA/FTA actively participates in these processes in Florida.
- Metropolitan Planning Agreements – on page 31788 of the Notice of Proposed Rulemaking, FHWA/FTA comments on their proposal to amend section 450.314 to require that MPOs include a description in their metropolitan planning agreements that identifies how the parties would cooperatively implement the performance-based planning provisions of MAP-21. We believe that this proposal, which is not part of MAP-21, is unnecessarily prescriptive. Amending the metropolitan planning agreement can be a burdensome process, one that has the potential to expose the MPO to unintended or unexpected changes in the metropolitan planning process and the organizational structure of the MPO under the wrong conditions. Instead, we recommend that the proposed rule be written in a manner that allows for increased flexibility by allowing the MPO and its

partners to establish a cooperative implementation process that fits the local context, including entering into memorandums of understanding, joint resolutions and other similar legal mechanisms.

- **Regional Planning Coordination** – on page 31789 of the Notice of Proposed Rulemaking, FHWA/FTA seeks comment on how regional planning coordination can be further improved in situations where multiple MPOs serve one or several adjacent urbanized areas. Additionally, FHWA/FTA seeks comment on additional mechanisms that could be created to improve regional coordination in situations where there may be multiple MPOs serving a common urbanized area or adjacent urbanized areas. Florida’s MPOs have created formalized MPO Alliances (established in state law and/or interlocal agreements) to achieve coordination between MPOs in neighboring urbanized areas and, in some cases, MPOs sharing the same urbanized area. For example, in the Tampa-St. Petersburg Transportation Management Area (TMA), coordination and regional project priority setting occurs through the TMA Leadership Group established by the three MPOs in the area (Hillsborough MPO, Pinellas MPO and Pasco MPO). The MPO Alliances have developed a wide variety of regional transportation planning products and successfully advocated for the implementation of a number of regionally significant multimodal projects –all without surrendering local autonomy over their individual and long-standing metropolitan transportation planning processes. Any language inserted in the rule to encourage regional planning coordination should not jeopardize the good work of Florida’s MPO Alliances.

B. Performance-Based Planning and Programming

- **Equal Decisionmaking Rights for Representatives of Providers of Public Transportation** – on page 31789 of the Notice of Proposed Rulemaking, FHWA/FTA comments on their proposal that representatives of providers of public transportation would have equal decisionmaking rights and authorities as other officials who are on the policy board of an MPO that serves a TMA. Many MPOs serving TMAs across the country use a weighted or proportional voting structure. In the majority of these cases, the weighted or proportional vote is based on population, a standard that may, in some cases, be satisfying state law or regulation to consider population in the formation of an MPO board. Where MPOs have providers of public transportation (and sometimes other modal authorities) represented on the MPO board and use a weighted or proportional voting structure, the MPO must define the weight or the proportion of the vote of the representative of transit providers. For example, it is often the case that the weight or proportion of a vote cast by the representative of the provider of public transportation is the same as that of the smallest general purpose government represented on the MPO board. We recommend that MPOs be given the flexibility to satisfy the political and regulatory conditions under which they operate, including the option to assign a weighted or proportional vote to the representative of providers of public transportation. Further, we recommend that the rule clearly state that MPOs have the flexibility to make that determination in

cooperation with the state and providers of public transportation operating within the TMA.

IV. Section-by-Section Discussion

Section 450.310 – Metropolitan Planning Organization Designation and Re-designation

- Relating to Policy Guidance on MPO Representatives – on page 31800 of the Notice of Proposed Rulemaking, FHWA/FTA notes that several questions and comments were received on how an MPO serving a TMA must be structured and then references in footnote 39 the September 30, 2013 Proposed Policy Guidance on Metropolitan Planning Organization Representation (issued as final Policy Guidance on June 2, 2014). It is not clear in the proposed rule if the policy guidance will be implemented as part of the final rule. We recommend against implementing the components of the policy guidance as part of the final rule. Instead we believe that the policy guidance be made available only as a guide for implementing the requirements of the final rule and not be binding through rule or the certification process. Further, we recommend that any sections of the policy guidance intended to be binding as law be clarified as such in the final rule in order to provide consistency of implementation across the country and avoid varying interpretations of the level of enforcement of the policy guidance by region, state, or FHWA Division.
- Responses to Questions Posed on TMA Structure – on page 31800 of the Notice of Proposed Rulemaking, FTA/FHWA asked if any of 5 questions relating to the structure of an MPO serving a TMA should be addressed in the final rule and, if so, how. We believe an MPO should be provided the flexibility to develop an MPO structure that suits the unique needs of that specific metropolitan area and that strict rules should not be implemented. However, it would be appropriate for the FHWA/FTA to provide guidance as it relates to the 5 questions asked in the NPRM, to the extent that the clarifying language provides for flexibility. Our comments relative to each of the 5 questions are as follows:
 - Should the regulations clarify who appropriate “officials” may be? Florida law states that, “all voting members shall be elected officials of general-purpose local governments...” (with an exception for providers of major modes of transportation not under general-purpose local government) and that “local elected officials” for the purpose of MPO membership includes only elected officials that represent general-purpose governments. Florida law also clarifies that representatives of the Florida Department of Transportation shall serve as nonvoting advisers to the MPO governing board in order to avoid conflicts with Florida’s strong Sunshine Laws. Therefore, while we believe that the regulations should clarify who appropriate “officials” may be for this purpose, we strongly encourage that any clarifying language added to the final rule provide significant flexibility and not present conflicts with already established state laws on this subject.

- Can staff members or other alternates be substituted for the officials identified in (d)(1)? We believe that alternates for officials identified in (d)(1) should be of the same general background (i.e. a local elected official should act as the alternate for a local elected official) and that any clarifying language state as such.
- Can an official in paragraph (d)(1) serve in multiple capacities on the MPO board, e.g. can a local elected official or State official also serve as a representative of a major mode of transportation? In Florida, Florida Statute 339.175(3)(b) provides how a local elected official can also represent a major mode of transportation. It provides: “In metropolitan areas in which authorities or other agencies have been or may be created by law to perform transportation functions and are or will be performing transportation functions that are not under the jurisdiction of a general-purpose local government represented on the MPO, such authorities or other agencies may be provided voting membership on the MPO. In all other MPOs in which transportation authorities or agencies are to be represented by elected officials from general-purpose local governments, the MPO shall establish a process by which the collective interests of such authorities or other agencies are expressed and conveyed.” Transit representation on MPO boards is clearly and appropriately addressed in this state statute which should be considered as conforming to the federal requirements.

This section in Florida law serves to avoid Sunshine Law issues and other conflicts of interest between modal staff and elected officials who act as the representative for a major mode of transportation. Any rule that would require transit agency staff to sit as a voting member on an MPO board along with elected officials who are members of their own governing board could create conflicts with Florida’s Sunshine Law and other conflicts of interest. We encourage FHWA/FTA to avoid creating rules that interfere with long standing state law and local practices.

- Should the regulations provide more specificity on how each official identified in paragraph (d)(1) should be represented on the MPO? There are MPOs in Florida that employ weighted voting structures in which the vote of each member of the MPO is based on an established set of criteria (i.e. population). Clarification would be appropriate to the extent that the rule would clarify how MPOs are expected to add representatives to their MPO board without undermining the stated policy priorities met through a weighted voting structure.
- Exemption from MPO Structure Requirements – on page 31800 of the Notice of Proposed Rulemaking, FHWA/FTA confirms that MPOs serving TMAs must comply with the structure requirements outlines in proposed section 450.310, except those that are exempt under 23 U.S.C. 134(d)(s) and 49 U.S.C. 5303(d)(3). The FHWA/FTA then states that the, “long-standing interpretation of this provision is that an exemption from MPO structure requirements is only

appropriate for an MPO where 1) the MPO operates pursuant to State law that was in effect on or before December 18, 1991; 2) such State law has not been amended after December 18, 1991, as regards to the structure or organization of the MPO; and 3) the MPO has not been designated or re-designated after December 18, 1991.” This interpretation does not allow for minor changes in state law over time that may have been made for a variety of purposes (clarification, definition, etc.) and that do not alter the underlying purpose of the law. For example, Florida’s law governing MPO structure (Section 339.175, F.S.) was modified several years ago to clarify that the definition of *local elected official* includes only elected officials representing local general-purpose government and does not include such local elected officials as County Sheriff, County Property Appraiser, County Supervisor of Elections, etc. This modification did not alter the intent of the law, but did clarify the range of elected officials covered by the law. In order to provide States, MPOs and FHWA Division Offices with increased flexibility in determining if an exemption from MPO structure requirements is applicable in individual cases, we recommend that the second clause in the interpretation should be modified to read, “... such State law has not been *substantially* amended after December 18, 1991” and that any references to “re-designated” should be deleted because of the inconsistent interpretation among the States of what changes require an MPO to be “re-designated”.

V. Regulatory Analyses and Notices

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

- Cost Burden of Proposed Rule – on page 31806 of the Notice of Proposed Rulemaking, FHWA/FTA finds that the economic impact of this rulemaking would be minimal. While we recognize that estimating the cost burden of this proposed rule (particularly given the fact that “no specific data was available for this analysis”) is a complex and fluid process, we do not agree that the economic impact of this rulemaking will be minimal (approximately 2.6% higher than current costs). While, in fact, the impact may be minimal in some states where federal metropolitan transportation planning (PL) funds rose under MAP-21, PL funding under MAP-21 was reduced in Florida (1 of 13 states where PL funds were reduced) by approximately \$2 million per year (an annual reduction of nearly 10%). MPO planning and programming requirements were not reduced under MAP-21 and the introduction of performance-based planning and programming will significantly increase the work load for each MPO in Florida. We do not expect an analysis of the potential cost burden to be conducted for each state or each MPO, but we do request that the varying financial impact in different states and MPOs of the proposed rulemaking be recognized.

TITLE 23 – Highways PART 450 – PLANNING ASSISTANCE AND STANDARDS

Subpart A – Transportation Planning and Programming Definitions

- Section 450.104 – on page 31814 of the Notice of Proposed Rulemaking, FHWA/FTA proposes a definition for the term *local official*. The term *local official* as it is defined in the proposed rule requires the official to have responsibility for transportation. However, responsibility for transportation has no direct relationship to the way the term *local official* is used in the proposed rules. For example, the term is used in section 450.310(d)(i) as one of the categories of individuals who may serve on an MPO in a Transportation Management Area (TMA). However, in some states general purpose local governments do not have jurisdiction over a transportation system and the local elected officials, therefore, do not have responsibility for transportation, but those local elected officials have often been included as members of their local MPO. We recommend that the phrase “with responsibility for transportation” be removed from the definition.

Subpart B – Statewide and Nonmetropolitan Transportation Planning and Programming

- Section 450.216(f)(2) – on page 31820 of the Notice of Proposed Rulemaking, FHWA/FTA proposes that the state transportation plan include, “a system performance report ... evaluating the condition and performance of the transportation system with respect to the performance targets ..., including progress achieved by the MPO(s) in meeting the performance targets in comparison with system performance recorded in previous reports.” It is not clear if the performance targets described in this section relate to those set by the State or those set by the MPO. It is also not clear if the comparison described in this section is to State or metropolitan area system performance recorded in previous reports. We recommend that this language either be deleted or clarified to address the comments above.
- Section 450.216(k) – on page 31820 of the Notice of Proposed Rulemaking, FHWA/FTA proposes that the state include a discussion of potential environmental mitigation activities in the long-range statewide transportation plan and includes a list of entities with which the state must consult when developing that discussion. Given the role MPOs play in leading transportation planning and programming in metropolitan areas, we recommend that this list include MPOs in the final rule.

Subpart C – Metropolitan Transportation Planning and Programming

- Section 450.306(a) – on page 31824 of the Notice of Proposed Rulemaking, FHWA/FTA states that, “... metropolitan planning organizations ... shall develop long-range transportation plans and TIPs through a performance-driven, outcome-based approach to planning ...” While we recognize that one of the primary innovations of MAP-21 is the requirement to integrate

performance measurement into transportation decisionmaking, we are concerned about the potential of a direct linkage between project funding and performance-based planning and programming. Specifically, we are concerned that states that have not traditionally performed well in certain areas (bridge maintenance, for example) would receive larger shares of discretionary funding to help them address those areas where they underperform in the new performance-based process, to the detriment of states and metropolitan areas that have traditionally performed well in those same areas through careful management and targeted funding. We believe that such a funding approach would reward irresponsible past funding decisions and encourage FHWA/FTA to provide clarifying language in the final rule to that effect.

- Section 450.310(d)(1) – on page 31825 of the Notice of Proposed Rulemaking, FHWA/FTA proposes that MPOs in TMA areas satisfy the structure requirements (transit representative) by October 1, 2014. We believe this requirement does not provide sufficient time for these MPOs to effectuate a change in the structure requirements as comments to the NPRM are not due until September 2, 2014 and final rules will likely not be available until after October 1, 2014. Instead, we recommend that MPOs be provided at least 12 months following the release of the final metropolitan transportation planning rule to modify the existing MPO structure in order to meet the new requirement.
- Section 450.314 – on pages 31826 and 31827 of the Notice of Proposed Rulemaking, FHWA/FTA proposes a variety of potential changes be made to the metropolitan planning agreement, primarily to ensure that MPOs coordinate performance-based planning with the state, providers of public transportation and neighboring MPOs. All MPOs in Florida will be required to amend their existing planning agreements to comply with this proposed rule, a complex process that will take significant time and expense to complete. We believe that it is not necessary for MPOs to be required to amend their existing metropolitan planning agreements to achieve improved coordination in performance-based planning. Instead, MPOs should be given flexibility in determining how to implement the performance-based planning and programming process relative to their own unique circumstances through the use of joint resolutions, memorandums of understanding, etc.
- Section 450.324(f)(11)(iii) – on page 31831 of the Notice of Proposed Rulemaking, FHWA/FTA proposes that MPOs include an assessment of the appropriateness of innovative finance techniques as revenue sources for projects in the metropolitan transportation plan. We believe that this is an important step in not only encouraging MPOs to consider new and innovative financing techniques very early in the planning process, but also places emphasis on the feasibility of implementing those financing techniques in light of the political and economic conditions of the region, state and part of the country. The result should be cost feasible plans that are more firmly grounded in the financial realities and possibilities of the metropolitan area.

- Section 450.326(c) & (d) – on page 31832 of the Notice of Proposed Rulemaking, FHWA/FTA proposes new requirements to implement performance-based programming, including a requirement to provide a description of the anticipated effect of the Transportation Improvement Program (TIP) toward achieving MPO performance targets. It is not clear whether the required descriptions must be developed for each individual project in the TIP or collectively for all projects contained in the TIP. MPOs should be given the authority to meet this requirement on a programmatic basis and not be required to provide this information for individual projects.

Thank you again for the opportunity to comment on the proposed statewide and nonmetropolitan transportation planning rule and the metropolitan transportation planning rule. We look forward to our continued work with the FHWA/FTA and our transportation partners at the state and local levels to plan and implement our nation's transportation system. Please call Mr. Howard Glassman, MPOAC Executive Director at (850) 414-4062 should you have any questions.

Sincerely,



Mayor Susan Haynie
Chairperson

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cc: MPOAC Members