



## *Florida Department of Transportation*

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SECRETARY

August 17, 2016

Gregory G. Nadeau, Administrator  
Federal Highway Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue S.E.  
Washington, DC 20590

Carolyn Flowers, Acting Administrator  
Federal Transit Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue S.E.  
Washington, DC 20590

Re: Docket No. FHWA-2016-0016

Dear Administrators Nadeau and Flowers:

The Florida Department of Transportation (FDOT) is pleased to comment on a Notice of Proposed Rulemaking (NPRM) issued by the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) in the June 27, 2016 Federal Register. The NPRM titled "Metropolitan Planning Organization Coordination and Planning Area Reform" proposes revisions to transportation planning requirements.

FDOT has collaborated closely with the Florida Metropolitan Planning Organization Advisory Council (MPOAC). The MPOAC is a statewide planning and policy organization created by the Florida Legislature 30 years ago. We recommend that the MPOAC comments on this rulemaking also be given careful consideration.

Our detailed comments which follow can be summarized as follows:

1. Florida is impacted by the NPRM more than any other state
2. Florida is a model of collaboration with its planning stakeholders
3. There is no clear direction for this NPRM in legislation
4. States and MPOs can follow the intent of the NPRM on their own
5. This rulemaking should be suspended until legislation is enacted that clarifies the Congressional intent
6. The highly prescriptive approach of the NPRM is not good governance consistent with established principles of federalism. FHWA and FTA can practice good governance by suspending the rulemaking

### **1. Florida is Impacted by the NPRM More Than Any Other State**

There are currently 27 metropolitan planning organizations (MPOs) in Florida. This is more than any other state. As determined by FHWA, 22 of these MPOs will be impacted by the proposed rule, more than any other state. As the third most populous state, our population of 20 million people will grow by more than 7 million more people by 2045. Each year more than 106 million

people visit Florida. Clearly, Florida has a great stake in this proposed rulemaking and its perspectives therefore must be closely considered.

## **2. Florida is a Model of Collaboration With Its Planning Stakeholders**

Prior to the 2010 census and the addition of one more MPO, a total of 22 of Florida’s 26 MPOs had entered into formal arrangements to coordinate regional transportation planning activities with one or more neighboring MPOs. Four of those efforts involve three or more MPOs working through a regional association of MPOs, while the rest include two contiguous MPOs working together to coordinate regional transportation planning and decision-making. Six MPOs participate in more than one alliance (Polk TPO, Martin MPO, St. Lucie TPO, Charlotte County-Punta Gorda MPO, Lee County MPO, and Sarasota/Manatee MPO). These regional coordinating efforts of MPOs are listed in the table below including the number of member MPOs, acronym, and formation date for each (as applicable):

<b>MPO Regional Coordinating Efforts</b>			
<i>Name of MPO Alliance</i>	<i>Number of Member MPOs</i>	<i>Acronym</i>	<i>Year Formed</i>
<b>Regional Alliances of MPOs (three or more MPOs working together)</b>			
Central Florida MPO Alliance	6*	CFMPOA	1997
Southeast Florida Transportation Council	3	SEFTC	2005
Treasure Coast Transportation Council	3	TCTC	2006
West Central Florida MPO Chairs Coordinating Committee	6*	CCC	1992
<b>Contiguous MPOs (two MPOs working together)</b>			
Charlotte County-Punta Gorda MPO and Lee County MPO			2010
Charlotte County-Punta Gorda MPO and Sarasota/Manatee MPO			2004
Collier County MPO and Lee County MPO			2004
Martin MPO and St. Lucie TPO			2006
Northwest Florida Regional Transportation Planning Organization		NWFLRTPO	2004

\*Polk TPO is a member of both the CFMPOA and the CCC

Given the widespread existence of regional MPO alliances, many regional transportation planning products have been generated; including but not limited to:

- regional long range transportation plans
- regional goals and objectives
- regional project priority lists
- regional congestion management systems
- regional freight plans
- regional public involvement programs

As a result of regional MPO coordination, a variety of regionally significant transportation projects have been planned, programmed, and constructed all across the state. Regional MPO coordination efforts have also resulted in regional long range transportation plans and numerous joint regional priorities lists that are developed and supported by multiple MPOs.

Examples of regional alliances of three or more MPOs working together are highlighted below:

***Central Florida MPO Alliance (CFMPOA)***

The Orlando-Volusia Alliance was formed in 1997 by MetroPlan Orlando and the Volusia County MPO (now the River to Sea TPO) as a regional collaborative to focus on transportation planning issues of mutual interest. In 2001 the Space Coast TPO, the Lake-Sumter MPO, the Ocala-Marion County TPO, and the Polk TPO joined MetroPlan Orlando and the River to Sea TPO to formally establish the Central Florida MPO Alliance (CFMPOA). Below is a list of regional documents produced by the CFMPOA and status of activity.

<b>CFMPOA Documents Produced, Documents in Progress, and Ongoing Activities</b>	
<i>Document/Activity</i>	<i>Progress</i>
2025 Regional Long Range Transportation Plan	Completed
Legislative Priorities List	Ongoing
Myregion.org	Ongoing
Regional Prioritization Priorities and Process Document	Completed
Regional Prioritization Initiative	Ongoing
Regional Tracking the Trends Document	Ongoing

***Southeast Florida Transportation Council (SEFTC)***

The three MPOs in Southeast Florida (the Broward MPO, the Miami-Dade Urbanized Area MPO, and the Palm Beach MPO) have been coordinating formally on regional transportation planning issues for many years. Documents of regional significance are listed below.

<b>SEFTC Documents Produced, Documents in Progress, and Ongoing Activities</b>	
<i>Document/Activity</i>	<i>Progress</i>
2035 RL RTP	Completed
2040 Regional Transportation Plan	In Progress
Annual Prioritized List of Regional Transportation Projects	Ongoing
Cargo 2040	In Progress
Regional Greenway Plan	In Progress
Regional Performance Standards	In Progress
Regional Public Involvement Plan	Completed
Regional Transit System Plan	In Progress
Southeast Florida Passenger Rail Evaluation	Completed
South Florida Regional Freight Plan	Completed
South Florida East Coast Corridor Study	In Progress

***Treasure Coast Transportation Council (TCTC)***

The Ft. Pierce Urbanized Area (UZA) was designated following the 1980 census and the St. Lucie County MPO (now the St. Lucie TPO) was formed to conduct metropolitan transportation planning in that new metropolitan area. Following the 1990 census, the Martin County MPO (now the Martin MPO) and the Indian River County MPO were formed to conduct metropolitan transportation planning for the newly designated Stuart and Vero Beach UZAs. These three Treasure Coast MPOs coordinated informally on regional transportation planning issues during the 1990’s and early 2000’s, but no formal coordination mechanism was in place.

Between 1990 and 2000, the Ft. Pierce and Stuart UZAs grew and crossed county lines and with the 2000 census, the two UZAs were merged to form the single Port St. Lucie UZA. On April 10th, 2006 the Martin, St. Lucie, and Indian River County MPOs entered into an interlocal agreement to create the Treasure Coast Transportation Council (TCTC). The TCTC was created foremost to secure TRIP funding but it has since come to serve as a forum for formal coordination and communication among agencies and organizations involved in regional transportation planning.

The Council consists of the chair and vice-chair from each MPO Board for a total of six voting members plus three ex-officio, non-voting advisors, one from FDOT District 4, one from the Florida Turnpike Enterprise, and one from the Treasure Coast Regional Planning Council. The administrative duties of the TCTC are performed by each of the three member MPOs on a rotating basis. The TCTC meets annually to coordinate regional planning issues, projects, and funding.

The TCTC developed a document in 2007 detailing the regional project prioritization criteria that was used to develop the Regionally Ranked 2030 Needs Projects document. These documents are listed below.

<b>TCTC Documents Produced, Documents in Progress, and Ongoing Activities</b>	
<i>Document/Activity</i>	<i>Progress</i>
Regional Project Prioritization Criteria Document	Completed
Regionally Ranked 2030 Needs Projects	Completed

***West Central Florida MPO Chairs Coordinating Committee (CCC)***

In early 1989, the Hillsborough County MPO and Pinellas County MPO staff directors began meeting to coordinate regional transportation planning and were joined by the Pasco County MPO later that same year. The West Central Florida MPO Chairs Coordinating Committee (CCC) was officially formed in 1992 following the 1990 census and the Governor’s re-designation of the MPOs. This was the first formal regional MPO alliance in Florida and the only one to be required in Florida Statute. In 1993, the Spring Hill/Hernando MPO (now Hernando County MPO) joined the CCC and the name was changed to the Tampa Bay Area’s Chairman’s Coordinating Committee. In 2000, the Polk TPO and the Sarasota/Manatee MPO joined the Tampa Bay Area’s Chairman’s Coordinating Committee by amendment to Florida Statute (s. 339.175, F. S.) and the name was again changed to the West Central Florida Chairs Coordinating Committee. In 2004, an interlocal agreement was signed by members of the CCC and amended in 2006 to add the Citrus County Board of County Commissioners as a voting member for the purpose of participating in the Transportation Regional Incentive Program.

The voting membership of the CCC Governing Board is comprised of the chairs from six individual MPOs including the Hernando Citrus County MPO, the Hillsborough County MPO, the Pasco County MPO, the Pinellas County MPO, the Polk TPO, and the Sarasota/Manatee MPO. Additional non-voting partner entities of the CCC Board include the Florida Department of Transportation (FDOT) District 1 and 7 Secretaries, a representative from Florida’s Turnpike Enterprise, representatives from four Regional Planning Councils (the Central Florida, Southwest Florida, Withlacoochee, and Tampa Bay RPCs), and a representative from the Tampa Bay Area

Regional Transportation Authority (TBARTA). Major modal providers participate on an ad hoc basis.

The CCC Board meets quarterly to discuss regional transportation issues, to develop solutions to those issues, and to ensure a consistent regional planning approach in the West Central Florida region. All administrative duties for the CCC are performed by TBARTA through a contract with the CCC, but the Chair of the CCC rotates annually among each of the voting members. The CCC Staff Directors Coordination Team, comprised of member MPO Directors, FDOT and RPC managers, and staff from other partner agencies, meets bi-weekly to carry-out the regional work program and coordinating process.

The CCC hosts a website (<http://www.regionaltransportation.org/>) where relevant documents and other information, including meeting schedules and minutes, are posted.

The CCC developed the Joint Citizens Advisory Committee (JCAC) to provide public input and a citizen perspective. JCAC members come from the Citizens Advisory Committees of each of the member MPOs.

The 2035 RL RTP, adopted in draft form in November 2009, is the CCC’s primary means for coordination in the west central Florida region. The RL RTP was developed using a top down approach in which member MPOs agreed upon the following:

- a regional multi-modal transportation network
- needs on the regional transportation network
- viable regional transportation improvement strategies
- regional goals, objectives and measures of effectiveness
- available revenue sources that could be applied to the regional transportation network
- a fiscally constrained list of regional transportation projects

In essence, the 2035 RL RTP was developed using a long range transportation planning process that would be used by any individual MPO, including public involvement activities and an advisory committee process. Each of the individual member MPO LRTPs contain elements of the RL RTP appropriate for their individual MPO needs, effectively implementing the policies and project priorities of the RLTP. The CCC had delayed the development of the 2040 LRTP so that it could be coordinated with the next TBARTA Master Plan update completed in 2015. This document and other documents of regional significance are listed below.

<b>CCC Documents Produced, Documents in Progress, and Ongoing Activities</b>	
<i>Document/Activity</i>	<i>Progress</i>
2035 Regional Long Range Transportation Plan	Completed
CMP List	Completed
FDOT District 1 and District 7 TRIP Priorities List	Completed
High Priority Regional Transportation Initiatives List	Completed
Regional Multi-Use Trails Element	Completed
Regional Public Participation Plan	Completed

### ***Tampa Bay Transportation Management Area Leadership Group (TMA)***

In the spring of 2013, the three MPOs covering the Tampa-St. Petersburg Urbanized Area (the Hillsborough County MPO, the Pinellas County MPO, and the Pasco County MPO) began to discuss ways to improve Transportation Management Area (TMA) level planning and programming coordination within the context of the broader CCC process. To date, no formal approach has been agreed upon, but the three MPO boards have agreed to establish a working group (to be called the Tampa Bay Transportation Management Area or TBTMA) comprised of three members from each MPO Board. The MPO boards also agreed that TBARTA and FDOT staff should be included in the working group. Further, there is a general consensus among the MPOs that to coordinate transportation planning activities in the larger region, the CCC process should be integrated with TBARTA planning process. In 2014, the TBTMA agreed upon a prioritized list of regional projects for the three MPOs.

Examples of two contiguous MPOs working together are:

**Charlotte County-Punta Gorda MPO and Lee County MPO**

**Charlotte County-Punta Gorda MPO and Sarasota/Manatee MPO**

**Collier County MPO and Lee County MPO**

**Northwest Florida Regional Transportation Planning Organization (NWFLRTPO)**

### ***FDOT-MPO Performance Collaboration Efforts***

On May 6, 2016, FDOT kicked off collaboration efforts with four pilot MPOs. Rather than work with all 27 MPOs to explore data development for performance measures by MPO area, four MPOs were chosen, of varying size and complexity, as a pilot for all MPOs. The MPOs are Gainesville, Hillsborough, Indian River and Broward. The pilot will help FDOT and MPO partners become better prepared to adopt FHWA's national measures of performance across Florida and to determine how to use these measures to support Florida's own performance management needs.

FDOT is also currently planning for the third Florida Metropolitan Planning Partnership (FMPP) group face-to-face annual meeting in September, 2016. The FMPP is the new name of the group consisting of FTA planning team, FHWA Division Office planning team, MPOs and FDOT. A major portion of this one and a half day meeting will be performance measures discussion and target collaboration. FDOT and Florida's MPOs can be showcased nationally as a model of collaboration through FHWA and FTA technical assistance. Replication and adaptation of such best practices may have far greater positive impact than an aggressive regulatory approach.

### **3. There is No Clear Direction for This NPRM in Legislation**

The NPRM states that "since 2007, the language of the regulation has supported the possibility of multiple MPOs within an urbanized area rather than within an MPA. The FHWA and FTA have concluded this 2007 change in the regulatory definition has fostered confusion about the

statutory requirements and resulted in less efficient planning outcomes where multiple TIPs and metropolitan transportation plans are developed within a single urbanized area. This proposed rule is designed to correct the problems that have occurred under the 2007 rule and return to the structure embodied in the rule before the 2007 amendments and envisioned in statute.”

There have been no changes in 23 U.S.C. 134 or 135 for metropolitan and statewide transportation planning in the SAFETEA-LU (2005), MAP-21 (2012) or FAST Act (2015) legislation to warrant the changes in this NPRM. Further, the Final Regulations for planning issued on May 27, 2016 after nearly two years and extensive comments gave no indication that this new rulemaking was forthcoming or needed. Caution and restraint must be objectively exercised so as not to regulate beyond the scope of associated statutes.

#### **4. States and MPOs Can Follow the Intent of the NPRM on Their Own**

During the July 15, 2016 webinar conducted by FHWA and FTA on this NPRM someone asked, “Couldn't all these revisions be accomplished under current law if the MPOs and states, and transit agree?” The response to this question was yes. FDOT will gladly volunteer to pursue further collaboration and consolidation efforts with our MPOs (and FHWA and FTA) and share our results with others. Once again, FHWA and FTA can carry out a highly value-adding approach of encouraging best practices through technical assistance programs.

#### **5. This Rulemaking Should Be Suspended Until Legislation is Enacted That Clarifies the Congressional Intent**

FDOT recommends that this NPRM be suspended and that state DOTs and MPOs be encouraged to pursue regional planning opportunities on a voluntary basis. FHWA and FTA could pursue clarification of the legislative language with the Congressional Committees that have responsibility for federal transportation legislation.

FDOT will continue to work cooperatively with all Florida MPOs and our federal partners to further improve our transportation planning products and the delivery of projects that achieve our Mission in providing a safe transportation system that ensures the mobility of people and goods, enhances economic prosperity and preserves the quality of our environment and communities. The recommended short-term action of suspending the rulemaking can produce a far greater long-term benefit through a federal-state-local collaboration around common goals and how best to achieve them. FDOT offers to be part of such a process.

#### **6. The Highly Prescriptive Approach of the NPRM is Not Good Governance Consistent with Established Principles of Federalism. FHWA and FTA Can Practice Good Governance by Suspending the Rulemaking**

Page 41480 of the NPRM contains the following Federalism Assessment:

*D. Executive Order 13132 (Federalism Assessment)*

The FHWA and FTA have analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132. The FHWA and FTA have determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA and FTA have also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Section 6 of Executive Order 13132 states:

Sec. 6. Consultation.

(a) Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Within 90 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order and that designated official shall submit to the Office of Management and Budget a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with State and local officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(C) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts State law, unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with State and local officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget a federalism summary impact.



Simply put, FDOT does not believe that the Consultation requirements of Executive Order 13132 have been met. The American Association of State Highway and Transportation Officials conducts multiple meetings each year in which FHWA and FTA officials are provided an opportunity to discuss matters such as this. Also, each state has a Division Office of FHWA which meets with the state DOT and MPOs in that state. The early consultation with state DOTs and MPOs in the process of developing this NPRM simply did not take place. Executive Order 13132 is an important and timely document even after nearly two decades since its issuance in 1999. It can be an invaluable resource for a federal-state dialogue about strengthening our intergovernmental approaches to be both more effective and efficient.

The foundation for rulemaking (and for any other federal-state-local policy or program) must be an understanding and application of federalism principles to ensure that our intergovernmental relationship is as effective and efficient as possible.

We appreciate the opportunity to comment on this Notice of Proposed Rulemaking. Thank you. Please do not hesitate to contact us in regards to any of our comments. Mr. David Lee should be your primary point of contact at (850) 414-4802 or david.lee@dot.state.fl.us

Sincerely,



Jim Boxold  
Secretary

JB/dl