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August 24, 2016

Mr. Gregory Nadeau, Administrator
Federal Highway Administration

Ms. Carolyn Flowers, Acting Administrator
Federal Transit Administration

Re: *Docket No. FHWA-2016-0016; FHWA RIN 2125-AF68; FTA RIN 2132-AB28
Metropolitan Planning Organization Coordination and Planning Area Reform*

Dear Administrators Nadeau and Flowers,

Thank you for considering the comments of the New York State Association of Metropolitan Planning Organizations (NYSAMPO) on the above referenced NPRM. NYSAMPO is an organization of the fourteen MPOs in New York, ranging in size from among the nation's largest to those that are very small. Our Association forms the foundation of a very effective Model of Regional Cooperation, facilitating regular communication among the MPOs, New York State DOT, and both of your agencies.

Our experience shows that effective metropolitan transportation planning is driven by cooperation and coordination among officials representing state and local governments, stakeholders, and the public, supported by quality professional staff. While we recognize that there has been a divergence between statutory language, regulation, and practice, we strongly believe that this proposed rule will not accomplish its purpose of improving coordination, but in fact would hinder effective planning, especially in multi-state urbanized areas.

NYSAMPO urges you to reconsider this rulemaking action, and consult with Congress as necessary to revise the statutory language that defines metropolitan planning area.

Our comments are attached.

Sincerely,

James D'Agostino, Chair

Enc:

NOTICE OF PROPOSED RULEMAKING
MPO COORDINATION AND PLANNING AREA REFORM
23 CFR 450 and 49 CFR 613
Docket Number FHWA 2016-0016

COMMENTS

On behalf of the
NEW YORK STATE ASSOCIATION OF METROPOLITAN PLANNING ORGANIZATIONS

From the narrative text of the proposed rule:

"I. Summary

This regulation proposes to improve the transportation planning process by strengthening the coordination of MPOs and States and promoting the use of regional approaches to planning and decisionmaking."

NYSAMPO believes this statement is not accurate. There are excellent models of coordination among MPOs and States, including those in New York State. In the New York City metropolitan region, where the Census Urbanized Area stretches across three states (NY, NJ, and CT), the constituent MPOs and State DOTs work effectively to coordinate their planning activities while respecting the fact that each may have different transportation priorities. The same is true in the Mid-Hudson region of the state, where the Poughkeepsie-Newburgh UZA extends into New Jersey. The Binghamton NY UZA extended into Pennsylvania in the 2000 Census, primarily as a result of the Census Bureau changing the definitional methodology of UZA. The two state DOTs and the RPO in northern Pennsylvania quickly developed effective coordination of both technical planning activities and decision making.

NYSAMPO finds, at least in our state, that this proposed rule will not improve the transportation planning process, but may in fact make it more difficult to plan effectively.

NYSAMPO notes the statutory language, and that the proposed rule would align the regulatory definition of the MPA with the statutory language.

"(e) Metropolitan Planning Area Boundaries.—

(1) In general. For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

(2) Included area. Each metropolitan planning area—

(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census."

23 US Code 134(e)

NYSAMPO recognizes the divergence of statutory and regulatory language. However, we believe that the Metropolitan Planning Area was in fact created as a planning construct that provided a basis for MPOs to formalize their planning geography to coincide with the forecasts for the horizon year of their long-range Metropolitan Transportation Plan.

We further note that the Census Bureau states that it defines and delineates urbanized areas for statistical purposes. "If a federal, tribal, state, or local government agency voluntarily uses the urban-rural classification in a nonstatistical program, it is that agency's responsibility to ensure that the classification is appropriate for such use. In considering the appropriateness of the classification for use in a nonstatistical program, the Census Bureau urges each government agency to consider permitting appropriate modifications of the results of implementing the urban-rural classification specifically for the

purposes of its program". [Federal Register: August 24, 2011 (Volume 76, Number 164) Page 53029-53043].

Finally, air quality non-attainment areas use a different geographic basis, which further complicates planning. NYSAMPO also notes that for those cross state urbanized areas that are in non-attainment for national ambient air quality standards and are subject to conformity, the potential complexities are enormous. Every new conformity determination, and every major amendment to the Transportation Improvement Program (TIP) that involves a non-exempt project would require multi-state technical, administrative, and public and interagency consultation. In the case of the New York metropolitan area, three states and their local transportation agency jurisdictions would need to coordinate planning schedules and processes, and it would necessitate substantial coordination between multiple Federal agencies. In that area, conformity approval would need to be jointly approved by two United States Environmental Protection Agency (EPA) regions, two Federal Transit Administration (FTA) regions and three FHWA Division Offices.

NYSAMPO believes that the proposed regulatory solution to the divergence of language is not the proper approach. It would be more appropriate to consult with Congress on an adjustment to the language in 23 USC 134(e) to better reflect the good planning practice that has evolved since the passage of ISTEA.

COMMENTS ON SPECIFIC SECTIONS

§450.104 Definitions

Metropolitan Planning Area is defined to align more closely with statute, to include the requirement that the MPA include the entire UZA plus area expected to become urbanized within the twenty year forecast period for the transportation plan.

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?

NYSAMPO finds this issue to be central to our concern. With the growth of mega-regions, like the Northeast U.S. and Florida, there is no question that MPA boundaries will become contiguous; many already have. Forced merger could result in a single MPA that stretches from south of Washington D.C. into the state of Maine. While there is a great deal of research and policy work underway on how to do effective planning in mega-regions, it is clear that forcing mergers will not provide any benefit. The ability of States and MPOs to define boundaries that support effective planning, for example by reflecting travelsheds, is necessary, and should be permitted.

“Metropolitan transportation plan means the official multimodal transportation plan addressing no less than a 20-year planning horizon, that is developed, adopted, and updated by the MPO or MPOs through the metropolitan transportation planning process **for the MPA.**”

“Transportation improvement program (TIP) means a prioritized listing/program of transportation projects covering a period of 4 years that is developed and formally adopted by an MPO or MPOs as part of the metropolitan transportation planning process **for the MPA...**”

NYSAMPO proposes that the words “for the MPA” be deleted. These are MPO planning products, and there is a provision for multiple MPOs in an MPA.

§450.226 – Phase-In of New Requirements

The proposed rule would provide a two-year phase-in period for a revised Metropolitan Planning Agreement that meets the requirements of §450.208.

FHWA and FTA seek comment on the appropriateness of the phase-in period.

NYSAMPO believes that if this proposed rule were to become final, a two-year phase-in period will not be adequate. The Metropolitan Planning Agreement is a document that requires legal scrutiny by the State and MPO members. This can be a lengthy process that must include time for conflict resolution.

NYSAMPO proposes that a four-year phase-in period is more realistic.

§450.306 – Scope of the Metropolitan Transportation Planning Process

The proposed rule states that when there are more than one MPO in an MPA, they must jointly establish performance targets.

FHWA and FTA request comments on the proposed language, and request ideas for alternatives that might better accomplish the goals embodied in the proposal. Those goals are to ensure performance targets appropriately reflect the needs and priorities of the MPA as a whole, and to avoid a situation where the MPOs within a single MPA select inconsistent or conflicting performance targets.

NYSAMPO finds this approach to be premature, given the incomplete nature of rulemakings that will implement performance-based planning requirements that include target setting. States and MPOs are just beginning to understand underlying data and methodologies that will support performance targets. FHWA has acknowledged in those rulemakings that target setting will be challenging. The notion that a single target can be adopted in a complex UZA like the NY-NJ-CT metropolitan area that includes multiple states and MPOs is not practicable. While there may be coordination, each State will appropriately have its own policy and investment priorities. NYSAMPO does not find a Federal purpose in forcing agreement on performance targets in these situations.

NYSAMPO proposes that this requirement for jointly developed performance targets be deleted; and that a decision on this matter be deferred until performance-based planning and programming is far more mature, after all three performance management rules are final and implementation schedules established.

§450.310 – MPO Designation and Redesignation

The proposed rule reinforces the statutory language that directs one MPO in an MPA unless the Governor and the MPO makes a formal determination regarding the size and complexity of the MPA requiring more than one MPO.

NYSAMPO supports this measure that allows for multiple MPOs in an MPA, whether contained within one state, or covering multiple states; including formalizing the boundaries and planning responsibilities.

§450.312 – Metropolitan Planning Area Boundaries

§450.312(a)(2) – The proposed rule states “If two or more MPAs would otherwise include the same nonurbanized area that is expected to become urbanized within a 20-year forecast period, the Governor and the relevant MPOs are required to agree on the final boundaries of the MPA or MPAs such that the boundaries of the MPAs do not overlap. In such situations, the Governor and MPOs are encouraged, but not required, to combine the MPAs into a single MPA.”

NYSAMPO believes that FHWA and FTA should encourage good planning practice, but should not encourage combining of MPAs for the reasons previously noted. We propose that language be deleted.

§450.312(h)(2) would require use of joint decision making to develop a single metropolitan transportation plan and TIP for the entire MPA, when there are multiple MPOs in the MPA.

NYSAMPO finds that the MTP is where the MPO, through a public process and the active involvement of its member agencies, states its vision, goals, objectives, and investment priorities. This is the foundation on which Congress built the MPO requirement more than forty years ago. To require a single MTP among multiple MPOs entirely defeats this longstanding process. It is not reasonable for FHWA and FTA to expect MPO decision makers, stakeholders, and the public to understand and accept a process that would in essence require a negotiation among MPOs on their core values. Modification of public involvement procedures in the situation of multiple MPOs would inevitably lengthen the plan development process and reduce, not increase, transparency. How could a citizen in Connecticut, for example, be expected to understand and comment on a transportation policy direction in New Jersey?

NYSAMPO proposes that this section be deleted.

§450.312(j)(1-3) encourages the merger of adjacent MPAs into a single MPA when the UZAs are adjacent, or the forecasted growth area will make them adjacent or overlapping.

NYSAMPO, using the reasoning outlined previously, believes that merging MPAs impairs rather than improves metropolitan planning practice; and therefore proposes this section be deleted.

§450.314 – Metropolitan Planning Agreements

The proposed rule would change the language from urbanized area to MPA; and would require the development of a single MTP and TIP in the MPA. The proposed rule would require rather than encourage (the present language) the use of coordinated data collection, analysis, and planning assumptions across the MPA. It would encourage these practices in neighboring MPOs that are not in the same MPA. This would be contained in a written agreement.

NYSAMPO proposes that the present language of encouraging coordination is more appropriate for an effective planning process, and should be retained.

§450.324 – Development and Content of the MTP

A proposed new provision would require that, if more than one MPO has been designated within an MPA, “those MPOs within the MPA shall (1) jointly develop a single metropolitan transportation plan for the MPA; (2) jointly establish, for the MPA, the performance targets that address the performance measures described in 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d); and (3) agree to a process for making a single conformity determination on the joint plan (in nonattainment or maintenance areas).”

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.

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.

NYSAMPO’s views on a jointly developed MTP and single performance targets in the MPA are expressed earlier. We reemphasize that this is not a question of FHWA offering exemptions, but rather revisiting the entire concept of jointly developed MTP and performance targets.

§450.326 – Development and Content of the TIP

The proposed rule would require that multiple MPOs in a single MPA develop a single TIP, and in the case of non-attainment areas, a single conformity determination.

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.

NYSAMPO believes that while a single TIP for a multiple MPO MPA could possibly be accomplished by simply assembling the individual MPO TIPs, this creates little benefit. It will again likely confuse the public and local officials, who will find it more difficult to understand the investment priorities and choices for their own MPO within the larger MPA. In multistate MPAs, funding processes are likely to be distinct for

each state and would cause difficult if not impossible coordination on the part of states, especially with respect to administering transportation dollars programmed in a multi-state TIP. As an example, the NYMTC MPO is already a very complex entity with a TIP that exceeds \$36 billion (2017-2021 5 year TIP- federal, state and local transportation projects for the region). Coordination of all federal fund sources among several states with different budget processes, schedules and priorities would be cumbersome at best, and possibly unachievable. Further, one state could hold up the planning process if did not, or could not agree to specific projects or if it is unhappy with a process issue.

Finally, within the performance based planning and programming process, the TIP must be constructed to make progress on prescribed performance targets. Since one option for an MPO is to agree to support State targets through its programming choices, a single TIP in a multi-state MPA could imply that the states agree on a single target for each federally designated performance measure.

NYSAMPO does not find any benefit in the proposal to require a single TIP in a multiple MPO MPA.

§450.340 – Phase-in of New Requirements

The proposed rule would provide a two year period for States and MPOs to comply with provisions regarding MPA and MPO boundaries, and with the requirements for jointly established performance targets and a single MTP and TIP for the MPA. In this section, the proposed rule would require that the Governor and MPO(s) document a decision about size and complexity being the basis for designating multiple MPOs in a single MPA. It is noted that this decision is not subject to approval by FHWA and FTA.

FHWA and FTA seek comment on the appropriateness of the two year phase-in period.

As stated earlier with respect to performance targets, NYSAMPO believes that a two-year phase-in period is inadequate. The content of this proposed rule, if adopted, will require large adjustments for MPOs that together comprise multi-State and multi-MPO MPAs. The time to develop cooperative planning processes that meet the requirements of the proposed rule will be a complex process. NYSAMPO proposes at a minimum a four-year phase-in period.