FHWA/FTA Rule on MPO Coordination and Reform Hits the Streets

The proposal generated a lot of comment and controversy, but in the end, the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) issued a rule that is slated to have some far-reaching effects on the delineation of metropolitan planning organizations (MPOs) and the geographic areas for which they are required to prepare transportation plans and programs. This rule appears in the December 20, 2016, Federal Register. A pre-publication text of the “MPO Coordination and Planning Area Reform” rule and its explanatory comments appears on the FHWA website at http://www.fhwa.dot.gov/planning/mpocoordination.cfm.

The Community Transportation Association previously reported on this proposal when it was drafted in June 2016, and published a brief analysis of the proposed rule on CTAA’s site at http://web1.ctaa.org/webmodules/webarticles/articlefiles/PlanningNPRM_June27_CTAApost.pdf.

Who’s affected by this rule?

In the rulemaking, FHWA and FTA say that this rule will affect only about a third of the country’s 409 MPOs. That’s an understatement. Every MPO will be affected in some way, since the rule will require a greater redrawing and redefinition of all MPO boundaries following the 2020 decennial census than otherwise would have been the case. The most-affected MPOs will be those where this rule will call for the consolidation of MPOs in urbanized areas (UZAs) that appear to fall in the planning areas of more than one MPO, unless there is a specific request for an exemption from consolidation on account of an UZA’s size and complexity.

Among the MPOs that stand to be heavily affected by this rule are those in the 69 multi-state urbanized areas across the US. Regardless of whether the MPOs in these multi-state UZAs merge or remain separate when this rule takes full effect in 2024, it appears they will need new designations by their states’ governors, and will need to negotiate new agreements among the affected states. In some instances, these designations and agreements may be easily accomplished, but in other instances of multi-state UZAs, such as where there are partisan differences, ongoing intergovernmental disagreements over allocations, or matters such as state/metropolitan area conflicts of priorities or partisanship, these agreements are likely to be quite difficult to execute.

Rural areas will see some effect from this rule, too. Up until now, MPOs only need to “consider” the transportation priorities and projected needs of currently rural areas expected to become urbanized over a 20-year horizon. Now, all those rural areas that are projected to become urbanized are required to be part of an MPO’s planning area and planning activities. While not a dramatic shift from current regulation, this may bring some
change in those areas where regional transportation planning organizations (RTPOs) or similar bodies are carrying out, or have gearing up to carry out, transportation planning in currently rural areas.

Transit providers in both urban and rural areas will see the impacts of this rule, too. More rural transit providers than ever before will find that their transportation programs and projects will need to be included on an MPO’s metropolitan transportation plan and TIP, since MPOs will be required, not just encouraged, to include all areas forecast to become urbanized, including currently rural areas, in their planning and programming activities. In many UZAs, urban transit providers will face some inter-organizational challenges, since MPOs are required not only to consider urban transit programs and priorities in their plans and processes, but are required to have urban transit provider representation on every MPO’s policy board. As MPOs merge or expand their geographic scope under this rule, some transit agencies may have to give up their current seats on MPO boards, and there may be cases where the various transit providers in a merged or expanded metropolitan planning area experience conflicting needs or priorities (such as, hypothetically, the balance of concentrated rail or bus service in an UZA’s core city vs. the need for suburban and “edge city” mobility in the outlying or adjoining metropolitan areas).

What’s in this rule?

This rule sounds almost deceptively simple. It embodies a few key concepts:

- For every Census-defined urbanized area, there should be only one metropolitan planning area (which encompasses not only the whose UZA but also all those currently rural areas forecast to become urbanized over the following 20 years), and only one MPO. For each metropolitan planning area, there should be only one metropolitan transportation plan, one transportation improvement program (TIP), and only one set of planning performance targets.

- In keeping with current rules, if a state wants to expand a metropolitan planning area’s boundaries beyond the 20-year forecast urbanized area, it can do so. For instance, a state can designate an entire metropolitan statistical area (which follow county boundaries, and are designated by the federal Office of Management and Budget, not designated by Census) as an UZA’s metropolitan planning area, even if this includes multiple UZAs, or includes rural areas that will not become urbanized any time in the coming 20 years.

- If, as a result of Census designations, UZAs are merged, then their MPOs are to merge, too.

- Where there are adjoining metropolitan planning areas, their MPOs need to negotiate and define the boundary between these areas.
• Where there is rural area that may be forecast to fall within either of two or more UZAs over a 20-year period, these UZAs’ MPOs need to negotiate and define their jurisdictions so that only one planning agency is responsible for the transportation planning in that currently rural area.

• As has already been the case, states may determine than an UZA’s size and complexity makes it necessary to have more than one MPO for that UZA. If so, that decision alone does not eliminate the requirement than there is to be only one plan, one TIP and one set of performance targets for each UZA. However, the rule does give states the opportunity to request a permanent exception to this requirement.

**When does this rule take effect?**

Although the regulatory language takes effect on January 19, 2017, the real effect of this rule won’t be until sometime in 2024, as the need for new metropolitan planning area boundaries, the possibility for merging MPOs, the possible need for new MPO designations, etc., all kick in 2 years after the Census Bureau has determined the urbanized area boundaries as adjusted by the 2020 census. Those designations generally appear two years after the census is concluded.

**What happens for the next seven years?**

From a regulatory point of view, no actions appear to be required between now and the time 2 years after Census designates its post-2020 UZA boundaries. However, FHWA and FTA will be expecting that MPOs, governors, local officials and other stakeholders are working behind the scenes in their states and communities to have agreements and designations ready to put into place at that time. These will be complicated in some areas, especially in large and multi-state UZAs, so a good deal of time is likely to prove necessary for these to fall into place by that deadline.

It’s possible that some MPOs, their partners or their national advocacy organizations will take advantage of the next surface transportation authorization (the FAST Act expires September 30, 2020) to push legislative change. It’s also possible, at least in theory, that changes in presidential administrations may become opportunities for regulatory change.

**Were there changes from the June 27, 2016, NPRM?**

In finalizing this rule, FHWA and FTA received more than 600 comments, including 299 comments opposed to the rule, of which 249 comments called from the proposed rule to be withdrawn. The final text of the rule includes some modifications that were made by FHWA and FTA in response to comments they received:
• **Effective Date:** This rule essentially does not become effective until some time in 2024, as opposed to the original proposal that it have a phase-in period of two years or less.

• **Clean Air Act Conformity:** This conformity remains a part of MPOs’ mandate, but some obsolete and confusion language from the NPRM has been removed in the final rule.

• **Opportunity for Exception:** FHWA and FTA inserted some regulatory language at a new 23 CFR 450.312(i), which gives governors and MPOs an opportunity to request permanent exceptions from the requirement that there be only one metropolitan transportation plan, one TIP, and one set of performance targets for an individual UZA and its planning area, regardless of the size or complexity of that area, and regardless of the number of MPOs in that planning area.

In addition, there were a few places where the final rule cleaned up some inadvertent errors in the NPRM.

**Citations, please!**

In case you want to know exactly which sections of FHWA and FTA regulations are noticeably changed under this rule, here’s a key to what seem to be the most significant changes:

• 23 CFR 450.104 – language is added to the definition of “Metropolitan Planning Area.”

• 23 CFR 450.208(a)(1) – language is added concerning the coordination between states, MPOs and public transit operators.

• 23 CFR 450.226 – a new Section 450.226(g) is added, defining the phasing in of these new requirements in 2024.

• 23 CFR 450.306(d) – a new subsection 450.306(d)(5) is added, addressing the need for single performance targets in areas with multiple MPOs.

• 23 CFR 450.310(e) – much language is added to address when there can be multiple MPOs in a single planning area, and how they are to coordinate.

• 23 CFR 450.312(a) – a new subsection 450.312(a)(2) is inserted, to address situations where two or more planning areas may encompass the same currently rural areas forecast to become urbanized.
• 23 CFR 450.312(c) – language is added to emphasize that each UZA is to be included in its entirety in a metropolitan planning area (i.e., there are not to be any areas currently, or forecast to become, urbanized, that are not part of an MPO’s planning processes and activities).

• 23 CFR 450.312(f) – language is added to instruct states on their options when addressing multi-state metropolitan planning areas.

• 23 CFR 450.312(h) – this is an all-new subsection, addressing how states and MPOs are to respond when determining that the size and complexity of a given UZA dictates the need for more than one MPO.

• 23 CFR 450.312(i) – this is an all-new subsection, giving instruction to states and MPOs for seeking an exemption from the requirement that there be only one metropolitan transportation plan, TIP and performance targets for a metropolitan planning area.

• 23 CFR 450.312(j) – much language is added to this subsection, regarding redesignation of MPOs following each decennial census and the Census Bureau’s urbanized area determinations.

• 23 CFR 450.312(k) – this is an all-new subsection, addressing the possible merger of MPOs following changes in UZA designations.

• 23 CFR 450.314(e) – language is added to this subsection, concerning metropolitan planning agreements in areas having more than one MPO.

• 23 CFR 450.314(f) – language is added to this subsection, concerning the coordinated development of planning products in areas with more than one MPO.

• 23 CFR 450.314(g) – language is added concerning metropolitan planning agreements when a metropolitan planning area includes both “TMA” (i.e., more than 200,000 population) and “non-TMA” (i.e., population less than 200,000) UZAs.

• 23 CFR 450.324 – an all-new subsection 450.324(c) is added, which addresses the responsibility for developing a single metropolitan transportation plan and performance targets in a metropolitan planning area having more than one MPO.

• 23 CFR 450.326(a) – language is added to address the responsibility for developing a single TIP in a metropolitan planning area having more than one MPO.

• 23 CFR 450.340 – an all-new subsection 450.340(h) is added, addressing the phasing in of this rule’s requirements in 2024.
Important Disclaimer

The above analysis represents only CTAA’s understanding of these regulations, and is not to be regarded as official interpretation, presentation or clarification of these rules by FHWA, FTA or any other agency of the federal government. If you have questions about these rules in general, or their specific pertinence to your state, MPO or transit agency, contact Harlan Miller of FHWA (email: Harlan.Miller@dot.gov; phone: 202-366-0847), Dwayne Weeks of FTA (email: Dwayne.Weeks@dot.gov; phone: 202-493-0316) or your area’s FHWA Division Office or FTA Regional Office.