



FHWA, FTA Propose More Changes to Planning Regulations

On June 27, 2016, the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) issued proposed rules that would change the way that metropolitan planning organizations (MPOs) define the geography of their planning areas, would force a fresh look at situations where there may be more than one MPO for a given urbanized area, and that would require a single set of transportation plans and programs for each urbanized area, regardless of how many MPOs it may have. Those provisions could require MPOs to develop additional formal documentation with one another and with the governments and transit agencies in their planning areas. The rules proposed by FHWA and FTA also would require considering the possible consolidation of MPOs following each decennial census. Once (and if) finalized, these rules might come with a two-year phase-in period before they took full effect.

If adopted, these rules would amend the joint FHWA-FTA planning rules that were issued just a month earlier, on May 27, 2016. However, it's important to note that NPRMs are not regulations, are subject to considerable change when – or if – finalized, and generally are not finalized for what can be a considerable period of time since first proposed. So if you're with an MPO or state DOT, be sure you're gearing up to follow the recently published planning rules, even as you prepare comments on this latest proposal.

The proposed regulations were published in the June 27, 2016, Federal Register, which you can find on line at <https://www.federalregister.gov/articles/2016/06/27/2016-14854/metropolitan-planning-organization-coordination-and-planning-area-reform>. Comments are due August 27, 2016. For additional information on this rule, interested parties are invited to register for a webinar that FHWA is hosting on July 15, 2016. Additional information is at the end of this post.

This sounds esoteric – Who's going to be affected by this proposal?

This is a surprisingly far-reaching proposal. It will have some significant impact on every one of the 409 MPOs in the country, but the impacts would be greater for some MPOs than for others. It also will affect the transportation planning carried out by states' departments of transportation (DOTs), regional transportation planning organizations (RTPOs), or other entities responsible for transportation planning in every rural area likely to become part of an urbanized area within the next 20 years.

Potential Impact on All MPOs

Under this proposal, every current and future MPO in the US might have to redraw its “metropolitan planning area” (MPA) boundaries. Unlike current regulations, in which MPA boundaries are determined largely by the MPO’s own criteria, the proposed rule would have these boundaries established by FHWA regulation as encompassing the entirety of a Census-designated urbanized area plus all areas forecast to become part of that urbanized area over the next 20 years. There would continue to be some flexibility to adjust these boundaries, such as to fit the county (or county-equivalent) boundaries of a federally defined Metropolitan Statistical Area, to maintain boundaries set in 2005 as part of Clean Air Act nonattainment areas, to respond to circumstances when two or more MPAs might include the same non-urbanized areas, or as determined by agreement between an MPO and the state(s) within which it lies.

Under this proposal, the MPA boundaries – and not the boundaries of the urbanized area – become the defining geography for the metropolitan transportation plans and transportation improvement programs that MPOs are required to prepare.

By broadening the geography for which MPOs have transportation planning responsibility, the geographic area in which state DOTs or RTPOs have planning and programming responsibility also becomes affected.

Regardless of whether an MPO’s planning area boundaries would have to be redrawn, this proposed rule would require every single MPO in the US to develop new or updated written “metropolitan planning agreements” between the MPO(s), state(s) and public transportation providers in each MPA. Such agreements are required under current regulations, but many of these agreements haven’t been touched since the initial designation of each MPO (and some MPOs were created more than 50 years ago).

Potential Impacts Where One Urbanized Area has Multiple MPOs

By law, regulation, and long-standing practice, the general notion is that each Census-designated urbanized area should have its own MPO, but that’s not always the case. Federal law and current regulation allow for more than one MPO in an urbanized area, when warranted by the “size and complexity” of that urbanized area. The most common circumstances where an urbanized area has two or more MPOs are those in which significant portions of the urbanized area are in two or more states (e.g., Philadelphia, which includes portions of Delaware, Maryland, New Jersey and Pennsylvania, and for which there are three MPOs, New York City, for which there are separate MPOs in its New York and New Jersey portions, or Portsmouth NH, which has separate MPOs in its Maine and New Hampshire portions), or in which one urbanized area has grown over the decades to encompass several formerly separate urbanized areas (e.g., Boston, which has five MPOs within its urbanized area, or Miami, with three MPOs).

Under this proposal, a core precept becomes “one metropolitan planning area = one transportation plan and TIP.” Even if the size and complexity warrants multiple MPOs for a given

metropolitan planning area, the proposed rule would require there be one and only one metropolitan transportation plan and TIP, developed and approved collaboratively by all the MPOs in that planning area.

The proposal also would require states and MPOs to take a fresh look at these instances where an MPA has multiple MPOs. During the proposed two-year phase-in period, and subsequently after each decennial census, existing MPOs and their states' governors would have to make an explicit determination whether the size and complexity of the planning area continues to warrant multiple MPOs; if separate MPOs are not warranted, the regulation would require their merger.

Regardless of whether an MPA has one or multiple MPOs, there will be one and only one set of performance goals and targets for the MPA under the performance-based planning requirements at 23 CFR Part 490 and FTA's transit safety and transit state of good repair regulations.

Potential Impacts Where Two or More Urbanized Areas are in Close Proximity

In dozens of places across the US, there are urbanized areas that directly border one another, or that are in near proximity to one another. Depending on the specifics of their geography and Census determinations, different things may happen under this proposed rule:

- If the Census-defined urbanized area boundaries are shared, these MPOs will need to agree upon MPA boundaries so that there is no overlap between the MPOs' planning areas.
- If the currently rural areas that are expected to become urbanized over a 20-year forecast period touch or overlap, these MPOs will need to agree upon MPA boundaries so that there is no overlap between the MPOs' planning areas.
- If the 20-year forecasts suggest the possibility that a future census may lead to the merger of currently separate urbanized areas, these areas' MPOs should be prepared for the possibility of being required to merge under this rule following such a Census determination, unless they and their governor(s) make a specific determination that the size and complexity of that resulting MPA warrants the continuation of separate MPOs. However, once two or more urbanized areas are merged in a Census designation, there will be one and only one metropolitan transportation plan and TIP for that resulting MPA, regardless of how many MPOs it may contain.

Potential Impacts When One MPO Serves Multiple MPAs

In quite a few of the country's larger metropolitan areas, there are planning organizations that carry out the MPO function for multiple metropolitan planning areas. The Metropolitan Transportation Commission in the San Francisco Bay area, and the Southern California Association of Governments stand out as examples of this, as each of these bodies is the MPO for

more than a dozen metropolitan planning areas. However, there are dozens of other instances where one body is the MPO for two or three planning areas.

Under this proposal, nothing changes for these multiple-MPA planning organizations, other than the requirements that apply to all MPOs, such as the need to reexamine planning area boundaries and the possible need to develop new metropolitan planning agreements. It's possible that these MPOs and their states should examine the "size and complexity" of the various planning areas, if only to assure themselves that the continued regional approach is appropriate for the included MPAs.

FHWA & FTA Have Questions

In addition to seeking comments from interested parties on the proposed regulation, FHWA and FTA posed some more cross-cutting questions in the June 27 NPRM for which they would welcome responses during this comment period, including:

"How can the statewide, nonmetropolitan and metropolitan transportation planning processes provide stronger incentives to states and MPOs to manage transportation funding more effectively?"

"Should the FHWA-FTA planning rule expressly address how states and MPOs address MPA boundaries where two or more MPAs are contiguous or expected to become contiguous in the near future, possibly to require the merger of MPAs, or should the rule allow states and MPOs to tailor MPA boundaries on their own?"

"Is the proposed two-year phase-in period for this rule appropriate?"

"Is the proposed requirement for a joint target-setting process when there is more than one MPO in a planning area appropriate, are there alternatives that might better accomplish the goals of a joint metropolitan plan and TIP for the MPA, should there be any exemptions from the joint target-setting requirement, and what criteria might be used for determining any such exemptions?"

"The proposed rule would require, rather than encourage, the use of coordinated data collection, analysis and planning assumptions across the MPA, regardless of how many MPOs it may have, and would strongly encourage the use of such practices across neighboring MPOs that are not within the same MPA. Should the rule provide for any exemptions from this requirement, and if so, what criteria might be used for such an exemption?"

"If there are multiple MPOs in an MPA that is a nonattainment or maintenance area, the proposed rule would require them to agree on a process for a single Clean Air Act conformity determination on their joint TIP. Should there be the possibility of an

exemption from this joint conformity determination requirement, and if so, what criteria should be used for such an exemption?”

For More Information

Interested parties should read the full Federal Register notice that was published on June 27, 2016, and should submit comments to the FHWA and FTA dockets for this rule under www.regulations.gov on or before August 26, 2016. As noted earlier, FHWA is holding an informational webinar on this proposal, taking place on July 15, 2016. To sign up for that webinar, interested persons should go to <https://www.eventbrite.com/e/mpo-coordination-nprm-webinar-july-15-2016-registration-26326602577>. For additional information about this proposal, you may contact Harlan Miller of FHWA at 202-366-0847, or Dwayne Weeks of FTA at 202-493-0316.