

Federal Highway Administration

23 CFR Part 450

Federal Transit Administration

49 CFR Part 613

[Docket No. FHWA–2016–0016]

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FTA RIN 2132–AB28

Metropolitan Planning Organization Coordination and Planning Area Reform

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA); U.S. Department of Transportation (DOT).

ACTION: Final Rule.

SUMMARY: This final rule revises the transportation planning regulations to promote more effective regional planning by States and metropolitan planning organizations (MPO). The goal of the revisions is to better align the planning regulations with statutory provisions concerning the establishment of metropolitan planning area (MPA) boundaries and the designation of MPOs. The rule clarifies that an MPA must include an entire urbanized area (UZA) and the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan. The MPOs will have several options to achieve compliance. The MPOs may need to adjust their boundaries, consider mergers, or, if there are multiple MPOs designated within a single MPA, coordinate with the other MPOs to create unified planning products for the MPA. Specifically, the rule requires MPOs within the same MPA to develop a single

metropolitan transportation plan (MTP), a single transportation improvement program (TIP), and a jointly established set of performance targets for the MPA (referred to herein as unified planning products). The rule also clarifies operating procedures, and it adopts certain coordination and decisionmaking requirements where more than one MPO serves an MPA. Requiring unified planning products for an MPA with multiple MPOs will result in planning products that reflect the regional needs of the entire UZA.

The final rule includes an exception that, if approved by the Secretary, allows multiple MPOs in an MPA to continue to generate separate planning products if the affected Governor(s) and all MPOs in the MPA submit a joint written request and justification to FHWA and FTA that (1) explains why it is not feasible for the MPOs to produce unified planning products for the MPA, and (2) demonstrates how each MPO is already achieving the goals of the rule through an existing coordination mechanism with all other MPOs in the MPA that achieves consistency of planning documents.

The final rule phases in implementation of these coordination requirements and the requirements for MPA boundary and MPO jurisdiction agreements, with full compliance required not later than 2 years after the date the Census Bureau releases its notice of Qualifying Urban Areas following the 2020 census.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

The purpose of this rulemaking is 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. To achieve this purpose, the rulemaking incorporates the 23 U.S.C. 134 requirements that the boundaries of MPAs at a minimum include an urbanized area in its entirety and include the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan. The rule emphasizes the importance of undertaking the planning process from a regional perspective. The rule includes new coordination and decisionmaking requirements for MPOs that share an MPA, to better ensure that transportation investments reflect the needs and priorities of an entire region. Recognizing the critical role MPOs play in providing for the well-being of a region, this rule will strengthen the voice of MPOs in the transportation planning process in a State by promoting unified decisionmaking within an MPA and better-coordinated regional decisionmaking so that

the affected MPOs speak with “one voice” about the area’s transportation needs and priorities.

B. Summary of Major Changes Made to the Regulatory Action in Question

This final rule retains many of the major provisions of the NPRM. The rule revises the regulatory definition of “metropolitan planning area” to better align with the statutory requirements in 23 U.S.C. 134, specifically to require that the MPA, at a minimum, must include the entire UZA and the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan. Under this final rule, if compliance with the MPA boundary requirements would result in more than one MPO in the MPA, the Governor(s) and affected MPOs may decide it is appropriate for multiple MPOs to serve the MPA because of the size and complexity of the MPA. In such cases, the MPOs will need to jointly develop unified planning products (a single MTP and TIP, and jointly established performance targets). If the Governor(s) and MPOs do not decide to have multiple MPOs serve the MPA, then the Governor(s) and the MPOs will consolidate or establish or adjust conforming MPA boundaries for each MPO by agreement. In response to comments received on the NPRM, FHWA and FTA are making the following significant changes in the final rule:

1. Adding an exception to the requirements for unified planning products. Section 450.312(i) allows multiple MPOs in an MPA to continue to generate separate planning products if the exception is approved by the Secretary. The exception is discussed in detail under *Unified Planning*

Products: Requirements and Exception in the “Discussion of Major Issues Raised by Comments” section of this preamble.

2. Changing the time period for adjustment of MPA boundaries following a decennial census, as required under § 450.312(j) (as redesignated in this rule) from 180 days to 2 years.
3. Extending the implementation period for MPA boundary and MPO jurisdiction agreement provisions; documentation of the determination of the Governor and MPO(s) that the size and complexity of the MPA make multiple MPOs appropriate; and MPO compliance with requirements for unified planning products. Compliance is not required until the next MTP update occurring on or after the date 2 years after the date the U.S. Census Bureau releases its notice of Qualifying Urban Areas following the 2020 census. Historically, the Census Bureau issues its notice approximately two years after the census. This extension provides States and MPOs a substantial amount of time to lay the groundwork for changes necessary to comply with the rule. The compliance date for all other changes made by this rule is the effective date of this rule.

C. Costs and Benefits

The FHWA and FTA believe that the benefits of the rule justify the costs. The total costs for merging 142 MPOs,¹ the cost of transportation conformity adjustments,

¹ The total number of MPOs is 409. The USDOT identified that 142 MPOs would be subject to this rulemaking by comparing current MPO boundaries with current UZA boundaries. This comparison

and the one-time cost of developing a dispute resolution process results in an estimated maximum average annual cost of this rule of \$86.3 million. Since not all MPOs will choose to merge and some may receive exceptions, this cost estimate is conservative.

The FHWA and FTA were unable to quantify the benefits for this rulemaking. The primary benefit of this rulemaking is to ensure that the MPO(s) is making transportation investment decisions for the entire metropolitan area as envisioned by the statute. If the MPOs within a metropolitan area consolidate or develop unified planning products, FHWA and FTA anticipate that the cost to develop the Metropolitan Transportation Plan (MTP) for the metropolitan area would decrease. We also expect this rule will result in some cost savings for State DOTs, which will benefit from having fewer TIPs to incorporate into their statewide transportation improvement programs (STIPs). There will also be benefits to the public if the coordination requirements result in a planning process in which public participation opportunities are transparent and unified for the entire region, and if members of the public have an easier ability to engage in the planning process.

II. Background

MPA and MPO Boundaries

The metropolitan planning statute defines an MPA as “the geographic area determined by agreement between the metropolitan planning organization for the area

identified a number of UZAs that included multiple MPOs as well areas where a UZA had spread into the boundaries of adjacent MPOs.

and the Governor under subsection [134](e).’ 23 U.S.C. 134(b)(1).² The agreement on the geographic area is subject to the minimum requirements contained in 23 U.S.C. 134(e)(2)(A), which states that each MPA “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.” The MPA and MPO provisions in 23 U.S.C. 134 make it clear that the intent for a typical metropolitan planning structure is to have a single MPO for each UZA. However, the statute creates an exception in 23 U.S.C. 134(d)(7), which provides that more than one MPO may be designated within an existing MPA if the Governor and the existing MPO(s) determine that the size and complexity of the existing MPA make designation of more than one MPO for the area appropriate. Title 23, U.S.C. 134(d)(7) reinforces the interpretation that the norm envisioned by the statute is that UZAs not be divided into multiple planning areas.

In 1991, Congress enacted the Intermodal Surface Transportation Efficiency Act (ISTEA), which included provisions intended to strengthen metropolitan planning. In particular, the law gave MPOs responsibility for coordinated planning to address the challenges of regional congestion and air quality issues. The 1993 planning regulation implemented these statutory changes by defining this enhanced planning role for MPOs. The 1993 planning regulation described a coordinated planning process for the MPA resulting in an overall MTP for the MPA. In several locations, the 1993 regulation recognized the possibility of multiple MPOs serving an MPA, and provided expectations

² For simplicity, the remainder of this notice refers only to the planning provisions codified in Title 23, although corresponding provisions are codified in Chapter 53 of Title 49.

for coordination that would result in an overall transportation plan for the entire area. See 58 FR 58040 (October 28, 1993).

The 1993 regulation stated in the former § 450.310(g) that “where more than one MPO has authority within a metropolitan planning area or a nonattainment or maintenance area, there shall be an agreement between the State departments(s) of transportation (State DOT) and the MPOs describing how the processes will be coordinated to assure the development of an overall transportation plan for the metropolitan planning area.” Further, that regulation stated in former § 450.312(e) that where “more than one MPO has authority in a metropolitan planning area . . . the MPOs and the Governor(s) shall cooperatively establish the boundaries of the metropolitan planning area . . . and the respective jurisdictional responsibilities of each metropolitan planning area.” In practice, however, many MPOs interpreted the MPA to be synonymous with the boundaries of their MPO’s jurisdiction, even in those areas where multiple MPOs existed within a single UZA, resulting in multiple “MPAs” within a single urbanized area.

In 2007, FHWA and FTA updated the regulations to align with changes made in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) and its predecessor, the Transportation Equity Act for the 21st Century (TEA-21). The revised regulations reflected the practice of having multiple “MPAs” within a single UZA, even though the statute pertaining to this issue had not changed. The 2007 regulation refers to multiple MPOs within an UZA rather than multiple MPOs within an MPA, and the term “metropolitan planning area” was used to refer

synonymously to the boundaries of an MPO. The regulations stated “if more than one MPO has been designated to serve an urbanized area, there shall be a written agreement among the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of consistent metropolitan transportation plans and TIPs across the MPA boundaries, particularly in cases in which a transportation investment extends across the boundaries of more than one MPA.” 72 FR 7224, February 14, 2007. The FHWA and FTA adopted that language as § 450.314(d), and redesignated it in a 2016 rulemaking as § 450.314(e). The 2007 rule also added § 450.312(h), which explicitly recognizes that, over time, a UZA may extend across multiple MPAs. The 2007 rulemaking did not address how to reconcile these regulatory changes with the statutory minimum requirement that an MPA include the UZA in its entirety.

As a result, since 2007, the language of the regulation has supported the possibility of multiple MPOs within a UZA rather than within an MPA. The FHWA and FTA have concluded that 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 MTPs are developed within a single UZA. This rule is designed to correct the problems that have occurred under the 2007 rule and return to the structure in regulation before the 2007 amendments.

MPO Coordination within an MPA

The metropolitan planning statute calls for each metropolitan planning organization to “prepare and update a transportation plan for its metropolitan planning

area” and “develop a TIP for the metropolitan planning area[.]” 23 U.S.C. 134(i)(1)(A) and (j)(1)(A).³ As discussed above, the metropolitan planning statute includes an exception provision in 23 U.S.C. 134(d)(7) that allows more than one MPO in an MPA under certain conditions. In some instances, multiple MPOs have been designated not only within a single MPA, but also within a single UZA in an MPA. Presently, such MPOs typically create separate MTPs and TIPs for separate parts of the UZA. Currently, the regulations require that where multiple MPOs exist within the same UZA, their written agreements must describe how they will coordinate their planning activities. However, the extent and effectiveness of coordination varies, and in some cases, effective coordination on regional needs and interests has proved challenging. It can be inefficient and confusing to the public if there are two or more distinct metropolitan transportation planning processes that result in two or more separate MTPs and TIPs for a single MPA (as defined under 23 U.S.C. 134). Further, a regional approach is needed to ensure that metropolitan transportation planning maximizes economic opportunities while also addressing the externalities of growth, such as congestion, air and water quality impacts, and impacts on resilience.

For these reasons, FHWA and FTA have determined that joint decisionmaking leading to unified planning products is necessary where there are multiple MPOs in an MPA in order to best ensure effective regional coordination. Accordingly, this rulemaking addresses coordination and decisionmaking requirements for MPOs that are

³ The process for developing plans and TIPs must be “continuing, cooperative, and comprehensive to the degree appropriate based on the complexity of the transportation problems to be addressed.” 23 U.S.C. 134(c)(3).

subject to the 23 U.S.C. 134(d)(7) exception to the one-MPO-per-MPA structure of the metropolitan planning statute.

Coordination between States and MPOs

The statewide planning statute calls for a continuing, cooperative, and comprehensive process for developing the long-range statewide transportation plan and the statewide transportation improvement program (STIP). 23 U.S.C. 135(a)(3). The statute requires States to develop the long-range statewide transportation plan and the STIP in cooperation with MPOs designated under 23 U.S.C. 134. 23 U.S.C. 135(f)(2)(A) and (g)(2)(A). While these statutes require that States work in cooperation with the MPOs on long-range statewide transportation plans and STIPs, the extent to which MPO voices are heard varies significantly. The nature of decisionmaking authority of MPOs and States varies due to numerous factors, including the extent of local funding for transportation projects. The MPOs will be strengthened by having a single coordinated MTP and TIP in order to create a united position on transportation needs and priorities for each MPA. Ultimately, each relationship between a State and MPO is unique, and there may not be a single coordination process that is appropriate for all areas of the country. However, there must be adequate cooperation between States and MPOs. Therefore, this rule requires that States and MPOs demonstrate evidence of cooperation, including the existence of an agreed upon dispute resolution process.

III. Summary of the NPRM

The FHWA and FTA published the NPRM on June 27, 2016, with a comment period ending on August 26.⁴ In a notice published on September 23, 2016, FHWA and FTA reopened the comment period.⁵ The second comment period ended on October 24, 2016. The NPRM proposed a revision to the regulatory definition of MPA to better align with the statutory requirements in 23 U.S.C. 134 and 49 U.S.C. 5303. Specifically, the NPRM proposed to amend the definition of MPA in 23 CFR 450.104 to include the conditions in 23 U.S.C. 134(e)(2) that require the MPA, at a minimum, to include the entire UZA and the contiguous area expected to become urbanized within the 20-year forecast period for the MTP. The MPA boundary requirements in the proposed rule would apply even when the MPA, as defined in the rule, would cross State lines. By aligning the regulatory definition of the MPA with the statute, the NPRM acknowledged that the MPA is dynamic. The MPA is the basic geographic unit for metropolitan planning; therefore, this proposed requirement would ensure that planning activities consider the entire region of the UZA consistently.

An exception in 23 U.S.C. 134(d)(7) allows multiple MPOs to be designated within a single MPA if the Governor(s) and MPO(s) determine that the size and complexity of the area makes multiple MPOs appropriate. The NPRM proposed certain requirements applicable in such instances where multiple MPOs serve a single MPA, including instances in which adjustments to urbanized areas, as a result of a U.S. Census Bureau decennial census, will result in multiple MPOs serving a single MPA. First, the NPRM proposed to clarify that MPA boundaries are not necessarily synonymous with

⁴ 81 FR 41473 (June 27, 2016).

⁵ 81 FR 65592 (September 23, 2016).

MPO boundaries. Second, the NPRM proposed to amend § 450.310(e) of the regulation to clarify that, where more than one MPO serves an MPA, the Governor(s) and affected MPOs must establish or adjust the jurisdiction for each MPO within the MPA by agreement. Third, the NPRM proposed additional coordination requirements for areas where multiple MPOs are designated within the MPA. Under the NPRM, the Governor(s) and MPOs would determine whether the size and complexity of the MPA make the designation of multiple MPOs appropriate; if they were to determine it is not appropriate to have more than one MPO, then the MPOs would be required to merge or adjust their jurisdiction such that there would be only one MPO within the MPA. If they were to determine that designation of multiple MPOs is appropriate, then the MPOs could remain separate, with separate jurisdictions of responsibility within the MPA, as established by the affected MPOs and the Governor(s).

The NPRM proposed to require those multiple separate MPOs in the same MPA to jointly develop unified planning products: a single long-range MTP, a single TIP, and a jointly established set of performance targets for the MPA. These requirements for unified planning products to accommodate the intended growth of a region would enable individuals within that region to better engage in the planning process and facilitate their efforts to ensure that the growth trajectory matches their visions and goals. In order to support the development of these unified planning products, the NPRM proposed to require MPOs to establish procedures for joint decisionmaking, including a process for resolving disagreements.

Additionally, the NPRM proposed to strengthen the role that MPOs would play in the planning process by requiring States and MPOs to agree to a process for resolving disagreements. These proposed changes to the planning regulations were designed to facilitate metropolitan and statewide transportation planning processes that would be more efficient, more comprehensible to stakeholders and the public, and more focused on projects that address critical regional needs. The NPRM was designed to position MPOs to respond to the growing trend of urbanization. It would better align the planning processes with the regional scale envisioned by the performance-based planning framework established by MAP-21, particularly those measures focused on congestion and system performance. The NPRM also would help MPOs to achieve economies of scale in planning by working together and drawing on a larger pool of human, material, financial, and technological resources.

IV. Response to Major Issues Raised by Comments

This final rule is based on FHWA's and FTA's review and analysis of comments received. The FHWA received 660 letters to the docket, which includes 21 duplicate submissions, 4 submissions to the wrong docket, and 23 *ex parte* response letters, for a total of 612 unique letters. The comments included 197 letters from metropolitan planning organizations, 39 letters from State departments of transportation, 29 letters from councils of governments, 29 letters from regional planning associations, 14 letters from transportation management associations, 38 letters from counties, 81 letters from municipalities, 22 letters from professional and trade associations, 21 letters from associations of metropolitan planning organizations and regional planning associations,

and 31 letters from individual citizens. The comments also included 18 letters signed or co-signed by Members of Congress, including 12 U.S. Senators and 15 U.S.

Representatives, and 20 letters signed or co-signed by State legislators. Given the large number of comments received, FHWA and FTA have decided to organize the response to comments in the following manner. This section of the preamble provides a response to the significant issues raised in the comments received, organized by summarizing and responding to comments that raise significant issues applicable to the NPRM.

Need for the Rule

Sixteen commenters expressed support for the NPRM. The FHWA and FTA received 156 comments in support of the stated purpose of the proposed rule, which is 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 to ensure that transportation investments reflect the needs and priorities of an entire region. While these commenters supported the stated purpose of the rulemaking, they did not support the specific requirements and procedures articulated in the proposed rule because the commenters believe the rule will not strengthen coordination efforts beyond current practices. The FHWA and FTA received 299 comments in opposition to the NPRM, of which 249 requested that FHWA and FTA withdraw the rulemaking. Commenters expressed various concerns about the NPRM.

The FHWA and FTA appreciate the substantial response to the NPRM and have reviewed and carefully considered all of the comments submitted to the docket. The FHWA and FTA believe the rule addresses important aspects of the metropolitan

transportation planning process. As such, and as described in the previous section, FHWA and FTA have amended several parts of the proposed rule in response to comments but decline to withdraw the rule.

A number of commenters stated that their MPOs are already engaged in the types of regional coordination activities described in the NPRM, and they questioned the need for this regulation. Many commenters expressing opposition to the proposed rule stated that they believe their current coordination processes are successful; they achieve their local goals and objectives, involve strong coordination with adjacent MPOs and States in urbanized areas, and include many of the activities proposed in the NPRM. A total of 151 commenters stated that they currently have good working relationships with adjacent MPOs, coordinate with States and other MPOs and jurisdictions, or have formal agreements for coordinated planning activities.

Many commenters provided examples from their respective regions, discussed how their current planning processes achieved goals similar to those proposed in the proposed rulemaking, and indicated the proposed changes would disrupt existing coordination efforts. Six commenters stated their existing working agreements for coordinated planning with neighboring MPOs and States would be disrupted by the proposed requirements. Some commenters stated they could not identify a problem the requirements would resolve. Fifteen commenters stated that they currently coordinate with adjacent jurisdictions on regional planning activities, so the proposed requirement for unified, merged planning documents (MTPs, TIPS) is not necessary. Several commenters indicated the success of current MPO practices means additional regulation

is not needed to improve MPO coordination. Several commenters stated that the proposed requirements would require them to re-do a recently completed merger of MPOs in Connecticut. One commenter stated that before the MPO is required to merge with another MPO, its current process and agreements with neighboring MPOs should be considered as meeting the proposed requirements.

In response, FHWA and FTA agree that many MPOs are coordinating planning activities with adjacent MPOs and across State and other jurisdictional boundaries. Many of the examples provided exemplify the type of coordinated transportation planning activities that FHWA and FTA are seeking by adopting the final rule. The existence of such exemplary planning practices in some MPOs, however, does not eliminate the need for consistency with statutory MPA boundary requirements or for improvement in the planning practices of other MPOs. This rule adds clarity to those and other planning requirements that FHWA and FTA evaluate when carrying out certification reviews for transportation management areas (TMAs) under 23 U.S.C. 134(k)(5), and when making planning findings in connection with STIP approvals under 23 U.S.C. 135(g)(7)-(8). In particular, this rule will benefit UZAs that presently are under the jurisdiction of more than one MPO. This rule will eliminate the risk of adverse consequences for the UZA that can arise when the MPOs adopt inconsistent or competing planning decisions.

The FHWA and FTA recognize that some regions have formal agreements for MPO coordination that may need to be revisited as a result of the rule, and that the implementation process for this rule could be disruptive in some cases. The FHWA and FTA considered this burden in adopting the final rule. Specifically, the final rule

addresses situations where it is not feasible for the multiple MPOs in an MPA to comply with the unified planning requirements. In such situations, MPOs may demonstrate to the Secretary that they already have effective coordination processes that will achieve the purposes of the rule. If adequately demonstrated, then the Secretary may approve an exception, and those MPOs will not have to produce unified planning products for the MPA. The exception is permanent, but FHWA and FTA will evaluate whether the MPOs are sustaining effective coordination processes consistent with the rule when FHWA and FTA do certification reviews and make planning findings. This new provision balances commenters' concerns about disruption of existing arrangements, including recent mergers and other changes, against the need for the type of holistic MPA planning the statute and this rule require.

The FHWA and FTA also remain sensitive to, and supportive of, the principle and value of local decisionmaking. One purpose of this rule is to support local decisionmaking and involvement in a planning process that increasingly takes place in a regional context. There is a need for better coordinated local decisionmaking, however. Issues like air pollution and traffic congestion do not stop at State boundaries or MPO jurisdictional lines, but planning often does. Planning in jurisdictional silos can occur where two or more MPOs plan for the MPA but do not coordinate effectively and do not produce a single overall plan and TIP for the MPA. Such a situation can interfere with essential coordination of regional transportation planning solutions. In turn, that can lead to project delays, process inconsistencies, and reduced freight reliability.

This rule places a greater emphasis on regional planning to help communities maximize economic opportunities while also addressing the externalities of growth, such as congestion, air and water quality impacts, and impacts on resilience. The FHWA and FTA have long promoted regional planning because of the increasing size, economic interdependence, and quality of life challenges of metropolitan areas. The elimination of possible confusion about MPA boundary requirements is one step toward better regional planning. By clarifying the metropolitan planning regulations implementing the language on boundaries in 23 U.S.C. 134(e)(2), the MPA will include the entire urbanized area plus the areas forecasted to become urbanized over the 20-year period of the transportation plan. This clarification will promote more efficient and effective planning for the MPA as a whole.

Based on experience, FHWA and FTA know that having two or more separate metropolitan transportation planning processes in a single MPA (as defined under 23 U.S.C. 134) can make the planning process confusing and burdensome for the affected public. For example, members of the public may be affected by projects in multiple MPO jurisdictions, either because they live in the area of one MPO and work or regularly travel to another, or because the MPOs' jurisdictional lines bisect a community. Such members of the public, therefore, can find it necessary to participate in each MPO's separate planning process in order to have their regional concerns adequately considered. Having to participate in the planning processes of multiple MPOs, however, can be burdensome and discourage public participation. Where communities have been so bifurcated that they are not able to fully participate in the greater regional economy, this

rule will help weave those communities together through new opportunities for regional investments in transportation.

Where regional coordination is already strong, this rule supports those efforts. Multi-jurisdictional planning encourages stakeholders to think beyond traditional borders and adopt a coordinated approach to transportation planning that combines many perspectives to improve coordination and implement effective planning across wide geographic areas. In addition, the requirement for the State and MPO to have a documented dispute resolution process in their metropolitan planning agreement will help ensure the MPOs have an effective means to be heard when investment decisions affecting the MPA are made. With the revisions that FHWA and FTA have made in response to comments received, this rule will serve as a strong tool for State DOTs, MPOs, and providers of public transportation to work together to enhance efficiency and be more responsive to the entire community.

When FHWA and FTA issued the NPRM, the agencies were involved in ongoing non-regulatory planning initiatives to improve MPO coordination. The Fiscal Year 2015 and 2016 FHWA and FTA Planning Emphasis Areas letters from the Administrators of FHWA and FTA to MPO executive directors and heads of State DOTs discussed three planning priorities, including *Regional Models of Cooperation* (RMOC).⁶ The objective of the RMOC initiative is to improve the effectiveness of transportation decisionmaking by thinking beyond traditional borders and adopting a coordinated approach to transportation planning. The RMOC promotes improved multi-jurisdictional

⁶ The Fiscal Year 2016 letter is available at https://www.fhwa.dot.gov/planning/processes/metropolitan/mpo/fy_2016/fy2016pea.pdf.

coordination by State DOTs, MPOs, providers of public transportation, and rural planning organizations to reduce project delivery times and enhance the efficient use of resources, particularly in urbanized areas that are served by multiple MPOs. The RMOC includes technical assistance efforts to assist MPOs and State DOTs in achieving the RMOC objectives.

The FHWA, as part of its *Every Day Counts* initiative (EDC), promotes RMOC and provides a framework and process for State DOTs and MPOs to develop multi-jurisdictional transportation plans and agreements to improve communication, collaboration, policy implementation, technology use, and performance management across agency boundaries.⁷ The EDC has identified the benefits of multi-jurisdictional planning as including higher achievement of transportation goals by working together and the potential creation of a more economically competitive region through faster construction, improved freight movement, reduced traffic congestion, and improved quality of life.

Functionality and Effectiveness of the Resulting Metropolitan Planning Areas

Many commenters stated that the current system fosters an environment that allows for right-sized collaboration and is working well. Many contended that their MPOs are properly sized for their respective regions and that they efficiently program their resources in a manner that cannot be achieved at a larger scale. Some commenters expressed concern that, by increasing the size and scope of individual MPOs, the proposed rule would make the transportation planning process less accessible and more

⁷ See EDC Web site at <http://www.fhwa.dot.gov/innovation/everydaycounts/edc-3/regional.cfm>.

confusing to stakeholders and the general public, many of whom are already overwhelmed by the process. Others commented that the rule would not reduce confusion, increase public participation, or increase efficiency in regional planning, arguing that residents who live far away from other residents do not, by default, have the same transportation planning priorities simply because they reside in the same MPA. Others expressed concern that a large MPA with multiple major and minor cities and differing economic bases would limit the potential for common interests and issues, potentially diluting the planning process and limiting locally applicable guidelines. Some commenters asserted that the proposed rule would result in disconnecting land use and transportation planning, negatively affect transit planning, and undermine congressional intent that an MPO be focused on a UZA's central city.

Several commenters stated that the proposed rule ignored the complex nature of existing regional coordination mechanisms and instead would create an unworkable coordination framework that likely would present challenges to capital planning and project delivery. Some commenters also raised concerns that the proposed rule would significantly change how neighboring communities and States work together, which could have potentially long-lasting negative consequences. Commenters also stated that the proposed rule would weaken the regional planning process by requiring it to be done at such a large scale that it no longer would be reasonably considered as regional planning as Congress intended and would result in MPO policy boards making decisions on transportation investments and policies for geographic areas with which they are unfamiliar.

Several commenters expressed the view that smaller, contiguous MPOs in a shared metropolitan region can be as effective, or more effective, than larger or consolidated MPOs. For instance, smaller organizations are generally more nimble and responsive to members of the public than larger, more artificially stitched-together organizations. These commenters also contended that smaller contiguous MPOs may often be better able to factor in land use, smaller scale projects such as pedestrian and bicycle needs, intersections, and transit, while still maintaining an appropriate focus and cooperation on major system elements such as the National Highway System and long distance freight.

The FHWA and FTA considered the concerns expressed by these commenters but disagree with the view that the rule will lead to the negative results described in their comments. In locations where MPOs have undertaken efforts to merge and rationalize the planning process for their regions, the results have been positive.⁸ These examples illustrate that MPOs can implement changes like those adopted in this rule. Implementation will require adjustment of processes and creative thinking about the best ways to conduct successful outreach if the changes required by the rule result in the need to involve a broader group of constituents in the MPA. The FHWA and FTA also acknowledge that the type of decisionmaking the rule requires may force MPOs to make hard choices about investment priorities because they must agree on MPA-wide priorities, rather than priorities for a subarea within the MPA. In the view of FHWA and

⁸ See, e.g., “Current State of the Practice” discussion on FHWA’s *Every Day Counts* web page for Regional Models of Cooperation, available at <https://www.fhwa.dot.gov/innovation/everydaycounts/edc-3/regional.cfm>.

FTA, this is an appropriate result in the performance-based planning environment in which FHWA, FTA, States, MPOs, and providers of public transportation now operate.

The vast majority of commenters concluded that the proposed rule would result in excessively large planning regions that cover extensive geographic areas, including multiple States and millions of people. The commenters believed this would cause complex and lengthy negotiations among MPOs and States. Many commenters raised concerns that the NPRM would lead to the formation of extremely large MPAs in certain parts of the country and result in either multiple MPOs merging to form a single MPO responsible for a very large geographical area or multiple MPOs in an MPA being required to coordinate to produce unified planning products. Many of these commenters asserted that transportation planning at such a large scale likely would be unmanageable. Miami Valley Regional Planning Commission stated that, if combined, the 10+ MPOs in its region would have a 300+ member MPO policy board, and there would be “unmanageable” results of a “super MPO” spanning multiple (in some cases five to seven) States. A number of other commenters also suggested the rule would result in “super MPOs.” The Connecticut Councils of Governments, including the Western Connecticut Council of Governments, Housatonic Valley MPO, and South Western Region MPO, Naugatuck Valley Council of Governments, and Central Naugatuck Valley Metropolitan Planning Organization cited the example of the Tri-State Regional Planning Commission, a particularly large MPO that formerly served parts of New York, New Jersey, and Connecticut but was deemed unsuccessful and ultimately dissolved. This comment suggested that the proposed rule could result in re-creating a large MPO like

that, apparently without learning the lessons of why it failed. The comment stated that following dissolution of the Tri-State Regional Planning Commission, Connecticut and its neighbors developed structures and mechanisms to provide for inter-MPO coordination, and this structure enables MPOs to maintain vigorous local involvement in the context of statewide and multistate corridors.

Several commenters also responded to FHWA's and FTA's request for comments on potential exceptions that should be included in the final rule and criteria for applying such exceptions.⁹ A number of commenters recommended providing an exception to boundary requirements where only a small portion of a UZA crosses into the jurisdiction of a neighboring MPO, and they proposed several options for applying such an exception. Twelve commenters proposed using a population threshold for the portion of a UZA crossing MPO jurisdictional boundaries, below which the neighboring MPOs would not need to comply with the rule's requirements, ranging from 5-25 percent of the total population of the UZA. Eight commenters proposed using a land area threshold of 5-25 percent of the total UZA land area crossing MPO jurisdictional boundaries, below which an exception would apply. Six commenters recommended using a threshold of 15-25 percent of the total Federal-aid lane miles in the portion of a UZA crossing MPO jurisdictional boundaries, below which an exception would apply. Four commenters recommended that if a small area of two MPAs were to overlap, ranging from 10-20 percent of the total combined MPA area, that the MPOs serving those MPAs should be excepted from the rule's requirements. Three commenters recommended excepting

⁹ See FHWA and FTA notice reopening comments at 81 FR 65592, 65593 (September 23, 2016).

MPOs that are in nonattainment for at least one criteria pollutant. The Merced County Association of Governments recommended giving special consideration to areas that are predominantly rural.

The FHWA and FTA appreciate the comments submitted and understand commenters' concerns about the potential for extremely large MPAs. The FHWA and FTA believe that some of these concerns are based on a misreading of the proposed rule, particularly relating to UZAs with common boundaries and MPAs with 20-year forecast areas that may overlap. The FHWA and FTA do not intend this rule to require the establishment of extremely large MPAs or to require transportation planning on such a large scale as to be unworkable. The intent is to ensure MPAs comply with statutory boundary requirements, and, if there are multiple MPOs serving an MPA, all such MPOs work together to plan for the MPA's future transportation needs. Because this rule and the underlying statute require that MPAs include the entire UZA and the surrounding area forecast to become urbanized within a 20-year forecast period for the transportation plan, FHWA and FTA cannot provide exceptions to these requirements based on the population in an MPA, the size of the part of a UZA that crosses into an adjoining MPO's planning jurisdiction, the degree to which the MPA includes rural areas, or the air quality status of the area. Under this rule and the underlying statute, MPA boundaries cannot overlap. The FHWA and FTA will provide guidance in the future about how to accomplish such boundary adjustments.

The NPRM presented MPOs with three compliance options, all of which the final rule retains. First, MPOs may adjust the boundaries of their MPAs to encompass the

entire urbanized area plus the contiguous area forecast (by the MPOs) to become urbanized over the 20 years of the metropolitan transportation plan. While the situations of individual areas may vary, many MPOs would be able to adjust MPA boundaries in such a way that they remain separate from contiguous MPOs. For example, in cases where an MPO's current jurisdiction includes a portion of a UZA primarily served by another MPO, the two MPOs can work together to adjust their jurisdictions so each MPO serves an MPA with the appropriate UZA. If the forecasted growth areas for two MPAs overlap, the affected Governor(s) and MPOs can work together to determine the most appropriate way to allocate that growth area between the MPAs. Although Governors and MPOs are encouraged to consider merging multiple MPAs into a single MPA under these circumstances, the rule does not require a merger. Second, multiple MPOs located in a single MPA can merge. Third, if MPOs and their respective Governor(s) determine that the size and complexity of the MPA justifies maintaining multiple MPOs in a single MPA, then they can remain separate MPOs but coordinate to prepare unified planning products.

To address comments stating that in some areas compliance with the rule would be infeasible, overly cumbersome, or contrary to the goal of effective and participatory regional planning, the final rule includes a new compliance option in §450.312(i) for MPAs with multiple MPOs. This option offers, under certain conditions, an exception to the requirement for unified planning products. The exception is discussed in detail below, under *Unified Planning Products: Requirements and Exception* in "Discussion of Major Issues Raised by Comments" section of this preamble.

Commenters raised similar concerns about the potential for large MPAs that cross State lines but cited even greater coordination challenges in that scenario. Commenters expressed concern that if an MPO serves a larger geographical area, particularly in the case of a multistate MPA, the planning discussions will inevitably take place at the State planning level and will not empower MPOs. Commenters stated the result would remove local constituent voices from identifying and implementing projects that provide connectivity and access, and spur economic development initiatives across all areas in the MPA. Commenters stated that the rule should provide greater flexibility where MPAs cross State lines to account for significant differences in transportation planning processes that may exist between two or more States. Some commenters expressed concern that each Governor in a multistate MPA would exercise veto power over the TIP and MTP in the neighboring State, which would delay approval of these products, jeopardizing access to Federal highway and transit funds. Commenters also highlighted differences in State transportation planning processes, planning statutes, budgetary cycles, project prioritization processes, land use authorities, vastly different relationships and involvement of State legislatures in the planning process, and various governance and MPO policy body structures in neighboring States as factors that would further complicate the production of unified planning products across State lines.

In response, FHWA and FTA acknowledge that a multistate MPA typically presents greater coordination challenges than an MPA contained entirely within a single State. For multistate MPAs where the Governors and the MPOs agree it is not feasible to comply with the unified planning products requirements adopted in this rule, the

Governors and MPOs may seek an exception under the provision added in §450.312(i) of the final rule.

Several commenters indicated concerns about the use of UZAs, which are determined by the U.S. Census Bureau, as the basis for establishing MPA boundaries. Commenters noted that UZAs do not necessarily reflect transportation realities for regional roadway and transit networks, and regional travel patterns. Commenters expressed concerns about the UZAs changing after each decennial census, requiring new configurations every 10 years. In response, FHWA and FTA note that Congress required in 23 U.S.C. 134 that UZAs be used to establish MPAs. The MPA boundaries provision in 23 U.S.C. 134(e)(2)(A) states that each MPA “shall encompass at least the existing urbanized area,” and 23 U.S.C. 134(b)(7) provides that urbanized area “means a geographic area with a population of 50,000 or more, as determined by the Bureau of the Census.” However, FHWA and FTA appreciate the concerns that UZAs may not reflect regional transportation patterns and systems, and, therefore, FHWA and FTA intend to engage with the U.S. Census Bureau to provide input into how UZAs should be delineated following the 2020 decennial census.

Several commenters requested additional guidance on the responsibilities and methodology for determining 20-year growth projections; determining the parameters for designating MPA boundaries when UZAs are contiguous, or when the 20-year forecast growth from two UZAs overlaps; developing dispute resolution agreements; and determining when the size and complexity of an MPA warrants the designation of multiple MPOs. To support efficient and effective implementation of the rule, FHWA

and FTA plan to issue guidance and will offer technical assistance to help States and MPOs understand their options for complying with the rule. In addition, not later than 5 years following the compliance dates in § 450.226(g) and § 450.340(h), FHWA and FTA will review how implementation of the new requirements is working and whether the new requirements are proving effective in achieving the intended outcomes. The FHWA and FTA are committed to ensuring the transportation planning process is successful. Through this review, FHWA and FTA will identify any necessary changes to the regulation.

Transportation Conformity

Some commenters raised questions about how the proposed rule would impact existing air quality conformity boundaries and relationships. Two MPOs, the American Association of State Highway and Transportation Officials (AASHTO), the National Association of Regional Councils (NARC), a State health organization and a transit operator noted that there are separately designated nonattainment and/or maintenance areas with air quality boundaries that do not coincide with UZA designations that cross State lines. The concern expressed is that by joining these separate areas into one MPO, or requiring joint planning documents, those regions that are in attainment or maintenance for air quality would be forced to perform detailed air quality conformity analyses in line with the nonattainment areas. Commenters voiced concern that, in complex regions, every new conformity determination and MTP or TIP amendment involving air quality non-exempt projects would require a multistate technical, administrative, and public and interagency analysis that would delay decisionmaking and

hinder progress. In response, FHWA and FTA understand the potential impacts of the final rule on meeting the transportation conformity regulations. The FHWA and FTA are cognizant of the challenges that MPOs and States may face, especially in areas where two or more MPOs in a multistate area may merge into one MPO or develop unified planning products. These areas may have to put extra effort into the interagency consultation and coordination process. They may also have to devote additional resources to address conformity issues, such as developing a single travel demand model; conducting an emissions analysis that covers the new MPA boundary; and aligning the latest planning assumptions, conformity tests, and analysis/horizon years. In addition, areas with nonattainment or maintenance area for multiple pollutants may experience additional complexities. The FHWA and FTA, however, believe that many MPOs already have experience in addressing conformity issues in a complex area. These complex areas may include multiple MPOs, multiple States, multiple pollutants, or a combination of all of these. The FHWA documented the experience of how these complex areas address conformity issues in *Transportation Conformity Practices in Complex Areas*.¹⁰ As a result of reviewing comments, FHWA and FTA have removed the NPRM language in § 450.324(c)(3) and § 450.326(a) that called for MPOs sharing an MPA to agree on a process for making a single conformity determination on their plan and TIP. The change was made to avoid the risk the language would be read as amending conformity requirements. Instead, during implementation of the final rule, FHWA and FTA will coordinate with the Environmental Protection Agency (EPA) on maintaining consistency

¹⁰ Available as of November 4, 2016, at https://www.fhwa.dot.gov/environment/air_quality/conformity/research/complex_areas/.

with EPA's transportation conformity regulations, seeking to avoid the impact on nonattainment and maintenance area designations, and on the need for state and local air quality agencies to revise approved State Implementation Plans (SIPs), motor vehicle emissions budgets, and conformity procedures. The FHWA and FTA also will work with EPA to provide technical assistance and training to help MPOs address conformity issues that may occur.

Furthermore, if it is not feasible for multiple MPOs serving the same MPA to comply with the unified planning products requirements because of conformity issues, the affected MPOs and the Governor(s) may request an exception under § 450.312(i) of the rule. The exception is discussed in detail under *Unified Planning Products: Requirements and Exception* in "Discussion of Major Issues Raised by Comments" section of this preamble.

Dispute Resolution Process

The FHWA and FTA received a total of 44 comments on the proposed requirement in § 450.208(a)(1) that States and MPOs establish dispute resolution procedures in their metropolitan planning agreements. Three commenters expressed support for the development of a written dispute resolution process to provide for fair, objective, and consistent resolution of disputes. One commenter asserted that because the FAST Act does not require a dispute resolution process, this is a matter that should be addressed legislatively rather than through a rulemaking. Thirteen commenters noted concern that the inflexibility of a formal dispute resolution process would make it cumbersome and confusing and would create conflict where none existed previously.

Five commenters suggested a formal dispute resolution process would unfairly favor States, based on speculation that States would have no incentive to support local control for separate MPOs and would not enter into the dispute resolution process in good faith. Two commenters stated that a formal dispute resolution process would allow for some parties to use the dispute resolution process to hold up the planning process in order to leverage particular outcomes.

The FHWA and FTA view the local planning process as a partnership among the MPOs, the States, and providers of public transportation. The dispute resolution requirement is a tool that, when used correctly, fosters this partnership. Dispute resolution establishes the path for all parties to follow in delivering the planning program, even when consensus is not readily reached. A well-crafted and well-executed dispute resolution process allows the parties to work through disagreements in an objective, fair, and transparent manner that should expedite delivery of planning products in an effective and inclusive fashion. The FHWA and FTA agree that if any party to the planning agreement fails to negotiate in good faith, the result will be suboptimal and not in accord with the intent of the planning statutes. The establishment of an objective, fair, and transparent process, however, will subject all participants to public scrutiny, which is likely to be a strong disincentive to bad-faith negotiation. Further, the type of failure described by the commenters would not be consistent with the “continuing, cooperative, and comprehensive” planning requirements in 23 U.S.C. 134-135. Finally, in response to the comment suggesting that requiring a dispute resolution process exceeds FHWA’s and FTA’s authority, FHWA and FTA believe the requirement is within the scope of the

agencies' discretion to interpret the meaning of the statutory requirements for coordination among States, MPOs, and providers of public transportation.

Seven commenters requested that FHWA and FTA provide model dispute resolution language, best practices, or guidance on how to develop a formal dispute resolution agreement. Thirteen commenters noted that the rule is silent on how disputes are to be resolved prior to establishment of a dispute resolution process between Governor(s) and MPOs.

The FHWA and FTA appreciate the request for more specific language, guidance, or best practices. The development of a dispute resolution process is a local decision that will vary depending on the particular needs and relationships that exist in each area. The FHWA and FTA are committed to providing MPOs and States with the technical assistance they need to effectively meet this requirement while taking local conditions and needs into account. The rule is purposely not prescriptive about the contents of a dispute resolution process. The FHWA and FTA do not believe that establishing a default dispute resolution process would further the desired collaboration. The FHWA and FTA understand it will take time to develop the required dispute resolution process, which is addressed by the final rule's compliance deadline of the next MTP update occurring on or after the date 2 years after the date the Census Bureau releases its notice of Qualifying Urban Areas following the 2020 census. Until the process is developed and contained in the metropolitan planning agreements, the parties may continue to use existing practices.

Unified Planning Products: Requirements and Exception

A number of commenters expressed concern that requiring unified planning products would increase the complexity of the planning process because developing unified planning products through coordination among multiple MPOs in an MPA would be more complicated, take more time, and extend the timeline for approvals, resulting in delays in project funding and delivery. Many asserted that this would require a multi-layered approval process that could jeopardize access to Federal funding. Some also expressed concern that working across State lines on TIPs (and STIPs) would be particularly challenging because different States have different legislative and budget schedules, and different project ranking and funding mechanisms. They also contended that the number of STIP/TIP modifications would increase, and that the multilayered approval process would make it less efficient to make such modifications. Several commenters stated that the sheer volume of projects, size, and diversity of geographical area, and the need to coordinate decisionmaking among multiple jurisdictions, and in some cases across State lines, will impair the region's ability to develop a single MTP and TIP, thus jeopardizing their ability to advance projects and secure FTA grant funds that are critical to maintenance and expansion of transit networks.

The Southeastern Massachusetts Metropolitan Planning Organization (SMMPO) expressed concern that a single TIP and MTP for a larger MPA would require consistent project eligibility and scoring criteria to ensure that the distribution of Federal funds is equitable. The SMMPO commented that even if an agreement can be reached among MPOs on the eligibility for Federal funds, it is unlikely that the MPOs will be able to agree on the requirements to receive State matching funds, because the criteria are

established by the legislative bodies of each State and not under the authority of the Governors.

Eight commenters expressed confusion regarding the proposed amendments to the joint planning rule. One respondent requested assistance to understand how the proposed rule would affect its UZA. Two respondents expressed confusion about how the proposed amendments would improve the planning process, citing the complexity of attempting to develop unified planning products for an area that could potentially cover hundreds of municipalities, millions of people, and dozens of counties. Five respondents stated that implementation of the proposed amendments would result in more confusion for the public, locally elected officials, and local units of governments because they would need to plan for such large areas and attempt to work through a very complicated, overwhelming, and inefficient process to approve unified planning products. Several commenters expressed concerns about unintended consequences of the proposed rule. Some commenters indicated that the proposed rule would negatively disrupt existing coordination and collaboration efforts, particularly for transit, economic development, land use, and local planning. Some commenters believed the proposed rule would make the existing transportation planning process more complex, less efficient, and more difficult for MPOs to meet the requirements of Federal and State laws. Other commenters expressed concern about States gaining more power in the metropolitan transportation planning process and the potential increase in competition for funding and resources. Commenters also questioned the impacts to MPO staff employment and the

participation of MPO members. One commenter expressed concern about potential conflicts with FHWA's other performance management rulemakings.

In the notice of the reopening of the comment period for this rulemaking, FHWA and FTA asked for comments on potential exceptions that should be included in the final rule and the criteria for applying such exceptions. Commenters recommended several criteria for exceptions to the rule's unified planning products requirements. Eighteen commenters recommended exceptions if multiple MPOs in an MPA can demonstrate a history of coordination, including the existence of formal agreements like memoranda of understanding and/or established processes for neighboring MPOs to consider the content of other MPO's long-range transportation plans when developing their own long-range transportation plan that provide for coordination among contiguous MPOs. Four commenters recommended providing an exception to the rule's requirement for multiple MPOs in an MPA to develop unified planning products if all of the MPOs in the MPA agree to opt out of this requirement. Twelve commenters suggested an exception from this requirement if the MPA crosses State lines. Seven commenters recommended that exceptions be made for MPAs with a population over a certain threshold, with suggested thresholds ranging widely from 300,000 to 2.5 million persons.

In response, FHWA and FTA recognize that many MPOs will have to make adjustments in their jurisdictional boundaries and their planning processes under this rule. A multistate MPA typically will face greater coordination challenges than an MPA contained entirely within a single State. There likely will be a need for additional coordination, as described by commenters. The FHWA and FTA considered the potential

impacts cited by commenters when developing this final rule, and decided the benefits of the rule in terms of comprehensive, unified decisionmaking in the transportation planning process outweighed such potential impacts. The FHWA and FTA also carefully considered commenters' recommendations for exceptions to the rule's requirements and have revised the rule by adding an exception from the new unified planning requirements. This exception will not allow multiple MPOs in a single MPA to simply opt out of the requirement to develop unified planning products, but it establishes criteria under which MPOs may seek an exception from this requirement. The exception will address those cases where it is not feasible for MPOs to prepare unified planning products due to conditions affecting coordination or other aspects of the unified planning process. The FHWA and FTA decline to provide an exception for MPAs that cross State lines because effective regional coordination requires coordination across a variety of jurisdictional boundaries, and there are examples of MPOs effectively coordinating across State lines, such as the Delaware Valley Regional Planning Commission (Philadelphia and Trenton), the Memphis Metropolitan Planning Organization (Tennessee and Mississippi), and the Kentucky-Ohio-West Virginia Interstate Planning Commission. The final rule, however, provides flexibility where producing unified planning products is not feasible. The new provision balances the concerns raised by commenters against the need for unified planning to ensure the MTP and TIP appropriately address the needs of the MPA as a whole. The exception is in § 450.312(i) of the rule. To be granted this exception, all MPOs in the MPA and their Governor(s) must submit, and the Secretary must approve, a joint written request and justification. The submittal to the Secretary must: (1) explain

why it is not feasible, for reasons beyond the reasonable control of the Governor(s) and MPOs, for the multiple MPOs in the MPA to produce unified planning products; and (2) demonstrate how the multiple MPOs in the MPA are effectively coordinating with each other and producing consistent MTPs, TIPs and performance targets, and are, therefore, already achieving the goals of the rule through an existing coordination mechanism. An approved exception is permanent. When FHWA and FTA do certification reviews and make planning findings, FHWA and FTA will evaluate whether the MPOs covered by the exception are sustaining effective coordination processes that meet the requirements described in 23 450.312(i)(2)(A)-(B).

If the Secretary determines that the request does not meet the requirements established under § 450.312(i), the Secretary will send the Governor(s) and MPOs a written notice of the denial of the exception, including a description of the deficiencies. The Governor(s) and the MPOs have 90 days from receipt of the notice to address the deficiencies identified in the notice and submit supplemental information addressing the identified deficiencies for review and a final determination by the Secretary. The Secretary may extend the 90-day period to cure deficiencies upon request.

The FHWA and FTA intend to provide guidance regarding the types of situations where an exception may be appropriate. Examples in the guidance may include situations where the Governor(s) and MPOs show that the number of MPOs in the MPA, the number of political jurisdictions within separate MPOs serving a single MPA, the involvement of multiple States with differing interests and legal requirements, or transportation conformity issues make it infeasible to develop unified planning products;

or they might show there would be unintended consequences of using unified planning products in the MPA that would produce results contrary to the purposes of the rule. The guidance also will address how Governor(s) and MPOs can demonstrate their current coordination procedures meet the exception requirements, such as by (1) documenting a history of effective regional coordination and decisionmaking with other MPOs in the MPA that has resulted in consistent plans and TIPs across the MPA; (2) submitting procedures used by the multiple MPOs in the MPA to achieve consistency on regional priorities and projects of regional impact through plans, TIPs, air quality conformity analyses, project planning, performance targets, and other planning processes to address regional transportation and air quality issues; and (3) demonstrating the technical capacity to support regional coordination.

Implementation Costs

Many commenters expressed concern about the costs, both in terms of financial resources and staff time associated with merging MPOs or coordinating among multiple MPOs in an MPA on unified planning products. Although many commenters did not cite cost estimates, several cited a voluntary MPO merger in Connecticut that cost \$1.7 million dollars and took 4 years. Some stated that implementing the proposed rule would divert both financial and staff resources away from core transportation responsibilities because no additional funds would be provided for MPOs to implement the proposed rule. Some commenters cited an expected increase in the cost of the planning process, including longer travel distances and time and travel expenses of MPO board and committee members. The FHWA and FTA address these and other comments on the

costs resulting from this rule in the discussion of Executive Order 12866 (Regulatory Planning and Review).

Impacts on the Local Role in Planning and Programming Decisions

The FHWA and FTA received 217 comments expressing concern that the proposed rule would decrease local influence and decisionmaking in the transportation planning processes. Many of these comments included concern that the proposed rule would increase the size of MPAs and MPOs, which would diminish the role and influence of local governments and make the transportation planning and decisionmaking process less responsive to local input. Commenters noted that a larger planning area with more jurisdictions would mean that many local governments and smaller transit systems would not be represented on policy boards or committees. Some stated the belief that this would lead to a focus on funding larger, more expensive projects and decrease the amount of funding available to smaller communities, resulting in local transportation needs not being fully addressed. Several commenters expressed concern that the proposed rule would shift power among jurisdictions, either from rural areas and small towns to urban areas, or from urban areas to suburbs. Nine commenters said larger MPAs, with unified MTPs and TIPs would create more, not fewer, conflicts among neighboring communities and between States, and this would make it more difficult to build consensus.

The FHWA and FTA acknowledge that the rule could have the effect of increasing the size of some MPAs, and that complying with MPA boundary requirements may lead to changes in how the MPOs operate. Commenters may be correct when they

suggest decisionmaking under the rule might result in different types of investments than in the past; however, FHWA and FTA believe that this rule will allow MPOs to make more efficient and effective planning decisions by focusing on the overall needs of the MPA. Focusing on the overall needs of the MPA also will support progress towards the national goals described in 23 U.S.C. 150(b). The FHWA and FTA disagree with comments suggesting the rule will necessarily disenfranchise local governments and small transit agencies, but FHWA and FTA also emphasize that the rule provides options for addressing such concerns, including (1) dividing an MPA that contains multiple UZAs into multiple MPAs, each of which contains an urbanized area in its entirety; and (2) retaining the multiple MPOs to serve the MPA. The NPRM provided three compliance options, all of which the final rule retains. First, many MPOs, including those that adjoin other MPOs, may be able to adjust their jurisdiction so each MPO's jurisdiction encompasses an entire MPA – the urbanized area plus the contiguous area forecast (by the MPOs) to become urbanized over the next 20 years. If the forecasted growth areas for two MPAs overlap, the affected Governor(s) and MPOs can work together to determine the most appropriate way to allocate that growth area between the MPAs. Second, multiple MPOs located in a single MPA can merge. Third, if MPOs and their respective Governor(s) determine that the size and complexity of the MPA justifies maintaining multiple MPOs in a single MPA, then they can remain as separate MPOs in the MPA but coordinate to prepare unified planning products. The final rule provides an additional option in §450.312(i) under which Governor(s) and MPOs can seek an exception to the requirement for unified planning products. The exception is discussed in

detail under *Unified Planning Products: Requirements and Exception* in “Discussion of Major Issues Raised by Comments” section of this preamble.

Effects on Public Involvement and Persons Protected by Environmental Justice and Title VI

Some commenters asserted the proposed rule would result in significantly larger MPOs and that would negatively impact public involvement. Fourteen MPOs and local governments, as well as a public transit agency, State DOT, national association, chamber of commerce, and a member of Congress noted that large planning entities with unified MTPs and TIPs would dilute the impact of local public input. A few commenters stated that the scale of large MPOs would make public involvement unmanageable and less meaningful. Thirteen MPOs and local governments as well as two associations and one State DOT said the large planning areas would create equity issues for populations unable to travel long distances for public meetings due to time, cost, and accessibility. A number of these commenters noted that this would present Title VI and environmental justice (EJ) concerns because it would be harder to ensure that individuals from low income communities, individuals from minority communities, individuals with limited English proficiency, and individuals with transportation limitations are meaningfully involved in the process.

Twelve commenters suggested the changes proposed in the NPRM would result in disruption to the public involvement process and confusion among the public and may increase the cost of public involvement and/or delay the process. One council of governments commented that the rule would disproportionately negatively impact central

cities with Title VI and EJ communities as compared to suburban areas. One transit agency indicated that the changes could cause a mismatch of transit provider districts and the planning functions tied to current MPO jurisdictional boundaries, and this would impact Title VI and EJ populations. One member of Congress said the NPRM did not address the changes that would be required to public involvement plans if multiple MPOs have to coordinate on unified planning documents.

In response, as detailed above in “Impacts on the Local Role in Planning and Programming Decisions,” FHWA and FTA believe the rule provides options for addressing concerns about one MPO being responsible for too large a geographic area. Even in cases where MPOs merge, or the decision to have multiple MPOs in an MPA triggers the requirement for unified planning documents, the size of the MPO’s planning jurisdiction does not determine the effectiveness of its public involvement. Best practices from existing large MPOs covering both urban and suburban areas indicate that public involvement, including meeting the goals of the Title VI process and EJ requirements, can be effective and can be carried out in a manner that addresses differences between these communities.

The FHWA and FTA recognize that the rule will require changes to ensure an effective public involvement process but believe that these changes are consistent with DOT’s encouragement of continuous improvements in all public involvement efforts. The FHWA and FTA have addressed the issue of a more effective consensus building process through Planning Emphasis Areas,¹¹ the EDC RMOC initiative,¹² and other

¹¹ See https://www.fhwa.dot.gov/planning/processes/metropolitan/mpo/fy_2016/index.cfm.

initiatives. The FHWA and FTA have developed a number of other resources that may be useful to MPOs and States in conducting effective public involvement and meeting Title VI and EJ requirements and expect to continue to provide such technical assistance and share best practices as part of the implementation of this rule.

The FHWA and FTA nevertheless recognize that in some cases, large and complex urban areas may have difficulty effectively addressing these concerns, and FHWA and FTA modified the proposed rule to allow an exception to the requirement for unified planning in § 450.312(i). If applicable, the request for an exception should provide evidence of public involvement, Title VI, or EJ concerns.

Implementation Timeline

The FHWA and FTA received input from 60 commenters on the proposed timeframe for the implementation of the proposed requirements in the NPRM. Many commenters, including 26 MPOs, 11 State DOTs, 9 municipalities, 5 professional associations, 4 COGs, 2 State legislators, 1 member of Congress, and 1 transit agency, raised concerns that the NPRM would require extensive and time-consuming coordination among MPOs and States, and they expressed that it would be unrealistic to complete this coordination within the 2 years required under the proposed rule. Many commenters stated that because of the complex nature of their particular MPA, the requirement to revise MPA boundaries and negotiate agreements among multi-MPO or multistate jurisdictions would be difficult to accomplish within 2 years. Many

¹² See http://www.fhwa.dot.gov/planning/regional_models/.

commenters noted that it would take longer than 2 years to complete new MTPs and TIPs among geographically-large MPAs, particularly in multistate areas.

Four MPOs and one member of Congress noted that 2 years is not enough time for State legislative action and gubernatorial approval that would be required to refine the MPO jurisdictional boundaries and member composition. Two MPOs stated that 2 years for compliance was not sufficient time for MPOs that are organized based upon State legislation, or are part of a Regional Planning Agency (RPA) or Council of Governments (COG) that would require re-establishment of roles through the State legislative process. One State DOT and numerous MPOs commented that the 2-year timeframe proposed in the NPRM was insufficient to draft new agreements and receive approval through multiple agencies. One State DOT commented that if there are disputes between the State and MPOs, it would significantly lengthen the timeframe for implementation. Three MPOs stated that a 2-year phase in period was not sufficient for a large, multistate area to draft new agreements and develop new structures, new rules and new planning processes.

Two COGs and eight local governments commented that 2 years was too aggressive given the extent of the required changes, resignations, and coordination agreements. They cited the experience of merging MPOs to form the Lower Connecticut River Valley Council of Governments, which took 4 years despite being a voluntary merger. Based upon this experience, they expressed doubt that the 2-year timeframe proposed in the NPRM would provide adequate time to complete a merger of MPOs to comply with the proposed rule.

Many commenters cited the complexity of implementing performance-based planning, and of requirements to prepare a new MTP and TIP, in concluding that the 2-year phase-in period was not sufficient. One transit agency noted that the 2-year timeline would be difficult to meet given the requirement to coordinate performance targets, particularly where a UZA crosses State boundaries and the MPOs must reconcile multiple goals and objectives. Two MPOs and one State DOT stated that if the MPOs are on different MTP cycles and need to develop a unified MTP and TIP, the proposed 2-year timeframe would be very tight. One State DOT and one MPO noted that in the case of an expanded boundary of the MPA, regional travel models would require updates that could not be completed within the 2-year timeframe. With regard to the timeline proposed in the NPRM's § 450.312(i) for MPA boundary redeterminations after release of the U.S. Bureau of the Census notice of the Qualifying Urban Areas, two State DOTs stated that 180 days would not be sufficient for MPOs to determine if they should be merged or develop unified planning products.

One association noted that the phase-in period of 180 days for the metropolitan planning agreements and the phase-in period of 2 years for the coordinated planning products were not aligned, and that the metropolitan planning agreements could not be updated until the MPO boundaries are determined. The commenter proposed that the timeframes for revision of the MPO jurisdictional boundaries and metropolitan planning agreements need to be aligned. Two MPOs recommended that the new requirements be phased in to support the air quality attainment deadlines and requirements that will be established for the phase-in of the revised 2015 National Ambient Air Quality Standards

(NAAQS) for Ozone, designations which are to occur by October 1, 2017, in accordance with the Clean Air Act (CAA), recognizing that the nonattainment areas will have to conform their TIPs and MTPs to the SIP.

Eleven MPOs, three State DOTs, two COGs, and three associations requested FHWA and FTA delay the requirement until after the 2020 decennial census to allow more time for implementation and avoid duplication of effort resulting from undertaking MPO coordination activities within 2 years after the effective date of the final rule and another set of MPO coordination activities after the release of the U.S. Census Bureau notice of new UZA boundaries following the 2020 decennial census.

Two State legislators and one local government commented that if the MPOs in Connecticut that recently completed a voluntary merger would be required to do another round of mergers within 2 years as a result of the proposed rule, and then be required to merge again after the 2020 census, it would be inefficient and waste staff time used for the previous MPO merger.

One State DOT commented that the proposed requirement should be suspended until the dispute resolution process could be fully developed. One association recommended that the implementation time should be extended to 4 years.

The FHWA and FTA recognize the challenges involved in defining MPA boundaries, negotiating new agreements, and implementing new planning processes in large and complex MPAs. The FHWA and FTA agree that it would be burdensome for MPOs and local planning partners to reconsider MPA boundaries 2 years after the date of the final rule, and then reconsider the boundaries and agreements after the 2020 census.

Therefore, in the final rule FHWA and FTA have changed the compliance date in §§ 450.266(g) and 450.340(h) to the next MTP update occurring on or after the date that is 2 years after the date the Census Bureau releases its notice of Qualifying Urban Areas following the 2020 census. The FHWA and FTA also changed the 180-day deadline, now in redesignated § 450.312(j), to 2 years after the release of the U.S. Bureau of the Census notice of the Qualifying Urban Areas for a decennial census.

Legal Authority

MPA Boundary Requirements

The FHWA and FTA received a number of comments questioning the proposed requirement that the MPA include the entire urbanized area and contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan. Commenters indicated Congress intended the statute to leave all MPA boundary determinations to Governors and local governments. The Capital Region Council of Governments stated that the current planning regulations reflect the flexibility of MPA boundaries implicit in the statute, and the proposed rule removed that flexibility. The Sherman-Denison MPO commented that the statutory language on MPA boundaries has not changed since ISTEA and suggested new statutory language would be required to support a change in interpretation by FHWA and FTA. Commenters cited 23 U.S.C. 134(e)(3)¹³ and 23 U.S.C. 135(d)¹⁴ as evidence that FHWA and FTA lack authority to

¹³ 23 U.S.C. 134(e)(3) provides “[i]dentification of new urbanized areas within existing planning area boundaries. - The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.”

dictate MPA boundaries or to require changes in MPA boundaries. In particular, the Pennsylvania Department of Transportation cited 23 U.S.C. 134(d)(4) and (5) as barring the changes in boundary provisions in the proposed rule. A few commenters asked whether areas designated as nonattainment as of August 10, 2005, would be allowed to retain their boundaries due to provisions in existing 23 CFR 450.312(b) and whether such MPAs would be subject to the proposed rule's unified planning products requirements.

In response to these comments, FHWA and FTA point to the statutory provisions defining MPA boundaries. The statute is explicit with regard to the minimum required inclusions: the existing urbanized area, as designated by the Census Bureau, plus the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan. 23 U.S.C. 134(e)(2)(A). While setting the boundaries of the 20-year forecast area may be subject to some discretion given the need to make judgments about future events, the statute leaves no room for interpretation about what constitutes the Census Bureau-designated urbanized area. The FHWA and FTA acknowledge their joint metropolitan planning regulations have not been clear with regard to the treatment of urbanized areas under this statutory boundary provision. Due to this lack of clarity, FHWA and FTA have been aware for some time that the practices of some MPOs have not been consistent with these statutory MPA boundary requirements. This rule is intended to correct these problems by more closely aligning the regulatory boundary

¹⁴ 23 U.S.C. 134(d) establishes in detail the process for designation and redesignation of MPOs by the Governor and local governments, as well as organizational and representation requirements for MPOs. 23 U.S.C. 134(d)(4) and (d)(5) address the continuing authority of agencies with multimodal transportation responsibilities as of December 18, 1991, and continuity of MPO designations until redesignation occurs. 23 U.S.C. 134(d)(7) establishes authority for the designation of more than one MPO in an MPA if the size and complexity of the existing MPA make it appropriate to do so.

provisions with 23 U.S.C. 134(e)(2). An agency has discretion to alter a prior interpretation of a statute it administers if the agency follows the proper procedures (e.g., notice-and-comment rulemaking) and engages in reasonable decisionmaking that meets the requirements of the Administrative Procedure Act.¹⁵ The FHWA and FTA believe this rulemaking meets those standards.

The FHWA and FTA do not agree that this rule conflicts with 23 U.S.C. 134(d) (4) and (5). First, if the MPO designation provisions controlled the determination of MPA boundaries, there would be no need for the separate boundary-setting provisions in 23 U.S.C. 134(e). As a matter of statutory interpretation, FHWA and FTA decline the commenters' invitation for FHWA and FTA to ignore the boundary provisions when applying the statute. The statute does not support the comments. Section 134(d)(4) contains a grandfathering provision that exempts certain MPOs only from the other requirements of 23 U.S.C. 134(d), and Section 134(d)(5) only states that an MPO designation remains effective until the MPO is redesignated. The remaining paragraphs of 23 U.S.C. 134(d) set methods for designating and redesignating MPOs (paragraphs (1) and (6)), and set a specific structure and board membership for any MPO serving a transportation management area (paragraphs (2) and (3)). Paragraph (7) permits the designation of more than one MPO in an MPA if the MPA is unusually large and complex, a possibility that is fully incorporated into this rule. In summary, Section 134(d) defines how MPOs are designated and the structure of certain MPOs; it does not describe the MPAs that the MPOs must conduct planning for, which is left to Section

¹⁵ See *FCC v. Fox Television 556 US 502, 514-16 (2009)*.

134(e). Thus, Section 134(d) does not conflict with this rule's MPA boundary requirements

Moreover, 23 U.S.C. 134(e)(3) is instructive with respect to the relationship between the designation/redesignation provisions in 23 U.S.C. 134(d) and the MPA boundary provisions in 23 U.S.C. 134(e). The inclusion of the redesignation exception in 23 U.S.C. 134(e)(3) confirms that Congress viewed the MPA boundary provisions to operate independently of the designation/redesignation provisions. Thus, questions about the need for designation or redesignation, and how that would occur, are separate from, and do not alter the effects of, MPA boundary provisions in 23 U.S.C. 134(e).

This rule also does not conflict with 23 U.S.C. 134(e)(3), which provides that if the Bureau of the Census designates a new urbanized area within an existing MPA, a redesignation of the existing MPO is not required. The rule does not alter provisions pertaining to designation of new urbanized areas by the Census Bureau, and it retains the regulatory version found in 23 CFR 450.312(e).

Commenters asked about the effect of 23 CFR 450.312(b) (implementing 23 U.S.C. 134(e)) concerning boundary retention for MPAs in urbanized area designated as nonattainment for ozone or carbon monoxide as of August 10, 2005. The commenters asked what the effect of the rule would be if UZAs extended into two MPAs and whether, if such MPAs kept their August 10, 2005, boundaries under the proposed rule, the MPOs serving such MPAs would be subject to the unified planning requirements in the proposed rule. In response, FHWA and FTA continue to give the same meaning to 23 CFR 450.312(b) and 23 U.S.C. 134(e)(4) as they have since Congress enacted the

provision in TEA-21 (1998) and modified it in SAFETEA-LU (2005). The FHWA and FTA conclude that Congress intended the provision to be time-limited to address issues that had arisen at the time these statutes were enacted, not to create a permanent or global exemption from other boundary requirements under the statute, including those in 23 U.S.C. 134(e)(2). Their purpose and effect have lapsed; the exemption found in subsection (e)(4) are bounded by the life of the nonattainment designations for ozone and carbon monoxide that were in effect as of August 10, 2005. In 2012, EPA made new ozone nonattainment designations under the 2008 ozone standards.¹⁶ The EPA also revoked the 1997 ozone standards, under which designations were in effect in 2010.¹⁷ The EPA terminated all nonattainment designations for carbon monoxide by September 27, 2010, when EPA designated all existing nonattainment areas as attainment or maintenance areas.¹⁸ Those urbanized areas originally covered by 23 U.S.C. 134(e)(4), but which are subject to these post-2005 EPA nonattainment designations for ozone and/or carbon monoxide, are now subject to 23 U.S.C. 134(e)(5). Section 134(e)(5) requires the MPA to encompass the entire urbanized area plus the 20-year forecast area as described in 23 U.S.C. 134(e)(2)(A). Similarly, those urbanized areas originally covered by 23 U.S.C. 134(e)(4) but which are subject to the post-2005 EPA designations of areas in attainment or maintenance for ozone or carbon monoxide no longer need the protection that this provision provided; they, too, are subject to boundary requirements of 23 U.S.C.

¹⁶ See EPA ozone designation notices at 77 FR 30088 (May 21, 2012) and 77 FR 34221 (June 11, 2012).

¹⁷ The EPA initially issued a notice revoking the 1997 standards for transportation conformity purposes only. See EPA notice at 77 FR 30160 (May 21, 2012). As a result of litigation, that partial revocation was determined invalid and EPA issued a full revocation. See 80 FR 12264 (March 6, 2015).

¹⁸ A list of EPA's Federal Register redesignation notices for carbon monoxide, including redesignations from August 10, 2005, through September 27, 2010, is available at <https://www3.epa.gov/airquality/greenbook/cfrnrpt1.html>.

134(e)(2)(A). Thus, all of these areas are now subject to the boundary and unified planning provisions in this rule.

Unified Planning Products Requirements

A number of commenters stated that the proposed requirement for unified planning products is not found in the metropolitan planning statute and exceeds congressional intent. Some cited language in 23 U.S.C. 134(i)(1)(A) as evidence that the proposed requirement conflicts with the statute.¹⁹ Others cited 23 U.S.C. 134(c)²⁰ and (j)²¹ for the same purpose. A joint comment letter from the Association of Metropolitan Planning Organizations, NARC, and the National Association of Development Organizations stated that the proposal is contrary to the practical framework and to 23 U.S.C. 134(b), (h)(2), (i), and (j). The commenters indicated the plain language of 23 U.S.C. 134, when viewed in the context of the statute, made it evident the proposal exceeds statutory authority. The commenters further stated that coordination among multiple MPOs in the same MPA is governed by 23 U.S.C. 134(f)(1)²² and 134(g)(1),²³

¹⁹ 23 U.S.C. 134(i)(1)(A) states, in part, “[e]ach metropolitan planning organization shall prepare and update a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection.”

²⁰ 23 U.S.C. 134(c)(1) provides “[t]o accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs through a performance-driven, outcome-based approach to planning for metropolitan areas of the State .” Section 134(c)(2) states, in part, “[t]he plans and TIPs for each metropolitan area shall provide for [systems and facilities]...that will function as an intermodal transportation system for the metropolitan planning area...”

²¹ 23 U.S.C. 134(j)(1)(A) states, in part, “...the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the metropolitan planning area...” Sections 134(j)(1)(B), (j)(1)(C), (j)(1)(D)(ii), (j)(4), (j)(6)(A)-(b) similarly use the singular reference to MPO in provisions concerning development, approval, and publication of the TIP and the selection of projects.

²² 23 U.S.C. 134(f)(1) states, in part, “[t]he Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.”

and that the NPRM proposal exceeds those provisions. According to the commenters, had Congress intended to create such a complicated and intricate requirement, it would have explicitly done so. The commenters pointed to 23 U.S.C. 134(g) as the sole part of the statute where Congress addresses MTP and TIP coordination among multiple MPOs in an MPA.²⁴ The commenters also pointed to the 23 U.S.C. 134(f)(1) provision for coordination across State lines, as well as 23 U.S.C. 134(i), as evidence that Congress did not intend to require unified planning products or to give DOT the authority to do so. The commenters stated that the performance-based planning provisions in 23 U.S.C. 134(h), adopted by Congress in MAP-21, reaffirmed the expectation that each MPO must produce its own planning products because the statute does not explicitly allow for the possibility of unified planning by multiple MPOs in a single MPA. The commenters rebutted the discussion in the NPRM that stated the NPRM proposals represented a return to more extensive coordination and decisionmaking requirements under the 1993 version of the planning regulations.

Several commenters stated that DOT's long-standing interpretation of the planning statute as allowing separate MTPs and TIPs for MPOs sharing an urbanized area confirms that the NPRM proposal for unified planning products is contrary to the existing statute. Commenters stated that the DOT reauthorization proposal, the Generating

²³ 23 U.S.C. 134(g)(1) reads "Nonattainment areas. - If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and TIPs required by this section."

²⁴ In addition to the nonattainment area provisions in 23 U.S.C. 134(g)(1), the section includes provisions for coordinating transportation improvements located within the boundaries of more than one MPA (23 U.S.C. 134(g)(2)), and for consultation and consideration of other types of planning activities under the responsibility of other types of entities (23 U.S.C. 134(g)(3)).

Renewal, Opportunity and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act (GROW AMERICA Act), contained provisions like those in the NPRM. According to the commenters, the GROW AMERICA Act provisions serve as an admission by DOT that new statutory authority is required to support the NPRM's proposals. Some commenters stated that Congress has had a number of opportunities over the years to adopt provisions like those in the NPRM, specifically including enactment of the MAP-21 and the FAST Act, but has chosen not to do so.

The FHWA and FTA have fully considered the comments stating the proposals conflict with 23 U.S.C. 134 in general; conflict specifically with 23 U.S.C. 134(b), (e), (i), (f)(1), (g), (h), and (j); and conflict with existing metropolitan planning practices. The FHWA and FTA understand that the commenters believe the statute makes it evident that: (1) each MPO is allowed to prepare its own MTP and TIP, regardless of whether the MPO is the sole MPO in its MPA or is one of two or more MPOs in the MPA; and (2) where an MPA crosses State lines, the Secretary's authority is limited to encouraging the affected MPOs to coordinate for the entire MPA.

The FHWA and FTA do not agree that the statute constrains the agencies' authority in the manner commenters suggest. Nothing in 23 U.S.C. 134(f)(1) and (g)(1) or any other part of Section 134 clearly establishes the applicable coordination requirements.

The FHWA and FTA first considered whether 23 U.S.C. 134(f)(1) and (g)(1) expressly address the question of how multiple MPOs in the same MPA handle

coordination and decisionmaking within the MPA. The answer rests on whether the use of the term “metropolitan area” in the two provisions means “metropolitan planning area” as defined in 23 U.S.C. 134(b)(1). The FHWA and FTA believe that the term “metropolitan area” in 23 U.S.C. 134(f)(1) and (g)(1) is ambiguous, thus providing FHWA and FTA authority to interpret the vague statutory language.²⁵

The enactment of ISTEA in 1991 produced the first detailed metropolitan planning statute, codified in 23 U.S.C. 134. The ISTEA version of the metropolitan planning statute used the term “metropolitan area” in various provisions governing planning area boundaries, multistate coordination, and coordination among planning entities.²⁶ The statute did not define the term. In the next reauthorization act, TEA-21 (1998), Congress reenacted the metropolitan planning statute in its entirety, including substantial amendments to many parts of the statute. Congress substituted the term “metropolitan planning area” for both “urbanized area” and “metropolitan area” in several places in the statute. Specifically, Congress replaced “metropolitan area” with “metropolitan planning area” in the 23 U.S.C. 134(c) (1998) provision on planning boundaries, but Congress retained “metropolitan area” in the multistate coordination provision in 23 U.S.C. 134(d) (1998) and in the coordination provision in section 134(e) (1998). Neither “metropolitan area” nor “metropolitan planning area” was defined in TEA-21.

In SAFETEA-LU (2005), Congress again reenacted the entire metropolitan planning statute. Congress added a statutory definition for the term “metropolitan

²⁵ *Chevron, U.S.A. v. Natural Resources Defense Council, Inc.*, 464 U.S. 837, 862-864 (1984).

²⁶ See, e.g., 23 U.S.C. 134(c), (d)(1), and (e).

planning area” that remains in effect today. The statutory definition states “[t]he term metropolitan planning area means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).” 23 U.S.C. 134(b)(1). Subsection (e), which limits the discretion of the Governor and the MPO in setting MPA boundaries, defines minimum and optional MPA boundaries. As in TEA-21, Congress retained the use of “metropolitan area” in a number of provisions, including in (1) the multistate coordination provision, which was redesignated from section 134(d) to section 134(f); and (2) the coordination provision, which was redesignated from section 134(e) to section 134(g). Congress did not adopt a definition of “metropolitan area” in SAFETEA-LU or in subsequent legislation.

This history leads FHWA and FTA to conclude that Congress intended the two terms to have different meanings. Even if FHWA and FTA treat the statutory history as insufficient evidence of congressional intent, the conclusion is the same. Under conventions of statutory interpretation, where congressional intent is unclear, if a word is not statutorily defined or a term of art, it is typically given its ordinary meaning.²⁷ In 23 U.S.C. 134, the terms “urbanized area” and “metropolitan planning area” are terms defined by the statute. 23 U.S.C. 134(b)(1) and (7). By contrast, “metropolitan area” is not defined. That leaves the question whether it is a term of art, or a term that should be given its ordinary meaning. Either result leads FHWA and FTA to conclude that the multistate provision in 23 U.S.C. 134(f)(1), and the coordination provision in 23 U.S.C. 134(g)(1), as well as their statutory predecessors, refer not to metropolitan planning areas

²⁷ See 2A Sutherland Statutory Construction § 47:29 (7th ed.).

as defined in 23 U.S.C. 134(b)(1), but to broader areas that include both an urban core and adjacent communities. The FHWA and FTA believe it is reasonable to consider “metropolitan area” a term of art in the context of the metropolitan planning statute, and to look to the U.S. Census Bureau for a definition just as 23 U.S.C. 134(b)(7) looks to the Census Bureau for the definition of “urbanized area.”

The Census Bureau describes the term “metropolitan area” as having been adopted in 1990 to collectively refer to the metropolitan statistical areas, consolidated metropolitan statistical areas, and primary metropolitan statistical areas.²⁸ Metropolitan statistical areas are core-based statistical areas “associated with at least one urbanized area that has a population of at least 50,000; it comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.”²⁹ The metropolitan planning statute recognizes these larger areas in the 23 U.S.C. 134(e) MPA boundaries provision, which provides the MPA “may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.” 23 U.S.C. 134(e)(2)(B).

Based on this analysis, FHWA and FTA have concluded that the coordination provisions of 23 U.S.C. 134(f)(1) and (g)(1) establish the coordination requirements applicable when there are two or more MPOs in a general metropolitan area. Neither provision prescribes requirements that govern coordination among MPOs where more

²⁸ “About Metropolitan and Micropolitan Statistical Areas,” U.S. Census Bureau, available online at <http://www.census.gov/population/metro/about/>.

²⁹ “Geographic Cores and Concepts - Core-Based Statistical Areas and Related Statistical Areas”, U.S. Census Bureau, available at https://www.census.gov/geo/reference/gtc/gtc_cbsa.html.

than one MPO has been designated in the same MPA. This interpretation gives meaning to both the undefined term “metropolitan area” and the statutorily-defined term “metropolitan planning area.”³⁰

The remaining parts of 23 U.S.C. 134 also do not definitively establish how multiple MPOs in the same MPA are to coordinate their plans and TIPs. The FHWA and FTA considered both individual provisions in 23 U.S.C. 134, and the statute as a whole, and considered the statute in the context of metropolitan transportation planning practices. Many sections of 23 U.S.C. 134, including those specific to MTP and TIP preparation, reference the responsibilities of MPOs in the singular. The language on MTPs and TIPs refers to “each” MPO and “the” MPO. Commenters state this use of the singular form means that each MPO has the right to prepare its own plan and TIP, regardless of the presence of other MPOs in the statutorily-defined MPA.

However, the use of the singular in those statutory provisions is subject to different interpretations. First, as a matter of statutory construction, absent clear language to the contrary, the use of the singular in statutory language includes the plural and vice-versa.³¹ Thus, the provisions cited by commenters could be read in either the singular or the plural, and the use of the singular is not determinative. Second, it is evident from a comprehensive reading of the MPA and MPO provisions in 23 U.S.C. 134 that the statute intends for a typical MPA to have a single MPO responsible for the entire MPA, including the urbanized area(s) included in the MPA. *E.g.*, MPA boundary

³⁰ “It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed.” *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883).

³¹ 1. U.S.C. 1; *see also* 2A Sutherland Statutory Construction § 47:34 (7th ed.).

provisions in 23 U.S.C. 134(e). If Congress had not intended the norm to be “one MPO per MPA,” there would have been no need for the exception provision in 23 U.S.C. 134(b)(7), which allows the designation of more than one MPO in an MPA under certain circumstances. Thus, it is not surprising that statutory provisions addressing the development and use of plans and TIPs are written to address the norm, and are cast in the singular.

The FHWA and FTA have thus determined that Congress did not directly address the question of how multiple MPOs in the same MPA ought to coordinate and make planning decisions for the MPA. This determination includes the situation where the MPA (as defined in 23 U.S.C. 134(b)(1)) crosses State lines. Accordingly, FHWA and FTA are charged with deciding how such coordination ought to occur. This rule addresses that question.

The FHWA and FTA disagree with comments stating the proposed rule exceeds FHWA’s and FTA’s authority because the rule would change long-standing FHWA/FTA statutory interpretations of MPA boundary requirements that Congress has tacitly endorsed. While FHWA and FTA acknowledge that there is a general presumption that Congress acts with knowledge of agency regulatory interpretations of a statute,³² the law is clear that an agency has the discretion to alter its interpretation of a statute so long as the agency follows the proper procedures (e.g., notice-and-comment rulemaking) and engages in reasonable decisionmaking that meets the requirements of the Administrative

³² See 2A Sutherland Statutory Construction § 47:8 (7th ed.).

Procedure Act.³³ The FHWA and FTA believe this rulemaking satisfies both of those tests.

The FHWA and FTA also disagree with comments stating that the proposed rule exceeds FHWA's and FTA's authority because Congress rejected or failed to adopt the same provisions in MAP-21 and the FAST Act, including not adopting DOT's GROW AMERICA proposals. An agency's submission of a proposal for legislation does not constitute an admission that additional statutory authority is needed in order to accomplish the objectives of the regulatory proposal. An agency submits legislative proposals for a variety of reasons, including a desire to have Congress clarify existing authority in order to overcome potential opposition from the public or other stakeholders to the agency's exercise of the authority. Similarly, the absence of an agency's submitted legislative proposal in subsequently enacted legislation does not constitute affirmative evidence that Congress rejected the proposal or determined the agency lacked sufficient authority under existing law. There may be many reasons for the legislative outcome, including a congressional decision that existing law is sufficient to authorize the proposal.³⁴

Finally, FHWA and FTA considered the comments stating that Congress's enactment of performance-based planning requirements in 23 U.S.C. 134(h) proves the

³³ *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 863-864 (1984), “[a]n initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis. Moreover, the fact that the agency has adopted different definitions in different contexts adds force to the argument that the definition itself is flexible, particularly since Congress has never indicated any disapproval of a flexible reading of the statute.”

³⁴ *See Alexander v. Sandoval*, 532 U.S. 275, 292–93 (2001).

statute requires each MPO to produce its own planning products. The FHWA and FTA believe Congress crafted the provisions in 23 U.S.C. 134(h), like those in other parts of the statute, to establish the process for the typical MPA structure of one MPO per MPA. For the reasons previously discussed, FHWA and FTA believe Congress did not explicitly address the question of how MPOs are to establish targets where there is more than one MPO in the same MPA. This rule addresses that question.

V. Summary of Major Changes Made in the Final Rule

The final rule includes the changes proposed in the NPRM, but with the revisions and additions described below, which FHWA and FTA made in response to comments.

Subpart B-Statewide and Nonmetropolitan Transportation Planning and Programming

450.226 Phase-In of New Requirements

Under this final rule, the implementation deadline for the requirement that States, MPOs and operators of public transportation have a current metropolitan planning agreement, which will identify coordination strategies that support cooperative decisionmaking and the resolution of disagreements, is changed from not later than 2 years after the date of publication of the rule to not later than 2 years after the date the Census Bureau releases its notice of Qualifying Urban Areas following the 2020 census.

Subpart C-Metropolitan Transportation Planning and Programming

450.312 Metropolitan Area Boundaries

Section 450.312(i) (as redesignated) - The final rule creates an exception, in new § 450.312(i), to the unified planning products requirements applicable where there are

two or more MPOs in the same MPA. The exception allows the multiple MPOs in an MPA to continue to generate separate, but coordinated and consistent, planning products if FHWA and FTA approve a request from the affected Governor(s) and all MPOs in the MPA that meets the requirements established in § 450.450(i). The exception is discussed in detail under *Unified Planning Products: Requirements and Exception* in the “Discussion of Major Issues Raised by Comments” section of this preamble.

Section 450.312(j) (as redesignated) - The final rule changes the time period MPOs have to adjust MPA boundaries after a U.S. Census Bureau designation that defines two previously separate UZAs as a single UZA. The final rule changes the time period for review and adjustment of MPA boundaries, so that one MPA includes the entire new UZA area, from 180 days to 2 years after the date the Census Bureau releases its notice of Qualifying Urban Areas following a decennial census.

450.340 Phase-In of New Requirements

In the final rule, FHWA and FTA changed the deadline in § 450.340(h) to provide additional time for compliance and to clarify the scope of the phase-in provision. The deadline for compliance proposed in the NPRM was the next MTP update occurring on or after 2 years after the effective date of the rule. The deadline for compliance in the final rule is the next MTP update occurring on or after the date that is 2-years after the date the U.S. Census Bureau releases its notice of Qualifying Urban Areas following the 2020 census. For clarity, the final rule lists the sections to which this phase-in provision applies.

VI. Section-by-Section Discussion of Changes Made in the Final Rule

Subpart B – Statewide and Nonmetropolitan Transportation Planning and Programming

Section 450.226—Phase-In of New Requirements

The rule provides a phase-in provision for the requirement in 23 CFR 450.208(a)(1) that metropolitan planning agreement must include strategies for coordination and the resolution of disagreements. In § 450.226(h), the rule provides a phase-in period ending 2 years after the date the Census Bureau releases its notice of Qualifying Urban Areas following the 2020 census.

Subpart C – Metropolitan Transportation Planning and Programming

Section 450.312—MPA Boundaries

The rule removes the first sentence of § 450.312(b), which is outdated grandfathering language concerning MPAs with August 10, 2005, nonattainment designations for ozone and carbon monoxide. Comments received in response to the NPRM showed the provision causes confusion about the applicability of other parts of the regulation. The FHWA and FTA have concluded the statutory provision on which the grandfather provision was based no longer has any effect. *See* discussion in *Legal Authority, MPA Boundary Requirements* in the Response to Major Issues Raised by Comments. The FHWA and FTA revised the second sentence to clarify the reference to designation procedures and add a reference to MPA boundary provisions.

The rule adds §450.312(i) as a result of comments received on the NPRM. The new paragraph creates an exception from the unified planning products requirements established by the rule. The exception is discussed in detail under *Unified Planning*

Products: Requirements and Exception in the “Discussion of Major Issues Raised by Comments” section of this preamble.

The rule changes the § 450.312(j) (as redesignated) time period for review and adjustment of MPA boundaries after a U.S. Census Bureau designation that defines two previously separate UZAs as a single UZA, so that one MPA includes the entire new UZA area, from 180 days to 2 years after the date the Census Bureau releases its notice of Qualifying Urban Areas following a decennial census. The rule also clarifies that Governor(s) and MPO(s) are responsible for reviewing MPA boundaries after each census and taking action to adjust MPA boundaries as needed to comply with boundary requirements.

Section 450.340—Phase-In of New Requirements

The rule adds phase-in provisions to § 450.340 for certain parts of Subchapter C. In a new paragraph (h), States and MPOs are given a longer time period than proposed in the NPRM to become fully compliant with the new MPA boundary and MPO boundaries agreement provisions, and with the requirements for jointly established performance targets and a single MTP and TIP for the entire MPA. To address comments on implementation timelines and the need for greater clarity in the rule, the phase-in provision lists the specific parts of Subchapter C subject to delayed compliance. Section 450.340 requires the Governor(s) and MPOs to document their determination of whether the size and complexity of the MPA justifies the designation of multiple MPOs; however, that decision is not subject to approval by FHWA and FTA. Full compliance for all MPOs within the MPA will be required before the next regularly scheduled update of an

MTP for any MPO within the MPA, following the date that is 2 years after the date the Census Bureau releases its notice of Qualifying Urban Areas following the 2020 census.

VII. Regulatory Analyses and Notices

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

The FHWA and FTA have determined that this rulemaking is a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of DOT regulatory policies and procedures due to significant public interest in the area of MPO reform. However, this rule is not estimated to be economically significant within the meaning of E.O. 12866. This action complies with E.O.s 12866 and 13563 to improve regulation.

This final rule improves the clarity of the joint FHWA and FTA planning rules by better aligning the regulations with the statute. Additionally, the MPOs within the same MPA must establish procedures for joint decisionmaking as well as a process for resolving disagreements. These changes also are intended to result in better outcomes for the MPOs, State agencies, providers of public transportation, and the public by promoting a regional focus for metropolitan planning, and by unifying MPO processes within an urbanized area in order to improve the ability of the public to understand and participate in the transportation planning process.

The unified planning requirements of this rule affect primarily urbanized areas with multiple MPOs planning for parts of the same UZA, or 142 of the 409 MPOs in the

country. The affected MPOs are: (1) MPOs that have been designated for an urbanized area for which other MPOs also have been designated; and/or (2) MPOs where an adjacent urbanized area has spread into its MPA boundary as a result of the periodic U.S. Census Bureau redesignation of UZAs. An MPO designated as an MPO in multiple MPAs, in which one or more other MPOs are also designated, would be required to participate in the planning processes for each MPA. Thus, under this rule, MPOs that have jurisdiction in more than one MPA would be required to participate in multiple separate planning processes. However, the affected MPOs could exercise several options to reduce or eliminate these impacts, including adjusting MPA boundaries to eliminate overlap, or by merging MPOs. In some cases, a Governor (or Governors in the case of multistate urbanized areas) and MPOs could determine that the size and complexity of the area make designation of multiple MPOs in a single MPA appropriate. In that case, the rule requires those multiple MPOs to jointly develop unified planning products: a single MTP, a single TIP, and a jointly-established set of performance targets for the MPA. The final rule includes a new option for MPAs with multiple MPOs that offers, under certain conditions, an exception to the requirement for unified planning products. Further, the final rule requires all MPOs to ensure their agreements with State DOTs and providers of public transportation include written procedures for joint decisionmaking and dispute resolution.

The FHWA and FTA have estimated that the maximum annual cost of implementation of the provisions of this action would be \$86.3 million. This estimate used high cost estimates to avoid any risk of underestimation. After evaluating the costs

and benefits of this final action, FHWA and FTA conclude that the maximum nationwide impact does not exceed the \$100 million annual threshold that defines a significant economic impact.

When extending the comment period FHWA and FTA requested additional comments on the potential costs of the rule, and the analysis conducted drew upon these submitted comments. One hundred fifty-eight respondents commented on FHWA's and FTA's evaluation of the costs and benefits of these proposed amendments. All of the respondents who commented on this section indicated that the evaluation underestimated the cost to implement the proposed regulatory provisions. Some respondents noted the following: the analysis of the costs of the proposed changes seems simplistic and inadequate; the NPRM provides no calculations or evidence to justify its assertion that costs will be minimal; the proposed rule does not fully contemplate the level of additional work that will be required for State DOTs and MPOs to comply with the changes; and evidence suggests that the costs will not be minimal. Others claimed that the increased costs would be considerable or significant and that merging MPOs is a time-consuming, complex and costly process. One stated that merging MPOs would require the involvement of multiple boards, commissions, and councils, as well as cost time and money, highlighting that the attorney fees alone for the multiple organizations in the process of any merger would be daunting. Many claimed that the NPRM would impose immense budgetary and administrative burdens on their jurisdictions, and that the administrative effort and expense would be huge. Thirteen respondents noted that the formation of the Lower Connecticut River Valley Council of Governments resulting from

the voluntary merger of Connecticut River Estuary Regional Planning Agency and Midstate Regional Planning Agency cost approximately \$1.7 million in staff time and direct costs and took 4 years to complete. The Michigan Department of Transportation noted that the process to establish a new MPO for the Midland UZA took 18 months and approximately \$300,000. The Richmond Regional Transportation Planning Organization stated that FHWA and FTA should consider the direct capital costs, lost productivity and opportunity costs for staff and elected officials, and other indirect costs in analyzing the financial impact of the proposed rule upon affected MPOs.

The AASHTO noted that the NPRM does not take into account the additional resources needed to implement the proposed provisions. Others pointed out that no additional funding is proposed and suggested that additional Federal funds should be provided to MPOs to offset the cost of implementing the proposed requirements.

In response, FHWA and FTA note that the total Federal, State, and local cost in FY 2016 of the planning program is approximately \$1.5 billion. Generally, 80 percent of these eligible costs are directly reimbursable through Federal transportation funds; however, AMPO's 2013 MPO Salary Survey Results³⁵ indicated that "the vast majority of MPOs received more than 70% of their funding from federal sources" including Federal transportation funds allocated for metropolitan planning (23 U.S.C. 104(d) and 49 U.S.C. 5305(f)) and for State planning and research (23 U.S.C. 505 and 49 U.S.C. 5305(f)). While no additional funds will be provided to the MPOs to implement the provisions of the final rule, FHWA and FTA note that MPOs have the flexibility to use

³⁵ Association of Metropolitan Planning Organizations, 2013 MPO Salary Survey, published: January 23, 2014, page 2.

some FHWA capital funds or some FTA formula funds for transportation planning (23 U.S.C. 133(b)(1), 49 U.S.C. 5307(a)(1)(B) and 5311(b)(1)(A)). The FHWA and FTA also expect there will be some cost savings for State DOTs, which will benefit from having fewer TIPs to incorporate into their STIPs.

Multiple respondents emphasized that requiring MPOs to merge and re-organize or to develop new memoranda of understanding (MOUs), representation selection processes, and unified planning products without additional funds would only serve to undermine transportation planning because it would require them to redirect considerable resources from core planning functions. Federal funding spent to implement the proposed rule would reduce the amount of planning funds now being used by MPOs and States to meet their current responsibilities. Seven respondents asserted that implementation of the proposed amendments would increase the cost of the planning process, as conducting metropolitan planning over more expansive areas would lead to less efficient and less effective planning and decisionmaking. Two respondents noted that larger MPOs would require MPO members to travel longer distances to attend meetings, resulting in higher travel costs to MPOs. Two respondents cited delays and added costs that would result from the need to coordinate among four State DOTs and Governors and three MPOs, which would be an unnecessary burden on completing critical transportation projects in the region. Others noted that such large MPOs would add significant time, logistical challenges, complexities, effort, and cost to the project development process, which goes against the intent of the FAST Act to streamline project

delivery. Finally, multiple respondents asserted that the inefficiency implications of the NPRM far outweigh the benefits that would be achieved.

In response to these comments, FHWA and FTA have estimated the maximum average annual costs of the implementation of the provisions of this final rule using the assumption that all 142 MPOs would choose the option to merge. While this scenario produces the highest cost estimates of all the options for compliance with the rule, and it is considered to be highly unlikely since the final rule provides three options in addition to a merger: to adjust boundaries, to develop unified planning products, or to seek an exception from the unified planning products requirement. The FHWA and FTA have estimated the cost to merge on the basis of information provided by the Michigan Transportation Planning Association, the Midland Area Transportation Study (MATS), the Genesee County Metropolitan Alliance, and the Lower Connecticut River Valley Council of Governments (River COG) in response to the NPRM. The total cost to merge is assumed to be equivalent to the combined annual budget of each agency involved in the merger. As suggested by MATS in their response to the NPRM, cost of the merger would include direct, indirect, and opportunity costs, such as merger process development, merger formal agreements, legal counsel, MPO structure/organization development, merged MPO administrative issues, merged MPO committees development, merged MPO task development, loss of institutional knowledge, funding instability costs, loss of public participation, and delays and loss of projects.^{36,37} Any

³⁶Comments from Midland Area Transportation Study, Posted 10/24/2016; ID: FHWA-2016-0016-0597

mergers are assumed to be implemented over a 4-year period, which is consistent with the experience of the River COG merger and with an MPO’s 4-year cycle to develop its principal planning products: the MTP and the TIP. The Michigan respondents also suggested that the cost of using the option to develop unified planning products would be approximately 45 percent to 50 percent of the cost to merge.

To estimate the annual operating budget for the MPOs subject to this regulation, FHWA and FTA relied upon the Association of Metropolitan Planning Organizations’ (AMPO) 2013 MPO Salary Survey Results, published January 23, 2014 (Table 1: MPO Survey Data). The AMPO Salary Survey included 135 MPOs; however, only 35 of the 142 affected MPOs were included in the survey results. While this survey represents 25 percent of the affected MPOs, FHWA and FTA determined that it would provide an adequate indication of MPO operating budgets.

Table 1: MPO Survey Data

MPOs	Number of Affected MPOs in AMPO Sample	Number of MPOS Affected	Sample Size
>1,000,000	9	31	29%
200,000 to 1,000,000	17	70	24%
< 200,000	9	41	22%
Total	35	142	25%

³⁷ The FHWA and FTA do not agree that the rule would result in the loss of public participation and the delay and/or loss of projects. However, those costs are embedded in MATS overall cost estimate. For this reason, the estimates of the costs of the rule may be overstated.

Applying the operating budget information from the AMPO Survey, FHWA and FTA estimated the average annual operating budget for the MPOs affected by this rulemaking on the basis of the size of the MPO: MPOs with greater than 1 million population; MPOs with populations from 200,000 to 1 million; and MPOs with populations less than 200,000 (non-TMAs). The resulting distribution is shown in Table 2: MPO Average Annual Operating Budgets. As the survey was undertaken in 2013, FHWA and FTA escalated the average annual operating budgets to 2015 using the Consumer Price Index.³⁸ The estimated operating budgets by size of MPO are reported in Table 2: MPO Average Annual Operating Budgets.

³⁸ The Consumer Price Index for All Urban Consumers rose by 1.74 percent from 2013 to 2015.

Table 2: MPO Average Annual Operating Budgets

MPO Population	Average Annual Operating Budget 2013 ¹	Average Annual Operating Budget 2015 ²
>1,000,000	\$ 6,260,000	\$ 6,370,000
200,000 to 1,000,000	\$ 1,800,000	\$ 1,830,000
< 200,000	\$ 416,110	\$ 423,000
Total	\$ 8,476,110	\$ 8,623,000

(1) Association of Metropolitan Planning Organizations, 2013 MPO Salary Survey Results, Published January 23, 2014

(2) Escalated to 2015 dollars using the Consumer Price Index for All Urban Consumers

On the basis of the estimated 2016 MPO operating budgets, and assuming that the merger process will be undertaken over 4 years and be completed within 2 years after the U.S. Census Bureau publishes the delineation of new UZA boundaries based on the 2020 Census of the Population, FHWA and FTA estimated the average annual cost to an MPO choosing the option to merge. The estimated average annual cost to an MPO to merge, presented in Table 3 below, is: \$1.6 million for very large MPOs with populations greater than 1 million; \$460,000 for MPOs with populations from 200,000 to 1 million; and \$106,000 for small MPOs with a population less than 200,000. In essence, these assumptions suggest that the cost of the merge option would be 25 percent of an MPO's annual operating budget for each of the four years of the merger process. The estimates are presented in Table 3: Estimated Average Annual Cost of Option to Merge.

Table 3: Estimated Average Annual Cost of Option to Merge

MPO Population	Number of MPOS Affected	Average Annual Operating Budget 2016	Total Annual Operating Budget	Total Annual Cost for 142 MPOs to Merge (4 years)	Average Annual Cost to Merge per MPO
	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>
			<i>B x C</i>	<i>D / 4</i>	<i>E/B</i>
>1,000,000	31	\$ 6,370,000	\$ 197,470,000	\$ 49,368,000	\$ 1,593,000
200,000 to 1,000,000	70	\$ 1,830,000	\$ 128,100,000	\$ 32,025,000	\$ 458,000
< 200,000	41	\$ 423,000	\$ 17,343,000	\$ 4,336,000	\$ 106,000
Total	142			\$ 85,729,000	

To test the methodology, FHWA and FTA applied this approach to estimate the merger cost for the River COG. The methodology produced a total estimated cost of the merger of approximately \$1.83 million. The actual total cost of the River COG merger was \$1.7 million. The FHWA and FTA also applied the methodology to a prospective merger of the Midland Area Transportation Study (population 83,629), Saginaw Area Transportation Study (population 200,169), and the Bay City Transportation Study (population 107,771). The estimated cost of the merger based on the methodology would be \$2.6 million. This amount is significantly higher than the merger cost estimated by MATS in its comments for these three contiguous MPOs (which was \$1.05 to \$1.8 million).³⁹ This difference suggests that, in instances where an MPO’s population is on the lower end of the mid-size MPO, such as the Saginaw Area Transportation Study with a population of 200,169, the estimation methodology used in this analysis would tend to overestimate the cost to MPOs that choose the option to merge. Based on this

³⁹ Comments from Midland Area Transportation Study, Posted 10/24/2016; ID: FHWA-2016-0016-0597.

comparison, FHWA and FTA concluded that their approach to estimating the maximum average annual cost of the implementation of this rule is acceptable because it provides the estimated cost of the highest cost option.

Thus, based on the assumption that the total cost to merge is equivalent to the combined annual operating budgets and that a merger would be implemented over a 4-year period, the total annual cost for 142 MPOs to choose the option to merge over a 4-year period is estimated to be approximately \$86 million.

The FHWA and FTA note that to estimate the cost to MPOs that choose the option to develop unified planning products in lieu of merging, FHWA and FTA applied the assumption proposed by MATS: that the cost to develop unified planning products would be up to 50 percent of the cost to merge. The MATS commented that the cost to develop the unified planning products, as proposed in the NPRM, includes unified processes development, supplemental formal documentation, legal counsel, joint unified planning work program (UPWP) development, UPWP administration/amendment processing, joint TIP development, TIP administration and amendment processing, joint metropolitan transportation planning development, metropolitan transportation plan administration and amendment processing, loss of public participation and the delay and/or loss of projects.⁴⁰

There may be costs associated with this rule that would be related to transportation conformity activities. The costs associated with transportation conformity

⁴⁰ The FHWA and FTA do not agree that the rule would result in the loss of public participation and the delay and/or loss of projects. However, those costs are embedded in MATS overall cost estimate. For this reason, the estimates of the costs of the rule may be overstated.

would be captured in the future in the Information Collection Request done by EPA for its transportation conformity regulations.

It also was unclear whether the cost to address the rule’s dispute resolution requirements was included in the MATS cost estimating approach. The FHWA and FTA estimated the one-time cost to develop a dispute resolution process, as required by Section 450.208(a)(1). This estimate assumes it will take 100 person-hours for an average State and an average MPO to craft written dispute resolution procedures. The average loaded wage for a planner is \$50.19.⁴¹ Based on these assumptions, the total, nationwide, one-time cost to establish written State/MPO dispute resolution processes in 2014 dollars is estimated to be \$2,313,759 ($\$50.19/\text{hour} \times (100 \text{ hours/entity}) \times (52 \text{ State DOTs} + 409 \text{ MPOs}) = \$2,313,759$).

Table 4: Estimated Total Annual Costs of Final Rule

MPO Population	Total Estimated Cost of Dispute Resolution Process	Total Annual Cost for 142 MPOs to Merge	Estimated Annual Cost of Final Rule
	\$2,314,000		
>1,000,000	---	\$49,368,000	\$49,368,000
200,000 to 1,000,000	---	\$32,025,000	\$32,025,000
< 200,000	---	\$ 4,336,000	\$4,336,000
Total	\$578,500(1)	\$85,729,000	\$86,307,500

(1) assumes a four year process

⁴¹ Source: Bureau of Labor Statistics, National Industry-Specific Occupational Employment and Wage Estimates, NAICS 999000 – Federal, State, and Local Government, Occupation code #19-3051, Occupation title – Urban and Regional Planners. Loaded wage rate is $(32.59/\text{hr}) \times (1.54) = \$50.19/\text{hour}$.

The total costs for merging all 142 MPOs, and the one-time cost of developing a dispute resolution process results in an estimated maximum average annual cost of this rule of \$86.3 million. The actual average annual cost will range from \$578,500 (if all 142 MPOs were to request and receive an exception from the unified product requirement) to a maximum of \$86.3 million (if all 142 affected MPOs were to choose the merger option). On the basis of this analysis, FHWA and FTA conclude that the economic impact of the final rule would not exceed the \$100 million annual threshold that defines a significant economic impact.

The FHWA and FTA have not been able to locate data or empirical studies to assist in monetizing or quantifying the benefits of the final rule. Given the limited quantitative information on these benefits of coordination, FHWA and FTA used a break-even analysis as the primary approach to quantify benefits. This approach determines the point at which the benefits from the final rule exceed the annual costs of compliance. The total FAST Act annual funding programmed for surface transportation investments subject to the metropolitan and statewide and non-metropolitan transportation planning process in FY2016 is \$39.7 billion in FHWA funds and \$11.7 billion in FTA funds. This is the entire FHWA Federal-aid Highway Program and FTA Transit Program. The maximum annual average cost for implementing this final rule, i.e., if all 142 MPOs choose the option to merge, is estimated to be \$86.3 million per year for a 4-year period. At the upper end, if the return on investment increases by at least 0.17 percent of the combined FHWA and FTA annual funding programs, the benefits of the regulation exceed the costs.

The FHWA and FTA believe the benefits of the regulation exceed the cost due to the following reasons. The rule will enhance efficiency in planning processes for some areas, and generate cost-savings by creating single rather than multiple documents and through the greater pooling of resources and increased sharing data, models and other tools. Because multiple MPOs within the same UZA will produce unified planning products, there will be less overlapping and duplicative work, such as developing multiple MTPs and TIPs for a single UZA. The FHWA and FTA also expect there will be some cost savings for State DOTs, which will benefit from having fewer TIPs to incorporate into their STIPs. There will also be benefits to the public if the coordination requirements result in a planning process in which public participation opportunities are transparent and unified for an entire region.

Based on experience, FHWA and FTA know that having two or more separate metropolitan transportation planning processes in a single MPA (as defined under 23 U.S.C. 134) can make the planning process confusing and burdensome for the affected public. For example, members of the public may be affected by projects in multiple MPO jurisdictions, either because they live in the area of one MPO and work or regularly travel to another, or because the MPOs' jurisdictional lines bisect a community. Such members of the public, therefore, can find it necessary to participate in each MPO's separate planning process in order to have their regional concerns adequately considered. Having to participate in the planning processes of multiple MPOs, however, can be burdensome and discourage public participation. Where communities have been so bifurcated that they are not able to fully participate in the greater regional economy, this

rule will help weave those communities together through new opportunities for regional investments in transportation.

The FHWA and FTA have conservatively estimated that the maximum annual cost of implementation of the provisions of this action would be \$86.3 million. After evaluating the costs and benefits of this final action, FHWA and FTA conclude that the maximum nationwide impact does not exceed the \$100 million annual threshold that defines a significant economic impact. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), FHWA and FTA have evaluated the effects of this rule on small entities and have determined that the rule will not have a significant economic impact on a substantial number of small entities. The rule addresses the obligation of Federal funds to State DOTs for Federal-aid highway projects. The rule affects two types of entities: State governments and MPOs. State governments do not meet the definition of a small entity under 5 U.S.C. 601, which have a population of less than 50,000.

The MPOs are considered governmental jurisdictions, and to qualify as a small entity they need to serve less than 50,000 people. The MPOs serve urbanized areas with populations of 50,000 or more. Therefore, the MPOs that might incur economic impacts under this rule do not meet the definition of a small entity.

I hereby certify that this rule will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

The FHWA and FTA have determined that this rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule does not include a Federal mandate that may result in expenditures of \$155.1 million or more in any one year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. Additionally, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program and Federal Transit Act permit this type of flexibility.

D. Executive Order 13132 (Federalism Assessment)

Three commenters (Chicago Metropolitan Agency for Planning (CMAP); Wisconsin congressional delegation, Southeastern Wisconsin Regional Planning Commission (SEWRPC), Kenosha County, Wisconsin; and one individual) submitted comments pertaining to federalism. The CMAP and Wisconsin congressional delegation, SEWRPC, Kenosha County, commented that the proposed rule would exceed the Secretary's authority and contradict congressional intent. These two commenters also asserted that the proposed rule would appear to override the intent of the State laws that created CMAP, Northwestern Indiana Regional Planning Commission (NIRPC), and

SEWRPC, noting that the direction of these organizations and the contents of their plans are influenced by State law and asserting that the proposed rule would make it difficult for these organizations to meet certain State mandates. The CMAP and Wisconsin congressional delegation, SEWRPC, Kenosha County, also commented that the proposed rule would require CMAP, NIPRC, and SEWRPC to set identical targets for certain performance measures for peak hour travel time and traffic congestion for the UZA, and if States cannot agree on a UZA target, then the MPO(s) would violate Federal law.

The individual commented that the proposed rule would constitute an unnecessary Federal Government overreach into planning decisions and would adversely impact the ability of regional planners to carry out their work and contribute to decisions regarding projects carried out in their communities and areas of jurisdiction.

The FHWA and FTA have analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. The FHWA and FTA have determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA and FTA also have determined that this rule does not preempt any State law or State regulation or affect a State's ability to discharge traditional State governmental functions. The FHWA and FTA do not agree that the statute constrains the Secretary's authority in the manner commenters suggest. Rather, this rule is intended to better align the planning regulations with existing statutory provisions concerning the establishment of MPA boundaries and the designation of MPOs. For multistate MPAs where the Governors and the MPOs agree it is not feasible to comply with the unified planning requirements adopted in this rule, the Governors and

MPOs may seek an exception. Further, FHWA and FTA do not agree that this rule expands the Federal Government's role in planning decisions. While this rule is intended to improve regional collaboration and guide decisionmaking, planning decisions will remain in the hands of States, MPOs, and local authorities.

E. Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

F. Paperwork Reduction Act

Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA and FTA have analyzed this rule under the PRA and believe that this final rule does not impose additional information collection requirements for the purposes of the Paperwork Reduction Act above and beyond existing information collection clearances from OMB. The FHWA and FTA, however, invite commenters to document and submit estimates of any incremental burdens that they believe would be imposed under this final rule when FHWA and FTA publish its Notice of Request for Comments seeking OMB renewal of the currently approved information collection activities (OMB Control Number 2132-0529) in early 2017.

G. National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.117(c)(20) (promulgation of rules, regulations, and directives) and 771.117(c)(1) (activities that do not involve or lead directly to construction) for FHWA, and 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction) for FTA. The FHWA and FTA have evaluated whether the rule will involve unusual or extraordinary circumstances and have determined that this rule will not.

H. Executive Order 12630 (Taking of Private Property)

The FHWA and FTA have analyzed this rule under Executive Order (EO) 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA and FTA do not believe this rule affects a taking of private property or otherwise has taking implications under E.O. 12630.

I. Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Executive Order 13045 (Protection of Children)

The FHWA and FTA have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA and FTA certify that this rule will not cause an environmental risk to health or safety that might disproportionately affect children.

K. Executive Order 13175 (Tribal Consultation)

The FHWA and FTA have analyzed this rule under E.O. 13175, dated November 6, 2000, and believe that the rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. The rule addresses obligations of Federal funds to State DOTs for Federal-aid highway projects and will not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

L. Executive Order 13211 (Energy Effects)

The FHWA and FTA have analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA and FTA have determined that this rule is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

M. Executive Order 12898 (Environmental Justice)

The E.O. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (available online at

http://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/index.cfm) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. The DOT agencies must address compliance with E.O. 12898 and the DOT Order in all rulemaking activities.

The FHWA and FTA have issued additional documents relating to administration of E.O. 12898 and the DOT Order. On June 14, 2012, FHWA issued an update to its EJ order, FHWA Order 6640.23A (FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations (available online at <http://www.fhwa.dot.gov/legregs/directives/orders/664023a.htm>)). On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for States and MPOs to incorporate EJ into their planning processes (available online at http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf).

The FHWA and FTA have evaluated the final rule under the Executive order, the DOT Order, the FHWA Order, and the FTA Circular. The EJ principles, in the context of planning, should be considered when the planning process is being implemented at the State and local level. As part of their stewardship and oversight of the federally aided transportation planning process of the States, MPOs, and operators of public transportation, FHWA and FTA encourage these entities to incorporate EJ principles into the statewide and metropolitan planning processes and documents, as appropriate and

consistent with the applicable orders and the FTA Circular. When FHWA and FTA make a future funding or other approval decision on a project basis, they will consider EJ.

Nothing inherent in the rule will disproportionately impact minority or low-income populations. The rule establishes procedures and other requirements to guide future State and local decisionmaking on programs and projects. Neither the rule nor 23 U.S.C. 134 and 135 dictate the outcome of those decisions. The FHWA and FTA have determined that the rule will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

N. Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this rule with the Unified Agenda.

List of Subjects

23 CFR Part 450

Grant programs—transportation, Highway and roads, Mass transportation, Reporting and record keeping requirements.

49 CFR Part 613

Grant programs—transportation, Highways and roads, Mass transportation.

Issued in Washington, DC, on _____, under authority delegated in 49 CFR 1.85:

Gregory G. Nadeau
Administrator
Federal Highway Administration

Carolyn Flowers
Acting Administrator
Federal Transit Administration

In consideration of the foregoing, FHWA and FTA amend title 23, Code of Federal Regulations, part 450, and title 49, Code of Federal Regulations, part 613, as set forth below:

Title 23—HIGHWAYS

PART 450—PLANNING ASSISTANCE AND STANDARDS

1. The authority citation for part 450 continues to read as follows: Authority: 23 U.S.C. 134, 135, and 315; 42 U.S.C. 7410 et seq.; 49 U.S.C. 5303 and 5304; 49 CFR 1.85 and 1.90.

2. Amend § 450.104 by revising the definitions for “Metropolitan planning agreement”, “Metropolitan planning area (MPA)”, “Metropolitan transportation plan”, and “Transportation improvement program (TIP)” to read as follows:

§ 450.104 Definitions.

* * * * *

Metropolitan planning agreement means a written agreement between the MPO(s), the State(s), and the providers of public transportation serving the metropolitan planning area that describes how they will work cooperatively to meet their mutual responsibilities in carrying out the metropolitan transportation planning process.

Metropolitan planning area (MPA) means the geographic area determined by agreement between the MPO(s) for the area and the Governor(s), which must at a minimum include the entire urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan, and may include additional areas.

* * * * *

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, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. chapter 53.

* * * * *

3. Amend § 450.208 by revising paragraph (a)(1) to read as follows:

§ 450.208 Coordination of planning process activities.

(a) * * *

(1) Coordinate planning carried out under this subpart with the metropolitan transportation planning activities carried out under subpart C of this part for metropolitan areas of the State. When carrying out transportation planning activities under this part, the State and MPOs shall coordinate on information, studies, or analyses for portions of the transportation system located in MPAs. The State(s), the MPO(s), and the operators of public transportation must have a current metropolitan planning agreement, which will identify coordination strategies that support cooperative decisionmaking and the resolution of disagreements;

* * * * *

§ 450.218 [Amended]

4. Amend § 450.218(b) by removing “MPO” and adding in its place “MPO(s)” in both places it appears.

5. Amend § 450.226 by adding paragraph (g) to read as follows:

§ 450.226 Phase-in of new requirements.

* * * * *

(g) With respect to requirements added in §§ 450.208(a)(1) on [INSERT EFFECTIVE DATE OF THIS RULE]: On and after the date 2 years after the date that the U.S. Census Bureau releases its notice of Qualifying Urban Areas following the 2020 census, the State(s), the MPO(s) and the operators of public transportation must comply with the new requirements, including the requirement for a current metropolitan planning agreement that identifies coordination strategies that support cooperative decision-making and the resolution of disagreements.

Subpart C—Metropolitan Transportation Planning and Programming

6. Amend § 450.300 by:

a. Revising paragraph (a); and

b. Removing from paragraph (b) the word “Encourages” and adding in its place “Encourage”.

The revision reads as follows:

§ 450.300 Purpose.

* * * * *

(a) Set forth the national policy that the MPO designated for each UZA is to carry out a continuing, cooperative, and comprehensive performance-based multimodal transportation planning process for its MPA, including the development of a metropolitan transportation plan and a TIP, that encourages and promotes the safe and efficient development, management, and operation of surface transportation systems to serve the mobility needs of people and freight (including accessible pedestrian walkways, bicycle

transportation facilities, and intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities and commuter vanpool providers) and foster economic growth and development, and takes into consideration resiliency needs, while minimizing transportation-related fuel consumption and air pollution; and

* * * * *

7. Amend § 450.306 by adding paragraph (d)(5) and revising paragraph (i) as follows:

§ 450.306 Scope of the metropolitan transportation planning process.

* * * * *

(d) * * *

(5) In MPAs in which multiple MPOs have been designated, the MPOs shall jointly establish, for the MPA, the performance targets that address performance measures or standards established under 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d).

* * * * *

(i) In an UZA not designated as a TMA that is an air quality attainment area, the MPO(s) may propose and submit to the FHWA and the FTA for approval a procedure for developing an abbreviated metropolitan transportation plan and TIP. In developing proposed simplified planning procedures, consideration shall be given to whether the abbreviated metropolitan transportation plan and TIP will achieve the purposes of 23 U.S.C. 134, 49 U.S.C. 5303, and this part, taking into account the complexity of the

transportation problems in the area. The MPO(s) shall develop simplified procedures in cooperation with the State(s) and public transportation operator(s).

8. Amend § 450.310 by revising paragraphs (e) and (m) introductory text to read as follows:

§ 450.310 Metropolitan planning organization designation and redesignation.

* * * * *

(e) Except as provided in this paragraph, only one MPO shall be designated for each MPA. More than one MPO may be designated to serve an MPA only if the Governor(s) and the existing MPO(s), if applicable, determine that the size and complexity of the MPA make designation of more than one MPO in the MPA appropriate. In those cases where the Governor(s) and existing MPO(s) determine that the size and complexity of the MPA do make it appropriate that two or more MPOs serve within the same MPA, the Governor and affected MPOs by agreement shall jointly establish or adjust the boundaries for each MPO within the MPA, and the MPOs shall establish official, written agreements that clearly identify areas of coordination, the division of transportation planning responsibilities within the MPA among and between the MPOs, and procedures for joint decisionmaking and the resolution of disagreements. If multiple MPOs were designated in a single MPA prior to this rule or in multiple MPAs that merged into a single MPA following a Decennial Census by the Bureau of the Census, and the Governor(s) and the existing MPOs determine that the size and complexity do not make the designation of more than one MPO in the MPA appropriate,

then those MPOs must merge together in accordance with the redesignation procedures in this section.

* * * * *

(m) Each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs shall, to the extent practicable, provide coordinated transportation planning for the entire metropolitan area. The consent of Congress is granted to any two or more States to:

* * * * *

9. Section 450.312 is revised to read as follows:

§ 450.312 Metropolitan Planning Area boundaries.

(a) At a minimum, the boundaries of an MPA shall encompass the entire existing UZA (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan.

(1) Subject to this minimum requirement, the boundaries of an MPA shall be determined through an agreement between the MPO and the Governor.

(2) If two or more MPAs otherwise include the same non-urbanized area that is expected to become urbanized within a 20-year forecast period for the transportation plan, 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. Merger into a single MPA also require the MPOs to merge in

accordance with the redesignation procedures described in § 450.310(h), unless the Governor and MPO(s) determine that the size and complexity of the MPA make multiple MPOs appropriate, as described in § 450.310(e).

(3) The MPA boundaries may be further expanded to encompass the entire metropolitan statistical area or combined statistical area, as defined by the Office of Management and Budget.

(b) The boundaries for an MPA that includes an UZA designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) after August 10, 2005, may be established to coincide with the designated boundaries of the ozone and/or carbon monoxide nonattainment area, in accordance with this section and the requirements in § 450.310(b).

(c) An MPA boundary may encompass more than one UZA, but each UZA must be included in its entirety.

(d) MPA boundaries may be established to coincide with the geography of regional economic development and growth forecasting areas.

(e) Identification of new UZAs within an existing MPA by the Bureau of the Census shall not require redesignation of the existing MPO.

(f) In multistate metropolitan areas, the Governors with responsibility for a portion of the multistate metropolitan area, the appropriate MPO(s), and the public transportation operator(s) are strongly encouraged to coordinate transportation planning for the entire multistate metropolitan area. States involved in such multistate transportation planning may:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(g) The MPA boundaries shall not overlap with each other.

(h) Subject to subsection (i), where the Governor(s) and MPO(s) have determined that the size and complexity of the MPA make it appropriate to have more than one MPO designated for an MPA, the MPOs within the same MPA shall, at a minimum:

(1) Establish written agreements that clearly identify coordination processes, the division of transportation planning responsibilities among and between the MPOs, and procedures for joint decisionmaking and the resolution of disagreements;

(2) Through a joint decisionmaking process, develop a single TIP and a single metropolitan transportation plan for the entire MPA as required under § 450.324(c) and § 450.326(a); and

(3) Establish the boundaries for each MPO within the MPA, by agreement among all affected MPOs and the Governor(s).

(i) Upon written request from all MPOs in an MPA and the Governor(s) of each State in the MPA, the Secretary may approve an exception to the requirements for a single metropolitan transportation plan, a single TIP, and jointly-established targets if the request satisfies the following requirements.

(1) The written request must include documentation showing compliance with the requirements in (h)(2) is not feasible for reasons beyond the reasonable control of the Governor(s) and MPOs, such as clear and convincing evidence that

(A) the MPOs cannot meet paragraph (h)(2) requirements because of the extraordinary size of the MPA, the large number of MPOs or State/local governmental jurisdictions required to participate, and/or because of Clean Air Act planning requirements; or

(B) complying with paragraph (h)(2) requirements would produce adverse results that contravene the effective regional planning purposes of paragraph (h)(2).

(2) The request must include documentation demonstrating that:

(A) the MPOs already use coordinated planning procedures that result in consistent plans, TIPs, performance targets, and air quality conformity analyses and other planning products that effectively address regional transportation and air quality issues;

(B) the MPOs have jointly adopted a formal written agreement with adequate procedures for coordination among the MPOs to achieve the effective regional planning purposes of paragraph (h)(2); and

(iii) coordination and decisionmaking during at least the two most recent STIP update cycles that produced results consistent with the effective planning purposes of paragraph (h)(2).

(3) Based on the documentation provided with the request, the Secretary will determine whether to approve an exception to the requirements of paragraph (h)(2). If the Secretary determines that the request does not meet the requirements established under this paragraph, the Secretary will send the MPOs and Governor(s) a written notice of the denial of the exception, including a description of the deficiencies. The Governor(s) and MPOs shall have 90 days from receipt of the notice to address the deficiencies identified in the notice and submit supplemental information addressing the identified deficiencies to the Secretary for review and a final determination. The Secretary may extend the 90-day period to cure deficiencies upon request.

(4) An approved exception is permanent. When FHWA and FTA do certification reviews and make planning findings, FHWA and FTA will evaluate whether the MPOs covered by the exception are sustaining effective coordination processes that meet the requirements in paragraphs (i)(2)(A)-(B).

(j) The Governor(s) and MPO(s) (in cooperation with the State and public transportation operator(s)) shall review the MPA boundaries after each Census to determine if existing MPA boundaries meet the minimum statutory requirements for new and updated UZA(s), and the Governor(s) and MPOs shall adjust them as necessary in order to encompass the entire existing UZA(s) plus the contiguous area expected to become urbanized within the 20-year forecast period of the metropolitan transportation plan. If after a Census, two previously separate UZAs are defined as a single UZA, not later than 2 years after the release of the U.S. Bureau of the Census notice of the

Qualifying Urban Areas for a decennial census, the Governor(s) and MPO(s) shall redetermine the affected MPAs as a single MPA that includes the entire new UZA plus the contiguous area expected to become urbanized within the 20-year forecast period of the metropolitan transportation plan. As appropriate, additional adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes, improves access to modal systems, and promotes efficient overall transportation investment strategies. If more than one MPO is designated for UZAs that are merged following a Decennial Census by the Bureau of the Census, the Governor(s) and the MPOs shall comply with the MPA boundary and MPO boundaries agreement provisions in §§ 450.310 and 450.312, and the Governor(s) and MPOs shall determine whether the size and complexity of the MPA make it appropriate for there to be more than one MPO designated within the MPA. If the size and complexity of the MPA do not make it appropriate to have multiple MPOs, the MPOs shall merge, in accordance with the redesignation procedures in § 450.310(h). If the size and complexity do warrant the designation of multiple MPOs within the MPA, the MPOs shall comply with the requirements for jointly established performance targets, and a single metropolitan transportation plan and TIP for the entire MPA, before the next metropolitan transportation plan update that occurs on or after 2 years after the release of the Qualifying Urban Areas for the Decennial Census by the Bureau of the Census.

(k) The Governor and MPOs are encouraged to consider merging multiple MPAs into a single MPA when:

(1) Two or more UZAs are adjacent to each other;

(2) Two or more UZAs are expected to expand and become adjacent within a 20-year forecast period for the transportation plan; or

(3) Two or more neighboring MPAs otherwise both include the same non-UZA that is expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan.

(1) Following MPA boundary approval by the MPO(s) and the Governor, the MPA boundary descriptions shall be provided for informational purposes to the FHWA and the FTA. The MPA boundary descriptions shall be submitted either as a geo-spatial database or described in sufficient detail to enable the boundaries to be accurately delineated on a map.

10. Section 450.314 is revised to read as follows:

§ 450.314 Metropolitan planning agreements.

(a) The MPO(s), the State(s), and the providers of public transportation shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO(s), the State(s), and the providers of public transportation serving the MPA. To the extent possible, a single agreement among all responsible parties should be developed. The written agreement(s) shall include specific provisions for the development of financial plans that support the metropolitan transportation plan (see § 450.324) and the metropolitan TIP (see § 450.326), and development of the annual listing of obligated projects (see § 450.334).

(b) The MPO(s), the State(s), and the providers of public transportation should periodically review and update the agreement, as appropriate, to reflect effective changes.

(c) If the MPA does not include the entire nonattainment or maintenance area, there shall be a written agreement among the State department of transportation, State air quality agency, affected local agencies, and the MPO(s) describing the process for cooperative planning and analysis of all projects outside the MPA within the nonattainment or maintenance area. The agreement must also indicate how the total transportation-related emissions for the nonattainment or maintenance area, including areas outside the MPA, will be treated for the purposes of determining conformity in accordance with the EPA's transportation conformity regulations (40 CFR part 93, subpart A). The agreement shall address policy mechanisms for resolving conflicts concerning transportation related emissions that may arise between the MPA and the portion of the nonattainment or maintenance area outside the MPA.

(d) In nonattainment or maintenance areas, if the MPO is not the designated agency for air quality planning under section 174 of the Clean Air Act (42 U.S.C. 7504), there shall be a written agreement between the MPO and the designated air quality planning agency describing their respective roles and responsibilities for air quality related transportation planning.

(e) If more than one MPO has been designated to serve an MPA, there shall be a written agreement among the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of a single metropolitan transportation plan and

TIP for the MPA. In cases in which a transportation investment extends across the boundaries of more than one MPA, the MPOs shall coordinate to assure the development of consistent metropolitan transportation plans and TIPs with respect to that transportation improvement. If any part of the UZA is a nonattainment or maintenance area, the agreement also shall include State and local air quality agencies. If more than one MPO has been designated to serve an MPA, the metropolitan transportation planning processes for affected MPOs must reflect coordinated data collection, analysis, and planning assumptions across the MPA. Coordination of data collection, analysis, and planning assumptions is also strongly encouraged for neighboring MPOs that are not within the same MPA. Coordination efforts and outcomes shall be documented in subsequent transmittals of the UPWP and other planning products, including the metropolitan transportation plan and TIP, to the State(s), the FHWA, and the FTA.

(f) Where the boundaries of the MPA extend across two or more States, the Governors with responsibility for a portion of the multistate MPA, the appropriate MPO(s), and the public transportation operator(s) shall coordinate transportation planning for the entire multistate MPA, including jointly developing planning products for the MPA. States involved in such multistate transportation planning may:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(g) If an MPA includes a UZA that has been designated as a TMA in addition to an UZA that is not designated as a TMA, the non-TMA UZA shall not be treated as a TMA. However, if more than one MPO serves the MPA, a written agreement shall be established between the MPOs within the MPA boundaries, which clearly identifies the roles and responsibilities of each MPO in meeting specific TMA requirements (e.g., congestion management process, Surface Transportation Program funds suballocated to the UZA over 200,000 population, and project selection).

(h) The MPO(s), State(s), and the providers of public transportation shall jointly agree upon and develop specific written provisions for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO (see § 450.306(d)), and the collection of data for the State asset management plans for the NHS for each of the following circumstances: When one MPO serves an UZA, when more than one MPO serves an UZA, and when an MPA includes an UZA that has been designated as a TMA as well as a UZA that is not a TMA. These provisions shall be documented either as part of the metropolitan planning agreements required under paragraphs (a), (e), and (g) of this section, or documented it in some other means outside of the metropolitan planning agreements as determined cooperatively by the MPO(s), State(s), and providers of public transportation.

§ 450.316 [Amended]

11. Amend § 450.316(b), (c), and (d) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

12. Amend § 450.324 as follows:

a. In paragraph (a) replace “MPO” with “MPO(s)” wherever it occurs;

b. Redesignate paragraphs (c) through (m) as paragraphs (d) through (n), respectively;

c. Add new paragraph (c); and

d. In newly redesignated paragraphs (d), (e), (f), (g)(10), (g)(11)(iv), (h), (k), (l), and (n), remove “MPO” with and add in its place “MPO(s)” wherever it occurs.

The revisions read as follows:

§ 450.324 Development and content of the metropolitan transportation plan.

* * * * *

(c) If more than one MPO has been designated to serve an MPA, those MPOs within the MPA shall:

(1) Jointly develop a single metropolitan transportation plan for the MPA; and

(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).

* * * * *

13. Amend § 450.326 as follows:

a. Revise paragraph (a); and

b. In paragraphs (b), (j), and (p) remove “MPO” and add in its place “MPO(s)” wherever it occurs.

The revision reads as follows:

§ 450.326 Development and content of the transportation improvement program (TIP).

(a) The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the MPA. If more than one MPO has been designated to serve an MPA, those MPOs within the MPA shall jointly develop a single TIP for the MPA. The TIP shall reflect the investment priorities established in the current metropolitan transportation plan and shall cover a period of no less than 4 years, be updated at least every 4 years, and be approved by the MPO(s) and the Governor(s). However, if the TIP covers more than 4 years, the FHWA and the FTA will consider the projects in the additional years as informational. The MPO(s) may update the TIP more frequently, but the cycle for updating the TIP must be compatible with the STIP development and approval process. The TIP expires when the FHWA/FTA approval of the STIP expires. Copies of any updated or revised TIPs must be provided to the FHWA and the FTA. In nonattainment and maintenance areas subject to transportation conformity requirements, the FHWA and the FTA, as well as the MPO(s), must make a conformity determination on any updated or amended TIP, in accordance with the Clean Air Act requirements and the EPA’s transportation conformity regulations (40 CFR part 93, subpart A).

* * * * *

§ 450.328 [Amended]

14. Amend § 450.328(a), (b), and (c) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

§ 450.330 [Amended]

15. Amend § 450.330 (a) and (c) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

§ 450.332 [Amended]

16. Amend § 450.332(b) and (c) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

§ 450.334 [Amended]

17. Amend § 450.334(a) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

§ 450.336 [Amended]

18. Amend § 450.336(b)(1)(i), (b)(1)(ii), and (b)(2) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

19. Amend § 450.340 as follows:

a. In paragraph (a) adding “or MPOs” after “MPO” wherever it occurs;

b. Adding paragraph (h) to read as follows:

§ 450.340 Phase-in of new requirements.

* * * * *

(h) With respect to requirements added in §§ 450.306(d)(5); 450.310(e); 450.312(a), (h),(i), and (j); 450.314(e), (f), (g), and (h); 450.324(c), (d), (e), (f), (h), (k),

(l), and (n); 450.326; 450.330; 450.332(c); 450.3349a); and 450.336(b) on [INSERT EFFECTIVE DATE OF THIS RULE]: States and MPOs shall comply with the MPA boundary and MPO boundaries agreement provisions, shall document the determination of the Governor and MPO(s) whether the size and complexity of the MPA make multiple MPOs appropriate, and the MPOs shall comply with the requirements for jointly established performance targets, and a single metropolitan transportation plan and TIP for the entire MPA, prior to the next metropolitan transportation plan update occurring on or after the date that is 2 years after the date the U.S. Census Bureau releases its notice of Qualifying Urban Areas following the 2020 census.

Title 49—TRANSPORTATION

PART 613—METROPOLITAN AND STATEWIDE AND NONMETROPOLITAN PLANNING

20. The authority citation for part 613 is revised to read as follows: **Authority:** 23 U.S.C. 134, 135, and 217(g); 42 U.S.C. 3334, 4233, 4332, 7410 et seq.; 49 U.S.C. 5303–5306, 5323(k); and 49 CFR 1.51(f) and 21.7(a).