

reasonably believe that a requester or a group of requesters acting in concert, is dividing a request into a series of requests for the purpose of avoiding or minimizing fees. For example, we may aggregate multiple requests for similar information filed within a short period of time.

(f) *If we anticipate fees will exceed \$25.* Unless you have indicated in advance a willingness to pay fees as high as anticipated, we will notify you if we estimate that charges will exceed \$25.

(1) We will not process your request until you either commit in writing to pay the actual or estimated total fee, or designate some amount of fees you are willing to pay. If you are a noncommercial use requester and we have not yet provided your statutory entitlements (*i.e.*, two hours of search time and 100 free pages), you can tell us to stop when we exhaust the statutory entitlements. We will start the twenty-day response clock when we receive your written reply.

(2) If you agree to pay some designated amount of fees, but we estimate that the total fee will exceed that amount, we will toll processing when we notify you of the estimated fees in excess of the amount you had indicated a willingness to pay. When we receive your written commitment to pay the actual or estimated total fee, or designate an additional amount of fees you are willing to pay, we will restart the processing clock.

(3) If you decide to reformulate your request to reduce costs, we will consider it to be a new request that restarts the twenty-day response clock. You can contact USTR's FOIA Public Liaison at [FOIA@ustr.eop.gov](mailto:FOIA@ustr.eop.gov) for assistance.

(4) We will close your request if you do not respond in writing within thirty calendar days after the date we notify you of the fee estimate.

(g) *Advance payments.* (1) If we determine or estimate that the total fee will exceed \$250, we may require you to make an advance payment up to the amount of the entire anticipated fee before we begin to process your request.

(2) If you previously failed to pay a properly charged FOIA fee to any Federal agency within thirty calendar days of the billing date, we may require proof that you paid the full amount due, plus any applicable interest on that prior request, and that you make an advance payment to us of the full amount of any anticipated fee before we begin to process a new request or continue to process a pending request or any pending appeal. If we have a reasonable basis to believe that you have misrepresented your identity in order to

avoid paying outstanding fees, we may require you to provide proof of identity.

(3) If we require advance payment, we will not consider your request received and will not do any additional work until we receive the required payment. We will close your request if you do not pay the advance payment within thirty calendar days after the date of our fee determination.

(h) *Requirements for waiver or reduction of fees.* (1) You can seek a fee waiver or reduction by explaining in writing how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in your commercial interest. In determining whether to waive or reduce a fee we will consider whether disclosure of the requested information would:

(i) Shed light on the operations or activities of the government. The subject of the request must specifically concern identifiable operations or activities of the Federal government with a connection that is direct and clear, not remote or attenuated.

(ii) Likely contribute significantly to public understanding of those operations or activities. Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding. The disclosure must contribute to the understanding of a reasonably broad audience—the public-at-large as opposed to a narrow segment of the population. We will consider your expertise in the subject area as well as your ability and intention to effectively convey information to the public.

(iii) Is to further an identified commercial interest and whether that is the primary interest advanced by the request. For example, we ordinarily presume that the public's interest is greater than the requester's commercial interest when we receive a request from a representative of the news media. We will not presume that disclosure to data brokers or others who merely compile and market government information for direct economic return primarily serves the public interest.

(2) We will grant a partial waiver when only some of the records to be released satisfy the requirements in this section.

(3) You should include your fee waiver or reduction request when you

first submit your FOIA request to us. You can submit a fee waiver or reduction request at a later time so long as the underlying record request is pending or on administrative appeal. If you already committed to pay fees and subsequently request a waiver of those fees that we deny, you must pay any costs incurred up to the date the fee waiver request was received.

**Janice Kaye,**

*Chief Counsel for Administrative Law, Office of the U.S. Trade Representative.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 450

### Federal Transit Administration

#### 49 CFR Part 613

[Docket No. FHWA-2016-0016; FHWA RIN 2125-AF68; 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:** Notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** The FHWA and FTA are reopening the comment period for the NPRM that was published on June 27, 2016, at 81 FR 41473, in order to receive additional public comment on targeted issues. The NPRM proposes revisions to the transportation planning regulations to promote more effective regional planning by States and metropolitan planning organizations (MPO). The original comment period closed on August 26, 2016. The FHWA and FTA received a number of requests to extend the comment period. The FHWA and FTA recognize that those interested in commenting on this important program may not have had the opportunity to provide comments and that the comment period should be reopened. Therefore, the comment period is being reopened.

**DATES:** Comments must be received on or before October 24, 2016.

**ADDRESSES:** Mail or hand deliver comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, or

submit electronically at <http://www.regulations.gov>, or fax comments to (202) 493-2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

#### Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at <http://www.regulations.gov>. The Web site is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: <https://www.federalregister.gov> and the Government Publishing Office's Web site at: <http://www.gpo.gov>.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Mr. Harlan W. Miller, Planning Oversight and Stewardship Team (HEPP-10), (202) 366-0847; or Ms. Janet Myers, Office of the Chief Counsel (HCC-30), (202) 366-2019. For FTA: Ms. Sherry Riklin, Office of Planning and Environment, (202) 366-5407; Mr. Dwayne Weeks, Office of Planning and Environment, (202) 493-0316; or Mr. Christopher Hall, Office of Chief Counsel, (202) 366-5218. Both agencies are located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., ET for FHWA, and 9 a.m. to 5:30 p.m., ET for FTA, Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 27, 2016, the FHWA and FTA published a proposed rule to revise the transportation planning regulations to promote more effective regional planning by States and MPOs. See 81 FR 41473. The goal of the proposed revisions is to promote unified planning products for each urbanized area, even if there are multiple MPOs designated

within that urbanized area. Specifically, the NPRM proposed that MPOs would develop a single metropolitan transportation plan, a single transportation improvement program (TIP), and a jointly established set of performance targets for the entire urbanized area and contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan. If multiple MPOs are designated within that urbanized area, they would jointly prepare these unified planning products. To accomplish this, the proposed revisions would clarify that the metropolitan planning area (MPA) must include the entire urbanized area and contiguous area expected to become urbanized within 20 years.

As discussed in the NPRM, these proposed revisions would better align the planning regulations with statutory provisions concerning the establishment of MPA boundaries and the designation of MPOs. This includes the statutory requirement for the MPA to include an urbanized area in its entirety together with the contiguous area expected to become urbanized within 20 years, and the exception provision to allow more than one MPO to serve a single MPA if warranted by the size and complexity of the MPA. This return to the original legislative intent is in alignment with the findings of the draft report *Beyond Traffic: Trends and Choices 2045*. *Beyond Traffic* was released by the Department in February 2015. It examines the long-term and emerging trends affecting our Nation's transportation system and the implications of those trends. It describes how demographic and economic trends, as well as changes in technology, governance, and our climate, will increase the importance of our metropolitan regions in making decisions that cross State, political, socioeconomic, and often transportation planning lines. By 2045, the population is anticipated to increase by 70 million people, with most of that growth occurring in metropolitan areas.

The rulemaking would establish clearer operating procedures, and reinstate certain coordination and decisionmaking requirements for situations where there is more than one MPO serving an MPA. The proposed rule would require unified planning products for the MPA, including jointly established performance targets within an MPA, and a single metropolitan transportation plan and TIP for the entire MPA in order to result in planning products that reflect the regional needs of the entire urbanized area. These unified planning products

would be jointly developed by the multiple MPOs in such MPAs where more than one MPO is designated.

The FHWA and FTA propose to phase in implementation of these proposed coordination requirements and the proposed requirements for MPA boundary and MPO boundaries agreements over 2 years.

#### Additional Public Comments Sought on Specific Issues

The FHWA and FTA are reopening the comment period in order to receive public comment on certain issues raised in the NPRM. Specifically, the FHWA and FTA are looking for specific and detailed comments that contribute to the understanding of the impact of the proposed requirements for unified planning products where multiple MPOs serve the same urbanized area, potential exceptions that should be included in the final rule, and criteria for applying such exceptions. The FHWA and FTA also seek specific and detailed comments on the expected costs of implementing the proposed rule. The FHWA and FTA are seeking comments specific to these issues as we decide whether to finalize any provisions within the scope of the NPRM. Previously submitted comments should not be resubmitted.

The original comment period for the NPRM closed on August 26, 2016. The FHWA and FTA ask commenters to focus on the specific issues open for public comment, as discussed in the above paragraph. Other comments will be considered to the extent practicable. To allow time for interested parties to submit comments on the targeted issues highlighted above, the comment period is being reopened until October 24, 2016.

Issued in Washington, DC, on September 19th 2016, under authority delegated in 49 CFR 1.85 and 1.91.

**Gregory G. Nadeau,**

*Administrator, Federal Highway Administration.*

**Carolyn Flowers,**

*Acting Administrator, Federal Transit Administration.*

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