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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Highway Administration

[Docket No. FTA-2013-0029]

Proposed Policy Guidance on Metropolitan Planning Organization Representation

AGENCIES: Federal Transit Administration (FTA) and Federal Highway Administration (FHWA), DOT.

ACTION: Proposed policy guidance; request for comments.

SUMMARY: The FTA and FHWA are jointly issuing this proposed guidance on implementation of provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, that require representation by providers of public transportation in each metropolitan planning organization (MPO) that serves a transportation management area (TMA) no later than October 1, 2014. The purpose of this guidance is to assist MPOs and providers of public transportation in complying with this new requirement.

DATES: Comments must be received by [FEDERAL REGISTER INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]. Any comments received beyond this deadline will be considered to the extent practicable.

ADDRESSES: *Comments.* You may submit comments identified by the docket number (FTA-2013-0029) by any of the following methods:

Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

DOT Electronic Docket: Go to <http://dms.dot.gov> and follow the instructions for submitting comments.

U.S. Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590.

Hand Delivery or Courier: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, Southeast, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Fax: 202-493-2251.

Instructions: You must include the agency names (Federal Transit Administration and Federal Highway Administration) and docket number (FTA–2013–0029) for this notice at the beginning of your comments. You must submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA and FHWA received your comments, you must include a self-addressed, stamped postcard. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments may wish to consider using an express mail firm to ensure prompt filing of any submissions not filed electronically or by hand. All comments received will be posted, without change and including any personal information provided, to <http://www.regulations.gov>, where they will be available to Internet users. You may review DOT’s complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477. For access to the docket to read background documents and comments received, go to <http://www.regulations.gov> at any time, or to the Docket Management Facility, U.S.

Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Dwayne Weeks, FTA Office of Planning and Environment, telephone (202) 366-4033 or *Dwayne.Weeks@dot.gov*; or Harlan Miller, FHWA Office of Planning, telephone (202) 366-0847 or *Harlan.Miller@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The FTA and FHWA are jointly issuing this proposed policy guidance on the implementation of 23 U.S.C. 134(d)(2)(B) and 49 U.S.C. 5303(d)(2)(B), which require representation by providers of public transportation in each MPO that serves an area designated as a TMA. The FTA and FHWA anticipate issuing a joint notice of proposed rulemaking to amend 23 CFR part 450 to implement 23 U.S.C. 134(d)(2)(B) and 49 U.S.C. 5303(d)(2)(B) as amended by sections 1201 and 20005 of MAP-21. These United States Code sections now require representation by providers of public transportation in each MPO that serves an area designated as a TMA. A TMA is defined as an urbanized area with a population of over 200,000 individuals as determined by the 2010 census, or an urbanized area with a population of fewer than 200,000 individuals that is designated as a TMA by the request of the Governor and the MPO designated for the area.¹ As of

¹ 23 U.S.C. 134(k)(1); 49 U.S.C. 5303(k)(1).

the date of this guidance, of the 384 MPOs throughout the Nation, 184 MPOs serve an area designated as a TMA.

The FTA conducted an On-Line Dialogue on this requirement from March 5 through March 29, 2013. Through this forum, FTA received input from MPOs, local elected officials, transit agencies, and the general public, with over 3,000 visits to the Web site. Over 100 ideas were submitted from 340 registered users who also provided hundreds of comments and votes on these ideas. Participants discussed the complex nature of MPOs and the advantages of providing flexibility for MPOs and transit providers to decide locally how to include representation by providers of public transportation in the MPO.

To increase the accountability and transparency of the Federal-aid highway and Federal transit programs and to improve project decision-making through performance-based planning and programming, MAP-21 establishes a performance management framework. The MAP-21 requires FHWA to establish, through a separate rulemaking, performance measures and standards to be used by States to assess the condition of the pavements and bridges, serious injuries and fatalities, performance of the Interstate System and National Highway System, traffic congestion, on-road mobile source emissions, and freight movement on the Interstate System.² The MAP-21 also requires FTA to establish, through separate rulemakings, state of good repair and safety

² 23 U.S.C. 150(c).

performance measures, and requires each provider of public transportation to establish performance targets in relation to these performance measures.³

To ensure consistency, an MPO must coordinate to the maximum extent practicable with the State and providers of public transportation to establish performance targets for the metropolitan planning area that address these performance measures.⁴ An MPO must describe in its metropolitan transportation plans the performance measures and targets used to assess the performance of its transportation system.⁵ Statewide and metropolitan transportation improvement programs (STIPs and TIPs) must include, to the maximum extent practicable, a description of the anticipated effect of the program toward achieving the performance targets established in the statewide or metropolitan transportation plan, linking investment priorities and the highway and transit performance targets.⁶ These changes to the planning process will be addressed in FHWA and FTA's anticipated joint rulemaking amending 23 CFR part 450.

As part of its performance management framework, MAP-21 assigns MPOs the new transit related responsibilities described above, i.e., to establish performance targets with respect to transit state of good repair and transit safety and to address these targets in their transportation plans and TIPs. Representation by providers of public transportation in each MPO that serves a TMA will better enable the MPO to define performance targets and to develop plans and TIPs that support an intermodal transportation system

³ 49 U.S.C. 5326(b), (c), 5329(b), (d).

⁴ 23 U.S.C. 134(h)(2); 49 U.S.C. 5303(h)(2).

⁵ 23 U.S.C. 134(i)(2)(B); 49 U.S.C. 5303(i)(2)(B).

⁶ 23 U.S.C. 134(j)(2)(D); 49 U.S.C. 5303(i)(2)(D) (TIPs) and 23 U.S.C. 135(g)(4); 49 U.S.C. 5304(g)(4) (STIPs).

for the metropolitan area. Including representation by providers of public transportation in each MPO that serves an area designated as a TMA is an essential element of MAP-21's performance management framework and will support the successful implementation of a performance-based approach to transportation decisionmaking.

The FTA and FHWA seek comment on the following proposals in this guidance: the determination of specifically designated representatives, the eligibility of representatives of providers of public transportation to serve as specifically designated representatives, and the cooperative process to select a specifically designated representative in MPOs with multiple providers of public transportation. There is wide variation in transit agency representation among MPOs and in the governance structure of MPOs throughout the country. To accommodate the many existing models of transit agency representation on MPO boards, this proposed guidance proposes flexible approaches for MPOs and providers of public transportation to work together to meet this requirement.

II. Specifically Designated Representatives

MAP-21 requires that by October 1, 2014, MPOs that serve an area designated as a TMA must include local elected officials; officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and appropriate State officials.⁷ The requirement to include "representation by providers of public transportation" is a new requirement under MAP-21. The FHWA and FTA construe that the intent of this provision is that

⁷ 23 U.S.C. 134(d)(2); 49 U.S.C. 5303(d)(2).

representatives of providers of public transportation, once designated, will have equal decision-making rights and authorities as other members listed in 23 U.S.C. 134(d)(2)(B) and 49 U.S.C. 5303(d)(2)(B) that are on the policy board of an MPO that serves a TMA. This expectation reflects the long-standing position of FHWA and FTA with respect to statutorily required MPO board members.⁸

A public transportation representative on an MPO board is referred to herein as the “specifically designated representative.” A specifically designated representative should be an elected official or a direct representative employed by the agency being represented, such as a member of a public transportation provider’s board of directors, or a senior transit agency official like a chief executive officer or a general manager.

III. Providers of Public Transportation

This guidance proposes that only representation by providers of public transportation that operate in a TMA and are direct recipients⁹ of the Urbanized Area Formula Funding program¹⁰ will satisfy 23 U.S.C. 134(d)(2)(B) and 49 U.S.C. 5303(d)(2)(B).

⁸ While this guidance specifically addresses the new requirement for representation by providers of public transportation, all MPOs that serve a TMA must consist of local elected officials; officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and appropriate State officials by October 1, 2014. 23 U.S.C. 134(d)(2); 49 U.S.C. 5303(d)(2). Only those MPOs acting pursuant to authority created under State law that was in effect on December 18, 1991, that meet the requirements of 23 U.S.C. 134(d)(3) and 49 U.S.C. 5303(d)(3), are exempt.

⁹ A direct recipient is defined as a public entity that is legally eligible under Federal transit law to apply for and receive grants directly from FTA.

¹⁰ 49 U.S.C. 5307.

IV. Process for the Selection of Specifically Designated Representatives

The FTA and FHWA's Metropolitan Transportation Planning rule at 23 CFR 450.314 provides for metropolitan planning agreements in which MPOs, States, and providers of public transportation cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. This guidance proposes that MPOs that serve an area designated as a TMA should cooperate with providers of public transportation and the State to amend their metropolitan planning agreements to include the cooperative process for selecting the specifically designated representative(s) for inclusion on the MPO board and for identifying the representative's role and responsibilities.

V. Role of the Specifically Designated Representative

To the extent that an MPO has bylaws, the MPO should, in consultation with transit providers in the TMA, develop bylaws that describe the establishment, roles, and responsibilities of the specifically designated representative. These bylaws should explain the process by which the specifically designated representative will identify transit-related issues for consideration by the full MPO policy board and verify that transit priorities are considered in planning products to be adopted by the MPO. In TMAs with multiple providers of public transportation, the bylaws also should outline how the specifically designated representative(s) will consider the needs of all eligible¹¹

¹¹ Eligible transit agencies are those that are direct recipients of the Urbanized Area Formula Funding program, 49 U.S.C. 5307, and operate in a TMA.

providers of public transportation and address issues that are relevant to the responsibilities of the MPO.

VI. Restructuring MPOs to Include Representation by Providers of Public Transportation

Title 23 U.S.C. 134(d)(5)(B) and 49 U.S.C. 5303(d)(5)(B) provide that an MPO may be restructured to meet MAP-21's representation requirements without having to secure the agreement of the Governor and units of general purpose government as part of a redesignation.

There are multiple providers of public transportation within most TMAs. In large MPOs that include numerous municipal jurisdictions and multiple providers of public transportation, FTA and FHWA expect that it would not be practical to allocate separate representation to each provider of public transportation. Consequently, this guidance proposes that an MPO that serves an area designated as a TMA that has multiple providers of public transportation should cooperate¹² with the eligible providers to determine how the MPO will include representation by providers of public transportation.

There are various approaches to meeting this requirement. For example, an MPO may allocate a single board position to eligible providers of public transportation collectively, providing that one specifically designated representative must be agreed upon through the cooperative process. The requirement for specifically designated representation might also be met by rotating the board position among all eligible providers or by providing all eligible providers with proportional representation.

¹² Cooperation means that the parties involved in carrying out the transportation planning and programming processes work together to achieve a common goal or objective. 23 CFR 450.104.

However the representation is ultimately designated, the MPO should provide specifics of the designation in its bylaws, to the extent it has bylaws.

Apart from the requirement for specifically designated representation on the MPO's board, an MPO also may allow for transit representation on policy or technical committees. Eligible providers of public transportation not given decision-making rights on the MPO's board may hold positions on policy or technical committees.

The FHWA and FTA encourage MPOs, State Departments of Transportation, local stakeholders, and transit providers to take this opportunity to determine the most effective governance and institutional arrangements to best serve the interests of the metropolitan planning area.

Peter Rogoff
FTA Administrator

Victor M. Mendez
FHWA Administrator

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