



# The Florida Metropolitan Planning Organization Advisory Council

*Mayor Susan Haynie*  
*Chairperson*

## **MPOAC Governing Board Meeting**

**Date:** Thursday, October 6, 2016

**Time:** 3:30PM – 5:30PM

**Location:** DoubleTree by Hilton, 2080 N. Atlantic Avenue  
Cocoa Beach, FL 32931

**Mayor Susan Haynie, Presiding**

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- 1. Call to Order & Pledge of Allegiance**
- 2. Approval of Minutes: July 18, 2016 Meeting**
- 3. Public Comments (non-agenda items)**
- 4. Executive Director's Report**
  - A. UPWP Report**
  - B. MPOAC Weekend Institute Dates for 2017**
- 5. Agency Reports**
  - A. Florida Transportation Commission**
  - B. Florida Department of Transportation**
  - C. Federal Highway Administration**
- 6. Business Items & Presentations**
  - A. Staff Directors meeting format and bylaws revision**
  - B. Calendar for 2017 meetings**
  - C. Review of Florida Attorney General response to MPOAC**
  - D. MPOAC Strategic Plan Working Groups**
  - E. All Aboard Florida Presentation**
  - F. Space Florida Modal Plan Update**
  - G. Executive Director Evaluation**
- 7. Communications**
- 8. Member Comments**
- 9. Adjournment**

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*Carl Mikyska, Executive Director*

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**Any person who desires or decides to appeal any decision made by this Council with respect to any matter considered at this meeting will need a record of the proceedings. For such purposes, such person may need to ensure that a verbatim record of the proceedings is made which record includes testimony and evidence upon which appeal is to be based.**

**The needs of hearing or visually impaired persons shall be met by contacting the Council sponsoring such meeting at least 48 hours prior to the meeting. Please contact Brigitte Messina at (850) 414-4037 or by email to [brigitte.messina@mpoac.org](mailto:brigitte.messina@mpoac.org).**

## **Item Number 2**

### **Approval of Minutes: July 18, 2016**

#### **DISCUSSION:**

Review and comments from members.

#### **REQUESTED ACTION:**

Approval of Meeting Minutes from the July 18, 2016 MPOAC Governing Board Meeting.

#### **ATTACHMENTS:**

1. July 18, 2016 MPOAC Governing Board Meeting Minutes



**Florida MPO Advisory Council  
Meeting of the Governing Board  
July 18, 2016  
Draft Meeting Minutes**

**GOVERNING BOARD MEMBERS IN ATTENDANCE:**

**Commissioner Nick Maddox, Vice Chair, Capital Region TPA  
Councilmember Bryan Caletka, Broward MPO  
Commissioner James Herston, Charlotte County-Punta Gorda MPO  
Councilmember Charles Bare, Florida-Alabama TPO  
Councilmember Doreen Caudell, Forward Pinellas  
Commissioner Nicholas Nicholson, Hernando/Citrus MPO  
Commissioner Troy McDonald, Martin MPO  
Bruno Barreiro, Miami-Dade MPO  
Dick Rynearson, Okaloosa-Walton TPO  
Commissioner Nat Birdsong, Polk TPO  
Councilmember Pat Patterson, River to Sea TPO  
Councilmember Patrick Roff, Sarasota/Manatee MPO  
Mayor Kathy Meehan, Space Coast TPO**

**OTHERS IN ATTENDANCE:**

**Carl Mikyska, MPOAC  
Paul Gougelman, MPOAC  
Karen Brunelle, Federal Highway Administration  
James Christian, Federal Highway Administration  
Lee Ann Jacobs, Federal Highway Administration  
Jim Wood, Florida Department of Transportation  
Sean Santalla, Florida Department of Transportation  
Sarita Taylor, Florida Department of Transportation  
Stephen Benson, Florida Department of Transportation District 7  
Jeff Kramer, Center for Urban Transportation Research  
Alex Carroll, Center for Urban Transportation Research  
Matt Ubben, Floridians for Better Transportation  
Ray Chiaramonte, Tampa Bay Area Regional Transportation Authority  
Michael Case, Tampa Bay Area Regional Transportation Authority  
Ann McNeill, National Association of Black Women in Construction  
Bob Herrington, Charlotte County-Punta Gorda MPO  
Mary Beth Washnock, Florida-Alabama TPO/Okaloosa-Walton TPO/Bay County TPO  
Greg Stuart, Broward MPO  
Whit Blanton, Forward Pinellas  
Michael Escalante, Gainesville MTPO  
Steve Diez, Hernando/Citrus MPO  
Dennis Dix, Hernando/Citrus MPO**

Beth Alden, Hillsborough MPO  
Andy Sobczate, Indian River County MPO  
Donald Scott, Lee County MPO  
Beth Beltran, Martin MPO  
Gary Huttman, MetroPlan Orlando  
Ronnie Blackshear, Polk TPO  
Lois Bollenback, River to Sea TPO  
Lisa Hickman, Space Coast TPO  
Bob Kamm, Space Coast TPO  
Peter Buchwald, St. Lucie TPO  
John Kaliski, Cambridge Systematics  
Hal Beardall, FCRC Consensus Center  
William Roll, Kimley-Horn & Associates  
Rob Cursey, Tindale Oliver

### 1. CALL TO ORDER

Commissioner Nick Maddox, Vice Chair, Capital Region TPA, called the meeting to order at 12:31pm. The Vice Chair welcomed those in attendance and self-introductions were made. All stood for the Pledge of Allegiance.

Commissioner Maddox entertained a motion to move Agenda Item 6-F: FHWA/FTA Notice of Proposed Rulemaking on MPO Coordination and Planning Area Reform to Agenda Item 4: Executive Director's Report. Commissioner Troy McDonald, Martin MPO, moved to advance the item. Councilmember Charles Bare, Florida-Alabama TPO, seconded. The motion was approved.

### 2. APPROVAL OF MINUTES

Councilmember Charles Bare, Florida-Alabama TPO, moved to approve the minutes of the April 28, 2016 meeting of the MPOAC Governing Board. Mayor Kathy Meehan, Space Coast TPO, seconded the motion. The motion carried unanimously.

Commissioner Nick Maddox, Vice Chair, Capital Region TPA, congratulated Commissioner Bob Dallari, MetroPlan Orlando, and Councilmember Bryan Caletka, Broward MPO, for their new leadership positions with the National Association of Regional Councils (NARC).

### 3. PUBLIC COMMENTS

No public comments were made.

#### 4. FHWA/FTA NOTICE OF PROPOSED RULEMAKING ON MPO COORDINATION AND PLANNING AREA REFORM (ISSUED 6/27/16)

Carl Mikyska, MPOAC Executive Director, presented information on the FHWA/FTA Notice of Proposed Rulemaking (NPRM) on MPO Coordination and Planning Area Reform, which was issued on June 27, 2016.

The purpose of the NPRM is to “promote more effective regional planning by States and metropolitan planning organizations.” The stated intention of the US Department of Transportation (USDOT) is to “right-size” metropolitan transportation planning and to consolidate MPO products. The rule would require Metropolitan Planning Area (MPA) boundaries to include the entire urbanized area (UZA) and contiguous area expected to become urbanized within 20 years. Currently separate MPOs that would fall within a single MPA would be required to either merge or remain separate if all affected MPOs in the UZA agree and the Governor agrees, but coordinate a variety of planning activities and products. In MPAs where more than one MPO is designated, the MPOs would be required to jointly develop a single LRTP and TIP, and to establish a single set of performance targets for the entire MPA.

The proposed rule would also require that metropolitan planning agreements include coordination strategies and dispute resolution procedures between state(s) and MPOs as well as between MPOs that share MPA boundaries. Planning data must be consistent between states and MPOs.

In the NPRM, the US Secretary of Transportation states that he believes (and the FHWA and FTA Concur) that the metropolitan transportation planning rules in effect since 2007 have undermined the original intent of federal law by allowing multiple MPAs to exist within a single UZA. He believes that this has fostered confusion and resulted in less efficient planning outcomes. The proposed rule is designed to correct the problems and return to the structure embodied in the rule prior to the 2007 amendments.

The proposed revisions are intended to clarify:

- That the MPA must include the entire urbanized area and contiguous area expected to become urbanized within 20 years;
- The statutory requirements for the MPA to include an urbanized area in its entirety; and
- The exception provisions allowing more than one MPO to serve a single MPA, if warranted by the size and complexity of the MPA and agreed upon by the Governor and the existing MPOs.

Comments on the proposed rule are due by August 26, 2016. Implementation of the rule would be phased in over two years. Any MPO products produced after that two-year mark must comply with the new rule.

Mr. Mikyska noted that the proposed rule has generally not been well received. Several members shared their thoughts. Some noted that this would be an agenda item at their next governing board meeting and that they would include feedback from their board in their comments on the proposed rule. One member expressed concern that a single LRTP and TIP would be unable to address unique issues in certain areas. Setting priorities and establishing performance targets would be extremely challenging given the diversity of each area (e.g. variations in community character, transit systems, air quality, etc.).

Mr. Mikyska also relayed some of the comments expressed by the Staff Directors. A single long range transportation plan (LRTP) could be beneficial, but it should have local elements to address more localized issues and needs. Florida is already a national leader in regional coordination, so there was some sentiment that this rule seems heavy-handed and superfluous. Joint performance measures and targets would also be very challenging given the diversity of geographic areas. The staff directors also suggested that if the Governor takes no action in relation to MPO consolidation, then the MPO designations should remain as they currently exist.

Several Governing Board members also provided comment on the proposed rule. Many expressed concern that this rule would undermine the fundamental purpose of MPOs – to provide a local voice in transportation planning. There was also concern about the ability of consolidated MPOs to establish and meet performance targets given the different conditions, character, and values in each community. A few members agreed that the approach is very “one-size-fits-all”, and that this would not be appropriate for most of Florida’s MPOs. Some members emphasized that Florida’s MPOs are already engaging in effective regional coordination, making this rule unnecessary, and that Florida’s existing regional coordination efforts should suffice to meet the intent of the rule.

Bryan Caletka, Broward MPO, moved to authorize Mr. Mikyska to draft a letter of opposition to the proposed rule and incorporate MPOAC member comments, as stated above. Nick Nicholson, Hernando/Citrus MPO, seconded the motion. The motion was approved unanimously. Mr. Mikyska noted that he will email a draft letter to the members of the Governing Board and request final comments before submission.

## EXECUTIVE DIRECTOR’S REPORT

Carl Mikyska, MPOAC Executive Director, spoke in regards to the MPOwerment Roundtable he and Mayor Susan Haynie, Palm Beach MPO, Chair of the MPOAC Governing Board attended last week at the White House. About 30 different officials from across the country attended the roundtable, including secretaries of state DOTs, mayors, MPO directors, and regional council executive directors. The discussion focused on how MPOs can have more influence on the transportation planning process. The US Department of Transportation (USDOT) is interested in expanding this roundtable discussion and visit different areas across the nation. Mr. Mikyska volunteered Florida to host one of those sessions if USDOT decides to come to Florida.



## A. BUDGET REPORT

Carl Mikyska, MPOAC Executive Director, reported on the MPOAC budget. During the 4<sup>th</sup> quarter (April 1 – June 30, 2016), approximately \$164,471 was spent, roughly 32% of the total \$532,048 budget. The MPOAC finished FY 2015/2016 \$25,086 below budget.

## 5. AGENCY REPORTS

### A. FLORIDA DEPARTMENT OF TRANSPORTATION

Mr. Jim Wood, State Transportation Planning Administrator, Florida Department of Transportation (FDOT), updated the members on FDOT activities and brought forward topics of interest to the MPOs.

- Florida Transportation Plan (FTP)
  - The Vision Element was completed in August 2015, and the Policy Element was completed in December 2015. FDOT is now working on the Implementation Element of the FTP with the assistance of an Implementation Committee, formerly the FTP Steering Committee. The Implementation Element is expected to be completed by the end of the calendar year.
- Florida Strategic Highway Safety Plan
  - FDOT's Safety Office is in the process of updating the State Highway Safety Plan (SHSP). Safety was a major component of the FTP, and FDOT is actively working to coordinate its plans internally. A webinar is scheduled for July 25, 2016 to inform stakeholders of the contents of the Florida SHSP and to accept comment on the final draft. The comment period closes on August 4, 2016 and is expected to be submitted for executive review shortly thereafter.
- Future Corridors
  - I-75 Relief Task Force
    - Mr. Wood provided an update on the I-75 Relief Task Force. The Task Force's goal is to evaluate options that:
      - Provide relief to I-75 and improve mobility in the Initial Focus Counties
      - Enhance regional connectivity between Tampa and Northeast Florida.
    - The Task Force has had six of its seven meetings. The seventh meeting is scheduled for August 12, 2016 where they will be providing a series of recommendations. Their draft framework includes three components:
      - Optimize existing corridors through operational improvements such as Intelligent Transportation Systems (ITS) strategies (short-term).

- Evaluate potential enhancements to or transformation of existing transportation corridors, such as truck-only lanes and express lanes (mid-term).
    - Evaluate potential for new multimodal, multi-use corridors after evaluation of I-75 and other connecting roads, and determination of need (long-term).
  - East Central Florida Corridor Task Force
    - In 2013, Governor Scott created the East Central Florida Corridor Task Force and charged the Task Force to develop consensus recommendations for future transportation corridor planning in portions of Brevard, Orange, and Osceola counties. In December 2014, the Task Force submitted a final report documenting findings and recommendations, including a proposed action plan for strategic transportation corridors. The Task Force recommended nine corridor alternatives for further study, five of which emphasize multimodal improvements to existing corridors. Recently, the FDOT selected a consultant to develop an innovative approach to evaluating the nine corridors for further development and potential implementation. A Project Advisory Group (PAG) has been established for the evaluation stage consisting of representatives of Florida's Turnpike Enterprise, the three study area counties, MetroPlan Orlando, Space Coast TPO, Central Florida Expressway Authority, and East Central Florida Regional Planning Council. The Central Florida MPO Alliance will lead the development of a Regional Transit Vision to complement and inform the multimodal corridor evaluation effort.
- Shared Use Nonmotorized Trail Program (SUNTrail)
  - Mr. Wood provided an update on the SUNTrail Program. The Coast-to-Coast Connector was selected as the top tier regional trail system, and the St. Johns River to the Sea Loop was selected as the second tier regional trail system. The third tier involves individual trails, which have not yet been selected. Final selection of projects for FY2017 will take place in August 2016 and a Work Program Amendment to add those projects will occur in September 2016. There were over \$300 million in projects submitted for consideration, and up to \$50 million is expected to be programmed for FY2017. Mr. Wood thanked the MPOs for supporting this program by prioritizing and submitting projects.
  - Some of the funding will be programmed for construction-ready projects, and some for feasibility and Project Development and Environment (PD&E) studies. FDOT is also trying to ensure that funds are spread geographically throughout the state. Mr. Wood noted that there may be gaps in some regions, but only because some areas did not have any projects ready. FDOT is focusing mainly on what will be funded in FY2017, but will also maintain a long-term vision throughout the programming process.

- MPO Program Management Handbook
  - FDOT is updating its MPO Program Management Handbook to reflect changes in federal and state laws and policies. It is also being converted to a web-based, user-friendly format. New content will be developed, including:
    - An enhanced certification checklist
    - Ethics requirements for board members
    - Public involvement
    - Performance management
    - Long-range planning
    - Other planning products/supporting programs
    - Glossary
- Calendar Items
  - State Highway Safety Plan Webinar: July 25, 2016
  - SASHTO Conference: West Virginia, August 27-30, 2016
  - Tools of the Trade Conference (TRB, Transportation Planning in Small and Medium Sized Communities): Charleston, SC, September 12-14, 2016
  - Florida Metropolitan Planning Partnership Statewide Meeting, Orlando, September 27-28, 2016
  - Florida Automated Vehicles Summit: Tampa, November 28-30, 2016
  - Florida Public Transportation Association and Commission for the Transportation Disadvantaged Annual Conference: Jacksonville, December 11-13, 2016

## B. FEDERAL HIGHWAY ADMINISTRATION

Ms. Lee Ann Jacobs, Planning Team Leader, Federal Highway Administration (FHWA) Office of Project Development, made several announcements of interest to the members:

- New bicycle and pedestrian enhancements are now available on PlanWorks, including a bicycle/pedestrian application, weblinks, and tools to support collaboration. The FHWA Office of Human Environment will be offering a virtual workshop in August for practitioners interested in the new PlanWorks features.
- FHWA announced the Round 7 recipients for the final round of assistance in the SHRP2 Implementation Assistance Program. FDOT was a recipient in two categories: “Advanced Methods to Identify Pavement Delamination” and “Reliability in Simulation and Planning Models”.
- Several innovations from Round 4 of Every Day Counts may be of interest to the MPOs. These include Accelerating Traffic Incident Management (TIM) Data Collection, Automated Traffic Signal Performance Measures, Community Connections, Data-Driven Safety Analysis, Safe Transportation for Every Pedestrian (STEP), as well as a variety of other innovation categories.
- The FHWA contact persons for each FDOT District are as follows:
  - Danielle Coles: Districts 1 and 3

- Shundreka Givan: District 2
- Stacie Blizzard: Districts 4, 5, and 6
- Lee Ann Jacobs: District 7

Ms. Jacobs then briefly discussed the Notice of Proposed Rulemaking (NPRM) on MPO Coordination and Planning Area Reform. She reminded the members that more information can be found at <https://www.federalregister.gov/articles/2016/06/27/2016-14854/metropolitan-planning-organization-coordination-and-planning-area-reform> and that comments are due on or before August 26.

Ms. Jacobs also provided an update on the Transportation Performance Management rulemaking schedule:

Performance Area	NPRM	Comments Due	Final Rule
Safety Performance Measures	March 11, 2014	<u>Closed</u> June 30, 2014	Published March 15, 2016
Highway Safety Improvement Program	March 28, 2014	<u>Closed</u> June 30, 2014	Published March 15, 2016
Statewide and Metro Planning; Non-Metro Planning	June 2, 2014	<u>Closed</u> October 2, 2014	Published May 27, 2016
Pavement and Bridge Performance Measures	January 5, 2015	<u>Closed</u> May 8, 2015	Anticipated December 2016
Highway Asset Management Plan	February 20, 2015	<u>Closed</u> May 29, 2015	Anticipated December 2016
Performance of the NHS, Freight, and CMAQ Measures	April 22, 2016	<u>Open</u> until August 20, 2016	TBD

Ms. Karen Brunelle, Director, FHWA Office of Project Development, then presented information on new planning regulations for metropolitan planning organizations. The new planning regulations were published and made effective May 27, 2016. These changes reflect changes in the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Fixing America's Surface Transportation Act (FAST Act) and provide some clarifications as well as organizational improvements. Changes include:

- Twelve new definitions, five updated definitions, one deleted definition;
- An expanded focus on performance management;
- Two new planning factors;
- An expanded MPO structure;
- Strengthened support for transit; and
- A phase-in schedule.

Detailed changes to federal planning regulations include:

- National policy was clarified and sets the stage for strengthened emphasis on performance management, safety, efficiency, and public transportation. MPOs shall carry out the 3-C process that:
  - Results in a performance-based multimodal transportation system;
  - Promotes the safe and efficient development, management, and operations of surface transportation systems; and
  - Takes into account resiliency needs
- The FAST Act identifies two new planning factors: (1) improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation, and (2) enhance travel and tourism.
- There is a strengthened emphasis on basing the planning process on ideas that enhance livability, including land use, economic development, and environmental issues. There is also a greater emphasis on using a performance-based approach throughout the decision-making process.
- The final rule clarifies that Transportation Management Areas (TMAs) must include officials that provide public transportation. However, it also clarifies that the representative on the policy board may be someone who already serves on the board as a representative of a local government.
- Metropolitan planning agreements should be reviewed and updated periodically to reflect any changes in the process. Agreements must clarify how information and data will be developed and shared among the partner agencies. The MPOs, State(s), and public transportation providers must jointly agree and develop specific written provisions for developing and sharing information related to performance data, targets, and progress.
- Public involvement for the LRTP and TIP must include public ports and private transportation providers. MPOs should also involve tourism agencies and agencies involved in natural disaster risk reduction.
- A new section of the planning regulations related to programmatic mitigation plans. If a mitigation plan is adopted by an MPO, any federal agency responsible for environmental reviews, permits, or approvals for transportation projects shall give substantial weight to the recommendations in the plan when carrying out its responsibilities under the National Environmental Policy Act (NEPA) or other environmental laws.
- The final rule describes travel demand reduction strategies that must be considered in the Congestion Management Process. It also clarifies that, while the process is still required, the plan itself is optional. If a plan is developed, certain requirements must be met.
- Several changes were made concerning the LRTP, including new performance measure requirements. Plans must have a description of the performance measures and targets used in assessing the performance of the transportation system. It must include a system performance report and subsequent updates evaluating the

condition and performance of the transportation system with respect to the performance targets. Plans should also integrate into the LRTP the goals, priorities, countermeasures, strategies or projects in the HSIP/SHSP.

- An MPO may voluntarily elect to develop multiple scenarios for consideration as part of LRTP development. Regulation encourages MPOs to consider several factors, including regional investments, population and employment distribution, and maintenance of baseline conditions.
- The TIP shall be designed such that, once implemented, it makes progress toward achieving the performance targets. The TIP must also include a description of the anticipated effect of the TIP toward achieving the performance targets identified in the LRTP and link investment priorities to those performance targets.

## 6. BUSINESS ITEMS & PRESENTATIONS

### A. SAFE ROUTES TO SCHOOL PROGRAM CHANGES

Ms. Sarita Taylor, Florida Safe Routes to School Coordinator, FDOT Safety Office, presented some background information and updates regarding the State's Safe Routes to School Program. Safe Routes to School (SRTS) is a sustained effort by parents, schools, community leaders, and local, state, and federal governments to improve the health and well-being of students by enabling and encouraging them to walk and bicycle to school. Congress established the Federal SRTS Program in September 2005, which provided over \$1 billion to states for community SRTS projects. The funds, provided to state DOTs, were allocated to both infrastructure projects (70-90%) and to non-infrastructure activities (10-30%)

Florida was awarded \$58 million through September 2012, which was used for 269 SRTS projects and programs and reached over 1,000 schools. There were more applications than funds available, which indicated a high level of interest in the program.

Florida's SRTS call for applications this year will be from November 14, 2016 to March 31, 2017. Eligible applicants are K-12 schools, and eligible maintaining agencies are FDOT, counties, MPOs, and cities, though applicants are encouraged to engage other partners. The application, as well as a guidance and other informational resources, can be found at [www.srtsfl.org](http://www.srtsfl.org).

There have been some recent changes to the SRTS program. MAP-21 eliminated the SRTS program and integrated it into the Transportation Alternatives Program (TAP). MAP-21 added TAP activities to the eligible activities for the Surface Transportation Program (STP). Therefore, SRTS projects now qualify for STP funding. MAP-21 also eliminated the prohibition against using STP funds on local roads. Now they can be used for SRTS activities on any public road. There is also a higher priority placed on projects or programs that address hazardous walking conditions as well as schools in rural communities.

Florida SRTS conducted educational activities in 13 counties in Fiscal Year 2016. Beginning with the 2016-17 school year, SRTS will start a phased approach by training teachers in several counties at a time over a three-year period. Once all counties in Florida have received the training, the bicycle/pedestrian training initiative will fall under the responsibility of the Florida Department of Education and FDOT will no longer fund non-infrastructure programs.

#### B. STAFF DIRECTORS REPORT

Carl Mikyska, MPOAC Executive Director, relayed a suggestion from the MPOAC Policy and Technical Subcommittee to consider changing the MPOAC Staff Directors' Advisory Committee meeting format. Instead of occurring immediately before the MPOAC Governing Board meeting, the Staff Directors meeting would take place a month in advance. This would be similar to how MPO Technical Advisory Committees meet, would allow for more in-depth meetings, would allow for suggestions to be vetted and formally presented to the MPOAC Governing Board, and would double as a Policy and Technical Subcommittee meeting. It would require a minor revision to the MPOAC by-laws. The Staff Directors discussed this at their meeting and decided to table it until the next quarterly meeting in October.

#### C. MPOAC STRATEGIC PLAN WORKING GROUPS

Carl Mikyska, MPOAC Executive Director, noted an interest in forming an MPO Program Management Handbook Drafting Committee to help FDOT draft three chapters of the Handbook. Five members from the Staff Directors' Advisory Committee volunteered to serve on the MPO Program Management Handbook Drafting Committee.

Mr. Mikyska also referred the members to the final MPOAC Strategic Plan in their agenda packets. The plan is currently undergoing some formatting and design changes and will be ready to post to the MPOAC website soon.

#### D. FHWA/FTA FINAL PLANNING RULE (ISSUED 05/27/2016)

Carl Mikyska, MPOAC Executive Director, noted that the FHWA presentation on the final planning rule covered this agenda item. Mr. Mikyska reminded the members that the effective date for Federal Register purposes is June 27, 2016, but the effective date for MPO compliance is two years from issuance (May 27, 2018).

**E. FHWA NOTICE OF PROPOSED RULEMAKING TO ASSESS THE PERFORMANCE OF THE NATIONAL HIGHWAY SYSTEM, FREIGHT MOVEMENT ON THE INTERSTATE SYSTEM, AND THE CONGESTION MITIGATION AND AIR QUALITY (CMAQ) IMPROVEMENT PROGRAM (ISSUED 04/22/2016)**

Carl Mikyska, MPOAC Executive Director, presented on the Notice of Proposed Rulemaking (NPRM) for performance measures. The document itself is 109 pages long in the Federal Register. Mr. Mikyska reminded the members that he sent out a shorter PowerPoint presentation that provided an overview of the NPRM, as well as suggestions for how the MPOAC and individual MPOs shall move forward in light of the proposed rule. Many of the requirements in the NPRM apply to FDOT, though the rule does require MPO and state coordination.

Mr. Mikyska stated that the implementation of system performance measures would have several benefits, such as enabling the MPOs to tell a national story, allowing for identical data across states and regions, and demonstrating a need for increased transportation funding. One shortcoming is that only certain aspects of the total system will be measured and the transportation measures may not reflect broader societal values (e.g. affordable housing). Mr. Mikyska noted that this is a step in the right direction.

Mr. Mikyska also noted that the NPRM included a suggestion for a proposal on greenhouse gas performance measures. The vagueness of this suggestion is somewhat concerning, as it does not specify where the data would come from, responsible parties, how to set targets, and what agencies would be responsible for meeting those targets.

Mr. Mikyska recommended that the MPOAC submit comments in support of FDOT.

**F. FHWA/FTA NOTICE OF PROPOSED RULEMAKING ON MPO COORDINATION AND PLANNING AREA REFORM (ISSUED 06/27/2016)**

This agenda item was moved to after Agenda Item 3: Public Comments.

## **7. COMMUNICATIONS**

Carl Mikyska, MPOAC Executive Director, noted the following communication items in the agenda packet:

- Email from Bryna Helfer, FHWA Office of the Secretary, inviting Carl Mikyska to a White House Roundtable Discussion



## 8. MEMBER COMMENTS

Commissioner James Herston, Charlotte County-Punta Gorda MPO, announced that the Punta Gorda Airport received the 2016 Commercial Airport of the Year Award.

Bob Kamm, Space Coast TPO, noted that the next meeting will be held on Thursday, October 6, 2016 in Cocoa Beach, FL. The Space Coast TPO is in the process of organizing a VIP tour of the Kennedy Space Center for the following day (Friday, October 7, 2016) for interested members.

## 9. ADJOURNMENT

The meeting was adjourned at 2:04pm. The next meeting of the MPOAC Governing Board will be held on Thursday, October 6, 2016.



## **Item Number 3**

### **Public Comments**

#### **DISCUSSION:**

Recommendations or comments by the public.

#### **REQUESTED ACTION:**

As may be desired.

#### **ATTACHMENT:**

None



## **Item Number 4**

### **Executive Director's Report**

#### **DISCUSSION:**

Mr. Carl Mikyska, MPOAC Executive Director, will be presenting the following items for discussion:

- A. UPWP Quarterly Report: July 1, 2016 – September 30, 2016
- B. MPOAC Weekend Institute Dates for 2017

#### **REQUESTED ACTION:**

As may be desired.

#### **ATTACHMENTS:**

To be provided at the meeting.



## **Item Number 5A**

### **Agency Reports – Florida Transportation Commission**

#### **DISCUSSION:**

Mr. Matt Ubben, Executive Director of the Florida Transportation Commission will update the members on the activities of FTC and bring forward topics of interest to the MPOs.

#### **REQUESTED ACTION:**

As may be desired.

#### **ATTACHMENT:**

None





## **Item Number 5B**

### **Agency Reports – Florida Department of Transportation**

#### **DISCUSSION:**

Mr. Sean Santalla from the Office of Policy Planning at FDOT will update the members on the activities of FDOT and bring forward topics of interest to the MPOs.

#### **REQUESTED ACTION:**

As may be desired.

#### **ATTACHMENT:**

None



## **Item Number 5C**

### **Agency Reports – Florida Division of Federal Highway Administration**

#### **DISCUSSION:**

Ms. Karen Brunelle, Director, Office of Project Development and Ms. Lee Ann Jacobs, Planning Team Leader will present the following items:

- A. Announcements
- B. Legislation and Regulations Updates

#### **REQUESTED ACTION:**

As may be desired.

#### **ATTACHMENT:**

None



## **Item Number 6**

### **Business Items & Presentations**

#### **DISCUSSION:**

Various action items and topics for discussion will be presented. The topics include:

- A. Staff Directors meeting format and bylaws revision
- B. Calendar for 2017 Meetings
- C. Review of Florida Attorney General response to MPOAC
- D. MPOAC Strategic Plan Working Groups
- E. All Aboard Florida Presentation
- F. Space Florida Modal Plan Update
- G. Executive Director Evaluation

#### **REQUESTED ACTIONS:**

As may be desired.

#### **ATTACHMENTS:**

1. Proposed bylaws with revisions
2. Letter to Florida Attorney General Pam Bondi and response from the AG
3. Survey results of interest in Strategic Plan Committees
4. Executive Director Evaluation Form



RESOLUTION NO. 2016-1

A RESOLUTION OF THE FLORIDA METROPOLITAN PLANNING ORGANIZATION ADVISORY COUNCIL RELATING TO AGENCY BY-LAWS; MAKING FINDINGS; AMENDING THE BY-LAWS; REVISING DEFINITIONS AND PROVISIONS RELATING TO THE MPOAC ORGANIZATION AND THE STAFF DIRECTORS' ADVISORY COMMITTEE AND OTHER COMMITTEES; REVISING PROCEDURES FOR SETTING AN AGENDA; MAKING GRAMMATICAL REVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Metropolitan Planning Organization Advisory Council ("MPOAC") recognizes and acknowledges the need and requirement for established procedures to be implemented in order to facilitate orderly, responsible, and respectable MPOAC Governing Board, Staff Directors' Advisory Committee, and other committee meetings; and

WHEREAS, the Governing Board desires to revise its By-Laws and procedures which will allow interested parties to easily understand MPOAC procedures; and

WHEREAS, this resolution shall act as a guide and framework for MPOAC procedures.

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the Florida Metropolitan Planning Organization Advisory Council that the following be and the same is hereby adopted:

Resolution Section 1. The following policies, procedures, and By-Laws, are hereby accepted, amended, restated, and adopted by the MPOAC as follows:

**MPOAC Agency Bylaws**

*(adopted January 22, 2015, Res. No. 15-1; amended October 6, 2016, Res. No. 16-1)*

Introductory Statement: The MPOAC is not subject to Florida's Administrative Procedure Act. §120.52(1), Fla.Stat. Consequently, these rules are not subject to a rule adoption proceeding pursuant to Section 120.54, Florida Statutes However, pursuant to Section 339.175(11)(c)4., Florida Statutes, the MPOAC has the

express legislative authority to adopt by-laws for agency operation.

**Section 1. Definitions.** As used in these bylaws, the following terms shall be defined as follows:

"MPO" means and refers to a metropolitan planning organization as provided for in 23 U.S.C. Section 134 and Section 339.175, Florida Statutes. MPO may also mean a transportation planning organization ("TPO"), transportation planning agency ("TPA") or other name used by an MPO in Florida.

(b) "MPOAC" shall mean the State of Florida, Metropolitan Planning Organization Advisory Council as provided for in Section 339.175, Florida Statutes.

(c) "Record" shall include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by the MPOAC. A record shall be as specified in Section 119.011, Florida Statutes, or as determined pursuant to judicial interpretation of Chapter 119, Florida Statutes.

~~(d) "TPO" or "Transportation Planning Organization" refers to a MPO.~~

**Section 2. MPOAC Organization.**

(a) The Governing Board of the MPOAC is composed of a twenty-seven (27) member Governing Board as of 2016. As provided in Section 3.(b), if a new MPO is created, the number of Governing Board members will increase. Each individual MPO selects one representative, and may select at least one alternate representative, to serve on the Governing Board. An MPO may select a primary alternate representative and, at its option, a secondary alternate representative. Alternate representatives shall vote, participate for the purpose of forming a quorum, make or second motions, and otherwise act as a member of the MPOAC Governing Board, only in the absence of the representative that the alternate has been appointed to serve in place of; provided, however, that alternate representatives may always attend Governing Board meetings and participate in



debate. A secondary alternate representative shall vote, participate for the purpose of forming a quorum, make or second motions, and otherwise act as a member of the MPOAC Governing Board, only in the absence of the Governing Board member, and primary alternate representative, of the MPO that the secondary alternate represents.

(b) Organizational structure.

(1) Executive Committee. The Executive Committee consists of the MPOAC Governing Board Chair and Vice-Chair, a member of the Governing Board serving at-large, the Staff Directors' Advisory Committee Chair and Vice-Chair. Service on the Executive Committee is considered an appointment to a position and not an office and is an ex officio part of the duties of the selected Governing Board Member or selected member of the Staff Director's Advisory Committee.

(2) In addition to the Governing Board, the MPOAC will be composed of at least three (3) committees ~~one~~ (1) committee, the Staff Directors' Advisory Committee, the Freight Committee, and the Policy and Technical Committee, which are is advisory to the Governing Board. The Policy and Technical Committee is also advisory to the Staff Directors' Advisory Committee. The MPOAC will be staffed by an executive director who hires, supervises, and may terminate or suspend MPOAC staff or consultants. The executive director serves as the agency clerk. The MPOAC may retain a general counsel and other staff as necessary to perform adequately the functions of the MPOAC within budgetary limitations.

(c) Executive Committee.

(1) The at-large Governing Board member of the Executive Committee will be selected at the same time that the Governing Board Chair and Vice-Chair are selected. If the at-large member position shall become vacant, the Governing Board shall select an at-large member to complete the term of the individual being replaced. Said replacement member shall serve until such time as the election is held for the Governing Board Chair, Vice-Chair, and the Executive Committee at-large member.

(2) The Executive Committee shall provide policy direction for the MPOAC between Governing Board meetings and provide an annual evaluation of the MPOAC Executive Director.

(3) Meetings of the Executive Committee shall

occur at the call of the Chair, setting the date, time, and location of said meeting. Alternatively, a vote of a majority of the Executive Committee may set a meeting time, date, and location for an Executive Committee meeting. A vote of the Executive Committee shall take precedence over a determination to call a meeting by the Chair. In addition, upon petition of the three (3) of the members of the Executive Committee, a special meeting may be called. In the event that the petition does not include the date, time or location of the meeting, the Chair, after consultation with the Executive Director, may determine the time, date, or location of the meeting.

(4) The Chair may cancel an Executive Committee meeting if the reasons for the meeting to be held no longer exist, or if there is a lack of business to be considered.

(d) Staff Directors' Advisory Committee. The Staff Directors' Advisory Committee is responsible for providing guidance to the MPOAC Governing Board regarding transportation issues and agency operation. It may assist in the preparation of the MPOAC agenda. In addition, the Staff Directors' Advisory Committee may serve as a forum for the discussion and formulation of recommendations to the Governing Board which will later be forwarded to appropriate governmental bodies or other individuals. Recommendations shall relate to statewide concerns regarding all transportation-related issues.

(e) Executive Director. The MPOAC Governing Board shall may appoint an executive director. The executive director shall be responsible for carrying out policy determinations and directives of the MPOAC Governing Board. The executive director shall have authority to hire, supervise, and terminate other subordinate employees of the MPOAC. The executive director reports for day-to-day supervision to the Chair of the Governing Board.

(f) Agency Clerk. As a part of the duties of the position of Executive Director, the executive director shall serve *ex officio* as the agency clerk. The duties and responsibilities of the agency clerk shall be to: index and file agency resolutions, orders, and bylaws in a manner not inconsistent with applicable provisions of the Florida Rules of Appellate Procedure; send notices of workshops and meetings; transcribe minutes of the Governing Board, committee, and subcommittee meetings and workshops; maintain all agency files and records; make certifications

of true copies and actions; attest to the signatures of MPOAC officers; and perform such other duties as determined by the MPOAC Governing Board.

(g) General Counsel. The MPOAC Governing Board may also appoint and retain a general counsel. The general counsel shall be responsible for assisting the MPOAC in legal matters and representation of the MPOAC in legal proceedings. The MPOAC general counsel shall at all times be a member of the Florida Bar and shall have been a practicing attorney for at least five (5) years prior to assuming the position of general counsel. The Governing Board may also retain special legal counsel from time to time as necessary for the handling of specialized legal matters.

### **Section 3. MPOAC Governing Board.**

(a) The MPOAC Governing Board consists of one representative from each of the duly designated MPOs in Florida ~~the following MPOs~~. As of 2016 the MPOs are:

- (1) Bay County Transportation Planning Organization;
- (2) Broward Metropolitan Planning Organization;
- (3) Capital Region Transportation Planning Agency;
- (4) Charlotte County-Punta Gorda Metropolitan Planning Organization;
- (5) Collier Metropolitan Planning Organization;
- (6) Florida-Alabama Transportation Planning Organization;
- (7) Forward Pinellas;
- (8) (7) Heartland Regional Transportation Planning Organization;
- (9) ~~(8)~~ Hernando/Citrus Metropolitan Planning Organization;
- (10) ~~(9)~~ Hillsborough County Metropolitan Planning Organization;
- (11) ~~(10)~~ Indian River County Metropolitan Planning Organization;
- (12) ~~(11)~~ Lake-Sumter Metropolitan Planning Organization;
- (13) ~~(12)~~ Lee County Metropolitan Planning Organization;
- (14) ~~(13)~~ Martin Metropolitan Planning Organization;

(15) ~~(14)~~ MetroPlan Orlando;  
(16) ~~(15)~~ Metropolitan Transportation Planning  
Organization for the Gainesville Urbanized Area;  
(17) ~~(16)~~ Miami-Dade Metropolitan Planning  
Organization;  
(18) ~~(17)~~ North Florida Transportation Planning  
Organization;  
(19) ~~(18)~~ Ocala-Marion County Transportation  
Planning Organization;  
(20) ~~(19)~~ Okaloosa-Walton Transportation Planning  
Organization;  
(21) ~~(20)~~ Pasco County Metropolitan Planning  
Organization;  
(22) ~~(21)~~ Palm Beach Metropolitan Planning  
Organization;  
~~(22) Pinellas County Metropolitan Planning  
Organization~~  
(23) Polk Transportation Planning Organization;  
(24) River to Sea Transportation Planning  
Organization;  
(25) Sarasota/Manatee Metropolitan Planning  
Organization;  
(26) Space Coast Transportation Planning  
Organization; and  
(27) St. Lucie Transportation Planning  
Organization.

(b) Appointment of Governing Board representatives.

(1) Each MPO ~~or TPO~~ shall appoint one (1) representative and may appoint at least one (1) and not more than two (2) alternate representatives ~~representative~~ to serve on the MPOAC Governing Board. Regular Governing Board members or alternate members may be reappointed from time to time by their appointing MPO ~~or TPO~~.

(2) The term for a representative and an alternate representative shall be from January 1st to December 31st of each calendar year. By no later than December 31st of each calendar year, each MPO ~~or TPO~~ shall appoint its representative to the MPOAC to serve for the succeeding calendar year.

(3) No individual shall be eligible to vote on the MPOAC until the appointing MPO ~~or TPO~~ certifies in writing or electronically by e-mail to the MPOAC agency clerk that such individual is authorized to act as the

representative or alternate representative of the certifying MPO ~~or TPO~~.

(4) Each representative and each alternate representative of a MPO ~~or TPO~~ shall serve at the pleasure of the appointing MPO ~~or TPO~~; provided, that a representative or an alternate representative on the MPOAC Governing Board must at all times be a representative sitting on the Governing Board of the appointing MPO ~~or TPO~~.

(4) Vacancies shall be filled only by an appointment by the original appointing MPO ~~or TPO~~.

(c) Upon the creation of a new MPO pursuant to Section 339.175, Florida Statutes, said MPO ~~or TPO~~ is entitled to the appointment of one representative and, at its option, one (1) primary alternate representative, and one (1) secondary alternate representative, to serve as a member of the MPOAC Governing Board in the absence of the regular voting delegate to the Governing Board.

#### **Section 4. Organization of the Governing Board.**

(a) The MPOAC Governing Board shall at its first meeting of the calendar year elect a Chair ~~chairperson~~ and Vice-Chair ~~vice-chairperson~~ as its officers. The Chair ~~chairperson~~ and Vice-Chair ~~vice-chairperson~~ shall take office upon election as of the time and date set for the MPOAC Governing Board regularly scheduled meeting in the third quarter of the calendar year (historically the meeting held in July), or as soon thereafter as possible, and shall serve until the next election which shall be held at the first meeting in the first quarter of the calendar year, the time and date set for the beginning of the regularly scheduled MPOAC Governing Board meeting in the third quarter of the next calendar year, or until a successor is thereafter elected, whichever event shall first occur. The Chair ~~chairperson~~ and Vice-Chair ~~vice-chairperson~~ must at all times during their term of office be members of the MPOAC Governing Board.

(b) If a vacancy occurs in any MPOAC Governing Board office, the MPOAC Governing Board shall fill the vacancy, and the individual filling the vacancy shall serve until the election is time set for the beginning of the MPOAC Governing Board meeting held at the first meeting in the

first ~~third~~ quarter of the calendar year, or until a successor is thereafter elected, whichever event shall first occur.

(c) Chair; Vice-Chair ~~Chairperson; Vice-Chairperson~~. The Chair ~~chairperson~~ of the MPOAC shall call and preside at all meetings of the MPOAC Governing Board. The Chairperson ~~chairperson~~ is authorized to execute on behalf of the MPOAC all documents which have been approved by the MPOAC Governing Board. The Vice-Chairperson ~~vice-chairperson~~ shall act as Chair ~~chairperson~~ in the absence of the Chair ~~chairperson~~.

(d) Agenda preparation. After consultation with the Chair ~~Chairperson~~ of the Governing Board, the Executive Director is responsible for the preparation of agendas for future meetings.

(e) Quorum. At least nine (9) of the voting members of the MPOAC Governing Board must be present for the MPOAC Governing Board to conduct business. All votes must pass by a vote of a majority of those members present and voting or by seven (7) votes, whichever number shall be greater.

(f) Meetings.

(1) The MPOAC shall meet no less often than once each calendar quarter during the year based on an annual schedule established by the Governing Board which schedule may be amended from time to time by the Governing Board, unless said meeting is cancelled or rescheduled by the Chair ~~chairperson~~. The Chair ~~chairperson~~ shall be empowered to cancel any of the foregoing regular meetings, as necessary. Regular meetings, may be held at a location, date, and time, to be determined annually by a majority of the Governing Board members voting.

(2) Special meetings may be called by the Governing Board Chair ~~chairperson~~ at a date, location, and time in the Chair's call for the special meetings or through a letter of petition from at least four (4) members of the Governing Board; provided, that all public notice requirements are satisfied. The letter shall state the purpose of the special meeting and may propose a time, location, and date for the special meeting. In the event of any petition which does not set a time, location, and date for a special meeting, the Chair, after coordinating with Executive Director, shall set the time, location, and

date of the meeting.

(3) Emergency meetings may be called as provided in Section 9.

(4) Joint meetings of the Governing Board and the Staff Directors' Advisory Committee. At the call of the Governing Board Chair or after consultation between the Governing Board Chair and the Staff Directors' Advisory Committee Chair at the call of the Staff Directors' Advisory Committee Chair, meetings of the Staff Directors' Advisory Committee may be held simultaneous with a Governing Board meeting.

(g) Committees ~~Subcommittees~~, other than the Executive Committee and the Staff Directors' Advisory Committee.

(1) Committees, as necessary to assist the Governing Board may be established by the Chair, Chairperson or by a majority vote of those present and voting at a Governing Board meeting. A vote of the Governing Board shall take precedence over an appointment by the Chair.

(2) Committee ~~Sub-committee~~ members shall be appointed by the Governing Board Chair Chairperson, or a majority of the Governing Board voting at a duly called meeting. The vote of a majority of the Governing Board members shall take precedence over an appointment by the Chair.

(3) The Governing Chair, or a majority of the Governing Board membership voting at a duly called meeting, may select the committee Chair and Vice-Chair. The vote of a majority of the Governing Board members shall take precedence over an appointment by the Chair. If the MPOAC Chair or Governing Board membership does not appoint a committee Chair and a Vice-Chair, the selection of the committee chair shall be left to the committee membership. The term of the Chair and Vice-Chair shall run commensurate with the regular term of the Governing Board Chair.

**Section 5. Staff Directors' Advisory Committee and other MPOAC Committees ~~Subcommittees~~.**

(a) Appointment of Committee representatives.

(1) The MPOAC Staff Directors' Advisory Committee is comprised of one staff person from each MPO of

~~the MPOs or TPOs listed in Section 2.~~ One (1) member representative to serve on the Staff Directors' Advisory Committee shall be designated by each MPO ~~or TPO~~. In addition, each MPO that designates a member representative to the Staff Directors' Advisory Committee ~~may shall~~ also designate at least one (1) alternate member representative. Each MPO may appoint a primary alternate representative and, at its option, a secondary alternate representative to the Staff Directors' Advisory Committee. Alternate member representatives shall vote, participate for the purpose of forming a quorum, make or second motions, and otherwise act as a member representative of the Staff Directors' Advisory Committee only in the absence of the member representative that the alternate has appointed to serve in place of; provided, however, that alternate member representatives may always attend committee meetings and participate in debate. A secondary alternate representative shall vote, participate for the purpose of forming a quorum, make or second motions, and otherwise act as a member of the Staff Directors' Advisory Committee, only in the absence of the Staff Directors' Advisory Committee member, and primary alternate representative, of the MPO that the secondary alternate represents.

~~(2) Regular Staff Directors' Advisory Committee Member representatives or alternate member representatives may be reappointed from time to time by their appointing MPO or TPO.~~

~~(2) (3)~~ Each Staff Directors' Advisory Committee Member representative and each alternate member representative of a MPO ~~or TPO~~ shall serve at the pleasure of the appointing MPO ~~or TPO~~. Vacancies shall be filled only by an appointment by the original appointing MPO ~~or TPO~~.

~~(3) (4)~~ Upon the creation of a new MPO pursuant to Section 339.175, Florida Statutes, said MPO ~~or TPO~~ is entitled to the appointment of one member representative and one (1) primary and one (1) alternate member representative to serve on the Staff Directors' Advisory Committee.

(b) The term of service for a member representative on the Staff Directors' Advisory Committee shall be for a period of time beginning on January 1st and ending on December 31st of each year. Members and alternate members



are eligible for reappointment. By no later than December 31st of each calendar year, each MPO ~~or TPO~~ shall designate its representative and any an alternate representatives ~~representative~~ to the MPOAC agency clerk.

(c) No individual shall be eligible to vote on the Staff Directors' Advisory Committee until the appointing MPO ~~or TPO~~ certifies in writing or electronically by e-mail to the MPOAC agency clerk that such individual is authorized to vote as the representative, or alternate, of the certifying entity. Each member and alternate member of the committee shall serve at the pleasure of the appointing MPO ~~or TPO~~. Each individual appointed to serve, as a regular member or an alternate member of the Staff Directors' Advisory Committee, as a representative of a MPO ~~or TPO~~ must be an employee of the MPO ~~or TPO~~ represented or the ~~governmental~~ agency staffing a MPO ~~or TPO~~.

(d) Officers. The officers of the Staff Directors' Advisory Committee shall be the Chair chairperson and the Vice-Chair vice-chairperson. The Chair chairperson and Vice-Chair vice-chairperson shall be selected by a majority vote of the membership of the Staff Directors' Advisory Committee ~~present and~~ voting. The Chair chairperson and Vice-Chair vice-chairperson shall take office upon election at the first Governing Board meeting in the first quarter as of the time and date set for the MPOAC Staff Directors' Advisory Committee in July (or as soon thereafter as possible if a meeting is not held in January July) and shall serve until the next election which shall be held at the first meeting in the first quarter of the calendar year, the time and date set for the beginning of the Staff Directors' Advisory Committee meeting usually preceding the Governing Board meeting in July (or as soon thereafter as possible if a meeting is not held in July) of the next succeeding year, or until a successor is thereafter elected, whichever event shall first occur. The Chair chairperson and Vice-Chair vice-chairperson must be members of the Staff Directors' Advisory Committee.

(e) If a vacancy occurs in any Staff Directors' Advisory Committee office, the Staff Directors' Advisory Committee shall fill the vacancy, and the individual filling the vacancy shall serve until the election is held at the first meeting in the first quarter of the calendar year, or until a successor is thereafter elected, whichever event shall first occur.

(f) ~~(e)~~ Chair; Vice-Chair Chairperson; Vice-Chairperson. The Chair chairperson of the Staff Directors' Advisory Committee shall call and preside at all meetings of the Staff Directors' Advisory Committee. The Chair chairperson is authorized to implement on behalf of the Staff Directors' Advisory Committee all decisions which have been approved by the Staff Directors' Advisory Committee, and the Chair chairperson is authorized to execute on behalf of the Staff Directors' Advisory Committee all documents which have been approved by the Staff Directors' Advisory Committee. The Vice-Chair vice-chairperson shall act as Chair chairperson in the absence of the Chair chairperson.

(g) ~~(f)~~ Agenda preparation. After consultation with the Chair chairperson of the Staff Directors' Advisory Committee, the Executive Director is responsible for the preparation of agendas for future meetings.

(h) ~~(g)~~ Quorum. At least nine (9) of the voting members of the Staff Directors' Advisory Committee must be present for the Staff Directors' Advisory Committee to conduct business. All votes must pass by a vote of a majority of those members ~~present and~~ voting or by seven (7) votes, whichever number shall be greater.

(i) ~~(h)~~ Meetings. Regular meetings of the Staff Directors' Advisory Committee shall be held at least once each calendar year quarter based on an annual schedule established by the MPOAC Governing Board ~~which schedule may be amended from time to time by the MPOAC Governing Board,~~ unless cancelled or rescheduled by the Staff Directors' Advisory Committee Chair chairperson. A regular meeting schedule shall be set by the Staff Directors' Advisory Committee annually by a majority of those members voting at a meeting. The Chair chairperson may cancel a meeting as a result of a lack of business to bring to the committee. Regular meetings shall usually be held immediately prior to, or at the option of the Chair, chairperson simultaneous with the meetings of the Governing Board. Joint meetings of the Staff Directors' Advisory Committee and Governing Board may be conducted, and those meetings may be called as provided in Section 4.(f)(4). Joint meetings of the Governing Board and the Staff Directors' Advisory Committee Meetings shall be held in the same location as the Governing Board meeting. Special meetings, which are not

joint meetings, may be held at a date, time, and location to be determined by the Chair or a majority of the committee members voting. A vote of a majority of the members voting shall take precedence over a decision of the Chair. The Chair chairperson shall set the time and location of regular and special meetings. In addition, special Special meetings may shall be called by the Staff Directors' Advisory Committee chairperson or through a letter of petition from at least four (4) members; provided, that applicable public notice requirements are satisfied. This letter shall state the purpose of the special meeting and may propose a time, location, and date for the special meeting. In the event of any petition which does set a time, location, or date for a special meeting, the Chair, after coordinating with Executive Director, shall set the time, location, or date of the meeting.

(j) ~~(i)~~ Subcommittees may be established by the Chair chairperson or by a majority vote of those present and voting at a Staff Directors' Advisory Committee meeting as necessary to assist the Staff Directors' Advisory Committee. Sub-committee members, including a Chair and Vice-Chair, shall be appointed by the Staff Directors' Advisory Committee committee Chair chairperson, or a majority of those voting at a meeting. A vote of the Staff Directors' Advisory Committee shall take precedence over an appointment by the Chair.

(k) Other MPOAC Committees.

(1) Other committees established by the MPOAC Governing Board (other than the Executive Committee), including but not limited to the Freight Committee and the Policy and Technical Committee, shall consist of the number of members appointed to the committee by the MPOAC Chair or the MPOAC Governing Board as provided in Section 4.(g). As part of the process of appointment, the Governing Board shall determine the tenure of members on the committee.

(2) A committee may be composed of members of the Governing Board and members of the Staff Directors' Advisory Committee and may have non-member advisers to serve the Committee. Appointment to a committee is considered an appointment to a position and not an office and is an ex officio part of the duties of a Governing Board Member or a member of the Staff Director's Advisory Committee.

(3) The quorum of other committees established

by the MPOAC Governing Board (other than the Executive Committee), including but not limited to the Freight Committee and the Policy and Technical Committee, shall consist of the physical presence of one-third of the Committee's membership.

(4) Meetings of the committee established (other than the Executive Committee or the Staff Directors' Advisory Committee) shall occur at the call of the Chair, setting the date, time, and location of said meeting. Alternatively, a vote of a majority of the committee may set a meeting time, date, and location for an Executive Committee meeting. A vote of the committee shall take precedence over a determination to call a meeting by the Chair. In addition, upon petition of the three (3) of the members of the committee, a special meeting may be called. In the event that the petition does not include the date, time or location of the meeting, the Chair, after consultation with the Executive Director, may determine the time, date, or location of the meeting.

(5) The Chair may cancel a committee meeting if the reasons for the meeting to be held no longer exist, or if there is a lack of business to be considered.

#### **Section 6. Open Meetings; Public Records; and Principal Office of the MPOAC.**

(a) Open Meetings. All meetings of the Governing Board and any committees ~~its advisory committee,~~ will be open to the public, except as provided by applicable federal or Florida law, if any.

(b) Records. All MPOAC records shall be open to the general public, unless such records are subject to an exemption from Chapter 119, Florida Statutes, or are confidential as required by law. The general public can review, or obtain copies of records (provided said public records are not non-reproducible pursuant to 17 U.S.C. §101 et seq.), unless said records are exempt or confidential pursuant to Section 119.071, Florida Statutes, or other provisions of federal or Florida law. Charges for copies may be made pursuant to Chapter 119, Florida Statutes. Public records shall be made available to the public for inspection at the principal office of the MPOAC.

(c) Principal Office of the MPOAC. The principal office of the MPOAC is located at such location as designated from time to time by the Governing Board. The

address, e-mail address, and telephone number of the principal office shall be displayed on the MPOAC Internet web-site. The MPOAC executive director and staff are located at the principal office. MPOAC official records, other than records of the general counsel, shall be maintained in the principal office of the MPOAC. Interested parties may receive copies of agency records from the agency clerk at the principal office of the MPOAC.

### **Section 7. Setting the Agenda.**

(a) Governing Board meeting. At least ten (10) ~~fifteen (15)~~ days prior to a meeting or workshop, the MPOAC executive director, in consultation with the Governing Board Chair ~~Chairperson~~, shall prepare the agenda for the Governing Board meeting.

(b) Staff Directors' Advisory Committee ~~or other committee~~. ~~(1)~~ At least ten (10) ~~fifteen (15)~~ days prior to a meeting or workshop or sub-committee meeting or workshop, the MPOAC executive director, in consultation with the Staff Directors' Advisory Committee Chair ~~Chairperson~~, shall prepare the agenda for the Staff Directors' Advisory Committee meeting.

(c) ~~(2)~~ At least ten (10) ~~fifteen (15)~~ days prior to a meeting or workshop of any MPOAC committee, the MPOAC executive director, in consultation with the committee Chair ~~Chairperson~~, shall prepare the agenda for the committee meeting.

~~(e) Subcommittees. At least fifteen (15) days prior to a meeting or workshop of a subcommittee, the MPOAC executive director, in consultation with the subcommittee Chairperson, shall prepare the agenda for the subcommittee meeting.~~

(d) Upon completion of the preparation of an agenda for the Governing Board or any committee, the agency clerk shall make available the agenda for the meeting for distribution on request by any interested person who pays the reasonable cost for a copy of said agenda; to any person named in said agenda; and to any class of individuals to whom intended action is directed.

(e) Any person desiring to have an item placed on the agenda of a meeting of the MPOAC Governing Board, an

advisory committee, or a Staff Directors' Advisory Committee subcommittee, shall request in writing that the item be considered at the next regularly scheduled meeting of the Governing Board, advisory committee, or a subcommittee, as appropriate; provided, however, such request must be received thirty (30) days in advance of said regularly scheduled meeting. Written requests for placing an item on the agenda must describe and summarize the item and shall be mailed, e-mailed, or hand delivered to the MPOAC executive director.

(f) The agenda shall be specific as to items to be considered. All matters involving the exercise of agency discretion and policy making shall be listed on the agenda. The agenda shall include a disclaimer as required pursuant to Sections Section 286.0105 and 286.26, Florida Statutes. Any items added to an agenda after its publication should be for information or reporting and not for action, unless the item is added as an emergency business item, an item that must be acted on because of a time deadline and which item was not known or available at the time that the agenda was prepared, or for consideration of solely ministerial or internal-administrative matters, which do not affect the interests of the public generally.

(g) The order of business for a regular meeting of the Governing Board or the Staff Directors' Advisory Committee shall be as follows:

1. Call to Order & Pledge of Allegiance
2. Approval of Minutes
3. Public Comments (non-agenda items)
4. Executive Director's Report
5. Agency Reports
  - A. Florida Department of Transportation
  - B. Federal Highway Administration
  - C. Federal Transit Administration
6. Business Items & Presentations
7. Communications
8. Member Comments
9. Adjournment

In preparing the agenda, the Executive Director may vary the order of items.

(h) The agenda shall list the items in the order they are to be considered; provided, however, that for good

cause stated in the record by the person who is designated to preside at the event, items may be considered out of their listed order.

### **Section 8. Notice of Meetings and Workshops.**

#### (a) Governing Board Meetings.

(1) Except in the case of an emergency meeting, the MPOAC agency clerk shall give written notice that will ensure receipt of said notice by all members and the general public at least seven (7) days prior to any non-emergency meeting or workshop of the Governing Board or the Executive Committee. In addition, the agency clerk shall prepare and make available a copy of said notice: for distribution on request to any interested person who pays the reasonable cost for a copy of said notice; to any person named in said notice; and to any class of individuals to whom action is directed. Meeting notices shall be advertised on the MPOAC web-site at least seven (7) days prior to any non-emergency meeting. Meeting notices given pursuant to this paragraph shall include a copy of the meeting agenda. All notices to members shall be sent to the official address of the MPO or such other current address on file with the agency clerk.

(2) Notices of regular meetings and travel and accommodation information shall be sent to Governing Board members at least thirty (30) days prior to the meeting date.

(3) The notice of meetings or workshops shall, at a minimum, provide:

A. The date, time, and place of the meeting or workshop.

B. Advise the general public that at the meeting or workshop the agency will accept written or oral comment from the public with regard to agenda items; that agenda items may be reviewed by the public; the location, days, and time during which the agenda items may be examined by the public; and that anyone who wishes to appeal any action of the agency with regard to a decision made at the meeting may need a verbatim transcript of the hearing and that said person shall be responsible for furnishing said transcript, as well as the cost of

furnishing the transcript; and that at least 48 hours prior to the meeting, a written request by a physically handicapped person to attend the meeting, directed to the Chair of such board or committee or the MPOAC Executive Director, such Chair or the Executive Director shall provide a manner by which such person may attend the meeting at its scheduled site or reschedule the meeting to a site which would be accessible to such person.

(4) Except as otherwise provided herein, notice may be given by regular U.S. mail, postage paid, nationally recognized overnight courier (delivery prepaid), or by e-mail. Governing Board agenda packages, including backup information for all agenda items, shall be provided by regular U.S. mail, postage paid or nationally recognized overnight courier (delivery prepaid), or may be provided by e-mail.

(b) Staff Directors' Advisory Committee, other MPOAC committees, and Staff Directors' Advisory Committee subcommittees. The provisions of sub-section (a) above shall apply to the Staff Directors' Advisory Committee, any other MPOAC committee, and any Staff Directors' Advisory Committee subcommittees.

## **Section 9. Emergency Meetings.**

(a) The MPOAC Governing Board, the Executive Committee, an advisory committee, or one of the Staff Directors' Advisory Committee ~~its~~ subcommittees, may hold an emergency meeting, notwithstanding the provisions of any other section of these bylaws for the purpose of acting upon matters affecting the public health, safety, or welfare. The form of notice shall be as set forth in Section 8. The form of the agenda shall be as prescribed in Section 7. ~~(g)~~ and (h).

(b) Whenever an emergency meeting is scheduled to be held, the agency clerk shall notify, as soon as possible prior to the meeting, at least one major newspaper of general circulation in the area where the meeting will take place, stating the time, date, place and purpose of the meeting or workshop.

(c) Following an emergency meeting the agency clerk shall cause to be published on the MPOAC web-site, notice as set forth in Section 8(a)(3), a statement setting forth



the reasons why an emergency meeting was necessary, and a statement setting forth the action taken at the meeting.

#### **Section 10. Rules of Procedure; Action by Consent.**

(a) Rules of Procedure. All meetings of the Governing Board, any advisory committee, or any Staff Directors' Advisory Committee sub-committee, shall be governed by Robert's Rules of Order as most recently revised.

(b) By general, unanimous, or silent consent, the Governing Board, or the Staff Directors' Advisory Committee, can do business with little regard for the rules of procedure, as they are made for the protection of the minority, and when there is no minority to protect, there is little need for the restraint of the rules, except such as to protect the rights of absent members. In the former case the consent of the absentees cannot be given. A single objection defeats a request for general consent. By the legitimate use of the principle that the rules are designed for the protection of the minority, and generally need not be strictly enforced when there is no minority to protect, business may be greatly expedited. When there is evidently no opposition, except in the case of state law requiring a recorded vote or when a written resolution is being adopted in final form, the formality of voting can be avoided by the Chair ~~Chairman~~ asking if there is any objection to the proposed action, and if there is none, announcing the result. The action thus taken is said to be done by general consent, or unanimous or silent consent. Thus, after an order has been adopted limiting the speeches to three minutes each, if a speaker is so interesting that when said speaker's ~~his~~ time has expired, there is a general demand for the speaker to be permitted to continue making remarks ~~him to go on~~, the Chair ~~Chairman~~ as the presiding officer, instead of waiting for a motion and taking a vote, could accept it as the will of the assembly that the speaker's time be extended, and would direct the speaker ~~him~~ to proceed. Or, the speaker's time ~~he~~ might say that if there is no objection, the member's time will be extended two minutes, or some other time. (Excerpted from Robert's Rules of Order).

#### **Section 11. Public Comment.**

(a) Public Comment with regard to Non-Agenda Items.

(1) In the early stages of a Governing Board, ~~or~~ Staff Directors' Advisory Committee, the Executive Committee, or other MPOAC advisory committee, meeting, time will be reserved for comment by members of the general public and other non-agency individuals. Individuals speaking during "Public Comment" will limit their comments to items not on the agenda. Members of the public and non-agency personnel comments are limited to not more than three (3) minutes per person, although the speaker is permitted to submit commentary in writing of any length provided that copies are made for all members of the board or committee being addressed by the speaker and the board secretary. No members of the public or non-agency personnel may lend speaking time to another speaker. The "Public Comment" period is limited to not more than 15 minutes duration. The Chair ~~Chairman~~ of the Governing Board, ~~or~~ Staff Directors' Advisory Committee, the Executive Committee, or other MPOAC advisory committee, as applicable, may extend the time for an individual person speaking, or the overall "Public Comment" period, for limited periods and for good cause shown.

(2) During a presentation by a member of the public or other non-agency personnel, other members of the public, non-agency personnel, Governing Board Members, Members of the Staff Directors' Advisory Committee, or agency staff members (other than the meeting Chair ~~Chairman~~ in said individual's role as the presiding officer) shall avoid interrupting the speaker. After all speakers have completed comments or a presentation, the Chair ~~Chairman~~, Governing Board Members, members of the Staff Directors' Advisory Committee, and agency staff may question the speakers. Time for question and answer of a speaker will not be deducted from the speaker's three (3) minute speaking limitation.

(b) Public Comment with regard to Agenda Items.

(1) With regard to an agenda item, time will be reserved for comment by members of the public ~~comment~~ and other non-agency personnel. Members of the public and non-agency individuals will limit their comments to the specific agenda item under consideration or the individual's comments will be considered to be out of order. Comments by members of the public and non-agency personnel are limited to not more than three (3) minutes per person, although the speaker is permitted to submit commentary in writing of any length provided that copies are made for all members of the board or committee being

addressed by the speaker and the board secretary. No members of the public or non-agency individuals may lend speaking time to another speaker making comment. The Chair Chairman of the Governing Board, the ~~or~~ Staff Directors' Advisory Committee, the Executive Committee, or other MPOAC advisory committee, as applicable, may extend the time for an individual making comment for limited periods for good cause shown.

(2) During a presentation by a member of the public or other non-agency personnel, other members of the public, non-agency personnel, Governing Board Members, members of the Staff Directors' Advisory Committee, or agency staff members (other than the Chair Chairman in said individual's role as the presiding officer) shall avoid interrupting the speaker. After all speakers have completed comments or a presentation, the Chair Chairman, Governing Board Members, and agency staff may question the speakers. Time for question and answer of a speaker will not be deducted from the speaker's three (3) minute speaking limitation.

(c) Addressing the Governing Board; Decorum.

(1) Members of the public or non-agency personnel seeking to address the Governing Board, the Executive Committee, or ~~the~~ Staff Directors' Advisory Committee, or another MPOAC committee, should prepare their remarks before addressing the Governing Board, the Executive Committee, or ~~the~~ Staff Directors' Advisory Committee, or another MPOAC committee, in an effort to be concise and to the point. Speakers must come to the lectern to speak, but they may come to the lectern only after they have been recognized by the presiding Chair Chairperson-man. Members of the public shall not address individual members of the Governing Board, the Executive Committee, or individual members of the Staff Directors' Advisory Committee, or another MPOAC committee, but shall address the board or committee being addressed as a whole through the presiding Chair Chairman.

(2) Any speaker, or member of the audience at a meeting, who becomes unruly, screams, uses profanity, or shows poor conduct, may be asked to leave the lectern and return to the speaker's seat, or to refrain from further outbursts, by the presiding Chair Chairman. Should the speaker, or member of the audience, refuse to leave the lectern and return to speaker's seat, or to refrain from further outbursts, the Chair Chairman, as the presiding officer, may rule the speaker "out of order." Should the

speaker, or member of the audience, still refuse to leave the lectern and return to the speaker's seat, or to refrain from further outbursts, the Chair ~~Chairman~~ may ask a law enforcement officer to remove the speaker from the meeting.

(d) Sign-up Sheets to be used. Sign-up sheets will be provided for each member of the public or non-agency personnel addressing the Governing Board, the Executive Committee, ~~or~~ the Staff Directors' Advisory Committee, or another MPOAC committee, as applicable, during public comment on non-agenda items or during public comment on an individual agenda item. For public comment on non-agenda items, the person seeking to speak must present a sign-up sheet to the board or committee secretary not later than the beginning of the public comment on non-agenda items. For public comment on an agenda item, the person seeking to speak must present a sign-up sheet to the board or committee secretary not later than the beginning of the agenda item. Sign up sheets shall provide that the speaker identify the speaker's name, address, who the speaker is representing (if anyone), the agenda item that the speaker wishes to address, and the sign-up sheet must include the signature of the person seeking to comment. If a speaker wishes to speak with regard to more than one agenda item, individual sign up sheets must be submitted for each agenda item. The street address for individuals under the age of eighteen (18) may be omitted from being completed on a sign up sheet.

## **Section 12. Amendment of Bylaws.**

(a) These policies and procedures may be adopted, amended, or repealed by amending the adopting resolution. These policies and procedures shall supplement and supervene Robert's Rules of Order to the extent of a conflict.

(b) These policies and procedures may be adopted, amended, suspended, or repealed by a two-thirds vote of the Governing Board members voting.

**Effective Date.** These rules are effective immediately upon adoption.

Resolution Section 2. This Resolution is effective upon adoption.

**PASSED AND ADOPTED** by the Florida Metropolitan Planning Organization Advisory Council at a regular meeting this 6th day of October, 2016.

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Susan Haynie, Chair

ATTEST:

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Carl Mikyska,  
Agency Clerk



# Memo

To: Members of the Governing Board;  
Members of the Staff Directors' Advisory Committee;  
and Carl Mikyska, Executive Director

From: Paul Gougelman, General Counsel

Date: September 12, 2016

Re: Opinion of the Attorney General

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**BACKGROUND:** Earlier this year, the Governing Board, at the request of the Staff Director's Advisory Committee, requested an Attorney General's Opinion relating to the use of federal funds to purchase refreshments (*e.g.* – cookies, water, coffee, and tea) provided at MPOAC meetings. The reason was that the Department of Financial Services ("DFS") indicated that it would likely not reimburse the MPOAC (and potentially MPOs) for expenditures of this nature, since there was no specific state authority for the expenditure.

Regardless of state authority, these expenditures are funded with federal funds which determine the propriety of any expenditure of federal funds. It was believed that these expenditures were consistent with federal grant regulations, in particular 2 CFR §200.432, which states:

**§ 200.432 Conferences.**

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The Federal awarding agency may authorize exceptions where

appropriate for programs including Indian tribes, children, and the elderly. See also §§ 200.438 Entertainment costs, 200.456 Participant support costs, 200.474 Travel costs, and 200.475 Trustees.

As is the case with most requests for an Opinion of the Attorney General, the matter was fully briefed, and a copy of the briefing letter is attached for your review. The letter presented an argument that a reasonable interpretation of the implied authority of the MPOAC permitted such expenditure; that there was express authority provided based on 2 CFR §200.432, a provision that is part of every federal grant; and that based on the Supremacy Clause to the U.S. Constitution, federal requirements are superior to state requirements and preempt state requirements.

I regret to inform you that the Attorney General chose not to address the second two points of argument, and instead addressed only the first point of argument, determining that there was no implied authority for the expenditures. A copy of the Attorney General Opinion is attached for your review.

Having discussed this matter with the Executive Director, it appears that there are three approaches to deal with this opinion:

- 1) Accept the opinion and follow the position of DFS and the Attorney General;
- 2) Seek a modification to state law from the Florida Legislature; and
- 3) Meet with the Federal Highway Administration (“FHWA”), likely in their Washington, D.C., and seek an opinion based on the Supremacy Clause to the U.S. Constitution declaring the expenditures valid and that the State of Florida must follow federal regulations.

It is requested that the Governing Board and Staff Directors’ Advisory Committee consider this situation and provide direction to the Executive Director and the General Counsel.

PRG/ns





## STATE OF FLORIDA

**PAM BONDI  
ATTORNEY GENERAL**

August 2, 2016

16-08

Mr. Paul R. Gougelman  
General Counsel  
Florida Metropolitan Planning Organization  
Advisory Council  
200 East Broward Boulevard, Suite 1900  
Fort Lauderdale, Florida 33301

Dear Mr. Gougelman:

As general counsel to the Florida Metropolitan Planning Organization Advisory Council (MPOAC), you ask substantially the following:

Does the MPOAC have the authority to purchase refreshments for meetings, workshops, and seminars with funds received as a federal grant?

In sum:

The MPOAC is not authorized by state law to purchase refreshments for meetings, workshops, and seminars with funds it has received from a federal grant.

While you have posed three separate questions using the terms "necessary and implied power," as well as "express power" and whether supremacy of federal law controls, this office will address only whether the council has the authority under state law to pay for such expenses.<sup>1</sup>

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<sup>1</sup> This office does not interpret federal law and, therefore, offers no comment on the application of such in this instance. Questions involving the application of federal law or regulations would be more appropriately addressed to the federal agency administering the funds. Moreover, whether 2 CFR s. 200.432 recognizing that refreshments may be provided by a non-Federal entity sponsoring or hosting a conference whose primary purpose is the dissemination of technical information beyond the non-Federal entity serves as sufficient authority for the purchase of refreshments by the MPOAC at its meetings is a determination which must be made by the Florida Department of Financial Services.

Section 339.175(11), Florida Statutes, creates the Metropolitan Planning Organization Advisory Council to "augment, and not supplant, the role of the individual M.P.O.'s in the cooperative transportation planning process..."<sup>2</sup> Section 339.175(11)(c), Florida Statutes, enumerates the powers and duties of the MPOAC to:

1. Enter into contracts with individuals, private corporations, and public agencies.
2. Acquire, own, operate, maintain, sell, or lease personal property essential for the conduct of business.
3. Accept funds, grants, assistance, gifts, or bequests from private, local, state, or federal sources.
4. Establish bylaws by action of its governing board providing procedural rules to guide its proceedings and consideration of matters before the council, or, alternatively, adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring powers or duties upon it.
5. Assist M.P.O.'s in carrying out the urbanized area transportation planning process by serving as the principal forum for collective policy discussion pursuant to law.
6. Serve as a clearinghouse for review and comment by M.P.O.'s on the Florida Transportation Plan and on other issues required to comply with federal or state law in carrying out the urbanized area transportation and systematic planning processes instituted pursuant to s. 339.155.
7. Employ an executive director and such other staff as necessary to perform adequately the functions of the council, within budgetary limitations. The executive director and staff are exempt from part II of chapter 110 and serve at the direction and control of the council. The council is assigned to the Office of the Secretary of the Department of Transportation for fiscal and accountability purposes, but it shall otherwise function independently of the control and direction of the department.
8. Adopt an agency strategic plan that prioritizes steps the agency will take to carry out its mission within the context of the state comprehensive plan and any other statutory mandates and directives.

As a statutorily created entity, the council may only exercise such powers as have been expressly granted by statute or must necessarily be exercised in order to carry out an express power.<sup>3</sup> Moreover, it is well settled that any reasonable doubt as

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<sup>2</sup> Section 339.175(11)(a), Fla. Stat.

<sup>3</sup> See *Forbes Pioneer Boat Line v. Board of Commissioners of Everglades Drainage District*, 82 So. 346 (Fla. 1919); *Halifax Drainage District of Volusia County v. State*, 185 So. 123, 129 (Fla. 1938); *State ex rel. Davis v. Jumper Creek Drainage District*, 153 Fla. 451, 14 So. 2d 900, 901 (Fla. 1943) (because the districts are creatures of statute, each board of supervisors must look entirely to the statute for its

to the lawful existence of a particular power sought to be exercised must be resolved against the exercise thereof.<sup>4</sup>

You state that the council has been advised by the Florida Department of Transportation that reimbursement for the cost of refreshments would likely not be acceptable. This advice supposedly originated from the Department of Financial Services (DFS) and was grounded in the "Reference Guide for State Expenditures" (guide), a publication prepared by the DFS Bureau of Auditing.<sup>5</sup> The guide "provide[s] state agencies guidance regarding the requirements applicable to the disbursement of funds from the State Treasury, regardless of the payment methods[.]"<sup>6</sup> Based upon a now repealed rule of administrative procedure, the guide provides a list of prohibited expenditures, unless such are expressly provided by law, which includes "[r]efreshments such as coffee and doughnuts."<sup>7</sup>

While the administrative rule which automatically prohibited the purchase of refreshments with state funds has been repealed, you state that the council has been informed that the prohibition against purchasing refreshments with state funds remains intact based upon Attorney General Opinion 78-101. In that opinion, this office was asked whether a county property appraiser could expend public funds for the development and distribution of informational material explaining the operations of the appraiser's office. Setting forth the basic requirement that a public officer must have the express or necessarily implied statutory authority to expend public funds for a particular purpose, the opinion found that a property appraiser's statutory duties and powers did not include the development and distribution of informational materials about the appraiser's office. In contrast, the opinion cited several statutes expressly authorizing agencies to prepare materials for informing the public.

In a more recent opinion, this office considered whether a supervisor of elections could use county funds to purchase a membership in local chambers of commerce and

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authority); *Roach v. Loxahatchee Groves Water Control District*, 417 So. 2d 814 (Fla. 4th DCA 1982). *And see* Ops. Att'y Gen. Fla. 89-34 (1989), 96-66 (1996), 98-20 (1998), and 04-26 (2004).

<sup>4</sup> *Halifax Drainage District of Volusia County v. State*, *supra*; *State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So. 2d 628 (Fla. 1st DCA 1974), *cert. dismissed*, 300 So. 2d 900 (Fla. 1974); *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493 (Fla. 1973). *And see, e.g.*, Ops. Att'y Gen. Fla. 02-30 (2002) and 04-48 (2004).

<sup>5</sup> Reference Guide for State Expenditures, Division of Accounting and Auditing, Bureau of Auditing, Department of Financial Services (updated 2011).

<sup>6</sup> *Id.* at p. 7.


<sup>7</sup> Reference Guide, p. 45, citing Rule 69I-40.103, F.A.C. (repealed 10/14/2013). *See State of Florida, Department of Financial Services v. Peter R. Brown Construction, Inc.*, 108 So.3d 723 (Fla. 1st DCA 2013) (Rule 69I-40.103, F.A.C., restricting expenditures for decorative items invalid exercise of delegated legislative authority).

Mr. Paul R. Gougelman  
Page Four

to purchase tickets to luncheons and banquets hosted by community organizations such as a chamber. After discussing the supervisor's express statutory authority to work with the business and local community to develop public-private programs to ensure the recruitment of skilled inspectors and clerks, the opinion concluded that the supervisor of elections was authorized based upon that express statutory authority to expend county funds to purchase memberships in local chambers of commerce and to pay related expenses for attendance to meetings of the chambers.<sup>8</sup>

A review of the powers and duties of the MPOAC enumerated in section 339.175(11)(c), Florida Statutes, does not reveal an express authority to purchase refreshments for the meetings or seminars of the council, nor does the purchase of refreshments appear necessary to carry out the council's express powers.<sup>9</sup> It is my opinion, therefore, that state law does not authorize the expenditure of funds by the MPOAC for refreshments at its meetings, seminars, or conferences.

Sincerely,

  
Pam Bondi  
Attorney General

PB/tals

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<sup>8</sup> See Op. Att'y Gen. Fla. 02-16 (2002).

<sup>9</sup> It should be noted that s. 339.175(11)(b), Fla. Stat., provides: "Members of the council do not receive any compensation for their services, but may be reimbursed from funds made available to council members for travel and per diem expenses incurred in the performance of their council duties as provided in s. 112.061."

Mr. Paul Gougelman  
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RE: PUBLIC FUNDS – ADMINISTRATIVE AGENCIES –  
TRANSPORTATION – expenditure of public funds for refreshments.  
s. 339.175, Fla. Stat.

WEISS SEROTA HELFMAN  
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September 12, 2016

The Honorable Pam Bondi  
Attorney General, State of Florida  
Department of Legal Opinions  
The Capitol – PL-01  
Tallahassee, FL 32399-1050

RE: Request for Opinion of the Attorney General

Dear General Bondi:

The undersigned serves as General Counsel for the Florida Metropolitan Planning Organization Advisory Council (“MPOAC” or “M.P.O.A.C.”). The MPOAC Governing Board has acted to authorize me to write for your opinion. The issues presented are not the subject of pending or anticipated litigation.<sup>1</sup>

ISSUES PRESENTED:

- 1) Does the MPOAC have the *necessary and implied power* to purchase Refreshments for MPOAC meetings, workshops, and seminars, when the money used to purchase the Refreshments consists of money from a federal grant?
- 2) Does the MPOAC have the *express power* to purchase Refreshments for MPOAC meetings, workshops, and seminars, when the money used to purchase the Refreshments consists of money from a federal grant?
- 3) Does the Supremacy Clause in the U.S. Constitution override a State decision not to permit the use of federal grant funds to purchase Refreshments for MPOAC meetings, workshops, and seminars, given the existence of federal regulations authorizing the expenditure of federal grant monies to purchase Refreshments for governmental meetings, workshops, and seminars?

BACKGROUND; DESCRIPTION OF THE AGENCY: The MPOAC is an organization duly constituted pursuant to Section 339.175(11), Florida Statutes. The MPOAC “is created to augment, and not supplant, the role of the individual M.P.O.’s [Metropolitan Planning

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<sup>1</sup> See §IV., Frequently Asked Questions About Attorney General Opinions (internet: [//myfloridalegal.com/pages.nsf/Main/dd177569f8fb0f1a85256cc6007b70ad#types](http://myfloridalegal.com/pages.nsf/Main/dd177569f8fb0f1a85256cc6007b70ad#types))  
FORT LAUDERDALE, FLORIDA CORAL GABLES, FLORIDA  
954-763-4242 305-854-0800

Organizations]<sup>2</sup> in the cooperative planning process described in” . . . Section 339.175, Florida Statutes and 23 USC §134.<sup>3</sup> The MPOAC serves as a “clearinghouse for review and comment by M.P.O.’s on the Florida Transportation Plan and on other issues required to comply with federal or state law in carrying out the urbanized area transportation and systematic planning processes instituted pursuant to s. 339.155.”<sup>4</sup> The MPOAC Governing Board consists of one representative from each M.P.O in the State of Florida.<sup>5</sup>

Of importance in the resolution of the issues presented is the fact that the MPOAC is a non-home rule agency. It possesses the express powers, and those that are necessarily implied, in Section 339.175(11), Florida Statutes.

The MPOAC and each MPO are funded by federal funds pursuant to 23 USC §134 and 49 USC §5303-5305. These monies are known as “PL funds”<sup>6</sup> or metropolitan planning funds. PL funds are made as a grant from the Federal Highway Administration (“FHWA”) to the Florida Department of Transportation (“FDOT”). FDOT in turn pursuant to a formula developed by FDOT in consultation with the MPOs and approved by FHWA,<sup>7</sup> sub-grants the PL funds to the MPOAC and the various Florida MPOs.<sup>8</sup> In short, the FDOT is what is known as a “pass-through entity”.<sup>9</sup>

PL federal funds are subject to extensive federal regulation. The regulations are pursuant to what is known as the “Super Circular” regulations in 2 CFR Part 200, which guides all federal

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<sup>2</sup> There are twenty-seven (27) such metropolitan planning organizations in Florida and many more MPOs in all fifty (50) states. All of the MPOS are created and mandated pursuant to federal law, including 23 USC §134 and 49 USC §5303-5305. Some of the Florida MPOs have elected to be named as a “Transportation Planning Organization” or “T.P.O.” to more accurately reflect to the general public the type of activities which the agency engages.

<sup>3</sup> §339.175(11)(a), Fla.Stat.

<sup>4</sup> §339.175(11)(c)6., Fla.Stat. Section 339.155, Florida Statutes, is the statute that provides the process by which the FDOT will prepare the Florida Transportation Plan.

<sup>5</sup> §339.175(11)(b), Fla.Stat.

<sup>6</sup> See 23 CFR §420.103 definition of FHWA planning and research grants, sub-paragraph (2). PL funds are those monies available for MPOs and the MPOAC to carry out the metropolitan transportation planning process required by 23 USC §134, including the development of metropolitan area transportation plans and transportation improvement programs. Apportionment of PL funds is addressed in 23 USC §104(f).

<sup>7</sup> See 23 CFR §420.109(a). The formula requires FHWA approval. The formula must consider population, status of planning, attainment of air quality standards, and metropolitan area transportation needs. 23 CFR §420.109(b).

<sup>8</sup> This is also required by Section 339.175(6)(f), Fla.Stat.

<sup>9</sup> See 2 CFR §200.74. According to that definitional rule, a “pass-through entity” means “a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.”

grants, and FHWA regulations in 23 CFR Parts 420 and 450. These regulations define what programmatic expenses or costs are acceptable expenditures of PL monies.<sup>10</sup>

The MPOAC periodically holds meetings or workshops of its Governing Board, Staff Directors' Advisory Committee, Governing Board Executive Committee, and Policy & Technical Committee (hereinafter individually and/or collectively: "Conference"). The MPOAC also holds training sessions to educate MPO members concerning the creation and operation of MPOs consistent with federal and Florida law. One of the primary purposes of these Conferences is the dissemination of technical information beyond the MPOAC for the operation of MPOs in a manner either consistent with or implementing federal law relating to MPOs. The expenses are necessary and reasonable for successful performance under the Federal award.

At these Conferences, the MPOAC proposes to provide refreshments in the form of coffee, water, tea, and cookies (herein individually and/or collectively: the "Refreshments"). The Refreshments will be provided free of charge and made available to anyone attending the meetings, whether they are MPOAC officials or members of the public.

The cost of these Refreshments will sometimes be included in the cost of the rental of a facility to hold the Conference, and at other times, there will be an extra charge to the MPOAC (but not Conference attendees) by the Conference facility, in addition to the facility rental, for the Refreshments. The payment for the Conference facility and any additional charge for the Refreshments will be made with federal PL funds "pass-through" the State of Florida.

NATURE OF ISSUES RAISED: The MPOAC is now in doubt whether it has the legal authority to expend these monies for the cost of Conference Refreshments, and the MPOAC seeks direction from the Attorney General. The MPOAC notes that these funds are federal funds, but apparently, given that they pass-through FDOT, they might also be viewed as State funds. The MPOAC recognizes that a final decision on the propriety of expending federal PL funds on Conference Refreshments is a federal issue. The questions for the Florida Attorney General, however, relate to how State authority and the State of Florida's view of the application of Florida law to the expenditure.

BACKGROUND: HOW THE MPOAC'S CONCERN HAVE ARISEN: Recently, FDOT advised the MPOAC, apparently based on advice from the State of Florida's Department of Financial Services ("DFS"), that reimbursement for the cost of Conference Refreshments with PL funds would likely not be acceptable. The process by which this advice was made is somewhat unclear but was informal.

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<sup>10</sup> See, e.g., 23 CFR §420.113(a), which generally defines what costs are eligible expenses under a PL grant. Costs will be eligible for FHWA financial/grant participation provided that the costs: (1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities; (2) Are verifiable from the State DOT's or the subrecipient's records; (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR 18.22; (4) Are included in the approved budget, or amendment thereto; and (5) Were not incurred prior to FHWA authorization.



To obtain a better understanding of the basis of the advice and to be assured that the MPOAC was operating consistent with federal grant guidelines and Florida law, the MPOAC asked for the reasoning behind the advice given. The MPOAC was told that the advice was given based on provisions in the Reference Guide for State Expenditures (Feb. 2011) (hereinafter: the "Guide"), which is a publication prepared by DFS' Bureau of Auditing.<sup>11</sup> The Guide, at p. 45, states:

***PROHIBITED EXPENDITURES***

Per Rule 69I-40.103, F.A.C., expenditures from state funds for items listed below are prohibited unless "expressly provided by law":

Congratulatory telegrams.

Flowers and/or telegraphic condolences.

Presentment of plaques for outstanding service.

Entertainment for visiting dignitaries.

**Refreshments such as coffee and doughnuts.**

Decorative items (globe, statues, potted plants, picture frames, etc).

Greeting Cards: Per s. 286.27, F.S., use of state funds for greeting cards is prohibited.

An expenditure of state funds must be authorized by law and the expenditure must meet the intent and spirit of the law authorizing the payment. The payment of items used generally for the personal convenience of employees, (example: portable heaters, fans, refrigerators, microwaves, clocks for private offices, coffee pots and supplies, etc.), and which are not apparently necessary in order for a state agency to carry out its statutory duties must provide justification for the purchase of these items or perquisite approval. State funds cannot be expended to satisfy the personal preference of employees (example: an agency may not purchase more expensive office furniture or equipment than is necessary to perform its official duties because the employee prefers a more expensive item).

Each voucher must contain documentation which shows the legal authority for the requested payment if the authority is not obvious from the face of the voucher.

**Food Purchases Related Conference/ Conventions/Workshops**

Food purchases for a conference or convention or in connection with the rental of a meeting room for agency workshops or meetings are **prohibited** unless expressly provided by law. Also,

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<sup>11</sup> E-mail from Yvonne Arens, FDOT's Public Transportation Manager, to numerous FDOT employees and copied to Carl Mikyska, MPOAC Executive Director (sept. 8, 2015).

the negotiated price for the rental of a room should not include food and beverages.

(emphasis supplied). The actual Rule referenced in the Guide is Rule 69I-40.103, Florida Administrative Code, and it does not include the commentary above that follows the rule.<sup>12</sup>

A day later it was discovered that Rule 69I-40.103 had been repealed.<sup>13</sup> By telephone call from an unnamed State employee with DFS' Bureau of Auditing, the MPOAC Executive Director was advised that the Rule had been repealed. Mr. Mikyska, the MPOAC Executive Director, summarized his telephone conversation with the DFS employee as follows:

When the . . . [Rule]<sup>14</sup> was repealed in the fall of 2013 addressing this there was some discord about some state expenditures. It was decided that repealing the . . . [Rule] would be appropriate because a previously written Attorney General opinion from 1978 (opinion number 078-101) would apply and would more broadly address the issue of prohibited expenditures. The repealed . . . [Rule] listed specific items and to keep the . . . [Rule] and the list of prohibited expenditures current would be difficult. The Attorney General opinion states that an agency may not spend money on an item unless they are expressly permitted to do so or legislation implies that the agency may spend money on a particular item.<sup>15</sup>

The MPOAC now questions under Florida law and by application of federal law its authority to seek reimbursement of so-called "pass-through" monies. The MPOAC is not seeking an interpretation of federal regulations, but the application of the plain wording of those regulations is critical to the resolution of the State of Florida issues presented.

## ANALYSIS:

### I

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<sup>12</sup> Rule 69I-40.103 provides only:

**69I-40.103 Restriction of Expenditures.**

Expenditures from state funds for items as listed below are prohibited unless "expressly provided by law." (See Attorney General opinion 71-28):

- (1) Congratulatory telegrams;
- (2) Flowers and/or telegraphic condolences;
- (3) Presentment of plaques for outstanding service;
- (4) Entertainment for visiting dignitaries;
- (5) Refreshments such as coffee and doughnuts; and
- (6) Decorative items (globes, statues, potted plants, picture frames, etc.).

<sup>13</sup> See ID 13612221, Florida Administrative Register (Oct. 14, 2013).

<sup>14</sup> Reference to the "Rule" is Rule 69I-40.103, F.A.C.

<sup>15</sup> E-mail from Carl Mikyska, MPOAC Executive Director, to Yvonne Arens, FDOT Public Transportation Manager (Sept. 9, 2015).

THE M.P.O.A.C. HAS THE *NECESSARY AND IMPLIED*  
*POWER* TO PURCHASE REFRESHMENTS FOR M.P.O.A.C.  
MEETINGS, WORK-SHOPS, AND SEMINARS, WHEN THE  
MONEY USE TO PURCHASE THE REFRESHMENTS  
CONSISTS OF MONEY FROM A FEDERAL GRANT

IA

Existing Applicable Florida Administrative Rules

Although the Rule, Rule 69I-40.013 was repealed three (3) years ago, the Guide has not been updated since its publication in 2011. The Guide still displays the Rule as authority for prohibited expenses, and the commentary following the Rule is apparently still included in the prohibited expense category. Without the Rule, the MPOAC questions whether the policy in the Guide reflects the actual state of the Law given DFS' apparent current reliance on AGO 78-101.<sup>16</sup> Clearly, the DFS reliance on AGO 78-101, in apparent contravention of the agency's own Guide, would if it were reduced to a final written determination would amount - - at best - - to free form agency action.<sup>17</sup> At worst, the advice given relies on a now repealed rule.

The MPOAC is concerned that reliance on the Guide could give an incorrect view that the now-repealed Rule, but left in the Guide, in favor of application of AGO 78-101 leaves the impression that the legality of the purchase of Conference Refreshments has become an issue whereby the now-repealed Rule has been subsumed within AGO 78-101. That reasoning the MPOAC believes is incorrect. This is because there is no longer a regulation or court case that specifically rejects the purchase of Refreshments for a Conference. What is left is an Attorney General Opinion which correctly views the expenditure of funds by a non-home rule agency as a question of express or necessarily implied authority to do so.

With regard to authority for the future, DFS apparently now relies on Rule 69I-40.002(1), Florida Administrative Code, and the provisions of AGO 78-101. Rule 69I-40.002(1) provides:

**69I-40.002. Requirements.**

Following is information, data or requirements to be met concerning vouchers submitted to the Chief Financial Officer for payment.

*(1) All vouchers submitted to the Chief Financial Officer for disbursement or transfer of funds shall include documentation*

<sup>16</sup> While one might assume reliance on a "rule" would be necessary, since "[r]ulemaking is not a matter of agency discretion," Section 120.54(1)(a), Florida Statutes, the "preparation or modification of: . . . 2. Statements, memoranda, or instructions to state agencies issued by the Chief Financial Officer or Comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the Chief Financial Officer or Comptroller" is not a "rule" under the Administrative Procedure Act. §120.52(16)(c)2., Fla.Stat.

<sup>17</sup> See *Capeletti Bros., Inc. v. State Dept. of Transportation*, 362 So.2d 346, 348 (Fla. 1<sup>st</sup> DCA 1978); See also *Gopman v. Dept. of Education*, 908 So.2d 1118, 1121-22 (Fla. 1<sup>st</sup> DCA 2005); *Rice v. Dept. of Health & Rehabilitative Services*, 386 So.2d 844, 847 (Fla. 1<sup>st</sup> DCA 1980).

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*to show that the requested disbursement or transfer is authorized by law, unless such authority is evident from the face of the voucher.* When requested by the Chief Financial Officer, the voucher must show that the agency or officer has been expressly authorized by law to expend funds for the purpose under consideration, or must be considered to have been given such authority by necessary implication in order to carry out a duty or function expressly imposed or authorized by law. The requirement for legal authority may not be satisfied by demonstrating that the requested disbursement or transfer has been done or approved previously.

(emphasis supplied).

## IB

### Applicable Federal Administrative Regulations

Rule 69I-40.002(1), Florida Administrative Code, requires that there should be legal authority for the expenditure, and there is such authority. The disbursement of funds is part of a federal grant. Federal regulations applicable to all grants from various federal agencies are contained in what is commonly known as the “Super Circular,” which is contained in 2 CFR §200.<sup>18</sup> The Super Circular regulations authorize the expenditure of PL grant funds for Conference-related Refreshments. 2 CFR §200.432 states:

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<sup>18</sup> See 2 CFR §§1.200(a), 1.205, 200.100(a)(1) which states:

#### **§1.200 PURPOSE OF CHAPTERS I AND II.**

(a) Chapters I and II of subtitle A provide OMB guidance to Federal agencies that helps ensure consistent and uniform government-wide policies and procedures for management of the agencies' grants and agreements.

\* \* \*

#### **§1.205 APPLICABILITY TO GRANTS AND OTHER FUNDING INSTRUMENTS.**

The types of instruments that are subject to the guidance in this subtitle vary from one portion of the guidance to another (note that each part identifies the types of instruments to which it applies). **All portions of the guidance apply to grants** and cooperative agreements, some portions also apply to other types of financial assistance or nonprocurement instruments, and some portions also apply to procurement contracts. For example, the:

(a) Guidance on debarment and suspension in part 180 of this subtitle applies broadly to all financial assistance and other nonprocurement transactions, and not just to grants and cooperative agreements.

(b) Cost principles in parts 220, 225 and 230 of this subtitle apply to procurement contracts, as well as to financial assistance, although those principles are implemented for procurement contracts through the Federal Acquisition Regulation in title 48 of the CFR, rather than through Federal agency regulations on grants and agreements in this title.  
(emphasis supplied).

\* \* \*

#### **§200.100 PURPOSE.**

(a)(1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in §200.101 Applicability. Federal awarding agencies must not

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**§ 200.432 Conferences.**

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The Federal awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§ 200.438 Entertainment costs, 200.456 Participant support costs, 200.474 Travel costs, and 200.475 Trustees.

(emphasis supplied). The reader's attention is also directed to 2 CFR §200.438 Entertainment costs,<sup>19</sup> 2 CFR § 200.456 Participant support costs, 2 CFR §200.474 Travel costs, and 2 CFR §200.475 Trustees. However, none of these rules is applicable to the factual scenario presented. Thus, the requirement of Rule 69I-40.002(1), that of showing the expenditure is authorized by law, has been satisfied.

IC

Applicability of AGO 78-101

DFS now relies on AGO 78-101. AGO 78-101 states:

In considering a question involving the expenditure of public funds by a public officer, it is necessary to determine whether the officer

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impose additional or inconsistent requirements, except as provided in §§200.102 Exceptions and 200.210 Information contained in a Federal award, or unless specifically required by Federal statute, regulation, or Executive Order.

<sup>19</sup> 2 CFR §200.438 states:

**§ 200.438 Entertainment costs.**

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.

in question has been expressly authorized by statute to expend funds for the purpose under consideration, or must be considered to have been given such authority by necessary implication in order to carry out some duty or function expressly imposed or authorized by statute.

In explicating the reach of AGO 78-101, the Attorney General cited to Molwin Investment Co. v. Turner, 167 So. 33 (Fla. 1936)<sup>20</sup> and to AGO 75-299. In Molwin, the Florida Supreme Court noted that an express power duly conferred may include implied authority to use means necessary to make the express power effective, and that such implied authority may not warrant the exercise of a substantive power not conferred. Implied authority cannot exist in the absence of some express grant of authority or the express imposition of a duty.

AGO 75-299 amplifies this position:

If the authorization must be necessarily implied, the person issuing the voucher for payment "is obligated to cast such vouchers in such language as will indicate to the postauditor or the public the legality of such payments." Thus, if the authority is implied rather than express, the official must not only point to the statute expressly authorizing or requiring the performance of a particular duty or function but also point out why the expenditure in question is necessary in order to carry out the express duty or function.

The Florida Attorney General has opined several times with regard to whether a power is implied. However, in each of these opinions, the expenditure is based on an implied power that is clearly beyond the scope of an express power.

In AGO 2009-17, the Attorney General ascertained that the Housing Finance Authority of Palm Beach County had no authority to loan its funds to for-profit developers for the development of affordable housing.

In AGO 2008-02, the Attorney General opined that the expenditure of funds of the Lake St. Charles Community Development District to fund a holiday social event was not within the contemplation of the powers, express or implied, of a Community Development District whose primary purpose is for the planning, management and financing of capital infrastructure.<sup>21</sup>

In AGO 2007-24, the Attorney General ruled that the use of Lake County Water Authority special district funds to host a fishing tournament or to sponsor a soccer league "would

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<sup>20</sup> See also State, Dept. of Environmental Regulation v. Falls Chase Special Taxing Dist., 424 So.2d 787 (Fla. 1<sup>st</sup> DCA 1982).

<sup>21</sup> See Chap. 190, Fla.Stat. and in particular §§190.002, 190.003(8), 190.007, 190.011, 190.012, Fla.Stat.

not appear to be related to the authority's duties to foster and improve tourism through the improvement of streams, lakes and canals within" Lake County.

In AGO 2006-24, the Attorney General opined that the Upper Captiva Fire Protection and Rescue Service District was not authorized to construct, require maintenance of or maintain private roads and pathways that have been damaged or may suffer damage on North Captiva Island.

In AGO 2005-44, the Attorney General concluded that the Florida Keys Mosquito Control District was not authorized to purchase real property for the purpose of leasing that property to a not-for-profit tenant.

In AGO 2003-49, the Attorney General ascertained that the Coquina Water Control District had no authority in its enabling act to undertake the maintenance of roads.

In AGO 2002-75, the Attorney General determined that the Boca Raton Airport Authority, was not expressly or impliedly authorized to levy a special assessment on long term airport rentals.

Another example of ruling on implied powers was in AGO 90-64, in which the Attorney General determined that a housing finance authority would not have the authority to establish a wholly owned and operated state-chartered savings bank.

In AGO 85-43, the Attorney General determined that the Indiantown Water Control District, was not expressly or impliedly authorized to expend district funds to take preventative measures to protect citrus groves within the district from citrus canker.

As previously noted, none of these opinions describes a situation as compelling as the case at bar.

However, the Attorney General in AGO 79-105 has previously advised that whether the expenditure of public funds is expressly or impliedly authorized is a question that can only be answered on a case-by-case basis.<sup>22</sup> The determinative factors to determine the legality of an expenditure include: (i) identification of the officer or agency in question; (ii) identifying the duties and functions imposed by law on that officer or agency (both express and necessarily implied); and (iii) the purpose of the expenditure.<sup>23</sup>

Additionally, in AGO 71-200, the Attorney General's Office addressed the concept of implied authorization referring to the performance of a function or the making of a public

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<sup>22</sup> AGO 79-105.

<sup>23</sup> *Id.*

expenditure if the function or expenditure falls within the “penumbra”<sup>24</sup> of the public officer’s duties. Specifically, there should be a direct public purpose and there should be a rational nexus to the function performed or the expenditure made.

#### ID

#### Application of the Principles in AGOs 78-101 and 71-200

There are a number of instances in which express or implied authority has been found for the performance of an agency function and the expenditure of public funds. For example, in AGO 2005-50, the Attorney General advised that the Florida Keys Mosquito Control District was authorized to reduce or compromise a lien held by the district.

Likewise in AGO 2002-16, the Attorney General applied the functionality test identified in AGO 78-101. The Attorney General found that county funds could be used by the Polk County Supervisor of Elections to purchase memberships in local chambers of commerce and to pay related expenses for attending meetings of the chambers and other community organizations, including the purchase of tickets to attend luncheons and banquets. This expenditure of public funds was found to have a *rational nexus* to the Supervisor’s duty to ensure the recruitment of skilled clerks and inspectors. These expenditures fell within the penumbra of the Supervisor’s duties.

The MPOAC would posit that it has a Governing Board created by Florida law consisting of one representative from each of the 27 MPOs around the State. The MPOAC is expressly authorized to employ an Executive Director.<sup>25</sup> The Executive Director would have to have an office to house the Executive Director, and obtaining an office for the agency and the Executive Director would require the expenditure of public funds to do so. Such an expenditure clearly falls within the penumbra of the necessarily implied powers of the agency and bears a direct public purpose or rational nexus to the duties for which the agency was authorized to undertake. *See* §339.175(11)(c), Fla.Stat.

Likewise, for the agency to operate and function, its Governing Board must meet periodically to perform various functions. To meet it must find a conference room location and to expend funds to do so. This is not expressly authorized by Florida law, but it clearly falls within the penumbra of necessarily implied powers. There is a direct public purpose and a rational nexus to the performance of functions that the agency was authorized to undertake. If the agency Governing Board consisting of 27 representatives could not meet periodically, how else could the agency function? How could the Executive Director be given direction or even be hired?

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<sup>24</sup> A “penumbra” is the surrounding area or periphery of uncertain extent. In constitutional law, the Supreme Court has ruled that the specific guarantees in the Bill of Rights have penumbras containing implied rights, esp. the right of privacy. *Black’s Law Dictionary* (10<sup>th</sup> ed. 2014).

<sup>25</sup> §339.175(11)(c)7, Fla.Stat.



Similarly, when an office is obtained for the agency and the Executive Director or a conference room is obtained for a Governing Board meeting, another necessarily implied power and expenditure would be to purchase electricity for lights and air conditioning. How else could the meeting be held or the office be operated?

The MPOAC notes that the purchase of Refreshments, such as water, tea, cookies and coffee, for all in attendance at MPOAC meetings falls within the penumbra of necessarily implied powers. As a practical matter, does it make sense to argue, based on AGO 78-101, that the purchasing of water or coffee for the refreshment of attendees at an all afternoon meeting is not permissible, because there is no express authority to do so? As a practical matter, does it make sense to argue, based on AGO 78-101, that obtaining a public address system and tape recorder for the ease of attendees at a meeting to hear what is being said or to memorialize decisions made at a meeting<sup>26</sup> would not be permissible, because there is no express to do so? Clearly, these powers fall within the penumbra of necessarily implied powers.

In each of these instances there is a direct public purpose and rational nexus to the performance of the statutorily prescribed duties of the agency. One purpose of the purchase of Refreshments is to keep meeting participants healthy and alert during long, technical Conferences.

## II

### THE M.P.O.A.C. HAS THE *EXPRESS POWER* TO PURCHASE REFRESHMENTS FOR M.P.O.A.C. MEETINGS, WORKSHOPS, AND SEMINARS, WHEN THE MONEY USED TO PURCHASE THE REFRESHMENTS CONSISTS OF MONEY FROM A FEDERAL GRANT

Even if the expenditure of public funds for Conference Refreshments is viewed as not constituting a necessarily implied power of the MPOAC, there is express authority for the expenditure. The PL funds, which fund the operation of the MPOAC, are federal funds. The grant of funds is much in the nature of a contract. In return for federal funds, the State agrees to comply with the federally imposed requirements and to perform the tasks required by the grant.<sup>27</sup> This is based on the concept that the State voluntarily and knowingly accepts the terms of the "contract."<sup>28</sup>

Even if the grant was not viewed as an implicit contract, the MPOAC, as is the case with all MPOs, as sub-recipients of the federal grant, receives PL monies as a part of a grant

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<sup>26</sup> While there is no requirement in the Government-in-the-Sunshine Law requiring tape recording of government meetings, most local and State agencies routinely do so. See AGO 86-21.

<sup>27</sup> Pennhurst State School and Hospital v. Halderman, 451 U.S. 1, 101 S.Ct. 1531, 1540 (1981); Sharp v. Johnson, 669 F.3d 144, 154 (3rd Cir. 2012). This concept is also required by the preamble to Section 339.175(6), Fla.Stat.

<sup>28</sup> *Id.*

agreement with FDOT, which is the federal grant recipient.<sup>29</sup> The contract provides that supply procurement, which would include Conference Refreshments, must comply with the provisions of the Super Circular,<sup>30</sup> which includes 2 CFR §200.432.

As noted by the First District Court of Appeal in National Merchandise Co., Inc. v. United Service Auto Assn., 400 So.2d 526, 531 (Fla. 1<sup>st</sup> DCA 1981), “[t]he law in existence at the time of the making of a contract forms a part of that contract, as if it were expressly referred to in its terms.”<sup>31</sup> Therefore, the performance of duties must be accomplished consistent with federal grant provisions, and the grant, subject to those provisions, is a contract.

Thus, there is express authority for the expenditure of public funds for Refreshments for Conference participants, and that express federal authority is part and parcel of the PL funds grant, binding both the FDOT, as the grant recipient, and the MPOAC and MPOs, as sub-recipients.

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<sup>29</sup> The Agreement acknowledges that the funds are federal grant monies and provides in pertinent part:

1. Authority: The MPO and the Department have authority to enter into this Agreement pursuant to 23 U.S.C. 134, 23 Code of Federal Regulations (CFR or C.F.R.) §450 and Section 339.175, Florida Statutes (F.S.), which, require the Department and the MPO to enter into an agreement clearly identifying the responsibilities for cooperatively carrying out the Federal Highway Administration (FHWA) portion of the Metropolitan Planning Process and accomplishing the transportation planning requirements of state and federal law.

\* \* \*

8. General Requirements:

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B. Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State laws, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Department shall notify the MPO in writing citing the reasons why items and amounts are not eligible for federal participation. . . .

\* \* \*

10. Procurement and Contracts of the MPO

A. The procurement, use, and disposition of real property, equipment and supplies shall be consistent with the approved UPWP and in accordance with the requirements of 2 CFR §200.

<sup>30</sup> See Note 29, *supra*, ¶10.A.

<sup>31</sup> See also Columbia County Commrs. v. King, 13 Fla. 451 (Fla. 1869); General Development Corp. v. Catlin, 139 So.2d 901, 903 (Fla. 3<sup>rd</sup> DCA 1962), citing Von Hoffman v. City of Quincy, 4 Wall. 535, 71 U.S. 535 (1866);

2 CFR Section 200.432 432 is directly on point in this instance providing that the purchase of Refreshments for Conferences is expressly authorized. This express authorization exists in the absence of any State regulation to the contrary, given that Rule 69I-40.103 has been repealed.

III  
THE SUPREMACY CLAUSE IN THE U.S. CONSTITUTION  
OVERRIDES A STATE DECISION NOT TO PERMIT THE USE  
OF FEDERAL GRANT FUNDS TO PURCHASE REFRESH-  
MENTS FOR M.P.O.A.C. MEETINGS, WORKSHOPS, AND  
SEMINARS GIVEN THE EXISTENCE OF FEDERAL  
REGULATIONS AUHTORIZING THE EXPENDITURE OF  
FEDERAL GRANT FUNDS TO PURCHASE REFRESHMENTS  
FOR GOVERNMENTAL MEETINGS, WORKSHOPS, AND  
SEMINARS

Even if Rule 69I-40.103 still existed, which it doesn't, should reliance on such a Rule or concepts in AGOs 78-101 and 71-200 trump federal law?

The U.S. Constitution's Supremacy Clause<sup>32</sup> is applicable. Pursuant to the Supremacy Clause, federal law may preempt state law.<sup>33</sup> Federal regulations have no less pre-emptive effect than federal statutes. Once a federal rule is properly promulgated, it is considered to be an integral part of the regulatory statute.<sup>34</sup>

Even a ruling of a federal agency can preempt state law based on Supremacy Clause case rulings,<sup>35</sup> whether that ruling is by agency administrative rule or by agency advisory opinion.<sup>36</sup> The U.S. Supreme Court approved this concept noting that "[w]here Congress has directed an

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<sup>32</sup> Article VI, clause 2 of the U.S. Constitution contains the Supremacy Clause, which provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

<sup>33</sup> West Florida Regional Medical Center, Inc. v. Lee, 79 So.3d 1 (Fla. 2012).

<sup>34</sup> Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 104 S.Ct. 2694, 2700 (1984); Lilly v. Grand Trunk Western R. Co., 317 U.S. 481, 63 S.Ct. 347 (1943); 2 Am.Jur.2d *Administrative Law* §223 (2016).

<sup>35</sup> 16 Am.Jur.2d *Constitutional Law* §56 n.3 (2016), citing Illinois Natural Gas Co. v. Central Illinois Public Service Co., 314 U.S. 498, 62 S.Ct. 384 (1942).

<sup>36</sup> Teper v. Miller, 82 F.3d 989, 997 (11<sup>th</sup> Cir. 1996).

administrator to exercise his discretion, his judgments are subject to judicial review only to determine whether he has exceeded his statutory authority or acted arbitrarily.”<sup>37</sup>

As noted by the Florida Supreme Court, “[a] state cannot assert jurisdiction where Congress clearly intended to preempt a field of law.”<sup>38</sup> There are three forms of preemption recognized by the U.S. Supreme Court, including express preemption, implied field preemption, and implied conflict preemption.

Express preemption exists where a federal statute explicitly preempts state law. . . . Implied field preemption is only applicable “where the scheme of federal regulation is ‘so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.’ ” . . . . Implied conflict preemption occurs only when it is physically impossible to simultaneously comply with both federal and state law on a topic, or where state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” . . . .<sup>39</sup>

As a general rule, when express preemption does not exist, as is the situation in the case at bar, there is a presumption against preemption. However, “this principle gives way, . . . , where what is at issue is regulation of an area where there has been a history of significant federal presence.”<sup>40</sup> The permissibility of the expenditure of federal PL funds, as a grant, falls within this category.

Additionally, a specific expression of agency intent to pre-empt in a rule is not required before an implied conflict pre-emption can be found.<sup>41</sup> As noted by the Florida Supreme Court, the lack of an express preemption provision in a federal law, rule, or interpretation doesn’t foreclose the question of preemption.<sup>42</sup> The law, rule, or interpretation may impliedly preempt a state law or regulation, whether implied or implicit conflict preemption. It is when there is no express preemption but when it is impossible to comply with both state and federal regulations or

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<sup>37</sup> Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 104 S.Ct. 2694, 2700 (1984); Fidelity Federal Savings and Loan Association v. de la Cuesta, 458 U.S.141, 153-54, 102 S.Ct. 3014, 3022-23 (1982), citing United States v. Shimer, 367 U.S. 374, 381-82, 81 S.Ct. 1554, 1559-60 (1961).

<sup>38</sup> West Florida Regional Medical Center, Inc. v. Lee, 79 So.3d 1, 15 (Fla. 2012) citing Chicago & Northwestern Transportation Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 101 S.Ct. 1124 (1981)..

<sup>39</sup> (citations omitted). West Florida Regional Medical Center, Inc. v. Lee, 79 So.3d 1, 15-16 (Fla. 2012); 16 Am.Jur.2d *Constitutional Law* §55 (2016); see also Florida East Coast Railway Co. v. City of West Palm Beach, 110 F.Supp.2d 1367 (S.D. Fla. 2000).

<sup>40</sup> Florida East Coast Railway Co. v. City of West Palm Beach, 110 F.Supp.2d 1367, 1375 (S.D. Fla. 2000), citing United States v. Locke, 529 U.S. 89, 120 S.Ct. 1135, 1147 (2000).

<sup>41</sup> Geier v. American Honda Motor Co., Inc., 529 U.S. 861, 120 S.Ct. 1913, 1927 (2000).

<sup>42</sup> State v. Harden, 938 So.2d 480 (Fla. 2006).

where the state law is an obstacle to accomplishing the full purposes and objectives of . . .” the federal government<sup>43</sup> that preemption occurs.

In short, based on the Supremacy Clause to the U.S. Constitution, a state cannot validly prohibit compliance with federal laws.<sup>44</sup>

It should be noted that the Florida Legislature has recognized the applicability of the Supremacy Clause and that federal law provides a width breadth of regulation relating to MPOs and the MPOAC. While the recognition requires a notification from the federal government, which isn't required by the Supremacy Clause, in Section 339.175, Florida Statutes, creating the MPOAC and setting forth the general framework for creation of MPOs, the Legislature has recognized the Supremacy Clause and provided that:

(12) APPLICATION OF FEDERAL LAW.—Upon notification by an agency of the Federal Government that any provision of this section conflicts with federal laws or regulations, such federal laws or regulations will take precedence to the extent of the conflict until such conflict is resolved. The department or an M.P.O. may take any necessary action to comply with such federal laws and regulations or to continue to remain eligible to receive federal funds.

Decisions concerning expenditure of PL funds inconsistent with federal grant provisions not only violate the contract created by the federal grant of PL funds but also violate the Supremacy Clause.

In this case the inconsistency results, because federal regulations (which are a part of the grant contract) specifically provide that PL funds may be used to obtain Refreshments for Conferences. If there were State authority to the contrary, the MPOAC believes that this conflict violates the Supremacy Clause.

An example of how such conflicts have been resolved in the past may be found in a U.S. Supreme Court ruling in Fidelity Federal Savings and Loan Association v. de la Cuesta, 458 U.S. 141, 102 S.Ct. 3014 (1982). At issue in de la Cuesta was a federal regulation adopted by the Federal Home Loan Bank Board that due-on-sale clauses *may* be included in a loan instrument at the option of a savings and loan association.<sup>45</sup> The California courts, in contrast, limited a federal savings and loan association's right to exercise a due-on-sale provision to those cases where the lender can demonstrate that a transfer of a mortgagor's title to a new fee owner has impaired the savings and loan association's security.<sup>46</sup> A California appellate court in an opinion

<sup>43</sup> *Id.*, 938 So.2d at 490.

<sup>44</sup> Ubiquiti Networks, Inc. v. Kozumi USA Corp., 981 F.Supp.2d 1207 (N.D. Fla. 2013).

<sup>45</sup> 12 CFR §545.8-3(f).

<sup>46</sup> de la Cuesta, 102 S.Ct. at 3023. This decision of the California courts occurred in Wellenkamp v. Bank of America, 21 Cal.3d 943, 148 Cal.Rptr. 970 (Cal. 1978).

in the de la Cuesta case noted that the Federal Home Loan Bank Board's regulation "merely authorizes and does not compel savings and loan associations to include a due-on-sale clause in their loan contracts and to exercise their rights thereunder."<sup>47</sup>

The U.S. Supreme Court found that there was a conflict between the California court rulings and the Federal Home Loan Bank Board's regulation. The Court explained that,

The conflict does not evaporate because the Board's regulation simply permits, but does not compel, federal savings and loans to include due-on-sale clauses in their contracts and to enforce those provisions when the security property is transferred. The Board consciously has chosen not to mandate use of due-on-sale clauses "because [it] desires to afford associations the flexibility to accommodate special situations and circumstances." . . . 12 CFR §556.9(f)(1) (1982). Although compliance with both § 545.8-3(f) and the . . . California courts' rulings may not be "a physical impossibility," . . ., the California courts have forbidden a federal savings and loan to enforce a due-on-sale clause solely "at its option" and have deprived the lender of the "flexibility" given it by the Board.

(footnote omitted); 102 S.Ct. at 3023.

The case at bar is a virtually identical scenario, dictating a virtual identical result. Like the Federal Home Loan Bank Board regulation which doesn't mandate use of due-on-sales clauses by federal savings and loan associations, the Super Circular regulation does not mandate that a grantee or sub-grantee submit for reimbursement for the cost of Conference Refreshments. It permits it. Like the California court rulings which prohibit the enforcement of due-on-sale clauses in most instances, the State of Florida decision in this case bars the reimbursement because of either language in the Guide (which is based on a rule since repealed) or based on a lack of authority to expend money on Conference Refreshments.

Respectfully, based on the U.S. Constitutional Supremacy Clause, the MPOAC seeks assurance that the expenditure of funds for Conference Refreshments if legal under federal law would trump a determination that the MPOAC could make such an expenditure under Florida law.

**SUMMARY:** The MPOAC finds that there is both necessarily implied authority and, based on 2 CFR §200.432, express authority for the expenditure of federal PL monies for Conference Refreshments. Additionally, a determination to the contrary based on concepts of Florida law would be contrary to the apparent wording 2 CFR §200.432 permitting reimbursement of grant

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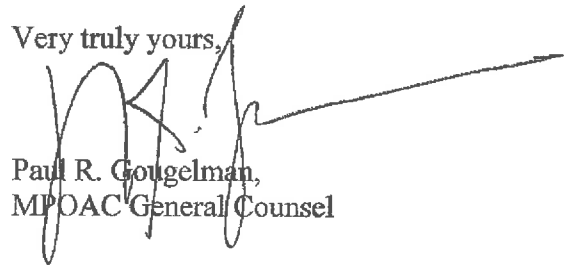
<sup>47</sup> de la Cuesta v. Fidelity Federal Savings and Loan Association, 121 Cal.App.3d 328, 175 Cal.Rptr. 467 (1981).

The Honorable Pam Bondi  
May 5, 2016  
Page 18 of 18

expenses for Conference Refreshments, and would violate the Supremacy Clause in the U.S. Constitution.

Again, as noted above, the MPOAC does not seek an interpretation of the federal regulation. Instead, the MPOAC would assume that it authorizes the purchase of Conference Refreshments. Assuming that fact, the MPOAC seeks guidance on its legal authority to purchase Conference Refreshments. The MPOAC seeks a formal opinion of the Attorney General, as opposed to an informal opinion.

Very truly yours,



Paul R. Gougelman,  
MPOAC General Counsel

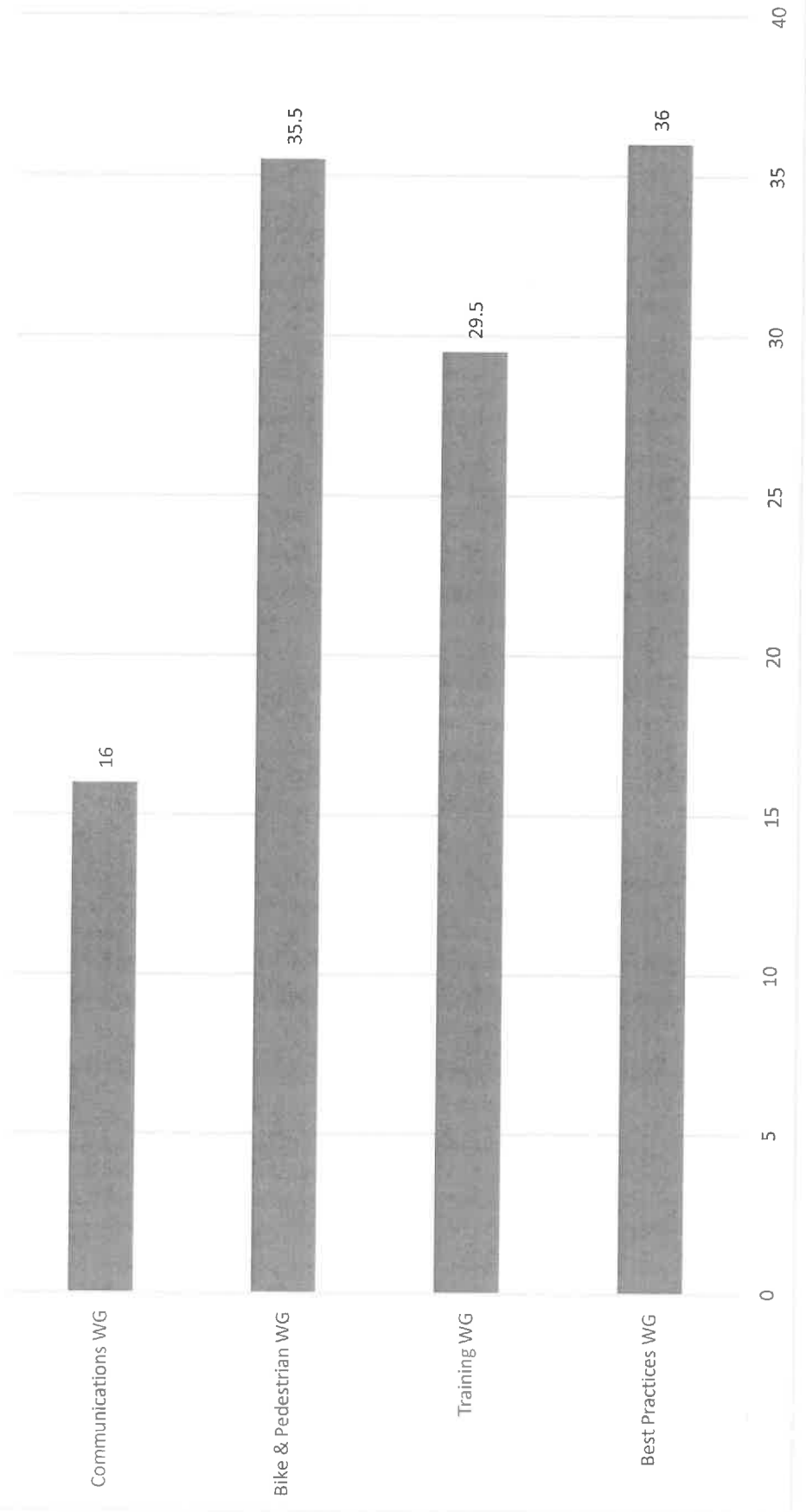
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pc: Carl Mikyska, MPOAC Executive Director





### MPOAC Strategic Directions Working Groups Survey Results





# MPOAC Executive Director Performance Review

## EMPLOYEE INFORMATION

**Name:** Carl Mikyska

**Review Date:**

## REVIEW INFORMATION

**Reviewer Name:**

**Review Period:**

June 15, 2015 - September 30, 2016

Complete this review using the following scale:

**2 = EXCEEDS JOB EXPECTATIONS:** Consistently exemplary performance, including in demanding situations or circumstances.

**1 = MEETS JOB EXPECTATIONS:** Competent performance in most situations and circumstances.

**0 = PARTIALLY MEETS JOB EXPECTATIONS --** Shows capability, but in a variable manner. Improvement needed in key areas.

**X = DOES NOT MEET JOB EXPECTATIONS --** Major or ongoing problems that negatively impact organizational objectives.

(Outstanding)      (Good)      (Needs Work)      (Poor)

### EVALUATION

**2**                      **1**                      **0**                      **X**

<b>Maintains effective communications with and availability for the Staff Directors and Governing Board</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Represents the MPOAC well, understands role, and implements the Board's vision</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Understands and maintains compliance with Federal and State MPO requirements as they apply to the MPOAC</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Understands current trends and issues impacting the MPOAC and membership, informs the Staff Directors and Governing Board as to their implications</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Hires and develops qualified staff appropriate for day-to-day operations and guides staff to achieve objectives</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Maintains public image of the MPOAC representing service, vitality and professionalism while enhancing the visibility and identity of the organization</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Builds relationships and encourages the creation of partnerships with other organizations that contribute to the MPOAC's mission and vision</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Develops sound budgets for current and future revenues and expenses necessary to maintain daily and overall operations</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Meets challenges head on</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Manages assets including technology, equipment, budget, and office space</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Encourages public involvement and maintains transparency for the Board, the public, and staff</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Inspires confidence, establishes credibility with the Governing Board, Staff Directors, MPO Staff and partners</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Maintains a "big picture" outlook and is aware of industry issues</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Exhibits diligence in leading the MPOAC</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Forecasts trends, responds to change, and invites innovation</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Maintains public image of the MPOAC representing service, vitality and professionalism while enhancing the visibility and identity of the organization</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Solicits and acts upon the ideas of others when appropriate</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Demonstrates excellence in carrying out job responsibilities and accomplishing goals</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Participates in relevant and worthwhile professional organizations</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Additional Comments:**

## **Item Number 7**

### **Communications**

#### **DISCUSSION:**

- A. MPOAC Comments to the Federal Register Docket
  - 1. Performance Measures
  - 2. MPO Coordination and Planning Area Reform
- B. Thank you note from Florida League of Cities

#### **REQUESTED ACTION:**

As may be desired.

#### **ATTACHMENTS:**

- 1. MPOAC Comments to the Federal Register Docket – National performance management measures
- 2. MPOAC Comments to the Federal Register Docket – MPO Coordination and Planning Area Reform
- 3. Thank you note from the Florida League of Cities staff, Megan Sirjane-Samples





**The Florida Metropolitan Planning Organization Advisory Council**

*Mayor Susan Haynie  
Chairperson*

Docket Management Facility  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

RE: Docket Number FHWA-2013-0054  
FHWA RIN 2125-AF54  
Notice of Proposed Rulemaking (NPRM); Request for Comments  
*National performance management measures; assessing performance of the national highway system, freight movement on the interstate system, and congestion mitigation and air quality improvement program.*  
As published in the Federal Register, Friday, April 22, 2016

Dear Secretary Foxx,

On behalf of the 27 member Metropolitan Planning Organizations (MPOs) of the Florida MPO Advisory Council (MPOAC), I want to thank you for the opportunity to comment on the proposed national performance management measures; assessing performance of the national highway system, freight movement on the interstate system, and congestion mitigation and air quality improvement program.

The MPOAC supports the positions and comments submitted by the Florida Department of Transportation (FDOT), the National Association of Regional Councils (NARC) and the Association of Metropolitan Planning Organizations (AMPO). In addition to their comments, the MPOAC is providing additional specific comments.

Generalized Comments

**Overall Support.** The Florida MPOAC supports the use of performance measures to tell a national story, as FHWA has stated as a purpose in the beginning sections of the NPRM. We look forward to seeing national data which will hopefully demonstrate the need for continued and additional investment in national, state and local transportation systems.

**Align the various due dates.** While each item may not launch at the same time, please set a future point in time when all reporting of measures will align to fall on the same day.

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*Carl Mikyska, Executive Director*

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1-866-374-3368 x 4037 or 850-414-4037 · Fax 850-414-4895

**Establish segment lengths based on logical termini.** We suggest that segment length should be based on logical termini – not mandated maximum lengths as proposed in the NPRM.

**Separate managed lanes data and general use lanes data.** FHWA has stated that at this time there is not a way to separately measure managed lanes from the traffic occurring on the general use lanes of the interstate system. This will produce two very different data sets which will be merged into one data set with very unusual characteristics. It is very important that a methodology be developed soon to collect the data as two distinct sets and evaluate each separately so that we have an honest evaluation of the system performance where both managed lanes and general use lanes exist on the interstate system.

**Provide flexibility in evaluating long term progress.** The reliability measure as written would reward the slow implementation of certain strategies such as the introduction of road rangers on the Interstate. The purpose of road rangers is to remove traffic incidents and resume free flow conditions of all lanes in an expeditious manner, minimizing the time a traffic incident creates traffic disruptions. The region-wide implementation of a strategy, such as road rangers, over the course of several years would spread out the benefit across many reporting periods and help to insure that each reporting period showed improvement over the previous reporting period. The opposite approach, implementing a strategy such as road rangers across the entire system in one year, would provide a larger positive impact, but only for one reporting period. At the conclusion of that reporting period, the implementing agency/agencies would need to find new ways to show improvement to the system performance. One of the unintended consequences of the System Performance Measures may be encouraging the slow, multi-year implementation of strategies which would be a disservice to the traveling public. We don't believe this is the intended outcome Federal Highway Administration (FHWA) desires. The MPOAC suggests that FHWA consider changes to the proposed rule that will allow large-scale efforts to be credited over a period of several years or reporting periods so that the incentive for slow implementation is removed.

**Maintain Local Control Over Transportation Decision-Making.** The MPOAC requests that the final rule state clearly that at no point now or in the future will FHWA or the Federal Transit Administration (FTA) direct or demand how funds are to be invested in the state or local transportation network based on the system performance measures. It would undermine local decision-making if states or local agencies were forced by federal agencies to dedicate funding to specific projects or project categories in a manner that would attempt to change a specific performance measure.

**Punitive Use of System Performance Measures.** The final rule must clearly state that FHWA and FTA are prohibited from using the results of the Performance Measures in MPO Certification Reviews (please see 23 USC 450.334(b)) to generate recommendations or corrective actions. Due to the statewide nature of the measures and the difficulty in changing the system performance of a region that an MPO is



responsible for, especially when considering the numerous factors beyond the control of the MPO, it would be punitive at best to use the results of performance measures to generate corrective actions or recommendations in the federal Transportation Management Area (TMA) MPO certification review process. To use these performance measures for corrective actions would force an MPO to program funds to improve specific system performance measures, likely to the detriment of other aspects of transportation. Additionally, the state may wish to commit funds to another performance measure that is generally failing across the state, but not in the geographic area of the MPO. This could set-up a situation where local priorities would be in direct conflict with statewide priorities and damage the existing state/MPO partnership. Additionally, because MPO Executive Directors are commonly evaluated by the number of corrective actions in the federal MPO certification review process (informally in all cases and formally in several cases), any corrective action identified on the basis of performance measurement could have a direct impact on their salary or employment status..

- a. State DOTs shall be prohibited from using the system performance measures in the joint state/MPO certifications of MPOs (please see 23 USC 450.334(a)) for the same reasons stated above.
- b. FHWA and FTA shall be prohibited from using the system performance measures in the assessment of statewide planning that is conducted when approving the statewide transportation improvement program (STIP) (23 USC 450.218(b)) for the same reasons stated above.

**Do Not Use System Performance Measures to Determine Federal Funding Levels.**

The final rule must expressly state that these performance measures shall not be used, and were not intended to be used, as a mechanism to determine funding levels to states. If the US Department of Transportation (USDOT)/Congress were to shift to this practice, then states that have not managed their systems well would be “rewarded” with additional funding for their poor management. Further, states like Florida that have proactively implemented additional transportation projects by generating local and state sources of transportation funds would be harmed by such a policy by rewarding states that did not take similar measures to improve their own transportation networks. We are simply asking that those who have taken the initiative to help themselves should not be harmed by receiving less federal funding.

**Recognize the limitations of the proposed measures.** Because these performance measures are focused only on certain elements of the transportation system and do not represent the whole transportation system, we ask that FHWA and FTA take a cautious approach to implementation by doing the following:

- Establish a comprehensive strategic plan that details how these measures are to be used to reach the federal vision and to provide context for states and MPOs to apply the results of the performance measures. The plan would also offer an understanding of which elements of the performance measures are most important.

- Please consider unintended consequences. If an effort by a state to improve travel time reliability (TTR) results in that state diverting funding away from safety programs, there could be lives lost. The following performance reporting period, the state improves their TTR measure and measured deaths stay the same. However, the death rates could have gone down if the funding had not been diverted. Is this the result FHWA and FTA are intending to achieve? We ask that great caution be taken when implementing the proposed rule and that a periodic evaluation be undertaken for all performance measures in partnership with states and MPOs. This reevaluation should take place every five years to determine how performance measures are being used, if any unintended consequences have resulted, what measure remain relevant, and if any new measures should be established, particularly in the areas of transit and non-motorized transportation.
- Recognize that travel patterns and the resulting congestion (and thus travel time reliability) are products of many individualized decisions. These decisions are based on factors well beyond the scope of transportation, such those that families use when selecting a neighborhood to live in (school quality, crime rates, and distance to shopping and amenities, proximity to more than one employment center, etc). Also, traffic levels will fluctuate based upon the health of the national and local economies, the relative costs of fuel, and the seasonal fluctuations of travel patterns. These and other factors may alter how the data performs in the structure proposed by FHWA. Therefore, we must acknowledge and factor into our review of the performance measures that these are simply one set of indicators of performance and that they do not capture all essential elements of a healthy transportation network. An over-reliance on these performance measures will create a value system that does not represent the larger set of values of the general public.

**Account for Localized Conditions, including Seasonal and Regional Characteristics.**

Some regions and states have unique travel characteristics that will affect how they manage their systems and the data used in the proposed performance measures will not tell the whole story. From one state to another, the data will not always be comparable as well as from region to region. This makes the ability of FHWA to tell a national story much more difficult. We believe this a comment representative of all states and regions across the United States. An example to better explain our request follows:

- System performance in Florida will suffer during the winter months when retirees and vacationers come to Florida in great numbers to escape the cold weather conditions of northern climates. During the summer months when school-aged children are typically out of school, Florida sees another spike in visitors and again, system performance suffers. As a result of these travel trends, Florida manages the transportation system differently than other states. Last year Florida

hosted over 100 million visitors. This is a tremendous boon to the Florida economy. However, to achieve “good” performance numbers under the proposed rule, we would be rewarded if we discouraged visitors from coming to Florida. This, of course, will not happen. The point to keep in mind is that localized conditions are exactly that – localized. It is difficult to compare one state to another, or even one region to another, without accounting for the differences and unique characteristics of each. Also, it is important to note from this example, transportation does not perform or exist in a vacuum. Therefore, it is unfair to evaluate it in a vacuum and with broad measures.

We ask that the final rule provide some form of evaluation of system performance reporting which expressly includes consideration of unique localized conditions.

We have included specific comments below that are very similar to this generalized comment. They are not to be confused as being the same issue repeated in our comments.

### **Specific Comments and Responses to Requests for Comments by FHWA**

**System Performance Measure Transparency and Data Availability on the World Wide Web.** The NPRM on page 23853 notes FHWA’s desire “to provide for transparency by communicating the content of the report to the public on an externally facing Web site in a downloadable format.” Because the FHWA website can be difficult to navigate and is not always easy to find information on, we ask that the referenced website be easily found on the USDOT website. We also ask that the data in the website be downloadable, be searchable, offer the public the ability to sort the data and have the capability to export the data to some commonly available software so that researchers, students, MPOs, DOTs and the general public can review and analyze the data. We also ask that all performance measures, reports, and USDOT reviews, comments, letters and approvals/disapprovals be posted to this website and that all state and MPO specific performance measures, reports, and USDOT reviews, comments, letters and approvals/disapprovals be posted to each FHWA division and FTA region websites. This would facilitate public involvement and is consistent with the stated purpose (page 23807 of the NPRM) of FHWA to “...provide FHWA the ability to better communicate a national performance story...”. The transportation community may also realize a benefit from research performed using the data. Through academia, research may find improved investment strategies and techniques that had not been previously considered or studied in transportation circles.

**Green House Gases.** The NPRM mentions potentially considering some form of a performance measure related to green house gases (GHG). There is a lack of detail and making comments that would be constructive, either positive or negative, is difficult with any specificity. Therefore, we ask that FHWA develop a separate proposal that provides specific details at a level similar to the Travel Time Reliability performance measure NPRM, This would allow interested parties a detailed understanding of the proposal and the ability to provide comments specific to GHG issues.

**Avoid Burdening Attainment Areas.** One of the stated goals of the System Performance NPRM is to "...Avoid Imposing Burdens on Areas in Attainment..." (Page 23817) and the MPOAC agrees with this approach completely and encourages FHWA to carry this approach into the final rule.

**CMAQ Comments.** Because Florida is currently attaining all National Ambient Air Quality Standards and thus would not be subject to the CMAQ performance measures, we are minimizing, and in some cases withholding altogether, specific comments on these sections of the NPRM. We did note that there is a desire to measure the effectiveness of CMAQ projects by looking at the CMAQ dollars expended on a project and comparing that to the amount of emissions reductions achieved. We would caution that CMAQ projects typically have several sources of funding and looking at only CMAQ dollars on projects would overstate the impact of CMAQ dollars to achieve emissions reductions. A better measure would be to look at CMAQ funded projects and consider all funds on the project when comparing it to the emissions reduction. The MPOAC requests that the final rule require a complete funding picture of CMAQ projects when evaluating dollars to emissions reductions.

**Fiscal Constraints.** The MPOAC fully agrees with the statement found on page 23822 of the NPRM, "Recognize Fiscal Constraints – provide for an approach that encourages the optimal investment of Federal funds to maximize performance but recognize that, when operating with scarce resources, performance cannot always be improved." We ask that this philosophy be carried into the final rule.

**Future Data Collection and Technology Advancements.** FHWA requests comments on page 23824 of the NPRM relating to anticipated future advancements in technology which may allow for additional data collection related to Trip Information Data as well as Throughput Data and Survey Data. In an earlier MPOAC comment, a suggestion was made to revisit the whole performance measures structure every five (5) years for relevance and appropriateness. The discussion of future data collection capabilities would be best addressed at one of the future reviews when we have a better understanding of opportunities created by technology advancements related to and impacting data collection.

**Freight Performance and the Multi-Modal Nature of Freight.** On page 23828 of the NPRM, FHWA recognizes that "...a true picture of freight performance must reflect the multi-modal nature of freight." The MPOAC agrees completely and asks that the final rule recognize that too much focus on highway freight may hinder investment in rail freight capacity. When rail freight crosses a roadway, the performance measures may favor slowing the rail freight or disrupting the rail operations in order to achieve better roadway performance. While the better public investment may be directed at rail systems in some regions, an investment in rail may negatively affect the system performance measures in this NPRM. We ask that caution be used when reviewing and measuring on-road freight without a corollary measure for rail freight.

**Preserving Local Decision-Making.** The MPOAC was pleased to see FHWA's recognition on page 23831 of the NPRM that transportation strategies are local decisions and that FHWA desires to "...avoid any measures that would impact the ability of a state DOT or MPO to make decisions that work for the local area." We ask that this philosophy be carried forward into the final rule.

**Data Outliers.** The MPOAC generally agrees with the logic and proposal on page 23832 of the NPRM to eliminate from the data pool any data outliers (travel times at speeds less than 2 mph and over 100 mph). We did note that this only applies to the System Performance Measure and not to the Freight Performance Measure. We suggest that the data be consistent between the two measures and that the approach of eliminating data outliers be applied to both the System Performance Measure and the Freight Performance Measure. We do not know how much data will fall into the outlier category and find it difficult to provide detailed comment on this specific provision. We do agree that data indicating over 100 mph is likely incorrect and should be eliminated.

**Population Thresholds for Applying Travel Time Reliability.** FHWA requested comment on population thresholds for where to measure travel time reliability. On page 23835 of the NPRM, FHWA suggested 1 million population would be an appropriate number and the MPOAC agrees. This comment is correlated to our next comment and we ask that they be considered together.

**Travel Time Reliability, Transportation User Expectations and Measuring the Right Metric.** The NPRM on Page 23839 explains: "...Travel Time Reliability is consistency or dependability of travel times from day to day or across different times of day." On page 23873, FHWA proposes that a roadway segment would be considered unreliable when travel times are 50% longer than normal travel times. On page 23874 of the NPRM, FHWA requests comment on this methodology to define and measure Level of Travel Time Reliability. The MPOAC respectfully disagrees with portions of this definition and the overall approach.

In large urban areas, time of day is known to impact expected travel times and system users adjust accordingly. When asking how much time is required to travel from one point to another in a small urban or rural area, normally an answer is provided in minutes or hours. In a large urban area, this same question is answered with a clarifying question asking what time of day the trip is going to occur because residents know to allow additional time for trips during the highest system usage periods of the day. In many urban areas, a 20 mile trip that takes over one hour during rush hour is considered "normal.". During non-rush hour times, the same trip may only take 20 minutes. By the measure proposed, the referenced rush hour trip would be considered un-reliable, but residents would think it average.

The MPOAC suggests that the reliability measure can be better addressed by comparing average travel times by hour during the year. To explain further, the idea would be to compare the same time block across the year. For example, the 4 to 5PM travel times of weekdays (minus holidays) for each day of the year would be measured

and the reliability would look at the variability of the travel time for that one hour period over the course of a year. Higher variability would indicate a lack of reliability. The comparison of the variability of peak travel times across a one-year period will encourage state DOTs and MPOs to minimize the travel time variability and will still address the intent of FHWA to determine travel time reliability.

By comparing peak hour travel times over a one year, two year or longer period of time, system operators will focus on more operational strategies such as ITS and improving incident response times. These are strategies that are affordable and effective, whereas adding additional lanes to the interstate system in hopes of eliminating all congestion is not cost feasible. The MPOAC questions why we would measure system performance in a manner that would seem to suggest taking an action that we know we cannot easily afford? Additionally, comparing peak travel times to non-peaks travel times seems to suggest that any and all congestion is bad. Some level of congestion promotes dense land use development, promotes taking discretionary trips during non-peak times, encourages transportation demand management strategies such as teleworking, and increases the value of transit – particularly rail transit. Instead let us focus our data collection, implementation and measuring efforts on something that is within our financial abilities and control. Additionally, we believe that even if revenues were substantially increased, making large projects capacity expansion on our urban interstates financially feasible, that local decision-makers would rank such projects as the top transportation priority for their region. It is also quite likely that environmental approval for such a project would be difficult to secure. Therefore, for environmental and financial reasons, projects such as the FHWA proposed measure would seem to promote, are not a possibility or potentially even desirable and we ask FHWA to reconsider the proposed travel time reliability measure.

On page 23873, FHWA proposes to establish a peak hour travel time measure for the NHS, including Interstate System and non-Interstate NHA within urban areas of over 1 million population. The MPOAC agrees with this concept and proposes that this be the only measure of travel time reliability for the entire system.

FHWA asks on page 23873 of the NPRM if the 1.5 threshold is appropriate for comparing travel times between “normal conditions” (the 50<sup>th</sup> percentile) and the 80<sup>th</sup> percentile travel times. Please see the comments provided in this section and confirm that we do not believe that this is an appropriate threshold or approach.

**Use of the Posted Speed Limit as a Default Value Travel Speed.** In response to FHWA’s request for comment on page 23876 of the NPRM, the MPOAC opposes the use of the posted speed limit as a data point when no data is available. This may create two impacts to the measured data and both have the possibility of substantially altering the Level of Travel Time Reliability measure to the point of being useless. Even though the MPOAC opposes using the 50<sup>th</sup> and 80<sup>th</sup> percentile for comparative purposes, it may end up being the choice made by FHWA in the final rule and, therefore, we feel compelled to provide comment on this portion of the NPRM. First, too many missing data points could result in having the 80<sup>th</sup> percentile and 50<sup>th</sup> percentile data points be

the posted speed limit. While we are opposed to using the 50<sup>th</sup> and 80<sup>th</sup> percentile points for comparative measures, adding this second variable would be further altering the representation of the actual conditions and system user expectations. The substitution of the posted speed limit as the travel time when no data is available would further defeat the purpose of the measure. The second possibility would be one where the posted speed limit/missing data points would fall between the 80<sup>th</sup> percentile and 50<sup>th</sup> percentile data points, pushing the actual measured data points further apart and resulting in a performance measure that is not representative of reality.

Instead, we suggest that missing data points be eliminated from the pool of data points and not substituted with a “replacement” number. In another section of the NPRM, FHWA suggests eliminating any data that indicates a travel speed of over 100 mph or under 2 mph. FHWA has shown a willingness to eliminate data points when the data appears erroneous, please expand this approach to missing data points. We believe that there will be sufficient data over the course of a year to reliably make comparative evaluations without having to rely on default values.

**Locally Available Data.** FHWA discusses in the NPRM the use of local data that may be available. On page 23840 FHWA states “If more detailed and accurate travel time data exists locally, FHWA is proposing that this data could be used in place of, or in combination with the NPMRDS provided it is first approved by FHWA.” The MPOAC supports this flexibility. That said, we ask the FHWA to clarify what the approval process will look like, who will have the authority to grant the approval, how quickly will the approval be granted after a formal request is made, what information will be required in order for a FHWA approval to occur and how frequently can requests be made by each state? We also support inclusion of a time limit in the final rule for such requests and a provision be added clarifying that the request will be considered approved if a request is made and no action is taken after the time limit specified in the rule. Similarly, on the same page and the next page of the NPRM there is a discussion of “equivalent data sources” and the same comments apply.

**Changes to measured roadways and boundaries.** The NPRM discusses the ability of states to adjust the NHS limits and the MPOAC suggests that when NHS limits are adjusted that targets may also be adjusted in response to the change to the NHS limits. A similar discussion takes place later in the NPRM related to Metropolitan Planning Area (MPA) boundary changes and how MPA changes could affect targets (see page 23861-23862 of the NPRM). FL MPOAC believes the two issues are similar and should be treated in the same manner.

**Target setting flexibility.** On page 23844 of the NPRM, FHWA requests comments on establishing optional additional targets and any other flexibility that FHWA could provide to state DOTs related to optional additional targets. The MPOAC supports this concept and would ask that FHWA convene a series of workshops four (4) to five (5) years after implementation of the system performance measures to learn what experiences states have had and how these additional optional targets may assist state DOTs in their system management. We ask that FHWA commit to no fewer than eight (8) workshops

around the country and a concluding webinar to share the input and insights learned from the workshops so that the information may be shared nationwide.

**Target Setting agreement among MPOs and State DOTs.** It is generally thought, and implied, in the NPRM that state(s) and MPO(s) in a region will agree on the targets to be set. Certainly in some future point it seems inevitable that there will occur an occasion where local units of government and a state DOT will not agree on a target. The NPRM does not address what shall be the course of action to resolve differences in target setting. We ask that the final rule leave the issue of resolving differences to the states and locals.

**Attainment States and adjacent non-attainment or maintenance areas.** On pages 23848 and 23849 of the NPRM FHWA suggests that "...if a State is in attainment for the applicable criteria pollutants, but that state is part of a multistate urbanized area with more than 1 million in population and another part of that urbanized area contains an applicable nonattainment area or maintenance area then the State that is in attainment would be required to work with the other States and establish a traffic congestion target." We completely disagree with this approach. States that are in attainment need to remain exempt from traffic congestion measures and targets.

**NPMRDS lacking data.** On page 23850 of the NPRM, FHWA states that they are aware that the NPMRDS is lacking data on the non-Interstate NHS roadways in the short-term. FHWA also states that the missing data will make it difficult for states to establish reasonable traffic congestion targets stating, "By the time the 2-year condition/performance are calculated, FHWA expects the NPMRDS data to have improved to an acceptable level for this measure." We ask FHWA to consider either delaying implementation until FHWA is absolutely sure sufficient data populates the NPMRDS database or develop an alternative approach using alternative data sources so that states may establish reasonable traffic congestion targets. Leaving this to a likely, but not guaranteed, future is concerning and requires an alternative approach.

**Challenges and Trade-Offs in Achieving Targets.** On page 23863 of the NPRM, FHWA states, "The FHWA recognizes that there may be factors outside of a state DOT's control that could impact its ability to achieve a target." Later on the same page appears, "The FHWA recognizes that the state DOTs and MPOs have to consider multiple performance priorities in making investment trade-off decisions and that there are challenges with balancing local and national objectives." The MPOAC appreciates this discussion and fully agrees with the comments provided by FHWA. We thank you for this acknowledgement and ask that this language be brought into an introductory section of the final rule.

**Evaluation by FHWA of Progress Toward Achieving Targets.** The NPRM explains on page 23864 how FHWA would look at performance and evaluate "...if a State DOT has made significant progress toward the achievement of its NHPP and NHFP targets." In Step 3 of the identified process, population is identified as a factor to be considered. The MPOAC asks that locations experiencing high levels of tourism be included in the



list of factors FHWA considers. Tourists are a temporary population that create a “shadow population”. Tourists are not counted in the population figures published by the Census, but large numbers of tourists/visitors do place a significant demand on the transportation system and affect the system performance that is experienced by users and reflected in the transportation data collected. Florida experienced over 100 million visitors last calendar year. Just looking at the Census defined population, we would be counted for approximately 20 million persons. The 100 million visitors to Florida last year, if each stayed an average of one week, would be the equivalent of approximately another 2 million permanent persons or a 10% increase in population. This is a significant increase over the indicated population figures available from the Census and we ask that this “shadow population” be considered as an influencing factor in evaluating performance.

**Recognizing Financial Limitations of State DOTs and MPOs.** In the NPRM (page 23866), FHWA recognizes the financial limitations of State DOTs. FHWA goes on to state “...in some cases, anticipated condition/performance could be projected to decline from (or sustain) the baseline condition/performance due to lack of funding, changing priorities, etc.” We thank FHWA for recognizing the practical implementation aspects of system performance measurement and we ask that this statement and implementation philosophy be carried forward to the final rule.

**Use of 5 Minute Time Bins.** FHWA has suggested using 5 minute time bins in the NPRM. The MPOAC questions if this level of granularity will produce meaningful additional benefit in comparison to using 15 minute or longer time bins. The MPOAC recommends, as does the Florida DOT, the use of 15 minutes, 30 minutes, hourly or peak-period travel times, used in a consistent manner. Given the size of the transportation system, which will produce a large number of measured segments, and then the large number of time bins over the course of the year, the data collection effort will produce a massive amount of data. We can make the assessment of the data much easier by going to 15 minute time bins (or longer) and theoretically this should reduce the number of instances where there is no data in a time bin. Conceptually, a 15 minute time frame will offer three times as many opportunities for detection equipment to capture a unit passing by and record the information when compared to a 5 minute time bin. The 15 minute time bin is advantageous over 5 minute time bins given the reduced data storage required, fewer data points requiring quality control/quality assurance efforts and reduced difficulty that would be experienced by the public who may wish to export this data and evaluate it. Moving to longer time segments to establish time bins seems to be a sensible approach. Florida has estimated that under the 5 minute time bins, there would be approximately 1 billion data points per year for Florida alone.

**Freight Travel Time Data.** FHWA proposed in the NPRM collecting and measuring truck travel speeds on the interstate system. We ask that this measure be removed as it will essentially measure the interstate which is already being assessed as a performance measure under the title of travel time reliability. The trucks proposed to be measured on the interstate system will be in the same traffic that is being measured through system reliability. This seems to actually double count the reliability of the

interstate system. Freight congestion is commonly found at the first and last mile portions of a freight trip which are not being measured. We see little to no additional value by collecting freight travel time data separately from overall interstate system performance data.

Thank you again for providing us with the opportunity to comment on these proposed rules. We look forward to working with the FDOT and our transportation partners across the state to implement the resulting performance measures.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Mikyska". The signature is fluid and cursive, with a large initial "C" and "M".

Carl Mikyska, Executive Director  
Florida MPO Advisory Council



**The Florida Metropolitan Planning Organization Advisory Council**

*Mayor Susan Haynie  
Chairperson*

Docket Management Facility  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

RE: Docket Number FHWA-2016-0016  
FHWA RIN 2125-AF68; FTA RIN 2132-AB28  
Notice of Proposed Rulemaking (NPRM); Request for Comments  
*Metropolitan Planning Organization Coordination and Planning Area Reform*  
As published in the Federal Register, Monday, June 27, 2016

Dear Secretary Foxx,

On behalf of the 27 member Metropolitan Planning Organizations (MPOs) of the Florida MPO Advisory Council (MPOAC), I want to thank you for the opportunity to comment on the proposed metropolitan planning organization coordination and planning area reform rules. While we agree that MPO coordination and geography are important aspects of transportation planning decision making (as demonstrated by the extensive and formalized MPO coordination efforts found in Florida), we do not believe that the proposed rules will result in improved planning decisions or more efficient processes. Rather, we believe that the one-size-fits all approach of the proposed rules will make transportation planning less accessible to the general public by increasing MPOs' size and scope. This would also mute the voice of locally elected officials in the metropolitan transportation planning process and undermine the original purpose for the creation of MPOs, which was to provide for local input in transportation decision making. We, therefore, stand strongly in opposition to the proposed metropolitan planning organization coordination and planning area reform rules and respectfully request that they be withdrawn without further action.

While we have a number of comments to the proposed rule (enumerated later in this letter), our primary concerns are the lack of a clearly defined, evidence-based "problem" with existing MPO coordination efforts and a cookie cutter "solution" which would be extremely difficult, if not impossible, to enact in Florida without creating nonsensical metropolitan planning area (MPA) boundaries.

Numerous declarative statements are made in the proposed rule regarding the believed issues with existing MPO coordination efforts across the country and the supposed improvements the proposed rule will make. However, none of those perceived problems or proposed cures are supported by objective research findings. The problems of poor coordination between existing MPOs and the necessity to "right-size" planning geography has not been the subject of conference panels,

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research papers, peer-to-peer exchanges or any of the typical mechanisms used by the federal agencies (the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA)) to highlight and resolve issues they see in planning practice, giving the proposed rule an “out of the blue” quality. In fact, language relating to MPO coordination and geography remained unchanged in the final metropolitan transportation planning rules issued on May 27, 2016.

The proposed “solution” to this perceived lack of coordination is to force MPOs in the same urbanized areas (UZAs) to either merge or adopt a unified plan and program. In states like Florida, increases in population density have led the US Census Bureau to consolidate formerly separate UZAs over time. However, these UZA consolidations do not take into account transportation complexity, land use patterns, economic development patterns or other factors that make a UZA the appropriate area for conducting metropolitan transportation planning and programming. In fact, in many areas of Florida, now-consolidated UZAs stretch out for miles and link areas that have limited connections to each other in any meaningful planning metric (e.g. travel patterns, culture and identity, demographics, etc.). The fact that MPAs must also include areas expected to be part of the UZA based on 20-year growth projections further exacerbates this problem. The proposed rule doubles-down on this approach by strongly encouraging consolidation of MPAs for areas where UZAs are contiguous. In Florida, where UZAs are contiguous up and down both coasts and across the I-4 corridor, identifying appropriate boundaries between MPAs will be nearly impossible and result in MPO processes that will not in any way correspond to what the local populations consider to be their metropolitan area.

We have no doubt that MPO coordination across the country could be improved, particularly between MPOs in the same urbanized area. However, we strongly believe that any proposed rules should be based on objective research and that any potential solutions should be flexible enough to fit the local planning and regulatory context of each metropolitan area. We would support voluntary, incentive-based approaches to solving any identified problems.

The concept of voluntary coordination is something that Florida MPOs have been implementing for a number of years with great success at both the state and MPO level. FHWA even recognized the successes of MPO coordination in Florida through the Every Day Counts program (EDC-3 Innovations) in 2016. The South East Florida Transportation Council (SEFTC) was highlighted as a best practice for multi-MPO cooperation and collaboration for their ongoing and formalized planning efforts that include freight planning and coordinated identification of project priorities. In fact, 22 of Florida’s 27 MPOs (all those with a neighboring MPO) have entered into written agreements to coordinate with one or more nearby MPOs on a voluntary basis. Of those, 17 are members of formal MPO alliances that include three or more MPOs (see Table 1). Many transportation planning products have been generated, including but not limited to:

- Long-range transportation policy plans covering multiple MPO areas
- Shared goals and objectives
- Collaborative Shared project priority lists

- Congestion management processes covering multiple MPO areas
- Multi-county freight plans

Table 1. MPO Regional Coordinating Efforts in Florida

Name of MPO Alliance	Number of Member MPOs	Acronym	Year Formed
<b>Regional Alliances of MPOs (three or more MPOs working together)</b>			
Central Florida MPO Alliance	6*	CFMPOA	1997
Southeast Florida Transportation Council	3	SEFTC	2005
Treasure Coast Transportation Council	3	TCTC	2006
West Central Florida MPO Chairs Coordinating Committee	6*	CCC	1992

\*Polk TPO is a member of both the CFMPOA and the CCC

Additionally, all 27 Florida MPOs belong to the Florida MPO Advisory Council (MPOAC), which is a statewide forum for collaboration and statewide transportation policy development. The MPOAC meets quarterly and provides regular opportunities for the Florida DOT, FHWA and FTA to provide updates of national and statewide significance. This voluntary collaboration demonstrates that MPOs in Florida recognize the value of speaking with a collective voice on transportation issues at a statewide level. This has been demonstrated in a variety of ways including the development of financial guidelines for MPO plans and, in partnership with the Florida DOT, an estimate of unfunded statewide transportation needs in Florida’s urbanized areas. As a result, the funding allocated by the Florida legislature for transportation has been growing and exceeded \$12.2 billion for the current state fiscal year (only 25% of that is federally funded).

Clearly, Florida already recognizes the value of partnerships and collaboration. We would like to see a process where MPOs are not forced to merge or forcibly coordinate, but rather are encouraged with incentives to develop partnerships that suit their unique metropolitan areas. We are open to several ideas and would suggest that any incentives offer additional funding beyond FHWA and FTA planning funds. We would be happy to assist USDOT and other states by sharing our experiences in Florida and assisting other areas in establishing voluntary cooperative planning agreements and structures.

Additional MPOAC comments to the proposed metropolitan planning organization coordination and planning area reform rules are stated below. Chief concerns include:

**Lack of Authority in Law**

As stated in the proposed rule, the interpretation of the terms Urbanized Area (UZA) and Metropolitan Planning Area (MPA) has stood for many years. We cannot find a requirement in federal law stating that neighboring MPOs sharing a UZA need to produce joint documents (Metropolitan Transportation Plan (MTP) and Transportation Improvement Program (TIP)) unless the definition is rewritten as proposed. In that case, we believe that the definition is being rewritten to achieve a goal that is beyond the original intent of Congress. We, therefore, contend it is an act of administrative overreach, and potentially not a legal action by USDOT. We ask USDOT to provide a legal opinion that demonstrates

Congressional intent in this area and provides authority for USDOT to undertake the actions proposed in this rulemaking.

### **Loss of Coordination Between Transportation and Other Planning Processes**

One of the primary functions of MPOs, as is clearly illustrated in federal law through the planning factors, is to coordinate transportation planning with other forms of planning. MPA boundaries in our state are frequently drawn to correspond to the same geography as other planning processes, particularly land use planning. By forcing MPO planning and programming documents to be adopted for a larger geographic area than is currently the case in many areas of Florida, this proposal will dramatically complicate the ability to coordinate transportation planning with land use, economic development and other planning processes. Any rule on MPO coordination should maintain flexibility in the designation of MPA boundaries to allow MPOs to “right size” for this important planning coordination function.

### **Complications of State Open Government Laws**

Florida has very strong and very specific open government laws that require the vast majority of transportation planning related discussions and decisions to be made during noticed meetings. These laws pertain not only to members of decision-making bodies such as MPO governing boards, but also to all MPO advisory committees (i.e. technical advisory committees, bicycle/pedestrian advisory committees, citizen/community advisory committees, freight advisory committees), most of which are comprised of local and state agency employees. As written, the proposed rule would greatly complicate coordinating decision-making processes across political boundaries in states with strong open government laws by requiring MPO planning processes to cover increasingly large areas. This would be particularly true for transit agencies that are currently covered by different MPOs, but would be covered by the same MPO under the proposed rule, dramatically limiting their ability to communicate with decision makers outside of publicly noticed meetings.

### **Loss of Local Perspective**

The original motive behind the creation of MPOs was to incorporate the local perspective into transportation decisions that up until that time were made exclusively by state DOTs. This proposal will result in fewer, but much larger, MPO areas where the decision-making process will be further removed from communities and the people for whom MPOs were originally intended to provide engagement opportunities.

### **Negative Impacts to Low-Income and Minority Communities**

MPOs are required to actively encourage the participation of transportation-disadvantaged populations and to continuously monitor and improve outreach techniques for that purpose. When larger MPOs hold meetings, they may try to either meet in a centralized location or move about the larger region. This would result in many citizens having to travel

further to engage in the transportation planning and programming process in person and will have a substantial impact on low-income and minority populations who may have limitations in terms of time, money, or mobility. We anticipate that the USDOT response will be that good public involvement will prevent this issue. We counter that participating in an MPO governing board meeting in person is more meaningful than any other form of participation. The additional travel that would result from this rule will create a barrier for low-income and minority populations to participate. We find it very concerning that USDOT would propose a rule that would potentially disengage individuals whom MPOs spend so much time and effort reaching.

### **Larger MPOs Will Not Necessarily Create Better Planning**

As discussed earlier in these comments, we believe that the result of this proposed rule will be fewer and significantly larger MPOs that will not necessarily cover a geography that makes sense from a planning or programming perspective. This, in turn, will result in fewer creative solutions to address localized issues. Small MPOs provide customized transportation planning and solutions to their areas. As MPOs grow, they become less familiar with each individual sub-area of their region and less able to fully appreciate the impacts of their transportation decisions on local communities. MPOs were created to give a local voice to transportation planning. State DOTs are not always able to fully appreciate all of the individualized urban concerns due to the fact that they operate on a much larger scale and scope than individual MPOs. This NPRM, if implemented, will create MPOs that are larger than some states due to the contiguous nature of Florida's UZAs. Florida already has five (5) MPOs with larger populations than the five (5) smallest states. This seems counter to the original purpose for creating MPOs.

### **Polycentric and Monocentric Regions: Not All UZAs are Alike**

Each UZA or group of contiguous UZAs has a specific character and nature. Some areas grew from a singular, easily-identified, urban core outward (like an amoeba) and are generally monocentric regions. These monocentric regions grew organically from a core over long periods of time and the entire area generally shares a common identity. Other areas started as individual urbanized areas, each with their own identifiable urban core, which grew together (like interlocked fingers) and now comprise a single, census-defined UZA with multiple long-established urban cores. These are polycentric regions, which are quite different from monocentric regions in a variety of ways that are important to transportation planning and programming. For example, many polycentric areas in Florida have multiple commercial airports, multiple transit agencies, multiple expressway authorities, multiple seaports and multiple intermodal logistic centers. These polycentric areas do not share an identity and, though connected through a fluke of population density, continue to behave like a series of separate areas. As such, we do not believe that a one-size-fits-all approach to transportation planning is appropriate and propose that the federal agencies promulgate rules that allow for flexible and voluntary approaches to coordinated planning and programming. Such an approach would allow polycentric regions to address transportation issues of universal concern in a collaborative manner through

visioning efforts and general policy plans that guide and inform individual MPO planning and programming processes.

### **The Term “Region” is Not Defined**

The word “region” is used repeatedly in the NPRM, but is not defined in the proposed rule or 23 CFR 450. “Region” may mean different things to different people.

### **The Proposed Rule Gives Governors “Veto” Power over MPOs**

In a case where a governor will accept nothing other than merger of existing MPOs, the proposed rule would give the governor what amounts to veto power over the decision to allow MPOs to remain separate, creating a powerful weapon for that governor. The proposed rule states that most MPOs are not meeting the federal MPA boundary requirements and presumably would have to establish a new planning boundary or face receiving a corrective action during their next Transportation Management Area (TMA) certification review for not serving the entire MPA. The MPO could not re-establish its planning boundary to correct the deficiency identified in the certification review without approval from the governor. This rulemaking would give the governor the ability to compel MPO mergers by waiting out the process until a federal certification review. The affected MPOs would be forced to choose between being de-certified by FHWA/FTA for not serving the entire MPA or going along with a coerced merger if the governor decides that is what he/she wants. This proposed rule gives undue influence to the governor in these cases.

### **Factual Statements Made in NPRM Need Verification**

As previously mentioned, a number of declarative statements are made in the proposed rule without explanation of how these statements are known to be factual. There are no citations of completed research, peer exchanges, or studies to establish the veracity of the statements, and the lack of proof leaves the reader unsure of what is actual fact. Examples include:

- A statement that economies of scale would be achieved by combining MPOs (page 41474).
- A statement that the proposed rule will correct problems that have occurred under the 2007 rule (what problems are we referring to?) (Page 41475).
- A declaration that planning has become inefficient in MPAs with multiple MPOs (page 41475).
- “However, it is the opinion of the Secretary of Transportation that there must be adequate cooperation between states and MPOs.” (Page 41476).
- USDOT states that multiple separate MPOs jointly developing unified planning products should not create a large burden and in some cases reduce overall planning costs (Page 41480).
- A declaration that the costs to the affected MPOs should be minimal (Page 41480).



### **Appropriateness of Census Data and related Census Policies to set UZAs**

The proposed rule does not address how changing policies within the US Census Bureau could impact the structure and size of MPOs in the future. It is important to note that the US Census Bureau creates their data and UZA boundaries without regard to the needs and uses of the transportation community. Therefore, the results of census policies may have significant unintended impacts on transportation decision making. We note that the decennial census of 2010 did not merge any UZAs due to a policy decision that any named area identified in the 2000 census as a UZA would continue in 2010 to be an independently named UZA (please see the August 24, 2011 Federal Register, page 53041, middle column). This policy may not carry forward into future census efforts, which could cause Florida eventually to have one UZA along the entire Atlantic Coast (see Figure 1). The Atlantic Coast is a high growth area of our state, and the multiple existing MPOs will continue to have connected UZAs. It is conceivable that Florida could have one UZA that extends from Miami-Dade to Jacksonville, a distance of about 400 miles. We maintain that an MPO of this size would be nonsensical and unable to effectively or efficiently conduct a metropolitan planning process that represents local interests and engages local communities. Perhaps it is time to reconsider the census-defined urbanized area as the sole basis for MPO geography and for the necessity of an MPO process.

### **Two (2) Years to Implement Is Not Enough Time**

The proposed rule requires that this change be implemented in two (2) years. The MPOAC does not believe that this time frame is reasonable given the multiple moving parts involved in this decision. In Florida, for example, not only would multiple MPOs and the State need agree to a course of action, but changes to state law would also be required, a process completely out of the control of the MPOs and governor. Additionally, this would require negotiating membership on a combined board, merging of staffs, and presumably in some cases may require state DOTs to alter their field office/district boundaries to better align with new MPO boundaries. All of this takes time and any changes would be best aligned with new census data when the 2020 census UZA boundaries are released.

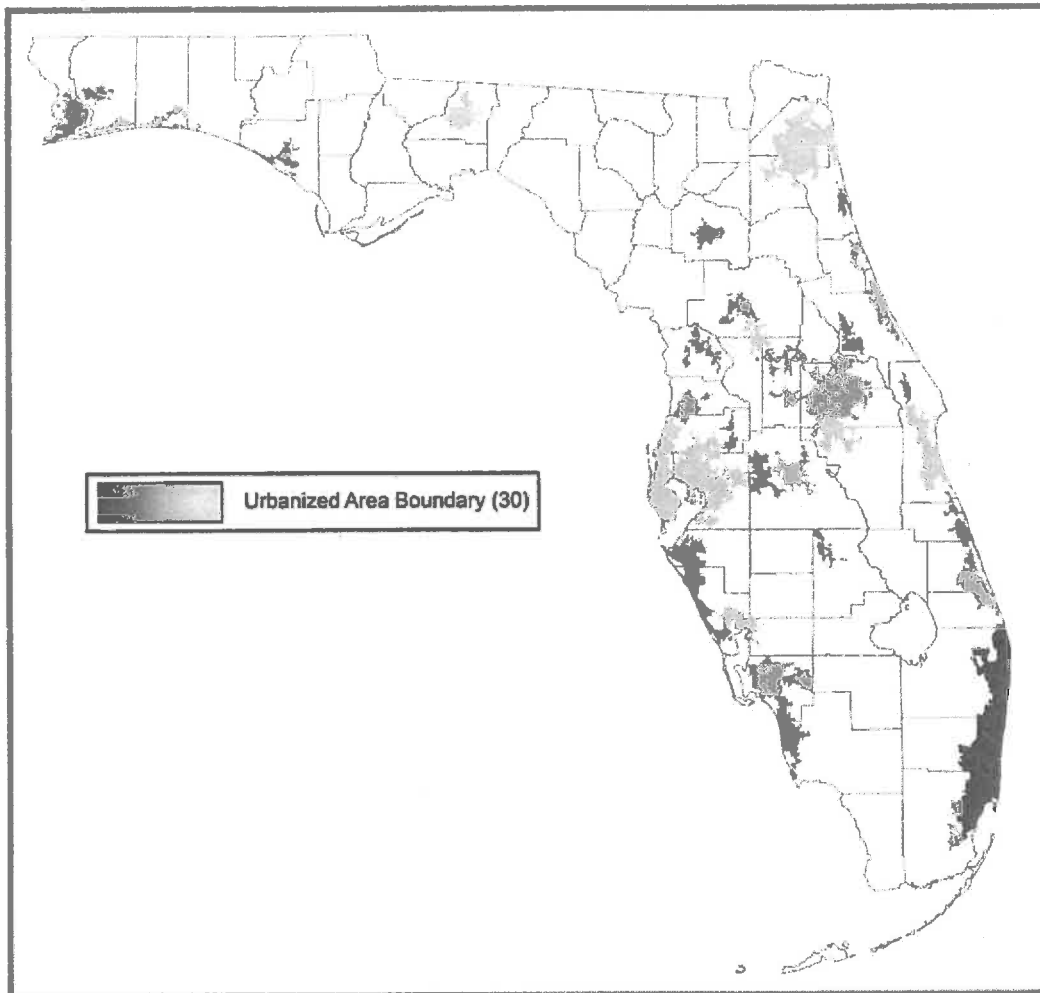


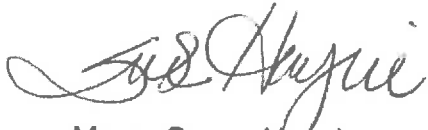
Figure 1. 2010 Florida Urbanized Area Boundaries.

**Establishing One Performance Target per UZA**

Establishing joint performance targets for MPOs within a common UZA ignores the fact that within a UZA there are often different priorities and characteristics among the multiple sub-areas and MPOs. In the case of a large UZA with multiple MPOs we could have an example where transit usage and the transit system is very different in one MPO than in the other MPOs. For example, the UZA that covers Southeast Florida includes four separate MPOs (Miami-Dade, Broward, Palm Beach, and Martin). Miami-Dade MPO has a well-developed transit system, with rail and bus rapid transit, whereas Martin County is much lower density and offers a smaller system with four fixed routes and paratransit services. Establishing a single performance target would be difficult because one target would not fairly represent all areas of the UZA. A low target may work well for a suburban area like Martin, but be well under the actual performance of an urban center, like Miami-Dade. Conversely, a target designed for an urban area would result in the suburban areas consistently failing to meet the target. We recommend that in the case of multiple MPOs, the UZA be allowed to set multiple targets that are specific to each MPO.

Thank you again for the opportunity to comment on the proposed metropolitan planning organization coordination and planning area reform rules. We look forward to our continued work with the FHWA and FTA and our transportation partners at the state and local levels to plan and implement our nation's transportation system. Please feel free to call me at 850-414-4062 should you have any questions.

Sincerely,



Mayor Susan Haynie  
MPOAC Chair



Carl Mikyska  
Executive Director

## List of FHWA Comment Requests in MPO Coordination and Planning Area Reform NPRM

### II. Background

#### 1. Coordination Between States and MPOs, Page 41476.

The purpose of the Planning program is to use public funds effectively and FHWA and FTA welcome ideas to improve our planning processes. As such, FHWA and FTA seek comment on how DOT can incorporate processes to further ensure that Federal funds are used efficiently by States and MPOs. How can the Statewide and Non metropolitan and Metropolitan Transportation Planning process provide stronger incentives to States and MPOs to manage transportation funding more effectively?

**MPOAC Response:** Project readiness and completing projects that have been started are key elements to insuring that all funds are used to their highest level of effectiveness. Obviously this also best serves the taxpayers who fund the transportation improvements we are discussing. Commonly, MPOs do the planning and State DOTs handle the NEPA process. Because the NEPA process is so difficult and time intensive, most MPOs do not have the expertise in-house to take on the effort with the limited funding MPOs have available. The passing of knowledge from the MPOs to the State DOTs will minimize the number of alternatives required to be reviewed in the NEPA process because they were already considered and eliminated in the planning process.

### III. Section-by-Section Discussion

#### 2. Section 450.104—Definitions, Page 41476.

The FHWA and FTA specifically ask for comments on whether the rule ought to expressly address how States and MPOs should determine MPA boundaries where two or more MPAs are contiguous or can be expected to be contiguous in the near future. For example, should the rule provide that such MPAs must merge? Alternatively, should the rule allow the States and MPOs to tailor the MPA boundaries and the 20-year urbanization forecast to take the proximity of other MPAs into account?

**MPOAC Response:** In Florida contiguous MPAs coordinate their planning efforts and have done so for a number of years with success. This current process works well in Florida and we ask that the current process whereby multiple MPOs within one UZA be allowed to work in coordination for visioning efforts and that each MPO produce their own Long Range Plan and TIP that reflects the land use policies and other policies of their membership and area. While this may not be working in other parts of the country, Florida finds that it does work well in our state. For areas where collaboration is not occurring, we ask that these areas be addressed specifically by the field offices of FHWA and FTA rather than through a nationwide rulemaking that affects everyone instead of addressing problems explicitly where they are occurring.

3. **Section 450.226—Phase-In of New Requirements, Page 41476 and Section 450.340—Phase-In of New Requirements, Page 41479.**

The FHWA and FTA seek comments on the appropriateness of the proposed 2-year phase-in period.

**MPOAC Response:** This is clearly not enough time to actually implement changes as proposed in this NPRM. Some states have legislatively incorporated MPO requirements into their laws. Implementing this NPRM would require legislative action by the state legislature and Governor. As we are sure USDOT can understand in trying to get federal transportation bills passed in a timely fashion, this can be an unpredictable process. USDOT has allowed States to place additional requirements on MPOs and this NPRM seems to ignore that latitude and control that USDOT has given to States. MPOs are responsible for, and subject to, the previous actions and decisions of others. In this case the previous decisions and actions of both USDOT and State Legislatures combined with this proposed action by USDOT would likely render the MPOs unable to comply with both State and Federal requirements. To not comply with each set of requirements could ultimately result in funding to the MPOs being restricted. Two years is not enough time and additionally, USDOT should not allow States to place additional requirements or restrictions on MPOs.

**Section 450.306—Scope of the Metropolitan Transportation Planning Process, Page 41477.** The FHWA and FTA request comments on the proposed language, and request ideas for alternatives that might better accomplish the goals embodied in the proposal.

**MPOAC Response:** As identified in this section of the NPRM, USDOT states that the goal is to select an appropriate performance target and avoid a situation where the MPOs within a single MPA select inconsistent or conflicting performance targets. We fear that by forcing the selection of a single performance target for a large region some sub-areas will be working with a performance target that is not appropriate or realistic. In a large area with a dense core area and less dense areas at the edge, the characteristics and nature of the transportation system are likely to be quite different. The question becomes which sub-area do you set a performance target for, a high target for the dense core or a lower target for the less dense areas? Either way, the target is not doing justice to one of these areas. We can see this being particularly true for transit targets. Having individual targets for each MPO, where multiple MPOs exist in a single UZA, would be more appropriate in that each area can work on achieving something that is realistic and meaningful.

4. **Section 450.314—Metropolitan Planning Agreements, Page 41478.**

The FHWA and FTA seek comments on what, if any, exemptions ought to be contained in the rule from these requirements, and what criteria might be used for such an exemption.

**MPOAC Response:** It is the position of MPOAC and the 27 MPOs of Florida that the proposed rule should be withdrawn and therefore exemptions would not be needed. Suggesting exemptions seems as if MPOAC is signaling some form of approval to USDOT to proceed forward in the implementation of this rule. The existing process is working well in Florida and we again ask that if USDOT finds that collaboration is not working in some areas of the nation that these areas be addressed directly by the division offices of FHWA and FTA instead of creating a nationwide rule.

5. **Section 450.324—Development and Content of the Metropolitan Transportation Plan, Page 41479.**

The FHWA and FTA seek comments on what, if any, exemptions ought to be contained in the rule from these requirements, and what criteria might be used for such an exemption. The FHWA and FTA also request comments on the question whether additional changes are needed in FHWA and FTA regulations on performance measures and target setting (e.g., 23 CFR part 490) to cross-reference this new planning provision on target-setting.

***MPOAC Response:*** It is the position of MPOAC and the 27 MPOs of Florida that the proposed rule should be withdrawn and therefore exemptions would not be needed. Suggesting exemptions seems as if MPOAC is signaling some form of approval to USDOT to proceed forward in the implementation of this rule. The existing process is working well in Florida and we again ask that if USDOT finds that collaboration is not working in some areas of the nation that these areas be addressed directly by the division offices of FHWA and FTA instead of creating a nationwide rule.

Additionally, in the NPRM USDOT states that the goal is to select an appropriate performance target and avoid a situation where the MPOs within a single MPA select inconsistent or conflicting performance targets. We fear that by forcing the selection of a single performance target for a large region some sub-areas will be working with a performance target that is not appropriate or realistic. In a large area with a dense core area and less dense areas at the edge, the characteristics and nature of the transportation system are likely to be quite different. The question becomes which sub-area do you set a performance target for, a high target for the dense core or a lower target for the less dense areas? Either way, the target is not doing justice to one of these areas. We can see this being particularly true for transit targets. Having individual targets for each MPO would be more appropriate in that each area can work on achieving something that is realistic and meaningful.

6. **Section 450.326—Development and Content of the Transportation Improvement Program, Page 41479.**

The FHWA and FTA seek comments on what, if any, exemptions ought to be contained in the rule from these requirements, and what criteria might be used for such an exemption.

***MPOAC Response:*** It is the position of MPOAC and the 27 MPOs of Florida that the proposed rule should be withdrawn and therefore exemptions would not be needed. Suggesting exemptions seems as if MPOAC is signaling some form of approval to USDOT to proceed forward in the implementation of this rule. The existing process is working well in Florida and we again ask that if USDOT finds that collaboration is not working in some areas of the nation that these areas be addressed directly by the division offices of FHWA and FTA instead of creating a nationwide rule.

#### IV. Regulatory Analyses and Notices

7. **A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures, Page 41479-41480.**

The FHWA and FTA are seeking comments on what other options affected MPOs could exercise to reduce the overlap while meeting the statutory and regulatory requirements. The FHWA and FTA expect that such responses will reduce the number of MPOs ultimately affected by these coordination requirements.

***MPOAC Response:*** We are strongly opposed to the proposed rule. We find the approach taken in the NPRM to be inappropriate and respectfully ask that the Proposed Rule be withdrawn. For a national policy we ask that FHWA and FTA incentivize MPO collaboration and coordination, not mandate it. We would be supportive of a program that rewards voluntary efforts of MPOs to collaborate and coordinate on both multi-MPO and statewide levels, while at the same time not create a default punishment or exclusion from benefits for those MPOs that already have a one UZA to one MPO ratio.

8. **A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures, Page 41480.**

The FHWA and FTA seek comments and available data on the costs and benefits of the proposals of this rulemaking.

***MPOAC Response:*** This is an excellent question and we would like to know the answer to this as well. It is our opinion that this should have been researched by FHWA and FTA prior to launching this effort and the answers provided in the NPRM. We are aware of a previous effort by FHWA to combine the duties and staffs of the Delaware and Maryland field offices. Looking at the FHWA website, we note that the two offices appear to be separate and question why a similar approach being mandated onto the MPOs would deliver any sort of benefit that was not realized by the FHWA effort. We ask that FHWA provide information pertaining to the realized cost savings from their merger of the two field offices and explain why it was not appropriate for FHWA to continue this merger but would be appropriate for MPOs to merge. If the answer is that operationally it was not working, we would ask why it will work operationally for MPOs when it did not for FHWA? The reasons for not merging two FHWA field offices would be the same reasons for not merging MPOs.

9. **A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures, Page 41480.**

The FHWA and FTA seek comments and available data on the costs and benefits of the proposals of this rulemaking.

***MPOAC Response:*** This is an excellent question and we would like to know the answer to this as well. It is our opinion that this should have been researched by FHWA and FTA prior to launching this effort and the answers provided in the NPRM. It is the understanding of Florida MPOAC that two MPOs in Connecticut voluntarily merged and that effort took 4 years.







CARL,

THANK YOU FOR TAKING THE TIME TO  
PRESENT TO THE TRANSPORTATION AND  
INTERGOVERNMENTAL RELATIONS POLICY COMMITTEE  
MANY OF MY MEMBERS APPROACHED ME  
AFTER THE MEETING AND EXPRESSED HOW  
BENEFICIAL THEY THOUGHT YOUR PRESENTATION  
WAS. AGAIN, THANK YOU! P.S. I WILL BE  
SURE TO INVITE YOU TO THE HOUSE WARMING  
PARTY ☺

—Megan S. Johnson

## **Item Number 8**

### **Member Comments**

#### **DISCUSSION:**

Comments or recommendations by MPOAC members.

#### **REQUESTED ACTION:**

As may be desired.

#### **ATTACHMENT:**

None



## **Item Number 9**

### **Adjournment**

The next meeting of the MPOAC Staff Director's Advisory Committee will be held on Thursday, January 26, 2017. This meeting will be held in conjunction with the 2017 Safe Streets Summit which will be January 26<sup>th</sup> and 27<sup>th</sup> in Sunrise, FL.

The meeting will be held at the:

**DoubleTree by Hilton Hotel Sunrise - Sawgrass Mills**

13400 West Sunrise Boulevard, Sunrise, FL, 33323

Phone: 954-851-1020

Room reservation information will be sent out at least 30 days prior to the meeting

