

DEPARTMENT OF TRANSPORTATION

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November 10, 2014

U.S. Department of Transportation
Dockets Management Facility
1200 New Jersey Avenue SE
West Building, Ground Floor, Room W12-140
Washington, DC 20590

RE: Docket No. FHWA- 2014-0031
Federal Register Document Number: 2014- 21439
Additional Authorities for Planning and Environmental Linkages

To Whom It May Concern:

The California Department of Transportation respectfully submits the attached comments on the Additional Authorities for Planning and Environmental Linkages Notice of Proposed Rulemaking issued by the Federal Highway Administration and Federal Transit Administration on September 10, 2014.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Malcolm Dougherty".

MALCOLM DOUGHERTY
Director

Enclosure

**California Department of Transportation's Comments on the
Federal Highway Administration's and Federal Transit Administration's
Notice of Proposed Rulemaking on
Additional Authorities for Planning and Environmental Linkages
November 10, 2014**

1. The California Department of Transportation (Caltrans) asks the Federal Highway Administration and the Federal Transit Administration (FHWA/FTA) to clarify how the new authorities in the proposed rulemaking differ from what is already available from existing authorities in paragraphs 450.212(b) and 450.318(b). The planning products listed in this proposed rulemaking could be incorporated into the National Environmental Protection Act (NEPA) process using the existing authorities, without using the much more rigorous process outlined in this proposed rulemaking.
2. Caltrans asks FHWA/FTA to clarify how the preparer of the planning product will document which of the processes is being followed: 450.212(b) and 450.318(b), or 450.212(d) and 450.318(f).
3. Caltrans asks FHWA/FTA to clarify how the preparer of the planning product documents that the various requirements of this proposed rulemaking have been satisfied, so that the Federal lead agency can make the required determinations. Caltrans suggests comparing such documentation with the language already in Sections 450.212 (b)(2)(iv) and 450.318(b)(2)(iv): "Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process."
4. Section 450.212(d)(1)(iii) states that the planning product must be approved by the State, all local and tribal governments where the project is located, and by any relevant Metropolitan Planning Organization. The use of the word "approved" seems inappropriate. These entities generally do not have approval authority over the planning products listed in the proposed rulemaking as being eligible for adoption and use in the NEPA process. Caltrans recommends replacing "approve" with "concur." Caltrans recognizes that some planning-level documents that may be adopted and used by a Federal lead agency for NEPA, such as programmatic mitigation agreements, will also require a separate process in which partner agencies will have approval authority.

5. By defining implicit approvals (concurrences) of the planning product, and implicit concurrences on the Federal lead agency's determination, the rulemaking allows the Federal lead agency to move forward even when it does not receive responses. This streamlines the process.
6. It is helpful that the rulemaking defines a lifespan for planning products, but five years is short. Caltrans asks FHWA/FTA to identify the process for updating a planning product after five years, including any additional public and agency reviews that would be required.
7. Caltrans values the reaffirmation that this rule does not require NEPA during the transportation planning process, while still defining a process whereby a federal lead agency may adopt and use various kinds of planning products in the NEPA process.