

DEPARTMENT OF TRANSPORTATION

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October 2, 2014

U.S. Department of Transportation
Dockets Management Facility
1200 New Jersey Avenue SE
Washington, DC 20590

RE: Docket No. FHWA-2013-0037
Federal Register Number: 2014-12155
Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning

To Whom It May Concern:

The California Department of Transportation (Caltrans) respectfully submits the attached comments on the Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning Notice of Proposed Rulemaking issued by the Federal Highway Administration on June 2, 2014.

Thank you for your consideration.

Sincerely,

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

MALCOLM DOUGHERTY
Director, California Department of Transportation

Enclosure

**California Department of Transportation's Comments on the Federal Transit Agency and Federal Highway Administration's Joint Notice of Proposed Rulemaking on Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning
October 2, 2014**

1. The California Department of Transportation (Caltrans) would like to express appreciation that the proposed rule supports scenario planning. Metropolitan Planning Organizations in the State of California are already conducting scenario planning activities as required by State law, but it has not been financially supported. Scenario planning in California is a labor intensive and costly effort, and Caltrans appreciate that the proposed rule would allow federal financial support for these efforts.
2. Caltrans commends the U.S. Department of Transportation for including the Regional Transportation Planning Organizations designation for rural counties. California created a similar designation in 1971 for Regional Transportation Planning Agencies (RTPAs). RTPAs have been successfully operating as the regional transportation planning entity for rural communities in California since their inception. Caltrans recommends that the proposed regulations acknowledge States' current rural transportation planning agencies' designations.
3. Caltrans recommends that the proposed regulations ensure that the Metropolitan Planning Organizations have maximum flexibility in determining how their governing boards are constituted.
4. State metropolitan planning agreements are not easily updated, and involve extensive legal and executive review. The list of elements included in this proposed rulemaking is overly prescriptive and beyond what is necessary for such agreements. Caltrans recommends that the regulations ensure that Metropolitan Planning Organizations have maximum flexibility in determining how the agreements are constituted and how they operate.
5. The proposed regulations provide an optional avenue for State Departments of Transportation and Metropolitan Planning Organizations to consider the effects of climate change and resilience in the context of the transportation planning process. Executive Order 13653 (Climate Preparedness and Resilience) was identified as the authority to address climate change issues during the planning process.

Caltrans would suggest that the U.S. Department of Transportation include language in 23 CFR Part 450 and 49 CFR Part 613 that would recommend that State Departments of Transportation and Metropolitan Planning Organizations conduct prudent planning efforts

and start identifying potential areas of the transportation system that may be vulnerable to extreme weather events. As research has indicated, the number of extreme weather events across the country is rising. These events are having an increasing impact on transportation facilities, not to mention the costs involved to deal with the aftermath. Although many State Departments of Transportation, Metropolitan Planning Organizations, and transit agencies around the country have, or are currently conducting, planning efforts to address potential extreme weather impacts to the transportation system, more work needs to be accomplished.

6. Caltrans suggests the proposed regulations require states to consider the impact that Vehicle Miles Traveled has during the development of the statewide and metropolitan transportation plans.
7. Section 1203 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) requires the development and use of performance measures and targets based on the national goals in order to identify the most efficient use of Federal transportation funds within the Federal-Aid Highway Program. Title 23 CFR 450.206 (c) of the proposed rulemaking requires that the statewide transportation process provide for the establishment and use of a performance-based approach to transportation decision-making in support of national goals described in 23 U.S.C. 150(b). Each State must select performance targets in “coordination” with Metropolitan Planning Organizations to ensure consistency “*to the maximum extent practical*” that address all performance areas described in 23 U.S.C. 150(c). In addition the State must consider performance measures and targets when developing policies, programs, and investment priorities reflected in the statewide transportation plan and statewide transportation improvement program. Additional clarification should be provided regarding which party has the ultimate authority if State DOT and MPO performance measures and targets conflict.
8. The target setting process and reporting requirements for measuring performance should be streamlined as much as possible to minimize cost, maximize efficiency, and support consistency between all levels of government. To the extent possible, target setting should take into account the type of data that are readily available and widely used and limit or avoid the need to acquire and process new data sets.
9. During the statewide target setting process there should be sufficient flexibility to recognize the scale and context of the individual Metropolitan Planning Organizations, allowing for realistic target setting and performance measurement at the regional level. Alternatively, the U.S. Department of Transportation could consider establishing minimum targets with a range of acceptability. Metropolitan Planning Organization performance should be measured individually rather than comparatively. Overall, there seems to be an expectation by the U.S. Department of Transportation that performance measurement should be used to incentivize

successful decisions and progress to meet multiple goals, but that it should not result in punitive action for failure to meet established targets.

10. The Federal Highway Administration (FHWA) and the Federal Transit Agency (FTA) should coordinate in the development of any transit-related performance measures to ensure the identified metrics are comparable to performance measures for other transportation modes. This will increase the likelihood that transportation plans and facility improvements address all modes and are geared toward sustainability.
11. While Caltrans understands that measures and obtainable targets will be considered for adoption in the near-term for the two areas of traffic congestion and National Highway System performance, states' more comprehensive goals and multimodal transportation systems should be kept in mind. The FHWA and FTA should identify performance measures that better capture the transportation benefits provided by improved land use, infill development, and active transportation. Performance measures that require additional or improved monitoring, or information from surveys, will require a larger investment. As performance measurement at the national, State, or Metropolitan Planning Organization level become more sophisticated, improvements in data gathering will be necessary. We encourage consideration of additional federal investment to assist in the proposed extensive comprehensive monitoring of performance.
12. In Section 450.210, State Departments of Transportation are now required to cooperate with non-metropolitan local officials on the development of the long-range transportation plan and the State Transportation Improvement Program and to document this process. This means that the parties involved in carrying out the transportation planning and programming processes will work together to achieve common goals or objectives. This shift toward working cooperatively should also take Native American Tribal Governments into consideration. Doing this will lead to more coordinated efforts and will also allow consultation with Indian Tribal governments, also required by this proposed rule, to be more meaningful.
13. Caltrans suggests that the U.S. Department of Transportation consider adding a statement that reads as follows in Section 450.306: "when an Metropolitan Planning Area (MPA) includes Indian Tribal Lands, the MPO shall appropriately involve the Indian Tribal government(s) in the development of the performance-driven outcome-based approach to planning for those areas affected or potentially affected."
14. There is seldom data on traffic incidents on Native American lands due to their sovereign status. Where data can be obtained, incidents on tribal lands are grouped together with other

data, affecting analysts' ability to discern whether or not roadway issues are of tribal concern. As a result, a high concentration of incidents on Native American lands will not necessarily lead to funds for improvements of that jurisdiction. A possible solution to this problem is to consider tribal lands intentionally/individually when targets are being set. With more detailed information, State, tribal, and local officials can collaborate to solve significant problems on the reservation that might not be addressed if data is considered on a corridor level.

15. Performance measures and targets need to be designed in a manner that allows the flexibility to fund projects that address issues that are significant, but may not compete on a Statewide basis, such as projects that may need to be completed on reservation or tribal lands.
16. We appreciate Federal support for the development of programmatic mitigation plans. This support, and the eligibility for federal funding, is important to move this program forward. There is some concern, however, about the acceptability of these efforts by state and federal resource and regulatory agencies. As noted, the proposed rule states that "... any federal agency *may* use the recommendation in the programmatic mitigation plan when carrying out its responsibilities..." Are there opportunities for corresponding rules governing the regulatory agencies to influence a higher level of commitment to these efforts?

Subsection (a)(1)(ii) indicates that "...an MPO may develop a programmatic mitigation plan on a local, regional, ecosystem, watershed, statewide or similar scale." This implies that an MPO may plan on a scale beyond the MPA boundaries; is this the intent?

17. Caltrans believes that proposed section 450.214 needs to be clarified. It currently states "...and can normally develop a plan with an aim toward protecting, preserving, rehabilitating, or creating environmental resources, or mitigating possible harm to environmental resources due to future transportation projects." Inserting the "or" between "protecting, preserving, rehabilitating, or creating environmental resources" and "mitigating possible harm to environmental resources" makes it sound like the former is something other than mitigation. The sentence should state "...and can normally develop a plan with mitigating possible harm to environmental resources due to future transportation projects by protecting, preserving, rehabilitating, or creating environmental resources."
18. Section 450.214 also states: "*The State (or MPO), must make the plan available for review and comment by the public and the applicable environmental resource agencies.*" Is this a formal National Environmental Protection Act review, or does any form of public review count? Caltrans needs clarification on what the minimum requirements for this comment process are. For example, are there a minimum number of days for comments?

19. Finally, the phrase "*...through avoidance or mitigation opportunities*", the language surrounding mitigation in Section 450.214, needs clarification. It is not clear why avoidance is singled out, as distinct from mitigation, or what mitigation is suppose to cover. Minimization should be included in this list as well, in part to identify any recommended engineering solutions that can be included during the scoping process.