



Florida Department of Transportation

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ANANTH PRASAD, P.E.
SECRETARY

November 5, 2014

Gregory G. Nadeau
Deputy Administrator, Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue S.E.
Washington, DC 20590

Re: Docket No. FHWA-2014-0031

Dear Deputy Administrator Nadeau:

The Florida Department of Transportation (FDOT) is pleased to comment on the Federal Highway Administration's (FHWA) "Additional Authorities for Planning and Environmental Linkages" (PEL) issued by the Federal Highway Administration and the Federal Transit Administration on September 10, 2014. Our comments are based on an extensive review of the NPRM and participation in the development of the American Association of State Highway and Transportation Officials (AASHTO) comments. We were active participants in the development of the AASHTO comments and fully support them.

Section 1310 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) authorizes transportation agencies to use decisions or analyses from transportation planning to inform the environmental review process for Federal Highway Administration and Federal Transit Administration projects. Prior to MAP-21, planning and environmental linkages were authorized through the transportation planning regulations (23 CFR 450, Appendix A). MAP-21 does not affect the use of planning products authorized by existing regulations such as Appendix A, which allow a wide range of decisions and analyses to be adopted in the NEPA process.

FDOT strongly supports the broad emphasis on streamlining in MAP-21 and the authority to adopt planning products into the NEPA process, often referred to as PEL (Planning and Environmental Linkages). FDOT created the nationally recognized "Efficient Transportation Decision Making (ETDM) process more than a dozen years ago and continues to improve upon its foundation with the development of the Alternative Corridor Evaluation (ACE) Process to specifically develop planning products. These processes provide Federal, State and local agencies, tribal governments and the general public the opportunity for early input, involvement, and coordination. Florida's procedures provide for the coordinated consideration of potential project effects during planning activities. The results of these processes can be used to inform

the development of scopes for projects advancing to NEPA as well as develop planning products for adoption into NEPA.

FDOT is pleased that FHWA and FTA have proposed flexibility for carrying out planning and environmental linkages within the restrictive statutory language established in MAP-21. We also strongly support preserving pre-MAP-21 authorities for planning and NEPA linkage. Areas in which we agree with FHWA approaches are below.

However, FDOT has significant concerns with the underlying statute, and we do not believe that there will be any efficiencies in planning and environmental linkages through this proposed process; to the contrary, attempts to satisfy the statute and NPRM may lead to inefficiencies in planning activities that will exceed any potential efficiencies in environmental reviews. As a result, FDOT strongly supports the resolution adopted by the Southeastern Association of State Highway and Transportation Officials (SASHTO) calling for a suspension of this rulemaking. FDOT requests that the proposed rulemaking be suspended until such time as Congress acts on authorization.

Our comments include FDOT support for AASHTO positions related to areas where clarification is needed and areas of agreement with the NPRM approaches. Our comments close with areas of concern with the statute.

Selected AASHTO Comments Reinforced by FDOT

The following recommendations from the AASHTO comments are of particular interest to FDOT and we take this opportunity to affirm our support for the AASHTO position. Detailed explanations of these issues are contained in the AASHTO comments.

Areas of Clarification:

- “Federal Lead Agency” – The agencies define “Federal Lead Agency” as the agency bearing responsibility for taking some steps in the PEL adoption process...” Under 23 U.S.C. 168 the authority or role of the “Federal Lead Agency” is described as making the determination to adopt proposed planning products. The roles of the “Federal Lead Agency” and the SHA or planning agencies should be clarified.
- Concurrence – The statute differentiates between approval and concurrence; the proposed rule equates them. This does not appear to be consistent with intent of the statute.
- Decision to Follow Proposed Rule or Existing Linkage Authorities – The proposed rule is unclear as to who decides which linkage authorities are to be used. It should be made clear that the creator of the planning product should have a role in determining the authority used.

Areas of Agreement with the Notice of Proposed Rulemaking:

- Preserving Existing Planning and Environmental Linkage Authorities – Making it clear that the authority granted in section 168 is a PEL authority *in addition to* other existing authorities for PEL.

- Flexibility in Adopting Planning Products – Emphasizing that the Agencies may adopt a planning product in its entirety or may choose to only adopt and use portions of these planning products.
- Flexibility in the Timing of Adopting Planning Products – Establishing that the timing of adoption could be at the time the Agencies and other joint lead agencies are deciding the appropriate NEPA class of action or later when the Agencies are developing the NEPA documents.
- Explicit or Implicit Approvals – Approvals could occur through explicit approvals or through implicit approval if the State, local, or tribal government, or MPO remains silent, fails to object, or fails to explicitly disapprove the planning product within the review and approval period.
- Flexibility in the Planning Decisions Carried Forward – Recognizing that the illustrative examples in section 168(c) (1)-(2) is not an exhaustive list of what could be considered a planning decision or planning analysis, but provides an illustration of the types of decisions or analyses that may be considered.

Recommended Statutory Changes

FDOT welcomes FHWA and FTA’s efforts to provide flexibility within the statutory framework established in 23 USC 168, but we believe that the statutory framework itself is too restrictive. The process established in 23 USC 168 is unnecessarily complex and cumbersome – it requires the fulfillment of 10 separate conditions, plus concurrence in the fulfillment of those conditions by all participating agencies with “relevant expertise.” It will lead to increased costs and delays in producing planning products, undermining rather than enhancing the concept of streamlining.

We expect that Florida, and most States, will continue to rely on the more flexible procedure that existed prior to enactment of MAP-21 and will avoid altogether the optional process established by 23 USC 168. FDOT supports AASHTO’s a reauthorization policy stating that the statutory process in 23 USC 168 should to be amended to ensure that it provides the same flexibilities included in the existing regulatory process. We will continue to seek legislative changes to 23 USC 168, consistent with that policy.

We commend the Federal Highway Administration for its extensive stakeholder engagement and outreach in implementing MAP-21. We appreciate the opportunity to provide these comments and look forward to working with FHWA in the ultimate establishment of rules implementing improved streamlining legislation that is in accord with FDOT and AASHTO recommendations.

Sincerely,



Ananth Prasad, P.E.
Secretary

AP/dl