DEPARTMENT OF TRANSPORTATION
DIVISION OF ENVIRONMENTAL ANALYSIS
P.O. BOX 942873, MS-27
SACRAMENTO, CA 94273-0001
PHONE (916) 653-7136
FAX (916) 653-7757
TTY 711
www.dot.ca.gov

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Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave. SE.
West Building, Ground Floor, Room W12–140
Washington, DC 20590

Re: Comments on Notice of Proposed Rulemaking—Program for Eliminating Duplication of Environmental Reviews (Docket No. FHWA-2016-0037)

To: Federal Highway Administration, Federal Railroad Administration, and Federal Transit Administration

The California Department of Transportation (Caltrans) welcomes the opportunity to submit these comments on the notice of proposed rulemaking (NPRM) issued by the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and Federal Transit Administration (FTA) for the "Program for Eliminating Duplication of Environmental Reviews." The NPRM was published in the Federal Register on September 28, 2017.

Section 1309 of the Fixing America's Surface Transportation Act (FAST Act) requires FHWA, FRA, and FTA to establish a Pilot Program (Program) that will allow up to five states to use one or more State environmental laws instead of the National Environmental Policy Act (NEPA) for environmental review of surface transportation projects, and to administer the program on behalf of up to 25 local governments at the request of those local governments.

Caltrans offers the following comments on the NPRM:

In general, Caltrans supports this NPRM and believes that the Program could be effective at reducing certain duplicative reviews. Caltrans, however, seeks clarification on the "limitations on claims for judicial reviews" (or statute of limitations) which are not addressed in the NPRM. Our reading of Section 1309(e)(2)(A) of the FAST Act is that it set the statute of limitations for projects reviewed under the Program at two (2) years following the publication in the *Federal Register* of the Notice of Final Federal Agency Action. Please clarify if this is the correct interpretation of this section.

If the statute of limitations under the Program is indeed set at two (2) years, this is significantly longer than the 150-day period currently afforded to other surface transportation projects by the Moving Ahead for Progress in the 21st Century Act (MAP-21). Further, if Section 1309 of the FAST Act was intended to streamline project delivery, Caltrans believes that the "statute of limitations" under the Act should be the same period established by the State law that will be used to substitute for NEPA, or the 150-day period established by MAP-21, *whichever period is shorter*. As written, the 2-year "statute of limitations" poses significant risks to project delivery and severely limits the usefulness of the Program, which was clearly intended to be a streamlining measure. Further, it raises the question of whether or not there could be two statutes of limitations for a single project—one for the State's actions under the proposed Program (2-year duration) and one for a State's actions under federal laws that are not covered by the Program (150-day duration) but have been assigned to the State, such as Section 4(f) of the U.S. Department of Transportation Act.

Secondly, Caltrans seeks clarification on the requirement that a state must "Expressly consent to the exclusive jurisdiction of U.S. District Courts for compliance, discharge, and enforcement of any responsibility under this program." Caltrans has consented to this requirement for its assumption of responsibilities under 23 USC 327. Please clarify whether this requirement must be met separately for participation in the Program under Section 1309 of the FAST Act.

With regard to the "Criteria for Determining Stringency" in proposed section 778.109, Caltrans would like to offer the general observation that these requirements are overly detailed and may prohibit states from participating in the program. In California, the California Environmental Quality Act (CEQA) is the state's "equivalent" to NEPA, and in many ways is more stringent than NEPA. Rather than detailing an exhaustive list of separate requirements, Caltrans suggests that the state law be evaluated for equivalency to NEPA *as a whole*, with provisions included in the NPRM to address shortcomings or deficiencies should any be identified. Most such issues could be easily addressed through the written agreement required to implement the Program.

Thank you for the opportunity to submit comments. If you would like additional input, please contact Jennifer Heichel at (916) 651-8164 or jennifer_heichel@dot.ca.gov.

Sincerely,

Jeremy Ketchum
Assistant Division Chief
Division of Environmental Analysis