

May 8, 2013

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

**Re: Docket No. FHWA-2013-0013, Proposed Memorandum of Understanding (MOU) Revision Assigning Certain Federal Environmental Responsibilities to the State of California, Including National Environmental Policy Act (NEPA) Authority for Certain Categorical Exclusions (CEs)**

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the joint notice of proposed MOU by the Federal FHWA assigning certain federal environmental responsibilities to the state of California, including NEPA authority for certain CEs.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs.

ARTBA members undertake a variety of activities that are subject to the environmental review and approval process in the normal course of their business operations. ARTBA's public sector members adopt, approve, or fund transportation plans, programs, or projects which are all subject to multiple federal regulatory requirements. ARTBA's private sector members plan, design, construct and provide supplies for these federal transportation improvement projects. This document represents the collective views of our 5,000 member companies and organizations.

ARTBA strongly supported the delegation of CE responsibilities to states in both the 2005 federal surface transportation reauthorization act, the "Safe, Accountable, Flexible & Efficient Transportation Equity Act – A Legacy for Users" (SAFETEA-LU) and the 2012 "Moving Ahead for Progress in the 21<sup>st</sup> Century" law (MAP-21).

Allowing California and other states to assume responsibility for CEs rather than provide information to federal agencies on a case-by-case basis would reduce the amount of time involved in the environmental review and approval process by lessening the burden on federal agencies. ARTBA is supportive not only of California's decision to take advantage of the CE delegation provisions of MAP-21, but also of efforts to make this program as accessible and appealing as possible to other states. The more states chose to take advantage of delegation, the greater the reduction of delay in the environmental review and approval process for needed transportation improvements.



In implementing the delegation of CEs, a focus should be placed on flexibility. States should be given maximum flexibility to use their specialized knowledge in different areas to determine when an activity should qualify for CE status. It is more important to establish a flexible process for determining when CEs should be used than to establish a potentially constricting list of eligible activities. Thus, while ARTBA is supportive of the list of activities in the *Federal Register* notice that would be covered under California's assumption of CE responsibility, the list should be viewed as a starting point. In addition to the list, there needs to be flexibility for California (and any other state that chooses to participate in CE delegation) to add new CE classifications as time goes on.

In order for FHWA's proposal to have the greatest impact, once a project is determined by California to qualify for CE status, this decision should be treated as permanent and not subject to subsequent reconsideration. The overall purpose of expanding the use of CEs is to allow those projects which have demonstrated minimal impacts to proceed quickly. Allowing additional after-the-fact reviews for CE projects only serves to undermine the goal of advancing necessary repairs as soon as possible.

Finally, as part of the delegation process, the U.S. Department of Transportation (DOT) should focus on facilitating uniformity by establishing centralized training for all federal staff and state DOTs emphasizing swift CE determination and adherence to a centralized set of regulations regarding what does and does not qualify as a CE. One goal of this training should be to prepare state DOTs to administer CE determinations in place of DOT. Further, a centralized database should be developed to enhance uniformity. The database should contain guidance and frequently asked questions in order to help all parties implement MAP-21 in a consistent manner. Additionally, as new CEs are developed, the regulated community should be involved in the process. DOT should use stakeholder meetings as a forum to discuss the creation and implementation of CEs.

NEPA was never meant to be a statute enabling delay, but rather a vehicle to promote balance. While the centerpiece of such a balancing is the environmental impacts of a project, other factors must be considered as well, such as the economic, safety, and mobility needs of the affected area and how a transportation project or any identified alternative will address those needs. Allowing state delegation of the CE process to interested states like California will help NEPA to achieve this balance. For this reason, ARTBA appreciates the chance to offer these comments on the CE process and looks forward to working with DOT to continue to improve the NEPA process.

Sincerely,



T. Peter Ruane  
President & C.E.O