

April 29, 2013

Docket Management Facility  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
West Building, Ground Floor  
Room W12-140  
Washington, DC 20590-0001

**Re: Docket No. FHWA-2013-0007, Environmental Impact and Related Procedures**

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 rulemaking issued by the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) regarding categorical exclusions (CEs) for projects within an existing right-of-way and projects receiving minimal federal funding.

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 supports the implementation of the "Moving Ahead for Progress in the 21<sup>st</sup> Century" (MAP-21) surface transportation law's reforms to expand the use of CEs for both projects within existing rights-of-way and projects involving minimal amounts of federal funds. MAP-21's goal of increasing the use of CEs will greatly help to reduce delay in the current review and approval process for transportation improvements by clarifying the type of projects that appropriately qualify for less intensive environmental reviews.

Currently, the transportation planning process allows projects which neither individually nor cumulatively have a significant environmental impact, to be treated as a CE. State agencies must provide sufficient information on a case-by-case basis to demonstrate the environmental impacts associated with a project will not rise above the CE threshold. The CE process is typically used for projects where no real alternatives analysis is necessary, such as rehabilitation or replacement projects.



ARTBA urges FHWA and FTA to apply MAP-21's provisions creating CEs for projects within existing rights-of-way and projects relying on minimal federal funding as quickly and thoroughly as possible. These new classes of CEs represent a common-sense approach to reducing delay in the review and approval process for transportation improvements. In the case of projects within an existing right-of-way, a CE designation is warranted because an environmental review has already been undertaken during the designation of the right-of-way. Requiring additional reviews for projects within the right-of-way is duplicative and offers no additional benefits in terms of environmental protection.

ARTBA is concerned that the language used by FHWA and FTA would limit the opportunities for the new CE to be used. MAP-21 specifically states the new CE should apply to "**any** project within an existing operational right-of-way." FHWA and FTA's proposal, however, excludes any right-of-way which have are not "currently being used or regularly maintained for transportation purposes." No such limitation exists within MAP-21 and ARTBA believes that by constraining when the new CE can be used, FHWA and FTA would be imposing a standard outside of the balance that was struck with the enactment of MAP-21. As long as a right-of-way was properly obtained, for any purpose, it should be eligible for the new CE. Existing rights of way have already gone through environmental review and there is no need to duplicate such efforts. If the CE were only used for rights-of-way used or maintained for transportation purposes, there would be very little new opportunities as the areas in question would already be part of a review for a larger transportation plan or project.

For projects relying on minimal federal funding, a new class of CE expands on MAP-21's emphasis for allowing states to take on more responsibility in the project delivery review and approval process. The exact limits set for the new CE are projects receiving less than \$5 million of total federal funds or projects costing less than \$30 million where federal funding accounts for less than 15 percent of the total cost. In either instance, the state where the project is located will be bearing the brunt of the funding responsibility. The state in question should therefore be allowed to assume the brunt of the regulatory responsibilities for the project as well through the newly created CE.

With this in mind, ARTBA takes issue with FHWA and FTA's assertion that the new CE for projects with minimal funding may not apply in certain instances where projects fall below the financial thresholds established in MAP-21. According to the proposal, the agencies envision instances where the CE would not apply because of additional factors allowing for greater administrative review. The example given is a project which falls below the financial limits for the new CE but also would require Interstate access approval from FHWA. According to the proposal, such a project would not qualify for CE status. As with the CE for existing right-of-way, this interpretation by FHWA and FTA strays beyond the language of MAP-21. MAP-21 states the new CE applies to "**any**" project meeting certain financial qualifications. As such, we urge FHWA and FTA to revise this provision of their proposal to allow all qualified projects to be granted CE status.

ARTBA has consistently supported streamlining the environmental review and approval process for transportation projects. Numerous positive opportunities to accomplish this goal were provided by MAP-21's creation of new CEs. With respect to these new CEs, ARTBA believes that less restrictive rulemaking and subsequent agency guidance would allow agencies to make

this simple determination and documentation to the project record earlier in the process, i.e. in conjunction with initial long range planning and multi-year project programming. By making the CE determination earlier in the process without further and broad based staff engagement, agencies and the public would benefit from more reliable project delivery processes, streamlined project delivery, and ensure program continuity necessary to better deliver transportation improvements.

In order for FHWA and FTA's proposal to have the greatest impact, once a project is determined 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, with all of the new classes of CEs created by MAP-21, FHWA and FTA should focus on facilitating uniformity by establishing centralized training for all federal staff and state DOTs focusing on 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 U.S. 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 affect those needs.

ARTBA looks forward to continuing a dialogue with FHWA and FTA in order to continue the implementation of MAP-21 and improve the project delivery process for transportation improvements.

Sincerely,



T. Peter Ruane  
President & C.E.O