

November 30, 2012

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-2012-0092, Environmental Impact and Related Procedure

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 emergency repair projects.

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.

Because of the nature of their businesses, ARTBA members undertake a variety of activities that are subject to the environmental review and approval process. 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 21st Century" (MAP-21) Act's provisions for expanding the use of CEs for repairing transportation facilities damaged as a result of emergency situations. 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.

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 provision for using CEs when repairing transportation facilities damaged by emergency situations to as broad of a range of projects as possible. The more projects qualifying for CE status, the greater the opportunity will be to reduce delay. In order to have the greatest impact, when considering what types of "emergencies" would qualify for the rule, it should be noted that emergencies can involve both man-made and natural situations. While incidents like hurricanes, tornadoes and other severe weather would most certainly qualify as "emergencies,"—bridge collapses and similar situations could also justifiably be considered "emergencies." The goal of MAP-21's expansion of the CE process should be to allow areas subject to such disasters as much flexibility as possible in attempting to fix the damage to their transportation systems.

In its current state, NEPA is ambiguous on whether a CE or environmental assessment (EA) would be required for a specific project. This can, and often does, cause project sponsors to opt for the more time consuming EA in order to avoid potential litigation at a later time. For this reason, ARTBA also supports the creation of unambiguous environmental review criteria that would clarify the CE process (over a far more time consuming EA or EIS) where environmental impacts are clearly minimal unless there is "compelling" evidence warranting a different course of action. Creation of specific criteria would allow planners to know what type of review is most appropriate for their project. Such criteria would also reduce the threat of litigation by groups pressing for a more comprehensive review regardless of whether or not it is needed. To areas recovering from emergency situations, these benefits would enable transportation systems to be rebuilt without unnecessary delay.

The proposal specifically asks whether six different activities should be considered under MAP-21's new CE for emergency situations. These are:

- Construction of engineering and design changes to a damaged facility to meet current design standards;
- Repair and reconstruction of adjacent transportation facilities within the right of way damaged by the emergency;
- Construction of betterments to damaged facilities beyond those eligible under 23 U.S.C. 125;
- Construction of engineering and design changes to a damaged facility for the purpose of retrofitting;
- Construction of engineering and design changes to a damaged facility to deal with future extreme weather events and sea level rise; and
- Construction of other engineering and design changes to a damaged facility to address concerns such as safety and environmental impacts.

ARTBA believes all of the activities listed should qualify for CE status. The objective should be not simply to help an area replace transportation facilities damaged in emergency situations, but to build new transportation facilities that will not be damaged in the future. If the CEs are applied in an overly restrictive manner where states and localities are only allowed to rebuild transportation facilities exactly as they were, there will be no opportunity for improvement. For example, if a bridge is damaged in a "Category One" hurricane, it makes little sense to require more intensive reviews for an improved facility that could withstand future extreme weather events. Using such foresight in the implementation of MAP-21 will ensure areas rebuilding after

emergency situations will not have the opportunity only regain lost transportation capabilities, but also improve upon them. ARTBA is not advocating avoidance of appropriate environmental reviews for capacity enhancing projects, but rather seeking to ensure a common-sense approach to repairing damaged transportation infrastructure facilities.

Further, ARTBA also reminds FHWA and FTA that it is also important to establish a flexible process for determining when CEs should be used rather than focusing on a constraining list of activities. It is for this reason that ARTBA will continue to issue recommendations focusing on structural changes to the CE process itself, such as deadlines for completion and guidelines on when CEs should be used.

Providing set time limits for the completion of CEs would also go a long way towards reducing the delay inherent in the current NEPA review process. However, ARTBA recognizes that a uniform deadline may not work for every project. In setting deadlines for CEs, discussions involving the lead agency and project sponsor should take place in order to determine a realistic timeline for the project. As such, ARTBA recommends project sponsors and regulatory agencies agree on individualized CE deadlines in the beginning stages of the development process. Further, changes to the CE process should allow for project-specific flexibility in the setting of deadlines.

Finally, in order for FHWA and FTA's proposal to have the greatest impact, once an event 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.

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. FHWA and FTA's proposal in combination with further modifications the CE process will help NEPA to achieve this balance.

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