



April 25, 2013

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

Re: Docket no. FHWA-2013-0007

Dear Administrator Mendez and Administrator Rogoff:

The Safe Routes to School National Partnership appreciates the opportunity to comment on the joint Notice of Proposed Rulemaking (NPRM) on Environmental Impact and Related Procedures published February 28, 2013.

The Safe Routes to School National Partnership is a network of more than 600 nonprofit organizations, government agencies, schools, and professionals working together to advance the Safe Routes to School movement in the United States. Our focus is on making it safer and more prevalent for more children to walk and bicycle to and from school.

Safe Routes to School projects address the Administration's priorities of safety and livability, with a focus on children. Nearly one-quarter of all traffic deaths for children ages 0-14 occur when they are walking or bicycling and are struck by cars. Improving the built environment around schools by adding sidewalks, crosswalks, bike lanes and school zone signage improves safety for children on the way to and from school and in daily life.

We are very concerned about the impact of some changes in MAP-21 that affect the application of Title 23 to bicycling and walking projects. Under SAFETEA-LU, Safe Routes to School projects were explicitly called out as being treated as projects on a Federal-aid system under Title 23, Chapter 1. This language led to these small projects being subject to rules and regulations primarily targeted to large-scale, complex, federally-funded highway projects. Both local award recipients and state coordinators have indicated that the time and effort needed to comply with these regulations is high given the small size and scope of the typical Safe Routes to School award. This problematic legislative language from SAFETEA-LU has now been expanded to affect the entirety of the Transportation Alternatives program, meaning that all types of bicycling and walking projects may experience delays.

One aspect of Title 23 is the environmental review. While bicycle and pedestrian facilities currently have a categorical exclusion, we have found that many states have required Safe Routes to School projects to undergo environmental studies or submit significant documentation with sign-offs from multiple agencies to prove they qualify for the categorical exclusion. We view this rule as an opportunity to further clarify that bicycling and walking

projects that are small and low-cost and within the existing built environment should not require documentation to qualify for a categorical exclusion unless special circumstances exist.

Overall Comments

We appreciate the clarification of the Categorical Exclusions (CE) in existing law and regulations, and support the suggested rule. We hope that US DOT will disseminate clear guidance on when a CE is appropriate- especially in cases where more than one CE could apply. As discussed above, although bicycle and pedestrian projects are already eligible for a CE, state DOTs are often hesitant to use the CE even in cases where it is appropriate and that do not ‘involve unusual circumstances’ that “will require the Administration, in cooperation with the applicant, to conduct environmental studies to determine if the CE classification is proper” (23 CFR 771.117(b)). We are concerned this problem could worsen given the legislative language now applicable to all Transportation Alternatives projects.

However, a small modification to this proposed rule could help alleviate this challenge. We would suggest the rule encourages use of a CE where a project qualifies for two or more CEs apply and there are no unusual circumstances. As most bicycle and pedestrian projects already qualify for a CE, plus are frequently low-cost and built in the operational right-of-way, this will help ensure these projects are not subject to unnecessary environmental review. We believe this is within congressional intent and will help local project sponsors better understand when a bicycle and/or pedestrian project is clearly eligible for a categorical exclusion under the new MAP-21 provisions.

Comments related to Operational Right-of-Way provisions

The proposed rule provides a clear and usable definition of ‘operational right-of-way’ as “within the geographic area previously permanently acquired, needed, and used for the construction, mitigation, operation, and maintenance of an existing transportation facility.” We believe this definition would qualify any sidewalk or bike lane on or along an existing roadway. It may also include a bikeway or multiuse trail depending on if that bikeway is within the operation or maintenance area or clear zone of the roadway, bridge, etc. It may not apply to a bikeway or multi-use trail that is outside of the ‘operational right of way’ or clear zone but within a larger right-of-way. We support this language.

We would like to suggest that the guidance language included related to right-of-way acquired for future corridor expansion be further clarified. As currently stated, a reader may think that land acquired for future corridor expansion may be eligible for a CE under these provisions as the ‘corridor is in operational use at the time of CE application’. It should be made clear that this provision is governed by the definition of operational right-of-way as land for future corridor expansion could be adjacent to an existing highway but not in an operational right-of-way.

Comments related to Limited Federal Assistance provisions

We support the language that provides that projects that require additional “Administration actions” are not covered by this rulemaking as projects that involve items such as a Interstate Justification Report or other significant modification to the regional transportation network are likely to invoke the unusual circumstances provision, which would prohibit the project from moving forward as a categorical exclusion under the environmental review process.

We also support the rule that projects need to demonstrate independent utility, connect logical termini and not restrict considerations of alternatives of other reasonably foreseeable transportation improvements. However, we suggest that the rule be clarified to say that, as long as the full project meets both the limited federal assistance and the independent utility requirement, the project can qualify even if it is built in segments. Even though bicycle and pedestrian projects may meet the minimum funding requirement, they are often built in segments.

Thank you again for the opportunity to comment on this important NPRM. We support the rule, and ask that the rule encourages use of a CE where a project qualifies for two or more CEs and there are no unusual circumstances. We believe these suggestions will help provide clarity for state DOTs and more efficiency in undertaking bicycle and pedestrian projects without creating loopholes for projects that should be subject to review of their potential environmental impacts.

We look forward to continuing to work with DOT, FHWA and FTA on the implementation of MAP-21. Please contact us if you have questions about our ideas or would like to discuss them further.

Sincerely,

A handwritten signature in blue ink, appearing to read "Deb Hubsmith".

Deb Hubsmith, Director
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