May 14, 2012

U.S. Department of Transportation
1200 New Jersey Avenue, SE
Docket Operations, M-30
West Building Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: Docket No. FTA–2011–0056

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Transit Administration's (FTA) Notice of Proposed Rulemaking (NPRM) on Environmental Impact and Related Procedures, published March 15, 2012 at 77 FR 15310.

About APTA

APTA is a non-profit international trade association of public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

General Comments

APTA supports FTA's efforts to streamline the National Environmental Policy Act (NEPA) review process for federally funded projects. We believe expansion of the categorical exclusion (CE) list will save time and costs for project sponsors and FTA without compromising protection of the environment.

APTA believes the proposed changes will be beneficial overall and offers the comments below to maximize that benefit. We also suggest the Final Rule be accompanied by a strong outreach program to ensure all involved in the process understand the changes and implementation is consistent throughout the country.

Section by Section Comments

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

§771.111 Early coordination, public involvement, and project development

- We support FTA's proposal to formalize "early scoping". We believe this is the right direction for the industry, and should help advance the environmental review process.

§771.118 FTA Categorical Exclusions (CEs)

- As noted in the proposed rule, "when a patterns emerges of granting CE status for a particular type of action, the Administration will initiate rulemaking to add this type of action to the appropriate list of categorical exclusions." We urge the FTA to update the CE list on a regular basis, based on experience, and as new and novel projects arise that may be subject to categorical exclusion. We suggest that this review occur at least every five years.
- Section (c) states that "The following FTA CEs meet the criteria for CEs in the Council on Environmental Quality (CEQ) regulation (section 1508.4) and § 771.118(a) of this regulation and normally do not require any further NEPA approvals by FTA." The subsections of 771.118 (c) that follow list the CEs eligible for expedited approval.
- Where a subsection lists types of projects that would be categorically excluded, we request that FTA add language to clarify that the list of projects is not intended to be an exhaustive list. For example, §771.118 (c)(1) would exclude projects "within the existing right-of-way, such as utility poles; underground wiring…." For clarification, we recommend that "such as" be replaced with "including but not limited to."

Subsection §771.118 (c)(1)

- Subsection (c)(1) references: "Acquisition, installation, operation, evaluation, and improvement of discrete utilities and similar appurtenances (existing and new) within or adjacent to existing transportation right-of-way, such as utility poles; underground wiring, cables, and information systems; and power substations and transfer stations."
- We recommend that FTA add "replacement" to the list of activities that would be excluded. A replacement would have no more impacts than a new installation. This is an instance where the additional activity may help provide clarity to regional offices. We request that FTA remove the word "discrete" since this word may be interpreted inconsistently. Further, for clarification we recommend that "such as" be replaced with "including but not limited to."
- The revised text would read as follows: "…improvement, and replacement of utilities and similar appurtenances (existing and new) within or adjacent to existing transportation right-of-way, including but not limited to utility poles…"

Subsection §771.118 (c)(3)

- Subsection (c)(3) references: "Limited activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, such as: noise mitigation

activities; rehabilitation of public transportation buildings, structures, or facilities including those that are listed or eligible for listing on the National Register of Historic Places when there are no adverse effects under the National Historic Preservation Act; retrofitting for energy conservation; and landscaping or re-vegetation."

- Revision is suggested because the proposed text is unclear as to what activities are covered under this CE.
- We request that FTA remove the word "Limited" and revise the text so that it reads: "Activities that will maintain or reduce the environmental footprint of transit operations that cause no harm themselves or maintain and enhance environmental quality and site aesthetics, including, but not limited to…" Additionally, "bridges and viaducts" should be added to the non-exhaustive list of project types in this subsection.

Subsection §771.118 (c)(5)

- Subsection (c)(5) references: "Discrete activities, including repairs, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as the deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; and retrofitting existing transportation vehicles, facilities or structures."
- Similar to the comments above under subsections (c)(1) and (c)(3), we recommend deleting the word "discrete" in describing activities that may be excluded. The term "discrete" is too subjective for these provisions.

Subsection §771.118 (c)(6)

- Subsection (c)(6) references: "Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the property or in substantial displacements, such as scenic easements and historic sites for the purpose of preserving the site. This CE extends only to acquisitions that will not limit the evaluation of alternatives."
- The first sentence refers to "Acquisitions or transfers" while the second sentence seems to limit the CE to acquisitions only. Revision is needed to clarify the intent of this subsection.
- We recommend FTA revise the last sentence to: "This CE extends only to acquisitions *or transfers* that will not limit the evaluation of alternatives."

Subsection §771.118 (c)(7)

- Subsection (c)(7) references: "Acquisition, rehabilitation and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for categorical exclusion."

- We recommend adding "installation" and "replacement" to the list of excluded projects involving vehicles or equipment. An installation or repair is likely to have the same or fewer impacts than a rehabilitation or maintenance work, which are both currently listed.

Subsection §771.118 (c)(8)

- Subsection (c)(8) references: "Maintenance and minimally intrusive rehabilitation and reconstruction of facilities that occupy substantially the same environmental footprint and do not result in a change in functional use, such as improvements to bridges, tunnels, storage yards, buildings, and terminals; and construction of platform extensions and passing track."
- We suggest removing the words "minimally intrusive," which would strengthen and broaden this CE. For clarification, we recommend replacing "environmental footprint" with "physical footprint."
- This subsection should also include renewal and/or component repair. While these activities may be interpreted as types of rehabilitation or reconstruction, the addition of these activities will provide clarity.
- "Stations and station buildings" should be included as a type of improvement that may be excluded. Similar to the comment above, while stations and station buildings may be interpreted as facilities, this proposed addition will provide clarity.
- The final revised text should read: "Maintenance, rehabilitation, reconstruction of facilities that occupy substantially the same physical footprint and do not result in a change in functional use, including but not limited to improvements to bridges, tunnels, storage yards, buildings, terminals, stations and station buildings; and construction of platform extensions and passing track."

Subsection §771.118 (c)(9)

- Subsection (c)(9) references: "Assembly or construction of facilities that is consistent with existing land use and zoning requirements (including floodplain regulations), is minimally intrusive, and requires no special permits, permissions, and uses a minimal amount of undisturbed land, such as buildings and associated structures; bus transfers, busways and streetcar lines within existing transportation right-of-way."
- We suggest removing the phrase "and requires no special permits, permissions" and adding the phrase "or uses previously undisturbed land", which would strengthen and broaden this CE.
- The revised text should read: "…is minimally intrusive, and uses a minimal amount of undisturbed land or uses previously disturbed land, such as...."
- To remain mode neutral, we suggest using the phrase "fixed guideways operating within" rather than "streetcar lines" and "bus transfer stations or intermodal centers" rather than "bus transfers."
- The revised text would read: "bus transfer stations and intermodal centers, busways, and fixed guideways operating within existing transportation rights-of-way."

Subsection §771.118 (c)(10)

- Subsection (c)(10) references: "Development activities for transit and non-transit purposes, located on, above, or adjacent to existing transit facilities, that are not part of a larger transportation project and do not substantially enlarge such facilities, such as police facilities, daycare facilities, public service facilities, and amenities."
- The term "Development activities" is unnecessarily vague.
- We suggest the word "Construction" replace "Development activities." The revised text would read "*Construction* activities for transit and non-transit purposes…"

Subsection §771.118 (d)

- We understand that, consistent with past practice, FTA proposes to continue to allow the categorical exclusion of other actions with documentation with a mechanism proposed for subsection §771.118 (d), which mirrors the existing 23 CFR 771.117 (d). However, because there is now a specific list of proposed undocumented FTA CEs noted in §771.118 (c), we suggest the following revisions to the proposed rule to provide clarity and distinction between undocumented and documented FTA CEs. These revisions are suggested so that the text in the proposed rule would more clearly indicate that FTA would consider **all** actions **not noted** under (c) if the applicant produces documentation showing compliance with the broader definition of a CE noted in the proposed rule and also in CEQ regulations.
- Subsection §771.118 (d) references: "Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after FTA approval. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result." FTA's proposed rule would not amend the list of examples already in this subsection.
- We recommend that, consistent with the existing and proposed versions of subsection 771.118 (e), those activities noted in draft subsection 771.118 (d)(2) through (4) be moved to subsection 771.118 (c). The remaining example, in subsection 771.118 (d)(1), should be deleted as unnecessary and the revised provision should end with the sentence: "The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result."
- Once shifted to subsection 771.118 (c), the CEs referencing hardship and protective acquisition of property should note that the applicant must provide information to FTA that substantiates a request for hardship or protective acquisition.

§771.119 (k) Environmental assessments (EA) and §771.123 (d) Draft environmental impact Statements (EIS)

- Section §771.119 (k) references: "For FTA actions: If the applicant selects a contractor to prepare the EA, the contractor's final scope of work for the preparation of the EA will not be determined until the informal scoping process is completed, and the scope of study has been approved by FTA in consultation with the applicant."

- Subsection §771.123 (d) references: "For FTA actions, the contractor's final scope of work for the preparation of the EIS will not be determined until scoping has been completed, and the scope of study has been approved by FTA in consultation with the applicant."
- While we support efforts to eliminate unnecessarily expansive efforts by consultants, the proposed requirement for FTA to approve scopes of study would likely have the unintended consequence of delaying project implementation.
- In the case of EIS's, delays would result when the sponsor intends to have the same consultant do project scoping and also write the EIS. Under the provisions in 771.119 (k), the sponsor would need to conduct two procurements, one for project scoping and a second to write the EIS, adding several months onto the environmental process. Sponsors would lose the ability to have a single consultant develop the scope if FTA had to approve the scope prior to contract award.
- Additionally, FTA must recognize that many properties have environmental requirements in addition to NEPA requirements that will impact the breadth of the scope.
- We suggest that sections 771.119 (k) and 771.123 (d) be removed from the rule and the discussion on the need for the applicant to carefully scope the project and be adaptable to changes in the overall process after formal NEPA scoping is included in published guidance following the final rule. One way to better manage consultant efforts nationally is to develop standard outlines and suggested content for statements of work (SOWs) for EAs and EISs (with the understanding that there will be unique elements for each project). This measure would provide significant support toward achieving FTA's goal.

We appreciate the opportunity to assist FTA in this important effort. For additional information, please contact James LaRusch, APTA's chief counsel and vice president-corporate affairs, at (202) 496-4808 or jlarusch@apta.com.

Sincerely yours,

Michael P. Melaniphy
President & CEO

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