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PUBLIC  
TRANSPORTATION  
ASSOCIATION

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Docket Operations  
U.S. Department of Transportation  
1200 New Jersey Avenue S.E.  
West Building Room W12-140  
Washington, DC 20590

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**PRESIDENT & CEO**

Michael P. Melaniphy

**RE: Docket No. FHWA-2015-0011**

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 Highway Administration (FHWA) and Federal Transit Administration (FTA) Notice of Proposed Rulemaking (NPRM) and request for comments on Environmental Impact and Related Procedures, published on November 20, 2015 at 80 FR 72624.

**About APTA**

APTA is a non-profit international trade association of more than 1,500 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 the FHWA and FTA efforts to ensure the joint environmental regulation provides guidance and helpful information to project sponsors without imposing overly onerous or rigid requirements. We offer the following brief comments to assist in those efforts.

**SPECIFIC SECTION COMMENTS**

Draft section 771.113 – APTA supports this draft language with the understanding that the overall goal is to broaden the definition of the ‘environmental review process’ to include activities that occur in early planning and activities that could be covered under a Categorical Exclusion.

Draft sections 771.119(a) and 771.123(d) – We understand the FHWA and FTA interest in ensuring a contractor’s scope of work “*not be finalized until the early coordination activities or scoping....is completed.*” While this requirement is well intended, we believe that given the way that agencies enter into contracts with consultants for these types of services, the requirement has a strong likelihood of being impossible to implement for many agencies.

Typically, an agency enters into a professional services contract for an overall scope of work. Part of that work includes the early design and environmental services needed to perform early coordination. If an agency is unable to finalize this scope of work until this step of the process is completed, many agencies will be unable to have the necessary consulting services to perform these early items, since the scope of work often spans from project initiation through later stages of environmental review and design. To separate these stages into separate and consecutive approvals will require contract amendments or change orders to contracts that are often in conflict with most agencies professional service contract standards.

While there is a logical and clear breakpoint for developing and approving the contractor’s scope of work (most likely at the completion of the Scoping Report), there is no similar bright line that defines the completion of the “early coordination process.” This concept, as drafted, is too vague to use for this purpose.

Finally, FHWA and FTA should affirmatively state that they do not envision reviewing or approving any consultant’s scope of work.

We appreciate the opportunity to assist FHWA and FTA in this important endeavor. For additional information, please contact James LaRusch, APTA’s chief counsel and vice president corporate affairs, at (202) 496-4808 or [jlarsch@apta.com](mailto:jlarsch@apta.com).

Sincerely yours,



Michael P. Melaniphy  
President & CEO

MPM/jpl:jr