



April 29, 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:

America Walks appreciates the opportunity to comment on the joint Notice of Proposed Rulemaking (NPRM) on Environmental Impact and Related Procedures published February 28, 2013.

America Walks is a national nonprofit organization whose mission is to make America a Great Place for Walking. We work collaboratively at the national level through the Every Body Walk Collaborative, and at the state and local levels through our affiliate organizations and network of walking advocates. Walking is increasingly being recognized, at the federal level, as an active transportation mode which promotes active and healthy lifestyles. Infrastructure that allows people to walk safely from home to a variety of nearby destinations, including transit, is often added after the basic motor vehicle roadway has been built.

Projects to make walking safe and attractive address the Administration's priorities of safety and livability. Although about 9% of trips today are made on foot, pedestrians account for about 12% of traffic fatalities. Improving the built environment by adding sidewalks, crosswalks, and pedestrian signage improves safety for everyone in their daily lives. It is important that sidewalks and pathways be able to be installed in the right of way with minimal environmental clearance (CE) as the default process.

We are very concerned about the impact of some changes in MAP-21 that affect the application of Title 23 to walking projects. 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 such 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 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 pedestrian and bicycle 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 encourage 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, and are generally

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low-cost and built in the operational right-of-way, this will help ensure that these projects are not required to obtain unneeded environmental review. We believe this 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 and meets congressional intent.

### **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 on or along an existing roadway. It may also include a multi-use trail depending on if that multi-use trail is within the operation or maintenance area or clear zone of the roadway, bridge, etc. It may not apply to a 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.

America Walks suggests that the guidance language be further clarified as it relates to right-of-way acquired for future corridor expansion. 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 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 pedestrian and shared use pathway projects may meet the minimum funding requirement, they are often built in segments.

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.

Thank you again for the opportunity to comment on this important NPRM. We support the rule, and request 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 pedestrian projects without creating loopholes for projects that should be subject to review of their potential environmental impacts.

Again, thank you for the opportunity to provide input. We look forward to working with DOT, FHWA and FTA on the implementation of MAP-21. Please contact us if you have questions.

Sincerely,

Scott Bricker,  
Executive Director

