



National Association of County Engineers

THE VOICE OF COUNTY ROAD OFFICIALS

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July 24, 2017

USDOT Secretary Elaine L. Chao
US Department of Transportation
1200 New Jersey Ave, SE
Room W12-140
Washington DC 20590-0001

Re: Docket No DOT-OST-2017-0057
USDOT- Office of the Secretary of Transportation
Transportation Infrastructure: Notice of Review of Policy, Guidance and
Regulation

Dear Secretary Chao:

I am contacting you on behalf of the National Association of County Engineers (NACE) which represents over 2,000 county engineers and county road officials across the United States and Canada.

Our nation's 3,069 counties build and maintain 45 percent of public road miles and 40 percent of bridges, as well as over one-third of the nation's transit systems and airports. Not only do county roads, bridges and highways connect our counties and states, they serve as a lifeline for rural communities, playing a critical role in the movement of freight and other goods and services.

Counties are innovators and, in many cases, must be to survive. The federal government can assist this innovation by providing a regulatory environment designed to empower project delivery, not hamper it.

Potential Solutions - Establish Exemptions and Empower All Levels of Government

NACE members offer the following **recommendations** to ensure we can provide our citizens the best possible services given our limited resources:

- **First, we would like to recommend that Congress build on the principles introduced in MAP-21 and furthered in the FAST Act by creating an exemption from any and all federal agency requirements if the project receives less than \$5,000,000 in federal funding.**

The Moving Ahead for Progress in the 21st Century Act (MAP-21) set a precedent by identifying a category of low risk projects appropriate for Categorical Exclusions [23 CFR Part 771.117 (c) and/or (d)]. In addition, MAP-21 established financial thresholds categorically excluding projects from environmental reviews, provided that the projects receive less than \$5,000,000 in federal funds. The FAST Act reinforced these principles.

Under this recommendation, state and local governments would apply the appropriate state or local standards and specifications to their projects and follow current state and local procedures to bid, award and construct their projects. State and local governments could also perform work under force account provided there is a substantial cost savings to the public by doing so. No state or federal oversight would apply to these projects, which will ensure the maximum amount of funding makes it to tangible projects. Low risk projects as defined in the FAST Act could easily be grouped into this exemption, but strong consideration should be given to defining bridge replacement projects where no major relocation occurs as an exempt action as well.

Currently Categorical Exclusions (CEs), while seemingly straight forward in CFR 771.117 and increased/encouraged through MAP-21 and the FAST Act, still require undue documentation and are subject to varied interpretations by each state division. Furthermore, a CE granted by USDOT does not ensure the project will not be subject to the review by additional federal agencies. This recommendation would eliminate these impediments, decrease the overall cost of the project and the time required to deliver the project, and minimize the need or confusion related to subject guidance detailing how to implement a CE.

This recommendation would also include the need to revisit projects occurring within the existing public right-of-way. *Rulemaking and guidance issued by USDOT utilizes a more limited definition of “operational” right-of-way rather than a broader inclusion of all right-of-way previously acquired.* This recommendation is consistent with the original intent of MAP-21 which we believe was to apply to projects and activities occurring within the acquired right-of-way.

What would be the impacts of this type of change?

First, more of our funding will reach the public in the form of tangible road and bridge projects. Quite simply, we currently have funding go to meeting duplicative federal regulations as opposed to the project itself. While eliminating these regulations will not solve transportation funding issues alone, this approach demonstrates improved efficiency and cost effectiveness.

Second, local and state governments can best evaluate the needs of their communities and the appropriate project scope that provides the greatest benefit to the communities.

Third, the various federal agencies can focus their efforts on moving large scale highway projects through the process and refocus their efforts on being resources to the state and local governments to meet the needs of our communities.

Lastly, the public wins. More resources are directed to projects that they can see, use, and reap the benefits from through an improved quality of life – all while improving our transportation network, which serves as the backbone for our nation’s economy.

This only works if the federal government has enough faith in states and counties to ensure public safety for their citizens. While I have no doubt the intentions of the federal government are to protect the public, there must be a realization that states have that same interest;

- **Second**, the FAST Act and MAP-21 both included provisions exempting emergency repair work when federal assistance is involved, but they do not go far enough as there are still a multitude of project types that are susceptible to review regardless of the scale of its undertaking. The bureaucratic delays increase costs, delay recovery and place lives in danger.

Creation of an exemption that removes any and all federal requirements from emergency repairs to any transportation facility damaged by a disaster would expedite restoration of services to our citizens, lower the costs of repairs and refocus federal resources to be available to support and assist with recovery efforts.

Repairs to such facilities would include the completion of the repairs occurring substantially within the existing public right-of-way and the subject repairs resulting in the restoration or reconstruction of the transportation facility to the pre-disaster condition provided the work is compliant with current local/ state standards. Mitigation to minimize future occurrences of damage to the transportation facility would be allowed under this exemption;

- **Third**, federal agencies' rules and regulations overlap, confuse and lengthen the delivery of critical projects with little value to the taxpayers of our nation. One example of this overlap is the Waters of the United States issue. These multiple agencies overreaching local and state jurisdiction is very problematic and adds no increase in service when federal funds are being expended; rather this overreach prevents the public from receiving the benefits their tax monies could provide because of unnecessary delays, increased costs and unintended consequences.

All federal rulemaking should be *coordinated* so that all federal agencies provide a single cohesive policy that is interpreted and applied uniformly from agency to agency, region to region, and state to state. This single policy approach should be developed in *coordination* with local and state government to provide the most flexible approach possible and in many cases would result in the elimination of problematic and cumbersome regulations;

- **Fourth**, provide states funding by a formula that distributes the federal funds into four major categories: use on federal (interstate and US Highways) routes, use on state routes, use on municipal routes, and use on county routes.

Each category would receive funding equal to one quarter of the total funding received by the state. In the cases where the state maintains all routes and no county government (or less than 50% of the counties) do not maintain any routes, the county category of funding reverts back to the state government for use on their routes. Local and state governments shall be able to determine the use of the funds sub allocated to them provided that the funds are utilized for projects/activities on publicly owned and maintained routes. Allocation of funding in this manner to a state would simplify oversight by the federal agencies and minimize misinterpretation of how federal funds can be utilized. By simplifying the allocation process, federal personnel can focus efforts on aiding the state and local governments expedited delivery of the federal program to the benefit of our nation's citizenry.

Should a formula change for sub allocation as described above not be an option, local governments need additional access to safety and bridge rehabilitation funding along with flexibilities to deliver federal transportation funds to areas of severe need in this country. This can be accomplished through:

- ✓ *Requiring states to “coordinate” with local governments to develop Strategic Highway Safety Plans (SHSPs) and allocate Highway Safety Improvement Program (HSIP) funding based on fatalities regardless of ownership;*
 - ✓ *Establish Toward Zero Death (TZD) grants targeted to local governments and non-profit organizations to implement safety practices and programs focused on reducing roadway related fatalities;*
 - ✓ *Designate a separate funding pool for all structurally deficient and/ or functionally obsolete bridges, regardless of ownership, with the goal of funding the rehabilitation or replacement of 50% of these type structures within the remaining length of the FAST Act.*
- **Fifth**, the United States Department of Justice and USDOT issued guidance requiring improvements on most all federally funded projects with regard to the American with Disabilities Act.

The allowable activities for pavement preservation that trigger these requirements should be reevaluated to provide the maximum benefit and flexibility for all citizens impacted.

In many cases, the benefit of a pavement preservation project is not financially feasible to state and local government agencies when the required improvements are mandated into a project. While compliance with ADA is very important to state and local government, a renewed look at this mandate is needed to ensure our limited resources can make the most impactful investment possible;

- **Finally**, USDOT and its different subdivisions should reevaluate their structure to focus their role on being a resource agency rather than regulator. Many other federal agencies should follow the same recommendation, but USDOT should take the lead and ensure that a bottom up approach is ensured for our nation’s citizenry.

Through this reevaluation, USDOT can focus its staff to assist with accelerating project delivery by focusing its efforts on complex projects, expanding the deployment of innovative techniques to the various local and state government entities the USDOT should be serving, and ensuring educational opportunities exist for local and state governments through its existing LTAP/ TTAP networks;

In closing, NACE, as “The Voice of County Road Officials,” *stands ready to work with our federal partners to achieve our shared goals of strengthening transportation networks, improving public safety and advancing our economic competitiveness.* Please consider myself and our organization as a resource in achieving these goals. I would be happy to meet with you at any time to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Roberts", with a long, sweeping flourish extending to the right.

Brian C. Roberts, P.E.
Executive Director