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Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave. SE
West Building, Ground Floor
Room W12-140
Washington, DC 20590

Re: Docket No. FHWA-2021-0011 Improving Road Safety for All Users on Federal-Aid Projects.

Today I respectfully offer comments on the Federal Highway Administration's (FHWA) Feb. 3 request for information (RFI) on "Improving Road Safety for All Users on Federal-Aid Projects."

Safety is the top priority of the American Road & Transportation Builders Association (ARTBA) and its members—the men and women building and repairing the nation's road, bridges, and public transportation systems. Our 8,000 members represent all facets of the transportation construction industry and work continuously to protect jobsite safety and health of its workers.

Below, please find ARTBA's responses to questions 1, 7 and 8 of the RFI.

Question 1. *What steps are being taken by your agency (if you are commenting on behalf of an agency) or an agency you are familiar with to improve safety for all roadway users, including pedestrians, bicyclists, public transportation users, children, older individuals, individuals with disabilities, motorists, and freight vehicles? How are equity and demographic data considered?*

ARTBA Response: Our core safety challenge—the recognition of construction workers as vulnerable road users—is evidenced in the very questions posed by this RFI. In asking "How might America's roadway system be improved for all users?," the question lists examples including "pedestrians, bicyclists, public transportation users, children, older individuals, individuals with disabilities, motorists, and freight vehicles . . ." Transportation construction workers are not included in that list.

Meanwhile, transportation construction workers are experiencing increases year-after-year in fatalities related to work zone intrusions. A 2018 industry study found that as many as 39 percent of "pedestrians" killed at roadway construction sites were workers. Transportation construction workers are exposed to hazards from motorists, including speeders and distracted drivers, literally feet from active worksites.

This lack of recognition contrasts with the definition of pedestrians in the Infrastructure Investment and Jobs Act (IIJA) and by the National Highway Traffic Safety Administration (NHTSA), which include transportation construction workers under that term.

FHWA recognized the importance of including transportation construction workers as vulnerable road users (VRUs) in its recent memo, “Vulnerable Road User Safety Assessment Guidance” (October 21, 2022).

Definitions:

“A vulnerable road user is a nonmotorist with a fatality analysis reporting system (FARS) person attribute code for pedestrian, bicyclist, other cyclist, and person on personal conveyance or an injured person that is, or is equivalent to, a pedestrian or pedalcyclist as defined in the ANSI D16.1-2007. (See 23 U.S.C. 148(a)(15) and 23 CFR 490.205). A vulnerable road user may include people walking, biking, or rolling.

Please note that a vulnerable road user:

- *Includes a highway worker on foot in a work zone, given they are considered a pedestrian. (Emphasis added.)*

As many as 220 transportation construction workers are killed annually at transportation project sites, while thousands more are injured. However, these numbers are approximations at best. For decades, ARTBA has challenged as incomplete the data reported to and by federal agencies. For example, NHTSA tracks the number of workers killed by motorists, but these deaths are counted as and included in a subset of “pedestrian fatalities” and the data does not distinguish what the worker was doing at the time of death.

The Bureau of Labor Statistics (BLS) attempts to account for every worker death and injury, but finding and counting roadway worker fatalities is difficult. It requires searching across multiple categories of workers to find all those who labor on or adjacent to roadways. Moreover, the categories can overlap with worker deaths in other areas, such as electrical workers installing signs or lighting.

As noted, while the IIJA provides some clarity, transportation construction workers remain invisible VRUs. State and federal agencies are required to address pedestrian safety threats, but unfortunately, as illustrated in this RFI, they are often not considering roadway workers.

Safety improvements for roadway workers need immediate attention. Increased investment from the IIJA is fostering significant growth in the number of project sites nationally. With that growth comes increased worker exposure. It would be tragic to sacrifice the safety and well-being of those laboring to build a safer system for other users.

Questions 7 & 8. What changes to other FHWA regulations codified at [Title 23, CFR](#) are needed to equitably improve safety for people of all ages and abilities who use urban and suburban streets?

What changes to other FHWA regulations codified at [Title 23, CFR](#) are needed to equitably improve safety for people of all ages and abilities who use rural roadways, including in rural towns?

ARTBA Response: Congress and previous administrations have expressed, in a bipartisan manner, the intent to require the use of positive separation between workers and motorists on construction projects that present significant hazards. However, the law has not been fully implemented, and

positive separation is still not used as regularly as it should. New products and technologies are available that make it more practical and cost-effective in urban, suburban and rural applications.

At the same time, according to NHTSA, work zone fatalities have increased significantly--from 586 in 2010 to 857 in 2020 (the latest year for which data is available). These annual numbers include workers (pedestrians), motorists and passengers.

To better protect roadway workers, FHWA must strengthen areas of Title 23 CFR's Subparts J and K regulations in accordance with the Moving Ahead for Progress in the 21st Century (MAP-21) reauthorization law, that requires additional considerations for use of positive separation. It also institutes provisions to allow greater enforcement and/or consequences for those who do not follow the law.

FHWA should also require that positive separation considerations and suppositions be included in the Manual on Uniform Traffic Control Devices (MUTCD).

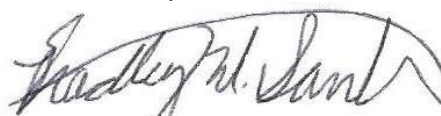
When serious hazards, such as working with a tunnel or bridge project, on a roadway with a posted speed limit higher than 45 mph, or in close proximity to traffic, are foreseen or encountered on a project, positive protection should be specified and an associated pay item provided, unless the owner agency representative determines the same to be impractical or unnecessary for the project under applicable standards, directives, guidance, policy, or other written agency position (collectively referred to as "Agency Standards").

A determination not to use positive protection should be noted in applicable specifications. Agency Standards should be appropriately updated to reflect this policy and when it is impractical or unnecessary. Decisions regarding deployment of positive protective measures should be documented, made available to affected parties, and subject to revision based on site conditions.

The safety needs of workers who build, maintain, and renovate transportation systems are not always fully considered by those agencies who depend on them to create a safe system. Improved safety for road users is an end goal tied to an improved roadway system, but safety during the construction process remains a key component of that equation.

Thank you for considering these views and ARTBA looks forward to continued work with FHWA towards our shared goal of improving road safety for all users on federal-aid projects.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bradley M. Sant", with a stylized, sweeping flourish at the end.

Bradley M. Sant
Senior Vice President of Safety & Education