

March 28, 2014

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590-0001

Re: Docket No. DOT-OST-2014-0024, Next Phase of the Regulatory Review of Existing DOT Regulations

On behalf of the 6,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the U.S. Department of Transportation's (DOT) "Next Phase of the Regulatory Review of Existing DOT Regulations."

ARTBA's membership includes private and public sector members that are involved in the planning, designing, construction and maintenance of the nation's roadways, waterways, bridges, ports, airports, rail and transit systems. Our industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs.

ARTBA members undertake a variety of activities that are directly impacted by DOT regulations. ARTBA's public sector members adopt, approve or fund transportation plans, programs or projects under Title 23 U.S.C. and Title 49 U.S.C., while ARTBA's private sector members plan, design, construct and provide supplies for these federal-aid transportation improvement projects. This document represents the collective views of our 6,000 member companies and organizations.

ARTBA supports DOT's efforts to continue the implementation of President Obama's Executive Order 13653 which aims to make both new and existing regulations "cost-effective," "evidence-based," and "compatible with economic growth, job creation and competitiveness." ARTBA submitted both oral and written testimony during the first phase of DOT's regulatory review in early 2011.

Before it begins the second phase of its regulatory review, DOT has posed a number of questions as to how the review should be conducted. First, DOT asks whether or not a notice should be published in the Federal Register asking for additional rules to be reviewed, as was done in the first phase. ARTBA believes this is the minimum effort which should be taken. The Federal Register is, in many cases, the first place organizations representing the regulated community look for information on proposals issued by DOT. Additional outlets may also be used to ascertain which rules parties would like to see reviewed in order to increase participation, such as DOT's website, but notices should always be placed in the Federal Register. Also, publication in the Federal Register would serve as a protection for DOT against any claims that the review was being done without public knowledge.

DOT also asks whether focus should be paid to rules identified in the first phase of the regulatory review. ARTBA also believes this would be prudent. Not all rules identified in 2011 have been thoroughly examined and, in some cases, there have been subsequent efforts to modify some of those rules in a manner that we believe is contrary to the rationale of the President's Executive Order. One example is the current implementation of the DOT's Disadvantaged Business Enterprise (DBE) program. ARTBA raised the DBE program as a candidate for review in our 2011 comments, and while DOT included it in the scope of that exercise, in our view DOT did not make much of an attempt to analyze or address the program's perceived inefficiencies. In 2012, DOT proposed major modifications to the DBE program, many of which would be severely inefficient and detrimental to all stakeholders, including DBE firms. That rulemaking is ongoing and ARTBA has participated in a number of ways. Even if DOT excludes issues relating to that DBE rulemaking from the upcoming regulatory review, there are numerous other aspects of the DBE program that would be appropriate for this discussion, such as the ongoing need to focus the program on developing and sustaining viable DBE firms.

The focus of this second phase of the department's regulatory review process should include both operating agency-specific regulations and regulatory actions that impact multiple agencies in and out of the DOT. While individual agencies may be focused on one specific mode of transportation or operational mission, the reality of an interconnected transportation network means even mode-specific actions have impact on other parts of the system. Furthermore, individual agency regulations are often major in scope, such as Federal Highway Administration procurement and project delivery initiatives, and have wide ranging impacts on the travelling public and the regulated community. Failure to include these types of major regulatory actions simply because they are perceived to be agency-specific would dilute the department's goal of a comprehensive regulatory review process.

DOT should also examine regulatory issues that "cross cut" among the modal agencies and with other federal agencies outside the department. Often times, multiple federal agencies combine to work on one particular regulation. For example, fuel efficiency standards are the product of work by both the United States Environmental Protection Agency and NHTSA. Fuel efficiency rules have demonstrated environmental benefits, but also result in a loss of revenues from the Highway Trust Fund. Despite repeated recommendations from ARTBA and numerous statements from DOT officials about the dilutive effect of fuel efficiency standards on Highway Trust Fund revenues, the Obama Administration has treated these proceedings as isolated events. DOT should work with other agencies to identify similar rules where the efforts of more than one agency would be required and work towards a mechanism to include such rules within the scope of the regulatory review.

Further, DOT proposes listening sessions as an additional method for gathering input. ARTBA supports this idea. These sessions should be coordinated with other federal agencies. In 2011, review dates for multiple agencies often fell on the same day, even at the same exact time (as was the case with DOT and EPA). Ensuring agencies do not schedule forums and listening sessions opposite one another will help members of the regulated community to offer a maximum level of feedback by avoiding forcing them to choose between opportunities to provide input.

Finally, ARTBA also asks DOT to not only look back at regulations which are already in place, but also to use the President's Executive Order as a guide when implementing new regulations, particularly those required by the "Moving Ahead for Progress in the 21st Century" (MAP-21) surface transportation reauthorization law. As DOT well knows, it is imperative that MAP-21 be fully implemented in as quick and efficient a manner as possible. With a significant portion of MAP-2's policy reforms still being developed, DOT should use the Executive Order's qualifications of having all regulations be "cost-effective," "evidence-based," and "compatible with economic growth, job creation and competitiveness" as it continues its efforts to fully enact the law.

Again, ARTBA is grateful for the opportunity to submit comments as DOT enters the second phase of its regulatory review. We are committed to a productive working relationship with DOT and other entities to ensure that current and future regulations are reviewed and reformed to maximize efficiency and safety for all concerned. We are available for further discussion at any time.

Sincerely,

A handwritten signature in black ink that reads "T. Peter Ruane". The signature is written in a cursive style with a large, stylized initial "T".

T. Peter Ruane
President & C.E.O