

July 13, 2012

U.S. Department of Transportation
Docket Operations
M-30
Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: National Environmental Policy Act (NEPA) Implementation, Docket No. FRA-2012-0016

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the United States Department of Transportation's (DOT's) notice of intent to amend the Federal Railroad Administration's (FRA's) procedures for considering environmental impacts by adding categorical exclusions (CEs) published in the June 13 *Federal Register*.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

Because of the nature of their businesses, ARTBA members undertake a variety of activities that are subject to the environmental review and approval process. ARTBA's public sector members adopt, approve, or fund transportation plans, programs, or projects which are all subject to multiple federal regulatory requirements. ARTBA's private sector members plan, design, construct and provide supplies for these federal transportation improvement projects. This document represents the collective views of our 5,000 member companies and organizations.

DOT seeks to improve the project delivery process by developing new classes of CEs to be used when determining the environmental impacts of rail projects. ARTBA enthusiastically endorses expansion of the use of CEs as a method to improve project delivery and has called for greater use of CEs on multiple occasions in both legislative and regulatory arenas

The transportation planning process allows projects which neither individually nor cumulatively have a significant environmental impact, to be treated as a CE. State agencies must provide sufficient information on a case-by-case basis to demonstrate the environmental impacts associated with a project will not rise above the CE threshold. CEs are typically used for projects where no real alternatives analysis is necessary, such as rehabilitation or replacement projects.



DOT's proposed rule would add seven new classes of CEs for use in the delivery of rail projects. ARTBA supports this initiative, but would also add that in determining guidelines for the establishment of new categories of activities to qualify as CEs, a focus should be placed on flexibility. In describing new CE classifications, it is important that DOT seek to make them as widely applicable as possible. If a new CE classification is limited to only a specific few projects by overly restrictive qualifying language, it will not have the desired effect of improving the overall delivery process for public transportation projects.

Further, ARTBA also reminds DOT that it is more important to establish a flexible process for determining when CEs should be used than to establish an actual list of activities. Focus should be placed on the process rather than defining new activities to classify as CEs. It is for this reason that ARTBA will continue to issue recommendations focusing on structural changes to the CE process itself, such as deadlines for completion and guidelines on when CEs should be used.

Providing set time limits for the completion of CEs would go a long way towards reducing the delay inherent in the current NEPA review process. However, ARTBA recognizes that a uniform deadline may not work for every project. In setting deadlines for CEs, discussions involving the lead agency and project sponsor should take place in order to determine a realistic deadline for the project. As such, ARTBA recommends project sponsors and regulatory agencies agree on individualized CE deadlines in the beginning stages of the development process. Any changes to the CE process should allow for project-specific flexibility in the setting of deadlines.

In its current state, NEPA is ambiguous on whether a CE or environmental assessment (EA) would be required for a specific project. This can, and often does, cause project sponsors to opt for the more time consuming EA in order to avoid potential litigation at a later time. For this reason, ARTBA also strongly supports the creation of unambiguous environmental review criteria that would favor the CE process (over a far more time consuming EA or EIS) where environmental impacts are clearly minimal unless there is "compelling" evidence warranting a different course of action. Ensuring project planners know when it is appropriate to use a CE without fear of possible legal recourse would help reduce delay in the NEPA process. Creation of specific criteria would allow planners to know what type of review is most appropriate for their project. Such criteria would also reduce the threat of litigation by groups pressing for a more comprehensive review regardless of whether or not it is needed.

NEPA was never meant to be a statute enabling delay, but rather a vehicle to promote balance. While the centerpiece of such a balancing is the environmental impacts of a project, other factors must be considered as well, such as the economic, safety, and mobility needs of the affected area and how a transportation project or any identified alternative will affect those needs. DOT's proposal in combination with further modifications the CE process will help NEPA to achieve this balance.

Sincerely,



T. Peter Ruane
President & C.E.O