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Docket Management Facility
U.S. Department of Transportation
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On behalf of the more than 8,000 members of the American Road & Transportation Builders Association (ARTBA), I respectfully offer comments supporting the Interim Policies on Page Limits for NEPA Documents and the Application of the One Federal Decision Process to DOT Projects.

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 $500 billion annually in U.S. economic activity and sustains more than 4 million American jobs.

ARTBA members undertake a variety of activities that are subject to the environmental review and approval process in the normal course of their business operations. ARTBA’s public sector members adopt, approve, or fund transportation plans, programs, or projects. ARTBA’s private sector members plan, design, construct and provide supplies for these federal transportation improvement projects.

**Introduction**

ARTBA members must directly navigate the regulatory process to deliver transportation improvements. As such, they have first-hand knowledge about specific federal burdens that can and should be alleviated. Because of the nature of their businesses, ARTBA members undertake a variety of activities that are directly impacted by NEPA. ARTBA supports NEPA and realizes it is an integral component of the transportation planning process. Many, if not all, of the significant environmental achievements of the transportation community and ARTBA members would not be possible without NEPA.

ARTBA recognizes that regulations play a vital role in protecting the public interest in the transportation project review and approval process. They provide a sense of predictability and ensure a balance between meeting our nation’s transportation needs and protecting vital natural resources. These goals, however, do not have to be in conflict. The most successful transportation streamlining provisions have been process oriented and have essentially found a path for regulatory requirements to be fulfilled in a smarter and more efficient manner.
According to a report by the U.S. Government Accountability Office (GAO), as many as 200 major steps are involved in developing a transportation project, from the identification of the project need to the start of construction. According to the same report, it typically takes between nine and 19 years to plan, gain approval of, and construct a new major federally funded highway project. This process involves dozens of overlapping state and federal laws, including NEPA, state NEPA equivalents, wetland permits, endangered species implementation, clean air conformity, etc. Often times these procedures mask disparate agendas or, at a minimum, demonstrate an institutional lack of interagency coordination that results in unnecessary delays.

There has been a general recognition, in both the legislative and regulatory arenas, that the NEPA review process is simply too long. On the legislative front, the past three surface transportation reauthorization laws contained a number of provisions specifically designed to reduce the amount of delay in the NEPA process, which are currently being implemented through the regulatory process.

**Interim Policy on Page Limits for NEPA Documents**

ARTBA supports U.S. DOT’s recommended page limit thresholds on the length of environmental impact statements (EIS) and environmental assessments (EAs). Setting page limits on these documents will help them better serve the communities for which they are intended to be written by forcing the authors of EISs to write in clear and more concise terms. Additionally, it will reduce the delay associated with new transportation construction projects by dramatically cutting down the time needed to complete the final document.

Currently, the EIS process for a new highway project is a multi-year endeavor. A major reason for this is the length of the EIS itself, which can literally span multiple volumes totaling thousands of pages under the current NEPA regulations.

The EIS is meant as a resource for affected members of the community to gain information about the proposed project. Current EISs are impossible for many lawyers to understand and completely inaccessible to community members without any prior training in the fields of law or environmental consulting. One factor behind lengthy EISs is the fear of litigation on the part of project developers. In an effort to anticipate issues which could be used to delay a project through litigation, project developers have reportedly attempted to “bulletproof” their EISs. This results in a document which attempts to address every possible issue or scenario to arise in connection with a proposed project no matter the relevance or how likely it is to be a factor in environmental decision making. The end product of this process is an EIS which is completely unwieldy and does not serve its intended purpose.

U.S. DOT’s interim policy is a positive step towards alleviating these concerns. ARTBA also appreciates U.S. DOT allowing flexibility for more complex projects by adding the option for EISs of “unusual scope or complexity.” Such flexibility allows for the fact that every transportation construction project is unique, and some are, inevitably, more complicated than others. Additionally, ARTBA also supports U.S. DOT’s instruction to have EISs and EAs follow the Plain Writing Act of 2010. Adherence to this statute will help improve the overall clarity of environmental documents.
Implementation of “One Federal Decision” (OFD)

In August of 2017, President Trump issued Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,” also referred to as “One Federal Decision.” OFD reduces unnecessary delay by aligning federal environmental reviews amongst multiple agencies and mandating a two-year average for completion of the environmental review and approval process. Perhaps most importantly, OFD also requires a lead agency for every infrastructure project and allows that lead agency to set schedules for other participating agencies during the project delivery process.

ARTBA supports U.S. DOT’s policy implementing OFD. Designating a lead agency for each infrastructure project addresses one of the basic problems in the project delivery process—multiple agencies besides DOT evaluating the impacts of the project as required by NEPA each according to their own schedule. While it would seem that the NEPA process would establish a uniform set of regulations and submittal documents nationwide, this has not been the case. For example, the United States Environmental Protection Agency (EPA), Army Corps of Engineers (Corps), Fish and Wildlife Service (FWS) and their companion state agencies each require an independent review and approval process, forcing separate reviews of separate regulations, and unique determinations of key benchmark issues—such as the purpose and needs of a project—and requiring planners to answer multiple requests for additional information. Also, each of these agencies issues approvals according to independent schedules.

Designation of a lead agency in accordance with OFD will allow U.S. DOT to be the focal point of the review process, as opposed to a peer on equal footing with non-transportation agencies. Further, setting a schedule which companion agencies must adhere to will add a needed sense of predictability to the project review and approval process.

Conclusion

ARTBA supports both of U.S. DOT’s proposed policies on page limits for NEPA documents and the implementation of OFD. Continuing to streamline the NEPA process for our nation’s infrastructure is essential in assuring the public the government is making every dollar spent of transportation go as far as possible without sacrificing necessary regulatory safeguards. ARTBA looks forward to continuing to work with U.S. DOT on these efforts.

Sincerely,

David Bauer
President & C.E.O