June 22, 2020

U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Docket No. EPA-HQ-OA-2020-0128, EPA Guidance; Administrative Procedures for Issuance and Public Petitions

On behalf of the more than 8,000 members of the American Road and Transportation Builders Association (ARTBA), we respectfully offer comments on the May 22 Federal Register notice of proposed rulemaking on procedural regulations for issuing guidance by U.S. Environmental Protection Agency (EPA).

ARTBA’s membership includes private and public sector members that are integral to 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 – especially transportation construction firms – must comply with EPA guidance. Therefore, changes to the procedures for issuing EPA guidance directly impact ARTBA members.

EPA’s proposed rule comes in response to President Trump’s Executive Order (EO) of October 9, 2019, “Promoting the Rule of Law Through Improved Agency Guidance Documents.” The EO directed most federal agencies to adopt policies ensuring that “Americans are subject only to those binding rules imposed through duly enacted statutes or through regulations lawfully promulgated under them.” Moreover, according to the EO, those regulated by such rules shall have “fair notice of their obligations.”

ARTBA supports EPA’s proposed changes to the guidance process. These changes will:

- make guidance documents readily available to the public;
- ensure that guidance will be treated as non-binding;
- require a notice and public comment period for significant guidance; and
- establish a public petition process request the issuance, amendment, or repeal of guidance.

Historically, federal agencies have used guidance to clarify the interpretation of existing regulations for the regulated community. However, in far too many cases, the guidance has become a new de facto regulation of its own, creating additional mandates on the entities it covers, while evading the public comment process. EPA’s proposed improvements to the
guidance process will ensure the agency’s guidance is considered non-binding. In addition, significant proposed guidance will go through notice and comment rulemaking. This will be a “win-win” in that regulated entities will now have a voice in the guidance’s creation, and EPA will – hopefully – use the comments to identify potential shortcomings before significant guidance is finalized.

EPA is also planning to improve the transparency of the guidance process. The agency plans to create a web portal where all existing guidance will be archived and accessible by the public. While this may seem like common sense in today’s “information age,” it is not the reality at many federal agencies. EPA is to be commended in this regard as well.

EPA’s efforts will be especially helpful to those in the transportation construction community who are smaller businesses with limited resources and personnel for regulatory compliance. These are not businesses who can review the Federal Register every day. Making guidance documents more accessible will help these businesses stay aware of their environmental responsibilities and comply with EPA’s objectives.

Finally, as an association representing thousands of member-entities with a direct interest in federal regulatory matters, ARTBA appreciates, and will take advantage of, the increased opportunity to communicate with EPA on issues directly impacting the transportation construction industry.

Sincerely,

David Bauer
President & C.E.O.