



June 16, 2025

VIA ELECTRONIC SUBMISSION

Ms. Jill Laptosky
Office of Regulation and Legislation
Office of the General Counsel
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Administrative Rulemaking, Guidance, and Enforcement Procedures (Docket No. DOT-OST-2025-0007).

Dear Ms. Laptosky:

On behalf of our more than 8,000 members across the transportation construction industry, the American Road & Transportation Builders Association (ARTBA) respectfully submits these comments on the U.S. Department of Transportation's (DOT) proposed rule on agency rulemaking procedures. ARTBA **strongly supports** the proposed rule and commends DOT for its focus on improving internal processes. To further strengthen the rule's implementation and impact, we offer the following recommendations.

Background

ARTBA represents a wide-ranging membership that spans all sectors and sizes within the transportation construction industry, including construction contractors, planning and design firms, state and local transportation agencies, materials suppliers, and safety and equipment manufacturers. Our members plan, design, build and maintain the nation's highways, bridges, rail, airports, and other essential transportation infrastructure.

As part of our ongoing advocacy, ARTBA regularly provides input on DOT regulatory initiatives on behalf of our members. We value our long-standing, collaborative relationship with the department and appreciate the opportunity to contribute our industry's expertise and perspectives on policies that affect the safety and efficiency of project delivery. ARTBA strongly supports clear, transparent, and predictable regulatory processes that are collaborative and constructive.¹

¹ See e.g. ARTBA-led comments on the following: Coalition Comments on OMB Public Participation Toolkit, Office of Mgmt. & Budget (May 17, 2024), <https://www.artba.org/resource/coalition-comments-on-omb-public-participation-toolkit/>; Coalition Comments on OMB Public Engagement Framework, Office of Mgmt. & Budget (May 17, 2024), <https://www.artba.org/resource/coalition-comments-on-omb-public-engagement-framework/>; Coalition

At the same time, ARTBA cautions against regulatory actions intended to advance political priorities, without adequate consideration of statutory authority or the economic impacts on those expected to comply. These actions can also conflict with the safe, efficient and cost-effective delivery of transportation projects, the values that ARTBA members prioritize.

Currently, DOT has proposed revising its administrative rulemaking procedures in several key areas. While the sections below focus on select provisions, ARTBA **supports the rule in its entirety.**

Select revisions include:

- Reinstating the Regulatory Reform Task Force to conduct ongoing reviews of existing regulations;²
- requiring that final rules appear in the Unified Regulatory Agenda prior to publication;³
- directing agencies to use plain language in regulatory text;⁴
- requiring additional public comment if new data or rationale is introduced after a proposed rule is published;⁵
- establishing procedures for using Advance Notices of Proposed Rulemakings (ANPRMs) for significant rules;⁶
- setting default public comment periods and limiting the use of Direct Final Rules to non-controversial matters;
- authorizing stakeholder meetings after the close of the public comment period, at the agency's discretion;⁷
- requiring guidance documents to be published in a centralized location, while clearly distinguishing them from binding regulations;⁸ and
- reinstating internal rule enforcement procedures, including notice and an opportunity to respond before an enforcement action is taken.⁹

ARTBA writes not only as a national trade association regularly engaged in the federal regulatory process, but on behalf of member-firms and agencies willing and able to participate directly as well. We believe several aspects of DOT's proposal will serve to demystify and

Comments on OIRA's Regulatory Process Proposal, Office of Info. & Regul. Affs. (May 17, 2024), <https://www.artba.org/resource/coalition-comments-on-oiras-regulatory-process-proposal/>; Coalition Comments on EPA's Draft "Meaningful Involvement in Rulemaking" Policy, Env'tl. Prot. Agency (May 17, 2024), <https://www.artba.org/resource/coalition-comments-on-epas-draft-meaningful-involvement-in-rulemaking-policy/>.

² *Id.* at 20974.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 20975.

⁶ *Id.*

⁷ *Id.* at 20976.

⁸ *Id.*

⁹ *Id.* at 20977.

simplify this process, resulting in improved participation among our members, regardless of size or resources available for these activities.

ARTBA's Comments on the Proposed Rule

- I. A revitalized Regulatory Reform Task Force can help ensure rules remain aligned with agency priorities.

DOT's proposal to reinstate its Regulatory Reform Task Force is a meaningful step toward improving internal accountability and ensuring that the agency's regulatory actions remain statutorily grounded.¹⁰ The task force, as outlined in the proposed rule, would serve as an internal review mechanism aimed at identifying outdated or unnecessary regulations and aligning agency actions with evolving priorities. To strengthen its effectiveness, ARTBA suggests incorporating regular stakeholder engagement, such as quarterly briefings, public comment windows, and listening sessions. These touchpoints would help identify implementation challenges and rules no longer reflecting department priorities. ARTBA also recommends expeditious review of legacy regulations that may be impeding innovation or creating conflicts with more recent federal or state requirements.

- II. Improving rulemaking procedures will reduce burdens and make regulatory engagement more accessible.

- a. *Plain language.*¹¹

The proposed directive to use plain language in rule text is especially important. It enables ARTBA members—particularly small and mid-sized firms—to read and interpret regulatory requirements without relying on outside consultants, while helping DOT promote broader understanding and compliance. To build on this improvement, ARTBA suggests extending the plain language requirement to all components of rulemaking—including preambles, guidance documents, petition responses, and related materials—to ensure consistency and improve overall comprehension.

- b. *Unified agenda and supplemental comment opportunities.*¹²

DOT proposes limiting final rules to those listed in the Unified Regulatory Agenda, which would foster a “no surprises” culture and reinforce public trust. It would ensure that ARTBA and our members can adequately prepare for upcoming regulatory actions. Likewise, the department proposes to reopen comments when new data or rationale is added after the proposed rule stage. This would constitute a practical safeguard and bolster regulatory transparency. To further

¹⁰ *Id.* at 20974.

¹¹ *Id.* at 20974.

¹² *Id.* at 20975.

improve this provision, ARTBA suggests that DOT clearly flag such additions in the docket, explain their significance, and provide reasonable notice when reopening public comments.

*c. Expanded use of ANPRMs.*¹³

ARTBA supports the proposed requirement that significant rules undergo pre-rulemaking activities, including Advance Notices of Proposed Rulemakings (ANPRMs) and/or public hearings. These early engagement activities invite meaningful public input before full development of policies, leading to more workable and defensible outcomes. Moreover, we encourage DOT to use ANPRMs more broadly—even in non-significant rulemakings—to engage stakeholders early and strengthen the factual foundation for final rules.

*d. Default comment periods.*¹⁴

The current proposal sets DOT's default comment period at 30 days. ARTBA suggests extending this window for non-significant rules from 30 to 45 days, unless the rule is clearly non-controversial or preceded by pre-rulemaking activities. Allowing additional time for comments would help improve the quality of feedback the agency receives. Given the complexity of transportation-related regulations, as well as the coordination required among project sponsors and proponents to assess regulatory proposals, additional time would enable more thoughtful, informed responses.

*e. Direct Final Rules.*¹⁵

A direct final rule (DFR) takes effect without going through the customary regulatory process, provided it is limited to truly non-controversial matters unlikely to generate significant adverse comments. ARTBA supports DOT's continued use of DFRs, but cautions that their overuse can erode trust and reduce opportunities for early input, particularly where practical impacts are not immediately obvious from the rule text.

III. Stakeholder meetings are a practical tool that can be used even after a comment period has closed.

Post-comment meetings can serve as a valuable supplement to the formal rulemaking record. ARTBA appreciates DOT's recognition that continued dialogue—particularly in complex or highly technical areas—can improve regulatory outcomes. While concerns about *ex parte* communications or perceived bias are understandable, they should not preclude informal discussions when conducted with appropriate safeguards. These meetings allow the agency to clarify technical points, assess feasibility, and engage with perspectives not fully conveyed in written submissions.

¹³ *Id.* at 20974.

¹⁴ *Id.* at 20975

¹⁵ *Id.*

To support transparency and process integrity, ARTBA suggests DOT note in the docket that post-comment engagement may occur at the agency’s discretion. Importantly, the agency should also ensure that it remains open to meeting with stakeholders who hold differing views. Selectively limiting access can undermine fairness and credibility. Preserving the informal, non-decisional nature of these meetings—without triggering public notice or requiring a formal request process—strikes the right balance between openness and administrative flexibility.

IV. Improving guidance transparency will support compliance and reduce confusion.

The proposed guidance provisions of the rule address long-standing pain points for ARTBA members in navigating a myriad of documents. Often it is unclear whether a particular guidance represents DOT’s official position. Other such documents appear difficult to find at all. Centralizing guidance in a single, accessible location will go a long way toward improving transparency and supporting timely compliance.

ARTBA suggests DOT take this a step further by allowing public comment on widely-used guidance, even when not deemed “significant.” While these documents lack the force of law, they are often the go-to source for understanding how a rule will be applied in practice. A chance to provide public input would help ensure accurate, feasible, and workable materials to be utilized “on the ground.” It’s also critical to reaffirm that guidance is not a substitute for rulemaking. DOT should make clear—both in policy and enforcement—that guidance cannot serve as the sole basis for penalties or findings of noncompliance.

V. Reinstating standardized regulatory enforcement procedures will promote fairness and support cooperative compliance.

Bringing back DOT’s internal enforcement procedures is a step in the right direction. These practices govern the department’s approach when apparent violations of rules occur. They should reflect a commitment to working with—rather than against—regulated entities acting in good faith. Requirements for proper notice and a meaningful opportunity to respond help ensure enforcement is lawful, proportionate, and consistent with due process. ARTBA is encouraged by the agency’s emphasis on issuing clear, well-documented decisions and resolving issues informally when possible.

To further strengthen the framework, ARTBA recommends that DOT clarify expected timelines for responses to enforcement notices, establish an internal reconsideration or appeals option short of Administrative Law Judge review, and commit to issuing updated guidance when violations stem from unclear or outdated regulatory language. These improvements would give regulated entities greater clarity and confidence in the process.

Conclusion

ARTBA appreciates the opportunity to offer this input and encourages the department to give the enclosed recommendations thorough consideration. By reaffirming the importance of legal

authority, stakeholder input, and public transparency, this proposed rule would lay the groundwork for a more stable and accountable decision-making framework.

We remain available to collaborate on any of these matters, including facilitating dialogues with our members when appropriate. For additional details, please contact Rich Juliano at rjuliano@artba.org or Prianka Sharma at psharma@artba.org.

Sincerely,

//s//

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//s//

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