

BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
FEDERAL RAILROAD ADMINISTRATION  
AND  
FEDERAL TRANSIT ADMINISTRATION

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DOCKET NO. FHWA-2025-0007:  
REVISION OF NATIONAL ENVIRONMENTAL POLICY ACT REGULATIONS  
REGULATORY INFORMATION NUMBER 2125-AF80

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COMMENTS OF  
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

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The American Short Line and Regional Railroad Association (“ASLRRRA”), on behalf of itself and its member railroads, submits the following comments in response to the Department of Transportation’s (“DOT”) Interim Final Rule (“IFR”) modifying DOT’s regulations implementing the National Environmental Policy Act (“NEPA”) that apply to the Federal Highway Administration, Federal Transit Administration, and the Federal Railroad Administration (“FRA”).<sup>1</sup>

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<sup>1</sup> 90 Fed. Reg. 29,426 (July 3, 2025).

DOT issued this IFR to remove the NEPA implementing regulations issued by the Council on Environmental Quality (“CEQ”). It also integrates changes to the regulations required by amendments to the NEPA statute included in the Infrastructure Investment and Jobs Act of 2021 and the Fiscal Responsibility Act of 2023 (the BUILDER Act of 2023).<sup>2</sup> The IFR encourages comments on further changes to the regulations that may be appropriate. Additionally, the Department also recently issued DOT Order 5610.1D, “DOT’s Procedures for Considering Environmental Impacts.”<sup>3</sup> Although this Order was effective upon issuance, DOT notes that it seeks comments on this document as well. ASLRRA appreciates the opportunity to provide feedback, and these comments consider both complementary documents.

## Background

### I. Who We Are

ASLRRA represents over 600 Class II and Class III American small business railroads and hundreds of railroad industry suppliers. These railroads, commonly referred to as short line railroads, are the “first- and last-mile” of the freight rail network. Short line freight railroads have existed in the U.S. since the 1800s, but the number of them grew tremendously in the 1980s and 1990s as the large Class I freight railroads shed their light density lines. Without short line railroads stepping up to take these lines, thousands of communities across the U.S., particularly in small town and rural America, would not have access to the national rail network. Short lines operate nearly 50,000 miles of track, or approximately 30% of the national freight rail network; connecting manufacturers, businesses and farmers in communities and small towns to larger markets, urban centers, and ports. Short lines operate in 49 states, and in some instances such as

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<sup>2</sup> P.L. 117-58 (IIJA) and P.L. 118-5 (Fiscal Responsibility Act of 2023).

<sup>3</sup> 90 Fed. Reg. 29, 621 (July 3, 2025).

Rhode Island and Alaska, they account for the state's entire freight rail network. As an industry, short lines support more than 478,000 jobs, \$26.1 billion in labor income, as well as \$56.2 billion in value-add to the economy, playing a particularly significant role in the agricultural, manufacturing, and energy industries.

In addition to the support of critical American industries, jobs and safety benefits, freight rail also lessens highway congestion and the need for taxpayer-funded highway maintenance and expensive new highways by significantly reducing the number of heavy trucks on the nation's beleaguered road network. One train can carry the same amount of freight as several hundred trucks. Short lines are an integral part of their local communities, maintaining strong relationships with customers, local government, and economic development agencies. Short lines are usually privately held, locally managed, and often locally owned small businesses.

Short line railroads are American-based businesses that employ Americans and serve other American small, medium, and large businesses. Short line freight railroads also promote economic development, attracting new businesses requiring rail service along their lines and keeping existing businesses viable, serving customers and communities that would otherwise be cut off from the national freight rail network.

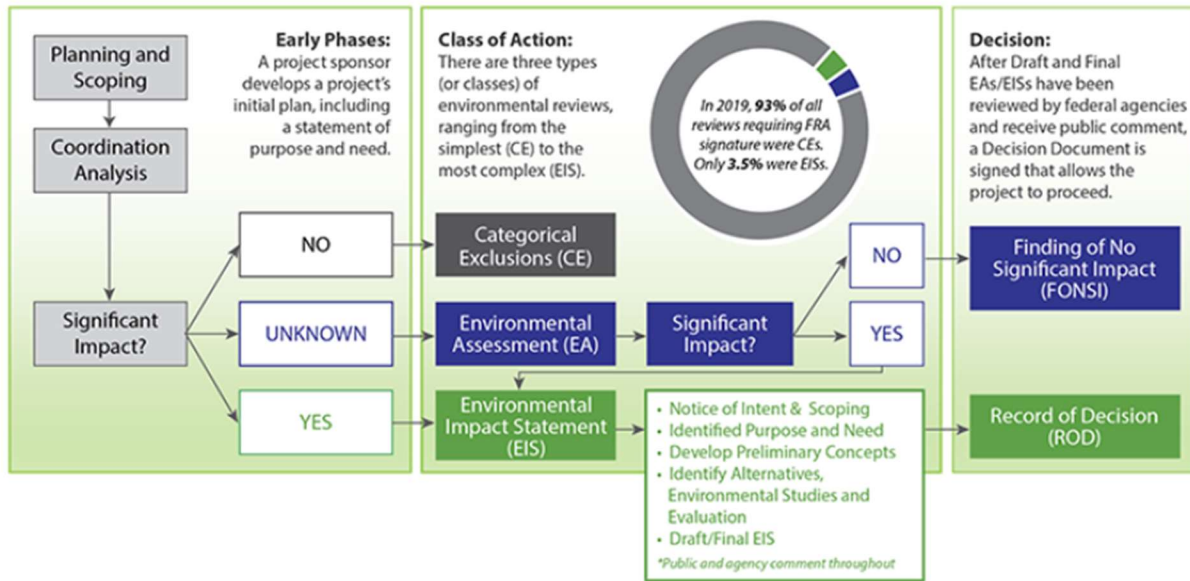
## II. Short Line Interface with the NEPA Process

Short line railroads are regular recipients of federal grant funds, notably through DOT's discretionary grant programs. Short lines have received grant funding through numerous DOT-administered programs, including the Consolidated Rail Infrastructure and Safety Improvements ("CRISI") program (formerly TIGER), the Better Using Investments to Leverage Development ("BUILD") program, the Railroad Crossing Elimination ("RCE") Grant program, the Nationally

Significant Multimodal Freight and Highway Projects (“INFRA”) program, and the Port Infrastructure Development (“PIDP”) Grant program.

The CRISI program includes by far the greatest number of awards made in support of short line projects. CRISI was established by the FAST Act in 2015 and first funded in FY 2017. Since 2017, short line industry projects have received some 240 competitive CRISI awards, representing more than \$2.5 billion in funding. CRISI funding deployed through congressionally directed spending and the Special Transportation Circumstances (“STC”) grant program, accounted for additional awards benefitting short line projects, totaling more than \$123 million. Awards supporting short line projects each year through the other named DOT discretionary programs are typically only a few each cycle. Awards for short line freight rail projects through all these grant programs are typically handled by the FRA’s environmental team.

A unique characteristic of the CRISI program is that Congress made Class II and III railroads directly eligible for grant funding. In the case of the other programs noted previously, short lines must partner with an eligible public applicant which becomes the grantee upon award with the railroad as a subrecipient. Approximately 62% of CRISI competitive awards to short lines have been made directly to railroads, with the balance having public applicants, like a state DOT, which provides the funding to a short line as a grant subrecipient.



(Image Source: FRA, 2024)

Figure 1: FRA Diagram of the Process for NEPA Compliance

Short lines are the only interface with FRA for the NEPA process in the direct CRISI awards. Even when the applicant and grant recipient is a public entity, the short line will often have a major role in interfacing with FRA as they are the property owner or lessor, operator, and generally the engineering project manager with intimate knowledge of the project area and the responsibility to develop and execute the project. Sometimes the public entity will provide significant leadership through the NEPA process, but more commonly most of these tasks are delegated to the short line to work with FRA while reporting to the public entity, as well as complying with any state or local environmental requirements. Consequently, the short line industry has gained significant experience working through the NEPA process with FRA.

### III. NEPA Classes of Action for Short Line Projects

Under NEPA, a grant proposed for a rail project may be determined to require one of three classes of action: categorical exclusion (“CE”), environmental assessment (“EA”), or an environmental impact statement (“EIS”). This is hierarchical, with a finding of a threshold

impact during evaluation of an action for a CE triggering an EA, and a finding of a threshold impact during an EA resulting in the requirement to prepare an EIS. There are 22 categorical exclusions that FRA may utilize, elaborated at 23 U.S.C. § 771.116. FRA may adopt CEs of other agencies in certain circumstances. Nearly all short line projects receiving funding through DOT have been found to be categorical exclusions by FRA. Essentially all of them are non-major projects per FRA's definition in policy, meaning capital projects that are less than \$300 million in cost and seeking less than \$100 million in federal assistance.<sup>4</sup> The scope of these projects where there is ground disturbance is often completely within existing operational freight rail rights-of-way. Most project scopes consist of activities that do not present any risk of environmental impacts, such as replacement-in-kind of rail, ties, ballast, or bridge components. When there are new construction elements, they are often extensions or additions of track sidings, or reconfigurations of yard tracks or spurs, which again are in or immediately adjacent to existing operational railroad property. Replacement of entire bridges is a common short line project type, for example where a legacy timber structure will be replaced by a modern design made of steel or concrete materials, but of generally the same scale and in the same footprint. Short line properties have typically hosted freight rail traffic for many decades, and the land adjacent to their rights-of-way has often been previously disturbed and in long-standing industrial or agricultural use. When a short line project results in increased train traffic, such an increase is typically minor, meaning dwarfed by the scale of traffic carried by nearby lines of the large freight railroads.

Despite these characteristics, FRA still must perform due diligence to be satisfied that the short line project is a CE, in support of its formal determination, which provides environmental

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<sup>4</sup> FRA Guidance on Development and Implementation of Railroad Capital Projects, July 18, 2025.

clearance for the project to receive an award. The NEPA umbrella for a CE requires analysis of impacts considering many elements of federal law, such as, but not limited to 49 USC § 303(4)(f), Section 106 of the National Historic Preservation Act,<sup>5</sup> and the Endangered Species Act.<sup>6</sup>

#### IV. Short Line NEPA Perspective

The primary concern of our industry related to the NEPA process is the timeline for an agency to complete the NEPA process for the CE class of action. It is not unusual for many CE determinations to take more than half a year. In some cases, the agency's work supporting CE determinations for short line projects has extended more than two years.

Time, in the world of railroad capital projects, especially for small businesses with limited resources, is money. Inflation has been significant for the materials and services used in carrying out these projects. Because the award amount cannot change, inflationary cost increases can only be addressed through contingencies applied to the project budget during project and grant application development. This contingency must reflect an assumption around the timeline to begin construction. This timeline includes assumptions around the time it will take the agency to review applications and make award notifications, and then to develop the grant agreement, which includes the time to environmentally clear the projects. If the process of getting to grant obligation is extended, and inflation absorbs the contingency, then the differential must come from the applicant in the form of additional match, or lacking that, be absorbed by attempting to reduce the scope of the project. Requirements by the agency or other stakeholders to conduct extensive due diligence also add costs for engineers and consultants, which can be significant.

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<sup>5</sup> 54 USC § 306108.

<sup>6</sup> 16 U.S.C. § 1531 et seq.

Short lines have noted the rising time and cost risk experienced by recipients of federal awards. Since short lines began interfacing with grant opportunities at scale with the TIGER program in 2009, the typical contingency that applicants apply to the budgets in their applications has risen from less than 10% to over 20%, or even over 30%.

Unexpectedly long timelines can also complicate efforts to coordinate grant-funded capital projects with expectations of beneficiary rail shippers. Generally, a short line project is carried out to benefit the businesses and communities served by the railroad. Unnecessary delays for grant clearance also delay the realization of those user benefits, as well as aggravate complementary investments by the railroads.

We applaud FRA's routine adoption of flexibility in grant agreements to enable administrative reprogramming of available funds for a grant due to project implementation efficiencies. This enables straightforward application of project cost savings to leverage additional like items of scope that fit within the project's environmental clearance and that support identified project benefits when savings occur relative to budgeted amounts including contingencies.

#### Recommendations for Improvement

Our suggestions for improvement to the NEPA are presented below. Our recommendations include: setting time limits for CE processing; improving transparency around NEPA reviews; expediting CEs by increasing batch processing; continuing early coordination with potential grantees; maintaining adequate staff resources to execute the NEPA compliance processes; updating two of FRA's existing CEs to increase their flexibility; making clarifications to the CE documentation and forms; continuing to expand pre-award authority; extending

support to Congress for practical reforms to NEPA statutes, as well as to the requirements for compliance with the National Historic Preservation Act.

V. DOT Should Set Time Limits or Thresholds for CE Processing

We encourage DOT to set temporal parameters around the CE process. First, the agency should establish expectations for prompt initiation of the environmental review relative to the date of notification of award, and then thresholds for the overall time necessary to make a CE determination that completes the environmental clearance. The overall threshold from notification of award to CE determination should be less than the 1-year target established at 23 CFR § 771.138(2) for the time for an EA to reach a Finding of No Significant Impact (“FONSI”) or, alternatively, transition to an EIS. When the clearance process for an expected CE breaches this timeline, procedures for internal accountability should be triggered. This should include some minimal documentation of the reason the process was extended and incorporate a feedback mechanism to reduce the risk of this situation arising with like future project reviews. The “fleet” of projects in this status should be elevated to a designated official in agency leadership for oversight and facilitation of resourcing and decision-making support.

Situations with very extended CE processes may be due to an excess of caution in an effort reduce the risk of exposure of the agency to litigation. We encourage FRA to consider the non-controversial history of short line project CEs, with (as we understand), no short line project CE determination having been legally challenged over decades of awards. This provides the agency with a rich repository of examples of a wide array of project CE’s documenting a mitigation of legal exposure generated by small freight railroad projects.

#### VI. FRA Should Provide Transparency into its NEPA Reviews

The information on the timeline between award notification, initiation of the environmental clearance process, and conclusion of the process, are important milestones in the grant process. We recommend that FRA track and communicate these metrics to stakeholders to support optimization of the environmental clearance process, including CEs. Such data would be useful to the transportation authorizing and appropriating committees in Congress in their oversight roles. Congress has already directed FRA to provide them with general metrics on grant timelines. Adding these few additional data points on environmental clearance to this existing reporting structure would provide further useful information to legislators.

#### VII. FRA Should Expedite CEs through Batch Processing

We encourage FRA to continue to take an expedited “batch” approach to the environmental review process for rail projects that are likely to be straightforward like CEs. Upon completion of a round of award notifications, the agency could immediately conduct a scan of the proposed projects to identify those that appear to be simple CE determinations requiring limited due diligence. These projects could be evaluated promptly by the upper level of the environmental division for the potential to promptly issue CEs, rapidly achieving the milestone of environmental clearance. This would simplify the work of regional-level project managers to whom the grants are delegated for agreement development.

#### VIII. FRA Should Enhance Outreach and Early Coordination During Project Development

FRA’s outreach to and early coordination with the Class II and III railroad community has improved the interface between grantees and the agency in the environmental clearance process. FRA early coordination with potential applicants has helped educate these small

organizations on what to expect in the environmental clearance process. Importantly, early coordination helps short line railroads understand when their project may trigger a requirement for unexpected levels of review, specific federal permits, and associated analytic products. Analytic products might include hydraulic studies, or endangered species or archeological surveys. Early coordination helps small railroads understand the level and type of project documentation they should prepare prior to award notification. This can greatly speed up environmental clearance, reducing financial burdens on the railroads and delays in getting to construction.

ASLRRA looks forward to supporting FRA's early coordination with small railroads, such as by facilitating webinars and hosting FRA environmental experts at our industry conferences. We are committed to providing venues that support this process. We understand that FRA's environmental staff has been reduced in size and is heavily tasked with processing environmental reviews associated with notified awardees. Early coordination, to the degree possible given resource restraints, reaps efficiency rewards later in the process for FRA and its grantees.

IX. V. DOT Should Ensure Adequate Agency Staff Resources

Initiatives to right-size the federal workforce have impacted the personnel resources at FRA that handle environmental compliance reviews. Prior to any potential formal reduction in force ("RIF") actions, we understand that staff buyout offers, and other personnel actions, have resulted in a 40% attrition of specialized environmental staff. The environmental review process is complex, and FRA must clear an unprecedented volume of project grant awards thanks to the levels of funding provided by Congress in the Infrastructure Investment and Jobs Act ("IIJA"). Experienced personnel are also likely to be better at implementing proposed deregulatory actions

than the less experienced employees. They are also less likely to undertake excessive due diligence on a grant-funded project.

ASLRRA respectfully urges DOT to consider this dynamic of attrition of experienced personnel as any further personnel actions at FRA are contemplated. ASLRRA is pleased to note that DOT's budget for FY 2026 proposes limited reductions in full-time equivalents at FRA. Recent general statements by the Secretary of Transportation we believe mirror our concerns around retention of experienced personnel to support process integrity and handle high workload volumes. An experienced workforce is needed to effectively implement NEPA streamlining and deregulatory actions.

X. FRA Should Adjust the Scope of Existing CEs

The revised 23 CFR § 771.116(c) lists FRA's categorical exclusions. ASLRRA believes two of these CEs, if modified slightly, could facilitate environment reviews for common short line freight railroad project types, without risking environmental impacts: §§ 771.116(c)(17) and 771.116(c)(21).

A. Suggested revisions to 23 CFR § 771.116(c)(17) – Bridges

This CE excludes "...extensive in water construction activities..." The language of this CE should be adjusted. The term "extensive" is highly subjective and could be interpreted to include common works to rehabilitate piers or to replace piers and foundations, especially for smaller bridges, in a like for like manner, when no permanent, significant alteration of the watercourse will occur.

We suggest the updating the text as follows: "...projects [that] are predominantly within existing right-of-way and that will not result in permanent and significant changes to the watercourse, including, but not limited to, projects replacing bridge components such as

stringers, caps, piles, piers, foundations, or decks, the construction of roadway overpasses to replace at-grade crossings, construction or reconstruction of approaches or embankments to bridges, or construction or replacement of bridges.”

B. Suggested revisions to 23 CFR § 771.116(c)(21) – Facilities

This text incorporates an arbitrary quantitative threshold of 10 acres of ground disturbance excluding a project from this CE. This CE should either expand the threshold or remove it entirely. A modern facility, such as a freight rail yard, interchange tracks, or a transload, can exceed this threshold without difficulty. Many federal investments in short line facilities are to enable interoperability for efficient interchange between small and large railroads. This implies enough track space to assemble blocks of cars for interchange of a length to enable shuttle train rates, which can be in the range of ½ mile to a mile. This CE determination can better be made based on specific analysis of the project and the land use and population density in the vicinity of the facility. For example, one type of project that CRISI has funded is to construct yards in rural areas, on industrial or agriculturally zoned land, for the purpose of moving legacy yard facilities from a populated area that grew up around the railroad. This type of project reduces environmental and community impacts and should not be arbitrarily excluded for consideration for a CE.

XI. FRA Should Improve its CE Worksheets and Companion Guide

The FRA’s CE worksheet expires this year and is accompanied by a detailed companion guide. ASLRRA encourages FRA to focus on two areas as these documents are either revised or replaced with improved interactive systems. First, the documentation should eliminate any language that is vague or imprecise such that it could bias agency personnel to excessive or unnecessary analyses in support of reaching a CE determination. Second, this guidance should

seek to clearly identify, for prospective applicants, situations where they may need to prepare specialty analyses products for DOT or other federal agencies. For example, hydraulic or noise studies or species or archeological surveys. CRISI program documentation should guide applicants to resources for evaluating the cost and time to prepare such documents. Provision of examples of such documents can also be very helpful. FRA should seek to expedite revision of these two documents (or their digital equivalents) prior to the opening of the FY 2025 CRISI NOFO, forecast for mid-Autumn.

## XII. FRA Should Increase Use of Pre-Award Authority

ASLRRA is pleased to note the FRA's increased deployment of pre-award authority in accordance with 2 CFR § 200.458 *Pre-award costs*. Pre-award authority ("PAA") may be extended to a notified grant awardee, at its risk, enabling the awardee to incur eligible project costs prior to execution of the federal grant agreement. PAA can be extended for project elements that do not create a violation with grant requirements, such as environmental clearance. An example of this would be that PAA typically would not be extended for construction works that disturb the ground, which has the potential for generating environmental impacts, prior to environmental clearance. Upon award, the grantee can seek immediate reimbursement for those expenditures. Routine deployment of PAA for items including materials acquisition, on-board systems installation, and engineering and administrative support services, is a powerful tool to enable prompt grant funded project implementation.

PAA is of great value for Class II and III railroad projects. The ability to initiate some aspects of project scope in parallel with the agency's compliance activities is helpful to avoid the impacts of inflation and other creeping project costs. It supports the greater urgency towards

implementation in an environment of freight rail transportation providers and the rail shipper businesses that they support.

### XIII. DOT Should Provide Technical Assistance for Further Statutory Reforms

The 119<sup>th</sup> Congress is actively considering revisions to the NEPA statute and potentially other elements of the U.S. Code related to federal permitting requirements. ASLRRA encourages U.S. DOT to provide technical assistance in support of this process, and to share practitioners' perspectives on potential impacts of legislative proposals to streamline and improve the process for environmental reviews. Of particular interest to us are proposals that would:

- Enhance cross-agency sharing and adoption of categorical exclusions.
- Establish funding and grant amount thresholds for requiring environmental reviews. This could eliminate reviews for relatively small projects and project types without significant impacts on the environment. Replacement-in-kind projects on active, operational short line freight railroad properties are ideal targets for such changes.
- Codify definitions that can limit excessive or frivolous NEPA review activities, particularly reviews studying effects that are speculative or separate in place or time from the project being funded. Clear definitions in statute can eliminate ambiguity that may encourage open-ended agency reviews.
- Codify the strict limitation of NEPA reviews to the project in question, excluding speculative upstream or downstream impacts, which would recognize and codify recent national legal decisions.
- Establish temporal frameworks for reviews, notably around the process for making the determination of categorical exclusions.

- Expand and broaden the use of programmatic determinations of categorical exclusions.

#### XIV. Section 106 Streamlining and the Rail Program Comment

Within the NEPA requirements for CEs, grant-funded projects must be reviewed for compliance with the National Historic Preservation Act. This requires coordination with the American Council for Historic Preservation (“ACHP”) via states. States typically delegate this to their (state) historical preservation offices (“SHPOS”), to identify impacts and establish mitigations, if any are found.

One criterion for evaluating properties for eligibility for listing on the National Register of Historic Places is that the significance was achieved more than 50 years prior, with some exceptions. The remaining criteria are subjective. Most railroad properties in the U.S. were constructed more than fifty years ago. This creates the potential for exhaustive NEPA evaluation under the NHPA of most or all elements of active operational freight railroad properties.

Most interactions with SHPOs for the purpose of preparing a short line project CE are routine and efficient. Occasionally, however, SHPO processes are lengthy and result in mitigation recommendations that are extremely costly or even infeasible or unreasonable. Bridges and structures are a common subject of lengthier evaluations. SHPOs can propose alternatives that defeat the entire purpose of a proposed project. For example, railroads have seen SHPOs request the replacement of a rail bridge using a legacy timber design rather than a proposed structure of concrete or steel that has fundamentally improved capacity, lifespan, and lower maintenance costs. SHPOs can also propose expensive mitigations for project elements in remote locations where it is unclear whether there is any true community concern. In these described instances the projects have typically been functionally like-for-like replacements or rehabilitations within existing railroad right-of-way that has been operation for many decades.

Although the FAST ACT aimed to streamline Section 106 compliance process, grantee feedback to ASLRRA indicates that delays and uncertainty are still common.<sup>7</sup>

Congress is considering modifications to 49 U.S.C. § 24202 that would codify limitations on the designation of operating railroad properties as historic properties. ASLRRA supports these efforts. If enacted into law, such changes would reduce the incidence of unnecessary delays in the current NHPA compliance process for DOT grant funded short line railroad projects.

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ASLRRA supports DOTs efforts to improve the NEPA compliance process and appreciates the opportunity to provide comments on this important matter.

Respectfully submitted,



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<sup>7</sup> P.L. 114—94 (FAST Act).