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Laura Shick
U.S. Department of Transportation
Federal Railroad Administration
Office of Railroad Policy and Development
RPD-13, 1200 New Jersey Ave. SE
Washington, DC 20590

VIA EMAIL: RailROW@achp.gov and FRA.106Exemption@dot.gov

Dear Ms. Vaughn and Ms. Shick,

The American Cultural Resources Association (ACRA), the national trade association for the cultural resource management industry, is pleased to offer remarks on the Advisory Council on Historic Preservation's (ACHP) *Notice of Proposed Draft Program Comment to Exempt Effects of Transportation-Related Undertakings Within Rail Rights-of-Way* (FR 2017-25024) pursuant to Section 11504 of the Fixing America's Surface Transportation Act ("FAST Act"). ACRA supports railroad industry needs to maintain, improve, and upgrade its infrastructure to serve our national needs more safely and efficiently. Likewise, ACRA remains committed to identifying solutions that result in more efficient National Historic Preservation Act/Section 106 review and that balance infrastructure improvement while preserving our Nation's heritage.

ACRA believes that the proposed Program Comment does not achieve the stated goals of FAST Act exemption and will not result in a streamlined approach to Section 106 compliance for the US Department of Transportation (USDOT) or its Operating Administrations (i.e., FRA, FTA). As currently proposed, the Program Comment introduces a needlessly complex Sponsor-led process that will result in further inconsistencies in the identification of significant rail-related historic properties. The background section conveys the challenges the rail industry faces in the subjectivity and variation in what constitutes a historic rail property. A Sponsor-led approach will face the same issue with varying opinions among Project Sponsors about what may or may not be a historic property. There is potential for numerous and inconsistent project-based lists that the USDOT will need to consult during Section 106 review. State Historic Preservation Officers may disagree from state to state on what constitutes a significant property and may contest federal agency determinations on which properties should be included or excluded from the list of historic properties.

Once a list of important properties is approved, it is unclear if an update or a scheduled review process will be required. Perceptions of significance change over time, and these property lists should be under periodic review to ensure they are up-to-date and reflect current perspectives on historical significance. There is no discussion about which procedures to use when a resource is not identified, or when a resource achieves significance after the list was created. For these reasons, exempting properties on the list from Section 106 review for future projects is also problematic.

ACRA continues to recommend an activities-based exemption approach. Compliance via the optional Project Sponsor-led approach would be onerous, subject to lengthy negotiation on what is or is not a historic property, and will result in variable interpretations between different Sponsor-led projects. We do not believe that the proposed Sponsor-led approach fulfills the mandate of the FAST Act. Specific activities are comparatively more definable, change minimally across space, and offer a clearer path toward more efficient Section 106 review. We strongly recommend adopting only the activities-based approach. If a property-based approach is further considered, realigning it with the Federal Highway Administration 2005 property-based process is suggested, and would further achieve the intent of the FAST Act mandate.

Thank you for your efforts in drafting the proposed Program Comment and in finding approaches that meet the needs of multiple and often conflicting stakeholders. ACRA would like to be included in further discussions regarding rail right-of-way planning efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim Redman", with a long, sweeping horizontal stroke at the end.

Kimberly L. Redman, M.A., RPA
President