

May 5, 2025

The Honorable Sean Duffy
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: Ensuring Lawful Regulation; Reducing Regulation and Controlling Regulatory Costs
Docket No. DOT-OST-2025-0026**

Secretary Duffy:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Department of Transportation's (DOT) Request for Information (RFI) regarding reducing regulation and controlling regulatory costs. TTD represents 37 affiliate unions across all modes of transportation, and as such has a vested interest in any future regulatory reform.¹ We respectfully request that the DOT take these and the comments of our affiliates into due and serious consideration.

First, we must stress that federal safety regulations must be repealed, revoked, or modified only through the full notice and comment process in accordance with the Administrative Procedure Act (APA). Safety regulations exist for a reason, and stakeholders and the public must be permitted to fully assess the costs of repealing the regulations that were put in place to protect their communities. Transportation workers in particular, many of whom have direct experience with the tragedies that have precipitated so many of the DOT's safety regulations, must be allowed to examine and subsequently provide meaningful comments in response to proposals to repeal these essential rules.

We must also underscore the importance of safety inspection regulations, particularly in the rail, transit, maritime, and aviation sectors. Inspection regulations are the first line of defense in ensuring passengers, goods, and crews travel safely through our communities. Without them, it is impossible to verify that transportation vehicles, equipment, and infrastructure are able to operate and perform at the highest level of safety. For example, proper inspection of rail cars and locomotives are vital in preventing derailments and accidents. The odds of a train derailment

¹ Attached is a complete list of the unions affiliated with TTD.

dramatically increase if a rail car or locomotive has a defect that has not been found or fixed. These and other critical mitigation measures must not be weakened, reduced, or repealed. To the contrary, current inspection regulations should be meaningfully strengthened to address gaps and improve the safety of our transportation system. We therefore strongly urge the DOT to, at a minimum, maintain existing safety inspection regulations, and further encourage the agency to promulgate improvements to safety inspection regulations in accordance with the regulatory process specified by the APA.

As the DOT is no doubt aware, the APA requires published notice and opportunity for comment for rulemakings, including for the repeal of regulations. Specifically, the law states, “After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.”² 5 U.S.C. 553(b)(B) exempts a proceeding from these requirements “when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” It appears, however, that the Trump Administration is looking to exploit the narrowly tailored exemptions to this requirement, contrary to conventional and longstanding interpretation.

According to a memo published by the White House regarding the repeal of “unlawful” regulations, “agency heads shall finalize rules without notice and comment, where doing so is consistent with the “good cause” exception in the Administrative Procedure Act.”³ The memo goes on to argue that retaining and enforcing “facially unlawful” regulations is clearly contrary to the public interest. We remind the DOT that the term “contrary to the public interest” does not in itself provide a separate basis for waiving notice and comment, per the DOT’s most recent regulatory handbook. Federal court precedent is clear that “contrary to public interest” is “met only in the rare circumstance when ordinary procedures — generally presumed to serve the public interest — would in fact harm that interest” for example, where “announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent.”⁴

Federal courts also agree that the good cause exception is to be “narrowly construed.”⁵ As such, federal agencies, including the DOT, are responsible for convincing a court that good cause exists, and the exception is not to be used as an “escape clause” to avoid rulemaking procedures when convenient for the agency.⁶ In this case, attempts to dismantle this country’s hard-won safety regulations clearly does not constitute good cause.

With respect to Federal Railroad Administration (FRA) regulations in particular, longstanding federal court precedent dictates that the good cause exceptions of 5 U.S.C. 553(b)(B) do not apply.

² See 5 U.S. Code § 553(c)

³ <https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/>

⁴ See *Mack Trucks, Inc. v. E.P.A.*, 682 F.3d 87, 94 (D.C. Cir. 2012)

⁵ See *Mack Trucks, Inc.*, 682 F.3d at 93

⁶ See *Arapahoe Tribe v. Hodel*, 808 F.2d 741, 751 (10th Cir. 1987)

Federal courts have been clear that good cause exceptions to notice and comment rulemaking do not apply when notice or a hearing is required by statute. FRA safety regulations state that the “Secretary [of Transportation] shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this chapter, including a regulation or order establishing, amending, or waiving compliance with a railroad safety regulation prescribed or order issued under this chapter. An opportunity for an oral presentation shall be provided.”⁷ Because FRA safety regulations require a hearing by a separate statute, the 5 U.S.C. 553(b)(B) exceptions do not apply. Even if the APA’s exceptions could apply to FRA safety regulations, the criteria for those exceptions has not been met.

In conclusion, we strongly caution the DOT against weakening or repealing the safety regulations put in place to ensure every mode of transportation in this country is as safe as it can be. Transportation workers and the travelling public deserve the high standard of safety that only a regulated industry can provide.

We appreciate the opportunity to comment on this matter and look forward to working with the DOT in the future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Regan', with a stylized flourish at the end.

Greg Regan
President

⁷ 49 U.S.C. § 20103(e).