

June 16, 2025

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

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

Secretary Duffy:

On behalf of the Transportation Trades Department, AFL-CIO (TTD) I am pleased to respond to the Department of Transportation's (DOT) proposed rule regarding updates to its administrative rulemaking, guidance, and enforcement procedures. TTD consists of 38 affiliated unions whose members represent workers across the entirety of the transportation sector, including rail track inspectors, locomotive engineers and conductors, flight attendants, pilots, and many others.¹ Given the clear safety implications of this proposal, TTD and our affiliate unions have a vested interest in this process. We respectfully request that the DOT significantly modify this proposed rule.

Rulemaking Procedures

The NPRM suggests that regulations should be technologically neutral, and, to the extent feasible, they should specify performance objectives, rather than prescribing specific conduct that regulated entities must adopt. This is concerning from a safety perspective given that regulated entities would likely be relied upon to self-report performance metrics. Moreover, the NPRM proposes that unless required by law or compelling safety need, regulations should not be issued unless their benefits are expected to exceed their costs. Oftentimes the safety benefits of regulations are difficult to quantify. That does not mean, however, that such regulations are not necessary or do not have a tangible safety impact.

An additional area of concern we must raise is that the proposed rule intimates that the Federal Aviation Administration (FAA) is specifically granted authority to issue emergency rulemakings, while no other modal agency would have such authority. This ignores the reality that other operating administrations (OAs), like the Federal Railroad Administration (FRA) for example, also encounter situations that require emergency rulemakings. The DOT must recognize that OAs

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

beyond the FAA encounter situations that demand immediate regulatory intervention to protect public safety, ensure the integrity of critical infrastructure, or respond to emerging threats. We urge the DOT to update its proposal to expand emergency rulemaking authority to all of its OAs in order to ensure they are able to quickly respond to emergent situations.

Guidance Document Procedures

The DOT's proposed rule would also establish a method for regulated entities to challenge existing guidance documents. Guidance documents, as the DOT notes in the NPRM's supplementary information, do not carry the force of law. There is, therefore, no reason for regulated entities to challenge existing guidance as it does not materially affect their operations. Guidance documents often detail best practices and recommendations but are not enforceable like other regulatory actions. Regulated entities should not be permitted to challenge guidance documents and undermine well-researched best practices and recommendations with which they disagree.

Enforcement Procedures

In addition, the DOT's proposed policies clarify the requirements governing enforcement actions initiated by the agency, including administrative enforcement proceedings and judicial enforcement actions brought in Federal court. Specifically, the NPRM would allow the subject of a DOT enforcement action to petition the General Counsel, with potential for appeal to the Secretary, for a determination that responsible DOT personnel violated provisions of this rule with respect to the enforcement action. The proposed remedies for the violations include removal of the enforcement team from the particular matter, and, where appropriate, a recommendation from the General Counsel to the relevant agency decision-maker for appropriate administrative discipline of personnel found to have violated the rule; elimination of certain issues or the exclusion of certain evidence or the directing of certain factual findings in the course of the enforcement action; and a requirement to restart the enforcement action again from the beginning or recommence the action from an earlier point in the proceeding.

Regulatory enforcement actions ensure regulated entities adhere to the regulations prescribed to keep industry and innovation safe for all Americans, including within the transportation sector. Without regulatory enforcement, regulated entities have no incentive to abide by the regulations put in place to protect the common good. It is clear that these proposed policies would have a chilling effect on enforcement actions and could result in the punishment of personnel merely attempting to uphold basic safety regulations. By introducing ambiguity around enforcement authority or by imposing new procedural burdens and risks for those initiating enforcement actions, the proposed policies could discourage inspectors, investigators, and other officials from acting decisively in situations where swift enforcement is warranted. This not only undermines the credibility and effectiveness of the enforcement process but also risks creating an environment where personnel fear professional repercussions for doing their jobs. Ultimately, this could erode the culture of safety that regulatory frameworks are designed to support. Transportation workers

and the travelling public deserve the high standard of safety that only a regulated industry can provide.

For the reasons outlined above, we respectfully request that the DOT significantly modify this proposed rule. 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 be "Greg Regan", written over a circular stamp or seal.

Greg Regan
President