American Public Transportation Association

May 5, 2025

Mr. Gregory D. Cote
Acting General Counsel
U.S. Department of Transportation
Office of the General Counsel
1200 New Jersey Avenue, SE
Washington, D.C. 20590-0001

Subject: Regulatory Reform RFI/ Docket No. DOT-OST-2025-0026

Dear General Counsel Cote:

The American Public Transportation Association (APTA) represents a $79 billion industry that directly employs 430,000 people and supports millions of private-sector jobs. APTA appreciates the opportunity to identify existing regulations, guidance, obligations, and reporting requirements that may be updated, streamlined, revised, or repealed to better achieve regulatory objectives while minimizing burdens, consistent with applicable law. Important recommendations include Public Transportation Agency Safety Plan Requirements, Pre Award Authority, Categorical Exclusions, Department of Labor Review, Drug and Alcohol Oral Fluid Testing Requirements, and Commercial Driver's License (CDL) under-the-hood testing for public transit bus operators. For ease of reference, our recommendations are organized in order of codification.

Pre Award Authority at 2 CFR 200.458

APTA recommends DOT through the Office of Management and Budget (OMB) clarify this regulation to ensure uniformity so that pre-award authority starts at the beginning of the Federal fiscal year in which the relevant authorization was enacted, when such costs are necessary and timely to the performance of the scope of work of the grant.

The Common Grant Rule gives Federal agencies broad discretion on when to apply pre-award authority. Unfortunately, the timing for eligibility for pre-award authority within the Department is utilized differently depending on the modal administration and/or grant program.

For example, the Federal Railroad Administration (FRA) recently published guidance saying its pre-award eligibility started with the issuance of the Northeast Corridor Inventory. This contrasts with the Federal Transit Administration (FTA), which determined that pre-award authority for its Capital Investment Grant program includes specific allowances for pre-award authority at different stages of project development, in recognition of the long lead time needed for certain activities, particularly for large complex projects.

Without the ability to recover eligible costs, project sponsors are reluctant to begin early work, creating a catch-22, in which they are unable to demonstrate readiness. Allowing reimbursement for costs incurred prior to grant award will speed up the disbursement of funds to the economy and more quickly generate good paying jobs and investment in communities across the United States.

Modifying the Common Grant Rule with clear language, that pre-award authority begins at the date of enactment or fiscal year, would allow project sponsors to move forward at their own risk and would help projects to be competitive and demonstrate project readiness. This provision makes the following pre-award activities automatically eligible for reimbursement if a project is approved: planning, environmental studies, engineering, and design activities. Authorizing these specific pre-award activities for automatic reimbursement will provide agencies with assurances to move forward with developing these capital projects.

Categorical Exclusions under NEPA at 23 CFR 771

We request that DOT eliminate the documentation requirements for Categorical Exclusions (CEs) under the National Environmental Policy Act (NEPA), to ensure the efficient use of taxpayer dollars for projects that support and increase mobility, provided the grantee retains a written description of the work and noting which CE applies, subject to DOT audit.

At present, for an FTA grantee to apply a Categorical Exclusion (CE) exemption to a project, they must complete an extensive paperwork process to verify the determination. This process, often through a "worksheet" package, consists of completing a questionnaire and documenting exhibits of maps, samples, and studies. The worksheet and documentation must be completed even for replacement projects in kind within previously disturbed right of way. The worksheet packages must then be reviewed and approved by an FTA Administrator. These prerequisites that project sponsors must complete prior to beginning the NEPA process often take three to six months, add FTA administrative costs, and lengthen the project delivery review schedule, which Congress has statutorily defined. This requirement is unduly burdensome. Thus, we recommend repeal.

Department of Labor Review of Project Grants at 29 CFR 215

We recommend DOT reduce the U.S. Department of Labor (DOL) review period for grant agreement review to expedite the execution of grant agreements. Under the existing regulation, DOL must certify that protective arrangements are in place and meet the requirements in FTA statute before FTA can execute a grant agreement. The minimum DOL review period is 15 days (if there are no objections from labor representatives) before DOL can certify FTA to release grant funds. FTA's DOL review process is rarely, if ever, used by labor unions to comment on Federally funded work, but the DOL approval process delays grant approvals and contract awards.

Moreover, FTA's Transit Award Management System (TrAMS) system automatically selects all unions in the service area to participate in the DOL review. This approach includes unions that are not relevant to a

particular project or operating agency, which further exacerbates delays. FTA's TrAMS system should only populate those labor unions relevant to a particular grant application.

DOT Drug and Alcohol Oral Fluid Testing Requirements; Department of Health and Human Services Certification at 49 CFR Part 382 and 49 CFR Part 655

APTA requests DOT work with the U.S. Department of Health and Human Services (HHS) to certify laboratories needed to conduct drug and specimen validity tests on oral fluid specimens. Oral fluid testing has the potential to significantly reduce the cost of complying with the DOT drug and alcohol requirements.

To date, DOT has required public transit agencies and other transportation employers to use urine testing procedures to drug test safety-sensitive employees. Nearly six million workers perform safety-sensitive transportation jobs that are covered by DOT drug and alcohol regulations.

DOT regulations govern the drug and alcohol testing process for pre-employment, random, post-accident, reasonable suspicion/cause, and required testing after an employee returns to work after failing or refusing a test. Each year, more than six million drug and alcohol tests are conducted under the DOT program, including 312,000 public transit drug tests and 88,000 rail drug tests at more than 3,300 employers.

In June 2023, DOT added oral fluid testing to the existing urine testing procedures. However, oral fluid testing cannot be implemented until HHS certifies two laboratories to conduct the drug testing. As of April 1, 2025, HHS has not provided an approved list of laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

In October 2023, APTA sent a letter to HHS urging it to certify laboratories needed to conduct oral fluid drug testing (and the collection device). To date, APTA has not received a response to our request and, after almost two years since DOT promulgated its final rule, HHS has not certified these laboratories.

Federal Motor Carrier Safety Administration's Commercial Driver's License (CDL) under-the-hood testing for public transit bus operators at 49 CFR § 383.113(a)(1)(i)

APTA requests that DOT eliminate this CDL requirement for bus operators. A majority of public transit agencies (85 percent) face severe workforce shortages, particularly hiring bus operators. APTA and transit agencies are working to improve the bus operator hiring process, including eliminating unnecessary requirements.

On November 4, 2024, APTA applied for a five-year exemption from the Federal Motor Carrier Safety Administration (FMCSA) Commercial Driver's License (CDL) "under-the-hood" testing requirement for transit bus operators. The CDL under-the-hood test is unnecessary for transit operators because operators are not responsible for vehicle maintenance and are often prohibited by labor contracts from performing it. Dedicated maintenance employees are responsible for vehicle inspections and repairs.

This unnecessary requirement adds costs to training operators. A large system estimates that it costs $4 million per year to comply with the under-the-hood requirement. The test has become a significant barrier to recruiting qualified bus operators at a time when our industry desperately needs them and is a misuse of funds.

An exemption would achieve an equivalent or greater level of safety for transit bus operations and would be similar to the exemption granted to school bus operators in 2022 and December 2024. Removing this unnecessary barrier will help us attract qualified candidates while maintaining our industry's exemplary safety record. We urge the Administration to approve APTA's five-year exemption request.

Transit Safety Rules beginning at 49 CFR Part 670

APTA requests FTA revise certain public transit safety rules. While the transit safety rules, in particular the Safety Management System (SMS) rules beginning at (49 CFR Part 670), were intended to be scalable and flexible, there are several prescriptive, onerous, and unduly burdensome requirements within the rules and APTA requests that FTA modify these sections, including the new Roadway Worker Protection (RWP) final rule at Part 671, the recently expanded provisions in both the Public Transit Agency Safety Plan (PTASP) final rule at Part 673, and the State Safety Oversight final rule at Part 674. In addition, FTA has issued Safety Advisories, General Directives, and Requests for Information that require transit agency actions, and State Safety Oversight Agencies (SSOAs) have made other requests for agency action.

To be clear, the safety and protection of transit workers, riders, and all users is paramount. However, the volume and scope of safety rules that have been promulgated over the past few years have created significant bandwidth, staffing, and implementation issues for public transit agencies, particularly smaller systems.

APTA's specific transit safety rule recommendations are detailed in turn below.

Rail Transit Roadway Transit Worker Protection Rule at 49 CFR 671

The Rail Transit Roadway Transit Worker Protection rule is unduly burdensome for certain rail transit systems and cannot be applied in the same way to all modes of rail transit. There are numerous application issues, especially for smaller rail transit systems (e.g., streetcar and some light rail systems) that are open and unprotected and often do not own the rights-of-way over which the system operates. The final rule appears to be written for heavier rail systems with dedicated rights-of-way, based on FRA's program. However, for street-running systems, such as light rail and streetcar systems, the rule's requirements are very difficult and challenging to implement.

APTA requests FTA revisit:

- the safe refuge requirements at 671.13(d)(1);
- the need for a dedicated flagger or watchperson and requirements in work zones at 671.39(d)(2);

- the requirement for a RWP manual and track access guide at 671.13, which is extremely burdensome for the largest systems;
- the requirement for a Roadway Worker in Charge (RWIC) at 671.31 whose sole duty is to be the RWIC. At most agencies, this person serves many duties, including RWIC; and
- the requirement for written and acknowledged job safety briefings at 671.33. Agencies already conduct these briefings and requiring written and signed briefings is burdensome.

Finally, for the 49 CFR Part 671 rule, the requirement to conduct an annual audit on RWP at 671.25(2)(c) is duplicative, considering existing auditing practices, risk-based inspections and ongoing oversight activities, as well as requirements under the SSO 49 CFR Part 674 rule. This audit is an undue burden on public transit agencies that are already being audited and inspected continuously through various other means.

Public Transportation Safety Certification Program at 49 CFR 672

This rule also presents a few concerns and undue burdens to transit agencies. Specifically, the requirement that a the transit agency update and make sure everyone is active and current for their Public Transportation Safety Certification Program (PTSCTP) certification every six months is an undue burden at 672.21(3)(d). Some SSOAs are also implementing this into their program standards, based on the rule.

In addition, although the rule directs agencies to hire candidates with a safety and security investigation background (e.g., police officers), if candidates do not have full PTSCTP certification, they cannot complete many of their required duties. Thus, even if prospective candidates have the necessary skill set for the position for which they were hired, this requirement may prevent them from carrying out their mission.

Finally, it is increasingly difficult to get into the necessary Transit Safety Institute (TSI) classes that are required under the PTSCTP Part 672 final rule.

Revise FTA Public Transportation Agency Safety Plan Requirements at 49 CFR § 673.19(c)(8) and 49 CFR § 673.23 (d)(1)).

We urge the Administration to reconsider and revise FTA's final PTASP rule. The Infrastructure Investment and Jobs Act (IIJA) continued FTA's Public Transportation Safety Program and adds to the PTASP requirements for public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53. Specifically, the IIJA requires public transit agencies that serve large areas to form a Safety Committee consisting of an equal number of management and front-line transit workers who are tasked with approving an Agency Safety Plan.

On April 11, 2024, the FTA issued its final PTASP rule, which included provisions that: (1) prevent the Accountable Executive of a transit agency from serving in a tiebreaking role as part of Safety Committee dispute resolution procedures under any circumstance; and (2) removes an Accountable Executive's decision-making authority regarding safety risk mitigations in the required safety risk reduction program.

Without an approved Safety Plan, FTA may find the transit agency in non-compliance and withhold its 49 U.S.C. § 5307 formula funds.

APTA has had two significant concerns with implementation of this requirement from the outset:

- Ensuring that the Safety Committees remain focused on safety—and not bring collective bargaining issues to the table; and

- Establishing a process to resolve an impasse.

APTA strongly urged FTA to ensure that the Accountable Executive (CEO) must determine whether to implement safety recommendations of the Committee, and that the CEO serve as a tie breaker if the Committee reaches an impasse. The Transit Agency CEO is responsible for the safety of the system. In the final rule, FTA found that the only person who could **never** serve as a tie breaker is the CEO.

APTA filed a Petition for Reconsideration of the final rule in May 2024. APTA has not received a response to its Petition.

State Safety Oversight at 49 CFR 674

APTA requests revision and modification of the current requirements for Corrective Action Plans (CAPs) as they are unduly burdensome.

Prior to the SSOA rule, transit agencies and SSOA were able to develop a common understanding of needed CAPs that conformed with the transit agency safety plan. In this way, Part 674 was geared toward scalability and flexibility.

Pursuant to the SSOA final rule, the regulations are now very prescriptive. The rule requires CAPs to be developed for three different categories (674.37(a)). This approach creates administrative and bureaucratic burdens and procedures for transit agencies and SSOAs, and it is unclear how these new requirements improve public transit safety.

FTA NTD Reporting Requirements for Cybersecurity Incidents

APTA urges FTA to remove cybersecurity incidents from National Transit Database (NTD) reporting and coordinate with other Federal agencies, such as the Transportation Security Administration (TSA) and Cybersecurity and Infrastructure Security Agency (CISA), to collect this information which is currently reported by public transit agencies. On October 31, 2024, FTA issued a proposed rule "National Transit Database (NTD): Proposed Reporting Changes and Clarifications for Report Years 2025 and 2026 NTD Reporting Changes, which would classify cyber-attacks as "major events" for NTD reporting. Many transit agencies and railroads are already required to report cyber-attack incidents to the Transportation Security Administration (TSA) and the Cybersecurity and Infrastructure Security Agency (CISA). Requiring transit agencies to additionally report the same incidents to FTA creates an unnecessary

bureaucratic and administrative burden on both FTA and transit agencies that would be required to report the information to additional Federal agencies. After reviewing a cyber incident, if FTA determines additional information is required, it could follow up with the impacted public transit agency.

Intersection of the National Environmental Policy Act and National Historic Preservation Act for Transportation Projects

On April 2, 2025, the Advisory Council on Historic Preservation (ACHP) issued a Notice of Approval on the "Program Comment on Certain Housing, Building, and Transportation Undertakings", which provides Federal agencies with additional flexibilities for National Historic Preservation Act (NHPA) Section 106 review. APTA supports this flexibility and urges DOT and its modal agencies to adopt the use of the Advisory Council on Historic Preservation (ACHP) Program Comment on Housing, Building, and Transportation Undertakings.

APTA members experience project delays due to inconsistencies on the application of CE exemptions across Federal reviews. For example, under NEPA, many bus shelter projects are exempt from review as a CE if they are in an existing right-of-way. However, the NHPA Section 106 review process, administered by the ACHP, continues to apply and undermines the NEPA exemption.

Due to cross-cutting Federal requirements, transit agencies must develop and provide additional information to determine NHPA Section 106 applicability. The Section 106 process is lengthy, with outside agencies involved that are not bound by NEPA review timeframes. As a result, project sponsors experience delays and increased costs, including loss of local match, for bus shelter projects.

In addition to bus shelter projects in a previously disturbed right-of-way, Appendix A of the Program Comment includes several other transportation projects in which further Section 106 review is not required. The Notice provides procedures for Federal agencies to utilize the new Program Comment for projects under their authority.

FTA Notice of Proposed Policy Statement Regarding the Applicability of FTA's Drug and Alcohol Testing Program to Transportation Network Companies (89 Fed. Reg. 106732)

On December 30, 2024, FTA issued a Notice of Proposed Policy Statement Regarding the Applicability of FTA's Drug and Alcohol Testing Program to Transportation Network Companies (Notice of Proposed Policy Statement), which seeks to clarify the long-standing "Taxicab Exception" to the Drug and Alcohol requirements as it applies to Transportation Network Companies (TNCs) by prohibiting TNCs (or taxi companies) from having any "contracts or informal arrangements" with transit agencies to augment critical paratransit and user choice services unless they comply with FTA's Drug and Alcohol testing program.

APTA urged FTA to withdraw the Notice of Proposed Policy Statement and consult with the public transit industry on the impacts of the Proposed Policy Statement on public transit agencies' operations and the riders that they serve and convene a stakeholder forum to ensure that the agency fully appreciates the

breadth of transit agency mobility on demand programs and the impacts of any proposed changes on their services.

While some agencies have partnered with TNCs that comply with FTA's Drug and Alcohol testing program, public transit agencies currently utilizing the Taxicab Exception with TNCs, such as Uber and Lyft, to augment their traditional paratransit, first- mile/last-mile, and guaranteed ride home services have expressed deep concern that FTA's Notice of Proposed Policy Statement, if finalized, could jeopardize these services. Moreover, there is broad concern about the near-term disruption to riders, including paratransit riders, who have come to rely on the wide array of choice and flexibility that these services provide.

APTA notes that some of its members strongly support APTA's withdrawal request, while other members are supportive of FTA's Notice of Proposed Policy Statement. All perspectives should be heard, considered, and addressed in an FTA consultation with transit providers. APTA and its members are firmly committed to the safety of our passengers and urge FTA's further engagement on this issue.

Streamline FTA Real Property Acquisition at 49 U.S.C. § 5323(q)

APTA proposes that Congress adopt a provision that expands transit agencies' authority to acquire land prior to completion of NEPA by amending 49 U.S.C. § 5323(q) to replace the term "right-of-way" with "real property interests". Expanded flexibility for early real property acquisitions for public transportation projects is needed to reduce delays and associated costs of projects and to create certainty in property rights with a view toward future use.

Many public transit agencies face difficulties purchasing real property for operations and maintenance facilities because FTA policies restrict the purchase of real property where Federal funds will be, or are anticipated to be, used for the purchase or development of that property. In most cases, transit agencies cannot acquire such real property until NEPA processes are completed.

Under current FTA law, project sponsors that purchase real property outside of existing transit corridors cannot proceed until the NEPA process is completed (or until FTA has determined that the project is exempt as a Categorical Exclusion or issued a FONSI or EIS/ROD).

This proposal would bring FTA's authority into parity with the Federal Highway Administration's property acquisition authority. This provision was included in the FY 2024 and FY 2025 Senate THUD Appropriations bills (and the President's FY 2024 and FY 2025 Budgets) but has not been enacted to date.

We urge the Administration to support this streamlining statutory change.

Consistency Across FTA Regions

APTA urges DOT to ensure that policies, guidance, procedures, and oversight activities issued or enforced by regional offices of the Department are executed in a consistent manner across all regions.

Operations are most efficient when there is clear communication and expectations. APTA members work diligently to deliver projects to better support their communities; however, our collective experience has shown that inconsistent enforcement of Federal rules leads to inefficiencies and unnecessary delays. Different regional interpretations can cause confusion for construction partners who work across multiple regions, administrative burdens for transit agencies, and increased costs.

For example, during the grant application process, APTA members have experienced delays with FTA regional offices having different standards of review—often requiring project sponsors to adjust wording, creating a back-and-forth process that spans several months, further delaying project approvals. While our members appreciate the technical assistance and resources available to ensure projects are successful, it is critical that timelines, such as requirements from One Federal Decision, as codified in statute[7], are enforced.

This commitment will allow for all parties to achieve our shared commitment to ensure timely and cost-effective project delivery to provide greater mobility opportunities for Americans.

Federal Grants—Certifications and Assurances

Every year, FTA requires its grantees to complete a lengthy series of Certifications and Assurances, as part of establishing eligibility to receive FTA grants. The required certifications and assurances sometimes include obscure statutes and regulations (e.g. the Laboratory Animal Welfare Act of 1966 (Pub. L. 89-544, as amended, 7 U.S.C. § 2131 et seq.)). FTA's annual list of Certifications and Assurances should eliminate those elements that are not relevant for public transit projects.

Federal Grants—Award Administration/Management

APTA recommends FTA publish apportionment, allocation, contract authority and competitive grant program plans for public transit funds on October 1 or within 30 days of the date of enactment of any transportation appropriations legislation, as appropriate. At times, FTA takes several months to publish apportionments and allocations for grant programs, contract authority, and competitive program plans for public transit program funds that are provided by Congress, which can delay grant development and contract award.

Conclusion

We are pleased to submit these comments in response to DOT's RFI on Regulatory Reform published in the Federal Register at 90 FR 14593 on April 3, 2025. Thank you for your consideration. APTA appreciates this opportunity and looks forward to continuing to work and further collaborate with you on this important

endeavor. If you have any questions regarding this request, please contact Taria Barron, General Counsel, at (202) 496-4808, or tbarron@apta.com.

Sincerely,

Paul P. Skoutelas

Paul P. Skoutelas
President and CEO