



March 31, 2014

U.S. Department of Transportation
Docket Management Facility
1200 New Jersey Avenue, S.E.
Washington, DC 20590-0001

RE: Docket No. DOT-OST-2014-0024

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Office of the Secretary of Transportation (OST) request for comments on the Next Phase of the Regulatory Review of Existing Department of Transportation (DOT) Regulations, published February 27, 2014 at 79 FR 11051.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

APTA speaks for its members. Its Board of Directors reiterated that fact on March 9, 2013, when it adopted the following statement: “While APTA encourages its members to provide specific examples or impacts in support of the association's positions, APTA crafts its comments to represent those of all APTA members. The association goes to great lengths to ensure its regulatory comments represent the consensus views of our members. Every APTA member has the opportunity to review drafts, participate in discussions, and assist in crafting those consensus comments. In short, we speak with a single voice and, when the rare instance occurs that we cannot reach consensus, we do not speak at all. APTA's comments are those of our more than 1,500 members. This consensus-based method of crafting regulatory comments is a factor underlying APTA's selection as one of Washington's most trusted brands in a broad survey conducted by the National Journal and we encourage all federal agencies to recognize the representative nature of the association's regulatory comments.”

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OST has offered a number of options for managing this review process, including simply asking for specific rules in need of review, focusing on a list identified by DOT in 2011, focusing on a specific operating administration, or focusing on cross-cutting rules. We do not believe any of these options are mutually exclusive and that all have merit, based on a wide range of factors.

There are specific rules that, standing alone, are unduly restrictive and cause the regulated community to expend excessive time and money to achieve compliance. DOT should seek recommendations on these specific rules to be reviewed.

The 56 rules cited in the *Federal Register* should be explained in greater detail. The reference to Attachment 2 of the Department's 2011 final plan leads to a reprint of a routine Section 610 notice and does not clearly specify which of the rules the Department identified as having potential savings. Once clarified, we would encourage OST to seek additional information from the public and use that information to prioritize its list.

Since the impact of rules is often cumulative, OST should pursue a modal review to ascertain the overall regulatory burden on the regulated community and specifically to identify those areas where differing rules require the same or similar information to be processed and presented in different ways. This review should not be limited to existing rules, but also those being developed.

Similarly, OST should focus on cross-cutting issues to eliminate unnecessary costs and confusion. Buy America, with many differing interpretations of compliance, should be an immediate focus. While the underlying statutes may differ, the differences are exacerbated in widely divergent regulatory schemes and practices within the Department. Moreover, projects that draw funding from more than one modal administration require clear guidance on what rule applies. As the Federal Transit Administration crafts its safety program, OST must ensure that the program can reasonably co-exist with the Federal Railroad Administration's program to avoid duplicative, counter-productive efforts.

Within this exercise, OST should also look to the various Circulars and other guidance documents that have become *de facto* rules through practice, oversight, and other modal administration actions. While an underlying regulation may be benign, the interpretation and enforcement of the rule is often cumbersome. We have found that review processes have tended, over time, to enlarge regulatory requirements through the threat of adverse findings and these *de facto* rules carry the same potential for wasting time and money as formal regulations.

Finally, the Department should examine its rulemaking processes. Delay and uncertainty in the regulatory process only compound the ill effects noted above. As an example, OST proposed changes to its regulations related to services for people with disabilities in 2006. Over eight years later, the proposals are still pending. Federal courts in multiple circuits have found them unenforceable before they are finalized, yet they are regularly enforced through adverse review findings. This leads to confusion for agencies providing the services, the passengers dependent on the services, and the state and local governments responsible for funding the services.

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We appreciate the opportunity to assist OST in this important endeavor. For additional information, please contact James LaRusch, APTA's chief counsel and vice president corporate affairs, at (202) 496-4808 or jlarsch@apta.com.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael P. Melaniphy". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael P. Melaniphy
President & CEO

MPM/jpl:rw