

**ADMINISTRATIVE RULEMAKING, GUIDANCE, AND ENFORCEMENT
PROCEDURES
NOTICE OF PROPOSED RULEMAKING (NPRM)**

Office of the Secretary of Transportation (OST)
US Department of Transportation (US DOT)

**AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS
COMMENTS**

Attention: Docket No. DOT-OST-2025-0007

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I. Introduction

The American Fuel & Petrochemical Manufacturers (“AFPM”) respectfully submits these comments in support of the U.S. Department of Transportation’s (“US DOT” or the “Department”) Notice of Proposed Rulemaking (“NPRM” or the “proposal”) titled “Administrative Rulemaking, Guidance, and Enforcement Procedures”.¹ The proposal would establish standardized procedures for regulatory development, guidance issuance, public participation, and enforcement actions across all DOT operating administrations (“OA”). These updates reflect a strong commitment to transparency, fairness, and public accountability in the Department’s administrative practices.

AFPM’s comments emphasize key provisions of the rule that improve predictability for regulated entities, ensure consistent and fair enforcement processes, and foster more meaningful public engagement in rulemaking. Specifically, AFPM supports:

- codifying cost-benefit analysis in regulation drafting,
- formalizing processes that clearly distinguish binding rules for advisory guidance, and
- incorporating mechanisms for public input throughout the rulemaking and guidance development lifecycle.

AFPM also strongly supports the rule’s framework for consistent enforcement standards and its encouragement of plain language and public outreach, which will help ensure that regulatory obligations are clearly understood and equitably applied.

II. AFPM’s Interest in the NPRM

AFPM is the leading trade association representing the manufacturers of the fuels that keep America moving and petrochemicals that are the essential building blocks for organic chemistry, including plastic products that improve the health, safety, and living conditions of humankind and make modern life possible. AFPM members are committed to sustainably manufacturing and safely transporting high-performing fuels and the petrochemicals and derivatives that growing global populations and economies need to thrive.

To produce these essential goods and bring them to market, AFPM members depend on good governance and a predictable regulatory environment. Inconsistencies in governance and enforcement, and lack of regulatory clarity, can lead to stalling industry operations and advancements. Industry, and the American public, thrive when the regulatory environment is transparent, accountable, and consistent with its enforcement and as such we support this effort to provide clarity.

III. Comments on the NPRM

Below AFPM highlights specific elements in the NPRM that will ensure that enforcement, guidance and regulatory obligations are clearly understood and equitably applied.

¹ See 90 Fed. Reg. 20956 “[Administrative Rulemaking, Guidance, and Enforcement Procedures](#)” Docket No. DOT-OST-2025-0007, published May 16, 2025.

A. Enhancing Transparency and Accountability

AFPM supports US DOT's decision to require that all guidance documents be made publicly available. This is a critical step toward increasing transparency and ensuring that stakeholders have timely access to the Department's interpretations and policies. AFPM also recommends that this requirement explicitly includes the publication of interpretive documents, which often play a significant role in shaping regulated entities' understanding of their compliance obligations.

We support the requirement that all OA guidance be reviewed and cleared by the issuing OA's Office of Chief Counsel prior to implementation. Regarding OA guidance deemed "significant" and therefore subject to additional review and clearance², we support consideration of the "constituencies of importance" provision³ included in the proposal.

As stated in the NPRM's preamble, US DOT does "its best work when it is informed by robust public input, the best available data, and sound law and economics." This sentiment should be reflected in earnest engagement with the regulated community subject to proposed guidance in advance to determine the accuracy of assumptions undergirding the proposed guidance.

The proposed changes to guidance review and clearance are encouraging and we support their intent.⁴ Guidance should be written clearly and not be used as a substitute for legislation or regulation. These updates are needed and will improve the consistency of OA design, content, language and force and effect of guidance across OAs.

Further, AFPM encourages the Department to incorporate public comment procedures into the development of significant guidance materials and interpretations. The Pipeline and Hazardous Materials Administration ("PHMSA") provides an example of how this could work in practice. Specifically, PHMSA recently adopted a policy that would provide stakeholders notice and the opportunity to comment on proposed interpretations of regulations. While this process was recently implemented, this approach should improve the quality and legitimacy of guidance by incorporating diverse stakeholder perspectives prior to issuance. Other OA should consider a similar process for regulatory interpretations, guidance and enforcement procedures.

AFPM is encouraged by DOT's acknowledgment that its "best work" can only be done when it has robust public input.⁵ Central to achieving DOT's "Best Work" across all OAs are "fair and sufficient opportunities to comment on guidance documents". DOT could facilitate easier stakeholder participation by establishing a separate website for guidance documents not yet

² See 90 Fed. Reg. 20956 at Sec. 5.37

³ See *Id.* Sec. 5.37 (d)(4)

⁴ See *Id.* at Sec. 5.29

⁵ See *Id.* "The Department produces its best work when it is informed by robust public input, the best available data, and sound law and economics, and these procedures increase opportunities to receive those essential building blocks for good governance that would strengthen the overall quality and fairness of the Department's administrative actions."

issued⁶, and guidance documents up for “reconsideration, modification, or rescission.”⁷ This is a clearer way of presenting two different categories of documents for public accountability.

AFPM also strongly supports the NPRM’s clear distinction between enforceable regulations and non-binding guidance. This distinction is essential to prevent confusion among regulated parties and ensure that compliance expectations are legally grounded. Enforcement actions should be based exclusively on binding legal requirements, and agencies should avoid citing ambiguous or interpretive guidance as a primary basis for penalties or corrective action. Such clarity will protect due process, support fair enforcement, and strengthen stakeholder confidence in the Department’s regulatory activities.

B. Streamlining Rulemaking Procedures

AFPM supports the Department’s efforts to codify internal processes for drafting, reviewing, and issuing regulations, as doing so will promote consistency across US DOT OAs and provide industry with greater predictability and confidence in the regulatory landscape. This ensures that regulations are grounded in practical realities and are achievable, rather than purely aspirational.

AFPM further supports enhanced coordination between OAs within and across US DOT agencies. Inconsistent messaging and fragmented processes can lead to confusion for stakeholders and inefficiencies within the US DOT. Improved intra-agency coordination will help reduce uncertainty, avoid conflicting interpretations, and ensure more coherent and stable regulatory outcomes. This coordination is particularly important for issues that fall under multiple OAs’ authorities, such as rail tank car standards or the transportation of hazardous materials.

C. Fairness and Uniformity in Enforcement Procedures

AFPM supports the NPRM’s effort to establish clear, department-wide procedures for initiating and conducting enforcement actions. Consistent standards—such as transparent notice requirements, defined timelines, and clear articulation of rights—are critical to ensuring due process and predictability for regulated entities. AFPM also strongly supports the rule’s emphasis on maintaining a structural separation between adjudicatory and investigative functions, which is essential to preserving impartiality in enforcement proceedings. For example, AFPM members have been subject to enforcement actions at both PHMSA and the Federal Railroad Administration (“FRA”) where the line between adjudicatory and investigative functions is not clearly delineated or is unclear.

AFPM also supports providing respondents access to all pertinent agency records related to enforcement proceedings. AFPM also supports clarity for calculating civil penalties, specifically ensuring respondents are subject to penalties in effect on the date when a proceeding is initiated, rather than the version in effect on the date when an alleged violation occurred. Both these issues

⁶ See *Id.* at Sec. 5.39

⁷ See *Id.* at Sec. 5.41

have been addressed in recent policies announced by PHMSA’s Office of Pipeline Safety and the agency should consider similar policies Department-wide.⁸

The NPRM contains definitions for both “Adversarial” and “Decisional” personnel.⁹ AFPM supports these definitions as they are central to achieving the “Separation of Function” and in turn are critical components of due process. We appreciate that the NPRM concretely demonstrates DOT’s efforts to eliminate bias in enforcement actions.¹⁰ However, we are concerned that the definition of “Separation of Functions”, and its critical role in due process, will only be applicable “For those OAs or OST components whose regulations provide for a separation of decisional personnel from adversarial personnel in an administrative enforcement proceeding”. Instead, DOT should separate adversarial and decisional personnel across all OAs. At the core of Separation of Function is avoidance of bias. Even where an OA’s current regulations do not require Separation of Function, they are required to avoid bias. While separating functions is no panacea to the problem of agencies exercising multiple functions, it reduces the opportunity for bias.

Additionally, AFPM endorses the Department’s goal of enforcing regulations uniformly across all operating administrations. A unified enforcement framework helps prevent duplicative, prolonged, or inconsistent investigations. Importantly, AFPM supports enforcement protections that ensure entities are not subject to indefinite or open-ended investigations without resolution.

D. Public Participation and Stakeholder Engagement

AFPM appreciates the rule’s emphasis on fostering meaningful public participation throughout the rulemaking process. While not mandatory, the NPRM’s encouragement of public meetings, hearings, and listening sessions—especially for complex or economically significant rules—represents a best practice that can strengthen trust in regulatory outcomes. AFPM also supports the Department’s plain language provisions, which will make rulemaking more accessible to a broader cross-section of stakeholders and promote diverse input from both industry and the general public. As stated in the preamble to the NPRM, DOT does “its best work when it is informed by robust public input, the best available data, and sound law and economics.” This sentiment should be reflected in earnest engagement with the regulated community subject to proposed guidance in advance to determine the accuracy of assumptions undergirding the proposed guidance.

AFPM particularly welcomes the reinstatement of procedures related to high-impact and economically significant rulemakings. However, the thresholds for such rules—\$500 million in annual cost or impact on 250,000 jobs—may be too high. Given that such impacts may fall on a concentrated segment of stakeholders, including shippers, rail car owners, and railroads, a lower threshold would better capture projects with substantial but narrower economic implications.

Finally, AFPM supports the rule’s commitment to transparency in guidance development. Encouraging public comment on significant guidance and requiring agencies to provide a reasoned

⁸ See [PHMSA Revised Policies for Pipeline Safety Enforcement Proceedings](#) issued June 4, 2025

⁹ See *Id.* at Subpart D, Sec. 5.57

¹⁰ See *Id.* at Sec. 5.73, which includes a list of disqualifications for personnel participation including “as ALJ, adjudication counsel, adversarial personnel, or decisional personnel”

explanation for their decisions will enhance stakeholder involvement and align guidance development more closely with formal rulemaking standards.

IV. Conclusion

AFPM commends the US DOT for taking comprehensive steps to improve regulatory clarity, accountability, and stakeholder engagement through this proposed rule. The codification of internal processes for rulemaking, guidance, and enforcement offers regulated entities a more predictable and transparent framework in which to operate. Provisions such as consistent cost-benefit analysis, clear differentiation between enforceable rules and guidance, and safeguards in enforcement proceedings reflect a strong commitment to fairness, legal integrity, and effective governance. These measures will help avoid regulatory ambiguity and bolster due process protections across the Department's activities.

Moreover, AFPM strongly supports the Department's efforts to enhance public participation and transparency. Encouraging early and inclusive engagement, particularly through public meetings and plain language requirements, ensures that the voices of industry, communities, and affected stakeholders are better heard and understood. The rule's provisions related to significant and economically impactful rulemakings appropriately recognize the importance of stakeholder input where financial and operational stakes are high, although AFPM urges consideration of lower thresholds to ensure broad applicability. Overall, the NPRM marks a positive evolution in administrative practice, and AFPM encourages continued dialogue and refinement to ensure its effective and equitable implementation. Please contact me at (202) 457-0480 or rkelsey@afpm.org if you wish to discuss these issues further.

Sincerely,

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