The National Beat

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Streamlining the Review of Deregulatory Action

On October 21, 2025, the White House Office of Management and Budget (OMB) issued **Memorandum M-25-36**, *Streamlining the Review of Deregulatory Actions*.

The "Too Long; Didn't Read" (TL;DR): OMB's memo is the most comprehensive effort to date to formalize "deregulation" as its own category of agency action. It is designed to speed up the repeal or scaling back of existing rules by changing review timelines, limiting requirements for agency consultation, and making broader use of the "good cause" exemption under the ***Administrative Procedure Act's*** *(APA)*.

The memo provides guidance to federal agencies, including USDOT, on how to carry out the Administration's deregulatory agenda. It emphasizes:

- Rapid repeal of rules that are considered "facially unlawful."
- Shortened review timelines at OMB.
- Treating "deregulation" differently from "regulation" under administrative procedure.

Aspects of this memo may sound familiar. USDOT has already begun using this approach over the past several months (think interim final rules, new waivers, changes to grant agreements, etc.). The memo largely formalizes a process that is already underway.

The memo builds on a series of recent executive actions:

- Executive Order (EO) 14192 **Unleashing Prosperity Through Deregulation:** Establishes a "10-for-one" rule requiring the repeal of 10 existing regulations for every new one issued. (**AMPO's analysis** here).
- EO 14219 **Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative**: Directs agencies to rescind or deprioritize regulations viewed as inconsistent with statutory or constitutional authority. (**AMPO's analysis** here).
- Presidential Memo on the Repeal of Unlawful Regulations: Instructs agencies to withdraw rules that conflict with recent Supreme Court decisions, invoking the APA's "good cause" exception to bypass notice-and-comment procedures. (**AMPO's analysis** here)

Together, these actions redefine how the federal government approaches rulemaking, shifting from regulation to rapid deregulation.

Streamlining OIRA Review

OMB argues that traditional rulemaking has become "ossified," meaning too slow and procedurally burdensome. To speed things up, the memo directs the Office of Information and Regulatory Affairs (OIRA) to apply much shorter review windows for deregulatory actions:

- **14 days** for rules deemed "facially unlawful" (i.e., rules an agency believes clearly conflict with statute or the Constitution).
- **28 days** for deregulatory actions supported by factual records or cost-benefit records.

This is a major change from the long-standing 90-day review baseline under EO 12866. Federal Agencies will now be expected to submit complete, pre-built justifications to OIRA up front to meet these compressed deadlines.

The memo also signals that agencies may waive or consolidate certain long-standing requirements when they are repealing rules rather than issuing new ones. This includes requirements related to **federalism/state and local consultation (EO 13132)**, **tribal consultation (EO 13175)**, **takings (EO 12630)**, and **small entity/business impacts (EO 13272)**. In other words: deregulatory actions are presumed to be exempt from some of the review and consultation that would typically apply.

The "Good Cause" Exception and Unlawful Regulations
OMB encourages agencies to use the APA's "good cause" exemption (5 U.S.C. § 553(b)(B)) to **bypass notice-and-comment processes when repealing rules** that are considered unlawful or when public process would be "unnecessary or contrary to the public interest." Under this approach, an agency can classify a rule as "facially unlawful."

For example, if it believes the rule exceeds its statutory authority or conflicts with recent Supreme Court precedent. The agency can then repeal or **narrow that rule immediately**, with only a short legal explanation, and allow the repeal to take effect without a 30-day waiting period if it "relieves a restriction."

Example: USDOT's DBE IFR. The recent Interim Final Rule (IFR) on Disadvantaged Business Enterprise (DBE) program exemplifies this new approach. The rule, effective immediately, eliminates group-based presumptions of disadvantage and replaces them with individualized determinations, **citing constitutional grounds and the APA's "good cause" exemption**. *Read AMPO's analysis **here***.

Building Deregulatory Records
In cases where an agency does go through public notice and comment for a repeal, OMB instructs agencies to frame the action as producing "**total costs less than zero**." In other words, repealing the rule should be presented as saving more than it costs. Agencies are encouraged to point to qualitative benefits such as:

- **Expanding private and business freedom**.
- **Generating cross-sector economic efficiencies**.
- **Correcting outdated or inaccurate cost assumptions**.
- **Codifying enforcement discretion** (e.g., deciding not to enforce certain requirements going forward).

This framing positions deregulation not only as a legal correction, but also as an economic benefit.

Potential Legal and Administrative Implications

Historically, under the APA, repealing a rule and issuing a new rule were supposed to follow the same procedures. OMB's memo moves toward **a two-track system**: one process for creating new requirements and a faster, lighter process for rolling back existing ones.

That shift could face legal challenges. Courts may continue to test whether expedited repeals, especially those justified by "good cause" and implemented without advance public comment, meet the APA's standard for reasoned decision-making. This is especially relevant where agencies invoke recent Supreme Court decisions (e.g., **Loper Bright**, **West Virginia v. EPA**, **SEC v. Jarkesy**) to justify immediate action.

Potential Implications for USDOT and Impacts on Stakeholders

- **Faster rule changes, fewer consultations:** USDOT's rulemakings will now move through these 14- or 28-day OIRA timelines. That means the Department can revoke or amend existing rules much more quickly. Because OMB treats deregulatory actions as presumptively exempt from certain consultation requirements, MPOs, state DOTs, and local governments may lose one of the few formal early opportunities to flag implementation challenges.
    - **Potential effect:** MPOs and stakeholders may have little advance notice before changes take effect, which could potentially disrupt planning and contracting cycles. This also places more responsibility on MPOs and stakeholders to monitor the Federal Register and OIRA activity in real time.
- **Increased use of "good cause" interim rules:** USDOT has already been increasing its use of interim final rules and immediate waivers. Under this memo, that approach is explicitly encouraged. Stakeholder input may be more likely to happen after a policy is already in place, not before.
- **Enforcement discretion:** Under **EO 14219**, USDOT is also directed to scale back enforcement of requirements it views as outside clear statutory authority or as excessively costly. This could potentially include elements of Buy America, environmental review, or performance management. While this may speed up project delivery, it may also create uncertainty if enforcement standards shift again later.
- **Increased litigation exposure.** If a rapid repeal is later struck down in court, recipients could face retroactive questions about whether contracts, certifications, or awards complied with the "right" version of the rule at the time. This is a particular concern for smaller agencies with limited legal capacity.
- **Administrative strain:** "Deregulatory" does not necessarily mean "less work." For example, USDOT's recent interim final rule on the DBE programs immediately changed certification expectations. That in turn requires state DOTs, MPOs, and contractors to adapt quickly and re-document compliance.

Bottom line. The memo marks a pivotal change in how the federal government manages regulation and deregulation. For transportation:

- **Within USDOT,** the memo likely accelerates repeals and expands the use of interim final actions and waivers.

- **For state DOTs, MPOs, transit agencies, local governments, and contractors,** it potentially compresses consultation windows, shortens lead time to adapt to new requirements, and increases the need to monitor agency actions closely.

AMPO will continue tracking regulatory changes and their practical impacts on MPOs. Please reach out to Katie Economou, Legislative Director, at **keconomou@ampo.org** with any questions.

🔗 USDOT FAQ Clarifying Implementation of DBE Interim Final Rule

On October 22, USDOT released a Frequently Asked Questions (FAQ) document offering new guidance on how recipients should implement **the Interim Final Rule (IFR) for the Disadvantaged Business Enterprise (DBE) and Airport Concessions DBE (ACDBE) programs**. Read AMPO's analysis on the IFR **here**

The FAQ builds on USDOT's October 3 rulemaking, which removed long-standing race- and sex-based presumptions of social and economic disadvantage. Instead, all applicants must now demonstrate disadvantage on a case-by-case basis. The new FAQ provides context for how these changes apply to existing contracts, certification processes, and program administration moving forward.

Implementation and Program Updates
USDOT confirms the IFR is **already in effect**, and recipients must begin updating their **DBE program plans** accordingly. **Any plan language that still references race- or gender-based presumptions is no longer valid**. Recipients are encouraged to update their plans as soon as their Unified Certification Programs (UCPs) have completed the reevaluation of currently certified firms.

What Happens to Current Contracts?
The FAQ clarifies how the rule applies to ongoing and upcoming contracts:

- **Advertised but not awarded:** DBE goals must be **removed before award**.
- **Contracts already executed:** These can continue as planned, but **DBE participation cannot be counted** toward goals until the firms are reevaluated under the new standards.
- **Future procurements:** No DBE goals may be included until UCPs complete reevaluations.

In short, current projects can move forward, but recipients cannot claim DBE credit until certifications are updated.

Reevaluating Certified Firms
All existing DBEs must now be **reevaluated individually** by their certifying UCP to verify disadvantage based on documentation and personal narratives.

- DBEs certified in multiple states will be reevaluated by their **home-state UCP** and must reapply elsewhere once approved.
- Firms cannot be decertified automatically, each must be given the chance to submit documentation.

- Appeals remain available through USDOT under **49 CFR §26.89**.

Until reevaluations are complete, DBE participation **cannot be counted** toward project or program goals.

Goal Setting and Reporting on Hold
USDOT confirms that recipients **cannot set new DBE goals** or count participation until reevaluations are finished.

- Uniform Report submissions and annual goal updates are temporarily paused.
- Once the reevaluation process concludes, recipients will establish new goals using the revised standards and submit updated DBE plans for approval.

This pause is intended to ensure that all certifications align with the new, constitutional framework before goal tracking resumes.

Requirements That Still Apply
While parts of the program are paused, several key requirements remain in effect:

- **Nondiscrimination clauses** must stay in all contracts.
- **Prompt payment rules** still require primes to pay subcontractors within 30 days.
- **Termination protections** remain; recipients must approve any substitution or removal of a DBE subcontractor.

Please reach out to Katie Economou, Legislative Director, at **keconomou@ampo.org** with any questions.

Federal Roundup

Congress: *Government Shutdown & Legislative Activity*
Administration & Agencies: *USDOT Updates*
NOFOs: *Fed-State Partnership for Intercity Passenger Rail*

Congress

Congressional "Vibe" Check

Government Shutdown. On **September 30**, the White House formally ordered federal agencies to implement their shutdown plans after a short-term funding measure failed to pass the Senate. As the federal government shutdown stretches into its 31st day, there is no clear resolution in sight.

- Public sentiment remains evenly split and neither party faces decisive blame. **Recent polls** show only modest differences in how voters assign responsibility, suggesting that frustration has not reached the level seen in previous shutdowns. Some lawmakers, including Senator Mark Warner (D-VA), **argue that** resolving this shutdown depends on direct engagement from the White House.
    - However, President Trump has resisted calls for an Oval Office meeting with congressional leaders, maintaining that **negotiations will not occur** until Democrats vote to reopen the government. White House officials continue to signal that such a meeting is unnecessary until Congress acts.
    - With key programs such as SNAP benefits set to lapse for millions of Americans, pressure is mounting on both parties to reach an agreement. Some Republican leaders, including Senator John Thune (R-SD), have expressed openness to discussing longer-term spending once agencies are reopened, while Democrats continue to seek provisions addressing expiring Affordable Care Act subsidies. Despite some bipartisan conversations on Capitol Hill, the administration appears focused on maintaining leverage, making direct negotiations with the president unlikely before a short-term funding bill passes.
- While the lapse in funding has begun to impact some workers, including air traffic controllers and TSA staff, many core USDOT programs remain insulated thanks to ongoing Highway Trust Fund (HTF) and IIJA allocations (*Read AMPO's analysis of the shutdown effects on USDOT* ***here***). This financial cushion has allowed USDOT to continue spending billions despite the broader funding impasse, softening the shutdown's immediate effects but leaving its political and economic resolution uncertain.

What's Making Headlines?

- 🔗 **Commerce Democrats Urge Chairman Cruz to Halt NTSB Nominee Hearing:** Senate Commerce Committee Democrats, led by Ranking Member Maria Cantwell (D-WA), are urging Chair Ted Cruz (R-TX) to cancel a confirmation hearing for John DeLeeuw, President Trump's nominee to the National Transportation Safety Board. DeLeeuw was nominated to replace former Vice Chair Alvin Brown, who was fired by the White House in May and is now suing the president, alleging unlawful termination from the independent agency. In a letter to Chair Cruz and Senate Majority Leader John Thune (R-SD), 10 Democrats warned that moving ahead would undermine the committee's bipartisan tradition and set a dangerous precedent while Brown's lawsuit remains unresolved. Cruz's office indicated the hearing will proceed, calling DeLeeuw "a highly qualified pilot dedicated to aviation safety."

- 🔗 **OBBBA Rescinds Low-Carbon Construction Grants**: The One Big Beautiful Bill Act (OBBBA) has rescinded more than $1 billion in federal grants intended to support the use of low-carbon asphalt and concrete in transportation projects (**Read AMPO's analysis of OBBBA here**). The funding, established under the 2022 Inflation Reduction Act, was designed to help state and local governments reduce greenhouse gas emissions in highway construction. Recent analysis shows 34 of 39 announced awards were canceled. Only five states (i.e., CO, IL, KY, OR, and WI) retained a portion of their funds because the money had already been obligated. Supporters of the rollback said the program reflected unnecessary subsidies and misplaced priorities, while others, including local transportation officials, said it represented a missed opportunity to advance innovation in construction materials.

- 🔗 **HTF $30.6 Billion User-Pay Deficit in FY 2025**: The HTF ended FY 2025 with a $30.6 billion "user-pay deficit," spending significantly more than it collected through highway user taxes, fees, and penalties. According to new FHWA data, this marks a **$4.9 billion increase** from FY 2024's $26.7 billion shortfall. The HTF's Highway Account recorded a $21.1 billion deficit, while the Mass Transit Account ran a $9.5 billion gap, meaning roughly **one-third of highway spending and nearly 60% of transit spending relied on general fund transfers** rather than dedicated user revenues. Overall, the fund's balance dropped from $101 billion to $74 billion over the fiscal year, underscoring the persistent gap between user-generated revenue and federal transportation spending.
    - Tax receipts from fuel and trucking sources rose modestly by **$1.2 billion to $43.7 billion**, with most growth coming from motor fuel taxes, while revenue from trucking-related taxes likely declined.
    - Spending grew by **$5.2 billion** due to continued implementation of the IIJA, with transit outlays up 15.7% and highway outlays up 4.5%.
    - Interest earnings fell from **$6.1 billion to $3.9 billion**, reflecting declining fund balances and the gradual drawdown of the IIJA's $118 billion general fund infusion.

Administration & Agencies

USDOT

- 🔗 **Secretary Duffy on Gateway Project**: Secretary Duffy clarified that the $16 billion Gateway Project and $7 billion Second Avenue Subway extension remain under administrative review, not canceled, despite President Trump's recent claim that Gateway was "terminated." Secretary Duffy said the federal government shutdown has slowed the review process, leaving minimal staff to continue work. Earlier this month, the White House temporarily froze funding for both projects while USDOT reviews whether diversity, equity, and inclusion policies affected contractor selection (Read AMPO's analysis **here**). Duffy emphasized that USDOT intends to move forward "without delay" once staffing resumes, while lawmakers and local officials underscored the projects' importance to the New York–New Jersey region's commuters and economy.

- 🔗 **USDOT Report Accuses California of Violating Federal Law** : A new USDOT report accuses California of violating federal law after the state allegedly allowed an asylum seeker with an improperly issued commercial driver's license to operate a truck involved in a fatal freeway crash. Secretary Duffy said the incident underscores "significant compliance failures" in California's CDL program, following an FMCSA audit that found one in four non-domiciled CDLs were issued improperly. The report claims the California DMV upgraded the driver's privileges in defiance of a September emergency rule barring asylum seekers from obtaining or renewing such licenses. Secretary Duffy ordered California to pause CDL issuances and re-audit its program, warning of "consequences" for continued violations.

- 🔗 **USDOT Warns Pennsylvania Over SEPTA Safety and Financial Failures**: Secretary Duffy issued a warning to Pennsylvania Governor Josh Shapiro over what he called "gross mismanagement" at the Southeastern Pennsylvania Transportation Authority (SEPTA), citing repeated safety incidents and debt. The FRA recently issued an emergency order requiring 14 safety improvements to SEPTA's Silverliner IV fleet, while the FTA is reviewing the agency's handling of electric buses. Duffy urged Shapiro to take direct action to ensure the safety and fiscal stability of the state's transit systems.

- 🔗 **USDOT Secures Temporary Lifeline for Essential Air Service**: USDOT announced it has obtained an additional $111 million to keep the Essential Air Service (EAS) program funded through November 18, averting an imminent shutdown of the program that subsidizes commercial flights to small and rural communities. The move follows earlier warnings from USDOT that funding could lapse by the end of October amid the ongoing government shutdown.

- 🔗 **DOT Advances Penn Station Overhaul**: Secretary Duffy announced that USDOT and Amtrak have reached three major milestones in the long-awaited New York Penn Station Transformation Project. The project, now led by USDOT and Amtrak after being shifted from the MTA earlier this year, is being framed as a showcase of the administration's "build big, beautiful infrastructure" agenda, emphasizing private-sector partnerships to accelerate delivery and control costs.

💲 Notice of Funding Opportunities

Note: Due to the government shutdown (read AMPO's summary **here**), expect delays in issuing new NOFOs, making selections, or signing/amending grant agreements until a CR/full-year law restores funding authority.

Open USDOT NOFOs

- 🔗 **Federal-State Partnership for Intercity Passenger Rail Grant Program – National**: This FRA program provides funding for capital projects that reduce the state of good repair backlog, improve performance, or expand or establish new intercity passenger rail service, including privately operated intercity passenger rail service.
    - **Deadline:** January 7, 2026

Upcoming NOFOs

- 🔗 **Strengthening Mobility and Revolutionizing Transportation (SMART) Grants – R2**: Stage 2 grants are up to $15,000,000 and 36 months. Only recipients of Stage 1 grants, or eligible entities designated by prior Stage 1 recipients, are eligible to apply for Stage 2.
    - **Expected Release:** Originally expected to in late fall (likely impacted due to ongoing government shutdown).

- 🔗 **Tribal Transportation Program Safety Fund**: FHWA Program to address transportation fatalities and injuries severely impact the quality of life in Indian country. Multijurisdictional groups are eligible to apply.
    - **Expected Release:** Originally forecast for October 1, 2025 (likely impacted due to ongoing government shutdown)
        - **Estimated Application Due Date:** January 15, 2026

➡️ Access **AMPO's NOFO Tracker** here.

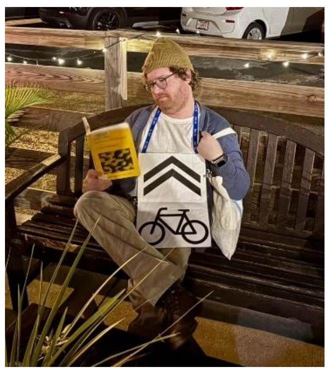
National News

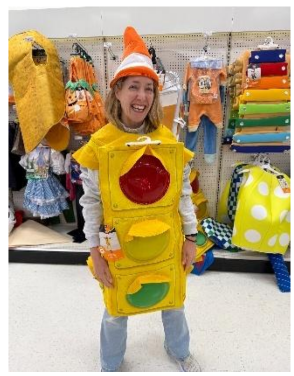
- 🔗 **Brightline Seeks $6B Federal Loan** : Brightline West, the private high-speed rail project linking Las Vegas and Southern California, has requested a $6 billion loan from FRA after its total cost ballooned from $12 billion to $21 billion. The company cited inflation, rising wages, and tariffs for the jump in expenses. Secretary Duffy, who has criticized California's troubled high-speed rail project, has previously praised Brightline's performance, calling it a "taxpayer-worthy" model for private-sector-led infrastructure.

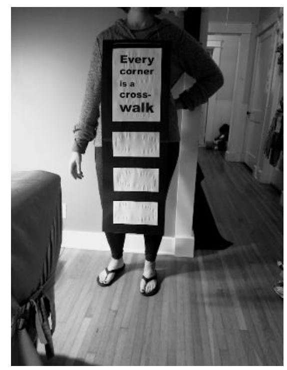
🎃 Halloween

Transportation planners everywhere may be hitting a detour this Halloween: no costume, no time, and plenty of creative pressure. Fear not… we've found some inspiration from across the planning world to get you moving!

Some are rolling into the holiday as the **[Kansas City Streetcar,]** others are reimagining bike lanes (including a special appearance by the "performative bike lane," courtesy of my good friend Luke Ranker in Kansas City), and a few are lighting up the party as traffic signals, like our very own Policy Committee member Anna Gremling from Indianapolis.







And of course, we can't forget AMPO's own Ellen Zavisca, who a few years back set the bar high by dressing as a crosswalk, complete with reflective tape and all.

Even the private sector is getting in on the transportation theme. **Spirit Halloween's 2025 in-store installation**, "Madison Scare Park," takes visitors underground to a haunted subway station complete with animatronic passengers, flickering lights, and a "final boarding call" that's not for the faint of heart. Some might say it's the scariest thing about transportation since Robert Moses.

Whether you're dressing as your favorite piece of transportation infrastructure or just trying to stay in your designated lane, AMPO wishes all our planners a Halloween that's safe, fun, and filled with treats (no tricks). Wherever you celebrate, please keep safety top of mind and look out for one another.

Recent Editions

October 23rd (2025)

October 16th (2025)

- **Federal Focus (10/16):** The Highway Funding Transferability Improvement Act & The Metropolitan Planning Enhancement Act

October 9th (2025)

- **Federal Focus (10/9):** USDOT IFR on DBE Program, USDOT Holds $18 Billion in New York Transit Funding, FY 26 FHWA Apportionment of Funds

October 1st (2025)

- **Federal Focus (10/1):** Government Shutdown, Grant Cancellations, Obligation Deadlines on IIJA Funds, FTA FY 25 Apportionments, & CEQ NEPA Implementation Guidance

August 29th (2025)

- **Federal Focus (8/29):** APTA Survey Preliminary Results & USDOT RFI Extension

August 22nd (2025)

- **Federal Focus (8/22):** USDOT's SAFE ROADS Initiative FAQ & USDOT's Reauthorization RFI Comment Period Extension

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