



May 28, 2013

U.S. Department of Transportation
1200 New Jersey Avenue, SE
Docket Operations, M-30
West Building Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: Docket No. FTA-2013-0004

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 Federal Transit Administration's (FTA) interim final rule concerning its Emergency Relief Program, published on March 29, 2013, at 78 FR 19136.

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 of 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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SECTION BY SECTION COMMENTS

602.5, Definitions

We understand and appreciate the difficulty of establishing definitions that are both precise enough to be useful and broad enough to be applicable across the spectrum of incidents and grantees this rule must account for. We offer the following comments and recommendations to assist FTA in finding that balance.

“Catastrophic Failure” – The proposed definition’s discussion that failure not be primarily attributable to gradual or progressive deterioration is problematic. It offers no guidance on who or how such a determination would be made. Moreover, it suggests that failure of aging yet still functional infrastructure could be found ineligible for replacement. While we do not advocate for replacement of property lost to poor maintenance practices, we believe FTA should clarify the criteria and process it proposes to apply in determining whether a catastrophic failure has been experienced.

“Emergency Repairs” – We suggest the word “immediately” be removed from this definition. It is imprecise and does not account for the fact that emergency repairs could easily be delayed for weeks or even months.

“Heavy Maintenance” – We believe this definition should be based in functionality rather than a dollar threshold to ensure applicability across the range of incidents and grantees discussed above.

“Resiliency Project” – We recommend deleting this definition entirely. A resiliency project is likely to be self evident in context and introducing a phrase such as “likely to occur again” simply creates an unnecessary bureaucratic hurdle. Overwhelming storms may not be mathematically likely to occur again but the devastation that would accompany reoccurrence so great that it is prudent to guard against reoccurrence.

602.11, Pre-Award Authority

We do not believe the phrase “forecast with some certainty to hit the affected area” adequately deals with expected weather events. The occurrence of one or more trigger events, such as those cited in the discussion and currently in use in FEMA practice, would provide a better level of certainty and allow for preparations that may take longer to put in place than the proposed language. While we would expect FTA to establish maximum pre-award authority when dealing with a more common disaster, FTA should acknowledge that the amount of any funding appropriated specifically for a particular situation should be made immediately available through pre-award authority.

602.13, Eligible Activities

FTA has asked for comment on the extent of risk analysis to be applied to resiliency projects. We believe that level of analysis must be based on the type of project, not on a dollar threshold or another measure. More routine activities are likely to reasonably require minimal review while more complex projects would require deeper risk analysis.

We agree that the cost benefit analysis applied to resiliency projects should take a comprehensive view of the benefits. We would like to work with FTA on the mechanics of accounting for the broad benefits.

FTA should specifically acknowledge that some assets are, by their nature or practical considerations, not able to be elevated. Obviously, tunnels and related infrastructure will have to be protected in some other way, and the final rule should explicitly accept as much.

We agree that resiliency measures should be incorporated into repairs wherever possible.

602.17, Application Procedures

We recommend FTA adopt a 60 day period for damage assessment, to be consistent with FEMA practice. The proposed six week period would take FTA recovery operations out of synch. Moreover, those assessments must be iterative, since damage may well not be evident until the repair process is underway. Grant applications should not be required to include copies of documents already a matter of public record, such as disaster declarations. Requiring such documents simply complicates a process that should be streamlined and efficient. Finally, we believe the requirement to include the permanent work necessary to repair a damaged asset in a grant application to be inconsistent with the need for flexibility. Information on all necessary repairs may not be fully known at the time of grant application and there could be successive grants.

ADDITIONAL COMMENTS

We recommend FTA carefully consider the comments submitted today by the New York State Metropolitan Transportation Authority. While FTA must remain cognizant of the broad applicability of the final rule, the MTA's Superstorm Sandy experience provides an unmatched guide for both minimizing damage and managing recovery. We believe the planning, strategies, and execution efforts of the MTA and other APTA member agencies affected by Sandy can be scaled and replicated across the universe of FTA grantees.

We appreciate FTA's efforts to craft a comprehensive framework for dealing with the chaotic situations that follow disasters and will continue to collect and share best practices as we learn them. 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,



Michael P. Melaniphy
President & CEO

MPM/jpl