



AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION

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

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RE: OST- 2017-0069

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's Notice of Review of Guidance published on February 5, 2019 at 84 FR 1820.

About APTA

APTA is a nonprofit international association of 1,500 public and private sector organizations representing a \$71 billion-dollar industry that directly employs 430,000 people and supports millions of private sector jobs. APTA's member organizations include 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.

General Comments

APTA is grateful for the opportunity to provide this input and it has surveyed its members to develop the following comments regarding Department of Transportation's (DOT) guidance, policy, and other documents. Much like the comments we provided in response to DOT's call for regulatory reform proposals (see Appendix A), we hope the Department will give these recommendations due consideration. We also call upon DOT to regularly update APTA and other organizations who have taken the time to develop these recommendations and would like to know DOT's timeline for making decisions regarding them.

Buy America Waiver Process

The Federal Transit Administration (FTA) should simplify, streamline and expedite the current Buy America (BA) waiver/approval process for purchase of rolling stock. Every transit system procures rolling stock and must replace it once it has reached the end of its useful life. Many transit systems also run vanpool programs, which requires the purchase of dozens of minivans every year. Unfortunately, when soliciting bids under the federal guidelines, no bids are received because no vendor can meet the BA domestic content and final assembly requirements. When a transit system recently applied for a “domestic content” waiver for minivan purchases in 2016, it took two years to obtain the waiver. This resulted in the transit system purchasing its vans at a higher price, since the first two years of contract pricing expired, and (higher) year three pricing had to be used to purchase minivans. Furthermore, FTA also denied the transit system’s request to extend the expiration date of that contract, which was a reasonable request given the two-year delay in the start date. Instead, FTA directed the transit system to resolicit bids for the same vehicle under a new solicitation, which forced the transit system to issue and award a new contract before the waiver expired.

APTA recommends that FTA:

- Limit the duration of a waiver request process;
- Provide a defined list of application requirements that waiver applicants must submit;
- Create an expedited waiver review process for recurring procurements for which waivers have been already approved by FTA in the past three years; and
- Extend the public interest waiver of the BA domestic content requirement for non-accessible minivans and vans (Docket No. FTA-2016-0025) because the conditions supporting the waiver have not changed.

An improved BA waiver process will benefit the hundreds of transit agencies who buy vans as part of their regular investment in rolling stock. A consistent and transparent process will lead to the more efficient use of taxpayer dollars.

NEPA Land Acquisition

A recent attempt to purchase real estate under Federal requirements failed due to National Environmental Policy Act (NEPA) requirements. Under the NEPA process, a transit system would need to produce a Phase I Environmental Site Assessment (ESA) report, and then if contamination is discovered, produce Phase II and III ESAs, and then submit to FTA for its review—a process that can sometimes take a year. This timeline is not realistic in the commercial real estate market. Available commercial/industrial properties are very limited and are purchased very quickly. Thus, it is essentially impossible for a transit system to use federal funds for land acquisition. Compounding the problem—even if a transit agency can utilize non-federal money for a land purchase—without following FTA regulations (FTA C 5010.1E Award Management/Real

Property) on the land acquisition itself, the transit agency is disqualified from using federal funds on the subsequent renovation and/or construction on the property.

APTA recommends that FTA:

- Waive NEPA requirements on land acquisition or alternatively, provide for a streamlined review process for NEPA reports related to the type of transaction; and
- If a transit system uses non-federal money to purchase land, and later seeks to build a transit facility on that land, the transit agency should be able to use Federal funds regardless of the timing of the two projects.

APTA believes FTA is unnecessarily delaying public transportation projects under the auspices of ensuring it does not harm the environment. In fact, such delay has the opposite effect—it delays the ability of the transit agency to implement the project and realize those environmental benefits that always come with better transit service.

Rolling Stock Spare Ratio

FTA Circular 5010.1E provides FTA’s award management requirements. Chapter IV, section 4(k) of this Circular provides FTA’s Rolling Stock Spare Ratio policy. FTA defines spare ratio as the total number of spare vehicles available for fixed route service divided by the total number of fixed route vehicles required for annual maximum service. FTA considers an FTA grantee’s spare ratios when reviewing an award for FTA funds that proposes acquiring, replacing, or rebuilding vehicles in the grantees fleet. For rail cars, however, FTA does not require a grantee to have a particular spare ratio, and instead FTA reviews the rationale for a grantee’s rail car spare ratio during grantee’s triennial review. For buses, FTA mandates that grantees shall not have a spare ratio for buses that exceeds 20 percent if the grantee operates 50 or more fixed route revenue vehicles. FTA does not provide any explanation why rail cars and buses are treated differently other than FTA’s statement that “rail transit operations tend to be highly individualized.”

APTA recommends to FTA:

- To not impose a spare ratio for bus systems because bus operations vary greatly from grantee to grantee.

Operating and Capital Contracts

FTA Circular 4220.1F provides guidance and requirements for a grantee’s third-party contracts. As a general matter, the Circular applies to a grantee’s contracts that are federally funded only and does not apply to a grantee’s contracts that use non-federal funds. FTA, however, does not apply this principle to operating and capital contracts in the same way. For a grantee’s operating contracts, FTA applies this principle strictly so that if there are no federal dollars being used in the operating contract, it is not subject to the Circular’s requirements. See FTA Circular 4220.1F, Chapter II, Section 2(b)(2). As to capital contracts, FTA does not apply this principle consistently, and, therefore, capital contracts without any federal funding can be subject to the

Circular's requirements if the contract is part of a larger project FTA considers to be a federal project. See FTA Circular 4220.1F, Chapter II, Section 2(b)(1).

APTA recommends to FTA:

- Treat third-party operating and capital contracts in the same manner by applying the Circular's requirements only if the contract includes federal funding.

Useful Life

APTA's original equipment manufacturers have concerns regarding the 12-year useful life requirements and early disposal. FTA Circular 5010.1D specifies that FTA is entitled to its share of the remaining federal interest if disposition takes place before the end of a vehicle's useful life. This has become a barrier for advanced technology in public transit because many agencies choose to keep their legacy buses for 12 years before replacing them with cleaner fuel burning buses. This drives up the cost of maintenance and operation.

APTA recommends to FTA:

- Eliminate the requirement to pay back the federal interest if, in connection with the early disposition of a bus powered by fossil fuels, an agency replaces the bus with a zero-emission bus.

Service Animal Definition

The DOT's regulation and guidance regarding accessible transportation requires transit agencies to transport service animals. A service animal is defined as "any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items." In addition, the Department's guidance found in Appendix D to Part 37 states:

A service animal shall always be permitted to accompany their users in any private or public transportation vehicle or facility. One of the most common misunderstandings about service animals is that they are limited to being guide dogs for persons with visual impairments. Dogs are trained to assist people with a wide variety of disabilities, including individuals with hearing and mobility impairments. Other animals (e.g., monkeys) are sometimes used as service animals as well. In any of these situations, the entity must permit the service animal to accompany its user.

The Department of Justice (DOJ), on the other hand, defines a service animal as: "A service animal is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must directly related to the person's disability."

APTA recommends that DOT:

- Amend its guidance document to harmonize the definition of service animal to that of the DOJ and limit service animal to a dog trained to assist a person with a disability.

Controlled Substance and Alcohol Testing

FTA issued guidance in the form of frequently asked questions to explain how FTA applies its drug and alcohol testing requirements to drivers for “ride sourcing companies” such as Uber and Lyft. The effect of this guidance is that the FTA drug and alcohol requirements sometimes apply to Uber and Lyft drivers, particularly if a passenger does not choose the provider for a ride. Since ride sourcing companies are very large, national companies, the potential universe of drivers who could be subject to FTA drug and alcohol testing requirements under FTA’s guidance is enormous. FTA grantees not be burdened with ensuring that ride sourcing companies appropriately follow FTA’s drug and alcohol testing requirements.

APTA recommends that FTA:

- Require ride sourcing companies to certify directly to FTA their compliance with drug and alcohol testing;
- Alternatively, FTA should re-evaluate whether ride sourcing companies are subject to drug and alcohol testing because drivers are independent contractors.

Service and Fare Equity Analysis

FTA Circular 4702.1B implements USDOT’s Title VI regulation (49 CFR Part 21) and creates requirements that go beyond what is required in the USDOT regulation. Among these requirements, this Circular requires a grantee evaluate service and fare changes in accordance with detailed requirements contained in the Circular. A prior version of the Circular (2007) left it to the grantee’s discretion how to best evaluate proposed service and fare changes.

APTA recommends to FTA:

- Reinststitute the practice of allowing grantees to determine how best to evaluate service and fare changes.

Transit Asset Management (TAM)

Asset Management and the State of Good Repair efforts support the regionally congruent goal of providing information regarding overall system performance. This information is critical to understanding how to invest, monitor and improve safety and reduce risks to transit service.

In times of constrained funding and expanding use of transit infrastructure, it is paramount that the industry prioritizes and communicates current and future investment needs. Public transit agencies are the stewards of public assets with the sole purpose of providing safe, reliable and cost-effective transportation. Agencies monitor performance and hold themselves accountable by

reporting progress toward operational and asset management goals. These agencies must be able to quantify and articulate the need for maintaining, repairing, reinvesting, renewing, enhancing, replacing and even procuring new assets. Moreover, agencies must be able to position themselves and the transit industry at large to compete on a level playing field with other demands on funding. This asset whole life perspective allows for better decision-making balancing risk, performance and cost. By understanding and prioritizing transit asset needs, APTA believes we inherently improve both the efficacy and efficiencies of transit agencies. Moreover, we can develop a more comprehensive framework for regional transportation investments.

Most agencies support the underlining tenants of asset management practices to run their businesses. In many cases, the asset management group starts by collecting and organizing information that already exists within the agency. The burden versus value of this information is disproportionate, clearly tipping the scales toward adding value. Decisions without information or worse yet, decisions made based on incorrect assumptions, will not lead to better outcomes. The TAM rule provides a solid foundation and drives better decisions and business practices.

Since, the first State of Good Repair Roundtable, FTA developed guidance, software, and training materials to assist transit agencies in their asset management journeys. Agencies can establish physical asset management targets and incorporate them into financial planning by using the FTA TERM Model (TERM-Lite). APTA commends FTA's continued efforts to promote the practice of Asset Management through engagement with the transit community and with industry leaders.

The final TAM rule requires transit properties to annually set targets on four state of good repair performance measures (% of revenue vehicles beyond their useful life, % of non-revenue equipment beyond their useful life, % of track under performance restriction, % facilities in poor condition). Transit properties are required to set targets for the next fiscal year before the current fiscal year ends. For example, if a fiscal year is July – June, a transit property must set FY20 targets prior to June 30, 2019. Typically, the capital program is put together on a different, earlier timeframe. For example, the FY20 capital program was developed in June 2018 and finalized in April 2019. Thus, the annual targets are just reflecting what money has already been programmed—they are not being used to prioritize investment. As a result, they will also likely fluctuate as different investments come online and may not reflect the entirety of planned multi-year investments.

For the targets to be useful at driving investment prioritization, they need to look further ahead—e.g. 4 years to align with the TAM Plan horizon. Many of the state of good repair investments take many years to come to fruition; for example, facility rehab or replacement projects can take 4-6 years, as can railcar procurements. Setting a longer-term target will help identify the amount of investment needed in that area to achieve the desired condition. One possible change would be to require transit properties to set targets every 4 years as part of the TAM plan update.

The TAM rule also requires transit properties to report annually on progress towards meeting the targets. This requirement can still be kept, but properties would report on progress towards meeting their 4-year targets.

Finally, the asset classifications used for TAM and National Transit Database (NTD) are not aligned. There are four asset classifications used for TAM - facilities, infrastructure, rolling stock and system. But, there are five for the NTD. For agencies, this creates additional assignment levels in asset systems and impacts outputs like the capital needs inventory.

APTA recommends to FTA:

- Set longer-term targets because the one-year horizon has limited impact on capital programs;
- Exempt services provided by private providers of public transportation that own, operate, and manage capital assets having no federal interest from the transit asset management requirements;
- Private providers of public transportation operating under a purchase-of-service or as a subrecipient be part of a transit agency's contract administration; and
- Align definitions across the TAM rule and the NTD.

We appreciate the opportunity to assist FTA in this important endeavor. For additional information, please contact Linda Ford, APTA's General Counsel, at (202) 496-4808 or lford@apta.com.

Sincerely yours,



Paul P. Skoutelas
President & CEO