



May 24, 2024

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Public Transportation
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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

Subject: Docket No. FTA-2023-0024

Dear Docket Clerk:

The American Public Transportation Association (APTA) represents a \$79 billion industry that directly employs 430,000 people and supports millions of private-sector jobs. Safety is the number one core value of the public transportation industry, including bus, rail, commuter and intercity rail and ferry operators. The employees responsible for managing and operating public transportation systems are fully committed to the safety of their systems, passengers, fellow employees, and the public. As a result of this commitment to safety, traveling by public transportation is 10 times safer per mile than traveling by car.

We greatly appreciate the ongoing dialogue between the Federal Transit Administration (FTA) and APTA regarding safety. We also appreciate the opportunity to respond to FTA's Rail Transit Roadway Worker Protection (RWP) Notice of Proposed Rulemaking (NPRM) published in the *Federal Register* at 89 FR 20605 on March 25, 2024 (FTA RWP NPRM).

After speaking with APTA's diverse membership of small, medium and large size operators and bus, transit rail, commuter rail, and ferry members, APTA is highly supportive of rail transit worker safety and FTA's efforts to enhance it. To that end, APTA strongly urges FTA to utilize the APTA standard for Roadway Worker Protection. Updated in August 2023, the APTA "Roadway Worker Protection Program Requirements" is a consensus document prepared with input from a very diverse group of rail transit agencies and business members¹.

Our members have identified the following significant areas of concern in FTA's RWP NPRM:

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See APTA, [Roadway Worker Protection Program Requirements](#) (APTA-RT-OP-S-016-11_Rev. 2)(August 2023)(APTA RWP Standard).

Definitions/Terminology

As some legacy rail transit agencies have had training and terminology in place for decades, APTA requests flexibility to allow systems to continue to use existing agency RWP terminology. Given that some Rail Transit Agency (RTA) employees are trained and familiar with their current terminology, some of which is unique to the operating environments in which they work, APTA is concerned that changing the long-established vocabulary and terminology for an RTA's existing RWP program may introduce hazards, including the potential for miscommunication and misapplication.

State Safety Oversight Agency (SSOA) Reporting and Annual Audit

Many of APTA's mid to small size rail transit agency members expressed concern with the FTA's proposal in § 671.25 to require transit agencies to submit for initial approval their RWP to State Safety Oversight Agency (SSOA) within 90 days.² According to these agencies, this short deadline is unduly burdensome, given the extensive information that must be included in each plan. APTA strongly urges FTA to extend this deadline to at least 180-days for RTAs to complete and submit the RWP components to SSOAs.

A few rail transit agencies also expressed concern with FTA's proposal to require under § 671.25(c) an annual RWP program audit given the extensive requirements listed for review, including: an analysis of the RWP program; all reports from the reporting program; instances of good faith safety challenges; assessment of the adequacy of the track access guide; review of all training; a written sample of job safety briefings; compliance monitoring program; and corrective action plans (CAPs). APTA members view this proposal as unduly burdensome for agencies already routinely audited by their SSOAs. At least one transit agency stated it simply does not have the budget to conduct these safety audits. APTA recommends FTA eliminate this section or, at the very least, remove the following elements from the final rule: § 671.25(c)(1)(annual audit of the RTA's compliance with its RWP program), and § 671.25(c)(2)(SSOA report with any findings and recommendations arising from the audit).

RWP Manual and Track Access Guide

While APTA supports having written procedures for RWP at an RTA, the RWP NPRM is very prescriptive in requiring both an RWP manual and a track access guide as proposed in §§ 671.13(a) ("Each RTA must establish and maintain a separate, dedicated manual documenting its RWP program") and (d) ("[t]he RWP manual must include or incorporate by reference a track access guide to support on-track safety...").³ APTA members believe requiring the creation of a

² See FTA RWP NPRM at 20626.

³ *Id.* at 20625.

track access guide for numerous employees on thousands of miles of track would be extremely burdensome. One agency also pointed out it would be nearly impossible for employees to carry something like that around on a day-to-day basis.

In addition, FTA proposes in § 671.13(d)(1) to require the track access guide to contain detailed locations of clearance zones and areas of clearance from the track.⁴ This could be problematic for some agencies to include as their systems may not have a large amount of “clearance” zones along the track, especially in enclosed and elevated portions of subway systems. On the other hand, some open light rail/streetcar systems will have clearance zones all along the track. FTA must consider the wide variety of system environments where rail transit operates.

A few other rail transit agencies (from large subway operations to smaller light rail operations) also expressed concern about having to create an RWP manual as opposed to utilizing their rulebook and standard operating procedures (SOPs) for employees working on or near the track. APTA urges FTA to provide flexibility for agencies to incorporate the requirements from the RWP manual into their rulebooks, SOPs or other agency documents, as long as it covers all of the requirements in § 671.13.

Roadway Worker in Charge

APTA members expressed strong concerns about FTA’s proposal in § 671.31 outlining Roadway Worker in Charge (RWIC) duties. While APTA members agree there should be always be a RWIC⁵, there is concern about how this position should be implemented at agencies. In particular, FTA proposed in § 671.31(a)(4) that “[t]he roadway worker in charge must serve only the function of maintaining on-track safety for all members of the roadway group and *may perform no other unrelated job function while designated for duty.*”⁶ (emphasis added) APTA members believe that prohibiting an RWIC from performing ancillary duties while also serving as the RWIC is far too prescriptive.

At some rail transit agencies, an RWIC may also be responsible for other duties such as paperwork, overseeing operations in certain areas of track, and managing people, which would not interfere with their primary safety responsibility. Given industry-wide workforce shortages, it is unreasonable for FTA to mandate that the RWIC can only perform one function. In fact, APTA believes a better way to phrase this requirement is: “Safety and the RWIC duties must always take precedence over other duties.” This would allow for safety to come first, while recognizing situations where the RWIC may have to complete other job duties, as assigned.

⁴ *Id.*

⁵ As is stated in the APTA Standard, “...the QPE [qualified protection employee], sometimes referred to as the roadway worker in charge, or RWIC, which may also be a separate individual shall be qualified under the rules of the agency to provide the protection necessary for on-track safety of each individual in the group.” APTA RWP Standard at 4.

⁶ FTA RWP NPRM at 20626.

Job Safety Briefing

In § 671.33, FTA proposes to require the RWIC to provide job safety briefings prior to a roadway worker fouling a track.⁷ APTA agrees that job safety briefings are important, and the APTA RWP Standard includes comprehensive guidance for on-track job safety briefings:

An on-track safety program shall include procedures for conducting and participating in a safety briefing before beginning work and when work or job conditions change. Before any roadway worker fouls a track, the designated person providing on-track safety for the group shall ensure that a job safety briefing is held, as prescribed by this standard. Additional job safety briefings shall be held anytime the job conditions change during the work period. Such information shall be given to all affected roadway workers before the change is effective. Emergency situations do not relieve the requirement for on-track safety briefings. ... All roadway workers involved in the work shall be included in the job safety briefing.⁸

However, APTA members are concerned about FTA's proposal in § 671.33(c) to require written confirmation and acknowledgement of the job safety briefing by each roadway worker. Such a requirement is unduly burdensome especially for those that are conducting these important briefings out on the track prior to work taking place. APTA members would like to continue to conduct the job safety briefings before all shifts, but not require employees to sign an acknowledgment as proposed in the RWP NPRM.

Lone Worker Restriction

FTA proposes in § 671.35 to restrict the types of duties a lone worker may perform while on duty.⁹ Many APTA members are concerned about these restrictions because they currently have programs in place that allow workers to conduct common tasks alone. Relatedly, the definition of "minor tasks" should be changed to make clear that if a roadway worker performing a task can visually assess their surroundings every five seconds while using a tool, the task remains a minor task under the regulation. In addition, some very large rail transit agencies have "point to point" flagging in place with a sole look out and have stated that if FTA prohibits this practice, it will disrupt their operations as they do not have the resources, manpower, or time to send out multiple workers for tasks that can be done safely by one worker at a time. APTA's RWP Standard provides the flexibility to allow lone workers to conduct common tasks, as long as they are abiding by agency standards.¹⁰

Further, one smaller RTA stated that it uses lone workers for trash pick-up, grass cutting and other day-to-day duties along the roadway. If FTA requires a flagger for every duty, similar to large rail transit systems, there is a real concern it would not have the resources to conduct the day-to-day

⁷ *Id.*

⁸ APTA RWP Standard at 3.

⁹ *See* FTA RWP NPRM at 20627.

¹⁰ APTA RWP Standard at 6-7.

needs at the agency. As noted earlier, the industry-wide workforce shortage is a reality for many transit agencies who are struggling with hiring employees, and this requirement would further strain already limited resources to the brink of materially impacting a transit agency's ability to provide transit services on a daily basis.

RWP Compliance Monitoring Program

In § 671.43(a)(3), FTA proposes that "Each RTA must adopt a program for monitoring compliance with the requirements specified in its RWP Program."¹¹ This program would include inspections, observations, and audits consistent with safety performance monitoring and requirements in the RTA's Agency Safety Plan under § 673.27. In addition, RTAs would have to provide monthly reports to their SSOAs, monitoring compliance and sufficiency of the RWP program, and provide an annual briefing on RWP performance to the Accountable Executive and Board of Directors. This approach is problematic because it is largely duplicative of the work RTAs already do and FTA did not explain why more monitoring is necessary. APTA recommends FTA remove this section from the final rule.

Applicability and a Risk-Based Approach

APTA notes that FTA's NPRM does not specify the circumstances in which this rule would apply to RTAs. Is it only in revenue service, or at the end of the line in storage tracks as well? APTA encourages FTA to specify that these requirements would be applicable when trains are in revenue service only, and not when trains are being put in storage tracks in the yards, as the risks are quite different and tend to be much lower. FTA must clarify when and how these requirements apply (if at all) during the design and construction phases of rail transit agency capital projects. Additionally, some of the smaller transit systems, those that provide streetcar and light rail systems and only have one or two lines in operation, question the level of burden imposed by the proposed rule. Many of these agencies believe their risk is low due to lower speeds (under 25 mph) used compared to other rail systems. APTA's smaller members would like to see a bifurcated final rule that imposes requirements that are commensurate with the system size and level of risk.

Paperwork Reduction Act and Cost-Benefit Analysis

Many of APTA's members believe that Option 1, which FTA chose to carry out the RWP NPRM is unduly burdensome especially for smaller systems. FTA did not explain why transit systems are not treated differently based on the risks posed. While FTA selected the option that kept costs and benefits relatively equal, FTA should have considered the least costly option, which would be to incorporate by reference the APTA RWP Standard because it represents industry consensus. From there, FTA could analyze any additional measures that are necessary and require those based on risks posed.

¹¹ FTA RWP NPRM at 20628.

In addition, FTA's estimates of 96 hours of labor to develop and implement an RWP program¹² strikes APTA members as grossly underestimated. For example, the simple confirmation and acknowledgement form before every job safety briefing alone is thousands of hours that would be repeated every day. Additionally, the track access guide that would be provided to thousands of employees creates an undue paperwork burden because it is not a one-time cost. Rather it is something that would be updated repeatedly for thousands of miles of track.

Summary

In summary, APTA appreciates this opportunity to provide comments on the FTA's RWP NPRM. APTA's Working Group that developed these comments includes large, medium, and small public transit agencies in the United States and represents all modes of public transportation (e.g., bus, commuter rail, rail transit and ferries), with an emphasis on those that provide rail transit operations/service.

APTA supports aspects of the RWP NPRM, but encourages FTA to adopt and incorporate by reference the APTA RWP Standard RT-OP-S-016-11, Rev. 2 for the final rule. APTA has concerns regarding the potential burdens and costs this proposal may place on rail transit agencies given the numerous new components and reporting requirements (e.g., SSOA reporting and annual audits; RWP manual and track access guide; RWIC requirements). Several of the proposals do not adequately take into account differing agency operating environments (e.g., job safety briefing written acknowledgement and lone worker restrictions) and are duplicative of current activities (e.g., RWP compliance monitoring program). Last, APTA has concerns about the applicability and the lack of a risk-based approach to implement RWP standard, as well as an inadequate Paperwork Reduction Act and cost-benefit analysis.

If you have any questions regarding this letter, please contact Brian Alberts, APTA's Senior Director of Safety and Advisory Services, at balberts@apta.com or 202.496.4885.

Thank you for your consideration and we look forward to continuing to work with FTA to improve safety throughout the transit industry.

Sincerely,



Paul P. Skoutelas
President and CEO

¹² *Id.* at 20619.