

July 31, 2023



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Paul P. Skoutelas

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

Re: DOT Docket Number FTA-2023-0010

Dear Docket Clerk:

The American Public Transportation Association (APTA) represents the \$79 billion public transportation industry that provides mobility for millions of Americans each year, directly employs 430,000 people, and supports millions of private-sector jobs. We are pleased to offer comments regarding the Federal Transit Administration's (FTA) Notice of Availability of proposed National Public Transportation Safety Plan; request for comments published in the *Federal Register* at 88 FR 34917 on May 31, 2023.

Safety is the number one core value of the public transportation industry, including bus, rail, commuter and intercity passenger rail, and ferry operators. The employees responsible for managing and operating public transportation systems are fully committed to the safety of their systems, passengers, the public, and our fellow employees who operate and maintain our systems at all hours, every day of the year. As a result of this extraordinary commitment to safety, traveling by public transportation is 10 times safer per mile than traveling by car.

The Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL) (P.L. 117-58), is a generational accomplishment that made historic investments in advancing sustainable transportation while improving the safety of our public transit systems. We greatly appreciate the strong partnership and ongoing dialogue between FTA and APTA regarding safety, including the BIL's statutory changes to the public transportation agency safety plan (PTASP) requirements at 49 U.S.C. § 5329(d) and the subsequent updates to FTA's National Public Transportation Safety Plan ("National Safety Plan" or "NSP"). We applaud FTA's efforts to make our systems safer and to safeguard the well-being of employees and riders and we appreciate the opportunity to respond to this revised National Safety Plan.

1300 I Street NW
Suite 1200 East
Washington, DC 20005
p: (202) 496-4800
f: (202) 496-4324

APTA.COM

APTA's comments are focused on four key areas: 1) Safety Performance Measures for Public Transit Agencies Subject to the FTA's PTASP Regulation; 2) Risk Reduction Program Performance Measures; 3) Voluntary Minimum Safety Standards and Recommended Practices; and 4) the Interrelationship between the PTASP, NSP, and Agency Safety Committees.

I. Safety Performance Measures for Public Transit Agencies Subject to the FTA's PTASP Regulation

APTA supports Safety Performance Measures in public transportation. However, APTA members have raised specific concerns about the proposed performance measures incorporated into the National Safety Plan.

a. New Performance Targets

As noted in our June 26, 2023 comments on FTA's PTASP Notice of Proposed Rulemaking (NPRM), APTA members are concerned about the administrative burden on public transit agencies because of the increase in the number of safety performance measures and goals from seven to 14, including the collection of transit worker assault data.¹

Currently, there are seven performance targets that transit agencies need to incorporate into their PTASPs, which are based on a three-year rolling average of the data submitted to the National Transit Database (NTD). With the additional seven new performance measures, APTA members are concerned about the potential administrative burden of resorting their previously collected data, especially for sub-measures 1.1.1 Pedestrian Collision Rate and 1.1.2 Vehicular Collision Rate, which has not been collected in the past. APTA strongly urges FTA to require the collection and reporting of this data to be forward looking and not require agencies to go back and sort their data for the previous three years to set these new performance targets.

b. Major Events

In its draft NSP, FTA lists 14 safety performance measures for all transit providers subject to the PTASP regulation.² The "Major Events" safety performance measure includes "all safety and security major events as defined by the NTD."³ APTA recommends that transit agencies retain the flexibility to select for this category the major events they use to measure their own performance, since safety events and or risks may differ by agency.

¹ See FTA, National Public Transportation Safety Plan, Notice of Availability, 88 Fed. Reg. 34917, 34919 (May 31, 2023) (FTA NSP).

² FTA NSP at pp. 11-12.

³ *Id.*

c. Assaults on Transit Workers

For new Safety Performance Measure 4a (“Assaults on Transit Workers”), APTA remains concerned about the transit worker assault definition in the NTD and the collection of data related to such assaults. In addition, our member agencies have pointed to differing interpretations of what might constitute an assault in the state law context. For example, in some jurisdictions spitting or verbal assaults at a transit worker is considered a crime (and therefore an assault) but in others it is not. In addition, some transit agencies are concerned that without specific examples of what actions constitute an “assault on a transit worker” there may be inconsistent reporting to the NTD. Agencies have also noted that with verbal abuse characterized as an assault, there could be an unintended consequence such as an increase in applications for workers’ compensation, which would drive up costs and impact worker availability.⁴

Given the varying federal and state definitions, APTA members will likely have to keep separate records for purposes of both state and FTA reporting. As such, APTA recommends that FTA clearly define transit worker assaults that apply to all reporting transit agencies. This approach would allow for “apples-to-apples” comparisons and may relieve transit agencies from having to record two sets of data if states adopted similar reporting.

d. Safety Performance Measure Rates

APTA members have expressed concerns about the proposed rate-based measures in the National Safety Plan.⁵ The National Safety Plan proposes rate-based performance measures to be normalized using vehicle revenue miles (VRM), regardless of the measure. As it pertains to assaults, VRM is an important indicator of how many hours workers are in the transit vehicle and therefore exposed to risk. However, the amount of service provided and passengers carried also plays into the risk calculation. APTA and its members would welcome the opportunity to work with FTA to determine how to normalize assault figures considering both VRM and unlinked passenger trips (UPT).

II. Risk Reduction Program Performance Measures

At the outset, APTA and its members have concerns regarding the Risk Reduction Program (RRP) as it appears duplicative of the Safety Management System (SMS) process already required at transit agencies. Many of the RRP Safety Measures outlined in the NSP are already being analyzed through SMS processes.⁶

⁴ APTA Comments on FTA PTASP NPRM (June 23, 2023) (APTA PTASP NPRM Comments) at 6.

⁵ FTA NSP at pp. 11-12.

⁶ APTA remains concerned about FTA’s proposal to remove the words “top down” from the definition of SMS in the PTASP NPRM. As APTA noted in its comments on the PTSAP NPRM, “top down” is important in the definition of SMS because the Accountable Executive has an integral role in the process by promoting SMS from the agency management level to the frontline employees. removal of the term “top down,” as in APTA’s view it negates the very

APTA is also concerned about the repetition between the Safety Performance Measures and Risk Reduction Program Measures. APTA appreciates FTA's recognition that there is overlap between the Safety Performance Measures found on page 11-12 of the National Safety Plan and the Risk Reduction Performance Measures found on page 13.⁷

The NSP identifies eight new performance measures for the risk reduction program. Under 49 U.S.C. § 5329(d)(4)(A), the Safety Committee of applicable transit agencies will use these performance measures to set targets for the safety risk reduction program. As noted above, many of these performance measures overlap with the performance targets under the PTASP. It is not clear how the measures for the two systems (i.e., PTASP and Risk Reduction Program) are different in data collection and the goals for each. APTA strongly urges FTA to clarify how these data collection requirements work together.

In addition, as it pertains to transit worker assaults, many agencies will not have a consistent three-year rolling average of transit worker assault-related data because of the new definitions, requirements, and timelines for reporting of assaults to the NTD. FTA should instead require agencies to report data based on existing definitions of assault on a transit worker until three years of NTD data is available with the new definition. The new, broader NTD requirement for reporting transit worker assaults could result in the perception that the number of assaults nationwide has increased significantly, which could be inaccurate. It is critically important that FTA provide context regarding new reporting requirements if it makes this data public.⁸

Moreover, implementation of the RRP will add an extra burden on an already complex process for setting safety goals and targets in a 12-month cycle. This is because most transit agency safety plans go through multiple reviews, each of which is very time and labor intensive. The risk reduction target setting by the safety committees adds an additional layer to this already cumbersome process.

Overall, APTA is concerned about the numerous and repetitive performance and risk reduction measures proposed and the burden that collection and consideration of this data will impose on transit agencies. APTA strongly urges FTA to streamline these measures to relieve potential duplication and burden on transit agencies required to comply with these programs. APTA also suggests that FTA's final guidance encourage Safety Committees to utilize existing data collected during other required review processes (e.g., State Safety Oversight and internal agency reviews and audits) in evaluating whether progress is being made toward achieving safety performance targets. Leveraging this work would reduce the administrative burden on transit agencies and Safety Committees, allowing them to prioritize other matters, such as strategies and efforts that help meet performance targets.

premise of SMS that is based on a top-down approach of managing safety risk. *See* APTA PTASP NPRM Comments at 5.

⁷ FTA NSP at pp. 13-14.

⁸ APTA PTASP NPRM Comments at 7.

Last, there are a few transit agencies in the United States that are not direct recipients of FTA funds (i.e., § 5307 or other sources of FTA funding). FTA should provide additional guidance on how these recipients should implement the Risk Reduction Program and the 0.75 percent for safety projects, as they do not have responsibility for determining the transit funding in their urbanized area.

III. Voluntary Minimum Safety Standards and Recommended Practices

The FTA states in the draft NSP that it has identified voluntary minimum safety standards and recommended practices for improving public transportation safety.⁹ APTA is supportive of providing transit agencies the flexibility to incorporate additional safety measures and practices as appropriate. However, APTA is concerned that several of the recommended “Voluntary Minimum Safety Standards and Recommended Practices” are also incorporated into the Performance Measures in Section I of the NSP. APTA recommends that FTA move this comprehensive voluntary list to an Appendix to limit any potential confusion as to the required or voluntary nature of the measures.

Moreover, it is important that these “voluntary minimum safety standards” remain completely voluntary. APTA requests that FTA include a clear statement in the National Safety Plan that these measures are completely voluntary, and that any further changes to the NSP Performance or Risk Reduction Program Measures will be conducted via the federal rulemaking process.

In addition, FTA should provide greater clarity and context to the voluntary safety standards and recommended practices groupings. Several of our members were unclear about the groupings, especially those related to Category A: Transit Worker Safety.

IV. Interrelationship between the PTASP, NSP and Agency Safety Committees

APTA notes the interrelationship between the PTASP and the proposed National Safety Plan, as the risk reduction performance targets set by the Safety Committee are based on data required to be collected under the National Safety Plan. As noted in its comments on the PTASP NPRM, APTA cautions that the Safety Committee at a transit agency should not be expected to function as the agency's safety department. Rather, Safety Committee members are charged with advising on safety targets not overseeing day-to-day, safety-related activities.

Moreover, APTA reiterates its concern about the potential for an impasse between management and labor in the Safety Committees, especially as FTA funding is tied to the approval of the PTASP.¹⁰ APTA strongly recommends FTA explicitly identify the Accountable Executive as the final decisionmaker in all matters concerning the Safety Committee, from adopting annual

⁹ FTA NSP at 15.

¹⁰ APTA PTASP NPRM Comments at pp. 3-4.

performance targets, to implementing dispute resolution rules, to executing the tie-breaking vote in the event of an impasse in the committee.

Given the important responsibilities and time-sensitive activities required of the Safety Committee under the proposed rules, it is crucial that the process for managing disputes and tie votes does not hinder the ability of transit system management to make decisions expeditiously and to exercise its responsibility to provide safe, reliable, and efficient service.

While the Safety Committee will provide valuable and welcome insight in certain areas, ultimate responsibility for the operation of the transit system remains with management. Consequently, responsibility for resolving Safety Committee disputes and tie votes must also remain with transit system management and ultimately the Accountable Executive.

The demand made by some labor stakeholders that the contract dispute resolution process used by a transit system pursuant to its collective bargaining agreements be imported to manage Safety Committee disputes and tie votes should be rebuffed by FTA in any PTASP final rule. While the use of a neutral arbitrator, selected jointly by labor and management based upon the arbitrator's labor relations credentials and experience, has been a successful method of resolving contractual disputes, it is not the proper model to import into the area of safety, which has long been a fundamental management responsibility. In addition, the process of resolving labor relations disputes under collective bargaining agreements frequently involves multiple hearing steps prior to an arbitration decision, which are then sometimes subject to judicial review. This process would not provide the prompt action required in ensuring an approved PTASP.

V. FTA Technical Assistance, Training, and Funding

Finally, transit agencies will incur significant costs to create and integrate these new performance targets as part of their PTASP. APTA strongly recommends that FTA provide substantial training, technical, and financial assistance to enable agencies to meet these new program requirements.

Many small- and medium-sized bus and rail transit agencies are already "stretched thin" in terms of their staff and budgets, and such training, technical and funding assistance will be pivotal to enable them to implement needed safety requirements. In addition, APTA also recommends that FTA provide training to Safety Committee members to ensure that they can accurately review the data to make informed safety and expenditure recommendations.

VI. Summary

In summary, APTA appreciates this opportunity to provide comments on the National Safety Plan. APTA's working group that developed these comments includes numerous 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). Many of these transit agencies also plan to submit individual comments on the National Safety Plan.

Safety is the number one core value of APTA, and we want to continue to work with FTA to ensure that all new requirements further advance our shared commitment to public transit safety. To that end, APTA strongly encourages FTA to: 1) confirm that Safety Performance Measure data collection is forward-looking; 2) streamline the Risk Reduction Program Performance Measures to relieve potential duplication with Safety Performance Measures; 3) move the Voluntary Minimum Safety Standards and Recommended Practices to an Appendix; and 4) ensure that a transit agency's Accountable Executive has the final determination in all Safety Committee decisions.

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