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

RE: Docket No. FTA-2015-0021

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) Notice of Proposed Rulemaking (NPRM) and request for comments on its Public Transportation Agency Safety Plan, published on February 5, 2016 at 81 FR 6344.

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.

General Comments

APTA and its members fully support implementation of Safety Management System (SMS) based safety programs. Safety and security serve as the first and foremost pillar of APTA's strategic plan and we believe SMS is clearly superior to rules based systems that merely establish minimum standards. We offer the comments below to assist FTA in the substantial task of creating and implementing this entirely new program.

FTA's implementation plan is extremely aggressive. Allowing only one year for full implementation of plans, including approval by agency boards of directors or their equivalents, appears insufficient. Even the most sophisticated, risk-based agency safety systems will require some degree of adjustment to mesh with FTA's proposed requirements.

Others, particularly those agencies new to SMS concepts and practices, or who may have to segregate safety duties to comply with the draft requirements, will have to recruit and train adequate personnel, train their workforces, draft their plans, and obtain board approval. We believe FTA might aspire to the one year goal, but allow longer implementation periods where agencies demonstrate diligence and simply require additional time to build strong programs.

Additionally, FTA should clarify its intent vis-à-vis the timing between agency safety plans and changes to the State Safety Oversight (SSO) program. The one year goal in the instant draft meshes poorly with the three year implementation window for the SSO program. We also note that the one year window would necessitate implementation before the mandated study of the need for data protection is complete. We believe implementation of agency plans should not be required prior to completion of that study and Congress having an opportunity to react to it.

The proposed rule would subject rail systems' safety plan to approval by both the agencies' boards and the State Safety Oversight Agencies of their states. We are concerned that subjecting a plan to potentially conflicting evaluation criteria could weaken those plans and delay implementation. FTA should work with the industry to establish consistent review criteria.

The concept of accountable executive should be modified. While this concept works well and is easily applicable in many agency hierarchies, it is less clear in some non-traditional formats. Combining responsibilities for safety, asset management, human resources, and capital resources would, in some cases, mean that a mayor, county executive, or even a state transportation secretary may be the first official with adequate control over each of these areas to be deemed 'accountable.' An additional difficulty found in some of our more traditional organizations involves situations where chief financial officers report directly to a board of directors rather than to the agency CEO. Moreover, where contractors fully staff agencies under the oversight of local boards of directors, the current definition could lead to board chairs being designated accountable officers, despite serving at a policy rather than operational level. We believe FTA should look elsewhere in the draft for a workable alternative. Agency safety officers, for instance, necessarily report directly to "the general manager, president, or equivalent officer." Those supervisory officers may be responsible for safety, asset management, and human resources, yet not have full control over the budgeting process. In those cases, that same general manager, president, or equivalent should be seen as the accountable executive.

FTA must maximize protection of data and press for explicit authority to protect data from discovery or admission into evidence in judicial proceedings. SMS, by its nature, requires full and frank review, evaluation, and prioritization of risk. The possibility that the product of this process will be released through the Freedom of Information Act (FOIA), state sunshine laws, or obtained and used against an agency in judicial proceedings clearly serves as a barrier to such documented self-examination. While provided no explicit authority to preserve the confidentiality of documents, FTA should affirmatively state its intent to protect agency safety analyses to the maximum extent authorized under current law. Moreover, FTA should unequivocally state its intent to pursue full authority to exempt safety analyses from discovery and use in judicial proceedings, and follow through on that intent. This coverage should extend to Transit Asset Management analyses as well, to preclude circumvention of rules intended to encourage strong safety cultures in agencies.

FTA should alter the definition of ‘small’ agencies. The current proposed definition would limit those considered small to agencies with fewer than 100 vehicles in revenue service. This definition would sweep many clearly small agencies including some simple van services in with large, multi-modal systems. With acceptable spare ratios and paratransit vehicles, an agency with as few as 70 buses could be considered too extensive to be ‘small.’ We believe FTA should revise that definition to read 100 buses in peak revenue service. This would be consistent with industry practice, avoid overlaying an inconsistent definition, and avoid the unintended consequences of the proposed definition.

FTA should allow maximum flexibility in agency SMS policy statements. In pilot environments, FTA has been rigidly insisting agencies adopt the ‘suggested’ policy language. Members report that this suggested language does not necessarily reflect their agency priorities and practices. FTA should allow deviation in policy adoption whenever consistent with the overarching principles of SMS.

We continue to be concerned that the inconsistency between the FTA and Federal Railroad Administration (FRA) programs will create unnecessary confusion and, ultimately, litigation. Separate systems result in confusion over terms and requirements, add expense, and complicate training efforts. Inconsistency of data protection provisions could effectively negate the protections afforded through FRA and undermine that program. Moreover, any difference between applications is likely to ultimately be exploited by plaintiff’s counsel who will quickly point out that an agency that instituted some practice on one railroad should have done the same on the other. While we understand that FTA has no authority to influence FRA activities, it remain incumbent upon the US DOT to address this discrepancy. In the interim, we caution FTA against evolving shadow rules through guidance, practice, or non-public interpretations, since any such action would serve to further complicate this situation.

Additionally, we believe FTA should affirmatively state that the FTA safety program does not apply to commuter railroads, even prior to revenue service when those railroads may be constructing assets with FTA financial assistance.

Finally, some of the items in the draft “crosswalk matrix” in the docket do not appear to be under the most applicable of the four pillars of SMS. We encourage FTA to work with industry to better align this matrix and promote better understanding of SMS throughout the public transportation community.

We appreciate the opportunity to assist FTA in this important endeavor. 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