



February 20, 2024

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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

Subject: Docket No. FTA-2023-0032

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 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, 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 Proposed General Directive 24-1: Required Actions Regarding Assaults on Transit Workers published in the *Federal Register* at 88 FR 88213 on December 20, 2023.

After surveying APTA's diverse membership of small, medium, and large operators and bus, transit rail, commuter rail and ferry members, APTA supports several elements of the Proposed General Directive (PGD). However, APTA has concerns with parts of PGD, which are focused on eight key areas: (1) the definition of transit worker assault; (2) State laws; (3) the need to focus on agency-wide efforts regarding assaults; (4) additional resources needed to comply with the PGD; (5) the use of the risk management process; (6) mitigations; (7) piloting buses with full driver/operator enclosures; and (8) Sensitive Security Information (SSI) and Freedom of Information Requests (FOIA) requests.

## **1. Definition of Transit Worker Assault**

One of the main concerns raised by APTA transit member agencies regarding the PGD, as well as the PTASP NPRM, is the concern over the definition of transit worker assaults. As stated in APTA's comments to the PTASP NPRM: "FTA proposes to amend § 673.5 to include the statutory definition of 'assault on a transit worker' set forth in 49 U.S.C. § 5302. In particular, the definition includes the term 'interference with ... a transit worker' as an element of assault. Although a statutory definition, APTA strongly encourages FTA to provide guidance on the types of events that would qualify as 'interference with a transit worker' as well as an 'assault on a transit worker' to better enable transit agencies to accurately capture and record these occurrences."<sup>1</sup> Many transit agencies continue to emphasize this point because there are still varying definitions for transit worker assaults including within states, and agencies would like to see as much consistency as possible.

As mentioned above, APTA member agencies have pointed to differing interpretations of what may constitute an assault in the context of state law. For example, in some jurisdictions spitting at a transit worker is considered a crime, and, therefore, an assault, but in other states it is not. Simply put, some transit agencies are concerned that without specific examples of what actions constitute an "assault on a transit worker" there would be inconsistent reporting to the National Transit Database (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.

APTA and its member agencies share a common goal of eliminating the number of transit worker assaults that occur on our transit systems. The definitions, however, need to be consistent to reach this goal.

## **2. State Laws**

APTA strongly urges FTA to take into consideration the fact that state laws vary widely in how they treat assaults on transit workers. In many states, spitting on a transit worker is considered a felony, whereas in others it is not. And, in most states, an assault includes physical violence that would be considered a felony, however, merely "interfering with a transit worker's duties" may not even be considered a misdemeanor. FTA must address how state laws, as they pertain to assaults, are taken into account in assessing the information gathered or prior to implementing this PGD. Finally, many states require local or state prosecutors to be consulted when an assault takes place. Thus, it is unclear how the PGD scheme would work with the gathering of transit worker assault data, a review of the risk management processes, consideration of mitigations, the implementation of transit agency mitigations, and a review of the effectiveness of mitigations.

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<sup>1</sup> See APTA Comments on FTA PTASP NPRM (June 26, 2023) (APTA PTASP NPRM Comments), at 5.

### **3. FTA focus on Transit Agency Safety Offices, when this is an Agency-Wide Concern**

APTA members agree that transit worker assaults are a major issue in the transit industry and are concerned about the increase in assaults nationwide. Many of the transit agency Chief Safety Officers, however, do not believe that the responsibility for responding to the “required actions regarding assaults on transit workers” should fall entirely on an agency’s safety department. This is an issue that affects operations, police/security, and other departments.

APTA recommends FTA work with operations and police/security departments to ascertain the best information and data as it pertains to this PGD.

### **4. Additional Resources Needed to Comply**

Many transit safety departments, even at the larger multi-modal transit agencies across the country, do not believe they are resourced sufficiently to oversee this issue of transit worker assaults, including completing the tasks required through PGD. In the post COVID-19 era, many transit agencies are facing a fiscal cliff and are ill-prepared to address the requirements of this PGD. Transit agencies believe this issue is a matter for local police and should not be handled at the safety department level through a safety risk assessment. APTA’s members recommend that FTA identify resources, including funding, if transit agencies are required to complete all of the components set forth in this PGD, including the” Required Actions” listed in (a) – (c) and the 17 components listed under “(c) Submit Required Information to FTA” listed on pages 2-6 of the PGD.

### **5. Use of the Risk Management Process**

Another concern raised by APTA member agencies is the use of the risk management process for transit worker assaults. As transit worker assaults are a “random” act in most cases, it would be difficult to apply an agency’s risk management process. Most agencies use the Military Standard (MIL-STD) 882E “Department of Defense Standard Practice System Safety” system safety standard<sup>2</sup> to conduct the safety risk management process. This process includes a risk assessment matrix with probability and severity of an event included. Because transit worker assaults are “random” acts of violence and not predictable, it is nearly impossible to incorporate transit worker assault data in a transit agency’s risk management processes and provide a meaningful assessment.

In addition, a nuance raised by several transit agencies is the fact that some events are escalated by operators who may have a false sense of security when they have a protective barrier in place.

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<sup>2</sup> See [Department of Defense Standard Practice System Safety \(Military Standard \(MIL-STD\) 882E\)](#) (September 27, 2023).

This raises an issue of how such events can be incorporated into an agency's risk management process.

## **6. Mitigations**

Many of the mitigations listed in the PGD under "General Directive: (c) Submit Required Information to FTA 8."<sup>3</sup> are already being implemented by a large number of transit agencies across the country, including: operator area protective barriers, signage informing riders of surveillance/penalties, de-escalation training, video/audio surveillance, and public awareness campaigns." Some of the mitigations discussed, including adding police officers on every bus or train, are just too costly.

Further, a few APTA members discussed self-defense training as an additional mitigation method that could be used to combat transit worker assaults. However, APTA members caution that the use of such skills would require extensive training and should only be used as a "last resort" for self-defense.

## **7. Piloting Buses with Full Driver/Operator Enclosures**

APTA members applaud FTA's research efforts to combat transit worker assaults, including a fully enclosed bus operator compartment under the "Bus of the Future" project.<sup>4</sup> APTA member agencies would like to see FTA undertake the design, manufacture, and delivery of prototype buses and pilot them at various sized transit agencies throughout the United States. This would allow relevant data to be gathered, and analyzed to determine if these buses should be recommended for future transit agency procurements. FTA could fund these prototype buses through a research and demonstration-type project and these buses could be piloted in service on various transit lines to determine if they do, in fact, lower the percentage of transit worker assaults.

We emphasize that APTA does not support use of these prototype buses in bus rehabilitation and/or new procurements. Rather, APTA would like to see these buses in a fully funded FTA pilot program. Then the data can be gathered, and analyzed to determine if these buses should be recommended for transit agency procurements in the future.

## **8. SSI and FOIA Requests**

Finally, APTA transit agency members are concerned with the gathering of SSI data or other information to comply with this PGD. Since some of the information that FTA is asking agencies

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<sup>3</sup> FTA, [Proposed General Directive No. 24-1 General Directive Under 49 U.S.C. 5329 and 49 CFR Part 670 Required Actions Regarding Assaults on Transit Workers](#) (December 20, 2023).

<sup>4</sup> FTA, [Bus of the Future, Redesign of Transit Bus Operator Compartment to Improve Safety, Operational Efficiency, and Passenger Accessibility Program](#) (June 2023).

to gather may be considered SSI, many transit agencies are wary of submitting this information to FTA. If this information were to get into the wrong hands, it could put a transit agency at risk.

In addition, many transit agencies are concerned about FOIA requests and whether the information/data submitted to FTA would be subject to FOIA. If SSI is included in what is submitted to FTA, it is a major safety and security concern to have this information potentially subject to FOIA.

Experts agree that to best protect the safety and security of public transportation riders, transit systems must be able to obtain comprehensive, confidential analyses of accidents without a looming threat of exposure to litigation. It is vitally important that this data not be subject to public disclosure to enable a strong culture of self-analysis that this PGD will require. Unwarranted exposure to liability and lawsuits would create perverse incentives for transit agencies to limit the scope of their actions under the PGD.

Because of the safety-sensitive nature of the data being collected under the PGD, it is necessary to safeguard this information in federal, state, and local forums. In the final rule for the State Safety Oversight program, FTA understood the importance of protecting data from public disclosure by stating that transit agencies should be able to prevent investigation reports from being introduced in evidence for litigation and that data should not be subject to FOIA. Thus, FTA must consider how agencies can protect the analysis that FTA requires under this PGD. APTA also recommends that this protection include federal preemption of any state sunshine laws so a safety regime can be fully effective.

## **Summary**

In summary, APTA appreciates this opportunity to provide comments on PGD No. 24-1: Required Actions Regarding Assaults on Transit Workers. APTA strongly encourages FTA to (1) review the definition of transit worker assault; (2) consider the impact of State laws on the PGD mandates; (3) consider agency-wide efforts regarding to assaults; (4) provide additional resources, including funding, needed to comply with the directive; (5) review the use of the risk management process and determine if it is the most effective method to take in response to transit worker assaults; (6) review the mitigations listed and determine if any should be removed or added; (7) completely fund bus pilot projects with full driver/operator enclosures nationwide; and (8) institute information protection for SSI and FOIA requests.

APTA and its member agencies would also like to emphasize that transit worker assaults are part of a larger societal issue. These assaults are often not focused on transit, but rather a result of an uptick in violence in surrounding communities throughout the United States. Accordingly, this complex issue needs to be looked at through a community-based lens, as opposed to a sole focus on public transportation.

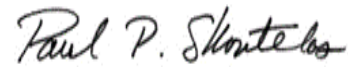
If you have any questions regarding this letter, please contact Brian Alberts, APTA's Senior

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Director of Safety and Advisory Services, at [balberts@apta.com](mailto: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,

A handwritten signature in cursive script that reads "Paul P. Skoutelas".

Paul P. Skoutelas  
President and CEO