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U.S. Department of Transportation
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West Building
Ground Floor, Room W12-140
Washington, DC 20590-0001.

Re: DOT Docket Number FTA-2023- 0007; RIN 2132-AB44

Dear Docket Clerk:

The American Public Transportation Association (APTA) represents the \$80 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 Proposed Rulemaking (NPRM) for Public Transportation Agency Safety Plans published in the *Federal Register* at 88 FR 25336 on April 26, 2023.

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, 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). 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 PTASP NPRM.

APTA's comments are focused on four key items: 1) a transit agency's Accountable Executive has the final determination in all Safety Committee decisions; 2) FTA's safety-related definitions must be identical across all of its safety rules and reporting requirements; 3) FTA provides guidance on the operation of the safety reduction program set asides; and 4) FTA harmonizes its regulations on PTASP with its ongoing and future National Public Transportation Safety Plan and State Safety Oversight (SSO) rulemakings and guidance documents.

I. Operation of Joint Labor-Management Safety Committees

The BIL and PTASP NPRM state, for large public transit agencies, a Safety Committee must be formed consisting of an equal number of management and front-line workers who are tasked with approving an Agency Safety Plan.¹ APTA acknowledges the importance of these safety committees and understands the need to have a collaborative labor-management safety committee in place at each transit agency that is focused on critical safety issues including needed mitigations for known safety hazards. Our agencies greatly value employee input on critical safety issues. However, APTA is concerned 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, as discussed below.

At the outset, the proposed regulatory framework appears to have the Safety Committee performing many of the functions of the agency's Safety Department without any training related to their responsibilities. APTA disagrees with this approach and strongly urges FTA to clarify that agency Safety Department decisions are not subject to review by the Safety Committee. Safety Committee members are charged with advising on safety priorities not overseeing day-to-day safety-related activities. As such, the Safety Committee should not be expected to "oversee" a transit agency's safety program.² This is the explicit function of the agency Safety Department per 49 C.F.R. Part 672. The final rule should clarify that in this context "oversee" refers to safety performance and advising on safety initiatives that are developed through the Agency Safety Plan.

In addition, the NPRM appears to have the Safety Committee tasked with making decisions and recommending mitigations with no oversight or accountability from the rest of the transit agency. Absent appropriate accountability measures or recommended best practices in the PTASP final rule, there is a risk that critical investments made possible by the BIL will be slowed or stalled due to disagreements over non-safety issues. APTA members have experienced this firsthand, and several transit agencies had difficulty getting their PTASP approved by the December 31, 2022, deadline and, in fact, FTA Regional Offices were ready to withhold a couple of transit agency's federal funding.

¹ See 49 U.S.C. § 5329(d); FTA, Public Transportation Safety Plans (PTASP NPRM), 88 Fed. Reg. 25336, 25349 (April 26, 2023).

² See *id.* at 25349 ("The Safety Committee must conduct the following activities to oversee the transit agency's safety performance.").

a. Resolving Disputes

The FTA's NPRM states in § 673.19(c)(7) that an agency's PTASP must address "How the Safety Committee will manage disputes and tie votes to ensure it carries out its operations."³ As noted above, APTA is concerned that there is no clear guidance in FTA's NPRM on how to resolve impasses in the Safety Committee, and such impasses could jeopardize the Safety Management Systems (SMS) that agencies have established per FTA regulations. APTA strongly recommends FTA explicitly identify in § 673.19 that the Accountable Executive is the final decisionmaker in all matters concerning the Safety Committee, from adopting dispute resolution rules to executing the tie-breaking vote in the event of an impasse in the committee. This approach is entirely consistent with the definition of Accountable Executive in proposed 49 C.F.R. § 673.5, which states that the Accountable Executive is the "single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a transit agency"⁴

FTA has previously supported this interpretation. In an earlier version of FTA's PTASP Frequently Asked Questions (FAQs) for the "New Bipartisan Infrastructure Law Requirements, Safety Committees", question 10 on FTA's website, FTA included the following guidance in answer to a question regarding implementation of Safety Committee recommendations:

Q10: Is our agency required to implement whichever measures the Safety Committee recommends?

A10: No. The Bipartisan Infrastructure Law does not require the agency to implement the risk-based mitigations or strategies recommended by the Safety Committee. The Accountable Executive, ultimately, must determine whether to implement the risk-based mitigations or strategies recommended by the Safety Committee (emphasis added).⁵

APTA agrees with FTA's assessment of the Accountable Executive's role in making safety decisions for the transit agency and its interpretation of 49 U.S.C. § 5329(d)(5). Section 5329(d)(5) clearly defines the role of the Safety Committee as having the responsibility for "identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment; identifying mitigations or strategies that may be ineffective, inappropriate, or were not implemented as intended; and identifying safety deficiencies for purposes of continuous improvement."⁶ Congress did not give Safety Committees the authority to require any particular mitigations or strategies, involve itself in collective bargaining issues, or assert itself as the ultimate authority on safety issues. The final rule must reiterate the critical role of the Accountable Executive and clarify that issues typically handled through collective bargaining are not within the purview of the Safety Committee.

³ *Id.*

⁴ *Id.* at 25346.

⁵ Question 10 was later deleted from FTA's webpage.

⁶ *See* §5329(d)(5)(A)(iii).

Accordingly, FTA must make it clear that an agency's Accountable Executive is the final decisionmaker in the Safety Committee, including for any disputes or disagreements that arise between labor and management (e.g., the naming of a chair, ties votes on important safety issues, and any other safety-related concerns that may arise).

Further, some transit agencies have multiple contractors at their properties, including for transit service and operations. Therefore, these agencies may have multiple contractors that currently serve on their Safety Committee as labor representatives. As such, APTA requests that FTA issue guidance on the appropriate structure of front-line worker representation on Safety Committees in situations where contractors provide service and operations.

b. Labor Participation in Safety Committee Meetings

It will be essential for transit agency managers and employees to engage in the PTASP process in good faith with a mutual and collaborative commitment to safety. One concern raised by APTA members is what happens if union members do not participate in meetings or contribute to the process of reviewing and approving the PTASP? FTA should strongly urge full participation by labor representatives at Safety Committee meetings. In addition, to ensure that labor representatives have the necessary training to participate in the Safety Committee and review PTASPs, APTA recommends that FTA provide basic SMS-related training for our labor partners to ensure that all participants in the process share a common understanding of SMS principles and how they should be embedded in each agency's PTASP.⁷

Overall, the Safety Committee at each transit agency will have significant responsibilities and authority. The BIL's historic funding increases for FTA's Urbanized Area Formula Grant program can only be put to work if they are accompanied by an approved Agency Safety Plan. It is important that issues unrelated to safety (e.g., issues typically handled through collective bargaining) do not impede adoption of the Agency Safety Plan, as this would impact funding typically used for critical safety and state of good repair projects. Accordingly, APTA recommends FTA make it clear in the final rule that the sole purpose of the Joint Management-Labor Safety Committee is to discuss safety-related issues and to not stray into other non-safety or collective bargaining issues. Transit agencies typically have long-established separate procedures to discuss, and, if need be, negotiate non-safety concerns with their labor unions.

II. Definitions

APTA's members are extremely concerned about conflicting definitions across FTA regulations and reporting requirements. For data to be meaningful for analyzing and addressing safety risks, definitions used for the National Transit Database (NTD), the SSO, and the PTASP must all be aligned. APTA and its members would welcome the opportunity to work directly with FTA on this issue.

⁷ This training could be provided by the Transportation Safety Institute (TSI), which has a basic 2-hour introductory course on SMS principles.

a. Safety Event

In the NPRM, FTA proposes to remove several definitions from 49 C.F.R. § 673.5, including definitions for “accident,” “event,” “incident,” “occurrence,” and “serious injury”. In its place, FTA proposes a singular definition of “safety event” as “an unexpected outcome resulting in injury or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment”⁸

Currently, 49 C.F.R. Part 674 (State Safety Oversight) defines the terms “accident”, “incident” and “occurrence” and sets forth specific thresholds for reporting such events to the SSO and FTA.⁹ APTA recommends FTA ensure consistency between the final PTASP rule, Part 674 SSO rule, as well as the NTD definitions for “safety event”. Failure to provide consistent definitions across these three interrelated rules and data collection systems could lead to confusion and may result in over or underreporting of events.

b. Safety Management System

FTA also proposes to update the definition of SMS in the PTASP NPRM, by deleting the term “top-down” from the definition. It defines SMS as the “formal, ~~top-down~~, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency’s safety risk mitigation.”¹⁰

APTA disagrees with deleting the term “top-down” from the definition. 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. APTA believes underscoring the importance of the Accountable Executive and emphasizing the top-down approach of SMS is a major principle that FTA should continue to include in this definition. Moreover, top-down has been included in all of FTA’s TSI- supported courses (for the Transit Safety and Security Program (TSSP) and Public Transportation Safety Certification Training Program (PTSCPT) bus and rail certifications) and is included in the basic definition of SMS throughout the entire transit industry.

c. Assault on a Transit Worker

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.

⁸ 88 Fed. Reg. at 25347.

⁹ See 49 C.F.R. § 674.7 and Appendix A.

¹⁰ 88 Fed. Reg. at 25347.

Our member agencies have also pointed to differing interpretations of what might constitute an assault in the state law context. For example, in some jurisdictions spitting 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.

APTA and its member agencies share a common goal of eliminating, or reducing, the number of transit worker assaults that occur on our transit systems. As noted earlier, APTA applauds FTA’s efforts, especially its pilot projects that incorporate a fully enclosed bus operator compartment area.

d. Near Miss

FTA also includes a definition of “near miss” in the NPRM, which is defined as “a narrowly avoided safety event.”¹¹ APTA suggests FTA either clarify the types of events that would qualify as a “near miss” or remove this definition altogether.

III. Safety Risk Reduction Program

a. Safety Risk Reduction Program

FTA proposes to include a new § 673.20 to incorporate the BIL requirement for large transit agencies to have Safety Risk Reduction programs.¹² APTA has a few recommendations to improve this section.

At the outset, APTA recommends that under §§ 673.20 (a) and (b) FTA remove the word “injuries” to avoid repetition, as the term “injury” is included in the definition of “safety event”, as follows:

- (a) Each large urbanized area provider must establish a safety risk reduction program for transit operations to improve safety performance by reducing the number and rates of safety events, ~~injuries~~, and assaults on transit workers.
- (b) The Safety Committee of each large urbanized area provider must establish annual safety performance targets for the safety risk reduction program to reduce the number and rates of safety events, ~~injuries~~, and assaults on transit workers based on the safety performance measures for the safety risk reduction program established in the National Public Transportation Safety Plan. The targets must be set. . .

¹¹ *Id.*

¹² *Id.* at 25340, 25349.

In addition, § 673.20(a)(4) of the proposed rule states that if there is a proposed mitigation for an assessed safety risk related to transit worker injuries or assaults, “the transit agency must implement one or more of those mitigations to reduce risk to an acceptable level, unless the Accountable Executive determines it would not improve the agency’s overall safety performance.”¹³ APTA believes this requirement is too prescriptive and exceeds the statutory requirements in the BIL. Agencies develop their own safety risk management programs, including establishing their own risk assessment matrices and risk response or acceptance procedures. If FTA requires certain mitigations be made, it overrides the intrinsic independence of transit agencies and the relationship between rail transit agencies and their SSO Agencies.

FTA also contemplates increasing the number of safety performance measures and goals from seven to 14, as indicated in its proposed update to the National Public Transportation Safety Plan, including transit worker assault data¹⁴ APTA members are concerned that such an increase may be burdensome. 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 important that FTA provide context regarding new reporting requirements when it makes this data public.

b. Safety Set Aside

In proposed § 673.20(e)(3), FTA discusses the requirement that large, urbanized area providers who do not meet annual safety performance targets must allocate its safety set aside in the following fiscal year.¹⁵ APTA recommends FTA clarify that the 0.75 percent set aside for safety may be allocated toward planned safety projects or elements of projects (e.g., bus compartments). Many agencies currently spend more than 0.75 percent on planned safety projects. It is important to note that the impact of some safety investments may not be immediately felt for long-term items.

In addition, APTA is concerned that Safety Committee members may not have the training needed to accurately review the data to make informed safety and expenditure recommendations. APTA proposes FTA provide or recommend additional training in this area.

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

¹³ *Id.* at 25350.

¹⁴ *See* FTA, National Public Transportation Safety Plan, Notice of Availability, 88 Fed. Reg. 34917, 34919 (May 31, 2023).

¹⁵ 88 Fed. Reg. at 25350.

IV. Training

In § 673.29(a) (Competencies and training), FTA states:

(1) A transit agency must establish and implement a comprehensive safety training program that includes de-escalation training, safety concern identification and reporting training, and refresher training for all operations transit workers and transit workers directly responsible for safety in the transit agency's public transportation system. The training program must include refresher training, as necessary.

(2) Large urbanized area providers must include maintenance transit workers in the safety training program.¹⁶

APTA agrees with FTA that only large, urbanized area providers must include maintenance transit workers in the safety training program (and not smaller providers, unless they choose to do so). However, APTA recommends that §§ 673.29(a)(1) and (2) be combined for ease of implementation of the training program.

The BIL requires PTASPs include de-escalation training, and FTA has incorporated this requirement in § 673.29(a).¹⁷ APTA requests FTA provide additional technical assistance in this area, including a potential list of vendors on the FTA website for such training, like FTA's COVID-19 products model. During the pandemic, FTA provided a list of vendors that supply COVID-19-related products, which APTA and CTAA helped support.¹⁸ APTA is supportive of de-escalation training and hopes that such training will result in positive outcomes. However, it will require a large investment by transit agencies in both time and resources, so any financial or technical assistance that FTA can provide to assist agencies with de-escalation training would be greatly appreciated.

V. Small Operator Concerns

A few APTA members have expressed concerns with PTASP in general and the potential cost burdens that would be imposed on small operators as result of the final rule. APTA's smaller to mid-size members had to hire additional people to implement the original PTASP rule and are concerned that additional requirements will result in an "unfunded mandate", which could strain already tight transit agency budgets. For example, one transit agency noted it has had to hire four additional people to handle data collection, drafting of the PTASP, accident and incident investigations, and other PTASP-related efforts. For an agency with a small budget, the additional staffing represents a considerable increase in that agency's modest overall operating budget.

¹⁶ *Id.* at 25351.

¹⁷ *See* 49 U.S.C. 5329(d)(1)(H)(ii); 88 Fed. Reg. 25351.

¹⁸ APTA is aware that there is also a free 3.5-hour online NTI de-escalation training course available (titled "Assault Awareness and Prevention for Transit Operators").

In the final PTSAP rule, APTA strongly encourages FTA to provide substantial technical assistance and less burdensome measures to enable small operators to implement needed safety requirements, while also drafting and implementing their PTASPs. Very small transit agencies have the choice of utilizing their State Departments of Transportation to draft their PTASPs. However, even for those small operators that are just above the FTA's threshold of 100 or fewer vehicles in peak revenue service, the requirement to draft and implement the PTASP requirements will result in additional costs (e.g., increased costs for accident and incident investigations and for data collection and analysis (Safety Risk Management and Assurance)).

VI. Resources

Transit agencies will spend significant time and resources implementing the proposed provisions set forth in this NPRM. APTA members are concerned FTA's cost-benefit analysis does not accurately reflect the staff and hours needed to meet these new administrative and reporting requirements. Therefore, APTA requests FTA provide additional technical assistance, resources, and/or funding, where appropriate, to better enable agencies to implement the PTASP final rule. Many of the new requirements will include updating and implementing the PTASP, working with Safety Committees to mitigate safety-related concerns (which in some cases may have a large cost implication), and implementing new training agency-wide (including de-escalation training).

VII. State Safety Oversight Agencies and Conflicts of Interest

Another issue raised by a few rail transit agencies (RTAs) is the fact that some former employees of the RTA now work for their State Safety Oversight Agency and oversee many of the areas of their previous employment. To preserve integrity and to avoid "conflicts of interest", APTA recommends there be a "cooling-off period" of at least 12 months between when an employee leaves or retires from an RTA and then oversees the exact same area in which they previously worked in at a transit agency. In many other lines of business, a cooling-off period is required and APTA believes that it would be appropriate to impose a cooling-off period here as well.

VIII. Publication of Parts 670 (National Safety Plan), 673 (PTASP) and 674 (SSO) Final Rules

To ensure consistency among the different aspects of FTA's Public Transportation Safety programs under 49 U.S.C. § 5329, APTA recommends FTA publish and promulgate the PTASP final rule (49 CFR Part 673), the final revised version of the National Public Transportation Safety Plan (49 CFR Part 670), and the final revised version of SSO rule (49 CFR Part 674) at the same time, rather than having the National Safety Plan and rules be issued sequentially.

Publishing these final rules simultaneously would allow transit agencies to update their PTASPs accordingly and ensure that their performance targets under part 673 are consistent with the performance measures set forth in the revised National Public Transportation Safety Plan.

Moreover, SSOAs would have a consistent set of data from which to review and approve of agency PTASPs.

For these reasons, APTA strongly encourages FTA to publish all three final, updated documents and rules (Parts 670, 673 and 674) in the Federal Register at the same time.

IX. Summary

APTA appreciates this opportunity to provide comments on the PTASP NPRM. APTA's Working Group that developed these comments includes numerous large, medium, and small 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 PTASP NPRM.

Safety is the number one core value of APTA, and our member agencies and APTA wants to ensure that FTA is fully focused on safety of the transit industry moving forward. To that end, APTA strongly encourages FTA to ensure: 1) a transit agency's Accountable Executive has the final determination in all Safety Committee decisions; 2) its safety-related definitions are identical across all of its safety rules and reporting requirements; 3) it provides guidance on the operation of the safety reduction program set asides; and 4) it harmonizes its regulations on PTASP with its ongoing and future National Public Transportation Safety Plan and SSO rulemakings and guidance documents.

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