



September 9, 2013

U.S. Department of Transportation
1200 New Jersey Avenue, SE
Docket Operations, M-30
West Building Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: Docket No. FRA -2008-0131 Notice No 1

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 Railroad Administration's (FRA) Notice of Proposed Rulemaking (NPRM) on Critical Incident Stress Plans, which was published in the Federal Register at 78 FR 38878 on June 28, 2013

About APTA

APTA is a non-profit international trade association of 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

For many years passenger railroads have had policies and programs in place addressing the mental and emotional effects on employees that can result from witnessing or being involved with a critical incident. FRA acknowledged this history in the preamble background of the NPRM and used that history as a basis for computing their economic impact model for the proposed rule. While acknowledging that most railroad managers are not clinically trained to be able to recognize the symptoms of Acute Stress and Post Traumatic Stress Disorders, many years of experience have both informed and strengthened passenger railroad responses and practices in caring for employees that have experienced critical incidents. Thankfully, these types of critical incidents are few and

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we believe that past practice in dealing with the resulting stress on employees has provided us with a great deal of understanding that can be applied to better develop this rule. APTA members are in firm support of FRA's initiative to create a Critical Incident Stress Plan rule that will give employees resources and treatment options to fit their needs and the railroad's needs to maintain service.

The Data Relied on by FRA is Insufficient

One of the weaknesses that we found with the way that the rule was structured concerned the lack of useful data to provide an assessment of both the problem areas and the mitigations being proposed. The literature review used in the rule did not find data on US Railroad worker experience with acute stress or post traumatic stress. Although a Norwegian railroad study clinically diagnosed 7 to 14 percent of those exposed, there is no way to compare it contextually to the US experience as there is no requirement or criteria for a clinical diagnosis in the proposed rule. The missing data from clinical diagnosis is significant as it affects the economic assumptions of the rule.

Data being used to project the costs of regulation includes annual accident reporting numbers showing that the US has on average 2,500 grade crossing accidents and 900 trespass incidents annually. The exposure rate provided by FRA does not cover all of the possible incidents that would be included in the definition of Critical Incidents in the proposed rule. We question how the cost analysis can be valid based on the lack of data.

APTA review of the preamble found a lot of data sourcing from Veterans and military institution studies on treatments used on US soldiers. A diagnosis PTSD and ASD from a theater of war does not seem to compare at all with a railroad business environment, or to the magnitude of difference between accident and suicide scenarios which occur randomly versus active military duty in a combat zone where deadly confrontation is a daily expectation. APTA does not find the data to be representative and questions the efficacy of comparing diagnosis and treatments with the rail industry.

FRA dismisses Critical Incident Stress Debriefing (CISD) as not helpful and in some cases harmful "directly contraindicated". Several passenger railroads currently use CISD with positive results and FRA's approach on this treatment method is perplexing. Perhaps this method has not found favor at the clinical level where drug therapy is more common or as reported within the military, however, we do not believe that FRA should summarily dismiss this treatment option without a more thorough review of its application in the railroad environment.

Near Miss Scenarios

FRA requested comment on whether the definition of Critical Incident should explicitly exclude Near Miss scenarios. APTA strongly supports FRA's intention to not include Near Miss incidents in the regulatory definition. However, the passenger railroads need to have the discretionary authority within their critical incident plans to apply critical incident procedures to what might be classified a near miss or otherwise fall outside of the definitions proposed in the regulation.

Coping and Recovery

One of the tenets of the rule and as currently practiced by the passenger railroads would provide directly-involved employees with an opportunity, away from the railroad environment, time to cope with having experienced a critical incident. This is an amount of time to be determined by each railroad. The purpose is to allow for a reasonable amount of rest and time following a critical incident for an employee to work through the experience in his/her own way without necessitating a clinical diagnosis. This proposed part is neutral on the amount of additional relief a railroad should permit beyond the tour of duty during which the critical incident occurred (the coping period). APTA appreciates the FRA's intent to modify the RSAC-approved language to include a qualifier on the requirement: "for an amount of time to be determined by each railroad . . . as may be necessary and reasonable" to add context and clarity on the intent of the provision. APTA supports this change as it strengthens the intent of the coping period as caring for the employee in each situation is different and tasks the railroad to make the determination rather than trying to make it a regulatory requirement.

Beyond an initial "coping" period, additional time must be provided to affected employees for preventive services and treatment as needed for the adverse effects of the critical incident. Many passenger railroads' plans currently permit relief from the tour of duty following the critical incident, leave subsequent to the critical incident (coping period of several days is common) and, if a clinical diagnosis supports the need, additional time off to fulfill the employee's request. APTA recommends that the rule reflect industry practice by requiring a clinical diagnosis and treatment plan be established when an employee requests continued leave past the coping period. This would be a far better option than leaving an employee on their own without knowing if they are depressed or suicidal.

Creation and Distribution of Plans

FRA has proposed that the railroads must provide wide distribution of the Critical Incident Stress Plans to organized labor and the definitions of those railroad employees that could be subject to the provisions of this rule are quite large, so many labor organizations would be included in the distribution. APTA sees no advantage in providing this wide circulation of the plan and supports only involving the labor organization representatives maintained on the service lists used by each railroad.

The FRA asks if critical incident stress plans should have the same consultation process with labor as required by statute for the system safety plans for passenger railroads. Passenger railroads already have individual plans in place that have been acceptable to the local representatives over the years. APTA members are unanimous in their opinion that the same consultation requirements should not be extended to this rule and is completely unnecessary and unwarranted.

We appreciate the opportunity to assist FRA in analyzing this important issue. 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,

A handwritten signature in black ink, appearing to read "Michael P. Melaniphy". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Michael P. Melaniphy
President & CEO