



October 13, 2015

Docket Operations
U.S. Department of Transportation
1200 New Jersey Avenue S.E.
West Building Room W12-140
Washington, DC 20590-00011

RE: Docket No. FTA-2015-0009

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 (FTA) request for comments on the Notice of Proposed Rulemaking on Public Transportation Safety Program, published on August 14, 2015 at 80 FR 48794.

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

"Safety and security first" is APTA's primary strategic goal. To that end, we are fully supportive of implementation of Safety Management Systems throughout the industry to continue to make what are among the safest modes of travel in the country even more so. We offer the following comments to assist FTA in better defining a robust, practical safety program.

Draft section 670.05 - the definition of 'pattern or practice' is overly broad. As written, this definition suggests two disparate 'findings' by an undefined authority or authorities separated by several years could subject an agency to FTA or SSOA control over its federal funds. Moreover, read in context with draft section 670.21, there is no definition of what might constitute a 'serious' such pattern or practice.

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Draft section 670.13 - the offer of confidentiality is unduly narrow. Subsections (a)(1) and (2) add nothing to existing law, yet subsection (d) would limit those existing exemptions from disclosure, through an overly technical set of requirements that presume a grantee agrees to public disclosure based on what would likely be a clerical error - not filing a second copy of a record when requesting that record be protected.

Draft section 670.23 - allows, but does not compel, the Administrator to consider a recipient's response to a notice of violation. This does not adequately provide an opportunity for notice and comment if the consideration is optional.

Draft section 670.27 - curiously contemplates the Chief Counsel will act as an appellate authority over an action taken by the Administrator. Petitions for reconsideration should, at a minimum, be handled by the original authority, a peer, or superior authority. The Counsel should not be placed in the position of appellate authority over his or her Administrator.

Additionally, this draft section inappropriately purports to extend to environmental harm. Environmental concerns should be referred to the Environmental Protection Administration rather than incorporated by minimal reference in a safety regulation.

Draft section 670.29 - when read in context suggests that advisories are the practical equivalent of directives. FTA should clarify its intent and differentiate between these actions.

Interaction with other legislative and regulatory regimes - FTA must explain its plan to deconflict other such regimes that affect public transportation, most notably those of the Federal Railroad Administration and the Coast Guard. Moreover, FTA must clarify its intent to deconflict its safety regime with the requirements of the Americans with Disabilities Act, particularly where agencies are required to accommodate unsafe practices.

Interaction with State Safety Organizations - must be clearly explained to ensure FTA is not acting at cross purposes with an SSO or conducting duplicative reviews that would create a burden on agencies.

A standard for enforcement - must be defined in this proposed regulation. As drafted, this regulation would authorize FTA and its contractors, and agents absolute discretion. The draft provides little guidance to grantees, FTA contractors, SSOs, or FTA regional offices. While we understand the nature of SMS does not necessarily lend itself to bright lines, some guidance is required to create a credible regulatory scheme.

FTA must dedicate itself to transparency and consistency in this program. Interpretations, decisions, directives, and other administrative actions must be fully explained, vetted with the industry, and subject to comment or appeal to the maximum extent possible.

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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,

A handwritten signature in black ink, appearing to read "Michael P. Melaniphy". The signature is fluid and cursive, with a prominent loop at the end.

Michael P. Melaniphy
President & CEO

MPM/jpl:jr