



**AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION**

June 7, 2004

Docket Clerk
Central Docket Office
Department of Transportation
PL-401
400 Seventh Street, S.W.
Washington, DC 20590

RE: Docket Number FTA-2004-17196

Dear Docket Clerk:

The American Public Transportation Association (APTA) is pleased to respond to the Federal Transit Administration's (FTA) Notice of Proposed Rulemaking (NPRM) on state safety oversight of rail fixed guideway systems.

About APTA

APTA is a nonprofit international trade association of over 1,500 public and private member organizations including transit systems and commuter railroads; planning, design, construction and finance firms; product and service providers; academic institutions, and state associations and departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. Over ninety percent of persons using public transportation in the United States and Canada are served by APTA members.

Background

On March 9, 2004, FTA published a notice of proposed rulemaking (NPRM) proposing to revise its rule on state safety oversight of rail fixed guideway systems at 49 CFR Part 659. FTA proposes to clarify and improve Part 659. In addition, FTA plans to incorporate previously issued guidance in this area as well as new concerns for security and emergency preparedness.

Chair
George F. Dixon III

First Vice Chair
Richard A. White

Secretary-Treasurer
Paul P. Skoutelas

Immediate Past Chair
Celia G. Kupersmith

Vice Chairs
Karen Antion
Research and Technology
Richard J. Bacigalupo
Government Affairs
Ronald L. Barnes
Bus and Paratransit Operations
Gordon Diamond
Canadian Members
Nathaniel P. Ford, Sr.
Management and Finance
William D. Lochte
Business Members
Jeffery Nelson
Small Operations
Lawrence G. Reuter
Rail Transit
Joshua W. Shaw
State Affairs
Howard Silver
Transit Board Members
David L. Turney
Marketing
Kathryn D. Waters
Commuter and Intercity Rail
Linda S. Watson
Human Resources
Alan C. Wulkan
Business Member-at-Large

President
William W. Millar

General Comments

Lack of Industry Involvement

Regrettably, in contrast to initial understandings on how FTA's review of the state safety oversight program would be conducted, the transit industry was not involved in FTA discussions with state oversight agencies in meetings leading up to the promulgation of the NPRM. In general, the transit industry was kept separate from those interactions, and was not involved in monthly teleconferences on these issues. In our view, such discussions and interaction would have been extremely useful given the industry's experience and practice in this area.

Extension of Comment Period

Given the complexity and potential impact of this rule change, and our concern about our lack of involvement in the process leading up to the NPRM, APTA respectfully requests that the comment period on the NPRM be extended. Further, we have heard from certain of our members that they have been focused on other safety and security concerns in the last few months, largely at the urging of the Department of Homeland Security. For these reasons, the transit agencies believe that they have not had an adequate opportunity to analyze the NPRM. Should a formal extension of the comment period not be granted, we would appreciate FTA accepting comments as long as possible so that they may be considered as part of the record.

Retention of APTA Manual

Although we feel an extension of the comment period would be warranted, APTA will nonetheless here comment on the NPRM. Most critically, APTA is concerned that FTA is proposing to eliminate from its rule the incorporation by reference of the APTA Manual for the Development of Rail Transit System Safety Program Plans (APTA Manual), which has formed the basis of FTA's state safety oversight program since issuance of the final rule in 1995. Since the implementation of the initial program, APTA has grown its standard-setting and audit programs, and continues to review and update as appropriate those programs to ensure that they remain relevant and effective. Continuing to incorporate the APTA Manual by reference would ensure that the regulation would continue to reflect the latest circumstances and standards. If, as the NPRM proposes, the concepts in the Manual are simply incorporated into the rule and frozen in place, ongoing changes and revisions will be difficult to implement, given the delays associated with the formal rulemaking process. In short, APTA strongly suggests that the rule retain the use of the APTA Manual and its reflection of the ongoing cooperative working relationship between the public transit industry and the FTA in the critical area of safety and security. As the FTA notes in its preamble to the rule, "[the] National Transportation Safety Board also made recommendations to APTA to update the APTA Manual.... and to FTA to adopt the updated Manual." (Emphasis supplied.)

Further, retention of the APTA Manual in Part 659 is consistent with the Department of Transportation's recognition of APTA as a Standards Development Organization, and permits the transit industry and the federal government to continue their collaborative relationship on important safety and security issues.

It would also be consistent with APTA's close working relationship with the Department of Transportation's Federal Railroad Administration. APTA developed Passenger Rail Equipment Safety Standards, which FRA participated in the development of, and the commuter railroad version of the system safety program manual was developed jointly with the FRA and the U.S. Department of Transportation in an effort to work together to improve overall safety on commuter railroads.

In short, we strongly urge the FTA to reconsider its decision, and to continue to incorporate the APTA Manual as a part of its state safety oversight rule.

Appropriate Balance

APTA is also concerned that the balance in the proposed rule between the concerns of the rail transit agencies and the state oversight agencies has been tipped in favor of the state oversight agencies. Several of the proposed changes indicate that FTA has focused more on the needs of the state oversight agencies without considering local needs and differences among the rail transit agencies. State oversight agency participation took place through a series of meetings between FTA and the state oversight agencies; however, as noted above, rail transit agencies have not had this same ongoing collaborative opportunity to make their views known.

Specific comments on the NPRM are provided below.

Specific Comments

1. Under Section 659.27(a)(3), the \$25,000 threshold for reporting property damage of is very low and will require needless notifications—APTA members prefer the current \$100,000 threshold amount.
2. Under Section 659.27(a), the two-hour notification requirement is unrealistic and a burden especially during a catastrophic event. The time frame should be at least four hours to permit adequate time to respond, attend to the incident and evaluate whether notification is appropriate.
3. The commentary under Section III, Audit Program, on audit finding (1) is incorrect, making it appear as though there was a need for a process based hazard management system that was not in the Manual. In fact, the hazard management system was part of the original APTA program that the FTA chose to modify in its original 1992 State Safety Oversight Rule to require an "Unacceptable Hazardous Condition" hazard management system. This system did not work, and this revision actually restores the original APTA Hazard Management system.

4. The decision by the FTA to drop the reference to the APTA Manual not only goes against the NTSB recommendation, but it also has significant other impacts that in our view do not enhance safety overall and system safety specifically. The reason that APTA adopted a Systems Safety approach was to move to a performance based self-regulatory process that provided a means for agencies to develop and make continuous improvement “optimizing safety performance within the constraints of time, cost and operational effectiveness”. It recognizes that a “one size fits all” approach does not work. Should this NPRM proceed as written, this basis will be abandoned.
5. If the NPRM proceeds as written, the state safety oversight program will be basically a safety program that is specification oriented. As the FTA notes in the NPRM, to drop the APTA guidelines FTA needs to create specifications for the states to “assist in State compliance with rule requirements...the proposed rule provides minimum requirements.” Such a program in which agencies need only satisfy minimum requirements will end the need to have a continuous improvement process and there will be no need for a systems approach to safety; rather, the satisfaction of state requirements will be the goal. The problem will become one in which each of the affected twenty-two states and the District of Columbia will define what satisfaction of each of the twenty-one elements under section 659.15 will mean to them without a common national standard. Since nearly all the states lack industry expertise, a national standard will remain elusive.
6. Further, the approach that FTA is taking in adopting the APTA audit criteria as elements in the regulation will be short lived. FTA will soon discover that it cannot cover all the variables that will be encountered and will need to further refine the elements into sub-elements, and those sub-elements into characteristics and those characteristics into attributes, etc. This is a natural part of the audit process. As mentioned above, changes are much more difficult to implement through the regulatory process.
7. The FTA also proposes to separate system safety plans from system security plans as separate documents and would require the states to approve any changes. There is no mention of coordination of effort with DHS/TSA on this requirement and this will cause confusion and concern among transit agencies. It is unclear whose regulations prevail—those of DHS, FTA, or the States.

Docket Clerk
June 7, 2004
Page 5

Conclusion

We appreciate the opportunity to comment on this NPRM, and stand ready to help FTA in the implementation of its state safety oversight regulation. Partnership, collaboration, and communication have served us well in areas such as the joint Safety Certification Manual and the Memorandum of Understanding on Bus System Safety. APTA supports the same type of partnership, collaboration, and communication in the state safety oversight area, where APTA, FTA and the state oversight agencies all share a common goal. To do so would better satisfy the NTSB recommendations and the industry than the methods proposed in the NPRM. For further information, please contact Kristin O'Grady at (202) 496-4808, or e-mail at kogrady@apta.com or Daniel Duff at (202) 496-4860, or e-mail at dduff@apta.com.

Sincerely yours,

A handwritten signature in black ink that reads "William W. Millar". The signature is written in a cursive style with a large, sweeping initial "W".

William W. Millar
President

WWM/cbo