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ATTN: Docket No. FTA-2023-0007

Re: Public Transportation Agency Safety Plans

The American Society of Civil Engineers (ASCE) appreciates the opportunity to submit comments to the Federal Transit Administration (FTA) on its Notice of Proposed Rulemaking (NPRM) regarding Public Transportation Agency Safety Plans (PTASP). Safety is the foundational principle of civil engineers' work, and ASCE supports policies that protect the safety of transit users and operators. The input presented in this document is in response to the NPRM published in the Federal Register on April 26.

Founded in 1852, ASCE is the nation's oldest engineering society. ASCE represents the professionals who design, construct, and maintain the country's transit systems, and we encourage investment and regulations intended to make public transportation safer for both system engineers and users. FTA's NPRM proposes to amend the PTASP regulation with new requirements that incorporate changes included in the Infrastructure Investment and Jobs Act (IIJA). ASCE was a strong supporter of the IIJA, which provided a once-in-a-generation investment in our nation's infrastructure and provisions to improve safety and modernize the transportation system. We are grateful for the opportunity to comment on a proposal regarding changes taking place because of this landmark legislation.

Public transportation services form an important fabric for communities across the country, providing access to jobs, schools, and healthcare facilities. On ASCE's *2021 Report Card for America's Infrastructure*, transit earned a D-, the lowest grade of any category.¹ Additionally, the Report Card found there is currently a \$176 billion transit backlog, a deficit that is expected to grow to more than \$270 billion through 2029. Transit's challenges have been compounded by the COVID-19 pandemic, which decimated ridership levels that were already in decline. Nationally, transit ridership and fare revenues were down in April 2020 from April 2019 by 73% and 86%, respectively. As people have gradually returned to offices, schools, restaurants, and stores, transit ridership is steadily recovering. According to data released by the American Public Transportation Association (APTA) in September 2022, ridership has recovered to about 72% of 2019 levels.² As the public transportation sector

¹ <https://infrastructurereportcard.org/cat-item/transit-infrastructure/>

² <https://www.apta.com/wp-content/uploads/APTA-POLICY-BRIEF-Transit-Ridership-09.28.2022.pdf>

continues to recover from effects of the pandemic, transit agencies will need to build consumer confidence through safety measures.

For these comments on the NPRM regarding new requirements for PTASP, ASCE and its members would like to focus on **transit agency resource needs, clarifications on certain terminology, and the provision to establish a risk reduction program.**

Needs associated with transit agency resources and additional research

FTA's NPRM outlines significant new requirements for PTASP. These include revised requirements for agency safety plans (ASP), safety committees, cooperation with frontline transit worker representatives in the development of ASP, safety risk reduction programs, safety performance targets, de-escalation training for certain transit workers, and addressing infectious diseases through the Safety Management System (SMS) process. These new requirements are in addition to those already in place mandating PTASP. The proposed requirements will necessitate added resources and increase the workload for already strained transit agency personnel. One factor compounding these anticipated strains is there is no new funding beyond that already in place under existing regulations to meet these needs.

Among the host of new requirements outlined in the NPRM is the establishment of a safety committee that is convened by a joint labor-management process and consists of an equal number of frontline employee representatives and management representatives. This safety committee has responsibility, at a minimum, for approving the transit agency's ASP and any updates to the ASP; setting safety performance targets for the safety risk reduction program; 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 or inappropriate; and identifying safety deficiencies for purposes of continuous improvement. In addition, a risk reduction program is required for transit operations to improve safety by reducing the number and rates of accidents, injuries, and assaults on transit workers based on data submitted to the National Transit Database. Also, the transit agency's comprehensive staff training program must include maintenance personnel and de-escalation training.

The analysis presented in Table 1³, which estimates the staff and hours needed to meet these new administrative and reporting requirements, seem low. As one example, Table 1 indicates only 24 first-year hours for a human resources manager and 24 first-year hours for a safety manager are needed to set up a safety committee at a transit agency. These hours seem low considering overall coordination time, meeting time, development of a final committee operations plan, and agency review and approval time. A cursory review of Table 3, which outlines the costs estimated for other mandates, including de-escalation training, continuous improvement processes, risk reduction programs, and frontline worker involvement with agency safety plans, also indicates these costs seem low.

According to FTA, the proposed rule would reduce the risk of fatalities and injuries for transit workers, bus passengers, drivers, and pedestrians if transit agencies adopt safety risk mitigations that they would not have adopted under current agency safety plans or spending levels. FTA expects that agencies would be more likely to adopt mitigations to reduce the risk of bus collisions and transit worker assault. Example mitigations include bus sensors and surveillance systems to detect objects and pedestrians and

³ <https://www.federalregister.gov/documents/2023/04/26/2023-08777/public-transportation-agency-safety-plans>

bus operator barriers to protect drivers. One challenge is that mitigation measures like these are not easily available and require significant testing to be fully operational and accepted by local agencies. There are no readily available or accepted standards for such systems. Although there has been research and development on such systems, considerable additional research and testing is needed to fully implement widely acceptable systems.

Clarifications on terminology

The NPRM proposed to add a definition of “public transportation,” which would mirror the statutory definition found in 49 U.S.C. 5302⁴. The proposed new regulation includes a definition of “rail fixed guideway public transportation system” that is confusing and inconsistent with the language in 49 U.S.C. 5302. The law defines “fixed guideway” as a public transportation facility:

- (A) using and occupying a separate right-of-way for the exclusive use of public transportation;
- (B) using rail;
- (C) using a fixed catenary system;
- (D) for a passenger ferry system; or
- (E) for a bus rapid transit system.

The new proposed regulation under Section 673.5⁵ should clearly state the definition of fixed guideway using the language of 49 U.S.C. 5302 in order to avoid ambiguity and confusion. It should be clear under the proposed new regulation that bus rapid transit systems and downtown people mover systems (such as those in Detroit, Miami, and Jacksonville, Fla.) are covered. In addition, overhead fixed catenary systems and passenger ferry systems should also be addressed, and an indication included whether or not these systems are covered in the proposed new regulation.

Risk reduction program

The proposed rule would establish a risk reduction program for transit operations to improve safety by reducing the number and rates of accidents, injuries, and assaults on transit workers. This program would also aim to reduce vehicular and pedestrian accidents involving buses with measures to reduce visibility impairments for bus operators that contribute to accidents, including retrofits to buses in revenue service.

In the case of bus rapid transit operations in mixed highway traffic, bus operations involving railroad crossings, and future autonomous shuttle operations, an effective risk reduction program would have to be based upon vehicular (including highway and railroad vehicles) data available from local and state highway agencies and railroad companies. Considerable and frequent systematic coordination between transit agencies and local and state highway authorities and railroad companies would have to be initiated that currently does not exist. Such coordination would add considerable cost to the implementation of the new regulation. However, although costly, such new coordination could be effective in reducing accidents and improving operations and enforcement processes on roadways and

⁴ <https://www.govinfo.gov/content/pkg/USCODE-2021-title49/pdf/USCODE-2021-title49-subtitleIII-chap53-sec5302.pdf>

⁵ <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-VI/part-673/subpart-A/section-673.5>

transitways, particularly in areas where transit services, roadways, and railroads intersect with each other. This would also increase interagency cooperation.

Conclusion

ASCE thanks FTA for collecting input on this proposed rulemaking regarding PTASP. While the proposed new requirements have the potential to improve safety across transit systems, there are certain agency resource and coordination needs that should be noted. ASCE stands ready to answer any questions about these comments and looks forward to working with FTA on this proposed rulemaking.