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April 5, 2016

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

RE Federal Transit Administration, Docket No. FTA-2015-0021

Dear Docket Clerk:

This letter is being sent on behalf of the 182 public transportation providers, businesses and members of the South West Transit Association (SWTA), from the states of Arizona, Arkansas, Colorado, Kansas, Louisiana, New Mexico, Oklahoma and Texas.

We are submitting comments in response to the notice of Proposed Rule-Making (NPRM) by the Federal Transit Administration (FTA) to establish Public Transportation Agency Safety Plans.

Safety is a key component for the transit agencies in our region and the customers we serve. Our members take pride in their safety and security record which is a part of the everyday commitment to passengers, employees and their communities. Our agencies provide on-going training, preventative and responsive maintenance for capital assets, excellent administrative oversight and open communication inside and outside their organizations.

For the record, according to 2015 National Transit Database

- 5307 bus operators in the SWTA region reported ZERO passenger or employee fatalities. These same bus operators logged 416,663,938 vehicle miles during 2015.
- Rail operators in the SWTA region reported ZERO passenger or employee fatalities.

According to 2014 National Transit Database

- Rural operators in the SWTA region reported ZERO passenger or employee fatalities.

We realize there is more to safety and security than a fatality report, but this does illustrate that current plans are working well in the SWTA region. We agree with AASHTO's statement, *"the excellent safety record of bus transit fully justifies FTA's proposal to exclude bus transit from the scope of the rule in this*

docket. The final rule should follow that approach and the notice in the Federal Register of the final rule should clearly affirm that approach.”

We do support reasonable, scalable safety plan implementation. Many of the proposed rules in the FTA’s NPRM are very good, especially for complex transit systems, while others cause us concern.

Proposed rules and our response:

- **STAFFING: 5310, 5311, Tribal, and small 5307** transit managers can wear many hats, and the administration staff can consist of two to three people sharing duties. Some of the proposed rules will put an undue burden on these systems. The SMS requirement for a designated accountable executive as well as other positions beyond the Board or Tribal Council is problematic because the staff simply doesn’t exist the way the proposed rule seems to envision it. The proposed rule introduces new reporting requirements not yet defined. In order to comply with some of the proposed SMS requirements, there may be a need to hire consultants or staff to handle the extra reporting paperwork and separation of positions. As you know, resources are limited as is. Our preference would be for FTA to adopt language that states, “*at agencies where such delineations exist between administrative positions*”.
- **DESIGNATED ACCOUNTABLE EXECUTIVE:** Our concern is that the designated accountable executive might result in someone being so far removed from day to day transit operations, such as a Mayor OR County Executive, thus creating a potential safety risk because this person will lack the needed operational knowledge of the transit agency and be unable to provide proper oversight. We need FTA to find a more practical definition and solution.
- **SAFETY PLAN REVIEW:** We agree with the need to create a safety plan within a calendar year of the FTA’s final rule, approved by an accountable executive and a Board of Directors, that is annually reviewed, updated and certified via a formal process. We believe a safety plan is a vital part of operations. However, our recommendation is to incorporate the safety plan review into the existing review process we already engage in. We caution that it may take longer than a year to write the plan according to specifications, find the personnel, train all involved, and then get the plan certified.
- **CLEAR GUIDANCE AND THE TWO TIER SYSTEM:** As you are aware, large differences exist between rail transit operators, large bus operators and smaller operators – both in the way we do business and in our rate of accidents and the consequences of those accidents. The way the proposed rule reads now, the categories are too broad and rigid and could have unintended consequences for small operators. The rigidity of the two-tier system could cause a 5307 system, under 100 vehicles to have their oversight provided by the State, but they want or need to maintain local control. The two-tier system does not take into account a 5311 operator who may serve multiple counties with over 100 vehicles. There is no definition for this type of system within the tiers and the 5311 system might be bumped into the higher category. We respectfully request FTA to be clear in the guidance pertaining to the ‘100 buses in revenue service standard’ applying only to 5307-funded operators.

- SCALABILITY: We respectfully request FTA to provide very clear guidance regarding how to scale the SMS principles for our system type. We have heard FTA say, *“When you’ve seen one transit system, you’ve seen one transit system”*. With that in mind, scalability is important because we do not have the sophisticated resources to create a plan that would in turn not fit our operation.
- STATE INVOLVEMENT IN DRAFTING A SAFETY PLAN: For some states, it may be a reasonable request for the State to provide oversight beyond their current duties. In others, with multiple responsibilities and multiple 5310/5311 operators to manage, adding the responsibility of overseeing small urban 5307 operators to the mix could prove undaunting.
- 5310 OPERATORS: We feel a 5310 operator who provides a menu of human services, along with transportation, could be adversely effected by the use of the ‘EXCLUSIVE CLOSED-DOOR’ exemption. This portion of the rule has the potential of shutting down local community service, because of the coordination efforts with other agencies. Many simply could not comply with the ruling, thus reducing mobility for vulnerable populations. We support CTAA’s recommendation, *“The FTA should remove Section 5310 recipients from safety plan requirements.”*
- PROTECTION OF DATA: We support the APTA statement on protection of data, *“FTA must maximize protection of data and press for explicit authority to protect data from discovery or admission into evidence in judicial proceedings. SMS, by its nature, requires full and frank review, evaluation, and prioritization of risk. The possibility that the product of this process will be released through the Freedom of Information Act (FOIA), state sunshine laws, or obtained and used against an agency in judicial proceedings clearly serves as a barrier to such documented self-examination. While provided no explicit authority to preserve the confidentiality of documents, FTA should affirmatively state its intent to protect agency safety analyses to the maximum extent authorized under current law. Moreover, FTA should unequivocally state its intent to pursue full authority to exempt safety analyses from discovery and use in judicial proceedings, and follow through on that intent. This coverage should extend to Transit Asset Management analyses as well, to preclude circumvention of rules intended to encourage strong safety cultures in agencies.”*

Thank you for considering our comments.



Kristen Joyner
Executive Director
South West Transit Association