

October 2, 2015

Honorable Therese McMillian
Acting Administrator, Federal Transit Administration
U.S. Department of Transportation
1200 New Jersey Avenue S.E.
Washington, DC 20590

Re. Docket No. FTA-2015-0009

Dear Administrator McMillian:

The American Association of State Highway and Transportation Officials (AASHTO) is pleased to provide comments on the Federal Transit Administration's (FTA) "Public Transportation Safety Program" proposed rule (Docket Number FTA-2015-0009), published in the Federal Register on August 14, 2015. Representing all 50 states, the District of Columbia, and Puerto Rico, AASHTO serves as a liaison between state departments of transportation (DOTs) and the federal government.

AASHTO and State DOTs strongly support safety in public transportation and believe that MAP-21's transit safety provisions can be implemented in a manner that advances a safer transportation system without imposing undue regulatory and implementation burdens on States and others. There are a number of challenges ahead in the effort to achieve those goals. It is our intent that AASHTO and the State DOTs continue to engage with U.S. DOT by working together to address these challenges.

AASHTO's primary comments specific to this Noticed of Proposed Rule Makings (NPRM) on public transportation safety are as follows and as described in detail below:

1. *Rulemaking should result in regulations that are relevant and properly scaled to the greatest extent practicable; specifically, FTA should provide a separate approach for smaller bus systems that is not unduly burdensome.*
2. *Flexibility should be authorized at the state level to implement requirements.*

Rulemaking should result in regulations that are relevant and properly scaled to the greatest extent practicable; specifically, FTA should provide a separate approach for smaller bus systems that is not unduly burdensome.

FTA continues to acknowledge in various forums that a one-size fits all approach is not appropriate and AASHTO agrees. FTA has also acknowledged that the national approach must be scalable, and AASHTO agrees. However, a **scalable** approach alone is insufficient. The requirements must be properly scaled and they must be **relevant for all transit systems to which they apply**. FTA can and should do much more to set parameters at the outset that properly scale its requirements and to make the requirements relevant to the problem at hand. Otherwise, transit providers are faced with the effort to comply with requirements that are not really applicable to their circumstances or are excessive.

FTA's proposed approach—which includes the language it uses in regulatory and guidance materials and the examples used to define the safety problem/issue and FTA's proposal to use Safety Management System (SMS)—is relevant only to the experiences, organizational cultures and institutional capacities of large urban rail systems. (As an example, the NPRM used rail incidents in Chicago, Washington D.C, and San Francisco to try to make the case for its approach to transit safety.) By continuing to use examples and language that are urban rail focused, FTA may be inadvertently making it difficult for the nation's small urban and rural bus systems to embrace, much less implement, FTA's safety objectives.

As we noted above, FTA's approach/language is very urban rail focused, however, there are significant differences in safety issues in a bus-only environment. Therefore, each of the 50 state DOTs will need to adjust and scale the national language to make it relevant, effective and translatable to small urban and rural bus systems. This is an inefficient process and States are concerned that FTA may not agree with how the States, each individually, attempt to achieve that scaling/relevance.

Consequently, FTA should address safety for small urban and rural bus systems with specific national language and concepts that can be integrated with the pre-existing safety systems of these smaller operators as we discuss more in the paragraph below. This can be done in a manner that is consistent with SMS terminology while also taking into account flexibility of implementation at the state level. Using bus specific language and concepts is important in this rulemaking, but it will become even more critical when FTA proposes the rules for agency safety plans, any guidance materials, and templates. At that time it will be essential that FTA uses language, concepts, and examples that State DOTs can immediately use with their bus system subrecipients.

Therefore, AASHTO continues to advocate that for bus only systems, FTA's focus and approach to safety not be based solely on SMS but instead be based on the language and concepts set forth in the voluntary bus safety program that emerged from the Memorandum of Understanding (MOU) signed by FTA, AASHTO, the American Public Transportation Association (APTA), and the Community Transportation Association of America (CTAA) in 2003. AASHTO

believes the 2003 MOU lays out a program of driver training, drug and alcohol compliance oversight, vehicle maintenance, specification standards and current National Transit Database (NTD) reporting, that has provided bus only systems with an unparalleled safety record at or approaching zero fatalities and should drive FTA's approach under MAP-21.

To limit the prospect that this and future proposed rules will be construed as precluding the alternate approaches that AASHTO has described above, the proposed rule should give FTA more flexibility. One way to do this would be to insert, immediately before the period at the end of proposed 49 CFR 670.3, the following: “, except as may be otherwise provided.” With such a modification, FTA clearly would be able, in future rulemakings and its guidance materials, to adopt and implement approaches that may not be construed as SMS approaches. Without some such clause to clearly provide for an exception, any specific safety rule that FTA adopts could be subject to uncertainty as FTA and the recipients try to implement not only that specific rule, but 670.3, which provides that all of FTA's rules “will follow the principles and methods of SMS”.

Flexibility should be authorized at the state level to implement requirements.

For the nation's small bus systems, AASHTO supports that safety planning and administrative requirements need to be flexible. AASHTO also believes that the planning and administrative requirements would be best addressed at the State level when applied to the State's Section 5307 and 5311 subrecipients. Therefore, AASHTO continues to advocate that FTA allow for flexibility in how MAP-21 safety requirements are implemented for the state DOT-lead programs. Specifically, states should have the flexibility of approaching the requirements at the state (i.e., grant recipient) level. Therefore, the FTA rules should **allow for and not require** implementation at the individual subrecipient level.

AASHTO is cognizant that the definition of recipient used in the safety section of MAP-21 is “a State or local governmental authority, or any other operator of a public transportation system that receives financial assistance under this chapter.” States understands from recent dialogues with FTA officials that the safety section of MAP-21 provides FTA the authority to require safety plans for each of a state's subrecipients under both the Section 5310 and 5311 programs. However, FTA has the ability to allow a state DOT, as the “direct” grant recipient, to take on the safety planning for its subrecipients in a single statewide approach and to submit a single comprehensive plan that covers all its subrecipients. With the States' encouragement, subrecipients' voluntary participation in the FTA SMS Gap Analysis and Safety Assessment program would facilitate greater agency-specific safety planning, while still taking into account the precepts of SMS; this may prove much more useful in the long run.

As it relates to the application of the requirements, AASHTO is adamant in its position that the application of SMS and a requirement for individual agency safety plans for Section 5310 operators is not a practical, feasible, or necessary endeavor for either the States or FTA. These

are largely small social service agencies with small bus fleets that provide transportation as part of a larger suite of services. These agencies will benefit more from ongoing safety dialogue at the State level that is relevant to their unique role and circumstances. It should also be noted that the language in Section 5329, which makes specific reference to the Section 5311 and 5307 programs and no references to Section 5310, supports AASHTO's position that FTA is not required to and should not apply these new safety provisions to the Section 5310 program and its subrecipients.

Building on the major concepts presented above, FTA's safety oversight compliance for state DOTs and their subrecipients can be effectively integrated into the comprehensive State Management Review process with additional State Safety Management Oversight reviews done in the same manner Financial Management Oversight and Drug and Alcohol Oversight reviews are done now for State DOTs.

However, a State agency that takes on these roles of planning and administrative support for subrecipients is, in most if not all cases, not actually operating public transit systems or equipment that serves the public. In this regard, the proposed rule would define an "accountable executive" as the person with ultimate authority "for carrying out the safety management system of a public transportation agency." The FTA should clarify this definition by adding language such as "a State DOT, by virtue of providing funds, advice, or administrative planning or support to a subrecipient agency, is not an accountable executive with respect to that agency." This does not mean that States are not and will not be concerned with safety at the subrecipient level. But, in most if not all cases, the State agencies are not actually driving the bus, supervising drivers, or taking other implementing actions. They are providing support and framework services.

Also, in recognition that the State DOT is—for most states—not the transit operator, AASHTO recommends the language in Subpart C of proposed part 670 be limited in scope. In this subpart, FTA spells out enforcement provisions, including: imposing more frequent reporting by a recipient, requiring a recipient to spend more federal funds on safety, ordering a recipient to prepare and implement a corrective action plan, withholding federal funds, and issuing a special directive or advisory to a recipient. While it seems highly unlikely, there is the possibility, that the "recipient" in question is a state subrecipient, such as a Section 5311 subrecipient. Therefore, Subpart C should have additional language that indicates when the recipient is a subrecipient of the state, any and all FTA enforcement actions will be limited to the particular subrecipient. For example, FTA should only be able to prohibit the state from passing Section 5311 funds onto a particular subrecipient and should not be able to withhold Section 5311 funds from the state as a whole in response to an issue with a single subrecipient.

We appreciate the opportunity to provide these comments and look forward to working with FTA in the implementation of final rules. If you would like to discuss the issues raised in this letter, please contact Shayne Gill, AASHTO's Senior Program Manager for Aviation, Passenger Rail and Public Transportation at (202)624-3630.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Trombino III". The signature is fluid and cursive, with a prominent initial "P" and a stylized "T".

Paul Trombino III, President
Director, Iowa Department of Transportation