

April 4, 2016

Acting Administrator
Federal Transit Administration
United States Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Public Transportation Agency Safety Plan (Docket Number FTA-2015-0021)

Dear Acting Administrator:

The American Association of State Highway and Transportation Officials (AASHTO) is pleased to provide comments on the Federal Transit Administration's (FTA) "Public Transportation Agency Safety Plan" (Docket Number FTA-2015-0021) Notice of Proposed Rulemaking (NPRM) published in the Federal Register on February 5, 2016. Representing all 50 States, the District of Columbia, and Puerto Rico, AASHTO serves as a liaison between State departments of transportation (DOT) and the Federal government.

AASHTO and State DOTs strongly support efforts to improve transportation safety, including in the already extremely safe public transportation mode, 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 some recognized challenges ahead in the effort to achieve those goals and AASHTO and the State DOTs will continue to engage with U.S. DOT to address these challenges and work together.

State DOTs have robust safety programs in place for their subrecipients focused on: driver training, drug and alcohol compliance, vehicle maintenance and specification standards, and the collection and reporting of safety data to the National Transit Database. For its subrecipients, the States' current approach to safety is yielding exceptional results. While we support a number of aspects of the proposed regulations, there are also a number of areas in which State DOTs have important concerns. AASHTO believes that safety principles can be implemented without overly burdening states, small providers, and Section 5310 and 5311 subrecipients. We recommend that FTA take action to address those concerns in finalizing this regulations.

These comments represent a substantial effort among State DOTs to thoroughly review and comment on the Public Transportation Agency Safety Plan NPRM.

AASHTO strongly supports FTA's proposal to defer to a State DOT's preference and allow flexibility for State DOTs to draft a single statewide safety plan or draft individual agency safety plans on behalf of its individual Section 5310 and Section 5311 subrecipients. AASHTO also is encouraged by FTA's

expressed intention to develop sample templates for safety plans, as the final rule should clearly provide that a State can meet its safety planning responsibility under this rule through development of a template plan, whether that approach is considered to be a statewide plan or a series of identical (or nearly identical) individual plans.

As discussed in the attachments to this letter, AASHTO does not support any mandate placed on the states to fulfill the planning obligations for any providers other than its Section 5310 and 5311 subrecipients. In addition, AASHTO agrees that our Section 5310 and 5311 subrecipients may not have sufficient resources for a full time Safety Officer. AASHTO also supports FTA's decision that Section 5310 and Section 5311 subrecipients may assign an adequately trained Safety Officer to serve other agency functions.

AASHTO's comments on the NPRM are set forth in this letter and two attachments. The first attachment, *AASHTO's Key Points*, outlines specific comments to this NPRM. The second attachment, *AASHTO Response to FTA Questions*, provides FTA with more specific details for particular questions and provides a concise and convenient manner for FTA staff to review AASHTO's response. The responses to specific questions are intended to be read in the context of the overview points made in this letter and the *Key Points* document. This comment letter should be read in conjunction with AASHTO's comments on the National Public Transportation Safety guidance ([attached as an Appendix to these comments](#)).

We appreciate the opportunity to provide these comments. If you would like to discuss the issues raised in this letter, please contact Shayne Gill, AASHTO's Program Director for Multimodal 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 stylized "P" and "T".

Paul Trombino III
President, American Association of State Highway and Transportation Officials
Director, Iowa Department of Transportation

AASHTO'S KEY POINTS

As noted in our cover letter and as further described in our detailed comments below, AASHTO does not support any mandate placed on the states to fulfill the planning obligations for any providers other than its (open door) Section 5310 and 5311 subrecipients. Therefore, throughout our comments, we speak to the proposed regulations in terms of their impact on our Section 5310 and 5311 subrecipients. We believe many of the comments also pertain to what FTA appears to be defining as “small” providers (i.e., Section 5307 recipients that are bus only operators with fewer than 100 buses). However, AASHTO is focusing its comments on the impacts on providers that receive their FTA formula funds and their federal compliance oversight from state DOTs.

AASHTO appreciates the flexibility and reduced requirements for Section 5310 subrecipients.

AASHTO is supportive of the aspects of the proposed rule that would provide flexibility to states and reduce requirements for the small systems that are our subrecipients under the Section 5310 program. Section 5310 subrecipients do not have the staff, money, or resources to implement all aspects of the Safety Plan and the nature of their services and their safety record warrant an approach that is not the same as for other providers. Therefore, AASHTO is pleased that Section 5310 subrecipients (that are closed to the general public and only available for a particular clientele) are not required to develop and certify a Public Transportation Safety Agency Plan. These nonprofit and other community service organizations that receive Section 5310 funds provide an invaluable service to their community.

AASHTO strongly recommends that States should not be required to prepare and certify safety plans for Section 5307 providers.

States have a regular relationship with subrecipients under Section 5310 and 5311 programs but do not have a regular relationship with transit providers that receive funding directly from FTA under the Section 5307 program, even if those 5307 providers also sometimes receive funds passed on by the State under 49 U.S.C. 5339. The relationship between the State DOT and Section 5307 program participants differs significantly from the State's relationship with Section 5311 and 5310 subrecipients and the relationships vary considerably from state to state. For urban Section 5307 agencies, each State DOT should be given the flexibility to define the role it will play based on whether these agencies are direct recipients of FTA or subrecipients of the State. The only obligation regarding agency safety plans that should be placed on the state in the rules should be for its Section 5310 and 5311 subrecipients. (For (open door) Section 5310 subrecipients the mandate on the state would only be for its Section 5310 subrecipients, not subrecipients of the Section 5310 funds whose projects are administered by direct recipients other than the State). This approach is consistent with AASHTO's position in the transit asset management (TAM) docket.

In addition, and as noted below, AASHTO believes that it will be feasible and will yield meaningful results for a state to assess risk across all our (open door) Section 5310 and 5311 subrecipients. The same may not be true for a state's Section 5307 providers. For these providers the state does not report their safety data in National Transit Database (NTD), control their federal investments or have the level of knowledge of their individual systems as we do for our subrecipients. These agencies are also much more apt to have passenger facilities, fixed route services and complex management/labor agreements

that require agency specific safety actions. Therefore, there would be considerably less value for a statewide plan and little rationale for the state to assume the planning responsibility for individual providers.

AASHTO strongly supports FTA’s proposal to defer to a State DOT’s preference and allow flexibility for State DOTs to draft a single statewide safety plan or draft individual agency safety plans, including plans following or closely following a template, on behalf of its individual (open door) Section 5310 and Section 5311 subrecipients.

States should be given the flexibility to decide if they would like to draft a single statewide safety plan or draft individual agency safety plans. States should have the ability to allow for statewide safety plans that include scalable requirements that are based on the safety performance of the transit organization and that add to the safety initiatives of the federal, state, and local transportation organizations. Our (open door) Section 5310 and 5311 subrecipients are for the most part demand response agencies with no passenger facilities. They have very common safety risks and hazards and we believe it will be feasible and will yield meaningful results for the state to assess risk across all these providers and then—if needed—supplement the statewide assessment with provider-level analysis for those providers that may—based on their safety record—require agency-level risk and hazard assessment. These plans should include specific safety metrics so performance can be measured, monitored, and reported by the state without being overly burdensome and detract from the goal of the safety. This concept is in-line with Safety Management System (SMS) because it is based on the principle that “one size does not fit all,” and enables states to determine their own safety risks and appropriate targets.

Templates would be of the utmost importance to successful safety planning. AASHTO strongly supports FTA’s proposal to *provide safety plan templates for states and transit agencies, keeping in consideration differences in size, complexity and operating characteristics*. States should be provided the flexibility that the plan might be a standard plan for its (open door) Section 5310 or 5311 subrecipients as a whole but that it is then adopted and implemented by each provider. In regards to the template, as noted with comments above, AASHTO suggests that in the template a transit agency’s unique situations could be addressed in an appendix for an individual agency (e.g., for X transit agency, an appendix to the template plan that would only apply to them would say “no operation during icy conditions on the steep grade on first avenue”). By providing agencies with the ability to attach an appendix to the template, it allows the State to avoid multiple unique plans but capture a few unique issues without the relevant agency opting out or the state having to start from scratch in developing a safety plan for each agency.

When an agency “opts out” of the statewide plan (or state template) and develops its own, the final rule should be clear that the agency that opts out is then dealing directly with FTA and the State has no obligation to review its plan or provide any certifications.

AASHTO recommends that the rule require Native American tribes to develop their own safety plans, even when they are subrecipients of the State under the Section 5311 program, except to the extent that a State and a given tribal transit agency voluntarily agree to have the state prepare the plan for a subrecipient.

American Indian and Alaska Native tribes are sovereign entities with powers of self-governance. Similar to our comments for TAM, providing for tribal independence in the safety planning process will help prevent any sovereignty issues, avoid confusion, and give a clearer picture of the tribe’s status and needs. Additionally, as per our comments in the Advanced Notice of Proposed Rule Making (ANPRM),

FTA should take the lead on this even if the State provides the tribal agency Section 5311 funds, because tribal agencies no longer provide their rural NTD report to State DOT's. AASHTO proposes that tribes develop their own plans, have the plans approved by their tribal leader, and certify to FTA that their plans are in place, except for those cases where a State and a given tribal transit agency voluntarily agree to have the state prepare the plan for a subrecipient.

AASHTO recommends that the final rule should make clear that a State is not a transit “provider” and that state officials are not “Accountable Executives”.

Similar to AASHTO’s comments for the TAM Plan, AASHTO is concerned about how this rule treats a State that does not actually provide transit service but only passes through funds, and complies with regulatory and administrative requirements, such as drafting and certifying safety plans.

The proposed rule is not as clear as it should be that a state official is not an “accountable executive” if the State is not also a transit provider. The definition of “accountable executive” uses the term public transit “agency,” not “provider.” However, in the NPRM narrative FTA consistently describes the “accountable executive” in terms of a provider, for example: Page 6359, column 2, “FTA proposes to include a definition for “Accountable Executive” that identifies the person at a transit agency that has responsibility and accountability for the implementation of SMS and control and direction of the Public Transportation Agency Safety Pan and the Transit Asset Management Plan.”

AASHTO recommends that FTA should amend the definition of “accountable executive” by adding a sentence such as: “An official of a State may not be considered to be an accountable executive unless the State is a transit provider and, if so, only with respect to the State’s activities as a transit provider.”

In addition, AASHTO recommends that FTA amend the definition of “transit provider” by adding a sentence such as: “A State is not considered to be a transit provider by virtue of passing on funds to subrecipients under 49 U.S.C. 5310, 5311, or 5339, administering these programs, developing and implementing a TAM plan, or safety plan or certifying a safety plan, or taking any other steps required of a State by Chapter 53 of title 49, United States Code or other federal statute, or by this or other FTA rules.” We believe that this is consistent with FTA’s intent and will represent a common sense clarification that draws a line between those actually providing transit service and those undertaking administrative-type work that is relevant to those that are actually providing transit service.

AASHTO recommends a revised, more practical definition of State of Good Repair (SGR).

The draft National Public Transportation Safety Plan would define a “state of good repair” as “the condition in which a capital asset is able to operate at a full level of performance” (emphasis added).¹

While this definition is identical to the definition set forth in FTA’s proposed transit asset management (TAM) rule at proposed 49 CFR 625.5, the asset management rule, unlike the proposed safety rule, included additional language that helped explain the meaning and regulatory relevance of the “state of good repair” definition.

¹ See page 53 of the draft National Public Transportation Safety Plan (by virtue of statute and proposed 49 CFR 673.11(a)(3), the definitions in that national plan of SGR and performance measures (criteria) are applicable to the proposed public transportation agency safety plan rule.

In the asset management proposed rule, proposed section 625.41, “Standards for measuring the condition of capital assets,” was a regulatory application of SGR. There, FTA explained that standards set forth in 625.41 “must be met for an asset to achieve a state of good repair.” More specifically, that section provided that for an asset to be in a state of good repair: it must be “able to perform its designed function”; if used, it must not pose a known “unacceptable” safety risk; and its life-cycle investment needs must have been met or recovered, including scheduled service.² Such additional information is absent from the proposed National Public Transportation Safety Plan and the proposed public transportation agency safety plan rule for providers.

Absent any elaboration, “full” level of performance appears to be an impractical, vague and unrealistic definition, suggesting that a bus or van, for example, is functioning as a brand new vehicle in ideal condition.

Accordingly, AASHTO strongly recommends changing the definition of state of good repair set forth at page 53 (of the draft National Public Transportation Safety Plan) so that it is more consistent with the definition in the FTA’s proposed asset management rule. Thus, we would amend the current definition such as by striking “operate at a full level of performance” and substituting “perform its designed function.”

Other options could include substituting “safely perform its designed function”; or “satisfactorily perform intended purposes.” The essential point is that a final plan and rule must not include an impractical “full performance” definition of state of good repair.

AASHTO would also like to note that in the TAM NPRM narrative, FTA says their definition of SGR is an “aspirational” condition – they also refer to it as “an ideal condition.” AASHTO understands that FTA is required by law to define SGR, but if FTA is going to retain a definition that is aspirational it is by definition not achievable and therefore FTA should make it clear that the definition does not have regulatory effect.

AASHTO does not support the level of detail required in the proposed rule.

AASHTO appreciates that FTA has consistently maintained that “SMS implementation is inherently scalable.” However, we find the content of these proposed rules to be in direct conflict with the concept of scalability. Specifically, Subpart C provides very prescriptive requirements for the “SMS elements that each transit agency must establish in its Public Transportation Agency Safety Plan.” AASHTO does not support this level of detail being codified in rule and believes this content needs to be addressed in templates and associated technical assistance manuals. The templates and technical assistance manuals need to—as FTA commits to in the NPRM—“accommodate the variance in transit system mode, size and complexity.” These templates and technical assistance documents should also accommodate the variance in a transit agency’s safety record.

The details proposed in Subpart C should instead be addressed in templates and associated technical assistance manuals that also guide agencies on how to scale their approach to each specific element based on their size, mode and safety record. FTA certainly recognizes that safety systems are to be scaled. In proposed 49 CFR 673.21 FTA proposes, in relevant part that:

² See proposed 625.41(b).

A transit agency Safety Management System must be appropriately scaled to the size, scope, complexity and safety record of the transit agency and address, to the degree applicable, [a list of elements].

AASHTO recommends that the transit agency (or, as applicable, the State DOT for subrecipients) should decide the scaling, especially in a zero fatality environment. The agency or state would be better positioned than FTA to appreciate how to “appropriately scale” these items. Accordingly, FTA should, in the above-quoted portion of the proposed rule, strike “appropriately scaled” and substitute “appropriately scaled by the agency or, if applicable, State.”

AASHTO strongly urges FTA to avoid duplicative requirements in the proposed performance measures.

The draft National Public Transportation Safety Plan lists four performance measures: fatalities, reportable injuries, reportable safety events, and reliability (mean distance between failures).

Per AASHTO’s Advanced Notice of Proposed Rulemaking (ANPRM) comments, the performance criteria and measures should be the safety outcomes already reported to NTD: reportable incidents, fatalities, and injuries. These safety criteria and measures are consistent with the Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration’s (NHTSA) major measures that have been developed over decades and are focused on the desired end result. Considering transit fatalities are far fewer in number, it would not be reasonable for the transit mode to have more complex measures. The reliability data is not currently collected for NTD purposes and would represent a meaningful new tracking and reporting burden for all providers – as well as for the States that provide such data for subrecipient providers.

Reliability, unlike fatalities, reportable injuries and reportable safety events, is not a safety measure. It is a maintenance-related measure. FTA has taken the position that State of Good repair is also related to safety. That should be enough in this regard as AASHTO believes that there is substantial overlap between attempting to measure reliability and encouraging the industry to achieve a state of good repair for assets. Assets that are in a state of good repair will be reliable.

Therefore, for all of these reasons, AASHTO does not support reliability as a national safety performance measure and asks that it be deleted from the plan and rule. It can remain an indicator of overall service quality to be adopted by individual providers at their discretion. Even without it, the overall package of proposals being advanced by FTA, even after any modification in response to comments from AASHTO and others, will move industry towards greater reliability. FTA is proposing many new regulatory requirements at this time and new requirements should not be duplicative or overreaching.

AASHTO recommends that a State or transit agency should “consult” with Metropolitan Planning Organizations (MPOs) during the planning process.

AASHTO proposes the revision of 49 CFR 673.15, regarding coordination with the planning process. Subsection 673.15 (b), as written, would require a State or transit agency to “coordinate” with States and MPOs “to the maximum extent practicable” in the “selection of State and MPO safety performance targets.” As this provision is not required by statute, AASHTO is proposing a change to a

“consultation” requirement. This requirement for coordination would be an excessive time burden for States and transit agencies. MPOs generally do not operate transit service and do not have transit operations and safety expertise or experience.

AASHTO strongly supports FTA’s recognition that it is not practical for the safety officer to be a full time job for (open door) Section 5310 and 5311 subrecipients.

AASHTO agrees that many smaller agencies may not have sufficient resources to hire a dedicated, full time Safety Officer. In many cases, a transit agency’s Safety Officer may serve several other functions, including those related to safety, operations, and maintenance. AASHTO supports FTA’s proposal that Section 5310, Section 5311, and small public transportation providers may assign an adequately trained Safety Officer to serve other agency functions.

AASHTO strongly suggests that the Safety Agency Plans need only to be updated every two years.

As stated in AASHTO’s ANPRM letter, the requirement for an annual update of Safety Plans is excessive and burdensome. If annual action is needed, an annual review and status report would be less resource intensive. Updates should be driven more by a change in condition or policy. AASHTO suggests that the Safety Agency Plans need only to be updated every two years, unless there is a significant policy or change in condition (such as a fatality) that warrants a change. AASHTO proposes that any system that had no fatalities in the two years preceding the date of publication of the final rule need only update the safety plan every two years—at which time if it had not had a fatality for the two prior years, again, it would not need to undertake an update for two years. This approach incentivizes good performance and reduces the burdensome approach of an annual update.

AASHTO suggests that only driver safety training should be required for Section 5310 and 5311 agencies.

AASHTO strongly opposes that Section 5311 and 5310 agencies need to have a comprehensive staff training program that includes the completion of a training program and continuing education and training. This additional staff training program will be a financial and administrative burden to small providers that do not have the time or resources to provide an all staff training. FTA should only mandate that driver safety training is required. For its subrecipients, the States’ current approach to safety is yielding exceptional results. State DOTs have robust safety programs in place for their subrecipients.

AASHTO recommends technical assistance tools be provided to States and others in a timely manner.

Similar to AASHTO’s comments in the TAM docket, AASHTO suggests that technical assistance tools should be distributed to States and others in a timely manner. Currently, there is no mandated timeframe for when FTA will provide technical assistance tools.

AASHTO recommends a delay in the effective date so that this rule would have a phase-in similar to that provided for the TAM plan rule.

AASHTO recommends that the Agency Safety Plan final rule should follow the FTA's proposal for TAM as to the phase in of requirements. In the TAM proposal, the effective date of the proposed rule's requirements is to be two years from the final rule's effective date, with an opportunity to apply for an extended deadline (see proposed 625.31 of the TAM NPRM). In the TAM plan docket there is no clear indication that the effective date of the rule would be substantially different than the usual shortly after publication. So, for TAM, the effective date of requirements is proposed by FTA to be approximately 2 years from publication of the final rule, with an opportunity for further extension.

As to safety plans, 49 USC 5329 requires the safety plans to be in effect one year after the effective date of FTA's final rule. AASHTO suggests that the effective date of the Agency Safety plan final rule be specified in the final rule as at least one year after publication. A delay in the effective date of the rule would provide much needed additional time to implement the requirements proposed. One year is a tight deadline for the transit industry (including States) to comply—especially given the scope of the proposed requirements. In short, what is recommended here is to achieve the same time period for the effectiveness of new requirements that FTA proposed for TAM – two years. The wording in the final rule in this docket should specify that the effective date of the rule is a year after publication, so that, combined with the wording in 49 USC 5329, that plans must be in effect one year after the effective date of the rule, a total of two years for effectiveness of requirements is provided.

AASHTO'S RESPONSE TO FTA REQUESTS

1. *FTA invites additional comments on how FTA could support the development of Public Transportation Agency Safety Plans for transit agencies of different sizes and modes.*

We appreciate that FTA has consistently maintained that “SMS implementation is inherently scalable” and that a transit agency safety plan will reflect the agency’s size and mode. As we noted in our detailed comments, the plan should also reflect the transit agency’s safety record. To support the development of plans for agencies of different sizes, modes and safety record, AASHTO believes much of the detail in Subpart C of the proposed rules needs to be eliminated and instead addressed in templates and associated technical assistance manuals where this content could be presented differently based on size, mode and safety record.

2. *FTA invites comments from the public regarding the definition of the term, “operator of a public transportation system.”*

AASHTO would prefer to see all agencies that only receive Section 5310 funds be exempted from this definition and as such the agency safety plan requirement.

3. *FTA seeks comments from the public on these proposals, particularly as to whether a Section 5310 provider operating a public transportation system should be required to develop and implement a Public Transportation Agency Safety Plan, whether or not the entity also receives Section 5307 or Section 5311 funds, and if so, whether that plan should be drafted and certified by a State.*

As noted in response to question #2, AASHTO would prefer to see **all** providers that only receive Section 5310 funds be exempted from the agency safety plan requirement, but will accept FTA’s proposal that all solely closed door Section 5310 systems be exempted.

4. *FTA also seeks comment as to whether a designated recipient under 49 U.S.C. 5310 should draft and certify Public Transportation Agency Safety Plans on behalf of Section 5310 providers in large urbanized areas instead of the State, or if the States should draft and certify those plans.*

The designated recipient or the individual providers should have this responsibility. There is no rationale for the state to have this role since Congress specifically divided up the Section 5310 program, separating out the funds in the urbanized areas as no longer being under the state’s direction and control.

5. *FTA seeks comments on whether any aspect of this proposed rule is duplicative, inconsistent, or conflicts with other Federal agency regulations.*

AASHTO believes FTA’s proposed approach to defining SGR in this NPRM is inconsistent with its approach in the asset management proposed rule. Proposed section 625.41, “Standards for measuring the condition of capital assets,” was effectively a regulatory application of a definition of SGR. In that proposed rule, FTA explained that standards set forth in 625.41 “must be met for an asset to achieve a state of good repair.” More specifically, that section provided that for an asset to be in a state of good repair: it must be “able to perform its designed function”; if used, it must not pose a known “unacceptable” safety risk; and its life-cycle

investment needs must have been met or recovered, including scheduled service. Such additional information is absent from the proposed national transit safety plan and public transportation agency safety plan rule for providers. Therefore we believe the definition of SGR in this NPRM raises considerable questions on its regulatory impact and needs to be adjusted.

AASHTO believes that “reliability” as a proposed safety measure duplicates FTA’s goal of aspiring to a state of good repair for assets. Assets that are in a state of good repair will be reliable and reliability should not be an addition and unnecessary safety measure.

AASHTO believes that the safety performance criteria does not match definitions used in the NTD glossary. Additionally, rural reported do not report these items to the NTD. On page 40 of the National Public Transportation Safety Plan, it states, ““In order to capture the broad and varied nature of public transportation, in this first National Safety Plan, FTA is proposing criteria that can be applied to all modes of public transportation and are based on data currently collected in the National Transit Database (NTD).” However, the details about the four criteria do not match the NTD definitions and rural NTD reporters do not report in the manner described in the plan. Specifically, “fatalities” does not match the definition used in the NTD glossary and the rural reporters do not report fatalities by mode. “Injuries” is included in the NTD glossary, but there is nothing about serious injuries. Additionally, rural reporters do not report injuries by mode. The footnote (11) about “reportable” is used only with the definition for injuries. It is not included for the other criteria, and goes beyond injuries. Third, “safety events” does not match the definition used in the NTD glossary and rural reporters do not report these items. Last, “system reliability” is not defined in the NTD glossary and rural reporters do not report anything about system reliability.

6. *FTA seeks comments from the public regarding the following questions: If a State was to draft a statewide plan, how would the plan respond to the SMS component of Safety Risk Management (i.e. identification of individual agency risks and hazards)? Should FTA require drafting of single statewide plans or individual safety plans on behalf of Section 5310, Section 5311, and small public transportation providers in that State? Or should FTA defer to the State’s preference on this requirement?*

There are already processes in place at State DOT Transit Offices that are able to integrate individual SMS components of Safety Risk Management for small bus public transportation providers to enable the drafting of a statewide agency safety plan. State DOT Transit Offices have annual or biennial processes that lend themselves to distributing and gathering information for its subrecipient transit systems. For example, the federal transit grant application processes and technical site visit oversight processes provide ample opportunity to incorporate individual input from each agency on their major SMS risks and hazards. The individual agency risks and hazards can be updated accordingly into the statewide agency safety plan, supplemented by further guidance and technical assistance from the State.

AASHTO strongly supports FTA’s proposal to defer to a State DOT’s preference and allow flexibility for State DOTs to draft a single statewide safety plan or draft individual agency safety plans on behalf of each open door Section 5310 and Section 5311 subrecipient transportation provider.

States should be given the flexibility to decide if they would like to draft a statewide safety plan or draft individual agency safety plans. States should have the ability to allow for statewide safety plans that include scalable requirements that are based on the safety performance of the transit organization and that add to the safety initiatives of the federal, state, and local transportation organizations. Our (open door) Section 5310 and 5311 subrecipients are for the most part demand response agencies with no passenger facilities. They have very common safety risks and hazards and we believe it will be feasible and will yield meaningful results for the state to assess risk and assessment across all these providers and then—if needed—supplement the statewide assessment with provider level analysis for those providers that may—based on their safety record—require agency level risk and hazard assessment. These plans should include specific safety metrics so performance can be measured, monitored, and reported by the state without being overly burdensome and detract from the goal of the safety. This concept is in-line with SMS because it is based on the principle that “one size does not fit all,” and enables states to determine their own safety risks and appropriate targets.

Templates would be of the utmost importance to successful safety planning. AASHTO strongly supports FTA’s proposal to *provide safety plan templates for states and transit agencies, keeping in consideration differences in size, complexity and operating characteristics*. States should be provided the flexibility that the plan might be a standard plan for its (open door) Section 5310 or 5311 subrecipients as a whole but that it is then adopted and implemented by each provider. In regards to the template, as noted with comments above, AASHTO suggests that in the template a transit agency’s unique situations could be addressed in an appendix for an individual agency (e.g., for X transit agency, an appendix to the template plan that would only apply to them would say “no operation during icy conditions on the steep grade on first avenue”). By providing agencies with the ability to attach an appendix to the template, it allows the State to avoid multiple unique plans but capture a few unique issues without the relevant agency opting out or the state having to start from scratch in developing a safety plan for each agency.

When an agency “opts out” of the statewide plan (or state template) and develops its own, the final rule should be clear that the agency that opts out is then dealing directly with FTA and the State has no obligation or authority to review its plan or provide any certifications.

7. *Two key other elements of the National Safety Plan—the minimum safety performance standards for public transportation vehicles used in revenue standards—may eventually be the subject of rulemaking. For the time being, however, FTA is proposing to establish voluntary vehicle performance standards and voluntary operational standards in this first iteration of the National Safety Plan. FTA seeks specific comments on the following questions related to the proposed standard. (1) Has your agency adopted any of the proposed voluntary standards? (2) What is the cost to your agency of implementing the proposed voluntary standards? (3) What other standards has your agency adopted? (4) In what other areas should FTA establish standards?*

AASHTO defers to the comments of individual agencies.

APPENDIX—NATIONAL PUBLIC TRANSPORTATION SAFETY PLAN



PAUL TROMBINO III, PRESIDENT
DIRECTOR, IOWA DEPARTMENT OF TRANSPORTATION

BUD WRIGHT, EXECUTIVE DIRECTOR

444 NORTH CAPITOL STREET NW, SUITE 249, WASHINGTON, DC 20001
(202) 624-5800 • FAX: (202) 624-5806 • WWW.TRANSPORTATION.ORG

April 4, 2016

Acting Administrator
Federal Transit Administration
United States Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Re: National Public Transportation Safety Plan (Docket Number FTA-2015-0017)

Dear Acting Administrator:

The American Association of State Highway and Transportation Officials (AASHTO) is pleased to provide comments on the Federal Transit Administration's (FTA) draft "National Public Transportation Safety Plan" (Docket Number FTA-2015-0017), notice of which was published in the Federal Register on February 5, 2016. Representing all 50 States, the District of Columbia, and Puerto Rico, AASHTO serves as a liaison between State departments of transportation (DOT) and the Federal government.

AASHTO and State DOTs strongly support efforts to improve transportation safety, including in the already extremely safe public transportation mode, 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 some recognized challenges ahead in the effort to achieve those goals and AASHTO and the State DOTs will continue to engage with U.S. DOT to address these challenges and work together.

State DOTs have robust safety programs in place for their subrecipients focused on: driver training, drug and alcohol compliance, vehicle maintenance and specification standards, and the collection and reporting of safety data to the National Transit Database (NTD). For its subrecipients, the States' current approach to safety is yielding exceptional results. While we support a number of aspects of the proposed regulations, there are also a number of areas in the proposal that we do not support and should be modified.

As mentioned in the draft National Public Transportation Safety Plan, transit is a safe mode of travel that has been getting even safer, with an overall decline of 19 percent for transportation-related fatalities

in the last 10 years. Even without heavy federal oversight, transit systems are inherently safe. More layers of federal requirements will not significantly improve an already very safe mode of transportation and may transfer limited funds away from needed service.

In previous comments, AASHTO has not supported the application of Safety Management System (SMS) since rural transit systems have an impeccable safety history. AASHTO does not support the application of SMS, as laid out in the FTA's Safety Notice of Proposed Rulemakings (NPRMs) and draft National Public Transportation Safety Plan, as the mandated approach to safety, especially for that portion of the nation's transit network that is delivered by State DOT subrecipients. However, AASHTO acknowledges that FTA is committed to that approach and our comments are based on that.

This comment letter should be read in conjunction with AASHTO's comments on the Public Transportation Agency Safety Plan proposed rule (attached as an Appendix to these comments). As one element of the Public Transportation Safety Agency Plan proposed rule would require agencies to establish safety performance targets based on the safety performance criteria and state of good repair standards found in the National Public Transportation Safety Plan, it is vital that FTA read both letters for AASHTO's complete comments on safety.

AASHTO's primary comments specific to the National Transportation Safety Plan are as follows and as described in detail below:

1. *AASHTO recommends a revised definition of State of Good Repair (SGR).*
2. *AASHTO strongly urges FTA to avoid duplicative requirements in the proposed performance measures.*
3. *AASHTO recommends technical assistance tools be provided to States and others in a timely manner.*
4. *AASHTO is strongly supportive of FTA disseminating non-binding guidance, technical assistance, and templates.*

AASHTO recommends a revised, more practical definition of State of Good Repair (SGR).

The draft National Public Transportation Safety Plan would define a "state of good repair" as "the condition in which a capital asset is able to operate at a **full** level of performance" (emphasis added).³

While this definition is identical to the definition set forth in FTA's proposed transit asset management (TAM) rule at proposed 49 CFR 625.5, the asset management rule, unlike the proposed safety rule, included additional language that helped explain the meaning and regulatory relevance of the "state of good repair" definition.

In the asset management proposed rule, proposed section 625.41, "Standards for measuring the condition of capital assets," was a regulatory application of SGR. There, FTA explained that standards set forth in 625.41 "must be met for an asset to achieve a state of good repair." More specifically, that section provided that for an asset to be in a state of good repair: it must be "able to perform its designed

³ See page 53 of the draft National Public Transportation Safety Plan (by virtue of statute and proposed 49 CFR 673.11(a)(3), the definitions in that national plan of SGR and performance measures (criteria) are applicable to the proposed public transportation agency safety plan rule.

function”; if used, it must not pose a known “unacceptable” safety risk; and its life-cycle investment needs must have been met or recovered, including scheduled service.⁴ Such additional information is absent from the proposed National Public Transportation Safety Plan and the proposed public transportation agency safety plan rule for providers.

Absent any elaboration, “full” level of performance appears to be an impractical, vague and unrealistic definition, suggesting that a bus or van, for example, is functioning as a brand new vehicle in ideal condition.

Accordingly, AASHTO strongly recommends changing the definition of state of good repair set forth at page 53 (of the draft National Public Transportation Safety Plan) so that it is more consistent with the definition in the FTA’s proposed asset management rule. Thus, we would amend the current definition such as by striking “operate at a full level of performance” and substituting “perform its designed function.”

Other options could include substituting “safely perform its designed function”; or “satisfactorily perform intended purposes.” The essential point is that a final plan and rule must not include an impractical “full performance” definition of state of good repair.

AASHTO would also like to note that in the TAM NPRM narrative, FTA says their definition of SGR is an “aspirational” condition – they also refer to it as “an ideal condition.” AASHTO understands that FTA is required by law to define SGR, but if FTA is going to retain a definition that is aspirational it is by definition not achievable and therefore FTA should make it clear that the definition does not have regulatory effect.

AASHTO strongly urges FTA to avoid duplicative requirements in the proposed performance measures.

The draft National Public Transportation Safety Plan lists four performance measures: fatalities, reportable injuries, reportable safety events, and reliability (mean distance between failures).

Per AASHTO’s Advanced Notice of Proposed Rulemaking (ANPRM) comments, the performance criteria and measures should be the safety outcomes already reported to NTD: reportable incidents, fatalities, and injuries. These safety criteria and measures are consistent with the Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration’s (NHTSA) major measures that have been developed over decades and are focused on the desired end result. Considering transit fatalities are far fewer in number, it would not be reasonable for the transit mode to have more complex measures. The reliability data is not currently collected for NTD purposes and would represent a meaningful new tracking and reporting burden for all providers – as well as for the States which provide such data for subrecipient providers.

Reliability, unlike fatalities, reportable injuries and reportable safety events, is not a safety measure. It is a maintenance-related measure. FTA has taken the position that State of Good repair is also related to safety. That should be enough in this regard as AASHTO believes that there is substantial overlap between attempting to measure reliability and encouraging the industry to achieve a state of good repair for assets. Assets that are in a state of good repair will be reliable.

⁴ See proposed 625.41(b).

Therefore, for all of these reasons, AASHTO does not support reliability as a national safety performance measure and asks that it be deleted from the plan and rule. It can remain an indicator of overall service quality to be adopted by individual providers at their discretion. Even without it, the overall package of proposals being advanced by FTA, even after any modification in response to comments from AASHTO and others, will move industry towards greater reliability. FTA is proposing many new regulatory requirements at this time and new requirements should not be duplicative or overreaching.

AASHTO recommends technical assistance tools be provided to States and others in a timely manner.

Similar to AASHTO's comments in the TAM docket, AASHTO suggests that technical assistance tools should be provided to States and others in a timely manner. Currently, there is no timeframe for when FTA will provide technical assistance tools.

AASHTO is strongly supportive of FTA disseminating non-binding guidance, technical assistance, and templates.

States should have the ability to allow for safety plans that include scalable requirements that are based on the safety performance of the applicable transit organization and that add to the safety initiatives of the federal, state, and local transportation organizations. These plans should include specific safety metrics so performance can be measured, monitored, and reported by the state without being overly burdensome and detracting from the goal of the safety. This concept is in-line with SMS because it is based on the principle that "one size does not fit all," and enables states to determine their own safety risks and appropriate targets.

In the case where a State DOT prefers individual agency safety plans, the ability to use templates would be of the utmost importance—and the final rule should make clear that a State can use that approach. AASHTO strongly supports FTA's proposal to *provide safety plan templates for states and transit agencies, keeping in consideration differences in size, complexity and operating characteristics*. States should be provided flexibility so that the plan might be a standard plan for the Section 5310 or 5311 network as a whole but that it is then adopted and implemented by each provider. In regards to the template, AASHTO suggests that a transit agency's unique situations could be addresses in an appendix for an individual agency (e.g. for X transit agency, an appendix to the template plan that would only apply to them would say "no operation during icy conditions on the steep grade on first avenue"). By providing agencies with the ability to attach an appendix to a State's template, it allows the State to avoid having to develop multiple unique plans but still capture a few unique issues without the relevant agency opting out or the State having to start from scratch with a plan for each agency.

When an agency "opts out" of the statewide plan (which can be a template) and develops its own, the final rule should be clear that the agency that opts out is then dealing directly with FTA and the State has no authority or obligation to review its plan or provide any certifications.

We appreciate the opportunity to provide these comments. If you would like to discuss the issues raised in this letter, please contact Shayne Gill, AASHTO's Program Director for Multimodal 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, American Association of State Highway and Transportation Officials
Director, Iowa Department of Transportation