

State of California

Public Utilities Commission
San Francisco

MEMORANDUM

Date: November 12, 2015

To: The Commission
(Meeting of November 19, 2015)

From: Helen M. Mickiewicz, Asst. General Counsel
Daren Gilbert, Program Manager, Rail Transit Safety Branch
Patrick S. Berdge, Principal Counsel

Subject: Federal Transit Administration's *Notice of Proposed Rulemaking*
(Transit Asset Management; National Transit Database), 49 C.F.R.
Parts 625 and 630, Docket No. FTA-2014-0020¹

RECOMMENDATION: The CPUC should file comments in response to the *Notice of Proposed Rulemaking* (Transit Asset Management, National Transit Database NPRM) released by the Federal Transit Administration ("FTA") on September 30, 2015. *Public comments must be filed by November 30, 2015.*

BACKGROUND: Section 20019 of the Moving Ahead for Progress in the 21st Century Act ("MAP-21"; Pub. Law 112-141, July 6, 2012), amended Federal transit law by adding a new section 5326 to Chapter 53 of title 49 of the United States Code. The provisions of section 5326 require the Secretary of Transportation to establish and implement a National Transit Asset Management ("TAM") System, which:

- defines the term "state of good repair" ("SGR");
- requires that all recipients and sub-recipients for Federal transit funds under Chapter 53 develop a TAM plan, to include an asset inventory, an assessment of the condition of those assets, decision support tools, and investment prioritization;

¹ See the Transit Asset Management; National Transit Database NPRM, 80 Fed. Reg. 58912 (Sep. 30, 2015).

- requires that all recipients and sub-recipients for Federal transit funds under Chapter 53 develop a TAM plan, to include an asset inventory, an assessment of the condition of those assets, decision support tools, and investment prioritization; and
- establishes annual reporting requirements; and mandates that FTA provide technical assistance to Chapter 53 recipients and sub-recipients, including an analytical process or decision support tool that allows for the estimation of capital asset needs and assists with investment prioritization. 49 U.S.C. 5326(b).

In addition, section 5326 requires the Secretary to establish SGR performance measures, and recipients are required to set performance targets based on these measures. (49 U.S.C. 5326(c)(1) and (2).) These performance measures² are intended to:

link policies, goals and objectives, planning and programming, and project delivery to stated outcomes. The performance management requirements are intended to facilitate more effective investment of Federal transportation funds by refocusing attention on national, regional, and local transportation goals, increasing the accountability and transparency of the Federal transit and Federal-aid highway programs, and improving project decision-making through performance based planning and programming.

(80 Fed. Reg. 58915.)

Furthermore each designated recipient must submit two annual reports to the Secretary. The first sets forth the condition of the recipients' public transportation systems, including a description of any change in condition since the last report. The second annual report describes the RTA's progress towards meeting performance targets established during that fiscal year as well as a description of the recipients' performance targets for the next fiscal year. (49 U.S.C. 5326 (b)(3) and 49 U.S.C. 5326(c)(3).)

² These performance measures will serve "to assess whether the transit system is meeting the needs of citizens and the region, and requires the RTA to develop criteria for evaluating capital projects." (See: the 2012 Asset Management Guide which is available on FTA's Web site at www.fta.dot.gov/documents/FTA_Asset_Management_Guide_-_FINAL.pdf. (80 Fed. Reg. 58921, n. 10.)

This *NPRM* also seeks comment on:

- (1) a proposed National TAM System to monitor and manage public transportation capital assets to achieve and maintain a SGR, improve safety, and increase reliability and performance; and
- (2) proposed amendments to the National Transit Database regulations to conform to the proposed reporting requirements for transit asset management.

These regulations are part of a number of current and upcoming FTA rulemakings to carry out the congressional mandate of MAP-21.³ One rulemaking aimed at State Safety Oversight Agencies (“SSOAs”) and requirements for them is currently open, and CPUC filed comments in that rulemaking (FTA-2015-0003). Another rulemaking on Public Transportation Safety Program is also currently open, and CPUC filed comments in that rulemaking (FTA-2015-0009) as well. Future rulemaking proceedings are expected on Public Transportation Agency Safety Plans (agency adoption and incorporation of SMS concepts), and on the Public Transportation Safety Certification Training Program.

California has a long-standing rail transit safety program that pre-dates the current Federal rail transit safety program.⁴ The CPUC was designated as the SSOA in 1992 by then Governor Pete Wilson.

The Rail Transit Safety Branch of the CPUC’s Safety and Enforcement Division (“SED”) is responsible for the CPUC’s rail transit safety oversight program, which includes oversight of 15 fixed guideway public transportation systems⁵ in California. Eight systems receive some level of Federal finding, but the remaining seven smaller systems receive no federal funds.

As a first step under MAP-21 and in accordance with congressional direction, FTA established certification requirements for SSOA’s. The CPUC rail transit safety program was one of only two in the nation that were initially certified based on the current

³ See <http://www.fta.dot.gov/map21/>.

⁴ Pub. Util. Code § 99152 enacted in 1978, provides the CPUC with safety oversight of public transit fixed-rail guideways.

⁵ The 15 fixed guideway public transportation systems in California are the Americana on Brand Trolley, Angel’s Flight Railway Company, Bay Area Rapid Transit District (BART), Getty Museum Automated People Mover, The Grove Trolley, Los Angeles County Metropolitan Transportation Authority, North County Transit District’s Sprinter, Oakland Airport Connector APM (BART), Port of Los Angeles Red Car Line, Sacramento International Airport Automated People Mover, Santa Clara Valley Transportation Authority, San Diego Trolley Inc., San Francisco Municipal Transportation Agency, San Francisco International Airport AirTrain Automated People Mover, and Sacramento Regional Transit District.

program and structure. Once certified, the CPUC was able to apply for SSOA grant funds, also made available under MAP-21 legislation. The CPUC grant application was approved July 2, 2015. The FTA's annual funding of approximately \$2.8 million per year to the CPUC is contingent on the CPUC's compliance with the FTA's existing requirements and any new or revised requirements that arise from the various related FTA past and pending rulemakings.

SED has reviewed the FTA *NPRM* and notes the critical link between system safety and transit agencies' maintenance programs, State of Good Repair, and transit asset management practices. Staff recommends that the Commission authorize staff to prepare formal comments addressing the issues as outlined below for submittal in response to this *NPRM*.

DISCUSSION AND RECOMMENDATIONS: Staff recommends the CPUC file comments on the following specific issues regarding the FTA's proposed new rules.

FTA's Proposed Rules

I. DEFINITION OF STATE OF GOOD REPAIR.

Section 625.5, proposed to define SGR as "the condition in which a capital asset is able to operate at a full level of performance". This definition excludes safety considerations.

Staff recommends modifications to the definition requiring that the asset must be shown to operate in a safe and reliable manner, in order to be considered in a SGR.

II. STATE OF GOOD REPAIR PRINCIPLES.

The *NPRM* on page 58925 states:

FTA proposes SGR principles intended both to highlight the relationship of state of good repair to other transit priorities and to guide a transit provider's practice of transit asset management. State of good repair is related to, but not synonymous with, transit asset management. State of good repair is a condition that can be achieved through good transit asset management practices. Transit asset management practices inform the capital investment planning and programming processes by producing data that informs investment prioritization. Transit asset management allows a transit provider to realistically predict the impact of its policies and investment decisions on the condition of its assets throughout an asset's life cycle. Transit asset management enhances a transit

provider's ability to maintain a state of good repair and proactively invest in its assets before the asset condition deteriorates to an unacceptable level.

Section 625.17(c) states: “*A transit provider's accountable executive must balance transit asset management, safety, operation, and expansion needs in approving and carrying out transit asset management practices and a transit agency safety plan.*”

Staff recommends giving safety a higher level of consideration than the other factors.

The NPRM on page 58918 states:

Response: Although FTA agrees that a transit asset in a state of good repair may be operated unsafely, and, conversely, that a transit asset not in a state of good repair may be operated safely through appropriate safety risk mitigation strategies, FTA notes that Congress recognizes a link between safety and state of good repair. Pursuant to 49 U.S.C. 5329(b)(2)(B), FTA must develop and implement a new National Public Transportation Safety Plan that includes the definition of state of good repair developed under this rulemaking. In addition, pursuant to 49 U.S.C. 5329(d)(1)(E), a transit agency safety plan must include performance measures based on the SGR standards developed under this rulemaking. Moreover, the legislative history of MAP-21 reinforces Congress' belief that transit asset management and safety are linked. Congress intended for FTA to establish a National TAM System that not only increases the performance and reliability of capital assets, but also “improve[s] safety.”

Staff concurs with FTA's comments above.

III. TRANSIT ASSET MANAGEMENT PLAN REQUIREMENTS

Section 625.25 discusses parties that should be involved in developing Transit Asset Management Plans.

Staff recommends SSOAs should be given the opportunity to review and comment on these plans as they are developed.

Staff also recommends additional comments regarding the TAM plan “condition assessments” and “investment prioritization” requirements and strategies. Staff believes it is important to develop objective methodologies to evaluate asset condition and that it will be an important element of a TAM plan to establish a link between those

assessments and an investment prioritization plan to seek FTA SGR grants to address asset deficiencies or compromised condition, which may result in the asset's failure or a possible accident.

Staff recommends that FTA's SGR grants address only assets the agency has considered and evaluated in its TAM plan. Possible exceptions to this might concern newer assets experiencing unexpected accelerated failure rates, previously evaluated assets deemed in acceptable condition which unexpectedly begin to fail or require maintenance, or hidden or unevaluated asset components. The RTA would be required to demonstrate those difficulties justifying an exception to the rule that only previously considered assets may be included in the RTA's TAM plan. Examples exist where hidden components, not easily inspected, have led to incidents. Given the limited operating budgets of most transit agencies, those agencies should not be prevented from seeking funding to address identified asset deficiencies that were not previously apparent unless the RTA has been negligent in evaluating those assets. However, even under those circumstances, a process must be implemented to assure public safety is not compromised by continued use of suspect assets readily apparent or not.

IV. PERFORMANCE MEASURES

Section 625.43 discusses Useful Life Benchmarks (ULBs) in determining performance measures.

Staff recommends adding a requirement to provide ULBs to SSOAs for review and comment.

Section 625.53(c) states:

*(c) Infrastructure-rail fixed-guideway track, signals, and systems.
The performance measure for rail fixed guideway track, signals, and systems is the percentage of track segments, signal, and systems with performance restrictions.*

Staff is concerned that this language might discourage RTAs from issuing restrictions even when needed.

Additionally, Staff seeks authority to comment on FTA's proposed performance measures linked to asset condition assessments and TAM plan development. For example FTA is initially proposing a simple age-based criteria for vehicles; however, depending upon the agency and vehicular asset use, it may be more appropriate to use the vehicle mileage or maintenance history in place of age in assessing and evaluating the condition of an agencies' vehicles.

V. RECORD KEEPING AND ANNUAL REPORTING

Proposed Section 625.53 pertains to record keeping requirements.

§ 625.53 Recordkeeping for transit asset management.

(a) At all times, each transit provider and group TAM plan sponsor must maintain records and documents that support, and set forth in full, its TAM plan.

(b) A transit provider or group TAM plan sponsor must make its TAM plan any supporting records or documents performance targets, investment strategies, and the annual condition assessment report available to States and Metropolitan Planning Organizations to aid in the planning process.

Even though California has laws allowing CPUC to review records of RTAs, staff recommend including requirement in the rulemaking requiring RTAs to provide their records to SSOAs upon request.

Section 625.55 pertain to Annual reporting requirements.

§ 625.55 Annual reporting for transit asset management.

(a) Each transit provider must submit the following reports:

(1) An annual data report to FTA's National Transit Database which reflects the SGR performance targets for the following year and a current assessment of the condition of the transit provider's public transportation system.

(2) An annual narrative report to the National Transit Database which provides a description of any change in the condition of the transit provider's transit system from the previous year and describes the progress made during the year to meet the SGR targets set in the previous reporting year.

Staff recommends requiring RTAs to provide their SSOAs, simultaneously with the FTA, a copy of the two annual reports described above.

VI. SUMMARY

There is a nexus between asset condition and management and system safety that is important to understand and address. Staff supports FTA efforts undertaken within the MAP-21 directives to require and develop processes to assure current system assets are monitored, assessed and replaced or upgraded before they compromise system safety.

In summary, comments reflecting Staff experiences and recommendations may be useful to the FTA and, consequently, staff recommends that the CPUC submit comments in response to the *NPRM* as previously mentioned.

Assigned Staff:

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