



Transportation Trades Department, AFL-CIO

July 31, 2023

The Honorable Nuria Fernandez
Administrator
Federal Transit Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**Re: NPRM re: National Public Transportation Safety Plan
Docket No. FTA-2023-0010**

Dear Administrator Fernandez:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Federal Transit Administration's (FTA) notice of availability of proposed updates to its National Public Transportation Safety Plan. TTD consists of 37 affiliated unions – including those representing the majority of public transportation workers in the United States – who have a significant interest in ensuring the safety performance measures set forth in the National Safety Plan will adequately address growing safety concerns in the public transportation sector.

As the agency explains, 49 USC § 5329(d)(1) requires transit agencies receiving § 5307 Urbanized Area Formula funds or § 5311 Rural Area Formula funds to certify that they have in place a Public Transportation Agency Safety Plan (PTASP). The Infrastructure Investment and Jobs Act (IIJA) adds new requirements for safety performance measures related to the PTASP safety risk reduction program, precautionary and reactive actions in emergency situations, and consideration of performance-based and risk-based methodologies.

TTD submitted public comment to the FTA in 2016 recommending that the agency consider assaults on transit workers when developing the first iteration of the National Safety Plan (NSP), and alongside our affiliated unions, spent years advocating for these changes to be required in law.¹ Consistent with the requirements of the IIJA, we are pleased to see the FTA make progress in requiring safety performance measures that are intended to track assaults on transit workers, transit worker injury rates, and transit worker fatality rates. However, we have concerns that the draft NSP and the proposed safety performance measures will result in significant gaps in data collection and fall short of ensuring that transit agencies and frontline workers have the data they need to ensure safety needs are met.

¹<https://ttd.org/policy/federal-comments/ttd-makes-recommendations-to-fta-on-new-public-transportation-agency-safety-plans/>

In its discussion of public transportation safety concerns, the proposed NSP includes graphs depicting increases in transit worker fatalities, assaults on transit workers, and bus transit collisions between 2016 and 2021.² We have long expressed our concerns that these statistics are based on incomplete data compiled through outdated National Transit Database (NTD) reporting requirements, necessitating the statutory requirements for additional and better data collection in the IIJA. Prior to the passage of the IIJA, the NTD only collected data on assaults leading to “serious injury” as then defined in 49 CFR 830.2, “(1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; (2) results in a fracture of any bone (except simple fractures of fingers, toes, or nose); (3) causes severe hemorrhages, nerve, muscle, or tendon damage; (4) involves any internal organ; or (5) involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.” This former definition excluded many serious injuries that need to be captured in order to accurately depict transit worker assaults. In fact, concerns about inadequate data collection date back to at least a 2011 Transit Cooperative Research Program report, which states:

Workplace violence data—The National Transit Database does not capture the true extent of workplace violence. This database does not accommodate the reporting of minor assaults that do not result in an arrest. Although an assault such as spitting or verbal insults may not cause physical harm to the operator, it can cause significant emotional distress. Research into an expanded database can help agencies identify emerging trends, incident types, perpetrators, and dangerous individuals and provide agencies with information to forecast violence against operators and other employees.³

In reality, the problems the FTA highlights in its draft NSP are much worse than they are portrayed. Accurate data collection is the only way to provide clarity on the real risks, including the risk of assault, associated with certain transit job functions. Gaps resulting from incomplete data further limit the ability of transit labor and the FTA to adequately respond to and mitigate risks faced by transit workers. The FTA must therefore ensure in its reporting guidelines that assaults on transit workers are parsed out by job function or craft. Simply recording assaults on all transit workers does not accurately reflect the potentially elevated risks of one job function or craft when compared to another.

The FTA also proposes new safety performance measures for the rate of assaults on transit workers. While measure 4a - Assaults on a Transit Worker will help gather meaningful data that expresses the entire scope of safety incidents for transit workers with the above recommendations that specify job craft, we question whether using Vehicle Revenue Miles (VRM) to determine rates of assault is a useful across-the-board measure. Currently, the proposed rate will be calculated by dividing the number of assaults on transit workers by Vehicle Revenue Miles (VRM). As previously noted, the FTA is not collecting data on the number of assaults on transit workers based on specific job functions or crafts. Utilizing VRM to determine the rate of assaults may not provide meaningful data to measure and respond to local or national trends with regard to assaults on

² <https://www.regulations.gov/document/FTA-2023-0010-0002> (pages 8-9)

³ <https://www.cutr.usf.edu/wp-content/uploads/2012/10/TCRP-Synthesis-93-Report.pdf>

custodial workers, station agents, and other frontline workers in non-operating crafts. FTA should include separate measures for the rate of assaults on transit operators and transit workers in non-operating roles in order to more accurately capture this distinction.

In addition to safety performance measures, the draft NSP includes eight measures for the risk reduction program, as required by the IJJA. Per the IJJA, the risk management measures are intended to inform the activities of transit agencies' Safety Committees and should be used to set targets for their safety risk reduction programs. Similar to the safety performance measures discussed above, the proposed risk management measure is based partially on VRM. Again, by not including specific measures for operating and non-operating crafts, the data will not provide an accurate representation of the rate of assaults on transit workers.

The FTA notes that the PTASP regulation requires transit agencies to set safety performance targets based on measures set by the NSP. Because the new NTD requirements are fundamental to setting and evaluating performance measures, we must remind the FTA that any requests to delay these requirements should be rejected. These metrics are to be established on a rolling basis and any delay will hamper Safety Committees' ability to establish accurate targets.

Finally, the FTA instructs transit agencies to utilize their own methodologies to determine performance measures. And while the FTA does note that Safety Committees – which include representatives from management and labor organizations – must certify these measures, there is no mechanism in place in case of a tied vote or dispute within the Committees. We ask that the FTA refer to the comments filed to the previous NPRM by TTD, SMART-TD, ATU, TWU, Senators Brown Et al., and Senator Schumer with regard to ensuring disagreements between frontline workers and management are addressed fairly.⁴ In order to ensure accountability, both labor and management should be required to independently certify their satisfaction with the Committee's proposed targets and whether or not those targets have been met based on reported data. We also request that the FTA provide ongoing guidance to the safety committees on best practices for setting and achieving targets based on the updated data collection and reporting requirements of the IJJA.

We appreciate the opportunity to comment on this NPRM and look forward to working with the FTA in the future.

Sincerely,



Greg Regan
President

⁴ <https://www.regulations.gov/docket/FTA-2023-0007/comments>