TO: AC Transit Board of Directors  
FROM: David J. Armijo, General Manager  
SUBJECT: Ratify Submission of Response to Federal Transit Administration Advance Notice of Proposed Rulemaking of Safety and Transit Asset Management Requirements

RECOMMENDED ACTION(S):
Consider ratifying the District’s response to the Federal Transit Administration’s Advance Notice of Proposed Rulemaking regarding the National Public Transportation Safety Plan, the Public Transportation Agency Safety Plan, the Public Transportation Safety Certification Training Program, and Transit Asset Management.

EXECUTIVE SUMMARY:
The Federal Transit Administration (FTA) requested public comments on its advance notice of proposed rulemaking (ANPRM) for safety and transit management asset (TAM) requirements authorized in the Moving Ahead for Progress in the 21st Century legislation funding surface transportation programs. Per Board Policy # 516, the General Manager, Board President, and Chair of the External Affairs Committee concurred that the District should communicate its concerns prior to the January 2, 2014 deadline for submission to the FTA.

This is a request to ratify the District’s response to the ANPRM by the entire Board of Directors. The deadline for submission of comments was 2 January, 2014, which did not permit consideration of the District’s comments by the full Board. In accordance with Board Policy 516, “Legislative Positions, Determination of District Positions,” the Board President, Chair of the External Affairs Committee and General Manager concurred on the District’s comments. This Board policy requires the full Board to consider ratification of this action.

BUDGETARY/FISCAL IMPACT:
There is no budgetary or fiscal impact associated with this report; however, it should be noted that considerable financial, staffing and time resources could be required to fulfill the rulemaking as currently proposed.

BACKGROUND/RATIONALE:
The Federal Transit Administration requested public comments in response to the Advance Notice of Proposed Rulemaking regarding the National Public Transportation Safety Plan, the

After careful review, District staff was compelled to consider advising the FTA of AC Transit’s position on the proposed rulemaking which could result in the need to divert financial, time, and staffing resources from operations to comply with the proposed rules including:

- Increased administrative costs to fund additional development, training, certification reporting and other compliance burdens
- Burdensome annual safety plan reviews as opposed to more detailed three year reviews
- Onerous processes for operators that could result in reduced transit service for passengers
- Implementing a “one-size-fits-all” approach that does not take size or operational capabilities into account
- Expensive State of Good Repair (SGR) measurements
- Confusing standards for asset management
- Subjective criteria for determining asset condition
- Imposing templates and training on transit operators without consideration of existing processes
- Developing new performance targets through a different system other than the National Transit Database (NTD)

The detailed response letter to FTA Administrator Peter Rogoff, which was approved by the Board President, Chair of External Affairs and General Manager and submitted on December 31, 2013, is provided as an attachment to this report.

The FTA will review comments to this ANPRM, draft several notices of Proposed Rulemakings (NPRM), and request additional comments before a final rulemaking is issued. Transit operators who are recipients of various federal funds including section 5307 Urbanized Area Formula Grants would have to comply within one year after FTA issues its final ruling.

**ADVANTAGES/DISADVANTAGES:**

By ratifying submission of the ANPRM comments and formally notifying the FTA of the District’s position on rules and regulations affecting the District, the Board is responsibly advocating its point of view on these important matters on behalf of its constituents.

**ALTERNATIVES ANALYSIS:**

AC Transit could opt to defer from commenting on the ANPRM, without making its positions known, leaving the District vulnerable to unfavorable rules and regulations.
PRIOR RELEVANT BOARD ACTIONS/POLICIES:
Board Policy 516, Legislative Positions, Determination of District Positions

ATTACHMENTS:
1: Letter to FTA commenting on ANPRM requirements on Safety and Transit Asset Management

Department Head Approval: Dennis Butler, Chief Planning & Development Officer
Prepared by: Beverly Greene, Director of Legislative Affairs & Community Relations
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December 31, 2013

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

Dear Administrator Rogoff:


AC Transit registers about 54 million transit boardings annually in the East Bay region of Northern California and is one of the three largest transit operators in the nine county metropolitan planning organization area. Our bus-only service provides nearly 200,000 average daily weekday rides. We operate in a large, urbanized area comprised of 13 cities including Oakland, Hayward, Richmond and Berkeley along with nine unincorporated areas which is home to 1.5 million residents.

AC Transit is committed to the safety and well-being of our riders and is also committed to partnering with the Federal Transit Administration as it implements the provisions of MAP-21. Our comments generally align with those of the American Public Transportation Association (APTA) and the California Transit Association (CTA), and we submit the following comments:

Safety/Certification

- Regulations regarding public transit safety should be efficient, reasonable, as free as possible of bureaucratic burden, and not put a financial burden on operations. Annual agency safety plan reviews will increase costs and may be difficult to implement without diverting resources from other transit operations and negatively affecting service. A more reasoned approach would be to require updates of agency safety plans every three years for review as part of the existing Triennial Audit process.
- Any costs/mandates associated with public safety should be compensated by the federal government over and above existing programs where appropriate. Funding should be provided from new sources to assist with additional development, training, certification, reporting, and other compliance burdens. An unintentional byproduct of the proposed rulemaking may be an onerous process for operators that will likely increase administrative costs to transit agencies resulting in reduced transit service for our passengers.
- To reduce regulatory burden, any new federal safety regulations should accept the safety programs of public transit agencies that have developed their safety plans / activities as members of organizations that have shared best practices as a result of rigorous evaluations (i.e. California Transportation Improvement Plan).
- Consider alternative organizational structures for Safety Officers based upon the modes of service, size, agency responsibilities, and other considerations.
• Effective safety oversight of public transit requires a collaborative effort between federal, state and local agency partners. Any new federal safety standards should build on consensus-based industry standards and should be further developed with input from public transit agencies to avoid a “one-size-fits-all” regulatory requirement that does not achieve the original objectives of MAP-21.
• Public transit agencies should be allowed adequate time to be brought into compliance without penalty, with consideration of phasing in the program to allow agencies to adapt to the new regulations.

State of Good Repair/Asset Management
• The initial rules should seek to ease the industry into State of Good Repair (SGR) measurement, keeping the cost of measuring SGR to a minimum as long as a useful amount of precision is achieved. Asset classes required should be phased in based on the order of their importance to the industry, starting with rolling stock.
• While proper asset maintenance is key to maintaining a safe transit system, tying system safety to a particular level of SGR is not at all straightforward. The most objective measure of an asset, its age, does not directly relate to how safe it is in operation. Subjective or combined measures of asset condition or performance may relate more directly to safety but are problematic to standardize across agencies.
• It is essential to have measures of SGR that are comparable across different agencies. To lessen the burden on agencies the FTA should initially choose whatever is the least complicated method to best determine SGR based on the individual asset class in question.
• If a condition-based approach is selected for measuring SGR, the FTA should strive as much as possible to define objective wear characteristics and measures to allow comparable inspections across the industry.
• The usage of an asset and the environmental conditions of the operating area can be important in determining SGR, and should be considered as potential modifying factors.
• Having immediate transit asset management (TAM) requirements for third-party contractors would be burdensome for agencies and likely increase contract costs and require contract revisions.
• It is a key role of the FTA to develop templates and training for agencies to develop and implement their own TAM plans. Implementing the SGR and TAM plan rules without assisting operators – both large and small – would be a great disservice to the agencies that the FTA is supposed to support.
• The FTA should not require any specific processes or procedures in a TAM plan, other than possibly to recommend best-practice procedures that can be easily implemented by agencies.
• Collecting performance target data through the NTD makes the most sense and would facilitate developing requirements that are applicable across agencies.

Thank you and we look forward to working with you as you develop guidance related to this ANPRM in the near future. Please contact me with any questions or comments at 510-891-5453 or darnijio@actransit.org.

Sincerely,
David Armijo,
General Manager

cc: AC Transit Board of Directors