# FTA TRANSIT ASSET MANAGEMENT (TAM) NOTICE OF PROPOSED RULEMAKING (NPRM) LISTENING SESSION NOVEMBER 12, 2015 PHOENIX PARK HOTEL, WASHINGTON, DC

Mshadoni Smith, FTA, welcomed participants to the session. She covered housekeeping items and introduced the speaker, John Giorgis, Director of the Strategic Planning and Analysis team at FTA.

Giorgis thanked the attendees for participating and surveyed the group about participation in previous webinars and listening sessions. He announced that the session would be recorded and submitted as part of the official docket on the rulemaking.

Giorgis described the purpose of the meeting. The session, he said, was not a forum to provide comments, but rather an opportunity to ask clarifying questions about the NPRM. He encouraged participants to submit comments to the docket.

# The Context

Giorgis provided background on transit asset management and explained why FTA is proposing a rule on TAM, beyond the requirements under MAP-21.

He explained that sound management of transit assets is a necessary business practice. He cited the Conditions and Performance report released in 2013 (based on 2010 data), which revealed that an estimated \$85.9 billion would be needed to bring the nation's transit systems into a State of Good Repair (SGR).

"We need to make sure that we prioritize the few financial resources we have to target the greatest possible impact on SGR. The process for doing that is TAM." Giorgis said.

Giorgis then described how FTA's proposed rule fits into the broader MAP-21 performance management context.

He said FTA is developing a number of rules to support performance-based planning, including the National Public Transit Safety Plan and Public Transportation Agency Safety Plan, which will propose safety performance measures; and the TAM Plan, which will propose SGR measures.

Giorgis explained that TAM and Agency Safety Plans will work in tandem; they will inform each other as well as feed the transit segments of the Metropolitan and Statewide performance planning process.

## Where Are We Now?

FTA released the advance NPRM in 2013. The comments FTA received informed the proposals being made in this NPRM. FTA released the NPRM on September 30, 2015 and the final rule is expected by late summer.

# The NPRM

Giorgis walked the participants through the five main sections of the NPRM: General Provisions, TAM System, TAM Plans, Performance Management and Recordkeeping and Reporting Requirements.

# A. General Provisions

Giorgis discussed the purpose and applicability of the TAM rule. He said the main purpose of the TAM rule is to "help achieve and maintain a SGR for the nation's public transportation system." It will apply to all recipients or sub-recipients of FTA funds under Chapter 53 that own, operate or manage capital assets used in the provision of public transportation.

# **B.** National Transit Asset Management System

The five pillars of asset management envisioned by MAP-21 require FTA to do the following:

- Define SGR, including objective standards for measuring the condition of assets;
- Require that all recipients and sub-recipients develop TAM Plans, which include asset inventory and investment prioritization;

- Establish SGR performance measures and require recipients to set targets against those measures;
- Report additional data to the National Transit Database (NTD);
- Provide Technical Assistance to the transit industry.

Giorgis focused on the first pillar—Defining SGR. He said the comments received on the proposed rule suggested that FTA "should keep the proposed definition of SGR simple and at a high level." The NPRM defines SGR as the condition in which a capital asset is able to operate at a full level of performance. The asset must be able to perform its designed function, must not pose a known unacceptable safety risk and must have met or recovered its lifecycle investment.

#### **QUESTIONS**

**David Johnson, WMATA,** asked Giorgis to elaborate on known unacceptable safety risk—where is it determined; how is it determined; what standards are there to follow?

Giorgis suggested that Johnson file the question to the docket. He also explained that the NPRM proposed the concept of an accountable executive who would be responsible for implementing the agency TAM plan and the safety plan. Giorgis offered a preview of some of the linkages that will occur between the two plans. He explained that the rule proposes that "if an asset's condition has deteriorated, and it is posing an unacceptable safety risk, that should be incorporated into a definition of SGR." Likewise, he said, "The future agency safety plan will be incorporating the definition of SGR into their safety standards."

Another participant asked what it means for life cycle investments to be recovered.

Giorgis said "if the maintenance has been deferred—if you have caught the maintenance for the asset up to the point it should have been—then it is recovered." He clarified that FTA "didn't want to say that the lifecycle investment needs have been met for the asset to be in a SGR, because that could imply that at any point at which maintenance needs were deferred, that the asset could never again be in a SGR."

Mary Jo Morandini, Beaver County Transit Authority, asked for clarification on the definition of an asset. She asked if the definition included the specific language: "...a capital item with a useful life of one year and costs over \$3500."

Giorgis confirmed that the rule included the language, "...a piece of tangible property with useful life of more than one year." He clarified that, for FTA grant programs, there is also a minimum threshold of \$5,000. However, the \$5,000 threshold was not found in the proposed rule. Candace Key, FTA, clarified that the definition proposed in the NPRM for a capital asset is "a unit of rolling stock, a facility, a unit of equipment or an element of infrastructure used in public transportation."

**Robin Phillips, National RTAP,** asked Giorgis to talk more about useful life and how it relates to lifecycle investments.

He described life cycle investments as the maintenance investments needed to keep an asset functioning at its full performance levels and to ensure that the asset is able to meet the target useful life that the agency set for it when it was purchased.

# **Cross-cutting Impacts**

Giorgis noted that once the definition of SGR becomes final, there will be ongoing cross-cutting impacts on FTA programs. Programs such as the State of Good Repair formula grants program, the National Public Transportation Safety Plans, the Metropolitan and Statewide plans, the new program for expedited project delivery and the capacity projects all incorporate the concept of SGR and, as a result, will be affected by this definition.

# C. Transit Asset Management Plans

Giorgis discussed the logistics and specifics of establishing TAM Plans.

All providers who are recipients or sub-recipients of Federal financial assistance under 49 U.S.C. Chapter 53 are required to have a TAM Plan for the assets they own, operate or manage. "In order to take into account the needs of smaller operators, the NPRM defines two tiers of providers, depending on the agency size and type of service provided," Giorgis said. The NPRM tailors its TAM Plan requirements to providers based on whether they fall under Tier I or Tier II.

Tier I operators would be transit systems that operate rail or have over 100 vehicles in peak revenue service.

Tier II providers do not operate rail, operate 100 or less vehicles in peak revenue services or exclusively receive Federal funds from Section 5310 or Section 5311 programs.

In both tiers, responsibility for developing the TAM plans falls on the accountable executive, who will be responsible for the implementation of the plan at the transit agency. However, Giorgis explained, a Tier I provider must develop its own TAM Plan and have it certified by the Accountable executive. A Tier II provider may develop its own TAM Plan or participate in a Group Plan—a plan typically developed by a state for a collection of small operators.

He noted that a Tier I provider can only participate in a group plan as a sponsor and would also have to develop a separate individual TAM Plan for its own assets.

# **Proposed TAM Plan Elements**

Giorgis explained that FTA is proposing nine required TAM Plan elements. Tier I providers need to incorporate all nine elements into their plans. To reduce the burden on small providers who have limited resources and assets, Tier II providers only need to incorporate elements 1 through 4.

# 1) Inventory of Capital Assets

All Plans must include a comprehensive listing of all capital assets that transit providers own, operate, manage or that are used for the provision of transit service. This includes leased assets and assets operated under contract. It also includes all assets that the provider would include in its program of projects. Providers may use existing inventories already collected and should include assets purchased without FTA or other federal funds.

# **Inventory by Categories and Class**

Assets are broken down by the MAP-21 legislation into four categories: Rolling Stock, Facilities, Infrastructure and Equipment. Giorgis described each category:

- a) Rolling stock refers to revenue vehicles used to transport passengers (e.g. buses, vans, trains, boats)
- b) Facilities includes substantial buildings or structures used in the provision of transit (such as a passenger station, maintenance yard or parking garage)

- c) Infrastructure refers to permanent installations that interconnect capital assets (such as track, track beds, signaling and communications systems, guideways, bridges)
- d) Equipment includes nonexpendable, tangible property having a useful life greater than 1yr (such as nonrevenue service vehicles, certain elements of heavy maintenance equipment)

#### 2) Condition Assessment

Condition assessment is a rating of the inventoried assets designed to help a transit system identify whether an asset is currently in a SGR and how close it is to needing to be replaced.

Giorgis explained that the FTA is providing transit agencies "a great deal of flexibility to use your own system of assessing the condition of your assets based on what works for your system." He said, "The most important part is to get the detail you need to monitor the performance of your asset and be able to inform your investment prioritization."

# 3) Decision Support Tools

Giorgis described decision support tools as the process, or the actual tool, within the TAM that supports transit providers in prioritizing capital asset investments.

He explained that decision support tools can be software, but they do not need to be. "It can be any identified process or procedure you use for fulfilling the requirements," Giorgis said.

## 4) Investment Prioritization

The final TAM Plan element that is applicable to transit providers of all sizes is investment prioritization. A transit agency's TAM Plan must include a ranked listing of proposed projects and programs ordered by the year the agency plans to implement them.

The prioritization should be locally determined. Giorgis explained, "It is up to you to determine your own priorities according to balancing all the competing needs within your transit system." However, providers should consider any identified unacceptable safety risks and accessibility requirements under the Americans with Disabilities Act (ADA), "particularly to the extent that a substantial capital project on a particular asset may cause ADA requirements to kick in for a legacy asset where those requirements are currently deferred," he said.

## 5) TAM and SGR Policy

TAM and SGR Policy is the first element that only Tier I Transit providers are expected to include in their TAM Plans. It provides the executive level direction that will support the goals of implementing the TAM program throughout the agency. Giorgis added, "It is your opportunity to demonstrate your agency's commitment within the organization to maintaining a SGR and achieving your asset management goals."

## 6) Implementation Strategy

Tier 1 operators are also required to have an implementation strategy that describes the actions the transit provider will take to implement TAM projects.

## 7) List of Key Annual Activities

Providers must provide a list of the key activities, by year, they will conduct to support TAM goals.

#### 8) Identification of Resources

Tier I operators must identify the resources they will have available for meeting their TAM goals and implementing their TAM projects, "including staff time, required elements of technology and the all-important funding considerations," said Giorgis.

#### 9) Evaluation Plan

Tier 1 operators are required to have a self-evaluation plan incorporated into their TAM process. Giorgis emphasized, "We want all Tier I operators to do some thinking about how asset management activities will be monitored and evaluated and plans for updating the TAM plan in the future."

# **Timeframe for Implementing TAM Plans**

FTA proposes that the initial TAM plans will be due no later than two years after the effective date of the final rule. The plan must be updated in its entirety at least once every four years, which should coincide with the relevant cycle for the Transportation Improvement Program (TIP) or Statewide Transportation Improvement Program (STIP).

Giorgis noted that this four-year update cycle is a minimum. A TAM Plan should be amended in any year in which there is "a significant change to the asset inventory, or funding has changed that requires a significant change to the investment prioritization" Giorgis explained.

## **QUESTIONS**

Mattie Webster, WMATA, asked if unacceptable safety risks would be identified in the condition assessment process.

Giorgis responded that it was a possibility. He added that much of the safety risk assessment detail "will come out in the Agency safety plan rule which has not been released." There will be a forthcoming rule as well as forthcoming guidance associated with that rule to come later. "But," he said, "we anticipate that in the process of assessing the condition of your assets, there may be safety risks identified. We want to specify that once those risks are identified, they have to be taken into account."

Perrin Palistrant, Potomac and Rappahannock Transportation Commission said the proposed description of rolling stock mentions leased vehicles or vehicles operated under contract. He inquired how this description would apply to van pools, which operators don't own, lease or contract.

Giorgis encouraged Palistrant to submit his comment to the docket. He explained that the proposed rule says "that any asset that is necessary for the provision of the transit service that you provide must be accounted for in the asset inventory."

Chris Zeilinger, Community Transportation Association of America sought clarification on three issues: 1) The applicability of the Section 5310 program; 2) The proposed qualifications for the accountable executive; and 3) The applicability of the rule to assets that were acquired without federal assistance.

- 1) Giorgis said the proposed rule states that any sub-recipient of section 5310 who is a provider of public transportation has to comply with the provisions of the rule;
- 2) Key referred to the NPRM to describe the qualifications of the accountable executive as "a single identifiable person who has ultimate responsibility for carrying out the safety management system of a public transportation agency; has responsibility for carrying out transit asset management practices; and has control or direction over the human and capital resources needed to develop and maintain an agency public transit agency safety plan and the agency TAM plan."

She explained that typically the accountable executive would be a general manager. However the FTA offers "the key qualifications, but gives flexibility for different organizational structures."

3) Giorgis clarified that all assets should be included in the TAM plan and in the investment prioritization, regardless of the funding source.

**David Burrows, Gannett Fleming, Inc.,** asked how an agency would certify that its system is in a SGR.

Giorgis explained that as FTA rolls out the program for expedited project delivery, it will be providing guidance about how to certify that a system is in a SGR.

Neil Sherman, VA Department of Rail and Public Transportation, asked Giorgis to repeat the answer to the question about Section 5310 sub-recipients. Giorgis said the rule specifies that any sub-recipient of Section 5310 that is a provider of public transportation has to comply with the provisions of the rule. He added that as a sub-recipient of Section 5310, the operator would be eligible for a group plan provided by its designated recipient.

**David Johnson, WMATA**, asked if the rules regarding vehicles that might be leased or operated under contract would apply to bus shelters, on-street layover locations or structures that might be operated under an intergovernmental agreement.

Giorgis suggested that some of the specific examples should be filed to the docket. He clarified that the proposed rule states that "any asset that is necessary for you to provide your service should be included in the asset inventory."

# **D. Performance Measurement Requirements**

Giorgis explained that the proposed rule includes four SGR performance measures—one for each asset class.

For Rolling Stock, FTA proposes an age-based measure, based on the percentage of revenue vehicles within an asset class that have met or exceeded their useful life benchmark (ULB).

For facilities, FTA proposes a condition-based approach based on the percent of facilities with a condition rating below 3.0 on FTA's Transit Economic Requirements Model (TERM) scale—a 1-to-5 condition scale

For infrastructure, the proposed rule includes a broad-based performance measure, which is the percentage of guideway directional route miles with performance restrictions by class.

For equipment, FTA proposes a narrow measure—the percentage of service vehicles within a particular asset class that have either met or exceeded their useful life benchmark (ULB).

The ULB, Giorgis explained, differs from the minimum useful life requirements under FTA's grant programs. FTA grants establish a 12-year useful-life minimum for a federally funded 40-foot bus. The ULB, in this instance, will be the target maximum level, taking into account a transit system's operating environment and maintenance practices.

He added that the ULB is expected to be flexible. FTA will provide certain default values, but each provider will have the flexibility to set different ULBs based on the unique operating environment of its vehicles.

## **Setting Targets**

Next, Giorgis provided detail on setting targets for the proposed performance measures.

He said annual targets should be established for each asset class. Targets should be supported by data, such as the most recent condition data from the provider's asset inventory as well as the most recent financial data.

Initial targets must be set within three months of the issuance of the Final Rule and then every fiscal year thereafter. Targets will be set before the TAM Plans are due. But, Giorgis clarified, FTA recognizes that transit systems "may not have complete data while setting initial targets." He said, "As the TAM plans are completed, the targets may be revised throughout the process."

Giorgis noted that targets for Group Plans apply to the group as a whole. Targets must be reported annually to the NTD.

## **QUESTIONS**

Chris Zeilinger, Community Transportation Association of America, asked

if the NPRM suggests a mechanism in case the agency and FTA think differently about which ULB benchmark number to use.

Giorgis said the ULB does not supersede the minimum ULB for FTA grant programs. He explained that for federally funded assets, transit operators still have to comply with the conditions of the grant. Giorgis said, "You could set a ULB that's lower, but you would have to accept not meeting your SGR target. Or, you could set your target accordingly, knowing that the particular asset will exceed its ULB before you can legally replace it."

**Robin Phillips, National RTAP**, asked if programs such as IT are considered infrastructure, and if bus stops are considered facilities or infrastructure.

Giorgis explained that one of the comments FTA heard in response to the advance NPRM is that there is a lot of concern about the burden that performance measures might pose. To minimize the burden, FTA is starting the rulemaking process off with a relatively narrow set of performance measures—recognizing that this suite would not necessarily cover all of the assets that would be required to be in the asset inventory.

Regarding the definition of facilities, Giorgis said, it covers buildings such as maintenance, administrative, passenger stations and parking garages. Other types of structures, like bus stops, would not be considered a building.

Mattie Webster, WMATA, asked if assets that could pose an unacceptable safety risk, such as underground safety tanks and other similar facilities, should be included in the asset inventory.

Giorgis clarified that all of the capital assets necessary for the operation of transit service should be included in the asset inventory at a level of detail necessary for the transit system to engage in its capital investment project planning process. "Assets should be identified at the level at which you would identify a capital project to replace those assets in the asset inventory," he said.

Marc Biondi, WMATA, inquired about the level of detail that should be used for setting different ULBs for a category. He described how, in the equipment category, a transit system could have a broad suite of different ULBs between the administrative non-revenue fleet versus the tunnel-scanning machine or the track geometry machine. He asked if it was necessary to have a different ULB for each type of asset, or if it would be rolled up into one weighted average.

Giorgis suggested that Biondi file this question to the docket. He clarified that FTA is proposing that providers would have the opportunity to set separate ULBs at a minimum by the asset class. He added that FTA can definitely take comments on the level of detail for ULBs.

**David Johnson, WMATA,** asked for clarity on the performance management measure for facilities. Specifically, he asked if the process of defining the ranking is subjective and up to the agency, or if the rankings are standardized.

Giorgis confirmed that there is standardization of the different levels on the TERM scale. Additionally, he said, FTA has projects in the work to develop guidance. "Once the rule goes final, and the performance measures are adopted, we will issue guidance for how you get into the nuts and bolts of it," said Giorgis.

Mary Jo Morandini, Beaver County Transit Authority, asked if FTA is proposing looking at the entire vehicle or various components of the vehicle.

Giorgis said the performance measurement for vehicles is age-based. Transit agencies set the age of the vehicle based on the year it was purchased, and then set a target age by which it expects to replace the vehicle. The performance measure is the percent of vehicles that have exceeded that age.

**David Burrows, Gannett Fleming, Inc.,** asked if there was flexibility for transit agencies to propose a different type of measurement than FTA is proposing for the asset categories.

Giorgis emphasized that this is essentially what the NPRM is for. "We have proposed that these are the performance measures and standards. But we'll definitely be looking in the docket for any suggestions about what would work better, be more meaningful, produce better results, or be easier or less burdensome to implement," he said.

**Patrick Reilly, Santa Clara VTA,** asked if buses that are operated and maintained by a contractor should be included in a transit agency's performance measures for buses.

Giorgis asked Reilly to submit the question to the docket. He added that he believes the target is based just on the assets that the transit operators have capital responsibility for.

Another participant, representing a smaller transit organization that uses space owned by a third party for garaging its fleet, asked how it will work when the state has to report on garages owned by city governments. He expressed concern about whether, depending on how the data is used, the system is subjected to be gamed.

Giorgis explained that parking garages are a special circumstance. There are a lot of private garages that FTA would not expect a transit operator to include in the asset inventory.

To ensure that these kinds of issues are clarified, Giorgis encouraged him to address these kinds of specific questions to the docket.

Mattie Webster, WMATA, asked how traditional fleet management plans fit into the concept of TAM plans.

Giorgis stressed that the requirement for fleet management plans has not gone away and that FTA is not proposing to repeal it. He encouraged Webster to file to the docket if she thinks there is a specific linkage or interaction that would be appropriate.

# E. Recordkeeping and Reporting Requirements

FTA proposed that transit agencies report through the NTD, Giorgis said, because it is familiar and should reduce the burden to the entire transit industry.

# **Annual NTD Reporting Requirements**

Recipients must submit to NTD an annual data report and an annual narrative report.

The data report will be submitted in conjunction with the annual entity report, and will include performance targets for the next fiscal year as well as selected asset inventory and condition information.

In a few weeks, FTA will publish in the federal register its proposed guidance updates to the NTD reporting manual that will contain specifics about the level of detail needed in the annual data report. "One of the comments we've received consistently is to keep the NTD data collection at a very high level," said Giorgis.

The purpose will be to supply national level data—not to duplicate the TAM process that an individual transit agency is undertaking. Giorgis told participants this will be "your next opportunity to provide comments into the process. There's a natural interaction between those data requirements and the legal requirements provided in the rule."

The annual Narrative Report will need to be submitted to the NTD "a year after the TAM Plans kick in," Giorgis said. This report will also be submitted to the NTD, and should include a description of the change in condition of the transit system's assets and progress toward the SGR targets set for the previous fiscal year. Giorgis said "This is your chance to tell your story as a transit system, beyond just the numbers that are going straight to the NTD."

For these reports to NTD, Group Plan Sponsors will submit consolidated reports on behalf of their participants.

## **Recordkeeping requirements**

Transit systems must maintain records supporting TAM Plans and share them, particularly the investment prioritization and the SGR targets, with their State DOT and Metropolitan Planning Organizations (MPO).

#### **Illustration of TAM Timelines**

Giorgis explained that it usually takes eight months to a year from the NPRM to the issuance of the final rule. FTA is expected to issue the final rule next summer (2016).

Initial targets for the performance measures will have to be set within three months after the final rule is issued (Fall 2016). The first SGR performance target data report must be submitted one year after the final rule is issued (2017). The first TAM Plan will be due two years after the final rule is issued (2018). Transit providers will have to submit to NTD a report on their assets' conditions within four months from the end of the Fiscal Year. The first narrative report will be due three years after the final rule is issued (2019).

## Certification

Giorgis noted that FTA does not approve TAM Plans. TAM plans are self-certified by the accountable executive of the transit system. FTA will update the Certifications and Assurances process for grant programs to reflect TAM Plan

requirements. These requirements will also be incorporated into Triennial & State Management Reviews, as well as during FTA/FHWA MPO Certification Reviews.

## **Tools**

Giorgis described some of the tools and technical assistance products that are available on FTA's State of Good Repair and Asset Management website, <a href="www.fta.dot.gov/sgr">www.fta.dot.gov/sgr</a> including the Transit Asset Management Guide, information about the Asset Management Pilot Projects and links to applicable TCRP reports.

He also described additional tools and technical assistance products that are under development, including a light version of the TAM Plan manual. The agency is also working on two guidebooks that will provide instructions on how to assess conditions of facilities and slow zones on rail systems.

## **Next Steps**

The comment period for the NPRM ends November 30, 2015. Giorgis explained FTA is not granting requests for a formal extension, but the agency maintains its process of accepting late comments to the extent possible. He encouraged everyone to get comments in before Thanksgiving.

Giorgis encouraged the participants to provide detailed feedback and their experiences on a number of key topics, including cost implications, estimating benefits, proposed group TAM Plan elements, reduced requirements for Tier II operators, requirements for group plans and proposed deadlines.

# **QUESTIONS**

Mark Teschauer, American Public Transportation Association, asked for clarification on the logic and reasoning for setting the initial target-setting dates for three months after issuance of the final rule, especially since it is before the two-year deadline for developing the TAM Plan.

"Those are the deadlines that are specified in the law," Giorgis explained. He added, "There is something to be said for the fact that target-setting is something you can start the ball rolling with. It's revised every year, so it can be updated as new information comes in. The deadline expresses Congress' eagerness to get asset management going as soon as possible."

Chris Zeilinger, Community Transportation Association of American, offered that CTA and colleagues at APTA are holding spring/summer meetings that could be good industry training opportunities on the final rule. He also asked if there are enforcement mechanisms related to this process.

Giorgis encouraged him to submit that comment to the docket.

Mattie Webster, WMATA, expressed concerns about scheduling conflicts with the safety rulemaking timeline.

Key expressed hope that the NPRM for the agency safety plans can be published by the end of the calendar year. She said FTA has taken into consideration that the effective date may not be the same for TAM as it is for the safety requirements or the planning requirements. FTA will be providing guidance on the relationship between TAM and safety plans. She encouraged Webster to comment on these issues when the safety rule is published.

Tuck Duncan, Kansas Public Transit Association asked if the plans are subject to FOIA requests.

Giorgis said TAM Plans are self-certified to FTA, but they are not collected by FTA. The transit agency has to maintain the plans and have them available for review. The documents are not in federal possession. "To the extent that the transit agency is a public agency in the state, the plans would likely be subject to the state's FOIA laws," said Giorgis.

Key encouraged the participants to comment on any aspect of the NPRM, but emphasized that the comments "that are the most useful are those that provide qualitative data, or rationale and explanation for why what we've proposed is or is not the right way to go."

Giorgis added that when "the case presented is persuasive, that's what leads us to update the rule."

Giorgis thanked participants for attending the session. The meeting was adjourned.