

## FTA Issues Transit Asset Management Rule

One of the farthest-reaching transit mandates under MAP-21 is becoming reality. You may recall that MAP-21 had two statutory requirements that Congress dictated would apply to every single transit agency in the country, regardless of size, geography, or funding stream: one of these is the requirement for public transportation safety plans, the other is the requirement for public transit asset management plans. We're still waiting on the transit safety rule, but today's news is that FTA's transit asset management rule was published in the July 26, 2016, Federal Register, and begins taking effect on October 1, 2016. A pre-release text of the rule is on FTA's website at <https://www.transit.dot.gov/regulations-and-guidance/asset-management/national-transit-asset-management-system-final-rule>. If you want to see this rule exactly as it appears in the July 26 Federal Register, go to <https://www.federalregister.gov/articles/2016/07/26/2016-16883/transit-asset-management-national-transit-database>.

Also on July 26, FTA launched a five-part series of asset management webinars, each addressing a different facet of the rule. These webinars continue through August 18. To sign up for the FTA webinars, go to [https://connectdotcpub1.connectsolutions.com/content/connect/c1/7/en/events/catalog.html?folder-id=1126913956&OWASP\\_CSRFTOKEN=03146e1e75b6190f7465a9cf32762ca3f9884a8584d27e1d9ab0d12d215693b1](https://connectdotcpub1.connectsolutions.com/content/connect/c1/7/en/events/catalog.html?folder-id=1126913956&OWASP_CSRFTOKEN=03146e1e75b6190f7465a9cf32762ca3f9884a8584d27e1d9ab0d12d215693b1)

In addition, FTA has announced the availability of asset management guidebooks for fixed guideways and facilities. These and a number of important background materials, including the FTA "Asset Management Guide for Small Providers" report and template, are found at the asset management page on FTA's site, at <https://www.transit.dot.gov/TAM>

It's interesting to note that almost all the concerns and suggestions put forth by CTAA earlier this year when FTA proposed its asset management regulations have been reflected in the final rule (you can read CTAA's comments on the proposed rule at [http://web1.ctaa.org/webmodules/webarticles/articlefiles/TAM\\_NPRM\\_Comments\\_Final.pdf](http://web1.ctaa.org/webmodules/webarticles/articlefiles/TAM_NPRM_Comments_Final.pdf)). Nonetheless, it's inevitable that a rule with a scope this far-reaching will cause some FTA grantees and subrecipients with a variety of headaches and hiccups as it begins to be implemented. Some of those possibly thorny issues will be discussed a little later in this analysis, but first, let's look at the basics.

### Who's Covered by FTA's Asset Management Rule?

All recipients and subrecipients of FTA funding that "own, operate or manage capital assets used for providing public transportation" are required to follow this rule.

FTA notes that this statement of applicability means that some private intercity bus companies whose only nexus of FTA funding are grants or contracts under Section 5311(f) probably will not need to participate in the asset management rule. FTA presents another possible exception in that Section 5310 subrecipients who do not provide transportation services that are open to the public probably will not need to participate in the asset management rule.

In general, this rule is meant to include public transit services that are operated under contract to FTA grantees or subrecipients, but FTA has acknowledged there may be bit of “gray area” with respect to taxi voucher programs (probably not included in this rule) or transit agencies’ contracts with taxi companies or transportation network companies such as Uber, Lyft, Split, Bridj, Via, etc. (the applicability of the transit asset management rule to these arrangements, probably will end up being determined on a case-by-case basis, looking at the extent to which the FTA grantee is controlling the ownership, operation or management of the capital assets associated with these contracts).

### Is This a “One Size Fits All” Rule?

To help ensure that smaller transit systems are not saddled with irrelevant requirements, FTA has divided the transit universe into “Tier I” and “Tier II” transit agencies. Tier I agencies are those transit agencies with rail transit as part of their scope, or that have more than 100 vehicles in revenue service in either a fixed-route transit or in any one non-fixed route mode. Tier II agencies are those that do not have rail service, and that have 100 or fewer vehicles in revenue service across all fixed route-modes or in any one non-fixed route mode; in addition, FTA has placed all Section 5311 subrecipients and all tribal transit programs in Tier II, regardless of their revenue vehicle fleet size.

Tier I agencies have to maintain more robust transit asset management plans, with nine mandatory elements to these Tier I plans. Tier II agencies have a somewhat more simplified asset management planning requirement, with only four mandatory elements. These elements are detailed in the rule at 49 CFR 625.25(b).

To further ease the management system burden on smaller entities, FTA allows Tier II systems to band together and participate in “group plans” under the asset management rule. FTA expects every state to sponsor a group plan for its Section 5311 subrecipients and those small-urban transit agencies that do not receive their funds directly from FTA. Similarly, FTA assumes that those entities that distribute or suballocate Section 5310 or 5307 funds to subrecipients will sponsor group plans under this rule. That said, the rule prohibits any entity from participating in more than one asset management group plan. Additional details about these group plans are found in the rule at 49 CFR 625.27.

So, while the rule doesn’t peg compliance to particular FTA funding streams, here’s a rough idea of what you might expect:

#### **Urban Transit and Paratransit Providers**

- If you are a Section 5307 recipient whose operations include some form of rail transit, you're a Tier I entity in this rule.
- If you are a Section 5307 recipient with more than 100 vehicles in fixed-route service, or more than 100 vehicles in demand-response service, you're a Tier I entity.
- If you're a Section 5307 recipient with 100 or fewer vehicles in revenue service, and do not operate any rail transit service, you're a Tier II entity; this is true whether you're in a large-urban or small-urban area. If you're a Tier II entity that is not a direct recipient of FTA funds (i.e., if your funding is administered by a state DOT or other FTA grantee before it hits your coffers), you may be able to participate in a group plan for asset management.

#### **Rural, Tribal or Intercity Providers**

- If you receive both Section 5311 and 5307 funding, follow the "Section 5307" bullet points above, unless you're an Indian tribe.
- If your only FTA funding comes via Section 5311 (possibly with additional capital from Sections 5310 or 5339), you're a Tier II entity, regardless of your fleet size. You're probably able to participate in a group plan for asset management.
- If you're a tribal public transit provider, you're a Tier II entity, even if some or all of your FTA funding comes from Section 5307.
- If you're a private intercity bus operator, and your only FTA funding is that which you receive through Section 5311(f), you do not need to follow the asset management rule.

#### **Specialized Transportation Providers Under Section 5310**

- If you receive not only Section 5310 funds, but also are a recipient of Section 5307 or 5311, see the above points for guidance.
- If your only FTA funding comes via Section 5310, and none of the service you provide is open to the public, you probably do not need to follow the asset management rule.
- If your only FTA funding comes via Section 5310, and some of your service is open to the public, then you're either a Tier I or Tier II provider, depending on whether you have more or less than 100 vehicles in your fleet. In either case, your asset management data will need to be reported to the National Transit Database. If you're a Section 5310 recipient with 100 or fewer vehicles that falls under this rule, you may be able to participate in a group plan for asset management.

### **What Goes Into a Tier II Asset Management Plan?**

As mentioned above, Tier II providers have to address four elements in their asset management plans. These are: (1) an inventory of the number and type of capital assets, (2) a condition assessment for these assets, (3) a description of the decision-making tools or processes that the entity uses to estimate capital needs over time and thus to prioritize its future transit investments, and (4) a prioritization of its future investments, over a four-year planning horizon. There are specific regulatory requirements that further define and explain each of these mandatory elements.

“Capital asset” is defined at 49 CFR 625.5 to include all rolling stock, facilities, units of equipment, and elements of infrastructure that are used for providing public transportation. Tier II entities’ asset management plans must include inventories and condition assessments of their capital assets, but do not need to include any equipment with an acquisition value under \$50,000 that is not a service vehicle.

### **What are the Performance Measures?**

As part of this rulemaking, FTA is including its “state of good repair” (SGR) performance measures, which are to be used in assessing the condition of transit assets under the rule. These measures, found at 49 CFR 625.43, are:

- (a) “The performance measure for non-revenue, support service and maintenance vehicles equipment is the percentage of those vehicles that have either met or exceeded their ‘useful life benchmark’ (ULB).
- (b) “The performance measure for rolling stock is the percentage of revenue vehicles within a particular asset class that have either met or exceeded their ULB.
- (c) “The performance measure for rail fixed-guideway, track, signals, and systems is the percentage of track segments with performance restrictions.
- (d) “The performance measure for facilities is the percentage of facilities within an asset class, rated below condition 3 on [FTA’s] TERM scale.”

Note that FTA will provide default values for useful life benchmarks annually.

### **What Happens to Asset Management Plans and Data?**

FTA grantees and subrecipients do not need to file or submit their asset management plans to FTA, but will certify their compliance with this rule, presumably as part of FTA’s annually required certifications and assurances. However, they are to be making use of these plans; for instance, 49 CFR 625.33 details how asset management plans are to be used to guide the prioritization of investments by FTA recipients, and includes specific requirements that “a provider must rank projects to improve or manage the state of good repair of capital assets in order of priority...” and “a provider’s project rankings must be consistent with its [transit asset management] policy and strategies.”

Data from FTA grantees’ asset management systems will become part of what is regularly submitted to the National Transit Database (NTD). In this rulemaking, FTA notes that some Section 5310 subrecipients that historically have not had to submit data to the NTD may find themselves having to submit transit asset management data to the NTD on account of this rule.

Compliance with the asset management rule will become one of the items examined on a regular basis through FTA’s triennial reviews and state management reviews.

Transit agencies' asset management plans, and their SGR performance targets, will need to feed into the performance-based transportation planning that now is required of metropolitan planning organizations and states (for CTAA's analysis of the FHWA-FTA performance-based transportation planning rule, see

[http://web1.ctaa.org/webmodules/webarticles/articlefiles/CTAA\\_DOT\\_Planning\\_Rule\\_Analysis.pdf](http://web1.ctaa.org/webmodules/webarticles/articlefiles/CTAA_DOT_Planning_Rule_Analysis.pdf)).

While there is nothing in the FTA asset management rule that specifically mentions rural transportation planning organizations (RTPOs), these entities – where they exist – may want to examine the rule anyway. For one, it's possible that some RTPOs, or the agencies housing an RTPO function, may find it appropriate to sponsor group asset management plans for the Tier II public transit systems in their area, or may even have such a function delegated to them from their state DOT. For another, in those states where RTPOs are gathering data and carrying out the steps of nonmetropolitan transportation planning, it will be important that the transit agencies in their planning area are providing asset management data to these RTPOs in support of their performance-based planning processes.

Note that FHWA and FTA have proposed a rule that would require each metropolitan planning area to have only one set of performance targets. If this rule takes effect, it probably would require even closer cooperation among all the transit agencies in an urban area to harmonize their asset management planning and performance reporting schemes. For CTAA's analysis of that FHWA-FTA proposal (which is months – or maybe even years – away from becoming final), see [http://web1.ctaa.org/webmodules/webarticles/articlefiles/PlanningNPRM\\_June27\\_CTAApost.pdf](http://web1.ctaa.org/webmodules/webarticles/articlefiles/PlanningNPRM_June27_CTAApost.pdf).

### **Where Can I Get Help With Following This Rule?**

FTA is continuing to maintain an abundance of information through the “Transit Asset Management” pages on its website: <https://www.transit.dot.gov/TAM>

For specific information on the asset management rule, contact Mshadoni Smith of FTA by email ([mshadoni.smith@dot.gov](mailto:mshadoni.smith@dot.gov)) or phone (202-366-1651). Interested parties also can contact FTA using the “Contact Us” tool on the FTA website, <https://ftawebprod.fta.dot.gov/ContactUsTool/Public/FAQs.aspx>.

FTA grantees with specific questions about compliance with this rule should, of course, turn to their FTA regional office as the first line of communication and interpretation.