



441 G St. N.W.
Washington, DC 20548

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August 12, 2016

The Honorable John Thune
Chairman
The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Bill Shuster
Chairman
The Honorable Peter A. DeFazio
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Transportation, Federal Transit Administration: Transit Asset Management; National Transit Database*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Transportation, Federal Transit Administration (FTA) entitled "Transit Asset Management, National Transit Database" (RIN: 2132-AB07). We received the rule on July 29, 2016. It was published in the *Federal Register* as a final rule on July 26, 2016. 81 Fed. Reg. 48,890.

The final rule defines the term *state of good repair* (SGR) and establishes minimum federal requirements for transit asset management that will apply to all recipients and subrecipients of chapter 53 funds that own, operate, or manage public transportation capital assets. This final rule requires public transportation providers to develop and implement out transit asset management (TAM) plans. TAM plans must include an asset inventory, condition assessments of inventoried assets, and a prioritized list of investments to improve the state of good repair of their capital assets. This final rule also establishes SGR standards and four SGR performance measures. Under the final rule, transit providers are required to set performance targets for their capital assets based on the SGR measures and report their targets, as well as information related to the condition of their capital assets, to the National Transit Database.

Enclosed is our assessment of FTA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that FTA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Holly Vandervoit
Paralegal, Federal Transit Administration
Department of Transportation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION
ENTITLED
“TRANSIT ASSET MANAGEMENT;
NATIONAL TRANSIT DATABASE”
(RIN: 2132-AB07)

(i) Cost-benefit analysis

The Federal Transit Administration (FTA) did a cost benefits analysis which includes both qualitative and quantitative components and is designed to provide information about the likely impacts of the final rule at the societal level. FTA estimated the costs and benefits of the final rule by using Bureau of Labor Statistics studies and through dialogue with transit providers. Due to the limited number of quantitative resources, many of the estimated impacts are based on explicit assumptions discussed in the final rule, and both low case and high case estimates were calculated based on in-house versus contractor estimated costs.

FTA estimated the costs of the final rule based on the incremental time that it will take a transit provider's staff to fulfill each of the National transit asset management (TAM) System requirements, deducting the costs of the transit industry's current practices. Where relevant, according to FTA, the estimates are associated with the size of a transit provider's asset portfolio, as reported in the National Transit Database (NTD). FTA monetized the time requirements using average wage rates from relevant job categories, as reported by the Bureau of Labor Statistics in 2015, and adjusted for employee fringe benefits.

FTA included a table that summarizes the estimated costs of the National TAM System. The quantified costs are for transit providers to assess their assets, develop TAM plans, and report certain information to the NTD. They do not include any incremental costs related to asset replacement, rehabilitation or maintenance—those costs are presented in the table as unquantified costs. FTA was also unable to estimate costs for assessing the condition of equipment that is not located at maintenance facilities or passenger stations or facilities not reported to NTD. The analysis covers a period of 20 years following the effective date of the final rule. Under the low cost case, the total undiscounted costs for the 20 years are \$449 million. Using a discount rate of 7 percent (with 3 percent sensitivity case) for future values, the final rule has annualized costs of \$23.2 million. Under the high cost case, if all the tasks are contracted out by the transit agencies or states, rather than performed in-house, the cost of the final rule will be roughly double the estimated in-house cost. The total undiscounted costs for the 20 years are \$868 million. Using a discount rate of 7 percent (with 3 percent sensitivity case) for future values, the final rule has annualized costs of \$44.5 million.

According to FTA, the initial costs for collecting data and developing new methodologies will be just over \$62 million spread over the first 2 years, followed by reduced amounts in subsequent years under the low cost case. Under the high cost case, initial costs will be approximately \$115 million over 2 years. FTA states that it expects that the benefits of the final rule will stem from improved maintenance practices and from improved decisionmaking in capital asset maintenance and replacement. As stated in the final rule, by identifying and prioritizing state of good repair needs, a transit provider could reduce costs for mechanical breakdowns of transit vehicles, reduce travel delays for passengers, and yield potential safety improvements. For some providers, this may be feasible by shifting priorities within their maintenance budgets. For example, by identifying slow zones where deteriorated asset conditions have reduced system travel speeds, transit systems may assign maintenance efforts towards repairs that will eliminate the slow zone and ensure consistent and reliable travel times for passengers. For other providers, this may be accomplished through proactive replacement of capital assets. For example, rather than operating buses until they become unreliable in old age, some transit providers will now establish a consistent replacement age for their buses that will prevent costly in-service breakdowns.

According to FTA, the final rule's benefits could not be quantified due to the lack of available information on the impacts of asset management programs on transit systems. Instead, FTA conducted a breakeven analysis based on the incidence of transit vehicle mechanical breakdowns reported to NTD and their associated costs. According to FTA, implementing a TAM system will require a provider to collect and use asset condition data, set targets, and develop strategies to prioritize investments to meet the provider's goals. One strategy may be to ensure that assets are maintained on a regular schedule to avoid failure of vehicles in service, which are expensive to manage and cause delays on the system. FTA states that based on limited findings on transit asset management-related cost savings from transit provider initiatives and from the literature in other transportation fields, notably highways, this level of improvement appears readily achievable. FTA further states that there will be important non-quantifiable benefits in areas such as improved transparency and accountability.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

FTA has evaluated the likely effects of the requirements of this final rule on small entities, and has determined that the rule may have a significant economic impact on a substantial number of small entities. According to FTA, the rule would impact roughly 2,700 small entities, most of whom are small government entities and small non-profit organizations that operate public transit services in non-urbanized areas. Compliance costs would vary according to provider size and complexity and the extent of current asset management practices. Costs are illustrated by an example calculation for a transit provider with 10 vehicles, for which compliance costs were estimated at \$42,535 (over 2 years) for initial implementation and \$9,816 per year for updates and reporting. Over a period of years, this would represent a small share (less than 1 percent) of the operating budget that would be typical for a transit provider of that size. However, under the final rule, small entities who met the criteria for tier II designation and subrecipients under the Rural Area Formula Program, could participate in a group TAM plan sponsored by their state Department of Transportation or direct recipient. This would allow for some of the costs of implementation (such as developing analytical tools, prioritization project list, target setting, and performance measures) to be borne by the group TAM plan sponsor or spread across a larger number of entities, reducing the cost for each.

FTA states that overall, while the rule would impact a substantial number of small entities, these effects would not be significant due to the low magnitude of the costs and the potential for offsetting benefits. Moreover, FTA states that it designed the rule to allow flexibility for small entities, including exemption from certain requirements and the option to participate in a group TAM plan. In addition, it states that transit agencies would also see benefits from improved data-driven decisionmaking, including qualitative benefits to transparency and accountability and the potential for direct cost savings in maintenance and life-cycle costs of asset ownership.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

FTA states that this rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995. Under FTA's grant programs, the development of a TAM plan is eligible for funding as a planning or administrative expense, or capital expense under the SGR Grant Program authorized at 49 U.S.C. § 5337.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On October 3, 2013, FTA published a consolidated advance notice of proposed rulemaking (ANPRM) requesting public comment on a wide range of topics pertaining to the Public Transportation Safety Program and the TAM program authorized by MAP-21. 78 Fed. Reg. 61,251. On September 30, 2015, FTA published a Notice of Proposed Rulemaking (NPRM) for the Transit Asset Management and the National Transit Database. 80 Fed. Reg. 58,911. FTA received a total of 119 public comments on the NPRM. FTA stated in the rule that, generally, it had not responded to those comments relating specifically to other rulemakings. Several commenters requested an extension to the comment period.

FTA did not extend the comment period, but did accept late filed comments. A couple of comments suggested that FTA provide an opportunity for states and others to offer additional comments after the Federal Highway Administration and FTA issue all of the performance management-related NPRMs. FTA will continue to engage with the states, transit agencies, and other members of the public on the implementation of its programs and requirements. FTA summarized the public comments on the NPRM and responded to them.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

FTA states that it is seeking approval from the Office of Management and Budget (OMB) for an Information Collection Request. FTA acknowledged that this final rule entails collection of information to implement the transit asset management requirements of 49 U.S.C. 5326. Specifically, a transit provider subject to the rule would do the following: (1) develop and implement a TAM plan; (2) set performance targets; (3) submit an annual narrative and data report to the NTD; and (4) maintain required records.

The initial hours of burden for tier I providers are expected to be 431,424 hours in total for 284 transit providers, averaging to just over 1,519 hours per provider. The annual average recurring burden is 200,015 hours, averaging at 704 hours per transit provider. For the low case, the initial dollar cost of implementing the rule would be \$24.45 million over 2 years and a recurring annual average cost of \$9.87 million, averaging to \$86,090 and \$34,752 per provider respectively. For the high case, the initial dollar cost of implementing the rule would be \$47.48 million over 2 years and a recurring annual average cost of \$19.74 million, averaging to \$167,187 and \$69,505 per provider, respectively.

The initial burden for tier II providers is expected to be 679,166 hours in total for 754 plans to be developed by the direct recipients and/or group TAM plan sponsors, with an average of just over 900 hours per plan. The annual average recurring burden is 243,504 hours, averaging at 323 hours per TAM plan. For the low case, the initial dollar cost of implementing the rule would be \$33.62 million over 2 years and a recurring annual average cost of \$10.58 million, averaging to \$44,594 and \$14,028 per plan, respectively. For the high case, the initial dollar cost of implementing the rule would be \$63.48 million over 2 years and a recurring annual average cost of \$21.15 million, averaging to \$84,187 and \$28,057 per plan, respectively.

Statutory authorization for the rule

The final rule was promulgated under section 20019 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) Pub. L. No. 112-141 (2012), codified at 49 U.S.C. § 5326.

Executive Order No. 12,866 (Regulatory Planning and Review)

FTA examined the potential economic impacts of this rulemaking and determined that this rulemaking is likely to be economically significant, in that it may lead to transit providers making investment and prioritization decisions that would result in economic impacts that could exceed \$100 million in a year. However, FTA discussed in greater detail in the rule, that it was unable to quantify the potential impacts of this rule beyond the costs for transit agencies to assess their assets, develop TAM plans, and report certain information to FTA. Most significantly, due to lack of information about how and the extent to which agencies will change their asset maintenance, rehabilitation and replacement plans and practices in response to this rule, FTA was unable to estimate costs or benefits for additional asset maintenance, rehabilitation or replacement.

Executive Order No. 13,132 (Federalism)

FTA determined that the action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. FTA also determined that this action does not preempt any state law or state regulation or affect the states' abilities to discharge traditional state governmental functions. Moreover, consistent with the federalism order, FTA has examined the direct compliance costs of the final rule on state and local governments and has determined that the collection and analysis of the data are eligible for federal funding under FTA's grant programs.