

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION (FTA)**

Frequently Asked Questions

Public Transportation Safety Program Final Rule

**Question 1: What is the Public Transportation Safety Program Final Rule?**

**Answer:** The Public Transportation Safety Program Final Rule (Safety Program Rule) establishes substantive and procedural rules for the administration of the Public Transportation Safety Program (National Safety Program) authorized at 49 U.S.C. § 5329, including FTA’s authority to monitor and oversee transit safety and enforce transit safety laws. The Rule establishes Safety Management Systems (SMS) as FTA’s foundational safety policy which will support FTA in taking a risk-based approach to the development and implementation of the National Safety Program. The rule does not require any specific, immediate action from recipients.

**Question 2: To whom does the rule apply?**

**Answer:** The rule applies to all recipients of Chapter 53 funds, including States, State Safety Oversight Agencies, and operators of public transportation systems.

**Question 3: Does the rule apply to agencies that are regulated by another federal entity, such as the Federal Railroad Administration?**

**Answer:** The rule does not apply to transit operators who are subject to the safety jurisdiction of another Federal agency, such as commuter rail operators that are subject to the Federal Railroad Administration’s safety regulatory requirements.

**Question 4: What types of oversight and enforcement authority does the rule grant to the FTA?**

**Answer:** FTA may:

- conduct investigations, inspections, audits, and examinations, and test the equipment, facilities rolling stock, and operations of a recipient’s public transportation system;
- withhold up to 25% of a recipient’s funding under 49 USC 5307 if FTA has evidence that the recipient has engaged in a pattern or practice of serious safety violations;
- require a recipient to use Federal financial assistance to correct safety deficiencies identified by FTA or a State Safety Oversight Agency (SSOA);

- require more frequent oversight of a recipient by an SSOA that has jurisdiction over the recipient;
- require more frequent reporting by a recipient;
- order a recipient to develop and execute a corrective action plan;
- issue restrictions and prohibitions on a transit agency's operations when unsafe conditions and/or practices create a substantial risk of death or personal injury;
- issue Safety Advisories that *recommend* corrective actions, inspections, limitations, or other responses from a recipient to mitigate or avoid safety risks or hazards; or
- issue Safety Directives that *require* action by a recipient. General Directives are applicable to all recipients or a subset of recipients, and Special Directives are issued to one or more named recipients.

**Question 5: Does the rule mandate that transit agencies adopt Safety Management Systems (SMS)?**

**Answer:** No. The Public Transportation Safety Program final rule formally establishes the principles and practices of SMS as the foundation for the FTA's new safety oversight authority. However, on February 5, 2016, FTA published the [Public Transportation Agency Safety Plan Notice of Proposed Rulemaking \(NPRM\)](#).<sup>1</sup> Under that proposed rule, each operator of public transportation that receives Federal financial assistance under 49 U.S.C. Chapter 53 would be required to develop and implement an Agency Safety Plan based on the principles of Safety Management System (SMS). FTA anticipates publishing a Public Transportation Safety Plan Final Rule later this year. For information about SMS, please refer to the [SMS resources](#) on the FTA Office of Transit Safety and Oversight website.

**Question 6: Will the FTA provide advance notice before visiting a transit agency to perform an inspection, investigation, testing, or other compliance activity?**

**Answer:** To the extent practicable, FTA will provide notice to a recipient prior to initiating investigations, inspections, audits, examinations, or testing the equipment, facilities, rolling stock, or operations of a recipient's public transportation system.

**Question 7: Where can I find additional information on the Public Transportation Safety Program Final Rule?**

**Answer:** Please visit the Office of Transit Safety and Oversight's [rulemaking page](#) for more information on the Public Transportation Safety Program Final Rule.

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<sup>1</sup> The Agency Safety Plan NPRM is available at <https://www.gpo.gov/fdsys/pkg/FR-2016-02-05/pdf/2016-02017.pdf>.

**Question 8: Hasn't FTA always had the authority to inspect and withhold funds if non-compliant?**

**Answer:** Prior to the passage of The Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141 (2012)), FTA's previous authorization statute, SAFETEA-LU (Pub. L. 109-59(2005)), amended 49 U.S.C. § 5329 to authorize the Secretary to conduct investigations into safety hazards associated with a recipient's equipment, facility, or operation. When deemed necessary, FTA could require the local governmental authority receiving Federal financial assistance to implement a corrective action. SAFETEA-LU further authorized FTA to withhold financial assistance until the corrective action plan was approved and carried out.

**Question 9: Can FTA to protect investigation reports otherwise protected by State law? Are Transit Agency Accident reports subject to Freedom of Information Act (FOIA) at the Federal level?**

**Answer:** FTA does not have statutory authority to withhold investigation reports or other safety information from disclosure under FOIA, from being entered into evidence, or from being used in civil litigation in a suit for damages arising from an accident. With regard to records in the possession of FTA, FTA will maintain the confidentiality of accident investigations and reports to the maximum extent permitted under Federal law, including the various exemptions under the FOIA.

**Question 10: The rule requires FTA to implement a Safety Management System approach (SMS) but transit agencies are not required to implement SMS? Will transit agencies be required to implement SMS in the future?**

**Answer:** Under this rule, transit agencies are not required to undertake any action. The rule formally establishes the principles and practices of SMS as the foundation for the FTA's new safety oversight authority. On February 5, 2016, FTA published the [Public Transportation Agency Safety Plan Notice of Proposed Rulemaking](#) (NPRM).<sup>2</sup> Under that proposed rule, each operator of public transportation that receives Federal financial assistance under 49 U.S.C. Chapter 53 would be required to develop and implement an Agency Safety Plan based on the principles of SMS. FTA anticipates publishing a Public Transportation Safety Plan Final Rule later this year. For information about SMS, please refer to the [SMS resources](#) on the FTA Office of Transit Safety and Oversight website.

**Question 11: Can FTA withhold Section 5311 funds?**

**Answer:** The Public Transportation Safety Program applies to ALL recipients of Federal financial assistance under 49 U.S.C. chapter 53, including those receiving funding under the Rural Area Formula Program (49 U.S.C. § 5311), either directly or indirectly.

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<sup>2</sup> The Agency Safety Plan NPRM is available at <https://www.gpo.gov/fdsys/pkg/FR-2016-02-05/pdf/2016-02017.pdf>.

**Question 12: Does the rule allow for variances and appeals to the administrator regarding special directives?**

**Answer:** The Program rule provides a mechanism for a recipient to appeal the issuance of a directive to the Administrator through a petition for reconsideration. However, a recipient is required to observe the special directive while the Administrator's decision is pending.

**Question 13: What data would FTA use to identify agency deficiencies and violations?**

**Answer:** FTA may use a number of sources to gather data to identify agency deficiencies and violations. For example, FTA may use the authorities provided under the Safety Program to gather data, including, but not limited to, conducting investigations, audits, examinations, and testing of equipment, facilities and rolling stock.

**Question 14: By removing the 30 day time frame for recipients to comply with FTA records requests, does that mean records requests must be supplied immediately?**

**Answer:** As noted in the preamble to the final rule, FTA eliminated the 30-day response timeframe proposed in in the NPRM because there may be instances where FTA will need requested information more quickly. In some instances it may be immediately. On a case-by-case basis, FTA will determine reasonable response times for requested information.

**Question 15: In general, what impact will the final rule have on rural transit systems?**

**Answer:** The rule applies to all recipients of Chapter 53 funds, including States, State Safety Oversight Agencies, and operators of public transportation systems, including rural transit providers. Although the rule does not require any specific action on behalf of recipients, FTA may undertake the following actions with respect to any recipient:

- conduct investigations, inspections, audits, and examinations, and test the equipment, facilities rolling stock, and operations of a recipient's public transportation system.
- withhold up to 25% of a recipient's funding under 49 USC 5307 if FTA has evidence that the recipient has engaged in a pattern or practice of serious safety violations.
- require a recipient to use Federal financial assistance to correct safety deficiencies identified by FTA or a State Safety Oversight Agency (SSOA).
- require more frequent oversight of a recipient by an SSOA that has jurisdiction over the recipient.
- require more frequent reporting by a recipient.
- order a recipient to develop and execute a corrective action plan.
- issue restrictions and prohibitions when unsafe conditions and/or practices create a substantial risk of death or personal injury.

- issue Safety Advisories that recommend corrective actions, inspections, limitations, or other responses from a recipient to mitigate or avoid safety risks or hazards.
- issue Safety Directives that require action by a recipient. General Directives are applicable to all recipients or a subset of recipients, and Special Directives are issued to one or more named recipients.