

## Public Transportation Safety Program NPRM Webinar

**Operator (Lori):** Hello, everyone, and welcome to today's webinar: Public Transportation Safety Program Notice of Proposed Rule Making. Before we get started, I would like to go over a few items so you know how to participate in today's event. You have joined the presentation listening using your computer speaker system by default.

If you would prefer to join over the telephone, just select telephone in the audio pane, and the dial-in information will be displayed. You will have the opportunity to submit text questions to today's presenter, by typing your questions into the questions pane of your control panel. You may send in your questions at any time.

We will collect these and address them during the Q&A session at the end of today's presentation. I would now like to turn the webinar over to Tom Littleton.

**Tom Littleton:** Thank you very much. Good afternoon, everybody. My name is Tom Littleton. I'm the FTA's Associate Administrator for Transit Safety and Oversight. I'm really excited that you all took time out of your busy schedules to join us here today so that we can talk about our new proposed rule to support a public transportation safety program, that's based on the principles and practices of safety management systems.

The rule, as proposed, would establish the overall framework for FTA to monitor, oversee, and enforce safety for the transit industry. It's important for you to have this knowledge, and I thank you for taking the time, again.

Now, I'm pleased to introduce our special guest to open the webinar, Matt Welbes. Matt Welbes is the Executive Director of the Federal Transit Administration. He directs the daily operations of the agency and supports the administrator and establishes direction on policies, budget, and strategic

priorities, and he's a good guy. Prior to joining the Office of the Administrator as a senior advisor in 2001, Matt worked in the FTA's Office of Budget and Policy.

Matt began his federal career as a Presidential Management Fellow in 1992, working in the Office of Management and Budget, the Office of the Secretary of Transportation, and in the FTA. With that, I'd like to go ahead and welcome Matt. Thank you for being here, and I'll turn the mic over to you.

**Matt Welbes:** Thank you, Tom. I want to thank all of you for joining us today. We have a tremendous response to this webinar, and so we appreciate your interest. Together, all of us in the public transportation industry face a common challenge.

We have to keep the safest mode of surface transportation safe. We have to do this while maintaining and restoring our existing public transportation infrastructure, adding capacity for growing transit ridership that is at historically high levels today.

Historically, we've proven that public transportation can give people transportation choices. In the process we manage traffic congestion, we create economic opportunities, and we contribute to a sustainable future. But the foundation for all of these benefits is safe and reliable public transportation service. That's a key reason why Congress expanded FTA's safety authority three years ago using MAP-21.

As FTA implements this authority, we've been very deliberate about including you, people in the transit industry, transit operators, industry suppliers, citizens who take transit every day, in this process.

If we do this right, we're all going to work closely together, and we will be in a superior position to keep public transportation safe and reliable for passengers long into the future. As Tom noted, the safety management system approach is the foundation for our efforts.

That approach has proven successful in aviation and other transportation industries, and FTA is using it as the basis for our work today. The Public Transportation Safety Program proposed rule, that we will review today, establishes Safety Management Systems, or SMS, as the foundation of the safety program.

It's a tremendous step forward for us and for all of us in public transportation right now. That's why we're, once again, asking you to take the time to comment on this proposed rule so that it benefits from your thoughts and expertise. That is very important for us as we go forward, to hear from you.

I want to thank you, again, for participating in this webinar and participating in the days and months and years ahead as we build the safety culture that we need for our public transportation industry. I'll turn in back over to Tom Littleton.

**Tom:** Matt, thank you very much. I'd like to thank you again for taking your time to come down here and provide those words. I wanted to piggyback on something you said at the end about the importance of providing good comments to these rule-makings.

I want to emphasize that it's not just comments on things that you think are wrong or need to be changed. But we need good comments on the things that you think are correct. Because, that is every bit as valuable as the critique in the other direction. With that I'll go ahead and turn it over to Donna Aggazio, who will take it from there. Donna.

**Donna Aggazio:** Great. Thank you both for being here. We appreciate you taking the time to welcome our audience. We appreciate your time, everyone out there, being on the webinar.

This webinar is a forum for FTA to provide an overview of the proposed program. Here to review the NPRM is Lynn Everett from the Office of Transit Safety and Oversight. Lynn.

**Lynn Everett:** Thank you, Donna. Thank you all for participating today. I'm Lynn Everett from the Office of Systems Safety, and also today we have Candace Key from the Office of Chief Counsel. I'm going to apologize in advance that this material is a little bit dry.

However, we are being recorded, so I want to make sure that the material is exactly the same today as it is tomorrow, and that everybody gets the same message. We'll start out with providing a little bit of background. We'll go over the contents in the NPRM, and follow that with the next steps in the rulemaking process.

Today's webinar is not a public hearing characteristic of formal rulemaking process. Instead, this webinar is to serve as a forum in which FTA can explain the NPRM and answer questions about it. This webinar is not an opportunity for the public to provide comments, but rather a forum in which FTA can explain the NPRM.

For your comments to be considered during this rulemaking process, they need to be submitted to the docket through one of the methods specified in the NPRM by October 13th, 2015.

The methods for providing comments are listed at the end of this webinar. It's extremely important for members of the transit industry, including small transit providers, to participate in the rulemaking process, for the Safety and Transit Asset Management programs. Your comments will impact the development of the rules that ultimately implement each of the topics discussed today.

In addition, your comments help to create a strong record that supports the rational basis needed for issuing final regulation. This means, that submissions to the docket that are most influential are those that contain data, site source materials, and rational to support the points made in the comments.

At the end of the presentation, we will be taking questions. You may ask clarifying questions or ask that we repeat something that you misunderstood.

However, this is not a forum to ask about implementation or provide comments on the NPRM.

We have an operator on the line who will be monitoring the calls, to make sure that we do not take questions outside of the parameters. We are not permitted to elaborate on what is written in the NPRM, and we will also not be answering questions about other rulemaking.

For a little bit of background, since 1964, FTA, which finances nearly half of the capital expenditures for Transit Systems nationwide, has been prohibited by law from issuing basic safety standards to protect Transit passengers and workers.

With MAP-21, FTA entered a brand-new territory. For real transit, specifically, previous weak authority contributed to insufficient and inconsistent state oversight. Several high profile accidents, coupled with weak or non-existent state oversight, marked renewed focus on the transit industry by Congress.

In December 2009, the administration transmitted to Congress the first piece of legislation ever submitted that was solely about public transportation. In July, 2012, President Obama signed into law MAP-21, which authorizes the Public Transportation Transit Safety Program, codified at 49 USC, section 5329.

For the first time, FTA is able to close a loop hole in inadequate transit safety oversight and enforcement. FTA is proposing a flexible and scalable approach to implementing its new safety authority. Each of the components of the program will become part of the comprehensive framework to improve safety of the nation's public transportation system.

This graphic depicts transit safety rulemaking components as envisioned under MAP-21. With the public transportation safety program, NPRM, establishing the structure of FTAs oversight, based on the guiding principles of safety management systems, and informed by the national safety plan.

FTA released an advanced notice of proposed rulemaking on October 3rd, 2013, on new safety and transit asset management requirements in MAP-21. The ANPRM posed 123 questions on both the new TM and safety requirements and received comments from 167 respondents.

FTA reviewed all of the comments to the ANPRM and used those comments to help write the NPRMs, which have been published for the State Safety Oversight Program, and Interim Training Provisions, and the forthcoming NPRMs for the Public Transportation Agency Safety Plan, Safety Certification Training Program, and Transit Asset Management.

During 2015, FTA has been very busy developing rules to implement the statutory requirements of MAP-21. The Public Transportation Safety Program sets the stage for the safety rulemaking.

The rule proposes to establish SMS as a foundational safety policy, establish the overall framework for FTA to monitor, oversee and enforce safety in the public transit industry, further defining FTAs new safety oversight authority, and establish the minimum contents for the National Public Transportation Safety Plan. This is the rule that says what FTA is going to do.

The Public Transportation Agency Safety Plan, The Public Transportation Safety Certification Training Plan, The State Safety Oversight Rule, and The National Public Transportation Safety Plan are all rules and guidance that will establish what the industry must do.

Today's rulemaking is the proposed "Public Transportation Safety Program Rule," which was published in the "Federal Register" on August 14th, 2015. Comments are due on or before October 13th, 2015.

Following the comment period, FTA staff will review the comments received to the docket, and then issue a final rule. The target date for the final publication is summer, 2016.

Finally, to the content. The Public Transportation Safety Program sets the policy for FTAs safety rulemaking, establishes a framework to support FTAs enforcement activities and other activities to carry out the Public Transportation Safety Program for the purpose of improving transit safety. It applies to all recipients of federal transit funds.

FTA has adopted the principles and methods of Safety Management Systems, or SMS, as the basis for enhancing, the safety of public transportation in the United States. All rules, regulations, policies, guidance, best practices, and technical assistance administered under the authority at 49 U.S.C. section 5329, will follow the principles and methods of SMS.

We've published our SMS framework, "Getting Ready," on our website in the link shown on this screen. SMS means the formal, top down, organization wide, data-driven approach to managing safety risks and ensuring the effectiveness of safety risk mitigations. SMS includes policies, procedures, and practices for the management of safety risk.

At the transit agency level, SMS aides in the establishment of clear accountabilities and communication processes for collecting, analyzing, and sharing information about safety that would be used to identify hazards, assess consequences of those hazards, assess risk, determine mitigations, and assess performance of those mitigations.

Again, the framework is posted on our website. We recommend strongly that you look that over.

MAP-21 strengthened the FTA administrator's authority to conduct inspections, investigations, audits, examinations and testing, required documents, issued subpoenas and depositions, and prescribed record keeping and reporting requirements.

This authority extends to equipment, facilities, rolling stock, and operations. The administrator may require production of documents and records, take evidence, and establish record keeping and reporting requirements.

The administrator may also direct FTA personnel or contractors to enter the premises of a grantee to inspect, cut and test equipment facilities, rolling stock to review operations, and relevant records to assure compliance with regulations and directives.

The proposed rule establishes administrative process for request of information. The rule proposes procedures for a grantee to request confidential treatment of records that FTA requests.

FTA also has the statutory authority to withhold funds. If the administrator identifies a pattern or practice of violations of regulations or non-compliance with directives, he or she may redirect the use of federal funds, to correct safety deficiencies or withhold federal funds.

The proposed rule establishes the process for notice from the administrator and the process for response with any final determination to be made by the administrator. The program rule also sets out two types of directives -- general directives, and special directives.

General directives would be applicable to all grantees, or a subset of grantees. General directives would be effective upon notice in the Federal Register, and would be subject to public notice and comment. After the comment period, FTA would issue a final general directive.

Special directives would be applicable to one or more named grantees, effective upon direct notice to the grantee or grantees. The proposed rule establishes a process for reconsideration.

For example, let's say there's a new type of technology in use throughout the industry or a particular type of wayside communication device, say. Several years



later, we discover a safety risk associated with the use of this system. FTA could issue a general directive to the entire transit industry, which would require specific action to be taken to mitigate that safety risk.

Conversely, FTA could issue a special directive to a single agency or a small group of entities to address a specific safety risk unique to those entities. That would not require response from the whole industry.

FTA recently issued a special directive to WMATA, on July 17th, 2015. In addition to directives, the administrator can also issue advisories. Safety advisories are issued to inform transit operators about a known unsafe or potentially unsafe condition, and requests action.

They would be applicable to one or more grantees, when the administrator determines that an unsafe condition exists within a public transportation system. They recommend corrective action, inspections, condition assessments, limitations on actions, or other actions to resolve or mitigate the unsafe condition.

They would be effective upon notice issued in the Federal Register, and non-compliance with an advisory, may impact enforcement actions, such as issuance of a directive, or redirecting of funds. It also establishes the administrative process for response to the administrator, and the administrator's final determination.

FTA has issues several safety advisories since 2013, related to right-of-way worker protection, train movement, safe stopping distances, and tunnel environments. Each the advisories are available on FTA's website, at [fta.dot.gov](http://fta.dot.gov).

Finally, the program rule also would establish the purpose and the contents for a National Public Transportation Safety Plan. The plan must establish, at a minimum, safety performance criteria, or measures. The initial measures selected are fatalities, injuries, safety events, and equipment failure rates by mode.

The plan would include also the definition of the state of good repair, minimum safety performance standards for vehicles, public transportation safety certification training program content.

The national plan would serve as a tool for FTA to communicate information about safety performance with the industry, to provide guidance on implementation of safety management systems, and to provide technical assistance tools, best practices, and links to additional information to assist the transit industry.

FTA anticipates the publication of the "First National Public Transportation Safety Plan," within the coming weeks. The most important thing that you can do at this point is to comment. The commentary for the docket closes on October 13th, 2013, and the docket information is on your screen.

The docket number is FTA-2015-0009. For more information, you may contact me, [lynn.everett@dot.gov](mailto:lynn.everett@dot.gov), or [candace.key@dot.gov](mailto:candace.key@dot.gov). We will then review the comments, develop the final rule, and publish the final rule for comment, as well.

The information for submitting comments, you can submit comments electronically at [www.regulations.gov](http://www.regulations.gov), by mail at Docket Operations USDOT, 1200 New Jersey Avenue Southeast, West Building, Room W12-140, Washington, DC, 20590.

They may also be hand-delivered to the same location, room W12-140 of the West building, at 1200 New Jersey Avenue Southeast, Washington, DC, between the hours of 9:00 and 5:00. They can also be faxed at 202-493-2251.

That concludes our presentation, and we will now take questions. I'll turn it over to Lori for organizing. Thank you very much.

**Lori:** OK. Thank you, Lynn. We're now going to begin answering questions submitted during today's presentation. As a reminder, you can still submit

questions to the questions pane of your attending control panel. Our first question is, could you please list the docket number again?

**Lynn:** Absolutely. The docket number is FTA-2015-0009, or the RIN number is 2132-AB22.

**Lori:** All right, thank you. We are still waiting on some questions to come in. Again, you can submit your questions to the questions pane of your control panel. I do want to remind everyone that this is being recorded, and the recording will be made available soon after the webinar has ended.

**Lori:** We have another question. Where can I go to get the two PDF documents listed in this presentation? I am unable to open it here.

**Lynn:** You can access the document on FTAs website, or the docket. That's a good question. Yes, at [www.regulations.gov](http://www.regulations.gov) and use the docket number. You will be able to access the program rule there. The SMS framework that was referenced in the presentation is available on FTA's website, at [fta.dot.gov](http://fta.dot.gov).

**Lori:** Thank you. Next question is, what is the expected timeline of implementation of the rules?

**Candace Key:** FTA anticipates publishing final rules for the safety program during calendar year 2016.

**Lori:** Next question is, please list the National Public Transportation Safety Plan list of safety performance criteria again, more slowly.

**Lynn:** Certainly. The proposed initial safety performance criteria or measures are fatalities. These are indicated as a number and as a rate. The specifics will be in the National Safety Plan, which will be published in the next few weeks.

It's fatalities, number and rate by mode. Injuries, number and rate by mode. Safety event, number and rate by mode. That means accidents and incidents. Then equipment failure rates or mean distance between failure by mode.

Those are the proposed initial performance criteria that are spelled out in the National Safety Plan.

**Lori:** Thank you. Another question is, is this docket 2015-0009 separate to docket 2015-0019?

**Lynn:** Yes, it is.

**Lori:** The next question is, is it accurate to say that the Public Transportation Safety Plan will not be a rule? How does the process of review and comment work if not?

**Lynn:** The Public Transportation Safety Plan, the National Safety Plan, as we call it in short, will be published in the Federal Register for review and comment for a period of 60 days. After the comment period FTA will review the comments and then publish a final National Safety Plan and responses to comments.

It's not a rulemaking, per se. It is considered guidance, but the FTA has the requirements for publishing our guidance in the Federal Register a little different than some other agencies. The intent of it being guidance and not rule is so that we may update it and share information in a more timely way, because that's faster significantly than rulemaking.

**Lori:** Thank you. Our next question is how with this rule affect NTSB investigations?

**Candace:** This is Candace Key, from the Office of Chief Counsel. This rule will not affect NTSB's investigation. NTSB has primary jurisdiction over transit and other transportation-related accidents, so this will not impact NTSB's investigations.

**Lori:** Our next question is the NPRM states that the FTA does not believe that proposed rule imposes additional costs to entities. What is the basis for this assumption?

**Candace:** FTA believes that any costs associated with this rule would be attributed to implementation of other requirements, either for the Public Transportation Agency Safety Plan, the State Safety Oversight Program, or under the Public Transportation Safety Certification Training Program.

This rule really just speaks to FTA's authority and what we are able to do, and our policy.

**Lori:** OK. Thank you very much. We have a question that says, are we commenting on the NPRM issue of August 14th, 2015 or the SMS Framework Document on the FTA website, or both?

**Lynn:** The docket is to comment on the NPRM itself. The SMS Framework is presented to give you some more background about what SMS is and what the FTA is doing with regard to safety in SMS.

**Lori:** Wonderful. Thank you. Let's see. You mentioned the release of the National Safety Plan next week. Can it be assumed it will be available online on the FTA website?

**Lynn:** The National Safety Plan is...I said in the coming weeks. It's not next week exactly. But in the coming weeks, it will be published in the Federal Register.

As we mentioned a minute ago, it will be available for notice and comment. We will also have it available on our website, eventually.

**Lori:** Will this apply to 5310 recipients?

**Lynn:** Yes. As we indicated at the beginning of the presentation, this rule would apply to all recipients of chapter 53 funds.

**Lori:** Just going through these questions, give me a few seconds. Again, if you want to submit a question, you can submit your questions through the questions pane of the control panel.

We are getting quite a few questions, so give me a few seconds to go through these. OK. Here's one. Will these questions and answers be posted for later review?

**Lynn:** Yes, they will.

**Lynn:** They most certainly will.

**Lori:** Can we see all comments received from this NPRM and FTA's responses to those?

**Lynn:** This is actually a great question. The comments made to the docket are public. Any comments can be reviewed by going to [regulations.gov](http://regulations.gov) and linking the docket number that we gave you a little while ago, which is FTA-2015-0009.

As we also mentioned earlier, that is the formal process for comments to be received on this rulemaking. If you want your comments to be recognized and considered as we are drafting rules, you will need to submit your comments to that docket. FTA will respond to comments to the docket in the preamble to the final rule. Thank you for the question.

**Lori:** Our next question is, will this rule cover agencies that are regulated by another federal entity, the Coastguard, Federal Railroad Administration?

**Lynn:** The proposed rule would apply to all recipients of Chapter 53 funds.

**Lori:** Next question, does the FTA plan to add a significant number of staff in order to accomplish the added inspections, investigative auditing, examinations and testing activities discussed in the 49 CFR, 670?

**Candace:** FTA has been working diligently to set up a safety program and staff up the safety office. We have hired several investigators in the safety office.

**Lori:** Would you please say again where we can view a recording of this presentation, and where will it be posted?

**Donna:** The presentation slides and transcript will be posted to the rulemaking docket and on the FTA website under Office of Transit Safety & Oversight.

**Donna:** We'll send out a notice to everyone who's registered on this webinar.

**Lori:** What will be the latest that you can submit comments on the document?

**Lynn:** The comment period closes on October 13, 2015, to the docket. FTA will accept comments beyond that date to the extent practicable. But to be certain, you need to have your comments in to the docket by October 13th.

**Lori:** Will these regulations also apply to tribal, rural, and small urban bus-only services as mandated or voluntary compliance?

**Lynn:** Yes, the proposed rule would apply to all recipients of Chapter 53 funds.

**Lori:** All right, guys, I'm just going through these. You guys are answering them much faster than I can go through them.

**Donna:** It's OK. [laughs]

**Lori:** Is the webinar tomorrow different from this one?

**Lynn:** No, tomorrow's webinar was due to the number of registrants for today's webinar. It's an opportunity for people who could not participate today to hear the same message.

**Lori:** I apologize. Bear with me a minute. I have a long one here, so bear with me here.

At what point in FTA's regulatory process will there be a clear opportunity for small bus transit systems to register such concerns as they may have to the effect that they should not be subjected to the full penalty of the requirements that FTA might choose to apply to large transit systems?

**Lynn:** This is an excellent question, and it gets at the reason for FTA's implementation of safety management systems as the policy for moving forward with safety regulations. SMS is intentionally scalable and flexible to respond to the size of the system that you're responsible for. That's why I keep leading you to the SMS framework, but the importance is that it is flexible and scalable.

There is no expectation that a small system is going to have the same kind of things that a large system does, nor would it make sense. I appreciate the question or comment. Thank you.

**Lori:** Will there be guidance or assistance from FTA in implementing the SMS?

**Lynn:** There absolutely will be guidance and assistance in implementing SMS. Again, the framework is getting started. That's the first piece. There will be more as we're developing it. We're working on this all the time. Thank you.

**Lori:** Have there been any general directives in regards to safety thus far?

**Lynn:** No, there have not.

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**Candace:** Just as a reminder, we're getting a lot of questions about a lot of other rulemaking. For example, the State Safety Oversight rule and the forthcoming Public Transportation Agency Safety Plan rulemaking.

Today's conversation is purely about the Public Transportation Safety Program, NPRM, and the contents of that NPRM. We will not be answering any questions about any other rules, but we encourage you to comment to the docket when those rules are published in the Federal Register.

**Lori:** Just give me a few minutes. Bear with me. You guys have some great questions.



**Lori:** It looks like we've answered all the questions to do with today's topic. If you'd like to ask a question within the limitation that was just outlined, please go ahead and do so.

**Lori:** I'll give you a few more seconds to submit your questions, and then we will close.

**Lynn:** Just to quickly reiterate, as Candace said, we're not using this webinar to talk about other rulemaking.

Just to also say the three most important things that we really hope you will do are to review the proposed rule and comment to the docket by October 13th, to read the estimate framework on our website, and to stay tuned to all of our rulemakings and publications.

There are many things in the works coming, and I think a lot of your questions will be answered in the coming months.

**Lori:** We have one more. Can you repeat the answer to the earlier questions on implementation at the rule level? Did I hear it was voluntary?

**Candace:** Oh, to clarify? I'm not sure we understood the question. The proposed rule would apply to all Chapter 53 recipients, including bus providers and rural providers.

**Lori:** Let's give it another 15 seconds. Does that work for everyone?

**Lori:** Will the PowerPoint today be available in PDF format?

**Lynn:** Yes, it will be.

**Lori:** Let's give it a few more seconds. I just want to make sure we get these questions answered for you.

**Lori:** Presenters, if they have questions after the webinar, can they contact you using the information on the slide?

**Lynn:** Yes, they can. Any questions, we can answer.

**Lori:** Perfect. Please clarify enforcement action.

**Candace:** Under MAP-21, FTA's enforcement authorities include imposing more frequent oversight, requiring that a recipient spend Federal funds on correcting safety deficiencies, withholding funds, and issuing directives.

**Lori:** Again, I apologize. We're just going to give it a few more seconds. I appreciate your guys' patience in all this.

**Lori:** We have another question. What is the state's DOTs role in this proposed rule?

**Candace:** This rule, as I mentioned before, discusses FTA's authority primarily, and our policy. It establishes SMS and lays out our enforcement and oversight authority. The state may have a role in certain situations. To the extent that FTA wants to take action against a rail-fixed guideway system that's subject to our State Safety Oversight Program, FTA may work with the State Safety Oversight Agency within that state in taking the enforcement action.

For example, in Safety Advisory, 14-2 Verification of Rail Vehicle Safe Stopping Distances in Terminal Station, FTA directed State Safety Oversight agencies to confirm the rail transit agencies actions to verify rail vehicle safe stopping distances in terminal stations in accordance with the safety advisory, and approve corrective action plans.

**Lori:** Thank you very much. Just to let you know, we understand that you are asking questions. We have a lot of questions that have submitted, but they're inappropriate at this point in the regulatory process. We're not addressing them at this time. Or they were not within the premise.

Let's give it a few more seconds. It looks like we're going to go ahead and close at this time. We will notify everyone by email when the video and transcript are available, and provide you links. Look for this within the next week or two.

Thank you. Now Donna will give us a final reminder on how to send questions to FTA.

**Donna:** Thanks, Lori. If you have any other questions, don't hesitate to send them directly to Lynn Everett. That's [lynn.everett@dot.gov](mailto:lynn.everett@dot.gov), or [candace.key@dot.gov](mailto:candace.key@dot.gov). Please remember that the comment period closes on October 13th.

**Lynn:** For comments that you want to be incorporated in the final rulemaking, you need to send those directly to the docket, at [regulations.gov](https://www.regulations.gov). Candace and I can answer clarifying questions or other questions, but if you want them to be considered for the final rule process, they need to be included in the docket.

**Donna:** Thank you to our speakers. As one final reminder, a link of the recording will be sent to all participants as soon as possible. Thanks again for being on the webinar today.