

Public Transportation Safety Program NPRM Webinar

9-18-15

Operator (Lori): Hello, everyone and welcome to today's webinar, "Public Transportation Safety Program's Notice of Proposed Rulemaking." 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 presenters by typing your question into the question 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. Hello, everyone. My name's Tom Littleton. I'm the FTA's Associate Administrator for Transit Safety and Oversight.

Today we're here to talk about a new proposed rule to support a public transportation safety program based on the principles and practices of safety management systems. The proposed rule 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. I thank you very much for taking the time out of your busy schedules to participate. This forum will only explain what is covered in the notice of proposed rulemaking. We will not take questions about implementation.

It's important for us to understand your concerns with the proposed rule. After the comment period closes, we will review all of the comments we receive.

We are holding this webinar today for one reason, to inform you. This is an ideal time to ask questions. We will use what we learn from you to clarify the issues at hand so that we can improve safety during the rulemaking process for the entire transit industry.

I want to thank you again for your time today. I hope that you all find this to be a useful webinar and that you have a great weekend. Now I'll turn the agenda over to Donna Aggazio.

Donna Aggazio: Thank you, Tom. We appreciate everyone taking the time to be here. We appreciate your time because this webinar will give you information on the public transportation safety program.

This webinar is a forum for FTA to provide an overview of the proposed program. We are recording the webinar and it will be available for viewing at a later date. Here to review the program is Lynn Everett from the Office of Transit Safety and Oversight and Candace Key from the FTA Chief Counsel's office who will take questions.

Lynn.

Lynn Everett: Thank you, Donna. As Donna mentioned, I'm Lynn Everett of the Office of Transit Oversight and Safety. Today we also have Candace Key from the Office of the Chief Counsel. We're going to apologize in advance that this material is a little dry. However, we are being recorded. We want to make sure that the material presented is the same as was presented yesterday.

We'll provide a bit of background, go over the contents of the NPRM, followed by the next steps in the rulemaking process. Then we'll take your questions.

Today's webinar is not a public hearing characteristic of a formal rulemaking process. Instead, this webinar is to serve as a forum in which FTA can explain the

NPRM that was published on August 14th 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 the 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 will be listed at the conclusion of this webinar.

It is extremely important for members of the transit industry, including small transit providers, to participate in the rulemaking process for the new safety and transit asset management program. Your comments will impact the development of the rules that will 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, cite source materials, and rational to support the points made in the comment.

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 comment on the NPRM.

We have an operator on the line who will be monitoring the call to make sure that we don't take questions outside of the parameters. We are not permitted to elaborate on what is written in the NPRM and we will not be answering questions today about other rulemakings that are currently underway.

For a 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 brand new territory. For rail transit specifically, previous weak authority contributed to insufficient and inconsistent state oversight. Several high profile accidents coupled with weak or nonexistent state oversight sparked renewed focus on transit safety.

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 authorized the Public Transportation Safety Program, codified it 49 USC Section 5329.

For the first time FTA is able to close the loophole in inadequate transportation 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 a comprehensive framework to improve safety of the nation's public transportation system.

This graphic depicts the transit safety rulemaking component as envisioned under MAP-21, with the Public Transportation Safety Program establishing the structure of FTA's oversight based on the guiding principles of safety management systems and informed by the national safety plan.

FTA released an advanced notice for proposed rulemaking on October 3, 2013 on the new safety and transit asset management requirements.

The ANPRM posed 123 questions on both the new transit asset management and safety programs, and received comments from 167 respondents. FTA reviewed all of the comments to the ANPRM and used those comments to help write the NPRM which have been published for the state safety oversight and interim training provisions, and the forthcoming NPRMs that are public transportation agency safety plans, safety certification training programs, and transit asset management.

The Public Transportation Safety Program NPRM 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 other rules, the public transportation agency safety plan, the Public Transportation Safety Certification Training Program, the state safety oversight program rule, and the national public transportation safety plan, are the rules that govern what transit agencies in the industry would be required to do.

Again, we're not answering questions about the other rules in this webinar, there will be other webinars for each of these rulemakings, and the national safety plan when each of those are published.

Today's rulemaking, the proposed Public Transportation Safety Program was published in the Federal Register on August 14, 2015, and comments are due on or before October 13, 2015. Following the comment period, FTA staff will review all the comments received to the docket, and then issue a final rule. The target date for the final rule publication is Summer 2016.

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.

The Federal Transit Administration has adopted the principles and method of safety management systems as the basis for enhancing safety of public transportation in the United States. All rules, regulations, policies, guidance, best practice, and technical assistance administered under the authority of 49 U.S.C. Section 5329 will follow the principles and methods of SMS.

FTA published our SMS framework, "Getting Ready," on the FTA website, and there's a link on your screen. SMS means the formal top-down organization-wide

data-driven approach to managing safety risk and ensuring the effectiveness of safety risk mitigation. SMS includes policies, procedures, and practices for the management of safety risk.

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

MAP-21 strengthened FTA administrator's authority to conduct inspections, investigations, audits, examinations, and testing, require documents, issue subpoenas and depositions, and prescribe record keeping and reporting requirements. The authority extends to equipment, facilities, rolling stock, and operations.

The administrator may require the production of documents and records, take evidence and establish recordkeeping and reporting requirements.

The administrator may direct FTA personnel and contractors to enter the premises of a grantee for the purpose of inspecting and testing equipment, facilities, rolling stock, or operations, and review the relevant records to ensure compliance with regulations and directives. The proposed rule establishes administrative processes for requests of information.

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 has the statutory to withhold funds. If the administrator identifies a pattern or practice of violation 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.

There are two types of directives proposed in the rule. General directives would be applicable to all or a subset of grantees, are effective upon notice in the Federal Register, and are 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, and are effective upon direct notice to the grantee. And also the rule establishes the process for reconsideration. For example, let's say there's a new type of technology in use throughout the industry. A particular type of wave type communication device, and several years later we discover a safety risk associated with the use of this system.

FTA could issue a general directive to the entire industry which would require specific actions to be taken to mitigate the risk. Conversely, FTA would issue a special directive to a single agency or small group of agencies to address a specific safety risk unique to those entities, that would not require the whole industry to respond. FTA recently issued a special directive to WMATA as an example.

In addition to directives, the administrator may issue safety advisories to inform transit operators about a known unsafe, or potentially unsafe condition and request action. Safety advisories are applicable to one or more grantees when the administrator determines that an unsafe condition exists within a public transit system.

The safety advisories would be effective upon notice issued in the Federal Register, non-compliance with an advisory may impact enforcement action such as issuance of a directive, or redirecting use of federal funds.

FTA has issued 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.

Finally, the program rule establishes the purpose and contents of the National Safety Plan. The statute requires the plan to establish at a minimum, safety performance criteria or measures. The initial measures in the National Safety Plan 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.

The next steps are for the review the rule and comment. The comment period, as I said, closes on October 13, 2015, less than a month away. Comments should be identified by the docket number which is FTA-2015-0009, or the RIN number, which is 2132-AD22. For information, please contact myself at lynn.everett@dot.gov, or candace.key@dot.gov. The links are on your screen.

We will then review the comments and develop the final rule and publish the final rule, which I said earlier, we expect to be summer of 2016. For submitting comments, you may do that in several different ways. You may submit comments directly electronically through www.regulations.gov, you may send them by US mail to Docket Operations, USDOT, 1200 New Jersey Ave SE, West Building Room W12-140, Washington, DC, 20590.

You may hand-deliver to the Docket Operations Room, same address, Room W12-140 of the West building, 1200 New Jersey Ave SE, Washington, DC. Or you

may fax your comments to the docket to 202-493-2251. Thank you very much, and we will now take questions.

Operator: Hi, thank you Lynn. Remember that you can submit your questions through the questions pane of your control panel. Our first question is, can you explain the difference between an advisory and a special directive?

Lynn: Yes. A safety advisory is a notice issued to public through the Federal Register that requests action but is not required compliance. It may request that you analyze something and report back to the FTA. A special directive is a notice to a specific agency or small set of agencies that would require compliance and reporting back to the FTA. Thank you very much.

Operator: All right, thank you. Just waiting for some questions to come in, give me a few seconds, please. Where do we find the proposed rule for review?

Lynn: The proposed rule is available at www.regulations.gov in the docket number that I mentioned a minute ago, which is FTA-2015-0009.

Operator: Our next question is, could you please repeat the types of safety measures?

Lynn: The safety measures that are proposed in the National Safety Plan are what we're calling the safety criteria are categories of measures. They are fatalities, injuries, safety events which means accidents and incidents, and mean distance between failure, or failure rate by mode. So you would report those separately for bus, or rail, or paratransit, or other modes. Thank you.

Operator: Our next question is, once the directive is finalized, what is the time frame for agencies to comply?

Candace Key: Hi, this is Candace Key. That would depend on what FTA was directing the particular transit agency or subset of the industry to do. If you have any suggestions about specific issues that you think should require a certain time frame in which to comply, you can post that comment to the docket.

Operator: [21:55] Please don't hold back, send in your questions. Bear with me just a moment while I go through these questions, we're waiting for some questions to come in. We have the next question, can you please explain why FTA believes that there will be no additional cost to the transit agency when FTA conducts inspections, audits, testing, examinations, et cetera?

Candace: This is Candace again, as we stated in the NPRM, FTA believes that the cost to recipients associated with FTA undertaking any actions outlined in the NPRM are captured in the rulemaking for the public transportation agency safety plan, state safety oversight, and public transportation safety certification training program, however, we have requested comments specifically on our assumption.

Operator: Bear with me for just a second while we go through these questions. We have a question here, is there an ideal format FTA prefers for submitting comment?

Lynn: As far as an ideal format, the easiest and the best way is through electronically, but any of the four ways that were listed on the screen that's up now work just fine. They are captured in the docket as PDFs, and are also publicly available, so you can also look at any questions or comments that are received in the docket, anybody can look at that. I hope that answers your question.

Operator: Next question is, would the FTA consider extending the comment deadline to October 30th?

Candace: FTA is working under a tight timeframe to get all of these rules out, as you are all aware. MAP-21 was passed in 2012 and it's now 2015, so we've been working diligently to get all these rules out on the street. The comment period closes on October 13th, and our practice has been to accept late comments to the extent practicable.

Operator: Next question is, are the SSOA responsible to ensure that their transit properties are responsive to general directives, special directives, and advisories?

Candace: State Safety Oversight Agencies may play a role in ensuring compliance with a directive.

Operator: When do they plan to have this implemented, you said but I did not catch the date?

Lynn: This is Lynn again, we anticipate issuing a final rule, if all goes according to plan, by the summer of 2016.

Operator: Will the questions from yesterday's webinar be published?

Lynn: Yes, the questions from both yesterday's and today's webinars will be published for everybody to review.

Operator: Now is the time to send in your questions if you have any. Remember we are only taking those questions which pertain to this rule.

Lynn: That's a very good point. Just to reiterate there will be webinars associated with each of the publications that I mentioned earlier in the presentation, including the National Safety Plan. They'll have specific information about those documents.

Operator: Bear with me just a moment as I go through these questions.

Operator: We have a question here, should transit agencies feel confident in implementing SMS?

Lynn: That's a very good question. The Federal Transit Administration is working hard to develop guidance and tools to help the transit agency implement SMS, however we're aware that there are lots of information out there about Safety Management Systems in different industries. We have published on our website the SMS framework, "Getting Started," that I think will be helpful as an initial intro to what FTA means about SMS.

That is also captured in the forthcoming National Safety Plan, along with additional detail about the safety performance measures, and what we mean that we'll be getting into when we talk about when that document gets published, and we hold the webinars for that document. But meanwhile you can read the SMS framework, Getting Started, on our website.

Operator: After the final rule is published in summer of 2016, how much time will the agencies have to implement?

Candace: This rule really lays out FTA's authorities and some administrative processes related to the exercise of those authorities. The rule doesn't require agencies to implement anything.

Operator: Will the transit asset manager rule be in effect by summer 2016?

Candace: In addition to working on the safety rules, FTA has also been working on the rule for, the notice of proposed rulemaking for transit asset management. We hope that that will be published shortly, and final sometime in calendar year 2016.

Operator: Again, bear with me just a moment while we wait for some more questions to come in.

Operator: Just to let everyone know that we'll notify everyone by email that when the video and transcripts are available and provide you links. Look for this within the next two weeks.

Could you come out to the transit agency at any time and do a spot check? Is that what I understand?

Candace: Under MAP-21 FTA has the authority to enter into property within a reasonable time and manner, so we specifically asked a question on what is "reasonable" in the NPRM, so we want to hear back from you all on what you all think is reasonable.

Operator: Since all of this is voluntary for bus only, will there be comment periods for the bus only rules, or is all going to be final in summer of 2016?

Lynn: So once again, this rule is pertinent to what FTA's authority is. The specifics of complying with it are...this is what FTA can do. This is what this rule is about.

The subsequent rules, the rules that are coming out, are the ones to pertain to each of the transit agencies but the National Safety Program, the Public Transportation Safety Program applies to all recipients of federal transit funding. It does apply to bus agencies, as well.

Operator: Thank you. Could you please describe again the actions FTA can take for failure to comply with the directive or advisory?

Candace: As proposed in the NPRM, with respect to a failure to comply with a directive, FTA may issue another directive, may require the use of funds to correct safety deficiencies, or withhold funds.

Operator: Thank you.

Operator: Just looking through the questions here. Give me just a moment, please. Thank you for your patience.

Operator: As a reminder, all questions will be answered after the webinar if we don't take your question at this time.

Operator: All right. We are going to wrap up questions now. We thank everyone for your participation today. Now I'm going to give it back over to Donna.

Donna: Let me thank our speakers, Lynn and Candace Key. Everyone remember that the comment period on this rule closes on October 13th. Submit your comments by one of the methods described in the presentation. Online, mail, hand deliver, or fax.

Again, a link with today's recording will be sent to all those who registered. It will also be posted on the FTA website. For those of you who have questions on other proposed rules, you will have the ability to comment on those rules when they become public. We will offer webinars on upcoming rules. You will have the opportunity to ask questions on those rules.

Thank you for being with us on this webinar today.