



New Safety NPRM & Recent Letter from the Acting Administrator Demonstrates FTA's Continued Implementation of its MAP-21 Safety Mandate

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In 2012, through passage of MAP-21, Congress required the Federal Transit Administration (FTA) to develop a comprehensive program for safety in public transportation.¹ FTA's new safety mandate is in addition to its historical role as a granting agency.

The latest Notice of Proposed Rulemaking (NPRM), issued August 14, 2015 (the August 2015 NPRM) seeks comment to establish a Public Transportation Safety Program to strengthen the safety of public transportation systems. Comments are due October 13, 2015.²

FTA proposes to add: 1) a formal adoption of Safety Management Systems as the basis for FTA's safety oversight and regulatory approach; 2) procedures under the Administrator's authority to conduct inspections, investigations, audits, examinations, and testing of equipment, facilities, rolling stock and operations of a public transportation system; and 3) procedures under the Administrator's authority to take appropriate enforcement actions, including directing the use or withholding of funds, and issuing directives and advisories. Additionally, FTA outlines the contents of the National Public Safety Transportation Plan.

This most recent NPRM is the latest in a series of actions FTA is taking to implement its safety programs Congress authorized in MAP-21. In February 2015, FTA issued an NPRM to transform and strengthen State Safety Oversight (SSO) of rail fixed guideway public transportation systems. That NPRM proposed to grant states greater safety responsibility over rail fixed guideway systems, but FTA would review and approve each SSO system and FTA would impose financial penalties on those states with non-existent or non-

compliant safety oversight programs.³

A few weeks before issuing the August 2015 NPRM, Acting Administrator Therese McMillan released a letter outlining FTA's ongoing role in strengthening transit safety regarding FTA's accident investigation authority.⁴ The letter reviews FTA's mandate to conduct investigations for safety oversight, including the power to make reports, issue safety directives, issue subpoenas, and take depositions as well as investigate, inspect, and audit federally funded transit agencies.

The August 2015 NPRM is not FTA's final rulemaking implementing its MAP-21 safety mandates. FTA has future plans to issue a Transit Asset Management NPRM and an update to the Statewide and Metropolitan Planning regulations that require consideration of transit safety performance criteria.

1. Moving Ahead for Progress in the 21st Century Act, Pub. L. No. 112-141 (2012)(the Secretary of the Department of Transportation delegates its mandates under the statute to the Federal Transit Administration.)
2. Public Transportation Safety Program, 80 Fed. Reg. 48794 (Aug 14, 2015)(to be codified at 49 C.F.R. pt. 674).
3. State Safety Oversight, 80 Fed. Reg. 11002 (Feb. 27, 2015)(to be codified at 49 C.F.R. pt. 670).
4. Letter from Therese W. McMillan, Acting Administrator, the Federal Transit Administration (July 31, 2015)(on file with FTA).