

FTA Issues Important Transit Safety Rule

The Federal Transit Administration has just published one of the key elements of their long-awaited comprehensive rules on transit safety. This rule appears in the August 11, 2016, *Federal Register* [link: <https://www.gpo.gov/fdsys/pkg/FR-2016-08-11/pdf/2016-18920.pdf>], and takes effect September 12, 2016.

Most of what's in this rule should not come as a surprise to transit industry stakeholders. The rule embraces a "Safety Management Systems" approach to transit safety, which FTA has been promoting for several years. Under MAP-21, there was a legislative mandate for FTA to regulate the safety of all public transportation operations, which is what this rule specifically addresses.

You may recall that MAP-21 created two comprehensive mandates for all FTA-funded public transit providers, regardless of their size, location, or funding stream. One of these is the requirement to participate in a transit asset management program, for which FTA issued a set of regulations earlier this summer (those rules are at <https://www.federalregister.gov/articles/2016/07/26/2016-16883/transit-asset-management-national-transit-database>, and CTAA's analysis of the transit asset management rule is at http://web1.ctaa.org/webmodules/webarticles/articlefiles/CTAA_FTA_AssetManagementRuleAnalysis_Updated.pdf).

The other comprehensive transit industry mandate under MAP-21 is for FTA to regulate and assure transit safety. There are several moving pieces to the transit safety mandate:

- **FTA Regulation of Transit Safety Across All Modes**
Final Rule issued August 11, 2016 – this rule, codified at 49 CFR Part 670, establishes the Safety Management Systems approach as FTA policy, gives FTA authority to conduct investigations, inspections, audits, and examinations of the safety at any recipient of FTA funding, gives FTA authority to dictate that FTA recipients spend portions of their funding allocations on correcting safety violations before spending those funds on capital investments or operating costs, gives FTA the authority to withhold up to 25 percent of recipients' Section 5307 funds if necessary to assure that safety violations are being corrected, and gives FTA authority to issue general or specific safety directives and advisories as needed to assure public transit industry safety.
- **Public Transportation Agency Safety Plans**
No Rule Yet – a proposed rule was issued in February 2016. FTA is in the process of preparing a final rule that covers the requirement for FTA recipients to create, adopt and follow transit agency safety plans, addresses

what should be in these plans, calls on transit agencies to certify their compliance with the safety plan requirement, and speaks to the retention of these plans and their availability for inspection by FTA and state transit safety oversight agencies. Once issued, this requirement probably will be codified at 49 CFR Part 673. FTA grantees or subrecipients should keep an eye on the details of this rule to see how it affects different circumstances of transit.

- **National Public Transportation Safety Plan**

Not Yet Adopted – FTA announced the draft of its inaugural national public transportation safety plan in February 2016, but it appears this plan has not yet been finalized and adopted by FTA. Once finalized, this plan is expected to cite the safety performance criteria to which transit agencies' plans will have to measure their results.

- **Safety Certification and Training Requirements**

Interim Requirements issued February 27, 2015 – MAP-21 required that FTA issue safety certification training provisions for FTA safety staff, states and transit agencies. Interim requirements were published in February 2015, and took effect May 28, 2015. Updates to these requirements are likely to appear once the remainder of FTA's safety plans and rules are finalized.

What Does This Mean for FTA Recipients?

This most recent rule, issued August 11, 2016, basically puts all recipients of FTA funding on notice that:

- FTA has – and may exercise – the right to investigate the safety of your transit operation.
- If FTA finds that corrective safety actions are necessary, it may order you to spend some of your FTA funding on those corrective measures before you spend your FTA funds on other allowable expenses.
- FTA can withhold up to 25 percent of your Section 5307 funding until necessary corrective safety actions are taken. No other FTA funding programs are subject to withholding.
- FTA can issue general safety directives that would be binding on all transit agencies.
- FTA can issue special safety directives that would be binding on a limited set of transit agencies, or on a single transit agency.
- FTA can issue safety advisories that are non-binding.

It doesn't matter what funds you receive from FTA, whether you receive funding directly from FTA, or if you're a subrecipient through your state, MPO, or local transit agency, nor is the status of tribal transit agencies any different from non-tribal entities: **this rule affects all transit agencies receiving any financial assistance from FTA.**

To Learn More About Transit Safety at FTA....

For more information on this rule, contact Brian Alberts of FTA by phone at 202-366-1783, or by email at brian.alberts@dot.gov.

To stay abreast of what FTA is doing in the area of transit safety, visit their Transit Safety web page at <https://www.transit.dot.gov/regulations-and-guidance/safety/transit-safety-oversight-tso>. While there, you may want to click on the “Sign Up for Updates” link to be even better informed about rulemakings and resources.

FTA is holding webinars to explain the August 11 rule in more detail. One of these webinars will be August 30, and the other webinar will be September 1. The same content is being presented at both webinars, so sign up for the one that best fits your schedule. To sign up for FTA’s August 30 safety rule webinar, use this link:

https://connectdotcpub1.connectsolutions.com/content/connect/c1/7/en/events/event/shared/1103886568/event_landing.html?sco-id=1143207849& charset =utf-8. To sign

up for FTA’s September 1 safety rule webinar, use this link:

https://connectdotcpub1.connectsolutions.com/content/connect/c1/7/en/events/event/shared/1103886568/event_landing.html?sco-id=1143198849& charset =utf-8.