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#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: August 3, 2015.

**Heather McTeer Toney,**

*Regional Administrator, Region 4.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### 49 CFR Part 670

[Docket No. FTA–2015–0009]

RIN 2132–AB22

#### Public Transportation Safety Program

**AGENCY:** Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of Proposed Rulemaking (NPRM); request for comments.

**SUMMARY:** The Federal Transit Administration seeks public comment

on a proposed rule to establish a Public Transportation Safety Program to strengthen the safety of public transportation systems throughout the United States, based on the principles and practices of Safety Management Systems.

**DATES:** Comments must be received by October 13, 2015. Any comments filed after this deadline will be considered to the extent practicable.

**ADDRESSES:** Please submit your comments by only one of the following methods, identifying your submission by Docket Number FTA–2015–0009 or RIN number 2132–AB22.

- **Federal Rulemaking Portal:** Submit electronic comments and other data to <http://www.regulations.gov>.

- **U.S. Mail:** Send comments to Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Room W12–140, Washington, DC 20590–0001.

- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12–140 of the West Building, Ground Floor, at 1200 New Jersey Avenue SE., Washington, DC 20590–0001, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations, U.S. Department of Transportation, at (202) 493–2251.

**Instructions:** You must include the agency name (Federal Transit Administration) and Docket Number FTA–2015–0009 for this notice or RIN 2132–AB22, at the beginning of your comments. If sent by mail, submit two copies of your comments. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments should consider using an express mail form to ensure their prompt filing of any submissions not filed electronically or by hand. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may review U.S. DOT’s complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477–8 or <http://DocketsInfo.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For program matters, contact Lynn Everett, Office of Transit Safety and Oversight, (202) 366–2410 or [lynn.everett@dot.gov](mailto:lynn.everett@dot.gov). For legal matters, contact Candace Key,

Office of Chief Counsel, (202)366–1936 or [candace.key@dot.gov](mailto:candace.key@dot.gov).

Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

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#### I. Executive Summary

##### A. Purpose of Regulatory Action

Every day, millions of passengers take some form of public transportation to get to or from work, shopping, classes, or other destinations. While the safety performance of the public transportation industry remains strong, recent accidents, including several investigated by the National Transportation Safety Board (NTSB), have demonstrated weaknesses in the safety performance of critical systems, equipment, procedures, management systems and oversight.

In the Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141 (2012)), Congress directed FTA to establish a comprehensive Public Transportation Safety Program to strengthen the safety performance of the public transportation industry. 49 U.S.C. 5329. Today’s NPRM carries out explicit statutory mandates to meet this objective. The proposed rule would adopt Safety Management Systems (SMS) as the basis for FTA’s new Public Transportation Safety Program. To ensure consistency in the implementation of this new program, today’s NPRM would establish the framework for the Secretary’s authority, delegated to FTA Administrator,<sup>1</sup> to monitor, oversee, and enforce safety in the public transportation industry.

Today’s NPRM also explains the relationship between the Public Transportation Safety Program and the National Public Transportation Safety Plan. The National Public Transportation Safety Plan (National Safety Plan) will be FTA’s primary tool

<sup>1</sup> 49 CFR 1.91(a).

for communicating safety performance information and safety guidance to the public transportation industry. Although the National Safety Plan is not a rulemaking, it will be subject to public notice and comment.

### B. Legal Authority

Under 49 U.S.C. 5329 (Section 5329), FTA is obliged to create a comprehensive program for safety in public transportation, comprised of a National Public Transportation Safety Plan; a training and certification program for Federal, State, and local transportation agency employees with safety oversight responsibilities; public transportation agency safety plans; a strengthened State Safety Oversight (SSO) program; and a new framework for Federal enforcement and investigative authorities to directly oversee the safety of the public transportation industry.

In addition, Section 5329 incorporates certain principles and tools associated with SMS into FTA's regulatory framework for public transportation safety. For example, Section 5329 establishes a performance management framework that includes: the use of safety performance criteria and safety targets to monitor program implementation and effectiveness; requirements for executives and boards to be accountable to hire qualified safety managers as direct reports and, annually, to certify safety plans; and requirements for comprehensive staff safety training programs. Also, Section 5329 calls for the collection of information on safety risk management methods and safety assurance strategies to minimize the exposure of the public, transit agency personnel, and property to safety hazards and unsafe conditions.

The statute also vests the Secretary of Transportation and his designee, the FTA Administrator, with explicit authorities to carry out the Public Transportation Safety Program and to take enforcement actions. For example, Section 5329(f) provides the Administrator with the authority to inspect and audit all public transportation systems; make reports and issue directives with respect to the safety of public transportation systems; issue subpoenas and take depositions; require the production of documents; prescribe recordkeeping and reporting requirements; investigate public transportation accidents and incidents; enter and inspect equipment, rolling stock, operations and relevant records; and issue regulations to carry out Section 5329. Section 5329(g) authorizes the Administrator to take enforcement actions against recipients that are

noncompliant with Federal transit safety law. The Administrator may further issue directives, require more frequent oversight, impose more frequent reporting requirements, require that formula grant funds be spent to correct safety deficiencies before funds are spent on other projects, and withhold funds from a recipient.

### C. Summary of Major Provisions

The proposed rule would add a new part 670, "Public Transportation Safety Program," to title 49 of the Code of Federal Regulations. The proposed rule includes the following elements: (1) Formal adoption of SMS as the foundation for FTA's safety oversight and regulatory approach; (2) procedures under the Administrator's authority to conduct inspections, investigations, audits, examinations, testing of equipment, facilities, rolling stock and operations of a public transportation system; (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; and (4) describes statutory and proposed contents of the National Safety Plan.

### D. Costs and Benefits

The proposed rule outlines FTA's authority to inspect, investigate, audit, examine and test transit agencies' facilities, equipment, safety processes and events as and when needed, direct or withhold Federal transit funds, and issue directives and advisories. FTA does not believe that the proposed rule imposes additional costs to entities other than FTA. FTA believes that costs to recipients associated with FTA's aforementioned authorities are captured in the rulemakings for Public Transportation Agency Safety Plans, State Safety Oversight, and the Public Transportation Safety Certification Training Program. FTA seeks comment on the cost assumptions herein.

## II. The Public Transportation Safety Program

### A. Background

Historically, public transportation has been one of the safest means of transportation. Today, however, the transit industry is facing increased pressures at a time when ridership is growing, demand is increasing, infrastructure is aging, and large numbers of the workforce are retiring. Calendar year 2013 marked the highest ridership level for transit since 1956, with the number of trips exceeding 10 billion for the seventh year in a row—

and there is reason to believe that this is the beginning of a sustained period of growing demand for public transportation.<sup>2</sup>

In recent years, the U.S. DOT, the U.S. Government Accountability Office (GAO), and FTA have conducted a number of studies, audits, and reviews highlighting these challenges and their potential impacts on safety and the reliability of public transportation operations. Most notably, in two different reviews,<sup>3</sup> the GAO has documented weaknesses in Federal authority, training, and funding for the State Safety Oversight (SSO) program. These limitations have impacted the ability of FTA and the State Safety Oversight Agencies (SSOA) to address the safety consequences of aging infrastructure, budgetary restrictions, and rapidly growing ridership on rail transit systems.

To help inform FTA in developing a strategic regulatory approach to implementing the new requirements of MAP-21, FTA issued an Advance Notice of Proposed Rulemaking (ANPRM), addressing new requirements for both transit asset management and safety. 78 FR 61251 (October 3, 2013).<sup>4</sup> The ANPRM sought comments on 123 questions related to FTA's initial ideas for how to implement the requirements of Sections 5326 and 5329, our understanding of the nexus between safety, transit asset management, and state of good repair, and FTA's initial concept for applying SMS to the transit industry. FTA will respond to the comments received on the ANPRM in the respective rulemakings for each topic and the National Public Transportation Safety Plan.

### B. The Relationship Between Safety and Transit Asset Management

Since the mid-2000s, FTA safety studies and audits have documented how dramatically increasing ridership leads to greater operational and maintenance demands on public transportation systems which can have safety impacts, if not managed vigilantly. FTA's research has shown

<sup>2</sup> 2013 *Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance* available at <http://www.fhwa.dot.gov/policy/2013cpr/overviews.htm#2t>.

<sup>3</sup> The GAO report *Rail Transit: Observations on FTA's State Safety Oversight Program and Potential Change in its Oversight Role*, December 10, 2009 is available at <http://www.gao.gov/assets/130/123884.pdf>. The GAO Report *Public Transit: Federal and Transit Agencies Taking Steps to Build Transit Resilience, but Face Challenges*, December 10, 2014 is available at <http://www.gao.gov/assets/670/667391.pdf>.

<sup>4</sup> The ANPRM is available at <http://www.gpo.gov/fdsys/pkg/FR-2013-10-03/pdf/2013-23921.pdf>.

that the safety and performance of a public transportation system depends, in part, on the condition of its assets. Insufficient funding combined with inadequate asset management practices have contributed to an estimated \$85.9 billion transit state of good repair (SGR) backlog.<sup>5</sup> The public transportation industry does not have these funds currently available, nor can it address annual expenditures of over \$2.5 billion required to prevent the SGR backlog from growing. As a result, many transit agencies are struggling to balance requirements for service with maintenance and safety.

It must be emphasized that, in enacting MAP-21, Congress recognized the critical relationship between safety and transit asset management.<sup>6</sup> We note, in particular, the congressional direction that the National Public Transportation Safety Plan include the definition of *state of good repair* set in the rulemaking for asset management (49 U.S.C. 5329(b)(2)(B)). Furthermore, pursuant to 49 U.S.C. 5329(d)(1)(E), transit agencies must set safety performance targets for state of good repair based on the state of good repair standards established under the National Public Transportation Safety Plan.

### C. The State of Public Transportation Safety

The October 2013 ANPRM included a discussion of major findings and considerations resulting from several high-profile accidents. Since the publication of the ANPRM, there have been four additional public transportation safety accidents of particular note that continue to highlight the need for comprehensive Federal oversight of public transportation safety. Following is a brief overview of these accidents:

- On September 30, 2013, an unoccupied Chicago Transit Authority (CTA) train consisting of four cars collided with a CTA train in revenue service that was stopped at the Harlem Station on the Blue Line. There were approximately 40 passengers on the in-service CTA train. CTA reported that 33

passengers were transported to three local hospitals. There were no fatalities.

- Shortly after midnight on October 6, 2013, in a work zone on the Washington Metropolitan Area Transit Authority's Red Line underground track, contractors and WMATA employees were performing rail renewal, a process that involves removing old sections of rail, installing new sections of rail and related activity such as welding and grinding. A fire and loud noise occurred during flash butt welding operations. Workers using a handheld extinguisher put the fire out but the smoke forced an evacuation from the work zone. During the evacuation, a 40-foot piece of rail came loose from the equipment that was supporting it, and struck three evacuating workers, killing a contractor and seriously injuring two WMATA employees.

- On October 19, 2013, two Bay Area Rapid Transit (BART) workers were struck and killed by a train while inspecting track. This accident occurred during a strike when BART was not providing passenger service but non-revenue train movements were occurring on the system. According to the National Transportation Safety Board (NTSB),<sup>7</sup> at the time of the accident, a trainee was operating the BART train under the supervision of a training supervisor. The train was traveling at least 60 mph before the collision. The workers accessed the rail right-of-way (ROW) under a standard procedure known as "simple approval," which required workers to notify BART's operations control center when they planned to work on or near the tracks. There were no other protections in place to safeguard the workers. As a result of preliminary findings from this investigation, the California Public Utilities Commission issued General Order 175, which contains new standards for Roadway Worker Protection programs at rail transit agencies in California.

- On January 12, 2015, a Washington Metropolitan Area Transit Authority (WMATA) Metrorail train stopped after encountering an accumulation of heavy smoke while traveling southbound in a tunnel between the L'Enfant Plaza Station and the Potomac River Bridge. After stopping, the rear car of the train was about 386 feet from the south end of the L'Enfant Plaza Station platform. A following train, stopped at the L'Enfant Plaza Station at about 3:25 p.m., was also affected by the heavy smoke. This

train stopped about 100 feet short of the south end of the platform. Passengers on both trains, as well as passengers on the station platforms, were exposed to the heavy smoke. As a result of the smoke, 86 passengers were transported to local medical facilities for treatment. There was one passenger fatality. Initial reports suggest that electric arcing caused by the subpar condition of insulators within the Metrorail system may have contributed to the fire.

FTA has used its expanded authority at 49 U.S.C. 5329(f) to address some of the underlying causes of each of these incidents. For example, on October 4, 2013, FTA issued a safety advisory following the CTA unoccupied train incident, requesting that rail transit operators immediately review their operating practices and attend to the NTSB's recommendation to utilize redundant train stopping mechanisms such as wheel chocks and/or derails. In a second advisory, issued June 12, 2014, FTA alerted rail transit operators of the need to assess the adequacy of safe stopping distances for rail transit in emergency braking in terminal stations. The advisory also requested action from SSOAs designated to implement FTA's SSO program as specified by 49 CFR part 659 and 49 U.S.C. 5329(e).<sup>8</sup>

FTA issued another advisory in December 2013, following the WMATA and BART incidents that resulted in the deaths of ROW workers. As recommended by the NTSB, FTA Safety Advisory 14-1 requested that SSOAs (1) inventory the current practices of the rail transit operators that they oversaw and (2) conduct a hazard analysis on workers' access to the ROW and how the protections identified in the inventory addressed the consequences associated with each hazard.<sup>9</sup>

In addition, FTA partnered with CTA for a safety examination to support CTA in strengthening its safety programs and capabilities through the implementation of Safety Management Systems (SMS). The outcomes of this activity will be a roadmap for CTA SMS implementation and an enhanced safety profile throughout the agency.

More recently, following the WMATA incident of January 12, 2015, FTA became a party to the NTSB investigation into the causal factors contributing to the incident. Information collected through the investigation has revealed that factors contributing to the incident included equipment

<sup>5</sup> 2013 Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance available at <http://www.fhwa.dot.gov/policy/2013cpr/overviews.htm#2t>.

<sup>6</sup> For a thorough history of the events and circumstances leading to the enactment of the broad safety authority now vested in FTA through the enactment of MAP-21, readers should please review the preamble to FTA's Notice of Proposed Rulemaking for State Safety Oversight (SSO) issued on February 27, 2015, 80 FR 11002-30. The NPRM for State Safety Oversight also explains the context for FTA's introduction of Safety Management Systems to public transportation.

<sup>7</sup> NTSB Railroad Accident Brief "Bay Area Rapid Transit Train 963 Struck Roadway Workers," April 13, 2015, available at <http://www.ntsb.gov/investigations/AccidentReports/Reports/RAB1503.pdf>.

<sup>8</sup> Both the NTSB recommendation and FTA's advisories are available on FTA's Web site here [http://www.fta.dot.gov/newsroom/12910\\_15703.html](http://www.fta.dot.gov/newsroom/12910_15703.html).

<sup>9</sup> *Ibid.*

malfunctions, communications failures, and human factors, all of which consistently have been identified as the contributing factors to previous public transportation incidents.

Moreover, FTA used its new authority under 5329(f)(1) to conduct a Safety Management Inspection (SMI) of WMATA's transit system. The SMI involved the following components:

- An SMS gap analysis, including SMS training across several levels of WMATA;
- A rail safety inspection, whereby FTA conducted an evaluation of WMATA's rail operations and maintenance programs to acquire the safety information and data needed to support meaningful analysis of safety risks; and
- A bus safety assessment, conducted in a similar manner to the rail safety assessment.

At the conclusion of the inspection, on June 17, 2015, FTA issued an SMI Final Report which included findings and recommendations, as well as results of the SMS Gap Analysis, to assist WMATA in building a mature and effective SMS. FTA also issued both safety directive 15-1 requiring WMATA to address findings documented in FTA's Safety Management Inspection SMI report and safety advisory 15-1 to inform rail transit agencies of planned audits to be conducted by State Safety Oversight Agencies of the agencies' tunnels, emergency procedures, and compliance with industry standards for maintenance and emergency procedures.<sup>10</sup>

This NPRM will further define FTA's enforcement authority and provide the procedural framework to support it, including proposing due process mechanisms, where relevant.

#### *D. The Safety Management Systems (SMS) Approach*

FTA has adopted the principles and methods of SMS as the basis for the Public Transportation Safety Program. SMS is a management approach that ensures each public transportation agency, no matter its size or service environment, has the necessary organizational structures, accountabilities, activities and tools in place to direct and control resources to optimally manage safety. SMS is a formal, top-down, organization-wide approach to managing safety risks and assuring the effectiveness of safety risk mitigations.

<sup>10</sup> For more information on FTA's Safety Management Inspection and report, safety directive 15-1, and safety advisory 15-1 please visit FTA's Web site at [http://www.fta.dot.gov/tso\\_16476.html](http://www.fta.dot.gov/tso_16476.html).

Over the last decade, SMS has been used in space, chemical, aviation and other industries, both domestic and internationally, and by for-profit and non-profit transportation providers, large and small. Both the NTSB and the National Safety Council (NSC) endorse the principles and methods of SMS.<sup>11</sup> Moreover, other DOT modal administrations, including the Federal Aviation Administration and the Federal Railroad Administration, have incorporated or intend to incorporate SMS into their regulatory frameworks. Indeed, the NTSB characterizes SMS as a "Most Wanted" practice for public transportation, largely because of the inherent flexibility of SMS, and its proven effectiveness across a range of organizations that operate under different business models, in differing physical and financial environments.

SMS ensures that information is provided to transit agency management so that resources can be strategically allocated to manage safety risk in a timely manner. SMS establishes lines of safety accountability throughout an organization, starting at the executive management level, and provides a structure to support a sound safety culture. SMS enables agencies to address organizational deficiencies that may lead to safety issues or unidentified safety risks, identify system-wide trends in safety, and manage the potential consequences of hazards before they result in incidents or accidents.<sup>12</sup> FTA will propose requirements for the implementation of SMS at transit agencies as part of the NPRM developed to address Section 5329(d) requirements for Public Transportation Agency Safety Plans, which FTA plans to publish later this year.

#### *E. Components of the Public Transportation Safety Program*

The Public Transportation Safety Program, codified at 49 U.S.C. 5329, includes the following components: (1) The National Public Transportation Safety Plan, 49 U.S.C. 5329(b); (2) the Public Transportation Safety Certification Training Program, 49 U.S.C. 5329(b)(1)(D) and 5329(c); (3) the Public Transportation Agency Safety Plan, 49 U.S.C. 5329(d); (4) the State Safety Oversight (SSO) Program, 49 U.S.C. 5329(e); (5) the Authority of the

<sup>11</sup> See, for example, the NTSB document at <http://www.ntsb.gov/safety/mwl-3.html> and the NSC documents at [http://www.nsc.org/get\\_involved/divisions/Documents/SMS%20Policy-PositionStatement%20final%20-%20Formatted.pdf](http://www.nsc.org/get_involved/divisions/Documents/SMS%20Policy-PositionStatement%20final%20-%20Formatted.pdf).

<sup>12</sup> FTA's SMS Web site, available at [http://www.fta.dot.gov/tso\\_15176.html](http://www.fta.dot.gov/tso_15176.html), provides additional detail regarding FTA's proposed SMS framework.

Secretary, 49 U.S.C. 5329(f); and (6) Enforcement Actions, 49 U.S.C. 5329(g). FTA is issuing separate rules for the Public Transportation Safety Certification Training Program, the Public Transportation Agency Safety Plan, and the SSO Program, and is also issuing a proposed National Public Transportation Safety Plan.

In addition, FTA will soon issue a Transit Asset Management NPRM and an update to the Statewide and Metropolitan Planning regulations<sup>13</sup> that require consideration of transit safety performance criteria. Safety performance criteria and standards developed to address 49 U.S.C. 5329 requirements will be incorporated in the National Public Transportation Safety Plan, and must be considered during the transportation investment decision-making process.

This NPRM for the Public Transportation Safety Program would establish a regulatory, enforcement, and programmatic framework to ensure consistency across these disparate, yet interrelated rules and requirements. To that end, the Public Transportation Safety Program proposes to formally adopt the principles and methods of SMS across all Section 5329 safety programs. This NPRM also outlines FTA's authorities to conduct reviews, audits, investigations, examinations, inspections and testing, and to issue findings and directives which would require specific corrective action from a single public transportation agency, a select group of recipients, or from all recipients. In the event corrective actions required by FTA are not implemented, Section 5329 provides FTA with a set of options for withholding or re-directing Federal funds, requiring additional oversight and monitoring, or partnering with the State or SSO agency to conduct further investigations or inspection. The NPRM proposes to adopt mechanisms to ensure that recipients that may be impacted by an FTA enforcement action are afforded sufficient due process, where relevant.

This proposed rule also describes statutorily required and proposed contents of the National Safety Plan. The National Safety Plan will be FTA's primary tool for communicating with the transit industry about its safety performance. The National Safety Plan would serve as a critical linchpin, connecting FTA's regulatory programs, enforcement and rulemaking priorities, and safety performance measurement

<sup>13</sup> The Joint Planning NPRM was published in the **Federal Register** on June 2, 2014 and is available on FTA's Web site at <http://www.gpo.gov/jdsys/pkg/FR-2014-06-02/pdf/2014-12155.pdf>.

and monitoring activities. The National Safety Plan would establish, communicate, and align public transportation safety priorities based on analysis of available safety information, recommendations from the NTSB, and regulatory and enforcement areas of focus. FTA would use the National Safety Plan to set national criteria for safety performance, to communicate mitigation strategies to the public transportation industry and State safety oversight agencies, and to provide guidance, technical assistance and other tools.

FTA intends for the National Safety Plan to be updated periodically to reflect new safety-related research and information, communicate best practices and emerging safety standards as they become available, and identify areas of focus for rulemaking and enforcement. FTA would use each plan update to report on the status of the public transportation industry towards meeting the national safety performance targets, and the transit industry's progress toward building SMS practices and improving safety outcomes.

### III. Benefit-Cost Analysis

The proposed rule outlines FTA's authority to inspect, investigate, audit, exam and test transit agencies' facilities, equipment, safety processes and events as and when needed, direct or withhold Federal transit funds, and issue directives and advisories. The proposed rule does not include any uncounted costs. Costs associated with FTA's aforementioned authorities are captured in the rulemakings for Public Transportation Agency Safety Plans, State Safety Oversight, and the Public Transportation Safety Certification Training Program.

### IV. Section-by-Section Analysis

FTA is proposing to amend chapter 49 of the Code of Federal Regulations by adding a new part 670 establishing a Public Transportation Safety Program. The following is a section-by-section analysis of each proposal in this rulemaking.

#### 670.1 Purpose and Applicability

This section proposes that the purpose of these regulations would be to establish a Public Transportation Safety Program. This part applies to all recipients of Federal transit funds.

#### 670.3 Policy

This section proposes the formal adoption of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States. This section proposes

that all aspects of the Public Transportation Safety Program administered under FTA's safety authority would follow the principles and methods of SMS.

#### 670.5 Definitions

This section includes proposed definitions for terms that would be applicable to the Public Transportation Safety Program, including: advisory, audit, corrective action plan, directive, examination, inspection, investigation, National Public Transportation Safety Plan, pattern or practice, recipient, record, Safety Management System, and State Safety Oversight Agency.

#### 670.11 Inspections, Investigations, Audits, Examinations, and Testing

This section sets forth FTA's statutory authority to conduct inspections, investigations, audits, examinations, and testing. This section proposes procedures for notifying a recipient or State of FTA's intent to engage in any of these activities, including information requested and the reason for the request. This section also proposes to establish the timeframe for response to such a request.

This section proposes that the Administrator, upon written notice, and within a reasonable time and manner as determined by the Administrator, may enter the premises occupied by a recipient and inspect and test a recipient's equipment, facilities, rolling stock, operations, and relevant records. FTA seeks comment on how it should define "reasonable time" and "reasonable manner" for the purpose of entering and inspecting equipment, facilities, rolling stock, operations and relevant records.

#### 670.13 Request for Confidential Treatment

This section proposes procedures for a recipient or State to seek confidential treatment of records obtained during the course of activities under section 670.21. This section governs the procedures for requesting confidential treatment of any record filed with or otherwise provided to FTA in connection with its enforcement of statutes or regulations related to safety in public transportation.

#### 670.21 General

This section would set forth the Administrator's enforcement authority.

#### 670.23 Use or Withholding of Funds

This section proposes procedures for FTA to direct the use of Chapter 53 funds where deficiencies are identified by the Administrator or a State Safety

Oversight Agency. This section also proposes procedures for withholding of Chapter 53 funds from a recipient or State for non-compliance where the Administrator determines that there has been a pattern or practice of serious violations of the Public Transportation Safety Program and any regulation or directive issued under those laws for which the Administrator exercises enforcement authority for safety.

#### 670.25 General Directives

This section proposes procedures for the issuance of a general directive by the Administrator. Pursuant to 49 U.S.C. 5329(f)(2), the Secretary may "issue directives with respect to the safety of the public transportation system of a recipient." FTA has interpreted this authority to include directives issued to all or a subset of the transit industry.

As a general matter, use of the singular includes the plural. *See e.g.*, the Dictionary Act, 1 U.S.C. 1 ("unless the context indicates otherwise . . . words importing the singular include and apply to several persons, parties, or things; words importing the plural include the singular"). In addition, FTA's interpretation is consistent with the purpose of section 5329 to improve the safety of the entire public transportation industry. Furthermore, the legislative history of section 5329 supports this reading. The Senate report accompanying the Public Transportation Safety Act of 2010 (S. 3638, 111th Cong. (2010)), which laid the foundation for the general safety and State Safety Oversight provisions eventually enacted under MAP-21, states: "Subsection (f) provides the Secretary with the authority . . . to make reports and issue directives with respect to the safety of public transportation systems."<sup>14</sup>

Accordingly, as proposed, FTA could issue a general directive that applied to all recipients or a subset of recipients and the directive would be effective upon notice provided by the Administrator in the **Federal Register**. For example, both a general directive that applied to all Chapter 53 recipients and a general directive that applied to all recipients that operate rail fixed guideway public transportation systems would be published in the **Federal Register**. A general directive would be subject to a public comment period. Following the public notice and comment period, FTA would publish a response to the comments in the **Federal Register**. The response also

<sup>14</sup> S. Rept. 111-232; 111th Cong. 2nd Sess. (2010) available at <https://www.congress.gov/111/crpt/srpt232/CRPT-111srpt232.pdf>.

would include a final iteration of the general directive. Note also that the use of general directives would be generally limited to circumstances where there is an “emergency situation,” in contrast to the use of special directives issued to specific named recipients.

#### 670.27 *Special Directives*

This section proposes that the Administrator provide direct notice to a named recipient for a special directive that is not generally applicable, but only applies to one or more named recipients. A special directive issued to a named recipient would be based on particular facts unique to the recipient. A named recipient would have an opportunity to petition the Administrator for review of the directive. The Chief Counsel of FTA would either grant or deny a petition, in whole or in part.

#### 670.29 *Advisories*

This section proposes that the Administrator may issue advisories which may recommend corrective actions, inspections, conditions, limitations, or other actions to resolve or mitigate an unsafe condition.

#### 670.31 *Purpose and Content of the National Public Transportation Safety Plan*

This section describes the statutory and proposed components of the National Public Transportation Safety Plan, which FTA will revise periodically. The statutory components include the definition of state of good repair established under FTA’s transit asset management rule, the Public Transportation Safety Certification Training Program established through rulemaking, safety performance criteria for all modes of public transportation, and minimum safety performance standards for vehicles used in revenue operations not otherwise regulated by another Federal agency.

### **V. Regulatory Analyses and Notices**

#### *Executive Order 12866 and 13563; USDOT Regulatory Policies and Procedures*

Executive Orders 12866 and 13563 direct Federal agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits—including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Also, Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and

promoting flexibility. FTA is also required under 49 U.S.C. 5329(h) to take into consideration the costs and benefits of each action the Secretary proposes to take under section 5329. As stated in section I.D. above, FTA believes this proposed rule does not impose costs on entities other than FTA.

FTA has determined this rulemaking is a nonsignificant regulatory action within the meaning of Executive Order 12866 and is nonsignificant within the meaning of the U.S. Department of Transportation’s regulatory policies and procedures. FTA has determined that this rulemaking is not economically significant. The proposals set forth in this NPRM will not result in an effect on the economy of \$100 million or more. The proposals set forth in the NPRM will not adversely affect the economy, interfere with actions taken or planned by other agencies, or generally alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), FTA has evaluated the likely effects of the proposals set forth in this NPRM on small entities, and has determined that they will not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act of 1995*

This proposed rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform act of 1995 (Pub. L. 104–4; 109 Stat. 48).

#### *Executive Order 13132 (Federalism)*

This proposed rulemaking has been analyzed in accordance with the principles and criteria established by Executive Order 13132, and FTA has determined that the proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this proposed action would not preempt any State law or State regulation or affect the States’ abilities to discharge traditional State governmental functions. Moreover, consistent with Executive Order 13132, FTA has examined the direct compliance costs of the NPRM on State and local governments and has determined that the collection and analysis of the data are eligible for Federal funding under FTA’s grant programs.

#### *Executive Order 12372 (Intergovernmental Review)*

The regulations effectuating Executive Order 12372 regarding

intergovernmental consultation on Federal programs and activities apply to this proposed rulemaking.

#### *Paperwork Reduction Act (PRA)*

This rulemaking will not impose additional collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*; “PRA”) and the OMB regulation at 5 CFR 1320.8(d). To the extent that there are any costs and burdens associated with any collections under this rule, the information collection will be incorporated into the requests for the rulemakings for Public Transportation Agency Safety Plans, State Safety Oversight, and the Safety Certification Training Program.

#### *National Environmental Policy Act*

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) requires Federal agencies to analyze the potential environmental effects of their proposed actions in the form of a categorical exclusion, environmental assessment, or environmental impact statement. This proposed rulemaking is categorically excluded under FTA’s environmental impact procedure at 23 CFR 771.117(c)(20), pertaining to planning and administrative activities that do not involve or lead directly to construction, such as the promulgation of rules, regulations, and directives. FTA has determined that no unusual circumstances exist in this instance, and that a categorical exclusion is appropriate for this rulemaking.

#### *Executive Order 12630 (Taking of Private Property)*

This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1998), Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)*

Executive Order 12898 (February 8, 1994) directs every Federal agency to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on minority populations and low-income populations. The USDOT environmental justice initiatives accomplish this goal by involving the potentially affected public in developing transportation projects that fit harmoniously within their communities without compromising safety or mobility. Additionally, FTA

has issued a program circular addressing environmental justice in public transportation, C 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients." This circular provides a framework for FTA grantees as they integrate principles of environmental justice into their transit decision-making processes. The Circular includes recommendations for State Departments of Transportation, Metropolitan Planning Organizations, and public transportation systems on how to: (1) To fully engage environmental justice populations in the transportation decision-making process; (2) determine whether environmental justice populations would be subjected to disproportionately high and adverse human health or environmental effects of a public transportation project, policy, or activity; and (3) avoid, minimize, or mitigate these effects.

*Executive Order 12988 (Civil Justice Reform)*

This action meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996), Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 13045 (Protection of Children)*

FTA has analyzed this proposed rulemaking under Executive Order 13045 (April 21, 1997), Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this proposed rule will not cause an environmental risk to health or safety that may disproportionately affect children.

*Executive Order 13175 (Tribal Consultation)*

FTA has analyzed this action under Executive Order 13175 (Nov. 6, 2000), and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

*Executive Order 13211 (Energy Effects)*

FTA has analyzed this proposed rulemaking under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that this action is not a significant energy action under the Executive Order, given that the action is not likely to have a significant adverse

effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not requirement.

*Privacy Act*

Anyone is able to search the electronic form of all comments received into any of FTA's dockets by the name of the individual submitting the comment or signing the comment if submitted on behalf of an association, business, labor union, or any other entity. You may review USDOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477-8.

*Statutory/Legal Authority for This Rulemaking*

This rulemaking is issued under the authority of Section 20021 of MAP-21, which authorizes the Secretary to issue rules to carry out the mandate for a Public Transportation Safety Program at 49 U.S.C. 5329. The authority is codified at 49 U.S.C. 5329(f)(7).

*Regulation Identification Number*

A Regulation Identification Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 670**

Public transportation, Safety.

Issued in Washington, DC, under authority delegated in 49 CFR 1.91.

**Matthew J. Welbes,**

*Executive Director.*

For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5329(f), and the delegations of authority at 49 CFR 1.91, FTA hereby proposes to amend chapter VI of title 49, Code of Federal Regulations by adding part 670 as set forth below:

**PART 670—PUBLIC TRANSPORTATION SAFETY PROGRAM**

**Subpart A—General Provisions**

Sec.

670.1 Purpose and applicability.

670.3 Policy.

670.5 Definitions.

**Subpart B—Compliance Assessments**

670.11 Inspections, investigations, audits, examinations, and testing.

670.13 Request for confidential treatment of records.

**Subpart C—Enforcement**

670.21 General.

670.23 Use or withholding of funds.

670.25 General directives.

670.27 Special directives.

670.29 Advisories.

**Subpart D—National Public Transportation Safety Plan**

670.31 Purpose and contents of the national public transportation safety plan.

**Subpart A—General Provisions**

**§ 670.1 Purpose and applicability.**

This part carries out the mandate of 49 U.S.C. 5329 to improve the safety of public transportation systems. This part applies to recipients of Federal transit funds.

**§ 670.3 Policy.**

The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (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 of 49 U.S.C. 5329 will follow the principles and methods of SMS.

**§ 670.5 Definitions.**

As used in this part:

*Accountable Executive* means a single, identifiable person who has ultimate responsibility for carrying out the Safety Management System of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

*Administrator* means the Federal Transit Administrator or his or her designee.

*Advisory* means a notice from FTA to recipients regarding an existing or potential hazard or risk in public transportation that recommends recipients take a particular action to mitigate the hazard or risk.

*Audit* means an examination of records and related materials, including, but not limited to, those related to financial accounts.

*Corrective action plan* means a plan developed by a recipient that describes the actions the recipient will take to minimize, control, correct, or eliminate risks and hazards, and the schedule for taking those actions. Either a State

Safety Oversight Agency or FTA may require a recipient to develop and carry out a corrective action plan.

*Directive* means a formal written communication from FTA to one or more recipients which orders a recipient to take specific actions to ensure the safety of a public transportation system.

*Examination* means a process for gathering facts or information, or an analysis of facts or information previously collected.

*FTA* means the Federal Transit Administration, an operating administration within the United States Department of Transportation.

*Inspection* means a process for gathering facts or information, or an analysis of facts or information previously collected. At the conclusion of an inspection, FTA may issue findings and recommendations.

*Investigation* means the process of determining the causal and contributing factors of an event for the purpose of mitigating safety risk or preventing recurrence.

*National Public Transportation Safety Plan* means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53, and authorized at 49 U.S.C. 5329.

*Pattern or practice* means two or more findings by FTA of a recipient's noncompliance with the requirements of 49 U.S.C. 5329 and the regulations thereunder.

*Recipient* means an entity that receives Federal financial assistance under Chapter 53.

*Record* means any writing, drawing, map, recording, tape, film, photograph, or other documentary material by which information is preserved. The term "record" also includes any such documentary material stored electronically.

*Safety Management System (SMS)* means the formal, top-down, organization-wide data-driven approach to managing safety risk and assuring the effectiveness of safety risk mitigations. SMS includes policies, procedures, and practices for the management of safety risk.

*State* means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands, or a State agency.

*State Safety Oversight Agency (SSOA)* means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations codified at 49 CFR part 674.

*Testing* means an assessment of equipment, facilities, rolling stock, and

operations of a recipient's public transportation system.

## Subpart B—Compliance Assessments

### § 670.11 Inspections, investigations, audits, examinations, and testing.

(a) The Administrator may conduct investigations, inspections, audits, and examinations, and test the equipment, facilities, rolling stock, and operations of public transportation systems operated by a recipient.

(b) In carrying out this section—

(1) The Administrator may require the production of relevant documents and records, take evidence, issue subpoenas and depositions, and prescribe recordkeeping and reporting requirements.

(2) The Administrator will provide the recipient with written notice that includes the information requested and the reasons for each request.

(3) Within thirty (30) days of service of a notice, a recipient shall comply with the Administrator's request or provide a written explanation for any delay or failure to provide the requested information.

(4) Upon written notice, and within a reasonable time and manner as determined by the Administrator, the Administrator may enter the premises occupied by a recipient and inspect and test a recipient's equipment, facilities, rolling stock, operations, and relevant records.

### § 670.13 Request for confidential treatment of records.

(a) The Administrator may grant a recipient's request for confidential treatment of records on the basis that the records are—

(1) Exempt from the mandatory disclosure requirements of the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt from public disclosure.

(b) Any record containing information for which confidential treatment is requested must be submitted with the request for confidential treatment. The request must include a statement justifying nondisclosure and provide the specific legal basis upon which the request for nondisclosure should be granted.

(c) Any record containing any information for which confidential treatment is requested must be marked "CONFIDENTIAL" or "CONTAINS CONFIDENTIAL INFORMATION" in bold letters.

(d) The accompanying statement of justification must indicate whether

confidentiality is requested as to the entire record, or whether nonconfidential information in the record cannot be reasonably segregated from confidential information.

(1) If confidentiality is requested as to only a portion of the record, the person filing the record must file a copy of the record and a second copy of the document where the purportedly confidential information has been redacted.

(2) If the person filing a record, of which only a portion is requested to be held in confidence, does not submit a second copy of the record with the confidential information redacted at the time he or she files the record, the Administrator may assume there is no objection to public disclosure of the record in its entirety.

(e) The Administrator retains the right to make his or her own determination with regard to any request for confidentiality. Notice of a decision by the Administrator to deny a request, in whole or in part, and an opportunity to respond will be given to a person requesting confidential treatment of information no less than five (5) days prior to its public disclosure.

## Subpart C—Enforcement

### § 670.21 General.

In exercising authority under this part, the Administrator may—

(a) Require more frequent oversight of a recipient by a State Safety Oversight Agency (SSOA) that has jurisdiction over the recipient;

(b) Impose requirements for more frequent reporting by a recipient;

(c) Require that a recipient expend Federal financial assistance for correcting safety deficiencies identified by the Administrator or an SSOA, if the Administrator finds a recipient is or has been engaged in a pattern or practice of serious safety violations or refused to comply with the requirements of this part or any regulation or directive issued under those laws for which the Administrator exercises enforcement authority for safety;

(d) Order a recipient to develop and carry out a corrective action plan;

(e) Withhold Federal financial assistance in whole or in part as deemed appropriate by the Administrator, upon notice in accordance with section 670.23 of this part; and

(f) Make reports and issue safety directives and safety advisories.

### § 670.23 Use or withholding of funds.

(a) *Use of funds.* The Administrator may require a recipient to use Chapter 53 funds to correct safety deficiencies



identified by the Administrator or an SSOA before such funds are used for any other purpose.

(b) *Withholding of funds.* The Administrator may withhold funds from a recipient when the Administrator has evidence that the recipient has engaged in a pattern or practice of conduct in violation of the Public Transportation Safety Program or any regulation or directive issued under those laws for which the Administrator exercises enforcement authority for safety.

(1) *Notice.* The Administrator will issue a notice of violation and the amount proposed to be withheld at least ninety (90) days prior to the date from when the funds will be withheld. The notice must contain—

(i) A statement of the legal authority for issuance;

(ii) A statement of the regulatory provision(s) or directive(s) the recipient or State is believed to have violated;

(iii) A statement of the factual allegations upon which the remedial action is being sought; and

(iv) A statement of the remedial action sought to correct the deficiency.

(2) *Reply.* Within thirty (30) days of service of a notice of violation, a recipient may file a written reply with the Administrator. Upon written request, the Administrator may extend the time for filing for good cause shown. The reply must be in writing, and signed by the Accountable Executive or equivalent entity. A written response may include an explanation for the alleged violation, provide relevant information or materials in response to the alleged violation or in mitigation thereof, or recommend alternative means of compliance for consideration by the Administrator.

(3) *Decision.* Within thirty (30) days of receipt of a reply from a named recipient, the Administrator will issue a written reply to a recipient. The Administrator may consider the recipient's response, pursuant to paragraph (b)(2) of this section, in determining whether to dismiss the notice of violation in whole or in part. If the notice of violation is not dismissed, the Administrator may undertake any other enforcement action he or she deems appropriate, including withholding funds as stated in the notice of violation.

#### **§ 670.25 General directives.**

(a) *General.* The Administrator may issue a general directive under this part that is applicable to all recipients or a subset of recipients, for either of the following reasons—

(1) The Administrator determines that an unsafe condition or practice, or a

combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death, personal injury, damage to property or equipment, or significant harm to the environment; or

(2) For any other purpose where the Administrator determines that the public interest requires the avoidance or mitigation of a hazard or risk through immediate compliance.

(b) *Effective date.* A general directive is effective upon notice provided by the Administrator under paragraph (c) of this section.

(c) *Notice.* The Administrator will provide notice to recipients of a general directive in the **Federal Register**. The notice will include, at minimum—

(1) A reference to the authority under which the directive is being issued;

(2) A statement of the purpose of the issuance of the directive, including a description of the subjects or issues involved and a statement of the remedial actions sought; and

(3) A statement of the time within which written comments must be received.

(d) *Consideration of comments received.* The Administrator will consider all timely comments received. Late filed comments will be considered to the extent practicable.

(e) *Final notice.* After consideration of timely comments received, the Administrator will publish a notice in the **Federal Register** that includes both a response to comments and a final general directive or statement rescinding, revoking, or suspending the directive. A final general directive may reaffirm or modify a general directive subsection, in whole or in part.

#### **§ 670.27 Special directives.**

(a) *General.* The Administrator may issue a special directive under this part to one or more named recipients for any of the following reasons—

(1) The Administrator has reason to believe that a recipient is engaging in conduct, or there is evidence of a pattern or practice of a recipient's conduct, in violation of any statute, regulation, or directive issued under those laws for which the Administrator exercise enforcement authority for safety;

(2) The Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death, personal injury, damage to property or equipment, or significant harm to the environment; or

(3) For any other purpose where the Administrator determines that the

public interest requires the avoidance or mitigation of a hazard or risk through immediate compliance.

(b) *Effective date.* A special directive is effective upon notice provided by the Administrator under paragraph (c) of this section.

(c) *Notice.* The Administrator will provide personal notice directly to a named recipient. The Administrator may initially provide notice through telephone or electronic communications; however, written notice must be served by personal service or by U.S. mail following a telephonic or electronic communication. Personal notice must contain the following information, at minimum—

(1) The name of the recipient or recipients to which the directive applies;

(2) A reference to the authority under which the directive is being issued; and

(3) A statement of the purpose of the issuance of the directive including a description of the subjects or issues involved, a statement of facts upon which the notice is being issued, and statement of the remedial actions sought.

(d) *Petition for reconsideration.* Within thirty (30) days of service of a notice issued under subsection (c) of this section, a named recipient may file a petition for reconsideration with the Administrator. Upon written request, the Administrator may extend the time for filing for good cause shown. Unless explicitly stayed or modified by the Administrator, a special directive will remain in effect and must be observed pending review of a petition for reconsideration. Any such petition:

(1) Must be in writing and signed by the recipient's Accountable Executive or equivalent entity;

(2) Must include a brief explanation as to why the recipient believes the special directive should not apply to it or why compliance with a special directive is not possible, is not practicable, is unreasonable, or is not in the public interest; and

(3) May include relevant information regarding the factual basis upon which the directive was issued, information in response to any alleged violation or in mitigation thereof, recommend alternative means of compliance for consideration, and any other information deemed appropriate by the recipient.

(e) *Filing a petition for reconsideration.* A petition must be submitted to the Office of Chief Counsel, Federal Transit Administration, using one of the following methods—

(1) Email to FTA at *XXX@dot.gov*;

(2) Facsimile to FTA at 202–366–3809; or

(3) Mail to FTA at: FTA, Office of Chief Counsel, 1200 New Jersey Ave. SE., Washington, DC 20590.

(f) *Processing of petitions for reconsideration.*

(1) *General.* Each petition received under this section will be reviewed and disposed of by the Chief Counsel no later than ninety days (90) after receipt of a petition. No hearing, argument or other proceeding is held directly on a petition before its disposition under this section.

(2) *Grants.* If the Chief Counsel determines that the petition contains adequate justification, he or she may grant the petition, in whole or in part.

(3) *Denials.* If the Chief Counsel determines that the petition does not justify modifying, rescinding, or revoking the petition, in whole or in part, he or she may deny the petition.

(4) *Notification.* Upon determination by the Chief Counsel, the Office of Chief Counsel will issue notification to a named recipient of his or her decision.

(g) *Judicial Review.* A recipient may seek judicial review in an appropriate United States District Court of a final action of the Administrator under this section as provided in 5 U.S.C. 701 through 706.

#### § 670.29 **Advisories.**

(a) The Administrator may issue an advisory to one or more recipients, upon determining that an unsafe condition exists within a public transportation system, which recommends corrective actions, inspections, conditions, limitations, or other actions to resolve or mitigate the unsafe condition. The Administrator will issue notice to recipients of an advisory in the **Federal Register**.

(b) The Administrator may take into consideration a recipient's or State's failure to follow the recommendations contained within an advisory when deciding whether to take other enforcement actions.

#### **Subpart D—National Public Transportation Safety Plan**

##### § 670.31 **Purpose and contents of the national public transportation safety plan.**

Periodically, FTA will issue a National Public Transportation Safety Plan to improve the safety of all public transportation systems that receive funding under 49 U.S.C. Chapter 53. The National Public Transportation Safety Plan will be comprised of the following:

(a) Safety performance criteria for all modes of public transportation,

established through public notice-and-comment;

(b) The definition of State of Good Repair established in accordance with 49 U.S.C. 5326 and the rules at 49 CFR part 625;

(c) Minimum safety performance standards for vehicles in revenue operations, established through public notice-and-comment;

(d) The Public Transportation Safety Certification Training Program established in accordance with 49 U.S.C. 5329(c) and the rules at 49 CFR part 672;

(e) Safety advisories, directives, and reports issued in accordance with 49 U.S.C. 5329(f) and this part;

(f) Best practices, technical assistance, and pilot programs in carrying out Safety Management Systems in public transportation;

(g) Research, reports, data and information on hazard identification and risk management in public transportation, and guidance regarding the prevention of accidents and incidents in public transportation; and

(h) Any other content as determined by FTA.

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