

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****49 CFR Part 673**

[Docket No. FTA–2023–0007]

RIN 2132–AB44

Public Transportation Agency Safety Plans

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

ACTION: Final rule.

SUMMARY: The Federal Transit Administration (FTA) is publishing a final rule for Public Transportation Agency Safety Plans (PTASP). This final rule includes requirements for Agency Safety Plans (ASP), Safety Committees, cooperation with frontline transit worker representatives in the development of ASPs, safety risk reduction programs, safety performance targets, de-escalation training for certain transit workers, and addressing infectious diseases through the Safety Management System (SMS) process. This final rule also finalizes revisions to the regulation to coordinate and align with other FTA programs and safety rulemakings.

DATES: The effective date of this rule is May 13, 2024.

ADDRESSES: FTA’s Office of Transit Safety and Oversight (TSO) will host a webinar to discuss the requirements of the Public Transportation Agency Safety Plans (PTASP) final rule. Visit <https://www.transit.dot.gov/ptasp> for more information and to RSVP. Please visit <https://www.transit.dot.gov/ptasp> to register for webinars and for information about future webinars. FTA is committed to providing equal access for all webinar participants. If you need alternative formats, options, or services, contact FTA-Knowledge@dot.gov at least three business days prior to the event. If you have any questions, please email FTA-Knowledge@dot.gov.

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

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I. Executive Summary

This final rule amends the Public Transportation Agency Safety Plans (PTASP) regulation at 49 CFR part 673 with new requirements that implement statutory changes in the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58; November 15, 2021). The Bipartisan Infrastructure Law amends FTA’s safety program at 49 U.S.C. 5329 and adds to the PTASP requirements for public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53 (Chapter 53). This final rule also builds on the existing PTASP final rule published in 2018 to enhance the Safety Management System (SMS) process and finalizes revisions to the regulation to coordinate and align with other FTA programs and safety rulemakings.

A. FTA Efforts To Address Transit Worker Safety

The Bipartisan Infrastructure Law amended the PTASP requirements by adding a risk reduction program that addresses, at a minimum, transit worker safety and reduction of pedestrian/bus collisions. Transit worker safety is a top priority for FTA. Since the previous PTASP Final Rule became effective in 2019,¹ FTA has taken a series of actions to improve transit worker safety and address the risk of assaults on transit workers. In 2019, FTA issued a notice

¹ Public Transportation Agency Safety Plans, 83 FR 34418 (2018) (Codified at 49 CFR part 673). <https://www.federalregister.gov/documents/2018/07/19/2018-15167/public-transportation-agency-safety-plan>.

in the **Federal Register** advising transit agencies subject to the PTASP regulation that where instances of operator assault are identified, transit agencies should, as required by the PTASP regulation, take steps to identify mitigations or strategies necessary to reduce the likelihood and severity of occurrences of operator assault.²

In 2020, FTA launched the Bus Operator Compartment Redesign Program³ to improve safety, operational efficiency, and passenger accessibility. In 2021, FTA launched the Enhanced Transit Safety and Crime Prevention Initiative,⁴ issued a Request for Information (RFI) on Transit Worker Safety,⁵ and used its Safety Risk Management (SRM) process to assess the safety risk of the potential consequences of identified hazards associated with assaults on transit workers. Also in 2021, the National Transit Institute began offering Assault Awareness and Prevention for Transit⁶ training courses sponsored by FTA.

In 2022, shortly after enactment of the Bipartisan Infrastructure Law, FTA issued a Dear Colleague Letter⁷ informing transit agencies of the statutory changes to PTASP requirements and establishing compliance dates for transit agencies to establish joint labor-management Safety Committees and revise Agency Safety Plans (ASP) in cooperation with frontline employee representatives to address Bipartisan Infrastructure Law requirements that strengthen frontline transit worker involvement in transit

² Protecting Public Transportation Operators From the Risk of Assault, 84 FR 24196 (May 24, 2019). <https://www.federalregister.gov/documents/2019/05/24/2019-10281/protecting-public-transportation-operators-from-the-risk-of-assault>.

³ Federal Transit Administration (March 2020). “Redesign of Transit Bus Operator Compartment to Improve Safety, Operational Efficiency, and Passenger Accessibility (Bus Operator Compartment) Program.” <https://www.transit.dot.gov/research-innovation/redesign-transit-bus-operator-compartment-improve-safety-operational-efficiency>.

⁴ Federal Transit Administration (October 2021). “Enhanced Transit Safety and Crime Prevention Initiative.” <https://www.transit.dot.gov/regulations-and-programs/safety/enhanced-transit-safety-and-crime-prevention-initiative>.

⁵ Federal Transit Administration (September 2021). “Federal Transit Administration Announces Request for Information on Transit Worker Safety.” <https://www.transit.dot.gov/about/news/federal-transit-administration-announces-request-information-transit-worker-safety>.

⁶ Federal Transit Administration (October 2023). “FTA-Sponsored Training Courses.” <https://www.transit.dot.gov/regulations-and-guidance/safety/fta-sponsored-training-courses>.

⁷ Federal Transit Administration (February 17, 2022). “Dear Colleague Letter: Bipartisan Infrastructure Law Changes to PTASP Requirements.” <https://www.transit.dot.gov/safety/public-transportation-agency-safety-program/dear-colleague-letter-bipartisan-infrastructure>.

safety. FTA also published a notice in the **Federal Register** seeking comment on proposed changes and clarifications to the National Transit Database (NTD) Safety and Security (S&S) reporting requirements,⁸ issued nine Special Directives on Required Actions Regarding Transit Worker Assault⁹ to transit agencies accounting for 79% of all transit worker assaults reported to the NTD, and published a Notice of Funding Opportunity in the **Federal Register** for the Transit Worker and Rider Safety Best Practices Research Project.¹⁰

To implement Bipartisan Infrastructure Law requirements related to assaults on transit workers and vehicular and pedestrian accidents involving buses, FTA published three notices in the **Federal Register** in 2023: a notice finalizing NTD S&S reporting requirements to expand reporting,¹¹ a notice of proposed rulemaking (NPRM) seeking comment on proposed new PTASP requirements,¹² and a notice seeking comment on proposed changes to the National Public Transportation Safety Plan (National Safety Plan).¹³ FTA also published a notice in the **Federal Register** seeking comment on a proposed General Directive on Required Actions Regarding Assaults on Transit Workers.¹⁴ In addition, FTA is pursuing other policy actions on transit worker safety, including an advance notice of proposed rulemaking (ANPRM) published in the **Federal Register** on Transit Worker Hours of Service and

Fatigue Risk Management,¹⁵ a planned NPRM on Transit Worker and Public Safety (RIN 2132-AB47),¹⁶ and an NPRM on Rail Transit Roadway Worker Protection (RWP) published in the **Federal Register**.¹⁷

B. Statutory Authority

Congress directed FTA to establish a comprehensive Public Transportation Safety Program, one element of which is the requirement for PTASP, in the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112-141; July 6, 2012) (MAP-21), which was reauthorized by the Fixing America's Surface Transportation Act (Pub. L. 114-94; December 4, 2015). To implement the requirements of 49 U.S.C. 5329(d), FTA issued a final rule on July 19, 2018, that added part 673, "Public Transportation Agency Safety Plans," to title 49 of the Code of Federal Regulations (83 FR 34418).

The Bipartisan Infrastructure Law continues the Public Transportation Safety Program and adds to the PTASP requirements for public transportation systems that receive Federal financial assistance under chapter 53.

C. Summary of Key Provisions

This rule finalizes FTA's implementation of several revisions to 49 U.S.C. 5329(d) enacted through the Bipartisan Infrastructure Law, including:

- Requirements for each recipient that serves an urbanized area with a population of fewer than 200,000 (small urbanized area) to:
 - Develop its ASP in cooperation with frontline employee representatives (49 U.S.C. 5329(d)(1)(B)); and
 - Address in its ASP strategies to minimize exposure to infectious diseases, consistent with guidelines of the Centers for Disease Control and Prevention (CDC) or a State health authority (49 U.S.C. 5329(d)(1)(D)).
- Requirements for each recipient of Urbanized Area Formula Program funds under section 5307 that serves an urbanized area with a population of 200,000 or more (large urbanized area) to:
 - Establish a Safety Committee that is convened by a joint labor-management

process and consists of an equal number of (1) frontline employee representatives, selected by a labor organization representing the plurality of the frontline workforce employed by the recipient or, if applicable, a contractor to the recipient, to the extent frontline employees are represented by labor organizations; and (2) management representatives. (49 U.S.C. 5329(d)(5)). This Safety Committee has responsibility, at a minimum, for:

- Approving the transit agency's ASP and any updates to the ASP before approval by the agency's Board of Directors or equivalent entity (49 U.S.C. 5329(d)(1)(A));
- Setting safety performance targets for the safety risk reduction program using a three-year rolling average of the data submitted by the transit agency to the NTD (49 U.S.C. 5329(d)(4)(A));
- Identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment (49 U.S.C. 5329(d)(5)(A)(iii)(I));
- Identifying mitigations or strategies that may be ineffective, inappropriate, or were not implemented as intended (49 U.S.C. 5329(d)(5)(A)(iii)(II)); and
- Identifying safety deficiencies for purposes of continuous improvement (49 U.S.C. 5329(d)(5)(A)(iii)(III)).

- Establish a safety risk reduction program for transit operations to improve safety by reducing the number and rates of accidents, injuries, and assaults on transit workers based on data submitted to the NTD, including:
 - A reduction of vehicular and pedestrian accidents involving buses that includes measures to reduce visibility impairments for bus operators that contribute to accidents, including retrofits to buses in revenue service and specifications for future procurements that reduce visibility impairments; and
 - The mitigation of assaults on transit workers, including the deployment of assault mitigation infrastructure and technology on buses, including barriers to restrict the unwanted entry of individuals and objects into bus operator workstations when a risk analysis performed by the Safety Committee determines that such barriers or other measures would reduce assaults on and injuries to transit workers (49 U.S.C. 5329(d)(1)(I)).

- Allocate not less than 0.75 percent of its section 5307 funds to safety-related projects eligible under section 5307 (safety set-aside). In the event the transit agency fails to meet a safety risk reduction program safety performance target:

⁸ National Transit Database Safety and Security Reporting Changes and Clarifications, 87 FR 42539 (July 15, 2022). <https://www.federalregister.gov/documents/2022/07/15/2022-15167/national-transit-database-safety-and-security-reporting-changes-and-clarifications>.

⁹ Federal Transit Administration (October 2022). "Special Directives on Required Actions Regarding Transit Worker Assault." <https://www.transit.dot.gov/regulations-and-guidance/safety/fta-special-directives#SDTWA>.

¹⁰ Federal Transit Administration (December 2022). "Transit Worker and Rider Safety Best Practices Research Project." <https://www.transit.dot.gov/funding/grants/TWRS>.

¹¹ National Transit Database Safety and Security Reporting Changes and Clarifications, 88 FR 11506 (February 23, 2023). <https://www.federalregister.gov/documents/2023/02/23/2023-03789/national-transit-database-safety-and-security-reporting-changes-and-clarifications>.

¹² Public Transportation Agency Safety Plans, 88 FR 25336 (April 26, 2023). <https://www.federalregister.gov/documents/2023/04/26/2023-08777/public-transportation-agency-safety-plans>.

¹³ National Public Transportation Safety Plan, 88 FR 34917 (May 31, 2023). <https://www.federalregister.gov/documents/2023/05/31/2023-11551/national-public-transportation-safety-plan>.

¹⁴ General Directive 24-1: Required Actions Regarding Assaults on Transit Workers, 88 FR 88213 (December 20, 2023). <https://www.federalregister.gov/documents/2023/12/20/2023-28002/proposed-general-directive-24-1-required-actions-regarding-assaults-on-transit-workers>.

¹⁵ Transit Worker Hours of Service and Fatigue Risk Management, 88 FR 74107 (October 30, 2023). <https://www.federalregister.gov/documents/2023/10/30/2023-23916/transit-worker-hours-of-service-and-fatigue-risk-management>.

¹⁶ Office of Information and Regulatory Affairs (2023). Unified Agenda: "Transit Worker and Public Safety." <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2132-AB47>.

¹⁷ Rail Transit Roadway Worker Protection, 89 FR 20605 (March 25, 2024). <https://www.federalregister.gov/documents/2024/03/25/2024-06251/rail-transit-roadway-worker-protection>.

- Allocate the transit agency's safety set-aside in the following fiscal year to projects that are reasonably likely to assist the agency in meeting the target, including modifications to rolling stock and de-escalation training (49 U.S.C. 5329(d)(4)).

- Ensure the agency's comprehensive staff training program includes maintenance personnel and de-escalation training (49 U.S.C. 5329(d)(1)(H)(ii)).

- Address in its ASP strategies to minimize exposure to infectious diseases, consistent with guidelines of the CDC or a State health authority (49 U.S.C. 5329(d)(1)(D)).

Many of FTA's proposals from the NPRM are finalized without change. In response to comments, FTA made minor, non-substantive changes to § 673.5 related to the terms "injury," "performance target," and "safety performance target."

In addition, the final rule includes amended requirements related to the role of the Safety Committee, Safety Committee procedures, the role of the Accountable Executive, and the safety risk reduction program.

In response to comments, FTA has made minor changes to the Safety Committee requirements in § 673.19. These changes provide additional clarity and specificity regarding Safety Committee procedures. FTA has revised § 673.19(c)(2) to provide that Safety Committee procedures must address how meeting notices will be developed and shared. FTA added a requirement at § 673.19(c)(4) that Safety Committee procedures include the compensation policy established by the transit agency for participation in Safety Committee meetings. In this provision, FTA is not requiring transit agencies to compensate members of the Safety Committee; rather, it is requiring the transit agency to adopt a policy regarding Safety Committee compensation and that the Safety Committee procedures include the policy the transit agency has adopted.

In response to comments, FTA also has revised §§ 673.19(c)(6) and (c)(8) to clarify that the Safety Committee procedures must document the Safety Committee's decision-making processes and to clarify that FTA is not requiring Safety Committees to make decisions through any specific voting mechanisms. Regarding Safety Committee disputes, FTA has revised § 673.19(c)(8) to clarify that the ASP must include procedures for how the Safety Committee will manage disputes to ensure that it carries out its operations, and may use the dispute resolution or arbitration process from

the transit agency's Collective Bargaining Agreement, or some other process that the Safety Committee develops and agrees upon. The Accountable Executive, however, may not have a tiebreaking role in resolving Safety Committee disputes, because that would be inconsistent with the statutory requirements relating to the roles of Safety Committees. Additionally, FTA strengthened the focus of the provisions on cooperation with frontline transit workers by grouping requirements for Safety Committees and Cooperation with Frontline Transit Worker Representatives into a single Subpart C, titled "Safety Committees and Cooperation with Frontline Transit Worker Representatives."

In response to comments from across the spectrum of stakeholders expressing confusion about the safety risk reduction program and seeking clarity on the relationship between the safety risk reduction program and SMS, FTA has eliminated the proposed § 673.20 as a standalone section, and has moved the safety risk reduction program requirements originally proposed under § 673.20 to other sections of the rule. This reorganization better reflects how the required safety risk reduction program activities are carried out using existing components of SMS.

Requirements that pertain to establishing the safety risk reduction program, general safety risk reduction program elements, and setting safety performance targets are now included in § 673.11, which identifies items that transit agencies must include in their ASPs. Requirements for carrying out the safety risk reduction program using SMS processes are in § 673.25, which now addresses safety risk reduction program requirements associated with Safety Risk Management, and § 673.27, which now includes safety risk reduction program requirements associated with Safety Assurance. By moving these requirements into the relevant SMS-related components of the regulation, FTA provides clear requirements for transit agencies to leverage existing SMS processes to support the safety risk reduction program. FTA confirms that the safety risk reduction program operates within an SMS and not outside of it or in conflict with it. Also in response to comments, FTA has clarified the requirements for large urbanized area providers and their Safety Committees to consider specific safety risk mitigations, including when the agency misses a safety performance target set by the Safety Committee.

Further, in response to comments and pursuant to statute, the final rule

requires transit agencies to include or incorporate by reference into the ASP any safety risk mitigations relating to the safety risk reduction program that are identified and recommended by a large urbanized area provider's Safety Committee based on a safety risk assessment. These requirements are described in §§ 673.11(a)(7)(iv) and 673.25(d)(5). The Bipartisan Infrastructure Law requires at 49 U.S.C. 5329(d)(1)(I) that the ASP must include the safety risk reduction program, and that the safety risk reduction program must include mitigations, including (1) measures to reduce visibility impairments for bus operators that contribute to accidents, including retrofits to vehicles in revenue service and specifications for future procurements that reduce visibility impairments; and (2) the deployment of assault mitigation infrastructure and technology on buses. Accordingly, the statute requires the ASP to include these mitigations. The Safety Committee is tasked with identifying and recommending safety risk mitigations necessary to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment. Therefore, as noted above, FTA is including the requirement that the ASP include safety risk mitigations related to the safety risk reduction program that are identified and recommended by the Safety Committee based on a safety risk assessment.

In response to comments, § 673.23(d)(1) clarifies the role of the Accountable Executive regarding implementation of mitigations recommended by the Safety Committee. The Accountable Executive must implement safety risk mitigations for the safety risk reduction program that are included in the ASP under § 673.11(a)(7)(iv). Given that the Accountable Executive has ultimate responsibility for carrying out the agency's ASP pursuant to § 673.5, the Accountable Executive is responsible for carrying out any mitigations included in the ASP.

In response to comments, § 673.23(d)(1) provides that the Accountable Executive of a large urbanized area provider receives and must consider all other safety risk mitigations (*i.e.*, mitigations not related to the safety risk reduction program) that are recommended by the Safety Committee. As described in § 673.25(d)(6), if the Accountable Executive declines to implement such a mitigation, the Accountable Executive must prepare a written statement explaining its decision and must submit and present this explanation to the

Safety Committee and the Board of Directors.

D. Benefits and Costs

Most provisions in the final rule implement self-enacting statutory amendments made by the Bipartisan Infrastructure Law to 49 U.S.C. 5329, although some provisions are discretionary. The discretionary provisions include extending the de-escalation training requirement to all transit agencies subject to part 673, as well as requiring small public transportation providers to establish continuous improvement processes.

The requirements for de-escalation training and continuous improvement

processes are predicted to reduce the risk of fatalities and injuries for transit workers, passengers, drivers, and pedestrians if transit agencies adopt safety risk mitigations that they would not have adopted otherwise. While FTA expects that agencies will be more likely to adopt safety risk mitigations to reduce the risk of transit worker assault and bus collisions, it does not have information to quantify or monetize potential benefits.

Agencies will incur costs to meet the requirements for de-escalation training and continuous improvement processes. FTA will also incur costs to notify agencies, update technical assistance

resources, and conduct training, although the expected costs are minimal.

Table 1 summarizes the economic effects of the discretionary provisions in the final rule over the first ten years from 2024 to 2033 in 2021 dollars, assuming an effective date of 2024. On an annualized basis (discounted to 2023), the rule has estimated costs of \$642,000 at a 3 percent discount rate and \$635,000 at 7 percent. To quantify benefits and assess net benefits, FTA would need information on the specific safety interventions transit agencies would adopt to address the requirements.

TABLE 1—SUMMARY OF ECONOMIC EFFECTS FOR DISCRETIONARY RULEMAKING PROVISIONS, 2024–2033
[\$2021, discounted to 2023]

Item	Total (undiscounted)	Annualized (3% discount)	Annualized (7% discount)
Benefits	Unquantified	.....	.....
Costs:			
De-escalation training	\$584,925	\$59,040	\$59,803
Continuous improvement processes	\$5,881,933	582,913	575,558
Total costs	\$6,466,858	641,954	635,362
Net benefits	Unquantified	.....	.....

II. Notice of Proposed Rulemaking and Response to Comments

FTA issued an NPRM for Public Transportation Agency Safety Plans on April 26, 2023 (88 FR 25336).¹⁸ The public comment period for the NPRM closed on June 26, 2023. FTA received 53 comment submissions to the rulemaking docket, including one that contained individual comments from 26 local transit unions. Commenters included States, members of Congress, transit agencies, labor organizations, trade associations, and individuals. FTA also received comments relevant to this rulemaking through the National Safety Plan docket (FTA–2023–0010). FTA has considered these comments and addresses them in the corresponding sections below. FTA also received ex parte comments about the rulemaking, which are summarized in the rulemaking docket. FTA addresses these comments in the corresponding sections below. Some comments were outside the scope of this rulemaking, and FTA does not respond to comments in this final rule that were outside the scope. Some comments expressed support for the NPRM without advocating for specific changes, and FTA

acknowledges those comments were received and considered.

FTA reviewed all relevant comments and took them into consideration when developing the final rule. Below, the NPRM comments and responses are subdivided by their corresponding sections of the proposed rule and subject matter.

A. Section 673.1—Applicability

1. Funding Sources

Comments: Two commenters supported FTA’s proposal to continue existing exemptions for operators of public transportation systems that receive only Federal financial assistance under 49 U.S.C. 5310 or 49 U.S.C. 5311.

One commenter requested additional clarification on applicability for operators who cease to meet the applicability criteria in § 673.1 but already have an ASP in place due to prior applicability.

One commenter recommended that applicability, particularly the requirement to create Safety Committees, should include operators that do not receive section 5307 funding, but that receive other funds or subsidy credit from a section 5307 recipient.

Response: FTA appreciates the comments that it received supporting the proposed revisions to the

applicability section of this rule. As described in the NPRM, these revisions clarify FTA’s existing practice regarding PTASP applicability. Accordingly, FTA will continue to defer regulatory action regarding the applicability of this regulation to operators of public transportation systems that only receive section 5310 and/or section 5311 funds. This final rule does not apply to an operator of a public transportation system that receives Federal financial assistance under only 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311, unless it operates a rail fixed guideway public transportation system.

FTA disagrees with the need to further clarify applicability for operators whose funding sources change. For non-rail fixed guideway public transportation systems, the final regulation applies only to operators that are recipients or subrecipients of Urbanized Area Formula Funding (section 5307) funds.

Similarly, FTA disagrees with the commenter who suggested that operators of public transportation systems who do not receive section 5307 funds but receive other types of funds or subsidies from a section 5307 recipient should automatically be required to meet the requirements of the regulation. FTA continues to apply the

¹⁸ Public Transportation Agency Safety Plans, 88 FR 25336 (April 26, 2023). <https://www.federalregister.gov/documents/2023/04/26/2023-08777/public-transportation-agency-safety-plans>.

existing definitions of recipient and subrecipient. Accordingly, if a transit agency is a recipient or subrecipient of section 5307 funding, this regulation applies. The final rule does not change any existing PTASP requirements regarding applicability.

2. Publication Timing

Comments: One commenter recommended that FTA publish its final rules for part 673, part 674, and the updated National Safety Plan simultaneously in order to ensure consistency across programs and that safety performance targets under part 673 are consistent with the performance measures set forth in the revised National Safety Plan.

Response: FTA appreciates the commenter's concern regarding the sequencing of publications, including for part 673 and the National Public Transportation Safety Plan (National Safety Plan).¹⁹ FTA's National Safety Plan defines safety performance measures that transit agencies use to set the performance targets required under part 673. FTA has ensured consistency between this final rule and the National Safety Plan, and FTA believes that both updates support the advancement of safety performance measurement by providing transit agencies what they need to set safety performance targets. FTA also understands the concern regarding the importance of consistency across FTA's safety program. FTA will take this into consideration and ensure consistency across parts as it develops its rulemaking for part 674, but due to rulemaking requirements, schedules, and resources, FTA is unable to publish both rulemakings simultaneously.

3. Modal Requirements

Comments: A rail transit agency (RTA) requested greater differentiation among requirements for specific types of rail fixed guideway public transportation systems (RFGPTS), such as streetcar and light rail systems.

Response: FTA appreciates the functional differences among types of RFGPTS and agrees that regulatory requirements should reflect those key differences as appropriate. FTA notes that this regulation is based on the principles of SMS, which are scalable and flexible for public transportation operators of varying types and sizes. FTA therefore disagrees that requirements relating to RFGPTS in this final rule are significantly impacted by the type of RFGPTS in operation.

The National Safety Plan establishes safety performance measures for all modes of transportation. This directly reflects statutory language in 49 U.S.C. 5329(b)(2)(A), which requires FTA to set safety performance criteria in the National Safety Plan by mode. FTA notes that nothing in this final rule or in the National Safety Plan prevents a transit agency from establishing additional safety performance targets with greater specificity than required in the National Safety Plan (e.g., establishing separate safety performance targets for streetcar and light rail systems).

B. Section 673.5—Definitions

1. General

Comments: A few commenters expressed concern with the potential for conflicting definitions across FTA's regulatory framework and associated requirements, with some urging FTA to ensure terms are consistent across FTA's safety regulations and the NTD. Another of these commenters recommended that FTA restate definitions within the rule rather than referencing statutory or regulatory provisions.

Two commenters expressed support for FTA's proposed definitions, with one specifically noting support for the revised definitions of "small public transportation provider" and "assault on a transit worker."

One commenter stated that changing or deleting definitions would have a significant impact on training materials and expressed concern with the cost of updating these materials.

One commenter expressed concern that the provided definitions lack the specificity required to address safety concerns in ASPs that are manageable and effective. They also stated that any new definitions should be congruent with State and local statutes.

Response: FTA agrees that consistent definitions and requirements are important across its safety program and associated regulatory framework. FTA has taken such consistency into consideration in finalizing this final rule and the National Safety Plan, and will standardize relevant definitions in part 674, the forthcoming Roadway Worker Protection rulemaking, and NTD reporting requirements. In response to the commenter that recommended FTA restate definitions within the rule rather than referencing statutory or regulatory provisions, FTA notes that referencing statutory or other regulatory provisions ensures consistency and avoids conflicts in instances where associated statutes or regulations are revised. In most instances, FTA has chosen to reference

statutory or regulatory provisions, except when FTA believes that restating the definition is necessary for clarity, as it has done for the definition of "assault on a transit worker."

FTA appreciates the support received regarding the definitions of "small public transportation provider" and "assault on a transit worker."

FTA acknowledges that, as with any regulatory update, the definitional changes adopted in this final rule may necessitate an update of training materials to address these changes. FTA will aim to provide guidance and other technical assistance regarding the changes adopted in this rule to assist agencies with understanding and adapting to them.

FTA appreciates the commenter's concern regarding the specificity of definitions in this rule and how FTA's definitions may differ from State or local statutes. The definitions introduced here are designed to be sufficiently specific to facilitate compliance without being so restrictive that they interfere with an agency's ability to appropriately scale their SMS to the size and complexity of their transit system. Further, it is not feasible for FTA to accommodate all potential State and local statutory definitions in this rulemaking. FTA therefore declines to make any changes in response to this comment.

2. Accountable Executive

Comments: Three commenters recommended that FTA revise the definition of "Accountable Executive" to express that the Accountable Executive has ultimate accountability for and authority over the Agency Safety Plan (ASP), including veto power over anything contained in the ASP. One commenter recommended that FTA specify that the Accountable Executive must have transit mode and safety qualifications.

Response: FTA declines to revise the definition. The Accountable Executive's ultimate accountability for the agency's safety performance, which includes execution of the ASP, is affirmed in § 673.23(d)(1). As explained in Section II.F.5. of this preamble, the rule does not establish Accountable Executive veto power over the contents of the ASP. The Accountable Executive's role is to sign the ASP and to ensure that the ASP and the agency's SMS process is carried out. FTA declines to establish specific qualifications for Accountable Executives because the rule clearly defines the responsibilities of the Accountable Executive. Transit agencies will ultimately define the qualifications

¹⁹Federal Transit Administration (April 2024). "National Public Transportation Safety Plan." <https://www.transit.dot.gov/nsp>.

required for their Accountable Executive.

3. Assault on a Transit Worker

Comments: Seven commenters expressed concerns about the breadth of the definition of “assault on a transit worker.” Two of these commenters requested that FTA narrow the definition to physical assaults. They stated that, by collecting non-violent offenses, FTA could skew the data and make it more difficult for agencies to address these assaults. For this reason, the same commenters recommended FTA limit the definition’s applicability to NTD reporting. Another of these commenters stated that, by characterizing verbal abuse as an assault, transit agencies could experience an increase in applications for workers’ compensation. One commenter requested clarification and coordination between this definition and the definition of “non-physical assault” in the NTD.

One of the commenters requested additional guidance on the definition’s use of the terms “knowingly,” “with intent,” and “interferes with” due to concerns about the difficulty of applying these factors in some situations. Similarly, four commenters requested that FTA provide guidance on the types of events that constitute an assault on a transit worker. Two of these commenters recommended that FTA provide examples either in the final rule or in NTD guidance materials. One of these commenters requested that FTA implement a “grace period” for NTD assault reporting requirements and PTASP safety risk reduction program performance measures until FTA develops clear guidance on the application of the term. This commenter expressed that the definition is ambiguous and leads to undue administrative burden.

Five commenters stated that the definition of assault used in this rule is not congruent with state criminal statutes, noting that this will create confusion and uncertainty about its application. One of these commenters further questioned why this definition was created when prosecution for assaults on transit workers is generally conducted at a local, not a Federal, level and suggested that these assaults should be tracked by the Transportation Security Administration (TSA) instead. Another commenter suggested that FTA consider using a different word than “assault” due to differences with state statutory definitions.

One commenter stated that the definition of assault varies, even within one transit agency, which leads to

administrative burden and confusion for an agency’s safety, dispatch, and law enforcement personnel. The same commenter stated the incongruity between the rule and the state criminal statutory definition may lead law enforcement to mistakenly direct dispatchers not to report an assault as defined by FTA.

One commenter asked whether assaults on a transit worker should be considered safety or security events.

Response: FTA notes that 49 U.S.C. 5329(d) explicitly uses the term “assault on a transit worker,” as defined by 49 U.S.C. 5302, when setting forth certain PTASP requirements. For this reason, FTA is adopting the statutory definition verbatim. The statutory definition does not exclude non-physical assaults, verbal assaults, or non-violent assaults. As such, FTA declines to exclude these events from the definition.

FTA acknowledges that the collection of non-physical assault events may increase the assault on transit worker data that transit agencies collect. FTA notes that the NTD has initiated the collection of non-physical assaults on transit workers data and that this rule utilizes the same definition of assault on a transit worker used by the NTD. This definitional alignment provides important consistency across the PTASP and NTD programs.

FTA appreciates the comments requesting additional guidance from FTA about the definition of “assault on a transit worker” and how it should be applied. The NTD program serves as FTA’s system for collection of assaults on transit worker reporting requirements. FTA communicates reporting requirements to the NTD reporting community through (1) annual messaging around updates to reporting requirements, (2) regular communications with reporters (both through the system’s blast messaging and between the reporter and their assigned validation analyst), (3) an updated FAQ section²⁰ on the FTA website specific to assaults on transit workers, and (4) updates to guidance and training. The NTD program has developed several training opportunities and guidance materials to help agencies address the new assaults on transit worker reporting requirements. The 2023 NTD Safety and Security Reporting Policy Manual²¹ provides detailed

²⁰ Federal Transit Administration (October 2023). “Recent NTD Developments—Frequently Asked Questions.” <https://www.transit.dot.gov/ntd/recent-ntd-developments-frequently-asked-questions>.

²¹ Federal Transit Administration (August 2023). “2023 NTD Safety and Security Reporting Policy Manual.” <https://www.transit.dot.gov/ntd/2023-ntd-safety-and-security-reporting-policy-manual>.

guidance about safety and security reporting, including assaults on transit workers. In addition, the 2023 Safety and Security Quick Reference Guide: Rail Modes²² and Safety and Security Quick Reference Guide: Non-Rail Modes²³ define reportable events and identify reporting thresholds. A webinar on 2023 Safety & Security Updates: Reporting Assaults on Transit Workers,²⁴ was provided to the public on April 27, 2023, and is available for viewing online. Finally, there are several courses offered by the National Transit Institute pertaining to 2023 safety reporting for full reporters (rail²⁵ and non-rail²⁶) as well as reduced reporters.²⁷

FTA disagrees that a “grace period” for safety risk reduction program performance measures and reporting assaults on transit workers to the NTD is necessary and notes that the NTD has already begun collecting data on assaults on transit workers from the transit industry.

Regarding concerns about inconsistencies with the State law definitions of “assault,” FTA’s proposed definition of “assault on a transit worker” is the same as the Federal statutory definition at 49 U.S.C. 5302. Although this definition potentially differs from State law and from transit agency definitions, FTA is adopting this definition to ensure the definition used for the purposes of this rule is consistent with the statute.

FTA appreciates that some transit agencies treat assault on a transit worker as both a safety and a security event. Congress directed FTA to address assaults on transit workers through both the NTD and FTA’s safety program as part of FTA’s work to improve safety at transit systems across the country. This final rule carries out the Congressional

²² Federal Transit Administration (August 2023). “Safety & Security Quick Reference Guide: Rail Modes.” <https://www.transit.dot.gov/ntd/safety-security-quick-reference-guides>.

²³ Federal Transit Administration (August 2023). “Safety & Security Quick Reference Guide: Non-Rail Modes.” <https://www.transit.dot.gov/ntd/safety-security-quick-reference-guide-non-rail-modes>.

²⁴ National Transit Institute (April 2023). “Webinar: NTD Safety Reporting Requirements Update: Assaults on Transit Workers.” <https://www.youtube.com/watch?v=GeB3RXCl6oQ>.

²⁵ National Transit Institute. “National Transit Database: Urban Safety & Security Reporting Rail Modes.” <https://www.ntionline.com/national-transit-database-urban-safety-and-security-reporting-rail/>.

²⁶ National Transit Institute. “National Transit Database: Urban Safety & Security Reporting Non-Rail Modes.” <https://www.ntionline.com/national-transit-database-urban-safety-and-security-reporting-non-rail-modes/>.

²⁷ National Transit Institute. “National Transit Database: Rural NTD Reporting.” <https://www.ntionline.com/rural-ntd-reporting/>.

mandate to address assaults on transit workers through the PTASP regulation.

FTA is adopting this definition as proposed.

4. Chief Safety Officer

Comments: One commenter requested that FTA revise the definition of “Chief Safety Officer” to remove the phrase “adequately trained individual” and instead require the Chief Safety Officer have transit modal and safety competencies, credentials, training, and experience.

Response: FTA declines to revise the definition and does not have discretion to remove the requirement for the Chief Safety Officer to be “adequately trained,” as it is required by statute at 49 U.S.C. 5329(d)(1)(G). FTA believes that the transit agency is the entity best situated to define adequate training. For operators of RFGPTS, the relevant SSOA may establish additional training requirements.

5. Emergency

Comments: Two commenters disagreed with the proposed definition of “emergency” and expressed concern that the definition may lead to confusion because the term “emergency” is commonly used to include incidents outside the scope of the proposed definition (e.g., medical emergencies). One of these commenters noted that FTA’s proposed definition is similar to an “Act of God” and recommended that if this is the intent, FTA should utilize the Federal Emergency Management Agency (FEMA) definition of “emergency.”

Response: FTA agrees that the term “emergency” may have definitions other than the one presented in the NPRM. The definition used in the NPRM mirrors the statutory definition in 49 U.S.C. 5324 and its use in this final rule synchronizes definitions within FTA’s programs. Further, FTA believes this definition is appropriate for purposes of establishing the minimum required scope of the emergency preparedness and response plan or procedures required in § 673.11(a)(6)(i). FTA notes that transit agencies are free to develop emergency preparedness and response plans or procedures that cover a broader set of situations.

6. Equivalent Entity

Comments: One commenter requested more information about the use of the term “equivalent entity” and how it relates to the term “Equivalent Authority.”

Response: The term “equivalent entity” is used in this final regulation as a one-to-one replacement for the term

“Equivalent Authority.” FTA made this change to conform with the statutory term used in 49 U.S.C. 5329(d)(1)(A). FTA does not intend this change to be substantive.

7. Hazard

Comments: One commenter requested clarification on the difference between a safety hazard and a hazard.

Response: FTA uses these two terms interchangeably. There is no substantive difference between FTA’s use of these terms. For clarity, FTA has revised the rule to use “hazard” in place of “safety hazard.”

8. Investigation

Comments: One transit agency stated that the definition of “investigation” implies that an investigation would only occur after a safety event has occurred and asked whether the definition also includes near-miss or close-call incidents. Further, the commenter recommended an alternative definition that includes near-misses and that states that investigations may serve the purpose of preventing the occurrence of potential consequences, rather than merely their recurrence.

Response: In both the NPRM and this final rule, FTA includes both hazards and safety events in its definition of “investigation.” The definition does not exclude investigations of hazards that may have resulted in a near-miss.

9. Joint Labor-Management Process

Comments: One commenter suggested that FTA should revise the definition of “joint labor-management process” to mean the formal approach for conducting the responsibilities of the Safety Committee established under 49 U.S.C. 5329(d). Another commenter opposed defining this term as a process to “discuss topics,” stating that establishing a Safety Committee consists of more than just discussion. In addition, this commenter requested that FTA include a requirement for workers and management to make democratic decisions and for agencies to incorporate the committee’s structure and rules into ASPs.

Response: The term “joint labor-management process” is used only in § 673.19(a), which sets forth the responsibilities for a Safety Committee established in 49 U.S.C. 5329. Because of this limited usage, FTA does not believe it is necessary to further address the Safety Committee in the definition of “joint labor-management process.” FTA agrees with the commenter that establishing and operating a Safety Committee consists of more than just discussion. FTA does not believe the

definition of “joint labor-management process” limits the role of the Safety Committee. FTA notes that § 673.19 defines the Safety Committee requirements and responsibilities, including requirements directly related to establishment, membership, procedures, and ASP approval. Further, FTA specifically addresses Safety Committee decision-making at § 673.19(c)(6). FTA refers readers to section II.F. of this preamble below for additional discussion about Safety Committee procedures and decision-making. As such, FTA declines to revise the definition of “joint labor-management process.”

10. Near-Miss

Comments: Two commenters stated that FTA should not use the word “narrowly” in its definition of “near-miss,” as each transit agency may interpret that word differently. One commenter also noted that transit agencies typically define “near-miss” differently in the bus and rail contexts and requested that the definition clarify this. Four commenters provided alternative language for inclusion in the definition to narrow its scope, expressing concern that FTA’s language is too broad and does not align with how some transit agencies categorize near-miss incidents. One commenter requested that FTA either clarify the types of narrowly avoided safety events captured in the definition of “near-miss” or alternatively, delete the definition. Another commenter recommended FTA ensure “near-miss” is defined the same way in State Safety Oversight (SSO) Program guidance so that all SSOAs interpret the term consistently.

Response: FTA appreciates the comments regarding the definition of “near-miss” and has thoroughly considered each suggestion. FTA acknowledges that transit agencies may interpret the word “narrowly” differently. However, FTA disagrees that defining or removing “narrowly” from the definition of “near-miss” is appropriate. FTA believes that it is important to give transit agencies flexibility to have different definitions of “narrowly” as it pertains to near-misses depending on the kind of narrowly avoided event. For example, an agency may decide that “narrowly” has a broader definition when identifying near-misses between transit vehicles and pedestrians than it does when identifying low-speed transit vehicle to transit vehicle collision-related near-misses in the yard.

FTA disagrees that the definition of “near-miss” is insufficient. Any safety

event, also defined in this rule, that is narrowly avoided is considered a “near-miss” under this definition. FTA acknowledges the comments recommending that FTA narrow the scope of the “near-miss” definition because it does not align with how some commenters currently categorize near-miss incidents or because it does not sufficiently distinguish application within rail and bus operating environments. FTA does not believe it should revise the definition to narrow the scope or specify mode-specific applications. As noted previously, the term as defined in the final rule offers transit agencies flexibility. As written, transit agencies have the flexibility to apply the definition based on their operating environments.

Further, FTA notes that the term “near-miss” is used only at § 673.23(b) where FTA identifies types of safety concerns that workers should be able to report through a transit worker safety reporting program. FTA disagrees with revising the definition, as it may limit the concerns that transit workers report through a transit worker safety reporting program. FTA may consider providing examples through technical assistance. While application of the term may vary across transit applications, FTA believes the term as defined is valid and useful.

Finally, FTA appreciates the comment recommending consistency with SSO Program guidance. FTA will consider this recommendation when finalizing 49 CFR part 674.

11. Performance Target/Safety Performance Target

Comment: An SSOA commenter requested that FTA clarify the difference between “performance target” and “safety performance target” and questioned whether both definitions are necessary. This commenter also requested that, for clarity, FTA revise the definition of “safety performance target” to combine elements of both definitions.

Response: FTA agrees with the commenter and has deleted the definition of “performance target” and revised the definition of “safety performance target” to combine elements of both definitions.

12. Potential Consequence

Comments: Two commenters requested additional language clarifying the definition of “potential consequence.”

Another commenter expressed confusion about the word “potential” and asked for clarification as to whether the definition refers to outcomes.

Response: FTA appreciates the request for additional language but believes that the term “potential consequence” is sufficient as defined in this rule as the effect (or outcome) of a hazard. FTA will consider technical assistance in the future on this subject.

13. Rail Fixed Guideway Public Transportation Systems

Comment: One commenter expressed concern that the definition of “Rail Fixed Guideway Public Transportation System” conflicts with the definition of “fixed guideway” in 49 U.S.C. 5302. The commenter requested that FTA add a definition of “fixed guideway” that includes bus rapid transit and people mover systems, and asked FTA to clarify whether overhead fixed catenary and passenger ferry systems are covered by the definition.

Response: The definition of “Rail Fixed Guideway Public Transportation System” is explicitly limited to fixed guideway systems that use rail and are under the jurisdiction of an SSOA (see 49 U.S.C. 5329(e)). The only revision that FTA proposed to this definition was to clarify existing language regarding systems in engineering or construction. This is a non-substantive revision that does not change applicability. Further, the addition of the term “public transportation” to § 673.5 does not change the applicability of the term “rail fixed guideway public transportation system.”

Because the definition of “Rail Fixed Guideway Public Transportation System” is limited to rail, FTA believes it is not necessary to clarify that passenger ferry systems and other non-rail modes are excluded from the definition. The definition does not conflict with the definition of “fixed guideway” in 49 U.S.C. 5302. Therefore, FTA declines to add a definition of “fixed guideway” that includes bus rapid transit and people mover systems.

14. Roadway

Comments: Four commenters stated that the definition of “roadway” could be confusing, with one noting that the definition obstructs the meaning of roadway worker protections for systems with shared rights-of-way. Two of these commenters recommended that FTA use the term “right-of-way” to refer to the area rail tracks occupy. Commenters noted that “roadway” is commonly understood to mean asphalt paved surfaces for rubber tire vehicles. A separate commenter recommended that FTA include definitions for both the terms “roadway” and “right-of-way” in the definitions section of the regulation.

One of these commenters stated the definition was too narrow and conflicted with other definitions for the term “roadway” such as the one used in Federal Highway Administration’s Manual on Uniform Traffic Control Devices.

One commenter requested clarification regarding whether the term includes busways that operate on their own right-of-way. The same commenter also asked whether this term included RTA maintenance facilities through which trains can move.

Response: FTA appreciates the stated concerns regarding the term “roadway” and notes that this is the term used in the Federal Railroad Administration’s regulations and guidance. For consistency across passenger rail operations, FTA has determined that it is best to define and use this term similarly. It therefore declines to use a different term such as “right-of-way.”

The term defined in this final rule means any land on which rail transit tracks and support infrastructure have been constructed, excluding station platforms. This means that “roadway” includes rail transit tracks and support infrastructure used in revenue service and rail transit tracks and support infrastructure used in non-revenue service, such as yards and sidings. In this final rule, the term is only used in the rail context. As such, FTA declines to use the definition of “roadway” found in the Manual on Uniform Traffic Control Devices²⁸ and does not include busways in the final rule’s definition of “roadway.”

15. Safety Event

Comments: Seventeen commenters, including transit agencies, SSOAs, and transit industry associations, expressed concern regarding FTA’s proposal to replace the terms “accident,” “incident,” “occurrence,” “event,” and “serious injury” with the term “safety event.” Commenters noted that all these terms have wide-ranging impacts and unique definitions across various programs, including drug testing thresholds, NTD reporting, accident investigation thresholds, and safety training programs.

Several commenters explicitly opposed the proposal. Four commenters stated that the definition is overly broad and should be more narrowly defined. One of these commenters expressed that the definition of “safety event” creates too broad of a scope for the safety risk

²⁸ Federal Highway Administration (July 2022). “Manual on Uniform Traffic Control Devices for Streets and Highways.” https://mutcd.fhwa.dot.gov/pdfs/2009r1r2r3/pdf_index.htm.

reduction program and would result in differing interpretations of that program.

Four commenters were SSOAs that stated removal of those terms would change the threshold for investigation and require investigations into an overly broad set of circumstances. One of these commenters expressed particular concern that the change would result in investigations of “damage to the environment.” Another of these commenters expressed that creating a generalized “safety event” category is confusing, and that FTA should consider the downstream effects of this change on SSO programs that rely on previous definitions. A participant at an FTA webinar asked whether this proposal would impact the accident investigation and SSOA reportable event thresholds. One RTA commenter requested clarification of what transit agencies will be expected to report within two hours.

Twelve commenters expressed concern that the proposed definition would cause inconsistency with the current definitions in 49 CFR part 674 and the NTD. One of these commenters requested clarification as to whether the new definition would change the NTD reporting requirements and FTA’s severity determinations.

Some noted that this proposal creates a different investigation threshold for rail transit systems subject to part 674, and bus systems that are not subject to that regulation. One commenter asked whether the change implies that FTA intends to incorporate bus modes into part 674, or whether FTA will make a similar change to part 674 for rail modes. This commenter questioned what improvements these changes would achieve. Several commenters recommended that, if FTA adopts the proposal, it should establish consistent definitions and thresholds across FTA’s programs.

Some commenters requested changes to FTA’s proposed definition of “safety event.” One SSOA commenter suggested FTA include the phrase “assault on a transit worker” in its definition to ensure that such assaults require investigation. One commenter requested that FTA replace the word “unexpected” with “undesired.” Another commenter recommended FTA remove the word “unexpected” and replace “outcome” with “incident” in the definition. This commenter noted that injury and death are expected outcomes of certain incidents, such as subway surfing.

One transit agency supported the proposal but recommended that FTA restrict SSOAs from developing their

own definitions for “injury” and “serious injury.”

Response: FTA appreciates the stated concerns but disagrees that the term “safety event” is inappropriately broad for this rule. Further, while the July 2018 PTASP rule included definitions for these terms, neither that rule nor this final rule use the terms “accident,” “incident,” or “occurrence” as key terms in the rule. FTA notes that the definition provided in part 673 is intended to be general in nature and is not intended to define concrete thresholds for notification, reporting, or investigation. Rather, the definition of “safety event” allows FTA to identify the types of events that a transit agency’s SMS should address. FTA, therefore, is adopting the definition of “safety event” in this rule as proposed in the NPRM.

Further, FTA does not believe that the definition results in an overly broad scope for the safety risk reduction program. The definition of “safety event” in this final rule does not define the safety performance measures required for the safety risk reduction program. Rather, FTA defines specific safety performance measures for the purposes of the safety performance target setting requirements of §§ 673.11(a)(3) and 673.11(a)(7)(iii) through the National Safety Plan. This includes the safety performance measures required of all transit agencies and the safety performance measures required for large urbanized area providers for the safety risk reduction program. This final rule does not define those safety performance measures.

FTA appreciates the comments from the four SSOAs that expressed concern that the removal of the terms “accident,” “incident,” “occurrence,” and “serious injury” from part 673 could impact the SSOA investigation thresholds by requiring investigation of an overly broad set of circumstances, including damage to the environment. Further, FTA appreciates SSOA commenters urging consideration of the downstream impacts of such changes. FTA has thoroughly reviewed the effects of the changes issued through this final rule and confirms that the definition of “safety event” does not change any SSOA investigation requirement established by part 674.

FTA notes that part 673 does not establish a two-hour notification requirement. The existing two-hour notification requirement referenced by the commenter is established by part 674, and any changes to that requirement would be executed through a rulemaking amending part 674.

FTA also appreciates the commenters that expressed concern that the proposed definition of “safety event,” coupled with the removal of the terms “accident,” “incident,” “occurrence,” and “serious injury,” could cause inconsistency with the current definitions in part 674 and the NTD. FTA again notes that the removal of these definitions from part 673 does not change any existing SSO Program investigation threshold or requirement established in part 674 or any existing NTD reporting requirements, nor do these changes conflict with either program.

FTA acknowledges and agrees with commenters who recommended FTA should establish consistent definitions across FTA’s programs, including in the bus and rail contexts. FTA continues to ensure synchronization of definitions across programs where appropriate to support the use of thresholds to trigger specific program activity.

FTA carefully considered commenters’ suggested changes to the definition of “safety event,” including the recommendation to add the phrase “assault on a transit worker” to ensure that such assaults require investigation. FTA again notes that the “safety event” definition provided in part 673 is intended to be general in nature and is not intended to define concrete thresholds for notification, reporting, or investigation. FTA also considered the suggestions to replace the word “unexpected” with “undesired” and to remove the word “unexpected.” FTA declines to make either of these suggested revisions as the word “unexpected” is used to distinguish planned outcomes from unexpected outcomes. FTA appreciates the commenter’s example of subway surfing but believes that subway surfing is an unexpected outcome. While injuries and fatalities are likely to result from these events, the safety event itself is unexpected. FTA also considered the suggestion to replace “outcome” with “incident,” but declines to adopt this change. The addition of the term “incident” may cause confusion based on its previous definition within part 673 and its current definition within part 674.

FTA acknowledges the comment from an RTA recommending that FTA restrict SSOAs from developing their own definitions for “injury” and “serious injury.” FTA notes again that this final rule does not impact any existing SSOA investigation requirements established in part 674. Further, part 673 would not be the appropriate rule to establish any SSO Program notification or investigation-related requirement.

16. Safety Management System

Comments: Six commenters requested that FTA not adopt its proposed revision to the definition of “Safety Management System.” Specifically, all these commenters opposed FTA’s proposed deletion of the word “top-down.” Commenters expressed that “top-down” is a foundational component of SMS that is important for improving safety, and that this word reflects the Accountable Executive’s key role in promoting and implementing SMS from the very top of an organization. Two commenters also noted that this concept is included in Transportation Safety Institute (TSI) courses. One commenter asked FTA to provide its rationale for this deletion and expressed that the change will negatively impact training materials and management accountability.

Response: FTA appreciates the stated concerns related to the change in definition. Removing the term “top-down” does not change any of the authorities, accountabilities, and responsibilities of the Accountable Executive, Chief Safety Officer or SMS Executive, or agency leadership. FTA notes that removal of this term is intended to reflect the multi-directional flow of information, which is intrinsic to the function of an SMS. Transit worker safety reporting program and Safety Committees are examples of multi-directional information flow throughout the agency. FTA notes that this change does not conflict with or modify the related concepts covered in existing TSI courses. FTA acknowledges that changes in definitions may require revision to existing training materials that may have referenced the previous definition but notes that this definitional change does not impact management accountability.

This final rule removes the term “top-down” from the definition, as proposed.

17. Safety Risk

Comments: FTA received two comments on its proposed revision to the definition of “safety risk.” One commenter stated that the terms “predicted severity” and “potential consequence” in the definition are synonymous. This commenter suggested an alternative definition for FTA’s consideration. Another commenter stated the proposed definition conflicts with the one used in the TSI training materials.

Response: FTA disagrees that these two terms are synonymous. A “potential consequence” is an effect or outcome, whereas “predicted severity” is a measure of how bad a potential

consequence could be as predicted by the transit agency through safety risk assessment. Further, as discussed earlier, FTA acknowledges that changes in definitions may require revision to existing training materials that reference a now outdated definition. FTA has adopted the definition as proposed.

18. Safety Risk Mitigation

Comments: Two commenters requested that FTA clarify the difference between safety mitigation and safety risk mitigation. Another commenter stated the proposed definition conflicts with the one used in the TSI training materials.

Response: FTA did not intend for any substantive difference between the two terms. For clarity, FTA has replaced instances of “safety mitigation” in this final rule with “safety risk mitigation.” Again, FTA acknowledges that changes in definitions may require revision to existing training materials that reference a now outdated definition but notes that this is not a substantive change.

19. Transit Worker

Comments: Two commenters expressed concern that the definition of “transit worker,” in conjunction with the statutorily defined term “assault on a transit worker,” will require transit agencies to address more than just assaults on transit operators. They recommended that FTA either redefine “transit worker” or add a definition of “frontline transit worker” to narrow the scope of individuals covered by the “assault on a transit worker” requirements. These commenters expressed that FTA’s proposed definition obscures data collection and mitigation efforts for operator assaults.

One commenter inquired whether the term “transit worker” includes a transit agency’s administrative staff. Another commenter requested clarification of the term’s applicability to short-term contract workers, such as individuals hired to distribute surveys or wayfinding support for a weekend shutdown.

Response: FTA confirms that the definition of “transit worker” is intended to be broader than just vehicle operators. The statutory definition of “assault on a transit worker” in 49 U.S.C. 5302 and the related requirements in 49 U.S.C. 5329(d) are not explicitly limited to transit operators. FTA therefore understands this term to be broad and include more job descriptions than just “operator” or “frontline transit worker.” FTA also notes that the definition adopted in this final rule is the same as the NTD definition, which provides important

consistency across programs. The term “transit worker” does not exclude a transit agency’s administrative staff. Further, FTA confirms that the term includes short-term contract workers. FTA adopts the definition as proposed.

20. Additional Definitions

Comments: Several commenters requested that FTA define additional terms used in the regulation and provided several terms for definition, with one commenter requesting that FTA define all relevant and subjective terms. This commenter recommended defining many common terms that are used in the rule text, such as “appropriately,” “elements,” “ineffective,” and “results.”

One commenter urged FTA to define the term “plurality” in § 673.5 to clarify the Safety Committee formation requirements. The commenter expressed that the definition should communicate that when multiple labor organizations represent a transit system’s frontline workers, the union with the largest membership chooses the frontline transit worker representatives for the Safety Committee. This definition would also clarify that when an agency has a single union, the union chooses the frontline transit worker representatives regardless of the size of the agency’s unrepresented workforce.

One commenter recommended FTA include a definition for “frontline transit worker.” One commenter requested FTA define the term “State Safety Oversight Program” and provided a suggested definition that included specific SSO Program requirements and a citation to 49 U.S.C. 5329(e)(3).

Several commenters, including transit agencies and an SSOA, stated that the removal of the term “serious injury” left transit agencies without a definition for “injury,” and two of these commenters expressed concern with the lack of an “injury” definition related to required safety performance measures.

Response: FTA agrees that this final rule should define all relevant terms but disagrees with including definitions for all suggestions made by commenters. In this rule, FTA balanced the need for distinct definitions for key terms with the need for flexibility inherent in an SMS environment.

FTA does not believe it is necessary to define commonly understood terms in the rule. For example, the terms “appropriately,” “elements,” “ineffective,” and “results,” among others suggested by commenters, do not need definitions to ensure understanding of the rule. Similarly, FTA does not believe it is necessary to define the term “plurality” in § 673.5 as

the commonly understood definition would apply. Further, FTA has addressed the elements of the “plurality” definition suggested by the commenter through the Safety Committee requirements established in § 673.19(b). FTA confirms that for transit agencies with multiple labor organizations, “plurality” refers to the labor organization that represents the largest number of the agency’s frontline workforce. For transit agencies with only one labor organization, that single labor organization chooses frontline transit worker representatives for the Safety Committee regardless of the size of the agency’s unrepresented workforce.

FTA appreciates the comment suggesting that FTA define “frontline transit worker” in the rule. However, FTA declines to establish a specific definition for this term, to preserve flexibility for transit agencies to apply this term based on their organizational and operating realities. Frontline transit worker roles and functions may vary across different transit agencies.

FTA also considered the recommendation to define “State Safety Oversight Program” in the rule. FTA disagrees that this term should be defined in this rule. FTA notes that the SSO Program requirements stated in the commenter’s suggested definition are explicitly stated in 49 CFR part 674. FTA does not believe it is necessary to repeat them in part 673.

FTA proposed removing the term “serious injury” from the rule in response to industry feedback stating that the criteria established under that definition were difficult to apply and led to confusion, rather than clarity. This change is intended to simplify the classification of safety events, and FTA will adopt the removal of this term as proposed. However, FTA agrees with the commenter that recommended FTA add a definition of “injury” to the rule. This term is used in the regulation in the context of the safety risk reduction program, so FTA believes that adding a definition provides necessary clarity.

FTA’s National Safety Plan, which establishes safety performance measures for the transit industry, directs users to the NTD for the definition of “injury.” In response to comments, and for consistency across programs, FTA has added the same definition of “injury” used by the NTD to this final rule.

C. Section 673.11—Agency Safety Plans

1. General

Comments: One commenter requested that FTA provide additional guidance on developing ASPs to allow transit

agencies and contractors to modify contracts to address necessary ASP changes. Two commenters urged FTA to consider how the proposed changes to the PTASP regulation would impact transit agencies with contracted transit services.

Two commenters requested that FTA define timelines or milestones related to RTA SMS implementation to support SSOA oversight of RTAs. One of these commenters expressed that additional requirements from FTA and SSOAs make SMS more complex and less scalable.

One commenter stated that FTA should require transit agencies to include their Safety Management Policy statement in their ASP along with processes for workers to report safety concerns. The commenter noted that inclusion is necessary to ensure that the Safety Committee reviews and approves these processes.

Response: FTA will consider expanding its existing technical assistance regarding ASP development, distribution of the Safety Management Policy statement, and SMS implementation. FTA notes that PTASP requirements, including any changes adopted in this final rule, apply to transit providers that directly operate service as well as those that use contractors to provide transit service. FTA took this into consideration when developing the final rule.

FTA acknowledges the commenters that recommended FTA establish timeline or milestone requirements for RTA SMS implementation to support SSOA oversight activity. Further, FTA acknowledges the related concern that additional requirements may make the PTASP regulation less flexible and less scalable. In response, FTA notes that most revisions adopted in this final rule implement statutory changes. Further, FTA believes that establishing additional SMS implementation milestone requirements for RTAs would limit the flexibility and scalability of SMS. FTA notes that SSOAs may establish additional safety requirements for the RTAs they oversee.

In response to the commenter that requested FTA require agencies to incorporate the Safety Management Policy statement into their ASP, FTA notes that in § 673.23(a), FTA establishes requirements for the Safety Management Policy component of a transit agency’s SMS and includes the requirement for an agency to have a written Safety Management Policy statement. Based on this existing requirement, FTA expects a transit agency to include or incorporate by reference a Safety Management Policy

statement in its ASP, as well as the processes for transit workers to report safety concerns. FTA notes that any documents incorporated by reference in the ASP that are used to address PTASP regulation requirements are part of the Safety Committee’s review and approval process. FTA declines to make changes to the regulatory text in response to these comments.

2. ASP Updates

Comments: FTA received several comments about the annual ASP review and approval requirement set forth in § 673.11(a)(5). One commenter noted that FTA should establish an annual ASP approval deadline that does not coincide with fall and winter holidays, noting that the initial December 31 compliance date for Safety Committee approval of ASPs was difficult to meet.

Three commenters asked whether a transit agency must follow the review, signature, and approval process outlined in § 673.11(a)(1) if the only change the agency made to the ASP was to update its safety performance targets (SPTs). Two commenters requested FTA issue guidance classifying SPT revisions as non-material substantive changes that are not required to undergo the § 673.11(a)(1) approval process.

Response: FTA appreciates the comment regarding establishing an annual ASP approval deadline that does not coincide with the fall and winter holiday season. FTA notes that it established one-time compliance dates of July 31, 2022, and December 31, 2022, to address certain Bipartisan Infrastructure Law PTASP requirements.²⁹ FTA is not establishing any such fixed deadlines in this final rule. Instead, the PTASP regulation requires transit agencies to review and update their ASPs annually to address needed changes, such as regulatory changes. FTA expects transit agencies to address the regulatory changes adopted in this final rule in their next ASP update based on their existing ASP update process documented in their ASP.

Transit agencies that update the SPTs in their ASP must follow the review, signature, and approval process outlined in § 673.11(a)(1). This follows existing practice under the PTASP regulation. FTA notes that changes to SPTs may have a direct impact on transit agency activity. This is especially true with respect to the SPTs set as part

²⁹ Federal Transit Administration (February 17, 2022). “Dear Colleague Letter: Bipartisan Infrastructure Law Changes to PTASP Requirements.” <https://www.transit.dot.gov/safety/public-transportation-agency-safety-program/dear-colleague-letter-bipartisan-infrastructure>.

of the safety risk reduction program of large urbanized area providers. However, FTA notes that agencies and their Safety Committees may leverage different approval processes based on the types of changes being proposed, as long as the process results in the approval by the Safety Committee (for large urbanized area providers), approval by the agency's Board of Directors or equivalent entity, signature from the Accountable Executive, and approval by the SSOA (for RTAs). This means that a transit agency and its Safety Committee, as applicable, could use a more streamlined review and approval process for its ASP if the only changes to the document are SPT revisions, as long as the process results in the required approvals and signature. FTA does not believe additional regulatory text is necessary.

3. Roadway Workers

Comments: An RTA commenter opposed language proposed at § 673.11(a)(6)(ii), which would require RTAs to include or incorporate by reference in their ASPs any policies and procedures regarding rail transit workers on the roadway the RTA has issued. This commenter stated that FTA should remove this paragraph and incorporate it into FTA's forthcoming Roadway Worker Protection rulemaking instead.

Response: FTA appreciates the comment regarding § 673.11(a)(6)(ii). FTA notes that the regulatory language does not establish any new requirements for roadway worker protection. The additional language only requires transit agencies to include or incorporate by reference in their ASP any such policies or procedures issued by the transit agency. FTA does not believe that this requirement related to ASP documentation would conflict with any future regulation that may establish roadway worker requirements.

4. State Safety Oversight

Comments: FTA received several comments regarding proposed § 673.11(a)(6)(iii), which would require RTAs to include or incorporate by reference the policies and procedures developed in consultation with SSOAs regarding the SSOA's risk-based inspection program. Two commenters stated that RTAs and SSOAs should establish a working group to develop the SSOA's risk-based inspection program and to establish language for the ASP regarding physical and digital access to the RTA.

One commenter requested FTA clarify what consultation RTAs are required to have with SSOAs for purposes of this

requirement. One commenter asked FTA to clarify that the SSOA develops the risk-based inspection program policies and procedures, and that the RTAs must comply with the SSOA's certified program. This commenter noted that per 49 U.S.C. 5329(k), the RTA must include the SSOA's policies and procedures in its ASP.

Another commenter recommended that FTA specify that RTAs do not need to comply with § 673.11(a)(6)(iii) until the SSOA's risk-based inspection program is in place. They also requested that FTA change the language in this paragraph from "provide access and required data" to "provide access to required data."

One commenter observed that the NPRM did not address requirements and processes for RTAs to ensure that their ASP is approved by their SSOA.

In addition, FTA received a few comments regarding FTA's SSO Program set forth in 49 CFR part 674.

Response: FTA agrees that SSOAs and RTAs may benefit from working together as appropriate on the SSOA's risk-based inspection program. This final rule does not establish any new requirements for an SSOA's risk-based inspection program. Instead, this final rule requires RTAs to document or incorporate by reference in the ASP the processes they use to address any risk-based inspection program requirements established by their SSOA. As such, FTA believes that it is inappropriate to establish additional requirements or clarifications specific to SSOA risk-based inspection programs in this final rule. Similarly, FTA declines to establish a distinct timeline in this final rule for RTA ASPs to incorporate language relating to their SSOA's risk-based inspection program.

Further, FTA disagrees with the commenter's suggested language change regarding access. Through a risk-based inspection program, SSOAs will perform inspections at transit agencies based on safety risk. An SSOA needs data access to support risk determinations and inspection prioritization and needs physical access to conduct inspections. Accordingly, this final rule does not change the language proposed in the NPRM.

The Federal requirement for SSOAs to approve the ASPs for RTAs under their jurisdiction is established through § 673.13(a) and part 674. As described in part 674, the SSOA is responsible for establishing timelines relating to SSOA approval of RTA ASPs. FTA believes that this function should remain with the SSOA to permit the oversight entity to set an appropriate timeline. Example timelines are publicly available through

FTA's PTASP Technical Assistance Center.

Regarding the comments relating to FTA's SSO program, FTA thanks commenters for these suggestions and will take them into consideration. However, FTA notes that they are outside the scope of the PTASP NPRM and therefore declines to address them in this final rule.

5. Safety Performance Targets

Comments: For comments specific to the safety performance targets in the safety risk reduction program, see section II.G of this preamble. The National Safety Plan includes additional information on the safety performance measures used to address the statutory requirements of the safety risk reduction program.

Two commenters requested that FTA permit transit agencies to set percentage-based safety performance targets.

Response: As defined in the National Safety Plan, transit agencies must set safety performance targets for the safety risk reduction program by number and rate. Transit agencies may calculate the change their agency wants to make using whole numbers or percentages. For example, a transit agency could set a safety performance target for injuries by defining a reduction of two injuries over an established time period or by defining a 20 percent reduction over an established time period.

D. Section 673.13—Certification of Compliance

1. General

Comments: Two commenters requested clarification on the requirement for direct recipients to annually certify that they and all applicable subrecipients are in compliance with PTASP requirements. They stated that this requires States, who may perform the role of a direct recipient for certain transit agency subrecipients, to assume ongoing compliance oversight. These commenters argued that this is a change in practice and that a State currently is responsible for drafting the ASP for small public transportation providers but is not responsible for providing ongoing oversight of those ASPs.

Response: This rule does not establish any changes to the existing annual certifications and assurances process used by States and transit agencies to certify compliance with part 673. To the extent that a State acts as a section 5307 direct recipient for certain transit agency subrecipients who must comply with the PTASP regulation, the State

must annually certify to its compliance and the compliance of any applicable subrecipients with PTASP requirements. This is the same process used by FTA for all rules and associated compliance requirements.

2. Compliance Enforcement

Comments: FTA received several comments, including from certain members of Congress, international labor organizations, and local unions, stating that FTA needs a process to monitor and enforce compliance with the PTASP requirements. Several of these commenters expressed concern about FTA's oversight of the Bipartisan Infrastructure Law Safety Committee requirements, with three of them noting that they estimate approximately 50 transit agencies were out of compliance at the time the comments were submitted. A few commenters also provided specific allegations of PTASP noncompliance. Commenters expressed concern that, without an established process for FTA to enforce the requirements of the rule, transit agency management may see the Safety Committee as a mere "check the box" exercise and not fully implement or utilize the expertise of the Safety Committee.

Three commenters urged FTA to establish a formal mechanism to receive claims of PTASP noncompliance, investigate such claims, and issue related findings and penalties. In addition, the Amalgamated Transit Union in a March 26, 2024, Executive Order 12866 review meeting suggested that FTA provide specific notice of noncompliance with PTASP prior to withholding FTA capital funds. One also urged FTA to require transit agencies to submit their ASPs to FTA for a compliance review.

In addition, another commenter suggested that FTA require transit agencies to submit an ASP signature page as part of its annual PTASP certification under § 673.13. This signature page would state that the ASP was approved and would be signed by the Safety Committee's lead union representative and lead management representative.

Some commenters stated that FTA should take enforcement action against noncompliant agencies, including withholding Federal funds. Relatedly, one commenter urged that compliance with the PTASP regulation should be tied to Federal funding eligibility.

Response: FTA requires applicable recipients to certify that they have established an ASP that meets the requirements of the PTASP regulation and 49 U.S.C. 5329(d) as part of the

annual Certifications and Assurances for FTA grants and cooperative agreements. FTA notes that per 49 U.S.C. 5307(c)(1)(L), this certification is a required condition of receiving section 5307 funding. FTA monitors these certifications in its Transit Award Management System (TrAMS) and assesses compliance with the PTASP regulation through its existing triennial review process. Agencies that are found to have incorrectly or falsely certified compliance with the requirements are subject to appropriate enforcement actions. FTA investigates specific allegations of noncompliance. FTA is authorized through 49 U.S.C. 5329(g) to take enforcement action against a recipient that does not comply with Federal law with respect to the safety of the public transportation system. This includes requiring the use or withholding of funds under 49 U.S.C. 5329(g)(1)(D) and (E). The manner in which FTA provides notice of noncompliance and enforces under this provision depends on the particular circumstances.

Due to the large number of transit agencies and the existing certification and review processes, FTA does not believe it is practical for FTA to review ASPs annually for each covered transit agency for compliance with the PTASP requirements. However, FTA notes that it does not need to wait until the Triennial Review process to review a transit agency's compliance with PTASP. FTA may do so whenever it deems necessary. Further, FTA does not believe that an additional requirement for an agency to upload a signature page is necessary at this time. FTA is considering the development of a mechanism to receive allegations of non-compliance with the PTASP requirements.

E. Section 673.17—Cooperation With Frontline Transit Worker Representatives

Comments: Six commenters addressed proposed § 673.17(b), which sets forth the cooperation with frontline transit worker representative requirements for transit agencies that do not meet the definition of "large urbanized area provider." Two commenters urged FTA to specify in the final rule what "cooperation" means, noting that this is a subjective term that is open to varying interpretations. One of these commenters recommended that FTA require management at small transit agencies to meet with frontline transit worker representatives at least 60 days before the ASP is due so that both parties can review the ASP together. Further, it urged FTA to require

management to meet with frontline transit worker representatives again at least 30 days, but no more than 45 days, before the ASP is due.

One of these commenters recommended that FTA encourage small transit agencies to establish joint labor-management safety committees voluntarily. A separate commenter asked what FTA's expectations are for labor representative involvement in the cooperation process, and whether collecting feedback in safety meetings would be sufficient. The same commenter argued that the ambiguity of this requirement and a lack of dispute resolution requirements could lead to conflict.

Two commenters asked how the requirement at § 673.17 dovetails with the proposed Safety Committee provisions at § 673.19.

Response: FTA appreciates comments regarding the requirement for transit agencies that do not serve a large urbanized area to cooperate with frontline transit worker representatives when developing and updating an ASP. This final rule provides each transit agency the flexibility to define how it will involve and cooperate with frontline transit worker representatives to support the development and subsequent updates of the ASP. In § 673.17(b)(2), FTA is requiring each transit agency that does not meet the definition of "large urbanized area provider" to document this process in its ASP. In line with existing practice and efforts to ensure flexibility and scalability, FTA declines to establish specific timeline requirements for the cooperation processes as suggested by the commenter.

In response to comments received regarding involvement of a labor union in the required cooperation with frontline employee representatives, FTA notes that 49 U.S.C. 5329(d) and § 673.17(b) do not require transit agencies that do not serve a large urbanized area to involve a labor union in this cooperation process, but that transit agencies may opt to do this voluntarily. Similarly, FTA does not require transit agencies that do not meet the definition of "large urbanized area provider" to establish a Safety Committee but notes that these transit agencies may establish a Safety Committee voluntarily. FTA encourages these transit agencies to voluntarily establish Safety Committees and to involve labor unions in the required process of cooperating with frontline employee representatives.

FTA acknowledges the comment that requested clarification of how this requirement relates to the requirement

for a Safety Committee. FTA notes that the requirements for developing, reviewing, and approving ASPs differ depending on whether the transit agency is considered a large urbanized area provider as defined in the rule. Large urbanized area providers must establish a Safety Committee, which must review and approve the agency's ASP and subsequent updates. For transit agencies that must meet PTASP requirements but are not large urbanized area providers as defined in this rule, § 673.17(b) requires the agency to develop the ASP and subsequent updates in cooperation with frontline transit worker representatives.

FTA is not establishing additional requirements or guidance on cooperation with frontline transit workers in this rule. FTA will consider this topic for future guidance and technical assistance.

F. Section 673.19—Safety Committee

1. General

Comments: FTA received several comments about proposed § 673.19, which sets forth the requirements regarding Safety Committees for large urbanized area providers. Several commenters expressed general support for the requirements, noting the importance of a forum for labor and management to work cooperatively to remedy safety issues. A few commenters provided examples of the successful implementation of Safety Committees. One commenter specifically supported limiting the applicability of the Safety Committee requirements to large urbanized area providers.

FTA received comments from 30 local labor organizations expressing that FTA's proposed Safety Committee requirements are insufficient and allow transit agencies to ignore the safety concerns of frontline transit workers. These commenters urged FTA to ensure that the voices of frontline workers are heard in a meaningful way and that transit agencies utilize the safety-related expertise of these workers. They provided numerous examples of safety issues occurring at their transit agencies, including assaults on transit workers, inadequate restroom access, law enforcement response times, premises security, blind spots, and unsafe vehicle conditions. Some noted that their Safety Committees have not yet been effective because transit agencies are not listening to the committees.

Three commenters expressed concern that establishing and operating a Safety Committee will be a significant financial burden for transit agencies. One commenter requested FTA provide

flexibility regarding the Safety Committee requirements, noting that employees on the Safety Committee are not always safety professionals.

Two comments addressed the number of Safety Committees that a transit agency may establish. A labor organization commenter stated that requiring one Safety Committee to review and approve multiple ASPs and to conduct its statutorily required responsibilities for multiple ASPs is too burdensome, and recommended that FTA require a "one ASP, one Safety Committee" approach. The commenter requested that FTA specify in the final rule that transit agencies must establish one Safety Committee per ASP and may not use the same Safety Committee for multiple ASPs. The second commenter raised concerns about committees other than the Safety Committee addressing issues related to operator assault.

One SSOA commenter asked when transit agencies must comply with the Safety Committee requirements established in the rule.

Response: FTA acknowledges the appreciation for the new Safety Committee requirements received from commenters. FTA also acknowledges the feedback received from the 30 local labor organizations that said the Safety Committee requirements are insufficient and allow transit agencies to ignore the safety concerns of frontline transit workers. FTA is committed to ensuring the voices of frontline workers are heard in a meaningful way and believes the Safety Committee requirements of this final rule accomplish this objective.

FTA appreciates that the formation and ongoing operation of the Safety Committee may increase the burden on transit agencies, both in terms of direct cost and worker availability. FTA reminds the commenters that the Safety Committee is a statutorily required function for applicable agencies and further believes that transit agencies will receive safety benefits from establishing and operating a Safety Committee. FTA also acknowledges the commenter who pointed out many Safety Committee members are not safety professionals. FTA understands this reality and does not expect a transit agency's Safety Committee to replace a transit agency's safety department. In practice, FTA encourages Safety Committees to utilize subject matter expertise from non-committee members to support decision-making. FTA understands that this is a common support structure for Safety Committees when it comes to data analysis and safety risk assessment, as well as information gathering related to specific agency systems, technologies, or

procedures. FTA believes the language of this final rule offers sufficient flexibility that ensures the voices of frontline workers are heard in a meaningful way and that the Safety Committee can consult non-member subject matter expertise to support the Safety Committee's needs.

FTA agrees that using the same Safety Committee for multiple ASPs may make meeting Safety Committee requirements more cumbersome. However, to the extent that the Safety Committee is convened and conducts business as required in 49 U.S.C. 5329(d) and part 673, FTA declines to prohibit transit agencies from using the same Safety Committee for multiple ASPs as this may place unnecessary burdens on transit agencies that operate under multiple ASPs. FTA notes that if a transit agency with multiple ASPs would like to establish a Safety Committee for each ASP, this final rule does not prohibit them from doing so.

In response to the commenter that expressed concerns about a transit agency addressing issues such as transit worker assault in a special committee instead of the joint labor-management Safety Committee, FTA confirms that the responsibilities of the Safety Committee, as required in 49 U.S.C. 5329(d) and this final rule, must be addressed by the Safety Committee. FTA notes that a transit agency may use other mechanisms within the organization to address safety risk, such as a special committee, task force, or study, but these mechanisms cannot eliminate or satisfy the role of the Safety Committee to address any of the applicable requirements in this final rule.

FTA notes that in response to the Bipartisan Infrastructure Law, it established one-time compliance dates of July 31, 2022, and December 31, 2022, to address certain Bipartisan Infrastructure Law requirements,³⁰ including the establishment of Safety Committees and the update and approval of ASPs to reflect the new Safety Committees. FTA is not establishing any such fixed deadlines in this final rule. Instead, the PTASP regulation includes the requirement for transit agencies to review and update their ASPs annually to address needed changes, such as regulatory changes. FTA expects transit agencies to address any regulatory changes in their next ASP update based on their existing ASP

³⁰ Federal Transit Administration (February 17, 2022). "Dear Colleague Letter: Bipartisan Infrastructure Law Changes to PTASP Requirements." <https://www.transit.dot.gov/safety/public-transportation-agency-safety-program/dear-colleague-letter-bipartisan-infrastructure>.

update process documented in their ASP.

2. Size, Scale and Structure

Comments: FTA received several comments on proposed § 673.19(a)(1), which would require Safety Committees to be appropriately scaled to the size, scope, and complexity of the transit agency. Two commenters explicitly opposed this language and asked FTA to strike it. FTA received several comments requesting additional guidance and clarification of this provision. Some comments expressed concern about the subjectivity of the requirement, including the ambiguity as to who determines whether a Safety Committee is scaled appropriately.

Proposed § 673.19(a)(2) set forth the requirement that Safety Committees be convened by a joint labor-management process. Two commenters suggested revising this language to state that the Safety Committee's structure and operating rules are determined by consensus decisions between labor and management.

Response: FTA's PTASP regulation must address the needs of a wide range of transit environments, from large transit systems to very small providers, and from basic transit applications to extremely complex technologies. As with existing regulatory practice, FTA must ensure that part 673 includes sufficient flexibility to support SMS implementation across these ranges of transit agencies. As a result, FTA expects that Safety Committees will be sized differently based on the size, scope, and complexity of the transit agency. Therefore, FTA declines to change the proposed language.

FTA also encourages transit agencies and their Safety Committees to hold periodic discussions about the size and scope of the Safety Committee to determine whether it is appropriate to add additional members or to change the scope of the Safety Committee's purview, while ensuring that the Safety Committee's activities still meet all statutory and part 673 requirements.

FTA declines the suggestion to revise § 673.19(a)(2), as FTA's proposed language mirrors the statute. FTA notes that § 673.19(c) requires Safety Committee procedures to address the committee's composition, responsibilities, and operations. FTA refers readers to Sections II.F.4 and II.F.6. of the preamble below for additional discussion of this topic and Safety Committee decision-making and dispute resolution, respectively.

3. Membership

Comments: Several commenters remarked on the Safety Committee membership provisions that FTA proposed in § 673.19(b).

One commenter stated that the Safety Committee requirements are unrealistic for frontline transit worker representatives, noting that activities would require Safety Committees to meet at least weekly.

One transit agency commenter strongly supported FTA's proposed language in § 673.19(b) that, to the extent practicable, the Safety Committee must include frontline transit worker representatives from major transit service functions across the transit system. In contrast, a labor organization commenter explicitly opposed this proposed language and requested that FTA remove it from § 673.19(b). This commenter argued that imposing restrictions on the plurality union's choice is inconsistent with 49 U.S.C. 5329(d) and FTA's existing guidance, and it would be inequitable without any corresponding restrictions on a transit agency's choice of management representatives. It argued that the plurality union must have flexibility to choose the transit worker representatives it finds most beneficial for the Safety Committee. A separate commenter requested that FTA clarify the rationale for its proposed language and clarify its application, given that the language does not appear in the statute.

Several comments pertained to the frontline transit worker representative selection process in § 673.19(b)(1). Six commenters expressed concern that the plurality union may select frontline transit worker representatives that are not representative of the entirety of the frontline workforce, particularly in cases where some workers are unrepresented or where an agency has more than one labor organization. Two of these commenters stated that a fairer selection process would be for FTA to require that frontline transit worker representatives be selected from each bargaining unit at a transit agency. One of these commenters urged FTA to establish Safety Committee selection requirements that reflect the objective of informed risk management.

Some comments requested additional guidance from FTA about the selection process. One commenter asked FTA to clarify the definition of "frontline transit worker" and asked whether volunteers and contractors need to be represented on the Safety Committee, given they are included in the definition of "transit worker" in § 673.5. Two commenters noted that transit agencies

may have multiple contractors that provide service and operations and requested more guidance on the structure of frontline transit worker representation on Safety Committees in such situations. One of these commenters urged FTA to confirm that contractors should serve on Safety Committees, given that contractors may be impacted by Safety Committee recommendations. Another commenter stated that its Safety Committee does not include "line-level" labor representatives and that including such transit workers on the Safety Committee is not practical, and that the requirement for equal membership of management and frontline transit worker representatives is not realistic. Another commenter stated that some transit workers might not be interested in serving on the Safety Committee and should not be forced to participate.

One commenter stated that the selection criteria for frontline transit worker representatives can allow management to have an unfair advantage on the Safety Committee. The commenter cited an example of a frontline transit worker representative on the Safety Committee who is a member of a union that represents supervisors and asserted this means the Safety Committee no longer has equal numbers of frontline workers and management.

One comment pertained to proposed § 673.19(b)(2), which would require transit agencies without labor unions to adopt a mechanism for frontline transit workers to select the frontline transit worker representatives for the Safety Committee. The commenter requested that FTA provide its rationale for this requirement and clarify its application, noting that it does not appear in 49 U.S.C. 5329(d).

One commenter noted that in the preamble to the NPRM, FTA distinguished between voting Safety Committee members and alternates who serve in a non-voting capacity. The commenter urged FTA to require that the number of non-voting members be limited to an equal number of management and frontline transit worker representatives. It stated that some transit agencies have attempted to add non-voting management positions to Safety Committees, which has tipped the balance in favor of management in a manner inconsistent with 49 U.S.C. 5329(d).

Response: FTA appreciates the feedback received supporting the proposed language in § 673.19(b). FTA acknowledges the comment received regarding the challenges of asking frontline transit workers to participate

in the Safety Committee and notes that frontline worker representative participation is mandated by statute. As such, the requirement is maintained in the final rule.

Similarly, FTA acknowledges the comment that requested FTA remove the language about including frontline transit worker representatives from major transit service functions as it may impose restrictions on the plurality union's choice and would therefore be inconsistent with 49 U.S.C. 5329(d) and inequitable without any corresponding restrictions on a transit agency's choice of management representatives. FTA notes that this language in § 673.19(b) provides parameters to strengthen frontline transit worker representation without contradicting statutory language on the selection of frontline employee representatives by the plurality labor organization. FTA expects that, to the extent practicable, the Safety Committee will include frontline transit worker representatives from major transit service functions. However, FTA notes that this may not be feasible in all situations; FTA includes the statement "to the extent practicable" to ensure flexibility for all transit agency applications.

The language in § 673.19(b) reflects FTA's belief that Safety Committees are most effective when they include representatives from multiple service functions. It is intended to strengthen the diversity of frontline worker representation and to ensure a breadth of perspective and expertise to support Safety Committee activity.

FTA also acknowledges comments expressing concern that the plurality union may select frontline transit worker representatives that are not representative of the entirety of the frontline workforce if workers are unrepresented or if an agency has more than one labor organization. FTA also acknowledges the two commenters who recommended that the section should require frontline transit worker representatives be selected from each bargaining unit at a transit agency. FTA agrees that selecting representatives from a narrow pool of only one service function or only from one represented labor organization can inadvertently reduce the effectiveness of the Safety Committee. However, FTA does not agree that FTA should require the plurality labor organization to select Safety Committee members who are not members of their labor union or who are not members of any labor union. FTA acknowledges the potential for narrow representation of frontline transit workers in the Safety Committee. As discussed above, FTA believes that the

language in § 673.19(b) regarding including frontline transit worker representatives from major transit service functions to the extent practicable appropriately strengthens frontline worker representation. As such, FTA declines to establish the additional requirements suggested by commenters.

FTA acknowledges comments requesting additional guidance on the frontline transit worker representative selection process and the questions about whether volunteers and contractors need to be represented on the Safety Committee. While FTA has not established requirements for volunteers and contractors to participate as frontline transit worker representatives on the Safety Committee, the plurality labor organization may decide to include these types of workers on the Safety Committee. FTA appreciates that the composition of an agency's workforce may mean that individuals from multiple contracting groups are selected for the Safety Committee. To the extent the selection process meets the requirements of 49 U.S.C. 5329(d)(5)(A) and § 673.19(b), this is permissible. FTA does not currently have any further guidance in this final rule on Safety Committee membership at transit agencies with more than one contracting group. FTA notes this final rule does not require a transit agency that provides contracted service to have contractor management representatives on the Safety Committee, but the agency may do so.

FTA acknowledges the comments expressing concern that the Safety Committee membership requirements are not practicable, including Safety Committee membership by "line-level" transit workers and equal membership of management and frontline transit worker representatives. In response, FTA notes that 49 U.S.C. 5329(d)(5)(A) requires the labor organization that represents the plurality of the transit agency's frontline transit workers to select frontline transit worker representatives. The statute does not provide the transit agency the option to determine that including "line-level" transit workers is not practicable. Further, FTA reminds the commenters that the Safety Committee's equal membership of frontline employee representatives and management representatives is required by statute.

FTA acknowledges that frontline transit worker representatives may include workers in a supervisory position, as described by the commenter. However, FTA disagrees that this contradicts the requirement for

equal frontline transit worker and management representation because some supervisory roles, such as line, route, or regional supervisors, involve work that takes place primarily in frontline environments. Such roles can support operators, monitor field conditions, adjust service levels or routes to respond to potential service disruptions, interact with customers to provide service information, and de-escalate situations that have the potential to result in assaults on operators and other transit workers. If the plurality labor union identifies such an individual as a frontline transit worker representative, they may select this individual for the Safety Committee.

FTA acknowledges the comment regarding § 673.19(b)(2), which requested that FTA provide its rationale for requiring transit agencies without labor unions to adopt a mechanism for frontline transit workers to select the frontline transit worker representatives for the Safety Committee. FTA notes this requirement helps to ensure that when no frontline transit workers are represented by a labor union, the frontline transit workforce will still have a voice in the selection of their representatives on the agency's Safety Committee.

Finally, FTA acknowledges the commenter who urged FTA to require that the number of non-voting Safety Committee members be limited to an equal number of management and frontline transit worker representatives. FTA notes that it has removed all references to voting in the final rule, as described further in section II.F.4 below, and instead, FTA expects Safety Committees to define decision-making mechanisms.

4. Safety Committee Procedures General

Comments: FTA received several comments regarding § 673.19(c), which sets forth requirements for Safety Committee procedures. Two commenters expressed their general support for FTA's proposal requiring transit agencies to include or incorporate by reference such procedures in the ASP.

One commenter noted that the procedural requirements are not present in the statute and asked whether transit agencies are required to negotiate the procedures with frontline transit worker representatives. The commenter stated this could impact collective bargaining agreements and have cost impacts for the transit agency.

One commenter expressed general support for this provision but suggested that FTA require an agency's Accountable Executive to approve the Safety Committee procedures and that they be included by reference in the ASP. The commenter expressed concern that disputes over the procedures could delay the ASP approval process and result in negotiations with labor organizations over issues that are outside of a collective bargaining agreement. Two commenters recommended the Safety Committee procedures should be approved by the Accountable Executive and included by reference in the ASP, but not approved by the Safety Committee. One commenter expressed concern that Safety Committees do not always function collaboratively, from setting meeting agenda items to voting on decision points.

Two commenters urged FTA to require transit agencies to reach an agreement with transit workers about the Safety Committee's structure and procedures through either consensus or democratic voting. One of these commenters urged that such an agreement must be in writing and included or incorporated by reference in the ASP, expressing that requiring transit agencies merely to "address" the procedural items listed in § 673.19(c) is inadequate.

Response: FTA appreciates the positive feedback received from commenters about the requirement to include or incorporate by reference the Safety Committee procedures in the ASP.

FTA acknowledges that the statute does not define specific procedures for Safety Committees. FTA notes that, as with existing requirements regarding SMS processes and activities, the PTASP regulation establishes procedural requirements to ensure effective implementation of statutory requirements. In response to the commenter's question about potential impacts on collective bargaining agreements, FTA notes that negotiation is not explicitly required, but § 673.19(a)(2) requires the Safety Committee to be convened by a joint labor-management process. FTA acknowledges that, in practice, this may involve some level of negotiation.

FTA acknowledges the commenter that suggested FTA require the Accountable Executive to approve the Safety Committee procedures and that they be included by reference in the ASP. Section 673.19(c) requires agencies to include or incorporate by reference in their ASP the Safety Committee procedures. Further, as described in

Section II.F.5 below, the Accountable Executive's role is to sign the ASP and ensure that the ASP and SMS processes are carried out. As such, the commenter's request was addressed by the NPRM, and no changes are made in the final rule in response to this comment. FTA notes that this final rule does not establish Accountable Executive veto power over the contents of the ASP, because that would be inconsistent with statutory requirements relating to the composition of Safety Committees, as well as the statutory requirement that the Safety Committee and Board of Directors must approve the ASP—not the Accountable Executive.

FTA disagrees that it is appropriate to exclude the Safety Committee procedures portion of the ASP, even if incorporated by reference, from the Safety Committee's approval. The statute requires the Safety Committee to approve the ASP, and as noted above, the procedures must be included or incorporated by reference in the ASP.

FTA acknowledges the concern regarding challenges associated with operating a Safety Committee with equal frontline transit worker and management engagement. FTA encourages Safety Committees to work collaboratively to set and execute procedures for determining Safety Committee agenda items and making decisions. These items are discussed further in the preamble sections below.

FTA believes that the use of the word "address" before listing the minimum requirements for Safety Committee procedures is appropriate because it provides flexibility, and the accompanying regulatory requirements are sufficient to ensure a transparent and standardized process. In § 673.19(c), FTA requires each large urbanized area provider to include or incorporate by reference in its ASP the procedures regarding the composition, responsibilities, and operations of the Safety Committee, including the organizational structure, size, and composition of the Safety Committee and how it will be chaired; how the Safety Committee will reach and record decisions; and how the Safety Committee will manage disputes to ensure it carries out its operations. FTA notes that the ASP and any referenced documents or appendices that are used to address PTASP regulation requirements are part of the annual review and approval process to confirm that the ASP meets PTASP regulation requirements. Thus, the Safety Committee will review and approve Safety Committee procedures included or referenced in the ASP through this process. Further, a Safety Committee

may opt to use its procedure for reaching decisions, which may include voting or consensus mechanisms, to formally endorse its structure and procedures.

Meeting Agendas, Notices, and Minutes

Comments: A local union stated that FTA should require transit agency management and frontline transit workers to agree on how often the Safety Committee should meet and require the transit agency to adhere to the agreed upon schedule. Similarly, a transit agency requested that FTA require transit agencies to give advance meeting notice to Safety Committee members as part of the Safety Committee procedures.

Two commenters noted the need for Safety Committees to have regular, formal meetings. A local union commenter expressed concern that at their transit agency, management creates and presents Safety Committee meeting agendas without seeking input or a vote from frontline transit worker representatives, and that management representatives have not shared meeting minutes with the frontline transit worker representatives.

Response: While FTA agrees that establishing a meeting schedule for the Safety Committee would be beneficial for Safety Committees, it disagrees that the rule should define or require the transit agency to define a specific meeting schedule. The PTASP regulation gives flexibility to Safety Committees to schedule meetings in a manner suitable to the size, scope, and complexity of their agency. Some agencies may decide to define a set schedule and document this in their Safety Committee procedures. FTA also acknowledges the commenter's concern regarding the development and sharing of Safety Committee meeting agendas. FTA agrees with commenter concerns regarding development and advance notice of Safety Committee meetings. Accordingly, FTA has added a requirement in § 673.19(c)(2) for Safety Committee procedures to include the process for developing and sharing meeting notices.

In response to the comment about meeting minutes, FTA notes that it is adopting the proposed requirement in § 673.19(c)(2) for Safety Committee procedures to document how meeting minutes will be recorded and maintained.

Training and Qualifications

Comments: Several commenters, as well as an attendee at an FTA webinar, expressed concern that some members of Safety Committees may not have

adequate training or qualifications to perform their required responsibilities. Two commenters asked whether FTA would provide or recommend training for Safety Committee members. One commenter recommended that FTA provide training about SMS processes and data analysis to frontline transit worker representatives. Another commenter noted that training Safety Committee members would add costs to the transit agency.

FTA received two comments on its proposed language in § 673.19(c)(3), which states that Safety Committee procedures must include any required ASP and SMS training for members. A commenter asked FTA to clarify whether this training is required, or if a transit agency and its SSOA may decide whether to provide it. This commenter further recommended that FTA address any safety training requirements for Safety Committee members in the Safety Promotion section of the regulation at § 673.29 instead.

Two commenters asked whether Safety Committee members are required to comply with the Public Transportation Safety Certification Training Program (PTSCTP) requirements established under 49 CFR part 672.

Response: FTA acknowledges comments that express concern that Safety Committee members may not have adequate training or qualifications to perform their required responsibilities. While this final rule does not establish training requirements specific to Safety Committee members, transit agencies may establish their own training requirements for their workers in accordance with their comprehensive safety training program. Section 673.19(c)(3) provides that any required training must be documented in the Safety Committee procedures. FTA appreciates the suggestion to include this requirement in the Safety Promotion section of the regulation instead, but declines to make this change. For clarity, FTA believes that it is best for all Safety Committee-related procedures to be addressed in a single section of the regulation.

FTA acknowledges the comment that noted training for Safety Committee members would add costs to the transit agency. FTA acknowledges that FTA-provided or FTA-recommended training for Safety Committee members is useful and has the potential to reduce burden on transit agencies, and FTA will consider this topic for future technical assistance.

The PTSCTP requires at 49 CFR part 672 that RTAs designate transit workers who are directly responsible for safety

oversight and ensure those workers comply with PTSCTP training requirements. The PTSCTP also offers a voluntary program for bus transit workers designated by their transit agency as having direct safety oversight responsibility. FTA agrees that participation in the PTSCTP curriculum can provide valuable context for Safety Committee members, but it does not require that Safety Committee members participate in the PTSCTP, unless they are otherwise required to do so under part 672.

Compensation

Comments: A transit agency and a labor organization requested that FTA require transit agencies to include information about compensation for Safety Committee members in their Safety Committee procedures. The labor organization urged FTA to require transit agencies to pay frontline transit worker representative members at their regular hourly rate for all time spent in Safety Committee meetings and conducting Safety Committee business. The commenter expressed that this would maintain the balance of power between management, which is typically compensated on a salary basis, and frontline transit worker members, which are usually compensated on an hourly basis.

Response: FTA appreciates the comments and concerns regarding compensation for Safety Committee members. FTA notes that 49 U.S.C. 5329(d) does not require transit agencies to compensate Safety Committee members for time spent on Safety Committee activities. While FTA does not manage transit agency compensation structures, FTA agrees that it is important for Safety Committee procedures to address this issue for transparency. In response to comments, FTA therefore is adding a requirement at § 673.19(c)(4) for transit agencies to document in their Safety Committee procedures the Safety Committee compensation policy that the agency has established for participation in Safety Committee meetings. FTA is not requiring transit agencies to compensate the members of the Safety Committee. FTA is only requiring that the agency establish a compensation policy and document such policy in its Safety Committee procedures. FTA notes that the transit agency must have a policy regarding compensation; however, this may include a policy to not provide compensation.

Coordination With Board of Directors and Accountable Executive

Comments: One commenter recommended that FTA amend the proposed requirement at § 673.19(c)(7) from describing how the Safety Committee will coordinate with the Board of Directors or equivalent entity and the Accountable Executive to “how the Safety Committee will communicate necessary information” to those entities, noting that this change would clarify and more narrowly define the requirement. Two commenters requested that FTA provide guidance on this process, including FTA’s expectations regarding the required amount and level of coordination.

Response: FTA disagrees that the Safety Committee procedures should only address how the Safety Committee will communicate information to the Board of Directors or equivalent entity and the Accountable Executive. The term “coordinate” was specifically chosen to reflect the flow of information in both directions—to the Safety Committee and from the Safety Committee. The term also encompasses joint activities the Safety Committee, Board of Directors or equivalent entity, and the Accountable Executive may want to undertake. However, FTA recognizes that communication between the Safety Committee, Accountable Executive, and Board of Directors or equivalent entity is a key element of coordination and has revised § 673.19(c)(7) to “how the Safety Committee will coordinate and communicate with the Board of Directors, or equivalent entity, and the Accountable Executive” for clarity.

Due to the varying operating environments of transit systems, FTA is deferring to transit agencies to establish and document the appropriate process of coordination between the Safety Committee, Board of Directors or equivalent entity, and Accountable Executive, including details on the frequency and level of coordination.

Additional Suggested Procedures

Comments: One commenter stated that the required Safety Committee procedures should include a mechanism for holding Safety Committee members accountable for fulfilling their responsibilities, such as attendance and completion of tasks assigned to the Safety Committee. Two commenters stated that FTA should allow transit agencies to set minimum qualifications for participation on the Safety Committee, such as minimum experience requirements or restrictions for certain individuals based on their

previous safety performance or failure to attend Safety Committee meetings. Another commenter urged FTA to strongly encourage frontline transit worker representatives to participate fully at Safety Committee meetings. Two commenters stated that an agency should have the authority to include procedural language to remove Safety Committee members who intentionally fail to attend meetings.

Three commenters requested that FTA require the Safety Committee procedures include an agreement between management and frontline transit worker representatives regarding participation in Safety Committee meetings by non-members. Two commenters stated that at some transit agencies, managers who are not on the Safety Committee participate in meetings, creating a power imbalance between management and frontline transit worker representatives. Another commenter noted that it is reasonable to expect that a Safety Committee will seek the expertise of others within and outside the transit system as it seeks to identify and define safety risk mitigations and suggested that the Safety Committee define procedures for non-members to participate in Safety Committee meetings.

Response: Establishing specific minimum Safety Committee qualifications or restrictions on frontline transit worker representative membership in part 673, such as minimum experience requirements or excluding a frontline transit worker representative selected for the Safety Committee based on the individual's safety performance, would impinge on the statutorily defined role of the labor organization representing the plurality of frontline transit workers to select frontline employee representatives for the Safety Committee. Transit agencies may discuss selection criteria with the entity or entities responsible for selecting management and frontline transit worker representatives, and these entities may voluntarily adopt their own selection criteria. However, FTA declines to require this in the final rule.

FTA agrees that Safety Committee meetings should be attended by all members. While FTA is not establishing requirements for attendance, FTA recommends that agencies document in their ASPs any Safety Committee meeting scheduling and attendance policies.

FTA appreciates the concern voiced by the commenters that Safety Committee participation by non-members may result in a power imbalance. FTA agrees that procedures for outside participation in Safety

Committee meetings helps to ensure that the Safety Committee conducts its vital work effectively, while maintaining the balance between management and frontline transit worker representatives required by statute. FTA defines these requirements at § 673.19(c)(5), which requires the Safety Committee procedures include how the Safety Committee will access technical experts, including other transit workers, to serve in an advisory capacity as needed.

5. Safety Committee Authorities, Accountabilities, and Responsibilities General

Comments: Five commenters asked for additional clarity of the authorities, accountabilities, and responsibilities of the Safety Committee. One commenter asked FTA to clarify what “authorities, accountabilities, and responsibilities” the Safety Committee would have, as described in proposed § 673.23(d)(3), arguing that the committee has an advisory role. One commenter opposed Safety Committee participation in the Safety Risk Management process, as set forth in § 673.19(d)(3), expressing that this dilutes the power of data-decision risk management.

Response: As established by § 673.23(d), transit agencies must identify the authorities, accountabilities, and responsibilities for the management of safety. FTA notes the Safety Committee does not merely serve in an advisory role and instead must meet statutorily defined requirements. The Bipartisan Infrastructure Law established several affirmative responsibilities for the Safety Committee at 49 U.S.C. 5329(d), such as review and approval of the ASP, setting annual safety performance targets for the safety risk reduction program, and supporting the operation of the transit agency's SMS.

The Safety Committee's participation in the Safety Risk Management process is statutorily required under 49 U.S.C. 5329(d)(5)(A)(iii). FTA does not agree that the Safety Committee's support of the Safety Risk Management process dilutes the power of data-driven risk management. The Safety Committee's participation in the Safety Risk Management process and the related setting of safety performance targets explicitly supports data-driven decision-making.

Relationship to the Accountable Executive

Comments: FTA received several comments voicing opposing views regarding the role of the Safety

Committee and the Accountable Executive.

Some commenters, including transit agencies, argued that final decisions regarding a transit agency's safety program should rest with the Accountable Executive, including the contents of an ASP, implementation of Safety Committee recommendations, and resolution of Safety Committee disputes. Some commenters argued that this aligns authority with accountability, as the Accountable Executive is ultimately accountable for the agency's safety performance. In support of this view, three commenters cited a prior Frequently Asked Question (FAQ) on FTA's website about this issue, which FTA removed prior to publication of the NPRM.

Conversely, FTA received two comment letters from certain members of Congress explaining Congressional intent in enacting the Bipartisan Infrastructure Law amendments to 49 U.S.C. 5329 relating to Safety Committees. These members of Congress stated that the intent of these amendments was to require a transit agency's Accountable Executive to implement safety risk mitigations that are recommended by the Safety Committee and included in the ASP. In their view, the Accountable Executive may not revisit, ignore, or reject elements of an approved ASP. Both letters urged FTA to remove any language from the rule that relegates the Safety Committee to an advisory role, including language that FTA proposed in § 673.23 regarding the Accountable Executive's role to “receive and consider” safety risk mitigations.

Similarly, several other commenters, including labor organizations, opposed Accountable Executive veto power over Safety Committee recommendations and urged FTA to require the Accountable Executive to implement all Safety Committee recommendations. Commenters stated that giving the Accountable Executive veto power would tip the power balance on Safety Committees in favor of management and noted that management already has a voice on the Safety Committee through the management representative members. Several commenters asserted that giving the Accountable Executive veto power would make the Bipartisan Infrastructure Law changes to 49 U.S.C. 5329 ineffective. Many stated that frontline transit workers already had the opportunity to raise safety concerns to management prior to establishing a Safety Committee, urging FTA to require transit agency management to act on these recommendations to make meaningful change.

Two labor organizations noted that FTA removed the FAQ referenced by other commenters from FTA's website and one argued that this former FAQ should not be relied upon as guidance regarding the role of the Safety Committee.

Response: FTA appreciates the questions and suggestions from commenters to clarify the relationship between the Safety Committee and Accountable Executive. FTA agrees that the Safety Committee should have a strong voice in safety-related decision-making and agrees that the Safety Committee is not merely an advisory body.

In response to comments, FTA is adopting several revisions to the rule to clarify the role of the Accountable Executive regarding implementation of mitigations recommended by the Safety Committee. As a preliminary matter, FTA agrees with the commenters who opined that the Accountable Executive must implement safety risk mitigations that are included in the ASP. Section 673.5 of FTA's 2018 PTASP final rule clearly conveys that the Accountable Executive is "ultimately responsible for carrying out the Public Transportation Agency Safety Plan of a public transportation agency." FTA understands commenters' concern about aligning authority and accountability. However, the Accountable Executive must implement an ASP that has been duly approved by the agency's Safety Committee and Board of Directors. If the approved ASP includes mitigations, the Accountable Executive must carry them out. This is consistent with the 2018 final rule and FTA's current practice.

Further, 49 U.S.C. 5329(d)(1)(I) requires transit agencies to include mitigations in their ASP related to the safety risk reduction program, including mitigations related to vehicular and pedestrian accidents involving buses and assaults on transit workers. To harmonize the regulation with this statutory requirement, FTA is adopting §§ 673.11(a)(7)(iv) and 673.25(d)(5), which convey that the ASP must include safety risk reduction program mitigations when recommended by the Safety Committee based on a safety risk assessment. FTA refers readers to Section II.G of this preamble for more discussion about these changes.

Due to the above, FTA agrees with the commenters who argued that proposed § 673.23(d)(1) is contrary to statute. This proposal stated that the Accountable Executive "receives and considers" mitigations from the Safety Committee. Given that the Accountable Executive is ultimately responsible for implementing the transit agency's approved ASP, FTA

agrees that the Accountable Executive must implement the safety risk reduction program mitigations included in the ASP under § 673.11(a)(7)(iv). While FTA acknowledges that the Accountable Executive retains control or direction over the human and capital resources needed to maintain an agency's ASP under § 673.5, the Accountable Executive does not have authority under part 673 to decline to implement elements of an approved ASP. Accordingly, FTA is adopting revisions to § 673.23(d)(1) to convey that the Accountable Executive must implement the safety risk reduction program mitigations included in the ASP under § 673.11(a)(7)(iv).

FTA notes that 49 U.S.C. 5329(d) does not require that the ASP include mitigations unrelated to the safety risk reduction program. As such, and in response to comments, FTA also has revised § 673.23(d)(1) to clarify the Accountable Executive's role with respect to these other mitigations. This provision requires that the Accountable Executive of a large urbanized area provider receives and must consider all other safety risk mitigations that are recommended by the Safety Committee (*i.e.*, mitigations not related to the safety risk reduction program). The Accountable Executive may decide not to implement these mitigations, consistent with the Accountable Executive's authority over the control or direction over the human and capital resources needed to develop and maintain the ASP. However, FTA believes that the Accountable Executive should articulate a reasoned explanation for this decision. Accordingly, FTA has added § 673.25(d)(6) to the regulation, which provides that if the Accountable Executive declines to implement such a mitigation, the Accountable Executive must prepare a written statement explaining this decision consistent with the PTASP recordkeeping requirements at § 673.31. The Accountable Executive then must submit and present this explanation to the Safety Committee and the Board of Directors or equivalent entity for discussion. FTA believes that this strikes a reasonable balance between the Accountable Executive's ultimate accountability for safety performance and the Safety Committee's vitally important role in the SMS process. FTA emphasizes that the transit agency may opt to include these other mitigations in the ASP if it wishes to do so. As explained above, the Accountable Executive would then be required to implement these mitigations because they are included in the ASP.

Regarding the PTASP FAQ mentioned by commenters, FTA rescinded the FAQ

in 2022. Transit agencies should not rely upon it as current guidance regarding the role of the Accountable Executive and Safety Committee.

Focus of the Safety Committee

Comments: Several commenters discussed the focus of the Safety Committee. Eight commenters expressed concern that the Safety Committee or its activities could be used as a negotiating tactic in collective bargaining or other labor negotiation activities. Some of these commenters asserted this could delay approval of an ASP and therefore impact an agency's ability to receive section 5307 funding. One commenter urged FTA to prohibit use of the Safety Committee to conduct contract negotiations or other collective bargaining activities.

Five commenters stated that FTA should require that Safety Committees focus exclusively on safety. One of these commenters suggested FTA do so by revising the definition of "Safety Committee" in § 673.5.

Response: FTA agrees that the Federal statutory responsibilities of Safety Committees, as outlined in 49 U.S.C. 5329(d), focus on safety at the transit agency. FTA's definition of "Safety Committee" at § 673.5 reflects that the Safety Committee is a joint labor-management committee "on issues related to safety." FTA believes that this definition sufficiently sets forth the focus of the Safety Committee and therefore declines to make any further changes to the regulation. However, FTA will not prohibit the Safety Committee from addressing issues with a nexus to safety outside of those identified in this final rule. FTA appreciates that some safety concerns may overlap with labor-related concerns and that individual Safety Committees will establish their own protocols for addressing safety-related business. Further, FTA appreciates that transit agencies may need to amend the terms of their collective bargaining agreements or other labor agreements to enable transit workers to participate in the Safety Committee.

Relationship to Safety Departments

Comments: Several commenters expressed concern that certain safety-critical tasks assigned to the Safety Committee in § 673.19(d) should be the responsibility of Safety Department representatives. Two commenters expressed concern regarding the practicality of having frontline transit worker representatives complete the work described in § 673.19(d).

Three commenters opposed FTA's proposed language in § 673.19(d) that

the Safety Committee conducts activities to “oversee” the agency’s safety performance, expressing that this is the responsibility of the agency’s Chief Safety Officer and Accountable Executive. These commenters suggested that FTA replace the word “oversee” with alternative language. One commenter further urged FTA to clarify that the decisions of an agency’s Safety Department are not subject to review by the Safety Committee. One commenter urged FTA to clarify that “oversee” refers only to safety performance and advising on safety initiatives.

Response: FTA appreciates the concerns about the potential for overlap between the Safety Committee and Safety Department and the practicality of having frontline transit workers complete the work described in § 673.19(d). However, these Safety Committee responsibilities are statutorily required.

FTA notes that the Safety Committee does not replace the transit agency’s Safety Department but rather augments the transit agency’s SMS by supporting Safety Risk Management and Safety Assurance processes such as the safety risk reduction program. The Safety Committee has several statutorily defined responsibilities to oversee safety performance through review and approval of the ASP, setting annual safety performance targets for the safety risk reduction program, and supporting the operation of the transit agency’s SMS. Therefore, FTA does not agree that it is appropriate to replace “oversee” with alternative language.

This final rule does not eliminate any existing authority, accountability, or responsibility established for the Accountable Executive, Safety Department, or Chief Safety Officer. FTA reminds commenters the Safety Committee has an equal number of management representatives, which may include members of the Safety Department.

Monitoring Safety Committee Performance

Comments: Some commenters expressed concern about holding Safety Committees accountable for fulfilling their responsibilities. Two of these commenters asked who has ultimate responsibility for the Safety Committee and for overseeing its performance. One commenter further asked who is responsible for maintaining compliance with Federal requirements in the absence of consensus in the Safety Committee. Another commenter argued that the transit agency should have ultimate responsibility for the Safety Committee. One commenter urged FTA

to add Safety Committee accountability measures or best practices to the final rule, noting that certain Federal funding is contingent on having an ASP that is approved by the Safety Committee.

Response: FTA appreciates the questions and suggestions from commenters on Safety Committee accountability. FTA reiterates that the Safety Committee’s responsibilities are required by statute. Per § 673.23(d)(3), transit agencies must identify the authorities, accountabilities, and responsibilities necessary for the Safety Committee, as they relate to the development and management of the transit agency’s SMS. FTA believes that transit agencies are capable of ensuring appropriate accountability for Safety Committee members and § 673.23(d)(3) provides appropriate flexibility for them to do so. FTA notes that the existence of the Safety Committee does not eliminate any existing authority, accountability, or responsibility established for the Accountable Executive, Safety Department, or Chief Safety Officer. FTA understands that disputes might occur on the Safety Committee and addresses this issue in Section II.F.6 of this preamble below.

6. Decision-Making and Dispute Resolution

Comments: Several commenters offered comments and proposed requirements for Safety Committee decision-making processes.

FTA received comments asking for clarification regarding “voting” as the mechanism for approving an ASP. One transit agency noted the word “vote” in proposed § 673.19(c) implies that Safety Committees must approve the ASP through voting, which is contrary to the commenter’s previous understanding. This commenter noted that voting is workable if the Accountable Executive is the tiebreaker. Two labor commenters stated that Safety Committees should be required to use a one-person-one-vote system with majority rule or another voting system.

In contrast, one transit agency stated that FTA should remove the word “vote” from § 673.19(c), arguing that voting increases burden and the likelihood of conflict and that Safety Committees should be permitted to establish their own decision-making processes.

FTA received several comments voicing opinions regarding Safety Committee tiebreaking and dispute resolution mechanisms; these commenters noted that deadlocks are likely given that committees are comprised of equal numbers of management and transit worker

representatives. FTA received one comment asking what to do if the Safety Committee could not come to an agreement.

Several commenters shared feedback on FTA’s proposal in § 673.19(c)(7), which would require the ASP to include procedures on how the Safety Committee will manage disputes and tie votes to ensure it carries out its operations. Five commenters stated that FTA should require a specific tiebreaking mechanism in the final rule, with one commenter noting that leaving this dispute resolution process up to the transit agency could lead to confusion and inequity. Several commenters, including transit agencies and a transit industry association, either suggested that FTA designate the Accountable Executive or Chief Safety Officer as the tiebreaker for the Safety Committee.

One of these commenters stated that having the Accountable Executive as the tiebreaker ensures the Accountable Executive remains accountable and that Federal funds are protected.

FTA received several comments, including from labor organizations and certain members of Congress, arguing that the Accountable Executive must not act unilaterally as a tiebreaker for the Safety Committee. Commenters stated that designating a member of management as a tiebreaker would circumvent the requirement for equal representation on the Safety Committee and that FTA should establish a fair and consistent process that maintains the power balance between management and frontline transit workers. These commenters urged FTA instead to require transit agencies to use the dispute resolution procedure in the transit agency’s collective bargaining agreement or some other mutually agreed-upon process.

One commenter also suggested that FTA require nonunionized transit agencies to establish a process to send Safety Committee disputes to a neutral third party decisionmaker.

One commenter noted it would be problematic to send tie votes to a third-party decision-maker selected only by one side or to allow a committee chair to break ties. Two other commenters opposed sending disputes to a neutral arbitrator or mediator, stating that third party neutrals might not have appropriate background knowledge to address the issue and that this would be a lengthy process.

One commenter requested clarification regarding who will write the dispute resolution process and how it will be approved and noted that if the process is subject to labor-management agreement there could be two deadlocks

instead of one. One commenter stated that in the event of deadlock with respect to the dispute resolution procedures, the Accountable Executive should be the tiebreaker in that one specific scenario only.

Two commenters requested that FTA provide guidance on Safety Committee dispute resolution best practices. One commenter recommended that FTA convene a national working group with transit labor and management representatives to establish these best practices and requested that FTA provide a sample procedure or workflow for Safety Committees to use to resolve disputes.

Response: FTA acknowledges the comments received expressing opinions on Safety Committee voting processes. FTA carefully considered all such comments and the associated concerns, including the varied implications of different voting systems and the potential conflicts surrounding tie votes. In this final rule, FTA is not mandating a specific mechanism for Safety Committee decision-making and has removed the word “voting” from § 673.19(c).

However, FTA agrees with commenters that Safety Committees need an agreed-upon decision-making process. It is therefore requiring at §§ 673.19(c)(6) and (8) that Safety Committee procedures include how the committee will reach and record decisions and manage disputes to ensure the Safety Committee carries out its operations. Safety Committees may decide to adopt a voting mechanism, but FTA is not requiring them to do so. This will provide each Safety Committee the flexibility to adopt the decision-making mechanism that best works for them.

In response to comments requesting clarification about disputes, FTA also has revised § 673.19(c)(8) to clarify that the Safety Committee may use the dispute resolution or arbitration process from the transit agency’s collective bargaining agreement, or a different process that the Safety Committee develops and agrees upon. As noted above, FTA is not mandating a specific mechanism or avenue for resolving disputes, as FTA has determined that transit agencies and their Safety Committees should have flexibility to establish the procedure best suited to their unique environments. Agencies may decide to leverage existing dispute resolution processes, such as sending disputes to a neutral third-party or using the dispute resolution or arbitration process from the transit agency’s collective bargaining agreement, but they are not required to do so.

However, FTA also revised § 673.19(c)(8) to make clear that the Accountable Executive, may not be the tiebreaker to resolve Safety Committee disputes. FTA has defined the Accountable Executive to have the responsibility for signing the ASP prior to it being sent to the Safety Committee for approval. Additionally, the Accountable Executive is ultimately responsible for implementing the transit agency’s approved ASP. Because of these unique roles within the PTASP process, if the Accountable Executive also were to serve as the tiebreaker, it impermissibly would give them authority to perform the roles prescribed by Congress for Safety Committees, including approval of an ASP, establishment of performance targets for the risk reduction program, and determination of risk reduction program mitigations for inclusion in the ASP. See 49 U.S.C. 5329(d)(1)(A) and (I) and (d)(4)(A).

FTA agrees that the dispute resolution process must be agreed upon by the members of the Safety Committee using the Safety Committee procedures in § 673.19(c)(6) to reach and record decisions and subject to the provisions in § 673.19(c)(8). The ASP and any documents incorporated by reference that are necessary for fulfilling PTASP requirements, including the Safety Committee procedures, are subject to the Safety Committee’s review through the annual ASP review and approval process. FTA also strongly encourages transit agencies and Safety Committees to work collaboratively to establish these procedures prior to the ASP approval process.

FTA appreciates the comments requesting additional guidance and will consider actions relating to Safety Committee decision-making in the future.

7. Agency Safety Plan Approval

Comments: Eight commenters expressed concern with requiring the Safety Committee to approve the ASP, as set forth in proposed §§ 673.19(d)(1) and 673.11(a)(1).

Three commenters stated the Safety Committee should not be involved in ASP approval process and argued that labor should participate in the development process in an advisory role instead. Two of these commenters asked FTA to mirror the language regarding Safety Committee ASP review on proposed § 673.17(b)(1), which states the ASP is developed in cooperation with frontline transit workers. Three commenters suggested that the final rule state that the Safety Committee reviews “draft” ASP language, arguing that the

Safety Committee has no authority to change policies or procedures summarized or referenced in the ASP. Similarly, a separate commenter asked FTA to clarify that the underlying drafting of the ASP most likely will be completed by agency management or safety consultants, not the Safety Committee. One commenter noted that Safety Committee approval of the ASP adds burden for transit agencies without any additional funding support.

In contrast, FTA received other comments supporting Safety Committee approval of the ASP. Comments from members of Congress and a labor organization stated that congressional intent was for Safety Committees to have more than an advisory role, with the labor organization stating that Congress intended Safety Committees to be delegated decisions on safety matters.

One commenter stated that transit agencies do not always provide sufficient time for Safety Committee members to review ASP updates, which means that Safety Committees cannot reasonably and adequately approve the ASP.

Two commenters stated that the rule should establish explicit requirements for how Safety Committees approve ASPs.

Response: FTA acknowledges the commenters that expressed concern with the requirement for Safety Committees to review and approve ASPs. FTA notes that ASP approval is a key Safety Committee responsibility required by statute at 49 U.S.C. 5329(d)(1)(A). FTA reiterates that per the statute, the Safety Committee’s role is not merely advisory.

FTA declines to establish more specific requirements for how Safety Committees approve ASPs. As discussed in section II.F.6 of this preamble, FTA is adopting requirements at § 673.19(c)(6) for documenting how the Safety Committee will reach and record decisions and at § 673.19(c)(8) for documenting how the Safety Committee will manage disputes to ensure it carries out its operations. FTA is providing each Safety Committee flexibility to adopt the decision-making mechanism that best works for them. FTA understands the concern regarding Safety Committees potentially not having sufficient time to review the ASP. Section 673.11(a) requires the transit agency to establish a timeline for the annual ASP review and update. Further, § 673.19(c)(9) requires that Safety Committee procedures address how the committee will carry out its responsibilities, which includes ASP approval. FTA encourages transit agencies and Safety Committees to

establish the ASP update timeline cooperatively and to ensure that the timeline permits each applicable group sufficient time to review the ASP and any referenced materials.

The Bipartisan Infrastructure Law established a role for the Safety Committee to approve the ASP as one vitally important step in the ASP approval process. This final rule reflects the critical role Congress established for the Safety Committee.

8. Access to Agency Data and Resources

Comments: FTA received several comments related to the Safety Committee's access to transit agency data. Several commenters stated that FTA should require transit agencies to provide Safety Committees access to all safety data available to the transit agency, including safety event information and any information that is reasonably relevant for accomplishing the Safety Committee's responsibilities. One commenter stated that this information should include each hazard report that a transit agency receives from workers and any action taken in response. One commenter stated that this should include any information described in § 673.31 when requested by the Safety Committee. This commenter argued that a Safety Committee cannot meaningfully review or approve an ASP without access to this information. Another commenter noted that it is difficult for labor representatives to be partners in solving safety issues if the Safety Committee does not have quick access to relevant information. One local union stated anecdotally that its transit agency does not permit the Safety Committee to access certain information unless the committee files an information request.

Two commenters stated that FTA should require transit agencies to allow Safety Committees to inspect all transit system vehicles and properties at least once per year and to inspect any vehicle or workspace involved in an accident, assault, or other serious safety event within 48 hours of the incident. One local union noted anecdotally that its transit agency has not permitted the Safety Committee to conduct walk-through inspections of transit property.

Response: FTA appreciates that the Safety Committee's work will require transit agencies and Safety Committees to agree upon the appropriate level of access the Safety Committee needs to perform its work. Section 673.19(c)(5) requires that Safety Committee procedures address how the committee will access transit agency information, resources, and tools to support its deliberations. This provision also

requires that the procedures address how the Safety Committee will access submissions to the agency's transit worker safety reporting program. While the requirement at 673.19(c)(5) does not require a transit agency to provide the Safety Committee with every piece of data and information maintained by the agency, the requirement is inclusive of all data reasonably necessary for the Safety Committee to perform its statutorily required responsibilities. Transit agencies must provide access to information necessary for the Safety Committee to execute their duties established under 49 U.S.C. 5329(d), and as described in this part and in the transit agency's ASP.

FTA disagrees that it is appropriate for FTA to require transit agencies to permit Safety Committee access to specific locations for inspections. Congress granted specific RTA inspection authority to State Safety Oversight Agencies but has not established this authority for Safety Committees. Further, transit agency safety departments typically conduct these types of activities. FTA does not expect a transit agency's Safety Committee to replace a transit agency's safety department. As noted above, FTA expects that Safety Committees will have access to information reasonably necessary for them to fulfill their statutory responsibilities. This may include information related to inspections, to the extent it is reasonably necessary for the Safety Committee to identify and recommend mitigations under 49 U.S.C. 5329(d)(5)(A)(iii)(I).

G. Section 673.20—Safety Risk Reduction Program

1. Applicability

Comments: One commenter supported limiting the applicability of the safety risk reduction program to large urbanized area providers. One commenter asked whether the safety risk reduction program applies only to bus modes. Another commenter noted that the safety risk reduction program does not appear to address historic streetcars and other open cab rail vehicles.

Response: FTA appreciates the support from commenters. FTA notes that the definition of "large urbanized area provider" in this rule at § 673.5 does not distinguish modes of service. The safety risk reduction program requirements therefore apply to any transit agency that meets the definition of a large urbanized area provider. The safety risk reduction program includes all modes of service except for modes

that are excluded from PTASP generally under § 673.11(e) (*i.e.*, passenger ferries regulated by the United States Coast Guard and rail fixed guideway public transportation service regulated by the Federal Railroad Administration). The safety risk reduction program applies to historic streetcar service provided by large urbanized area providers, to the extent this service is otherwise subject to the PTASP regulation.

2. Connection to SMS

Comments: Several commenters sought clarification about FTA's expectations for the safety risk reduction program.

Many commenters, including transit agencies and an SSOA, asked FTA to clarify the relationship between the safety risk reduction program and FTA's existing SMS requirements. One commenter recommended that FTA clarify that the safety risk reduction program is a prescribed example of the Safety Risk Management (SRM) process under SMS. Another commenter argued that if the safety risk reduction program is just a component of the SRM process, then FTA should consider including it in the SRM section of the regulation (§ 673.25). Relatedly, two commenters requested that FTA clarify the difference between safety risk reduction and safety risk mitigation.

Response: FTA appreciates the comments identifying the connection between the safety risk reduction program and a transit agency's SMS processes. FTA agrees that a safety risk reduction program operates within an agency's SMS to support efforts to manage safety. FTA clarifies that it does not intend for safety risk reduction programs to exist outside of or separate from a transit agency's SMS.

In the NPRM, FTA proposed that all safety risk reduction program requirements would be in a distinct section of the regulation (§ 673.20). In response to comments, FTA has determined that this organization creates confusion by obscuring the program's relationship with SMS. To clarify this understanding and to ensure the consistent application of SMS processes, FTA has removed § 673.20 from the final rule and has relocated these provisions to other sections of the regulation, including the Safety Risk Management and Safety Assurance sections. FTA believes this change reinforces that a safety risk reduction program is not separate from SMS and that required safety risk reduction program elements and activities should operate within the Safety Risk Management and Safety Assurance components of SMS.

Accordingly, provisions regarding identifying mitigations for the safety risk reduction program are now located in the Safety Risk Mitigation section of the regulation at §§ 673.25(d)(3) through (d)(6). Provisions regarding continuous improvement requirements for the safety risk reduction program are now located in the Safety Assurance section at §§ 673.27(d)(1) through (d)(3).

In addition, FTA has located the provisions setting forth the general elements of the safety risk reduction program to § 673.11(a)(7). FTA believes that this is the most appropriate location because § 673.11 sets forth the elements that a transit agency's ASP must contain. As mentioned previously, the safety risk reduction program must be in the ASP per 49 U.S.C. 5329(d)(1)(I).

3. Safety Performance Targets

General

Comments: Several commenters, including an FTA webinar participant, requested additional guidance on how Safety Committees set safety performance targets for the safety risk reduction program. One commenter asked that FTA set specific guidelines for how to set targets. Another commenter recommended that Safety Committees should advise the transit agency on safety performance targets but should not set them, given that the targets have financial consequences for the transit agency if they are missed. One commenter argued that Safety Committee deadlocks or setting unattainable targets could require transit agencies to spend funding on mitigations that are inappropriate or outside of an agency's budget.

Several comments pertained to approval of safety risk reduction program performance targets. One commenter urged FTA to require that the Accountable Executive approve the performance targets. One commenter stated that both labor and management should certify their satisfaction with the safety performance targets, as well as whether the targets have been met. A separate commenter stated that FTA should require management to adopt any safety performance targets that the Safety Committee sets.

Another commenter noted that setting safety performance targets to reduce vehicular and pedestrian accidents involving buses through the safety risk reduction program would require data from local and State highway agencies and railroad companies. The commenter stated that this would add considerable burden but would be effective and would increase interagency cooperation.

Response: FTA appreciates that Safety Committees will need to work carefully to develop safety performance targets that are reasonable and attainable. Although FTA does not believe rulemaking is the appropriate forum for additional guidance, it will consider issuing technical assistance on setting safety performance targets in the future. Further, as required by statute, FTA defines required safety performance measures for the safety risk reduction program in the National Safety Plan.

FTA notes that per 49 U.S.C. 5329(d)(4), the Safety Committee is the entity required by statute to set the safety performance targets for the safety risk reduction program. The Safety Committee's role is not merely to "advise" on the performance targets, but rather to set them.

FTA acknowledges the comments recommending FTA establish additional requirements for approval of safety performance targets for the safety risk reduction program. FTA appreciates the recommendations and has carefully considered each but declines to make any changes in response. FTA notes that, pursuant to 49 U.S.C. 5329(d)(1)(F) safety performance targets must be included in the ASP, which is then approved by the Safety Committee and transit agency's Board of Directors or equivalent entity. This approval process incorporates the perspectives of both frontline transit worker and transit agency management representatives, as well as the Board of Directors. Because the PTASP regulation requires the ASP to undergo annual review and approval, and Safety Committee approval of the ASP is part of the annual review and approval process, FTA does not believe that an additional approval process for safety performance targets is necessary. In addition, FTA believes that the equal representation of labor and management on the Safety Committee sufficiently addresses the commenter's concern that the Safety Committee might set unattainable performance targets. FTA also notes that the safety set-aside is a minimum amount that a transit agency must spend on safety related projects.

As discussed in section II.F.5 of this preamble, the rule does not establish Accountable Executive veto power over the contents of the ASP. The Accountable Executive is ultimately responsible for carrying out the ASP that has been approved by the Safety Committee and the transit agency's Board of Directors, including safety performance targets.

In response to the comment that data would be required from local and State highway agencies and railroad companies to set safety performance

targets, FTA notes that the required safety performance measures for the safety risk reduction program are defined in FTA's National Safety Plan and only require data that transit agencies are already required to report to the NTD. A transit agency will not need to gather additional data from local and State highway agencies and railroad companies to set safety performance targets for these required measures.

Three-Year Rolling Average

Comments: Several comments pertained to the requirement to set safety performance targets for the safety risk reduction program based on a three-year rolling average of NTD data. One of these commenters recommended that Safety Committees should simply be given the three-year rolling average instead of establishing the safety performance target, arguing that there is no need for the Safety Committee to establish the target under FTA's proposed language. This commenter further asked whether the Safety Committee is permitted to select a target higher or lower than the three-year rolling average. Two commenters suggested that FTA encourage Safety Committees to use existing data from other processes, such as SSOA and internal agency reviews, to determine whether a transit agency has made progress toward meeting its safety performance targets.

Three commenters expressed concern regarding setting targets using a three-year rolling average of NTD data when the industry has not previously tracked the related metrics or has tracked the metrics under different thresholds. One of these commenters urged FTA to communicate to SSOAs that transit agencies do not need to set safety performance targets for the safety risk reduction program until they have three years of NTD data. Two commenters recommended that FTA require agencies to report data based on historical NTD assault definitions until three years of data under the new NTD "assault on a transit worker" definition is available. One of them expressed that transit agencies should not compare assault data using more than one metric, as this could lead to inaccuracies. Another commenter noted that the public might oppose an agency setting a fatality target higher than zero based on a 3-year rolling average of NTD data; however, setting a target at zero might be unattainable.

Response: FTA appreciates the feedback received by commenters regarding the statutory requirement for Safety Committees to set safety performance targets for the safety risk

reduction program using a three-year rolling average of NTD data. The statute requires at 49 U.S.C. 5329(d)(4)(A) that Safety Committees set these targets “using a 3-year rolling average of the data submitted” to the NTD. FTA interprets this to mean Safety Committees must base their target on the three-year rolling average. To reflect an annual reduction, the safety performance target must be set below the three-year rolling average. However, Safety Committees have flexibility regarding the amount of annual reduction defined by their targets, as long as the methodology uses a three-year rolling average of data reported to the NTD and the targets reflect an annual reduction. For example, a Safety Committee may decide to set a target that is a 5% reduction from the previous three-year rolling average. Alternatively, a Safety Committee may set a target that represents an annual reduction of 10 injuries from the previous three-year rolling average. FTA therefore declines to adopt a requirement for the Safety Committee merely to be “given” the 3-year rolling average as the target. This would undermine the Safety Committee’s statutory role in setting these targets and be contrary to the statute.

In response to the commenters that suggested that FTA encourage Safety Committees to use existing data from other processes to support safety performance measurement, FTA agrees that a range of monitoring techniques can be useful for assessing progress towards reaching established safety performance targets, including existing processes identified by the commenter such as internal safety reviews and SSOA reviews. FTA notes that § 673.19(d)(3)(iii) establishes the responsibility for Safety Committees to identify safety deficiencies, including any instance where the transit agency did not meet an annual safety performance target set for the safety risk reduction program. Transit agencies and their Safety Committees define the processes they will use to monitor safety performance and progress toward targets and instances where the agency does not meet an established safety performance target.

FTA appreciates that several transit agencies may not previously have reported certain metrics and therefore do not have three years of historical NTD data on which to base their safety performance targets. FTA proposed in the NPRM that Safety Committees will not be required to set safety performance targets for the safety risk reduction program until the agency has been required to report three years of

data to the NTD corresponding to such performance measure. FTA is adopting this proposal in the final rule without change. FTA also intends to communicate this to transit agencies and SSOAs through guidance and technical assistance.

FTA acknowledges the two commenters that recommended FTA require agencies to report data based on historical NTD definitions until three years of data under the new NTD “assault on a transit worker” definition is available. As explained above, this final rule incorporates the statutory requirement that Safety Committees use a three-year rolling average of data reported to the NTD. Therefore, target setting for a safety risk reduction program performance measure would begin only once an agency has been required to report data to the NTD for three years corresponding to such performance measure. In response to the comment about public perception of a non-zero safety performance target, FTA notes that Safety Committees are statutorily required to set safety performance targets using a three-year rolling average of data reported by the transit agency to the NTD and that this may mean establishing safety performance targets that are zero or non-zero.

Annual Reduction

Comments: Some comments related to FTA’s statement in the preamble of the NPRM that safety performance targets for the safety risk reduction program must reflect an annual reduction. One commenter asked whether setting a target that reduces the rate of increase would count as a “reduction.”

Two commenters noted that safety performance typically ebbs and flows, particularly at smaller transit agencies. These commenters argued that some variation is mere “noise,” thus agencies should not be expected to have their safety performance targets reflect a continual reduction every year. One of these commenters stated that requiring an annual reduction might incentivize transit agencies to underreport safety events to the NTD. In addition, this commenter expressed concern that SSOAs and FTA might use this requirement as a justification to develop corrective action plans or other enforcement action.

Another commenter expressed confusion about FTA’s statement in the NPRM that Safety Committees have flexibility to determine the amount of annual reduction defined by the targets, stating that this seems inconsistent with FTA’s role in establishing performance

measures through the National Safety Plan.

Response: In response to the commenter that asked whether setting a target that reduces the rate of increase would count as an annual “reduction” for purposes of the target setting requirement, FTA notes that reducing the rate of increase does not necessarily result in an actual reduction. Therefore, a target that uses a reduction in the rate of increase would not necessarily meet the requirement to establish a target that requires an actual reduction. As described earlier, the safety performance targets set by the Safety Committee for the safety risk reduction program must reflect an annual reduction in the associated safety performance measure. However, FTA agrees that safety performance typically ebbs and flows, particularly at smaller transit agencies and notes that failure to meet a safety performance target set for the safety risk reduction program does not reflect a failure of safety management at the transit agency. Rather, the safety risk reduction program helps direct safety resources based on safety performance.

FTA acknowledges the commenter that raised a concern that requiring an annual reduction could incentivize transit agencies to underreport safety events to the NTD. All transit agencies that are recipients or subrecipients of section 5307 funds are statutorily required to submit data to the NTD in uniform categories. Failure to report data in accordance with NTD requirements may result in a transit agency being ineligible to receive certain funding under 49 U.S.C. chapter 53.

This final rule does not establish any SSOA safety performance measurement requirements or requirements relating to corrective action plans or SSOA enforcement. FTA encourages the commenter to refer to 49 CFR part 674 for SSO Program requirements. However, FTA notes that this final rule does not limit or restrict existing FTA or SSOA enforcement authority.

FTA acknowledges the commenter that expressed confusion about FTA’s statement in the NPRM that Safety Committees have flexibility to determine the amount of annual reduction defined by the targets. The statute requires Safety Committees to set safety performance targets for the safety risk reduction program requirements “using a 3-year rolling average of the data submitted” to the NTD. FTA interprets this to mean Safety Committees do not have to set a target that matches the three-year rolling average, but that they must base their target on this average. For example, a

Safety Committee may decide to set a target that is a 5% reduction from the previous three-year rolling average. FTA notes that the Safety Committee's role in setting performance targets is different from FTA's role in establishing the safety performance measures through the National Safety Plan. The Safety Committee must set targets for the measures that FTA defines, but it has flexibility when setting these targets, as discussed above.

Timing of Target Setting

Comments: A few comments pertained to the timing of setting safety performance targets for the safety risk reduction program. One commenter asked FTA to explain its reasoning for requiring these safety performance targets to be set on an annual basis, noting that certain actions to meet safety performance targets could take well over a year to implement and monitor. Another commenter asked FTA to clarify that Safety Committees set forward-looking targets (*i.e.*, for the following year). The commenter stated that the ASP approval timeline for many agencies is in December, so a requirement to set targets for a year in which an ASP is approved is nonsensical.

Response: FTA appreciates that policies, procedures, or mitigations put in place to help a transit agency achieve a safety performance target may become more effective over time and that a transit agency may not see the full safety performance benefit within one calendar year. However, FTA believes that an annual assessment of safety performance targets is appropriate. This allows transit agencies to monitor their progress, even when their progress may continue over multiple years. FTA disagrees with the perspective that because safety performance targets are forward-looking, safety performance targets cannot be set in the same year as an ASP is reviewed. FTA expects an ASP to be reviewed, updated as necessary, and approved (if necessary) every year. FTA also expects the Safety Committee of a large urbanized area provider to set safety performance targets for the safety risk reduction program every year. Transit agencies may establish ASP update schedules that coincide with Safety Committee target setting schedules as they see fit.

4. Safety Risk Mitigations

Comments: FTA received several comments regarding the safety risk mitigation process for the safety risk reduction program, including one comment during an FTA webinar

expressing confusion about the requirements.

A labor organization stated that FTA's proposed language in § 673.20(a)(1), which sets forth the two statutory areas that must be included in a safety risk reduction program, is insufficient because it requires programs to merely "address" those two topics. This commenter and one additional commenter urged FTA to require transit agencies to set forth in their safety risk reduction programs specific actions that the transit agency will take, as recommended by the Safety Committee, to address the mitigation of vehicular and pedestrian safety events involving transit vehicles, and the mitigation of assaults on transit workers. It also requested that these specific actions include project timelines.

One transit agency opposed the identification of the two areas in § 673.20(a)(1), stating that FTA's identification of safety concerns conflicts with SMS and an agency's Safety Risk Management process. This commenter recommended that FTA either delete the reference to the two areas or revise the provision to allow the transit agency to identify the top hazards for the safety risk reduction program.

Several commenters discussed whether transit agencies should be required to implement safety risk mitigations for the safety risk reduction program that are identified and recommended by the Safety Committee.

Several commenters opposed FTA's proposed language at § 673.20(a)(4), which would require the Accountable Executive to implement certain mitigations recommended by the Safety Committee but allowed the Accountable Executive to decline to do so if they determine the mitigation will not improve the agency's overall safety performance. FTA received two comment letters from certain members of Congress stating that allowing the Accountable Executive to decline a safety risk reduction program mitigation recommended by the Safety Committee is contrary to Congressional intent in enacting the Bipartisan Infrastructure Law. These members of Congress urged FTA to remove this language, asserting there is no statutory authority for transit agency management to ignore or reject elements of an approved ASP, including safety risk mitigations for the safety risk reduction program identified by the Safety Committee. Several labor organization commenters expressed similar views and stated that transit agencies must implement all safety risk mitigations for the safety risk reduction

program identified by the Safety Committee.

Four commenters expressed concern regarding the proposed requirement for the Accountable Executive to "consider" specific safety risk mitigations, as proposed at §§ 673.20(a)(2) and (a)(3). One commenter argued that this does not go far enough and urged FTA to require agencies to implement these mitigations when directed by the Safety Committee. Of these commenters, three supported their view by asserting that the safety risk reduction program is included in the ASP. Thus, when an ASP is approved, safety risk reduction program safety risk mitigations are approved as well.

Other commenters, including transit agencies and a transit industry association, opposed proposed § 673.20(a)(4) because it stated that the Accountable Executive "must" implement one or more of the mitigations recommended by the Safety Committee. Arguments raised by these commenters include that the provision is (1) too prescriptive, (2) overrides the agency's existing SMS and safety risk management process, (3) impinges upon the relationship between RTAs and SSOAs, (4) exceeds statutory requirements, and (5) diminishes the authority of the Accountable Executive. These commenters argued that the transit agency and Accountable Executive should not be required to implement Safety Committee recommendations, with one stating that mitigation implementation should be in accordance with the agency's hazard matrix. One commenter recommended replacing the word "must" with "shall consider."

Two commenters expressed that requiring the consideration of specific mitigations in the safety risk reduction program, as proposed at §§ 673.20(a)(2) and (a)(3), is inconsistent with SMS principles and will cause SMS to be less scalable and flexible. One of these commenters stated that the identification of two safety concerns and specific safety risk mitigations is inconsistent with data-driven risk assessment. The other commenter stated that a transit agency should have flexibility to determine mitigations based on its SMS processes. This commenter also asked FTA to clarify how it will gauge compliance with the requirement, urging FTA not to find an agency non-compliant if a mitigation is not appropriate for the agency's unique operating characteristics. Another commenter expressed concern that the mitigations mentioned in this provision are not readily available and require

significant testing to be fully operational, arguing that there are no accepted standards for these technologies.

One commenter observed that the preamble to the NPRM stated that transit agencies must consider mitigations related to assault mitigation infrastructure and technology in any type of transit vehicle and in transit facilities, but § 673.20(a)(3) only included “transit vehicles.”

Response: FTA acknowledges the large number of comments summarized above related to requirements for safety risk mitigations resulting from the safety risk reduction program. FTA has reviewed and thoroughly considered all comments received.

FTA notes that the two program areas for the safety risk reduction program identified in § 673.20(a)(1) are statutorily required. FTA therefore declines to adopt the suggestion to delete or revise them. As described in section II.G.2 of the preamble above, FTA is adopting the provision originally proposed at § 673.20(a)(1) but has relocated it to § 673.11(a)(7).

FTA did not state explicitly in the NPRM that mitigations for the safety risk reduction program are included in the ASP. However, FTA agrees with commenters that this is what the statute requires. Specifically, 49 U.S.C. 5329(d)(1) sets forth the required elements of a transit agency’s ASP. This includes the safety risk reduction program at 49 U.S.C. 5329(d)(1)(I). This provision further requires that the safety risk reduction program include mitigations, including (1) measures to reduce visibility impairments for bus operators that contribute to accidents, including retrofits to vehicles in revenue service and specifications for future procurements that reduce visibility impairments; and (2) the deployment of assault mitigation infrastructure and technology on buses. FTA therefore understands that per 49 U.S.C. 5329(d)(1)(I), the ASP must include the safety risk reduction program, which in turn must include mitigations. To harmonize the regulation with the statutory requirement, and in response to comments, FTA has added §§ 673.11(a)(7)(iv) and 673.25(d)(5) to the regulation. Together, these provisions convey that for large urbanized area providers, the ASP must include mitigations for the safety risk reduction program, including mitigations relating to vehicular and pedestrian safety events involving transit vehicles or assaults on transit workers, when identified and recommended by a Safety Committee

based on a safety risk assessment. FTA notes that this is consistent with the standard SRM process in § 673.25(d)(1), in which safety risk mitigations are identified when they are “necessary as a result of the agency’s safety risk assessment to reduce the likelihood and severity of the consequences.” However, FTA does not agree that the ASP must also include specific project timelines for carrying out these mitigations. Transit agencies may include timelines but are not required by statute or regulation to do so.

FTA appreciates the numerous comments discussing whether the transit agency must implement the safety risk reduction program mitigations that the Safety Committee recommends. FTA proposed at § 673.20(a)(4) of the NPRM that the Accountable Executive must implement one or more mitigations related to assaults and injuries to transit workers when recommended by the Safety Committee based on a safety risk analysis. This provision would have allowed the Accountable Executive to decline to implement the mitigation if the Accountable Executive determined it would not improve the agency’s overall safety performance. FTA further stated in the NPRM preamble that the Accountable Executive could reject a mitigation due to its “direction over the human and capital resources needed to develop and maintain the ASP and . . . ultimate accountability for the agency’s safety performance.” Upon thorough consideration of the comments received and re-analysis of 49 U.S.C. 5329(d)(1)(I), FTA has determined that this proposal is inconsistent with the statute. Accordingly, FTA is adopting several revisions to the safety risk reduction program provisions to harmonize the regulation with 49 U.S.C. 5329(d).

FTA agrees with the commenters who argued that the Accountable Executive must implement safety risk mitigations that are included in the ASP. Given that the statute requires a transit agency’s ASP to include certain mitigations for the safety risk reduction program, the Accountable Executive must implement these mitigations. While FTA acknowledges that the Accountable Executive has discretion over the human and capital resources needed to carry out the ASP under § 673.5, the Accountable Executive does not have authority to decline to implement elements of an ASP that has been duly approved by the agency’s Safety Committee and Board of Directors.

FTA therefore declines to adopt proposed § 673.20(a)(4), as it would have allowed the Accountable Executive

to decline to implement certain mitigations in a manner that is inconsistent with the statute. FTA instead is adopting provisions at §§ 673.25(d)(6) and 673.23(d)(1) to set forth the responsibilities of the Accountable Executive regarding Safety Committee mitigations for the safety risk reduction program. Readers should refer to section II.F.5 of the preamble above for more discussion about these changes and the role of the Accountable Executive.

Given these revisions that FTA is adopting in this final rule, FTA does not agree that it is necessary to change the word “consider,” as proposed in §§ 670.20(a)(2)–(3). The word “consider” reflects the flexibility inherent in SMS. Transit agencies and their Safety Committees have flexibility to recommend the safety risk mitigations through the safety risk reduction program that are appropriate to their unique operating environments. FTA therefore substantively adopts the provisions originally proposed at §§ 670.20(a)(2)–(3) but has relocated them to §§ 673.25(d)(3)–(4), as explained in section II.G.2 of this preamble above.

FTA acknowledges the numerous commenters that opposed FTA requiring an Accountable Executive to implement safety risk mitigations recommended by the Safety Committee due to concerns regarding conflict with existing SMS principles, conflict with the authority of the Accountable Executive, reduced implementation flexibility, a lack of accepted standards for the associated technologies, and a lack of availability of mitigations. FTA notes that this requirement is established by statute. As discussed in the Safety Committee section above, 49 U.S.C. 5329(d)(1)(I) requires the ASP to include mitigations related to the safety risk reduction program, including (1) measures to reduce visibility impairments for bus operators that contribute to accidents and (2) the deployment of assault mitigation infrastructure and technology on buses when a safety risk assessment determines such measures would be effective at reducing associated safety events. FTA further notes that this final rule maintains the role of the Accountable Executive as having control or direction over the human and capital resources needed to develop and implement both the transit agency’s ASP and the transit agency’s Transit Asset Management Plan. Further, FTA notes that not all safety risk mitigations are required to be included in the ASP; only those identified by the Safety Committee through the safety risk reduction program.

FTA also acknowledges commenters that urged FTA to require transit agencies to implement all safety risk mitigations identified by the Safety Committee as part of the safety risk reduction program. FTA confirms that this final rule requires the implementation of all such safety risk mitigations. One of the Safety Committee's key responsibilities under 49 U.S.C. 5329(d)(5)(A)(iii) is "identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment." As discussed in the Safety Committee section above, 49 U.S.C. 5329(d)(1)(I) requires the ASP to include mitigations related to the safety risk reduction program, including (1) measures to reduce visibility impairments for bus operators that contribute to accidents and (2) the deployment of assault mitigation infrastructure and technology on buses when a safety risk assessment determines such measures would be effective at reducing associated safety events.

The statute does not require an agency to include mitigations unrelated to the safety risk reduction program in the ASP. For any mitigations identified and recommended by the Safety Committee that are not included in the ASP, FTA is requiring at § 673.23(d)(1)(ii) that an Accountable Executive of a large urbanized area provider receives and must consider all other safety risk mitigations that are recommended by the Safety Committee. In response to the comment regarding FTA's evaluation of compliance with requirements related to safety risk mitigations established through the safety risk reduction program, FTA notes that it monitors compliance with part 673 requirements through its existing triennial review process. However, FTA notes that transit agencies are required to allocate their safety set aside to address a missed safety performance target in the safety risk reduction program. This means that an agency will still be required to allocate resources in an instance of an inappropriate or ineffective safety risk mitigation that has not enabled the agency to meet the associated safety performance target. In this way, the requirements of the safety risk reduction program help support continuous improvement by ensuring that ineffective safety risk mitigations are addressed to support improvement in safety performance.

Regarding the inconsistency between the preamble and regulatory text in the NPRM regarding consideration of the deployment of assault mitigation

infrastructure and technology, FTA notes that there was an error in proposed § 673.20(a)(3). FTA confirms that the preamble was correct: This requirement is intended to apply to both transit vehicles and transit facilities and assaults on transit workers are not limited to assaults that occur on transit vehicles. In response to comments, FTA has revised this provision to include the deployment of assault mitigation infrastructure and technology in transit facilities. FTA has relocated this provision from § 673.20(a)(3) to § 673.25(d)(4), as discussed in section II.G.2 of this preamble above.

5. Scope of the Safety Risk Reduction Program

Comments: One commenter recommended removing the word "injury" from the description of the safety risk reduction program in § 673.20(a) and safety performance targets in § 673.20(b). The commenter noted that the definition of safety event includes the term "injury," so this deletion would avoid unnecessary repetition. Another commenter asked for clarification of this term and recommended that it be defined in the same way as in the NTD.

Response: FTA acknowledges that some safety events may result in injuries. However, FTA disagrees that addressing a reduction of safety events and injuries through the safety risk reduction program is duplicative. Trends in injuries and injury rates may occur distinctly from trends in safety events and safety event rates. For example, an agency that experiences more severe safety event outcomes may show increasing injury trends as compared to its safety event trends. Further, addressing a reduction of both accidents and injuries is required by statute at 49 U.S.C. 5329(d)(1)(I). FTA agrees with the commenter that adding a definition of "injury" would be helpful and that this definition should match the one used by the NTD. FTA therefore is adding a definition of "injury" to § 673.5, which mirrors the definition used by the NTD.

6. Safety Set-Aside

General

Comments: Several commenters, including during an FTA webinar, asked for additional clarification and FTA guidance on using the 0.75% safety set-aside, as described in proposed § 673.20(e). Specifically, one commenter asked for clarification about whether the set-aside is always linked to a missed safety performance target. The same commenter noted that allocating the set-

aside in the following year is problematic, given that section 5307 funds likely already are forecasted and budgeted in a multi-year plan. Two commenters asked whether the safety set-aside may be used to supplement existing safety projects or whether it must be used only for new safety projects. A participant at an FTA webinar asked whether the set-aside is limited to capital projects. One commenter asked for clarification on the lifespan of the set-aside, and whether it is subject to section 5307 grant requirements. One commenter stated that the set-aside amount might not be enough for small RTAs. Two commenters asked how transit agencies that are not direct recipients of section 5307 funds should meet the safety set-aside requirements, noting that such agencies do not determine the transit funding in their metropolitan areas.

Response: FTA notes that the safety set-aside is required under 49 U.S.C. 5329(d)(4). While FTA understands the concern regarding funding being forecasted in a multi-year plan, FTA does not have discretion to make the safety set-aside optional. Per 49 U.S.C. 5329(d)(4)(B), the safety set-aside is required of every recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more (a large urbanized area provider). This means that all large urbanized area providers must allocate at least 0.75% of section 5307 funds to safety-related projects eligible under section 5307. This requirement exists whether the agency misses a safety performance target under the safety risk reduction program or not. In an instance where a large urbanized area provider does not meet a safety performance target established under the safety risk reduction program, the safety set-aside must be used on projects that are reasonably likely to assist the agency in meeting the safety performance target in the future, per 49 U.S.C. 5329(d)(4)(C)–(D).

In response to the commenter that asked about safety set-aside application to existing safety projects, FTA notes that transit agencies may allocate the set-aside to ongoing safety initiatives rather than completely new safety projects under certain circumstances. The funds must be directed to safety-related activities. If the recipient is meeting the safety performance targets established under the safety risk reduction program, the recipient may continue to direct the set-aside funds to any safety-related purpose, including ongoing initiatives and new safety projects.

Some safety expenditures identified to satisfy the safety requirement may also be used to support the 1% requirement for security-related projects for the urbanized area (UZA) under 49 U.S.C. 5307(c)(1)(J) if the recipient can justify the expense as both a safety and a security expense. If the recipient is not meeting its established safety performance target(s) established under the safety risk reduction program, the recipient may continue to expend the safety set-aside on ongoing safety initiatives if those initiatives are reasonably likely to assist the recipient in meeting the missed target(s). If the ongoing initiatives are not reasonably likely to assist the recipient in meeting the applicable target(s), it may be necessary for the recipient to expend its set-aside funds on new safety projects.

FTA acknowledges additional comments requesting clarification on the safety set-aside and its applications. In response, FTA notes that the safety set-aside establishes a minimum amount of funds that must be allocated to safety-related projects eligible under section 5307. In response to the commenter that expressed concern that the safety set-aside for a small RTA may be insufficient, FTA notes that the set-aside is statutorily defined as “not less than” 0.75 percent of the transit agency’s section 5307 funds. It is therefore a floor, not a ceiling. Transit agencies’ safety-related spending is not limited to the amount of the safety set-aside, and transit agencies may spend section 5307 funds on safety projects that exceed the amount of the safety set-aside. Further, FTA notes that this final rule does not alter existing project funding eligibilities under section 5307; project expenses must be eligible for reimbursement under section 5307.

FTA acknowledges the comments regarding the application of safety set-aside requirements for large urbanized area providers that are not direct recipients, and notes that most large urbanized area providers receiving section 5307 funds are direct recipients. This final rule and the safety set-aside requirements apply to all operators of public transportation systems that are recipients and subrecipients of section 5307 funds. It is the direct recipient’s responsibility to ensure its subrecipients are complying with the requirement, similarly to how they are required to ensure any subrecipients are complying with other requirements, such as civil rights or procurement requirements. FTA plans on developing technical assistance related to the safety set-aside, including application to subrecipients.

Missed Safety Risk Reduction Program Safety Performance Target

Comments: Two commenters opposed the requirement in § 673.20(e)(3) to allocate the set-aside when an agency misses a safety risk reduction program performance target. One stated that allocation should be based on an agency’s Safety Risk Management process rather than a missed performance target set by the Safety Committee. The other commenter requested that FTA delete the word “must” to give agencies flexibility to use any funding source to address a missed target. Two commenters urged FTA to clarify that when an agency misses a safety risk reduction program performance target, it may allocate its set-aside toward ongoing or planned safety projects rather than just new ones. Both commenters noted that the results of safety investments might not be felt immediately.

In addition, several commenters sought clarification about set-aside allocation requirements in § 673.20(e)(3). One commenter asked whether an agency needs to specifically call out the missed safety performance target when it applies the set-aside and asked for guidance for section 5307 recipients to better understand how to address the requirement at the time of application for section 5307 funds. Three commenters asked whether the entire set-aside must be allocated to address a single unmet performance target or if a transit agency may use this funding to address additional safety performance targets. Two of these commenters noted that some safety risk mitigations, such as a bus stop relocation or a new Standard Operating Procedure, may cost significantly less than the set-aside and asked whether the entire set-aside nonetheless must be allocated in such cases.

One commenter asked who at the transit agency determines whether a project is “reasonably likely to assist the agency in meeting the target” when allocating the safety set-aside under § 673.20(e)(3). A separate commenter urged FTA to give transit agencies flexibility to identify eligible expenses that are “reasonably likely” to achieve safety performance targets, noting that some agencies may already be working to address the specific safety issue. One commenter asked FTA to clarify the meaning of a “safety related project.”

Another commenter asked how allocating the set-aside will work when an agency continues to miss a safety performance target, but the set-aside has already been allocated to a mitigation addressing a previously missed target.

One commenter asked whether the use of safety set-aside funds in the following fiscal year referred to the Federal fiscal year or the transit agency’s fiscal year.

Response: FTA acknowledges the two commenters that opposed the requirement in § 673.20(e)(3) to allocate the set-aside to specific projects when an agency misses a safety risk reduction program performance target. However, because these are statutory requirements under the Bipartisan Infrastructure Law, FTA does not have discretion to make them optional. Further, while statute links the allocation of the set-aside to specific projects when an agency misses a safety risk reduction program performance target, FTA notes that an agency’s Safety Risk Management process plays a large role in the safety risk reduction program as the means to assess safety risk and implement safety risk mitigations. FTA notes that this final rule adopts requirements at §§ 673.25(d)(3)–(6) related to the use of Safety Risk Management processes for the safety risk reduction program.

FTA acknowledges the commenters seeking clarification on the ability for transit agencies to allocate the set-aside toward ongoing or planned safety projects rather than just new ones when an agency misses a safety risk reduction program performance target. FTA notes, as discussed in the section above, that transit agencies may allocate the safety set-aside to ongoing safety initiatives rather than completely new safety projects, to the extent they are reasonably likely to assist the agency in meeting the safety performance target in the future, as required by statute. If the initiatives are not reasonably likely to assist the recipient in meeting the applicable safety performance target(s), it may be necessary for the recipient to expend its set-aside funds on new safety projects.

FTA also acknowledges the commenter’s question about addressing the set-aside at the time an agency is applying for section 5307 funds. Recipients must identify when they are using the safety set-aside to address a missed safety performance target in the applicable grant application in TrAMS; reserve funds to assist the recipient in meeting any missed targets; and document intended compliance with the requirement at the pre-award stage. Recipients should note the safety goal or safety-related project in a section 5307 grant’s executive summary.

FTA appreciates the comments received requesting clarification about whether they must allocate the entire set-aside to address a single unmet performance target. FTA clarifies that if

the identified projects cost less than the transit agency's safety set-aside, the agency may use the remaining safety set-aside for other safety-related projects eligible under section 5307. Transit agencies with specific questions regarding the use of section 5307 funding should contact their FTA regional office.

FTA appreciates the comments received requesting clarification about who determines whether a mitigation is "reasonably likely" to assist the transit agency in meeting the safety performance target in the future. FTA notes that § 673.27(d)(3)(iii) requires the transit agency to allocate its set aside to projects reasonably likely to assist in meeting the missed safety risk reduction program safety performance target in the future. As described in § 673.19(d)(3)(i), one of the Safety Committee's statutory responsibilities is identifying and recommending safety risk mitigations, including safety risk mitigations associated with any instance where the transit agency did not meet a safety performance target for the safety risk reduction program. FTA interprets the identification of safety risk mitigations by the Safety Committee under § 673.19(d)(3)(i) to mean that the Safety Committee under their authority may identify mitigations that are reasonably likely to assist in meeting the missed safety risk reduction program safety performance target. FTA also notes that under the agency's Safety Risk Management process, sources outside of the Safety Committee may also identify safety risk mitigations, such as through a transit agency's safety department.

FTA acknowledges the commenter's question about an agency that continually misses a safety performance target. FTA notes that the safety set-aside is calculated annually based on a transit agency's section 5307 funding. If an agency fails to meet a safety performance target under the safety risk reduction program for a second year, the agency must again use its safety set-aside for safety risk mitigations reasonably likely to assist the transit agency in meeting the target in the future. FTA clarifies that the term "fiscal year" in this final rule refers to the Federal fiscal year.

FTA is adopting the proposed provisions relating to the safety set-aside, but has relocated them from § 673.20(e) to § 673.27(d)(3), as explained in Section II.G.2 of this preamble above.

Compliance

Comments: One commenter asked for clarification regarding the SSOA's role in overseeing the safety set-aside for

RTAs under their jurisdiction. Another commenter asked how FTA will enforce the reallocation requirement and what FTA will review during triennial reviews relating to this requirement.

Response: This final rule does not establish new oversight requirements for SSOAs related to the safety set-aside. SSO Program requirements are established through part 674. Further, FTA notes that it plans to use its existing triennial review process to monitor compliance with part 673. Following regulatory updates, FTA modifies the Comprehensive Review Contractor's Manual used to conduct triennial reviews to address changes to review procedures based on new regulatory requirements. FTA publishes the Comprehensive Review Contractor's Manual upon update. For additional discussion about FTA oversight and enforcement, see Section II.D.2 of this preamble.

H. § 673.23—Safety Management Policy

Comments: FTA received one comment asking for clarification about how the proposal to require large urbanized area providers to establish the necessary authorities, accountabilities, and responsibilities for the management of safety for the Safety Committee is different from what transit agencies are currently doing.

FTA received comments related to the transit worker safety reporting program from several commenters. Commenters suggested that the requirements at § 673.23(b) should include requirements for anonymous reporting. These commenters expressed concern that transit workers are reluctant to report hazards due to fear of retaliation and without comprehensive near-miss reports, management cannot address root causes adequately.

One commenter asked for an example of when the transit worker safety reporting program should be used for an assault. Another commenter stated that FTA should clarify or more narrowly define the kinds of things that are meant to be reported to ensure transit agencies and workers have a clear understanding of what exactly should be reported. One commenter stated that it appeared that the proposed changes would impact Occupational Safety and Health Administration (OSHA) whistleblower requirements.

Response: FTA appreciates the question regarding the proposal at § 673.23(d) to require large urbanized areas providers to establish the necessary authorities, accountabilities, and responsibilities for the management of safety for the Safety Committee. FTA notes that § 673.23(d) sets forth the

groups or individuals within a transit agency for which the agency must establish the necessary authorities, accountabilities, and responsibilities for the management of safety, as they relate to the development and management of the transit agency's SMS. While transit agencies may have already defined the Safety Committee's authorities, accountabilities, and responsibilities in their ASP in response to the enactment of the Bipartisan Infrastructure Law, this final rule adds the formal requirement to part 673 and establishes specific Safety Committee requirements in § 673.19, which impact the Safety Committee's authorities, accountabilities, and responsibilities.

As for the comments that asked FTA to require transit worker safety reporting programs to include anonymous reporting mechanisms, FTA declines to establish anonymity requirements at this time. As discussed in section II.M.3 of this preamble, FTA received several responses related to its request for information on confidential close-call/near-miss reporting systems. FTA thanks commenters for this feedback and is considering this information to inform future FTA action and technical assistance. FTA encourages transit agencies to consider providing ways for transit workers to anonymously report safety concerns and to consider participating in third-party confidential close-call reporting programs such as the Close Call Data Program operated by the Bureau of Transportation Statistics.³¹

In response to the commenter who asked for an example of when transit workers may use a transit worker safety reporting program to report instances of transit worker assault, FTA requires transit agencies at § 673.23(b) to establish transit worker safety reporting programs that allow transit workers to report safety concerns, "including assaults on transit workers." FTA expects transit worker safety reporting programs to allow transit workers to report any instance of an assault on a transit worker as defined at § 673.5. FTA declines to more narrowly define the types of concerns that may be reported through a transit worker safety reporting program, as that may have the unintended impact of limiting safety concern reporting. In accordance with existing SMS implementation principles, FTA preserves the flexibility for transit agencies to establish the transit worker safety reporting processes that are most effective for their

³¹ Bureau of Transportation Statistics (November 2023). "Close Call Data Program." <https://www.closecall.bts.gov/>.

operating realities. Finally, FTA does not believe that any of the requirements in this final rule impact OSHA whistleblower requirements. FTA notes that nothing in this final rule is intended to limit a transit worker's ability to file an OSHA complaint. Further, § 673.23(b) requires transit agencies to develop and implement transit worker reporting programs that include protections for transit workers who report.

I. Section 673.25—Safety Risk Management

1. Hazard Identification

Comments: One commenter requested that FTA expand the list of sources of hazard identification under § 673.25(b)(2) to include data provided by the agency's Safety Committee and data provided by transit workers through the agency's transit worker safety reporting program.

One commenter requested that FTA clarify which data and information regarding exposure to infectious disease transit agencies must consider as part of the hazard identification process.

Response: FTA agrees that the list of required sources for hazard identification at § 673.25(b)(2) is not comprehensive, but it is not intended to be exhaustive. FTA notes that transit agencies can consider other sources such as Safety Committee recommendations. FTA will consider providing examples of additional hazard identification sources in technical assistance.

The Bipartisan Infrastructure Law establishes a requirement at 49 U.S.C. 5329(d)(1)(D) for ASPs to address minimizing exposure to infectious diseases, consistent with guidelines from the CDC or a State health authority. This statutory requirement is incorporated into the final rule at § 673.25(b)(2)(ii). Data and information regarding exposure to infectious disease could include, but are not limited to, CDC or State public health authority advisories, warnings, and recommendations for preventing the spread of infectious disease and best practices identified during the COVID-19 public health emergency.

2. Safety Risk Mitigation

For a discussion of Safety Risk Mitigations for the Safety Risk Reduction Program, please refer to Section II.G.4 of the preamble above.

Comments: Several commenters suggested that FTA consider requiring agencies to implement specific safety risk mitigations. One labor organization commenter recommended several safety

standards regarding pedestrian safety, operator safety, passenger safety, bus mechanic safety, and health safety. The commenter also requested that FTA take specific actions in these areas, such as bolstering funding for police programs. Other suggestions from commenters include crowdsourced incident reporting systems to combat assaults on transit workers, video surveillance systems, and prohibitions on certain criminal offenders using transit.

One transit agency noted that FTA should fund pilot programs for fully enclosed bus operator compartments to mitigate assault risk. Relatedly, one commenter applauded FTA's pilot program for bus compartment redesign.

FTA also received a comment arguing that requiring agencies to "address" the role of the Safety Committee in § 673.25(d)(1) is inadequate. The commenter stated that FTA should require transit agencies to use their Safety Committees to identify safety risk mitigations and other safety improvements and require management to act on safety risk mitigation information and requests from the Safety Committee and implement these changes. This commenter also requested that FTA add the Safety Committee to proposed § 673.25(d)(2), which lists the sources that transit agencies must consider for safety risk mitigation. Another commenter recommended that transit agencies should use a threshold based on a hazard matrix to decide when safety risk mitigations should be submitted to the Accountable Executive to reduce the number of mitigations that must be reviewed by the Accountable Executive.

Response: FTA appreciates the recommendations. FTA's National Safety Plan includes a list of voluntary minimum safety standards and recommended practices to support mitigation of safety risk and to improve safety performance throughout the transit industry. FTA declines to adopt mandatory standards or mitigations through the PTASP rulemaking. FTA is considering the development of certain mandatory safety standards and will take commenters' suggestions into consideration to inform potential future FTA action, including through its Transit Worker and Public Safety rulemaking.

In response to the commenter who requested that FTA fund pilot programs for fully enclosed bus operator compartments, FTA notes that its Bus Operator Compartment Program supports research projects that protect operators from assault and improve their view of the road through innovative designs. FTA appreciates the

comment in support of this program. FTA has launched the Transit Worker and Rider Safety Best Practices Research Project, which supports research to identify public safety concerns for transit workers and riders, determine the most effective mitigation strategies to minimize the safety risk associated with those safety concerns, and promote the implementation of those strategies.

FTA acknowledges the commenter that argued that FTA should require transit agencies to use their Safety Committee to identify mitigations and safety improvements, and that transit agency management implement safety risk mitigations that are recommended by the Safety Committee. The final rule incorporates at § 673.19(d) the statutory requirement that Safety Committees identify and recommend risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment. As discussed in Section II.G.4 of the preamble above, the final rule requires a transit agency's Accountable Executive to implement safety risk mitigations that have been included in the ASP, including mitigations for the safety risk reduction program recommended by the Safety Committee. The Accountable Executive does not have authority to decline to implement elements of an ASP that has been duly approved by the agency's Safety Committee and Board of Directors, including safety risk mitigations. FTA declines to add the Safety Committee to the list of required sources for safety risk mitigations in § 673.25(d)(2). FTA notes that the list is intended to be limited to external sources, such as FTA and oversight bodies such as an SSOA, and does not include internal transit agency sources such as a Safety Committee, subject matter experts, a transit agency's safety department, or other internal sources.

FTA declines to add a new requirement for transit agencies to use a threshold based on a hazard matrix to decide when safety risk mitigations should be submitted to the Accountable Executive because this would conflict with requirements at §§ 673.11(a), 673.25(d), and 673.27(d) regarding the role of the Safety Committee to identify and recommend safety risk mitigations and would reduce the flexibility afforded transit agencies to develop safety risk management processes based on the size, scope, and complexity of the transit agency.

J. Section 673.27—Safety Assurance

Comments: One commenter argued that it is unrealistic for FTA to require

all transit agencies to conduct continuous improvement and that this would cause SMS to be less scalable.

One commenter asked whether transit agencies must describe their annual safety performance assessment processes under § 673.27(d) in a document separate from the ASP. They further asked for additional information on FTA's expectations for this annual safety performance assessment, including whether the Safety Committee is required to play a role in the performance assessment. The commenter noted the Safety Committee members may lack the training or time to do so. One commenter argued that FTA should require large urbanized area providers to use their Safety Committee to conduct this safety performance assessment.

Another commenter asked whether the continuous improvement component of SMS occurs only after the full implementation of SMS and whether activities that a transit agency undertakes to improve SMS processes or safety performance during SMS implementation are considered to be continuous improvement.

Another commenter asked for clarification regarding the differences between Management of Change, System Modification, and Configuration Management. Similarly, another commenter asked FTA to clarify how to measure deficiencies for purposes of § 673.27(d)(4) and how to audit deficiencies. The commenter also argued that requiring transit agencies to integrate SSOA concerns into the continuous improvement process would make it difficult to prioritize risk management in a data-driven way without a process for appealing SSOA decisions. The commenter requested clarification as to whether there are limits to what the SSOA may require an RTA to include in the continuous improvement process.

Regarding the role of the Safety Committee in the Safety Assurance process, one commenter urged FTA to require transit systems to use their Safety Committees to identify ineffective, inappropriate, and poorly implemented mitigations and for the transit agency to implement any changes that the Safety Committee directs. This commenter also suggested that FTA should require the Accountable Executive to implement the plan to address deficiencies identified in the annual safety performance assessments required under proposed § 673.27(d)(2).

Response: In the NPRM, FTA proposed to extend the continuous improvement requirements to small

public transportation providers. This proposal was responsive to the Bipartisan Infrastructure Law, which requires large urbanized area providers to establish a Safety Committee and a safety risk reduction program that involves key elements of continuous improvement, such as safety performance target setting, safety performance monitoring, and the identification of safety deficiencies and safety performance issues. FTA believes that requiring the processes for small public transportation providers eliminates possible inconsistencies in enforcement among small public transportation providers: some small public transportation providers operate in large urbanized areas and are therefore subject to statutory requirements for continuous improvement. FTA appreciates that this may increase the level of effort required for small providers compared to the 2018 PTASP final rule. However, FTA does not agree that this is an unrealistic requirement for these transit agencies, or that it would make SMS less scalable. As noted in the NPRM, these providers already are required to set safety performance targets based on the safety performance measures established in the National Safety Plan. Based on the experience that these providers have gained by operating an SMS and carrying out required safety performance measurement activities, FTA expects they will be able to formalize these continuous improvement activities and document them in their ASP.

Transit agencies may describe their annual safety performance assessment process within their ASP or incorporate it in the ASP by reference. FTA agrees with the commenter that argued the Safety Committee must be involved in a large urbanized area provider's safety performance assessment process. One of the Safety Committee's key responsibilities established under 49 U.S.C. 5329(d)(5)(A)(iii) is "identifying safety deficiencies for purposes of continuous improvement." FTA therefore adopts the proposed requirement at § 673.27(d)(1)(ii), which requires that the safety performance assessment process for large urbanized area providers address the role of the agency's Safety Committee. Transit agencies and their Safety Committee have flexibility to determine how to implement these continuous improvement activities. However, the Safety Committee's procedures must address how the Safety Committee will carry out this responsibility, as required by § 673.19(c)(9). FTA understands the

concerns regarding Safety Committee training and refers readers to section II.F.4 above for discussion of this topic.

In response to the question regarding when continuous improvement requirements apply, FTA confirms that the continuous improvement requirements established at § 673.27(d) are not dependent on an agency reaching a specific level of SMS implementation.

In response to the commenter that asked for clarification regarding the differences between Management of Change, System Modification, and Configuration Management, FTA notes that "management of change" is a subheading under § 673.27 and a required process within the Safety Assurance component of an SMS. Given that "system modification" and "configuration management" are not found in part 673, FTA does not believe it is necessary to define these two terms in this final rule.

FTA appreciates the question from the commenter regarding the term "deficiencies" used in § 673.27(d). FTA notes that § 673.27(d) references two specific types of deficiencies: deficiencies in the transit agency's SMS and deficiencies in the transit agency's performance against safety performance targets. Deficiencies in the transit agency's SMS include concerns with the processes and procedures defined by the agency to carry out the transit agency's SMS. Deficiencies in the transit agency's performance against safety performance targets include instances where the transit agency fails to meet a safety performance target, including targets for the safety risk reduction program for large urbanized area providers. This final rule does not establish any audit requirements related to safety performance deficiencies. Defining requirements for an RTA to appeal the decisions of an SSOA are out of scope for this final rule. FTA notes that § 673.27(d)(1)(iii) requires an RTA's continuous improvement process to address any specific SSOA internal safety review requirements. FTA confirms that incorporation of internal safety review processes into the continuous improvement element of the ASP should not interfere with an agency's ability to prioritize safety risk.

FTA appreciates the comment recommending that FTA require transit systems to use their safety committees to identify ineffective, inappropriate, and poorly implemented mitigations. FTA agrees with the commenter and notes that it is a key statutorily required responsibility under 49 U.S.C. 5329(d)(5)(A)(iii) for the Safety Committee to identify "mitigations or

strategies that may be ineffective, inappropriate, or were not implemented as intended.” Accordingly, § 673.19(d)(3)(iii) of the final rule incorporates this statutory requirement. Further, FTA agrees with the commenter’s perspective that the Accountable Executive is responsible for carrying out the plan to address safety performance deficiencies required under § 673.27(d)(4). FTA notes that § 673.27(d)(4) states that the plan must be carried out “under the direction of the Accountable Executive.” FTA reiterates further that per § 673.5, the Accountable Executive is ultimately responsible for carrying out the ASP. FTA believes additional clarification in the regulation is not necessary.

K. Section 673.29—Safety Promotion

1. Safety Training

Comments: One commenter asked whether the required safety concern identification and reporting training in § 673.29(a)(1) needs to be a standalone training course or if it could be incorporated into another element of the training program. Another commenter asked whether transit workers in an agency’s Safety Department are considered “directly responsible for safety” for purposes of the PTASP training requirements, and whether FTA expects these workers to complete the Public Transportation Safety Certification Training Program (PTSCTP) under 49 CFR part 672,³² as well as de-escalation training and safety concern identification and reporting training. Another commenter asked whether transit workers who have completed training under the PTSCTP must retake TSI training courses after the changes adopted in this final rule have been incorporated into the TSI training program.

Another commenter asked FTA to clarify the requirement to provide refresher training “as necessary,” and who decides whether refresher training is necessary. One commenter stated anecdotally that their transit agency has not provided safety-related refresher training in a decade and that some transit workers have not received safety training at all.

One commenter stated that FTA’s proposed requirements are not specific enough to ensure agencies provide effective training. This commenter suggested that FTA require transit agencies to provide safety training to new hires within 30 days of their hiring

date and annual refresher training to all frontline transit workers. It also suggested that FTA should require safety training to be interactive and for transit agencies to update training materials at least every five years. Another commenter suggested that training on how to report safety issues be included in the ASP.

One commenter expressed concern about the feasibility and cost of the new training requirements. Another commenter suggested that FTA provide technical assistance to assist agencies and their contractors implement training programs.

One commenter asked FTA to clarify the proposed requirement in § 673.29(a)(2) for large urbanized area providers to include maintenance workers in their safety training program, specifically whether this includes technical maintenance training. A separate commenter suggested that FTA create a certification program for mechanics regarding repair of electric and alternative fuel buses, and other new technologies. One commenter agreed with limiting FTA’s proposal in § 673.29(a)(2) to large urbanized area providers. Conversely, one commenter suggested that FTA broaden this requirement to all transit agencies, including small transit providers and another commenter similarly suggested that FTA combine § 673.29(a)(1) with § 673.29(a)(2) for ease of implementation.

Response: Transit agencies may develop standalone training on safety concern identification and reporting, may incorporate this training into existing courses or programs, or both. FTA has not identified transit workers within a transit agency’s Safety Department as automatically needing to be covered by the comprehensive safety training program. FTA gives agencies flexibility to define who is “directly responsible for safety” for the purposes of the PTASP safety training program. For questions related to PTSCTP applicability and requirements, FTA encourages individuals to refer to 49 CFR part 672.

Under § 673.29(a)(1), FTA requires transit agencies to implement refresher training “as necessary” for their comprehensive safety training program. FTA appreciates the recommendation to establish more specific requirements related to timelines for initial and refresher training. However, FTA believes that the flexibility regarding the type and frequency of refresher training ensures that agencies can establish requirements that are responsive to the size, scope, and complexity of their organization. For example, transit

agencies may determine that annual refresher training is necessary for certain elements of their PTASP comprehensive safety training program. In response to the commenter who stated that their transit agency has not provided safety-related refresher training in a decade and that some transit workers have not received safety training at all, FTA notes that this final rule requires transit agencies to establish a comprehensive safety training program for all operations transit workers and transit workers directly responsible for safety in the transit agency’s public transportation system. For large urbanized area providers, the agency’s comprehensive safety training program also must include maintenance transit workers. FTA notes that SSOAs may implement specific refresher training requirements for RTAs under their jurisdiction.

FTA agrees that interactive training and routine updates of training materials are good practices for training programs. FTA declines to require these practices or the commenter’s suggested timelines for initial and refresher training due to the flexibility afforded to transit agencies by the PTASP regulation, but FTA will consider these topics for future technical assistance. FTA appreciates the suggestion that it establish requirements for the development and delivery of training on how to report safety issues. FTA agrees that training on safety concern reporting and transit worker safety reporting processes at an agency are important. This final rule does not establish specific training requirements related to these individual program elements. However, FTA encourages transit agencies to document all such training as part of its comprehensive safety training program.

FTA acknowledges the comment that noted training requirements would add costs to the transit agency. FTA acknowledges that FTA-provided or FTA-recommended training is useful and has the potential to reduce burden on transit agencies, and FTA will consider the development of additional training resources to support these efforts.

The Bipartisan Infrastructure Law requires at 49 U.S.C. 5329(d)(1)(H)(ii) that large urbanized area providers include maintenance workers in their PTASP comprehensive safety training program. FTA appreciates the benefit transit agencies could receive from including maintenance transit workers in the comprehensive safety training program. Transit agencies that are not large urbanized area providers may include portions of their maintenance

³² Public Transportation Safety Certification Training Program, 83 FR 34067 (2018) (Codified at 49 CFR part 672). <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-VI/part-672>.

workforce in the comprehensive safety training program based on their agency's definition of "transit workers directly responsible for safety" or on a voluntary basis. However, FTA declines to extend the requirement to all agencies due to concerns related to industry burden.

Transit agencies do not need to include technical maintenance-specific training in their comprehensive safety training program. Rather, under § 673.29(a), large urbanized area providers must include maintenance transit workers in their comprehensive safety training program, which includes de-escalation training, safety concern identification and reporting training, and refresher training as necessary.

FTA appreciates the suggestion received from the commenter regarding the creation of a certification program for mechanics regarding repair of electric and alternative fuel buses, and other new technologies but notes that this final rule does not establish a new certification program and that existing safety certification training requirements are defined at 49 CFR part 672.

FTA declines to combine §§ 673.29(a)(1) and 673.29(a)(2). Given that these two paragraphs have different applicability, FTA believes that keeping them separate is the clearest way to articulate these requirements.

2. De-Escalation Training

Comments: One commenter requested general clarification about the de-escalation training requirement in § 673.29(a)(1). One commenter recommended that FTA establish a uniform de-escalation training curriculum and require all bus operators and transit workers who work directly in the field to receive de-escalation training, including retraining for operators who previously received this training. The commenter noted that some bus operators have not had de-escalation refresher training in years, and some have never had this kind of training at all. They also argued that transit agencies' existing de-escalation training sometimes is not thorough or is focused on the wrong type of transit workers.

One commenter expressed concern regarding the time and cost of de-escalation training. Another commenter requested technical assistance from FTA about the requirement, including a list of vendors on FTA's website similar to the COVID-19 resources page that FTA established during the pandemic. Another commenter argued that if RTAs are allowed to create their own de-escalation training, FTA should provide them with guidelines.

Two commenters recommended that FTA update the de-escalation training offered through NTI using current industry standards, with one commenter expressing concern that the current training course is outdated and ineffective.

A participant at an FTA webinar and several commenters expressed concern that the de-escalation training requirement is just a "check-the-box" exercise. One commenter stated that crime prevention and workplace violence are complex issues that frequently involve individuals experiencing mental health or substance abuse crises or repeat criminal offenders who do not respond to de-escalation techniques. It stated that the transit industry needs more than this rule change to address these issues.

Two commenters requested that FTA more clearly define which individuals must complete de-escalation training. This commenter also asked if a transit agency should consider any metrics for determining whether to provide de-escalation training and if it can use a threshold for requiring de-escalation training based on the number of assaults experienced at an agency per year.

One commenter stated that FTA did not specify how often de-escalation training must occur.

Response: FTA agrees that de-escalation training is beneficial for transit operators and any transit worker who works directly in the field. In § 673.29(a), FTA is requiring training programs to include de-escalation training for operations transit workers and transit workers directly responsible for safety, which could include transit workers directly in the field. For large urbanized area providers, this requirement also extends to maintenance transit workers. FTA worked with the National Transit Institute and the TSI to develop and provide Assault Awareness and Prevention and Violence in the Transit Workplace train-the-trainer and direct delivery courses.³³ While transit agencies are not required to use these courses as part of their training program, transit agencies may use these courses as part of their de-escalation training. FTA understands the concerns that this training course is outdated and ineffective and will consider updating the existing training and developing a voluntary curriculum for de-escalation training as part of its ongoing technical assistance. Fundamentally, FTA

believes that de-escalation training has a significant ability to improve transit worker responses to challenging and potentially dangerous situations and does not view de-escalation training as a "check-the-box" exercise.

FTA acknowledges the commenter that noted refresher training requirements would add costs to the transit agency. FTA notes that FTA-provided or FTA-recommended training is useful and has the potential to reduce burden on transit agencies, and FTA will consider the development of additional refresher training resources to support these efforts. FTA acknowledges the SSOA commenter that argued that if RTAs are allowed to create their own de-escalation training, FTA should provide them with guidelines. In keeping with the inherent flexibility on an SMS, FTA believes that an RTA may develop its own de-escalation training and declines to establish specific guidelines that may restrict an RTA from addressing its own specific de-escalation needs. Further, FTA notes that SSOAs may establish additional requirements for the RTAs they oversee, including requirements related to the comprehensive safety training program.

FTA also appreciates the commenters that recommended FTA provide a list of vendors on FTA's website similar to the approach used by FTA to publish the COVID-19 resources toolkit, as well as guidelines to RTAs. FTA will consider these suggestions as it develops additional technical assistance related to de-escalation training.

FTA agrees that ongoing de-escalation training is beneficial. While FTA is not requiring a specific frequency for de-escalation training, FTA encourages transit agencies to establish a routine cadence for de-escalation training. FTA appreciates that transit workers may encounter a variety of situations, including ones involving individuals experiencing mental health or substance abuse crises, and believes that de-escalation training can help prepare transit workers to handle these situations. Transit agencies could consider using metrics, such as the number of assaults experienced per year, to determine how often to provide de-escalation refresher training.

3. Safety Communication

Comments: One commenter requested that FTA clarify when a transit agency must communicate hazards relevant to an employee's roles or responsibilities under § 673.29(b), and whether this requirement applies to all relevant hazards or only hazards that meet a determined risk rating. The commenter

³³ Federal Transit Administration (October 2023). "FTA-Sponsored Training Courses." <https://www.transit.dot.gov/regulations-and-guidance/safety/fta-sponsored-training-courses>.

also requested clarification on the required timing for informing employees of actions taken in response to safety reporting.

Three commenters stated that FTA should clarify the requirements for integrating the results of cooperation with frontline transit worker representatives and Safety Committee activities into the agency's overall safety communication process at § 673.29(b). One commenter requested further clarification on whether FTA is mandating routine communications to the organization regarding safety and what those communications must include.

One commenter asked whether these safety communication activities should be included in the ASP or in separate documentation.

Response: FTA is not establishing a specific threshold for determining which hazards and associated safety risk information relevant to a transit worker's roles and responsibilities a transit agency must communicate. Similarly, FTA has not established a time frame for informing transit workers of hazards, associated safety risk, or actions taken in response to reports received through a transit worker safety reporting program. FTA believes that the flexibility regarding these requirements ensures that agencies can establish processes that are responsive to the size, scope, and complexity of their organization. This final rule provides sufficient flexibility for transit agencies to make these determinations themselves.

FTA is not establishing more explicit requirements regarding minimum communication relating to frontline transit worker representatives and Safety Committees. In deference to the significant differences in scope and mechanisms for communication throughout the transit industry, FTA believes that transit agencies should have flexibility in this area. FTA will consider technical assistance on safety communication processes in the future.

Finally, FTA appreciates the question regarding whether these safety communication activities should be included in the ASP or in separate documentation. Under § 673.11(a)(2), a transit agency's ASP must document the processes and activities related to SMS implementation, which a transit agency may include or incorporate by reference. This includes the safety communication processes established under § 673.29(b). However, FTA does not expect transit agencies to document the actual communications in an ASP. Please note that each transit agency must keep these records for a minimum of three years

consistent with the recordkeeping requirements in § 673.31.

L. Section 673.31—Safety Plan Documentation

Comments: One commenter stated that FTA should more clearly define the required documentation of the programs, policies, and procedures that the agency uses to carry out its ASP as stated in § 673.31. Another commenter requested FTA specify that a transit agency must maintain documents related to ASP approval.

Response: FTA notes that safety plan documentation is an existing requirement under the 2018 PTASP final rule. FTA disagrees that this section requires additional specificity, as the documentation of SMS processes and activities, will differ among transit agencies. Therefore, FTA declines to make any changes to the final rule in response to these comments. FTA provides technical assistance to transit agencies with questions about documentation requirements via the PTASP Technical Assistance Center (TAC).³⁴ As noted above, under § 673.11(a)(2), a transit agency's ASP must document the processes and activities related to SMS implementation, consistent with the recordkeeping requirements in § 673.31, which cover SMS processes and procedures, and results from SMS activities, including ASP approvals.

M. Other Topics

1. Assaults on Transit Workers

Comments: Several commenters expressed concern that the requirements of this rule do not go far enough to prevent assaults on transit workers. Commenters noted that assaults on transit workers are widespread and worsening and that FTA should take swift and decisive action to address assaults on transit workers. Several commenters expressed that FTA should immediately begin the study and attendant rulemaking required by Section 3022 of the Fixing America's Surface Transportation (FAST) Act to protect transit workers from attacks.

One commenter stated that, in many transit agencies, bus operators who leave the driver's seat to de-escalate a developing situation or to defend a passenger or themselves from an active assault are dismissed from their position. They stated that policies like these make operators feel vulnerable and powerless in the lead up to or during an assault. An additional

commenter stated that, when an assault involving a transit worker and a passenger occurs, regardless of who initiated or actively participated in the assault, the driver is often punished and not the passenger.

One commenter stressed the importance of an Employee Assistance Program (EAP) for transit workers who are involved in assaults or other events, as well as access to paid time off to address physical and mental health needs following an event.

One commenter urged for increased Federal penalties for assaults on transit workers, specifically elevating the crime to a felony and banning offenders from using public transportation, noting that some state legal codes include passenger bans.

Response: FTA appreciates that some stakeholders may have desired this rulemaking to impose more specific requirements relating to assaults on transit workers. The PTASP rulemaking is one element of FTA's approach to addressing this important issue. The processes outlined in SMS and reinforced in this regulation are critical to the transit industry's response to assaults on transit workers. By following the processes of SMS, the transit industry can make effective changes at their agencies to reduce the incidence of assaults on transit workers.

FTA has also initiated a separate rulemaking on Transit Worker and Public Safety. This rule would establish minimum baseline standards and risk-based requirements to address transit worker and public safety based on the most current research and available information, including but not limited to, addressing the requirements of Section 3022 of the FAST Act. The purpose of this rulemaking is to reduce serious injury events and fatalities from assaults involving transit workers, passengers, and the public.

FTA appreciates that de-escalation and response to an assault are complicated in a transit environment, particularly when aboard a moving vehicle. FTA encourages transit agencies to work with their frontline transit workforce and Safety Committees as appropriate to identify policies and techniques that enable transit workers to respond in a safe and effective manner.

FTA agrees that EAPs can benefit transit workers and transit agencies after a traumatic event. While FTA is not requiring transit agencies to implement an EAP, transit agencies may voluntarily develop such a program to support their workforce. FTA has aggregated a list of mental health resources to support transit workers during challenging

³⁴ Federal Transit Administration (October 2023). "PTASP Technical Assistance Center." <https://www.transit.dot.gov/PTASP>.

times.³⁵ FTA encourages transit agencies to share these online resources widely with their workers and with other transit agencies in their networks.

FTA notes that legal remedies such as increased Federal penalties for assaults on transit workers, elevation of assaults on transit workers to a felony, and banning offenders from using public transportation are outside the scope of FTA's authority.

2. Assaults on Transit Workers Data

Comments: FTA received several comments about data reporting on assaults on transit workers. One commenter recommended that FTA create a mandatory nationwide database for transit agencies to report assaults on transit workers, and for FTA to publish reports about the data on a regular basis. One commenter expressed concern that the new NTD requirement to report assaults on transit workers could result in the perception that the number of assaults on transit workers has increased significantly. The commenter recommended that FTA provide context regarding new reporting requirements when it makes this data publicly available.

One commenter stated that transit agencies should collect information from transit passengers who witness assaults on transit workers, noting that assaults may otherwise go unreported. Another commenter stated that some transit agencies are not keeping accurate records of the assaults that transit workers are experiencing. Other commenters expressed that assaults on transit workers are severely underreported. One comment requested clarification on whether assaults on transit workers data are safety data or security data.

One commenter also stated their transit dispatch "tends to over-report" and offered the example of an argument being reported as verbal assault. The commenter stated the data cleanup and training required under the rule as written would lead to a great administrative burden.

Response: FTA requires transit agencies that are recipients of certain Federal funding to report to the NTD on the financial, operating, and asset condition of transit systems. The NTD program publishes data products on a regular basis containing information and statistics, including statistics on transit safety. The NTD program serves as FTA's system for collection of assaults

on transit workers data and ensures all associated reporting requirements are clarified. FTA's published safety data includes data regarding NTD reporting threshold changes that may impact how data is interpreted. FTA notes that such information will be included in publicly available data related to assaults on transit workers, to the extent that it includes data reported prior to the NTD's implementation of the Bipartisan Infrastructure Law assault reporting requirements.

FTA appreciates the value of witnesses when investigating instances of assaults on transit workers. FTA encourages transit agencies to leverage witness information as possible to help inform investigative, safety reporting, and Safety Risk Management activities.

FTA appreciates the comments regarding the challenges of reporting assaults on a transit worker and questions about classification of assaults as safety events or security events. FTA acknowledges that assaults on transit workers historically have been severely underreported and that this has created challenges for remedying this issue. The new NTD assault reporting requirements enacted by the Bipartisan Infrastructure Law will help transit industry stakeholders better understand and address assaults on transit workers. FTA notes that the NTD has already established reporting requirements for assaults on transit workers. Nothing in this final rule changes those requirements or increases data collection or reporting burden related to assaults on transit workers. As explained in Section II.B.3 of the preamble above, the NTD communicates guidance to the NTD reporting community to clarify these reporting requirements. FTA refers readers to that section of the preamble for additional discussion of this topic.

3. Confidential Close Call/Near-Miss Transit Worker Safety Reporting Systems

In the NPRM, FTA requested information from stakeholders regarding their experience establishing confidential reporting methods for transit workers. FTA did not propose any new requirements on this topic in the NPRM. FTA received several responses relating to its request for information. FTA thanks commenters for this feedback and is considering this information to inform future FTA action and technical assistance.

N. Regulatory Impact Analysis

Comments: Several comments requested that FTA reevaluate the labor hour assumptions it used to estimate

costs for regulated entities to meet the requirements of the rule.

For de-escalation training, one commenter recommended that FTA provide hours for agency personnel to provide and track the progress of such training. The commenter sought additional clarification about the de-escalation training estimates, including whether FTA is requiring 0.25 hours of annual de-escalation training.

For the Safety Committee requirement, one commenter claimed that the first-year estimates for HR managers and safety managers seemed too low. Another commenter claimed that the estimates only provided hours for six individuals, although Safety Committees at larger transit agencies might be much larger; it also did not account for the administrative burden of preparing meeting materials and minutes.

For continuous improvement, one commenter stated that the first-year hours for the Chief Safety Officer and Safety Manager do not fully account for the cost of developing and implementing continuous improvement. In addition, the estimates should include hours for the Accountable Executive.

For the safety risk reduction program, one commenter claimed that estimates do not accurately reflect the resources needed to develop and implement the program, given the number of safety events the commenter's agency experienced annually.

For frontline worker involvement with ASP, one commenter claimed that the estimates do not include frontline personnel and that the hour estimates are too low.

Finally, one comment stated the estimated costs are generally too low but did not identify specific issues.

Response: In response to comments, FTA reviewed and revised the labor hour estimates as detailed in Section IV. "Regulatory Analyses and Notices" below. The updated cost estimates reflect the revised labor hours. For annual de-escalation training, FTA is estimating a half-hour training every two years, for an average of 0.25 hours per year.

O. Regulatory Burden

Comments: One commenter opposed this rulemaking generally, arguing that it imposes too much regulation on the transit industry. Some comments expressed that the new PTASP requirements impose burden without additional funding. Two commenters stated that FTA should provide funding for transit agencies to meet these requirements, with one asking for

³⁵ Federal Transit Administration (May 2023). "Mental Health Resources for Transit Workers." <https://www.transit.dot.gov/regulations-and-programs/safety/mental-health-resources>.

funding to be available without additional steps or grant applications. One commenter stated that some transit agencies may need to hire additional workers to meet PTASP requirements. They recommended that FTA provide relief from some requirements for smaller transit agencies. They also requested that FTA provide substantive technical assistance and resources to assist agencies comply with the final rule.

One commenter expressed concern that the proposed requirements are more prescriptive than the 2018 final rule and that this increases the burden on transit agencies, particularly small and mid-sized RTAs who also must comply with their SSOA's Risk-Based Inspection programs. They expressed concern that FTA's safety rulemakings have forced transit agencies to constantly evolve their safety programs to accommodate increasingly burdensome requirements and that FTA should provide a grace period for transit agencies to evaluate and implement staffing and resources needed to comply with the new requirements.

Response: FTA appreciates the comments received on the relative increase in costs related to this rule. FTA's cost-benefit analysis is based on the average estimated impact to transit agencies. The transit agencies that must comply with this regulation receive Chapter 53 funds and, with very few exceptions, receive section 5307 funds. Regarding the comment requesting funding be made available without additional steps or grant applications, FTA notes that agencies can use their existing section 5307 formula funds for eligible safety projects.

This final rule is implementing requirements statutorily mandated by Congress, and FTA has attempted to implement the statutory requirements by imposing the least burden on transit agencies. To minimize the de-escalation training burden on all transit agencies subject to part 673, FTA has made de-escalation training freely available to all transit agencies via the FTA-sponsored Assault Awareness and Prevention for Transit Operators courses offered by the National Transit Institute.³⁶ Regarding continuous improvement, under the PTASP rule currently in effect, small public transportation providers are already required to set safety performance targets. Based on the experience that the providers have gained by implementing SMS and

carrying out required safety performance measurement activities, FTA expects that the providers will be able to formalize their continuous improvement activities and document them in their ASP. FTA intends to continue its existing PTASP technical assistance program and will consider assistance geared towards smaller providers in the future.

FTA disagrees that a "grace period" for part 673 implementation is necessary and notes that to the extent the final rule incorporates Bipartisan Infrastructure Law requirements, those requirements have been in effect since November 15, 2021.

III. Section-by-Section Analysis

Subpart A—General

673.1—Applicability

This section sets forth the applicability of the PTASP regulation. The regulation applies to any State, local governmental authority, and any other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. chapter 53. FTA has deferred applicability to operators that only receive Federal financial assistance under 49 U.S.C. 5310 or 5311, or both 49 U.S.C. 5310 and 5311, and that do not operate a rail fixed guideway system.

673.3—Policy

This section explains that FTA is utilizing the principles and methods of SMS as the basis for this regulation and all other regulations and policies FTA has issued and will issue under the authority of 49 U.S.C. 5329. FTA's standards for SMS are flexible and scalable and may be tailored to the size and operating complexity of the transit operator.

673.5—Definitions

This section sets forth the definitions of key terms used in the regulation. Most notably, readers should refer to "assault on a transit worker," "safety event," "safety performance target," and "transit worker."

Subpart B—Safety Plans

673.11—General Requirements

This section establishes general PTASP requirements.

Pursuant to 49 U.S.C. 5329(d)(1), this section requires each operator of public transportation subject to this rule to develop a Public Transportation Agency Safety Plan (ASP) consistent with this part. Section 673.11(a)(1) requires the ASP and subsequent updates be signed by the Accountable Executive. For large urbanized area providers, the Safety

Committee must also approve the ASP, and any updates, followed by the transit agency's Board of Directors or equivalent entity. For all other transit agencies, the transit agency's Board of Directors or equivalent entity must approve the ASP.

Section 673.11(a)(2) requires the ASP to document the processes and activities related to SMS.

Section 673.11(a)(3) requires that ASPs must include annual safety performance targets based on the safety performance measures established under FTA's National Safety Plan. The ASP of a large urbanized area provider must also include safety performance targets for the safety risk reduction program.

Section 673.11(a)(4) requires the ASP to address all applicable requirements and standards of FTA's Safety Program.

Section 673.11(a)(5) requires each transit agency to establish a process and timeline for reviewing annually its ASP.

Section 673.11(a)(6) requires the ASP of each RTA to include or incorporate by reference an emergency preparedness plan, any policies and procedures relating to rail transit workers on the roadway, and policies and procedures related to the State Safety Oversight Agency's risk-based inspection program.

Section 673.11(a)(7) requires the ASP of each large urbanized area provider to include a safety risk reduction program for transit operations to improve safety by reducing the number and rates of safety events, injuries, and assaults on transit workers. The safety risk reduction program must address the reduction and mitigation of vehicular and pedestrian safety events involving transit vehicles, and the reduction and mitigation of assaults on transit workers. The safety risk reduction program must also include the safety performance targets set by the Safety Committee.

These targets must be based on a three-year rolling average of the data submitted by the large urbanized area provider to the National Transit Database (NTD); for all modes of public transportation; and based on the level of detail the large urbanized area provider is required to report to the NTD. The Safety Committee is not required to set a target for a performance measure until the large urbanized area provider has been required to report three years of data to the NTD corresponding to such performance measure.

Finally, the safety risk reduction program must include or incorporate by reference the safety risk mitigations identified and recommended by the Safety Committee as described in § 673.25(d)(5).

³⁶ Federal Transit Administration (October 2023). "FTA-Sponsored Training Courses." <https://www.transit.dot.gov/regulations-and-guidance/safety/fta-sponsored-training-courses>.

Section 673.11(b) provides that a transit agency may develop one ASP for all modes of transit service, or it may develop separate ASP for each mode of service not subject to safety regulation by another Federal entity.

Section 673.11(c) requires each transit agency to maintain its ASP in accordance with the recordkeeping requirements of this Part.

Section 673.11(d) requires a State to draft and certify an ASP for a small public transportation provider that is located in that State. FTA notes a small public transportation provider may also be a large urbanized area provider and thus required to have an ASP with the attendant provisions, such as a Safety Committee and safety risk reduction program.

Section 673.11(e) exempts agencies that operate passenger ferries regulated by the United States Coast Guard (USCG) or rail fixed guideway public transportation service regulated by the Federal Railroad Administration (FRA) from the requirement to develop an ASP for those modes of service.

673.13—Certification of Compliance

This section sets forth certification requirements. Section 673.13(a) lays out the requirement that a State's initial PTASP certification for a small transportation provider, or direct recipient's certification, must occur by the start of operations. This section also requires SSOAs to review and approve the ASP developed by a rail fixed guideway public transportation system. Section 673.13(b) requires the certification on an annual basis and that direct recipients must certify compliance on behalf of any subrecipients.

673.15—Coordination With Metropolitan, Statewide, and Non-Metropolitan Planning Processes

In accordance with 49 U.S.C. 5303(h)(2)(B) and 5304(d)(2)(B), section 673.15(a) requires that each State and transit agency must make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process. Section 673.15(b) requires, to the maximum extent practicable, a State or transit agency to coordinate with States and Metropolitan Planning Organizations in the selection of State and MPO safety performance targets.

Subpart C—Safety Committees and Cooperation With Frontline Transit Worker Representatives

Subpart C, "Safety Committees and Cooperation with Frontline Transit Worker Representatives" incorporates

Bipartisan Infrastructure Law requirements for Safety Committees and cooperation with frontline transit worker representatives.

673.17—Cooperation With Frontline Transit Worker Representatives

Section 673.17 establishes requirements for transit agency cooperation with frontline transit worker representatives, as required by the Bipartisan Infrastructure Law. In § 673.17(a), FTA incorporates the statutory requirement that a large urbanized area provider must establish a Safety Committee. Section 673.17(b) incorporates the statutory requirement that a transit agency that is not a large urbanized area provider must develop its ASP, and subsequent updates, in cooperation with frontline transit worker representatives, as required by the Bipartisan Infrastructure Law. In this section, FTA also requires that such providers must include or incorporate by reference in the ASP a description of how frontline transit worker representatives cooperate in the development and update of the ASP.

673.19—Safety Committee

The Bipartisan Infrastructure Law requires that transit agencies serving a large urbanized area establish a Safety Committee that meets certain requirements.

Section 673.19(a) incorporates the statutory requirement that the Safety Committee be convened by a joint-labor management process and provides that the Safety Committee be appropriately scaled to the size, scope, and complexity of the transit agency.

Section 673.19(b) incorporates the statutory requirement that the Safety Committee consist of an equal number of frontline transit worker representatives and management representatives. This section also requires that the Safety Committee include frontline transit worker representatives from major transit service functions to the extent practicable.

Section 673.19(b) also incorporates the statutory requirement that the frontline transit worker representatives on the Safety Committee be selected by a labor organization representing the plurality of the frontline workforce. If a transit agency's frontline transit workers are not represented by a labor organization, the transit agency must adopt a mechanism to ensure that frontline transit workers select frontline transit worker representatives for the Safety Committee.

Section 673.19(c) requires each large urbanized area provider include or

incorporate by reference in its ASP procedures about the composition, responsibilities, and operations of the Safety Committee. Of note are the requirements to include procedures related to how meeting agendas and notices will be developed and shared, and how meeting minutes will be recorded, maintained, and shared; the compensation policy for participation in Safety Committee meetings, procedures for reaching and recording decisions, and procedures for resolving disputes, such as the existing dispute resolution process at the agency.

Section 673.19(d) identifies statutorily required activities that the Safety Committee must take, including ASP review and approval, setting annual safety performance targets to support the safety risk reduction program, and support of SMS activities.

Subpart D—Safety Management Systems

673.21—General Requirements

This section outlines the SMS elements that each transit agency must establish in its ASP. Each transit agency must establish processes and procedures which include the four main pillars of SMS: (1) Safety Management Policy; (2) Safety Risk Management; (3) Safety Assurance; and (4) Safety Promotion. Each transit agency's SMS must be appropriately scaled to the size and complexity of the system.

673.23—Safety Management Policy

Section 673.23(a) requires the transit agency's Safety Management Policy to include a description of the transit agency's Safety Committee or approach to cooperation with frontline transit worker representatives, as applicable.

Section 673.23(b) directs each transit agency to establish and implement a process that allows transit workers to report safety concerns.

Section 673.23(c) requires that the Safety Management Policy be communicated throughout the transit agency's organization.

Section 673.23(d) requires the transit agency to establish the necessary authorities, accountabilities, and responsibilities necessary to meet its safety objectives, particularly as they relate to the development and management of the transit agency's SMS. Section 673.23(d)(1) requires each transit agency to identify an Accountable Executive and describes their role. Under § 673.25(d)(1)(i), the Accountable Executive of a large urbanized area provider must implement all safety risk mitigations for the safety risk reduction program that

are included in the ASP under § 673.11(a)(7)(iv). Under § 673.23(d)(1)(ii), the Accountable Executive of a large urbanized area provider receives and must consider all other safety risk mitigation recommendations of the Safety Committee, consistent with requirements in §§ 673.19(d) and 673.25(d)(6).

Sections 673.23(d)(2)–(5) require each transit agency to designate a Chief Safety Officer or SMS Executive, Safety Committee (for large urbanized area providers), identify transit agency leadership and executive management, and designate key staff.

673.25—Safety Risk Management

Section 673.25(a) requires that each transit agency must develop and implement a Safety Risk Management (SRM) process for all elements of its system. The SRM process includes hazard identification, safety risk assessment, and safety risk mitigation.

Section 673.25(b) discusses hazard identification. Section 673.25(b)(1) requires a transit agency to establish processes to identify hazards and potential consequences. Section 673.25(b)(2) lists certain data that a transit agency must consider as a source for hazard identification, including data regarding exposure to infectious disease provided by the CDC or a State health authority.

Section 673.25(c) describes the requirements for safety risk assessments.

Section 673.25(d) discusses safety risk mitigation. Section 673.25(d)(1) requires a transit agency to establish methods or processes to identify safety risk mitigations necessary as a result of the transit agency's safety risk assessment. For large urbanized area providers, these methods or processes must address the role of the agency's Safety Committee.

Section 673.25(d)(2) requires transit agencies to consider guidance provided by an oversight authority, if applicable, and FTA as a source for safety risk mitigation as well as CDC or State health authority guidelines to prevent or control exposure to infectious diseases.

Sections 673.25(d)(3) and (d)(4) require each large urbanized area provider and its Safety Committee to consider specific safety risk mitigations related to vehicular and pedestrian safety events involving transit vehicles and assaults on transit workers when identifying safety risk mitigations for the safety risk reduction program, including when addressing a missed safety risk reduction program safety performance target. Section 673.25(d)(3) requires consideration of operator

visibility impairment mitigations for any type of transit vehicles, not just buses. Similarly, § 673.25(d)(4) requires consideration of assault mitigation infrastructure and technology in any type of transit vehicle and in transit facilities, not just buses.

Section 673.25(d)(5) requires a large urbanized area provider to include or incorporate by reference in its ASP, as required by § 673.11(a)(7)(iv), any safety risk mitigations recommended by the Safety Committee based on a safety risk assessment as part of the safety risk reduction program. This includes mitigations relating to vehicular and pedestrian safety events or assaults on transit workers.

Section 673.25(d)(6) provides that if the Safety Committee recommends a safety risk mitigation unrelated to the safety risk reduction program and the Accountable Executive decides not to implement the safety risk mitigation, the Accountable Executive is required to prepare a written statement explaining their decision. The Accountable Executive must submit and present this explanation to the Safety Committee and Board of Directors, or equivalent entity.

673.27—Safety Assurance

Section 673.27(a) requires transit agencies to develop and implement a safety assurance process.

Section 673.27(b) requires transit agencies to establish safety performance monitoring and measurement activities. This section requires that large urbanized area providers address the role of the Safety Committee. This ensures that the SMS of these transit agencies incorporates the Safety Committee's statutorily required responsibilities relating to safety performance monitoring and measurement.

Section 673.27(c) requires transit agencies to establish a process for identifying and addressing changes to the system or operating conditions.

Section 673.27(d) addresses the requirement of continuous improvement. This requirement applies to all transit agencies subject to part 673. Section 673.25(d)(1) requires that a transit agency must establish a process to assess its safety performance annually. This process must include identifying deficiencies in the transit agency's SMS and in the agency's safety performance against its safety performance targets, including safety performance targets required for all transit agencies at § 673.11(a)(3). For large urbanized area providers, the continuous improvement process must address the role of the transit agency's

Safety Committee and include the identification of deficiencies in the transit agency's performance against annual safety performance targets set by the Safety Committee under § 673.19(d)(2) for the safety risk reduction program. Additionally, this section requires that RTAs must address internal safety review requirements established by SSOAs as part of the continuous improvement element of Safety Assurance.

Sections 673.27(d)(2) through (d)(4) address continuous improvement requirements related to safety performance targets as part of a large urbanized area provider's safety risk reduction program. Section 673.27(d)(2) requires the large urbanized area provider to monitor safety performance against the annual safety targets. Section 673.27(d)(3) identifies the requirements for a large urbanized area provider that does not meet an annual safety performance target set by the Safety Committee for the safety risk reduction program. Specifically, the transit agency must: (1) assess the associated safety risk; (2) mitigate associated safety risk using the safety risk mitigation process under § 673.25(d) and include those mitigations in the plan described in § 673.27(d)(4); and (3) allocate its safety set-aside in the following fiscal year to safety related projects that are reasonably likely to assist in meeting the safety performance target.

Section 673.27(d)(4) requires a transit agency to develop and carry out, under the direction of the Accountable Executive, a plan to address any deficiencies identified through the safety performance assessment.

673.29—Safety Promotion

This section requires each transit agency to establish competencies and training for all agency employees directly responsible for safety, and to establish and maintain the means for communicating safety performance and SMS information. Section 673.29(a) requires transit agencies to include de-escalation and safety concern identification and reporting training in their comprehensive safety training program. This requirement applies to all agencies, not just large urbanized area providers.

This section also incorporates the statutory requirement that large urbanized area providers must include maintenance workers in their training programs.

Section 673.29(b) requires transit agencies to integrate the results of cooperation with frontline transit worker representatives and joint labor-management Safety Committee activities

into their safety communication activities. This requirement addresses the communication impacts resulting from the new requirements for cooperation with frontline transit worker representatives and Safety Committee activities and to make sure that the results of these activities are communicated throughout the organization.

Subpart E—Safety Plan Documentation and Recordkeeping

673.31—Safety Plan Documentation

This section requires each transit agency to keep records of its documents that are developed in accordance with this part. FTA expects a transit agency to maintain documents that set forth its ASP, including those related to the implementation of its SMS such as the results from SMS processes and activities. For the purpose of reviews, investigations, audits, or other purposes, this section requires each transit agency to make these documents available to FTA, SSOAs in the case of rail transit systems, States, and other Federal agencies as appropriate. A transit agency must maintain these documents for a minimum of three years.

IV. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Order 12866 (“Regulatory Planning and Review”), as supplemented by Executive Order 13563 (“Improving Regulation and Regulatory Review”) and Executive Order 14094 (“Modernizing Regulatory Review”), directs Federal agencies to assess the benefits and costs of regulations, to select regulatory approaches that maximize net benefits when possible, and to consider economic, environmental, and distributional effects. It also directs the

Office of Management and Budget (OMB) to review significant regulatory actions, including regulations with annual economic effects of \$200 million or more. OMB has determined the final rule is significant within the meaning of Executive Order 12866 and has reviewed the rule under that order.

Updates From the NPRM

The NPRM analysis assessed the benefits and costs of self-enacting statutory requirements as well as discretionary provisions. The analysis for the final rule clarifies which provisions are discretionary and assesses their benefits and costs separately, as described in “Baseline.”

In addition, as described in “I.N. Regulatory Impact Analysis,” commenters on the NPRM requested that FTA reevaluate the staff and labor-hour assumptions it used to estimate costs for regulated entities to meet the requirements of the rule. After reviewing the assumptions, FTA made the following changes, which incorporate all the comments involving discretionary provisions of the rulemaking:

- *De-escalation training:* Added 2 hours in the first year and 2 hours in later years for agency staff to track employee training. The NPRM did not include hours for tracking employee training.
- *Continuous Improvement:* Added 2 hours per year for the Accountable Executive to participate. The NPRM did not include hours for the Accountable Executive.

Overview and Need for Regulation

The final rule adds requirements for transit agencies subject to the existing regulation for Public Transportation Agency Safety Plans. The applicable agencies include all RTAs and all transit agencies receiving section 5307 funding.

Most provisions implement self-enacting statutory amendments made by the Bipartisan Infrastructure Law to 49

U.S.C. 5329. Agencies in large urbanized areas must incorporate de-escalation training into their safety training programs and incorporate guidelines for infectious disease exposure into their safety management system processes. Agencies serving urbanized areas with 200,000 or more people must establish safety committees, safety risk reduction programs with safety performance targets, and include maintenance workers in their safety training programs. The agencies must allocate at least 0.75 percent of their section 5307 funding to eligible safety projects. If an agency does not meet a safety performance target established under its safety risk reduction program, it will need to allocate its set-aside funding to projects that are reasonably likely to assist the agency in meeting the target. Agencies serving urbanized areas with fewer than 200,000 people must develop their agency safety plans in cooperation with frontline transit worker representatives.

The final rule also includes discretionary requirements. The rule extends the de-escalation training requirement to all transit agencies subject to part 673. In addition, small public transportation providers must establish continuous improvement processes to assess safety performance; previous regulation required transit agencies to establish continuous improvement processes but exempted small public transportation providers.

Baseline for Analysis

The rule implements self-enacting statutory requirements as well as discretionary elements. Circular A–4 (p. 12) notes that, in such cases, the analysis can use a with-statute baseline, focusing on the discretionary elements of the rule and potential alternatives. Table 2 outlines the statutory and discretionary elements of the final rule.

TABLE 2—STATUTORY AND DISCRETIONARY RULE ELEMENTS

Provision	Statutory elements	Statutory citation	Discretionary elements
Safety Committee	Require transit providers in large UZAs to establish safety committees.	49 U.S.C. 5329(d)(5).	
	Require the plurality union to choose frontline worker representatives for the Safety Committee.	49 U.S.C. 5329(d)(5)(A)(ii)(I).	
	Require the Safety Committee to approve the Agency Safety Plan and conduct certain SMS activities.	49 U.S.C. 5329(d)(1)(A); 49 U.S.C. 5329(d)(5)(A)(iii).	
De-escalation training.	Require transit providers in large UZAs to incorporate de-escalation training into safety training programs.	49 U.S.C. 5329(d)(1)(H)	Extend new requirement to all transit agencies subject to part 673.
Risk Reduction Program.	Require transit providers in large UZAs to establish safety risk reduction programs with safety performance targets and engage in performance monitoring.	49 U.S.C. 5329(d)(1)(I); 49 U.S.C. 5329(d)(4).	
Continuous improvement.	.....	.....	Extend existing requirements for continuous improvement processes to small public transportation providers.

TABLE 2—STATUTORY AND DISCRETIONARY RULE ELEMENTS—Continued

Provision	Statutory elements	Statutory citation	Discretionary elements
Frontline transit worker cooperation.	Require small transit providers to develop agency safety plans in cooperation with frontline transit worker representatives.	49 U.S.C. 5329(d)(1)(B).	
Section 5307 funding allocation.	Requires transit providers in large UZAs to allocate at least 0.75 of Section 5307 funding to eligible safety projects and re-allocate the set-aside when risk reduction performance targets are not met.	49 U.S.C. 5329(d)(4)(B)–(D)).	

Benefits

The requirements for de-escalation training and continuous improvement processes are predicted to reduce the risk of fatalities and injuries for transit workers, passengers, drivers, and pedestrians if transit agencies adopt safety risk mitigations that they would not have adopted otherwise. Example mitigations include bus sensors and surveillance systems to detect objects and pedestrians, and bus operator barriers to protect drivers. At the same time, some mitigations, like de-escalation training for transit operators, have already been widely adopted. While FTA expects that providers will be more likely to adopt safety risk

mitigations after implementing continuous improvement processes, it does not have information to quantify or monetize potential benefits.

Costs

All transit agencies subject to part 673 will incur costs to meet the new requirement for de-escalation training, and small public transportation providers will incur costs to meet the new requirement for continuous improvement processes. FTA determined that the requirements would affect 572 transit agencies (299 providers in large UZAs; 273 providers in small UZAs) and 62 rail transit authorities (58 in large UZAs; 4 in small UZAs), as well as 3 large agencies in

small UZAs. While FTA will incur costs to notify agencies, update technical assistance resources, and conduct training, the expected costs are minimal.

To estimate the value of staff time spent on the requirements, FTA used occupational wage data from the Bureau of Labor Statistics as of May 2021 (Table 3).³⁷ FTA used median hourly wages for workers in the Transit and Ground Passenger Transportation industry (North American Industry Classification System code 485000) as a basis for the estimates, multiplied by 1.62 to account for employer benefits.³⁸ FTA then used the estimates to calculate costs for the first ten years of the rule from 2024—the assumed effective date of the rule—to 2033.

TABLE 3—OCCUPATIONAL CATEGORIES AND WAGES USED TO VALUE STAFF TIME
[\$2021]

Staff	Occupational category	Code	Median hourly wage	Wage with benefits
Frontline personnel	Transportation and Material Moving Occupations	53-0000	\$22.10	\$35.72
HR manager	Human Resources Managers	11-3121	45.64	73.77
Accountable Executive	General and Operations Manager	11-1021	45.60	73.70
Chief Safety Officer	Health and Safety Engineers	17-2111	49.21	79.54
Safety manager	Occupational Health and Safety Specialists	19-5011	37.29	60.27

Source: Bureau of Labor Statistics, May 2021 National Occupational Employment and Wage Estimates.

De-Escalation Training

Table 4 outlines the estimated staff and labor hours for transit providers and rail transit agencies in small UZAs (273 small agencies; 3 large agencies; 4 rail transit authorities) to engage in de-escalation training and track employee training activities. Almost all agencies established programs after the

Transportation Security Administration issued a security directive in January 2021 requiring mask use on public transportation.³⁹ The directive, which is no longer in effect as of April 2022,⁴⁰ required agencies to brief employees responsible for enforcing the directive. Agencies established de-escalation training programs as part of their

briefings, and FTA developed free online training resources allowing frontline employees to complete training by themselves.⁴¹ For these reasons, FTA estimates that 95 percent of employees already receive training, although agencies may not already engage in tracking of the training.

³⁷ Bureau of Labor Statistics (March 2022). “May 2021 National Occupational Employment and Wage Estimates: United States.” https://www.bls.gov/oes/2021/may/oes_nat.htm.

³⁸ Multiplier derived using Bureau of Labor Statistics data on employer costs for employee compensation for June 2022 (https://www.bls.gov/news.release/archives/ecec_09202022.pdf). Employer costs for state and local government

workers averaged \$55.47 an hour, with \$34.23 for wages and \$21.25 for benefit costs. To estimate full costs from wages, one would use a multiplier of \$55.47/\$34.23, or 1.62.

³⁹ Transportation Security Administration (January 31, 2021). “Security Directive SD 1582/84–21–01.” https://www.tsa.gov/sites/default/files/sd-1582_84-21-01.pdf.

⁴⁰ Transportation Security Administration (April 18, 2022). “Statement regarding face mask use on public transportation.” <https://www.tsa.gov/news/press/statements/2022/04/18/statement-regarding-face-mask-use-public-transportation>.

⁴¹ Federal Transit Administration (October 2023). “FTA-Sponsored Training Courses.” <https://www.transit.dot.gov/regulations-and-guidance/safety/fta-sponsored-training-courses>.

TABLE 4—STAFF AND HOURS NEEDED TO MEET DE-ESCALATION TRAINING REQUIREMENTS

Affected entities	Staff	First-year hours	Annual hours
280 providers and RTAs in small UZAs	Frontline personnel (5% of 14,800 employees; 740 employees total).	2	0.25
	HR manager (1 per entity)	2	2

Note: For the de-escalation training requirement, FTA uses an estimate of 0.5 hours every two years, for an average of 0.25 hours a year.

The training and tracking have the first year and annual costs of estimated first-year costs of \$94,000 in \$55,000 in later years (Table 5).

TABLE 5—FIRST-YEAR AND ANNUAL COSTS FOR DE-ESCALATION TRAINING

	Number	Hours	Wage with benefits	Total
<i>First-year costs:</i>				
Frontline personnel	740	2	\$35.72	\$52,866
HR managers	280	2	73.77	41,311
<i>First-year total</i>				94,177
<i>Annual costs:</i>				
Frontline personnel	740	0.5	35.72	13,216
HR managers	280	2	73.77	41,311
<i>Annual total</i>				54,528

Continuous Improvement Processes providers to maintain and establish Agency Safety Plan to reflect new Table 5 outlines the estimated staff continuous improvement processes. The processes and to complete an annual and labor hours for small transit hours include time to update the assessment of safety performance.

TABLE 5—STAFF AND HOURS NEEDED TO MEET CONTINUOUS IMPROVEMENT PROCESS REQUIREMENTS

Affected entities	Staff	First-year hours	Annual hours
572 small public transit providers	Accountable Executive (1 per entity)	2	4
	Chief Safety Officer (1 per entity)	2	4
	Safety manager (1 per entity)	2	8

The continuous improvement costs of \$626,000 in later years (Table processes have estimated first-year costs 6). of \$244,000 in the first year and annual

TABLE 6—FIRST-YEAR AND ANNUAL COSTS FOR CONTINUOUS IMPROVEMENT PROCESSES

	Number	Hours	Wage with benefits	Total
<i>First-year costs:</i>				
Accountable Executive	572	2	\$73.70	\$84,313
Chief Safety Officer	572	2	79.54	90,994
Safety manager	572	2	60.27	68,949
<i>First-year total</i>				244,255
<i>Annual costs:</i>				
Accountable Executive	572	4	73.70	168,626
Chief Safety Officer	572	4	79.54	181,988
Safety manager	572	8	60.27	275,796
<i>Annual total</i>				626,409

Total Costs processes have total estimated costs of and annual costs of \$680,000 in later years (Table 7).
 The requirements for de-escalation training and continuous improvement

TABLE 7—FIRST-YEAR COSTS AND ANNUAL COSTS FOR ADMINISTRATIVE AND REPORTING REQUIREMENTS [2021]

Requirement	First-year costs	Annual costs
De-escalation training	\$94,177	\$54,528
Continuous improvement processes	244,255	626,409
<i>Total</i>	338,432	680,936

Summary estimated costs of \$6.5 million in 2021 dollars. On an annualized basis (discounted to 2023), the rule has estimated costs of \$642,000 at a 3 percent discount rate and \$635,000 at 7 percent. To quantify benefits and assess net benefits, FTA would need information on the specific safety interventions transit agencies would adopt to address the requirements

Table 8 summarizes the economic effects of the final rule. Over the ten-year analysis period, the rule has

TABLE 8—SUMMARY OF ECONOMIC EFFECTS, 2023–2033 [2021, discounted to 2023]

Item	Total (undiscounted)	Annualized (3% discount)	Annualized (7% discount)
Benefits	Unquantified	.....	.....
<i>Costs:</i>			
De-escalation training	\$584,925	\$59,040	\$59,803
Continuous improvement processes	5,881,933	582,913	575,558
Total costs	6,466,858	641,954	635,362
Net benefits	Unquantified	.....	.....

Regulatory Alternatives

While most requirements in the final rule are statutorily mandated, the rule includes two discretionary elements: de-escalation training for all transit agencies subject to part 673; and continuous improvement for small public transportation providers. In developing the rule, FTA considered whether to adopt the statutorily mandated requirements without modification. Because the rule uses a with-stature baseline for analysis, the rule would not have incremental costs or benefits under this regulatory alternative.

For de-escalation training, FTA considered data reported to the NTD on assaults on transit workers and found that these assaults occur on transit systems that serve large urbanized areas as well as those that serve small urbanized areas. Preliminary NTD data show that agencies serving small urbanized areas reported more than 300 assaults on transit workers from January 1, 2023 to December 31, 2023. FTA expects the number to increase after 2023 data are finalized and annual submissions from hundreds of smaller agencies are added. For this reason, FTA believes that requiring de-escalation training for operations personnel and personnel directly responsible for safety

at all transit agencies subject to part 673 is appropriate and necessary to enhance safety for all transit workers and users of transportation, not just those in large urbanized areas. To minimize the de-escalation training burden on all transit agencies subject to part 673, FTA has made de-escalation training freely available to all transit agencies via the FTA-sponsored Assault Awareness and Prevention for Transit Operators courses offered by the National Transit Institute.⁴²

For continuous improvement, FTA believes that requiring the processes for small public transportation providers eliminates possible inconsistencies in enforcement among small public transportation providers: some small public transportation providers operate in large urbanized areas and are therefore subject to statutory requirements for continuous improvement. In addition, small public transportation providers are already required to set safety performance targets based on the safety performance measures established in the National Safety Plan. Based on the experience that the providers have gained by

operating SMS and carrying out required safety performance measurement activities, FTA expects that the providers will be able to formalize their continuous improvement activities and document them in their ASP.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) requires Federal agencies to assess the impact of a regulation on small entities unless the agency determines that the regulation is not expected to have a significant economic impact on a substantial number of small entities. FTA has determined that the final rule does not have a significant effect on a substantial number of small entities.

Most provisions in the final rule implement self-enacting statutory amendments made by the Bipartisan Infrastructure Law to 49 U.S.C. 5329, although some provisions are discretionary. The provisions include extending the de-escalation training requirement to all transit agencies subject to part 673, as well as requiring small public transportation providers to establish continuous improvement processes.

Under the Act, local governments and other public-sector organizations qualify

⁴² Federal Transit Administration (October 2023). “FTA-Sponsored Training Courses.” <https://www.transit.dot.gov/regulations-and-guidance/safety/fta-sponsored-training-courses>.

as a small entity if they serve a population of less than 50,000. The rule affects 280 agencies in small UZAs, with some qualifying as small entities under the Regulatory Flexibility Act. FTA estimates that, to meet the ongoing annual requirements for continuous improvement processes, a transit agency will need 4 hours of time for a Chief Safety Officer, 8 hours for a safety manager, and 2 hours for an Accountable Executive. To meet the ongoing annual requirements for de-escalation training, employees of a single agency would spend an average of 0.5 hours on annual refresher training, with an HR manager spending 2 hours on tracking and reporting. Using occupational wage data from the Bureau of Labor Statistics as of May 2021, FTA estimates the value of the time spent at \$1,068.00, which would not have a significant effect on the agency.

Unfunded Mandates Reform Act of 1995

FTA has determined that this rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995). This rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted for inflation) in any one year. Additionally, the definition of "Federal mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal Transit Act permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States' ability to

discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), and the White House Office of Management and Budget's (OMB) implementing regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for a currently approved information collection that is associated with an existing regulation. The information collection (IC) was previously approved on October 4, 2022. However, this submission includes revised requirements authorized by the Bipartisan Infrastructure Law, including cooperation with frontline transit worker representatives in the development of an Agency Safety Plan (ASP), establishment of a Safety Committee, Safety Committee approval of an ASP, establishment of a safety risk reduction program for transit operations, establishment of safety performance targets for the safety risk reduction program, and establishment of strategies to minimize exposure to infectious diseases.

OMB Control Number: 2132-0580.

Type of Collection: Operators of public transportation systems.

Type of Review: OMB Clearance. Previously Approved Information Collection Request.

Summary of the Collection: The information collection includes (1) the development and certification of a Public Transportation Agency Safety Plan; (2) the implementation and documentation of the SMS approach; (3) associated recordkeeping; and (4) periodic requests.

Need for and Expected Use of the Information to be Collected: Collection of information for this program is necessary to ensure that operators of public transportation systems are performing their safety responsibilities and activities required by law at 49 U.S.C. 5329(d). Without the collection of this information, FTA would be unable to determine each recipient's and State's compliance with 49 U.S.C. 5329(d).

Respondents: Respondents include operators of public transportation as defined under 49 U.S.C. 5302. FTA is deferring regulatory action at this time

on recipients of FTA financial assistance under 49 U.S.C. 5310 and/or 49 U.S.C. 5311, unless those recipients operate rail transit. The total number of respondents is 758. This figure includes 186 respondents that are States, rail fixed guideway systems, or large bus systems that receive Urbanized Area Formula Program funds under 49 U.S.C. 5307. This figure also includes 572 respondents that receive Urbanized Area Formula Program funds under 49 U.S.C. 5307, operate one hundred or fewer vehicles in revenue service, and do not operate rail fixed guideway service that may draft and certify their own safety plans.

Frequency: Annual, Periodic.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rule will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this rule affects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

FTA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety

that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, dated November 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 action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and 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 required.

Executive Orders 14096, 12898 (Environmental Justice)

Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All) (Apr. 21, 2023) (which builds upon Executive Order 12898) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012)⁴³ require DOT agencies to make achieving environmental justice (EJ) part of their mission consistent with statutory authority by identifying, analyzing, and addressing, as appropriate, disproportionate and adverse human health or environmental effects, including those related to climate change and cumulative impacts of environmental and other burdens on communities with EJ concerns. All DOT agencies seek to advance these policy goals and to engage in this analysis as appropriate in rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities.⁴⁴

⁴³ Department of Transportation Updated Environmental Justice Order 5610.2(a): Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 77 FR 27534 (May 10, 2012). <https://www.transportation.gov/transportation-policy/environmental-justice/departement-transportation-order-56102a>.

⁴⁴ Federal Transit Administration (February 2020). "Environmental Justice Policy Guidance for Federal Transit Administration Recipients." <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/environmental-justice-policy-guidance-federal-transit>.

FTA has evaluated this action under its environmental justice policies and FTA has determined that this action will not cause disproportionate and adverse human health and environmental effects on communities with EJ concerns.

Regulation Identifier Number

A Regulation Identifier 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 number contained in the heading of this document can be used to cross-reference this rule with the Unified Agenda.

List of Subjects in 49 CFR Part 673

Mass transportation, Reporting and recordkeeping requirements, Safety.

Veronica Vanterpool,
Acting Administrator.

■ In consideration of the foregoing, and under the authority of 49 U.S.C. 5329 and 5334, and the delegation of authority at 49 CFR 1.91, the Federal Transit Administration revises 49 CFR part 673 to read as follows:

PART 673—PUBLIC TRANSPORTATION AGENCY SAFETY PLANS

Subpart A—General

Sec.

673.1 Applicability.

673.3 Policy.

673.5 Definitions.

Subpart B—Safety Plans

673.11 General requirements.

673.13 Certification of compliance.

673.15 Coordination with metropolitan, statewide, and non-metropolitan planning processes.

Subpart C—Safety Committees and Cooperation With Frontline Transit Worker Representatives

673.17 Cooperation with frontline transit worker representatives.

673.19 Safety Committees.

Subpart D—Safety Management Systems

673.21 General requirements.

673.23 Safety Management Policy.

673.25 Safety Risk Management.

673.27 Safety Assurance.

673.29 Safety Promotion.

Subpart E—Safety Plan Documentation and Recordkeeping

673.31 Safety plan documentation.

Authority: 49 U.S.C. 5329, 5334; 49 CFR 1.91.

Subpart A—General

§ 673.1 Applicability.

(a) This part applies to any State, local governmental authority, and any other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. chapter 53.

(b) This part does not apply to an operator of a public transportation system that only receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311 unless it operates a rail fixed guideway public transportation system.

§ 673.3 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. FTA will follow the principles and methods of SMS in its development of rules, regulations, policies, guidance, best practices, and technical assistance administered under the authority of 49 U.S.C. 5329. This part sets standards for the Public Transportation Agency Safety Plan, which will be responsive to FTA's Public Transportation Safety Program, and reflect the specific safety objectives, standards, and priorities of each transit agency. Each Public Transportation Agency Safety Plan will incorporate SMS principles and methods tailored to the size, complexity, and scope of the public transportation system and the environment in which it operates.

§ 673.5 Definitions.

As used in this part:

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

Assault on a transit worker means, as defined under 49 U.S.C. 5302, a circumstance in which an individual knowingly, without lawful authority or permission, and with intent to endanger the safety of any individual, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates a transit worker while the

transit worker is performing the duties of the transit worker.

CDC means the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

Chief Safety Officer means an adequately trained individual who has responsibility for safety and reports directly to a transit agency's chief executive officer, general manager, president, or equivalent officer. A Chief Safety Officer may not serve in other operational or maintenance capacities, unless the Chief Safety Officer is employed by a transit agency that is a small public transportation provider as defined in this part, or a public transportation provider that does not operate a rail fixed guideway public transportation system.

Direct recipient means an entity that receives Federal financial assistance directly from the Federal Transit Administration.

Emergency means, as defined under 49 U.S.C. 5324, a natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide) or a catastrophic failure from any external cause, as a result of which the Governor of a State has declared an emergency and the Secretary has concurred; or the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

Equivalent entity means an entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.

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

Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

Injury means any harm to persons as a result of an event that requires immediate medical attention away from the scene.

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

Joint labor-management process means a formal approach to discuss topics affecting transit workers and the public transportation system.

Large urbanized area provider means a recipient or subrecipient of financial assistance under 49 U.S.C. 5307 that serves an urban area with a population of 200,000 or more as determined by the most recent decennial Census.

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.

Near-miss means a narrowly avoided safety event.

Operator of a public transportation system means a provider of public transportation.

Performance measure means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.

Potential consequence means the effect of a hazard.

Public transportation means, as defined under 49 U.S.C. 5302, regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and does not include:

- (1) Intercity passenger rail transportation provided by the entity described in 49 U.S.C. chapter 243 (or a successor to such entity);
- (2) Intercity bus service;
- (3) Charter bus service;
- (4) School bus service;
- (5) Sightseeing service;
- (6) Courtesy shuttle service for patrons of one or more specific establishments; or
- (7) Intra-terminal or intra-facility shuttle services.

Public Transportation Agency Safety Plan means the documented comprehensive agency safety plan for a transit agency that is required by 49 U.S.C. 5329 and this part.

Rail fixed guideway public transportation system means any fixed guideway system, or any such system in engineering or construction, that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration. These include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

Rail transit agency means any entity that provides services on a rail fixed guideway public transportation system.

Recipient means a State or local governmental authority, or any other operator of a public transportation system, that receives financial assistance under 49 U.S.C. chapter 53.

Roadway means land on which rail transit tracks and support infrastructure have been constructed to support the movement of rail transit vehicles, excluding station platforms.

Safety Assurance means processes within a transit agency's Safety Management System that functions to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

Safety Committee means the formal joint labor-management committee on issues related to safety that is required by 49 U.S.C. 5329 and this part.

Safety event means an unexpected outcome resulting in injury or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

Safety Management management Policy means a transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities for the management of safety.

Safety Management System (SMS) means the formal, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing hazards and safety risk.

Safety Management System (SMS) Executive means a Chief Safety Officer or an equivalent.

Safety performance target means a quantifiable level of performance or condition, expressed as a value for the measure, related to safety management activities, to be achieved within a specified time period.

Safety Promotion means a combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.

Safety risk means the composite of predicted severity and likelihood of a potential consequence of a hazard.

Safety risk assessment means the formal activity whereby a transit agency determines Safety Risk Management priorities by establishing the significance or value of its safety risk.

Safety risk management means a process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating the safety risk of their potential consequences.

Safety risk mitigation means a method or methods to eliminate or reduce the

severity and/or likelihood of a potential consequence of a hazard.

Safety set-aside means the allocation of not less than 0.75 percent of assistance received by a large urbanized area provider under 49 U.S.C. 5307 to safety-related projects eligible under 49 U.S.C. 5307.

Small public transportation provider means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service across all non-rail fixed route modes or in any one non-fixed route mode and does not operate a rail fixed guideway public transportation system.

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.

State of good repair means the condition in which a capital asset is able to operate at a full level of performance.

State Safety Oversight Agency means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and (k) and the regulations set forth in 49 CFR part 674.

Subrecipient means an entity that receives Federal transit grant funds indirectly through a State or a direct recipient.

Transit agency means an operator of a public transportation system that is a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 or a rail transit agency.

Transit Asset Management Plan means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR part 625.

Transit worker means any employee, contractor, or volunteer working on behalf of the transit agency.

Urbanized area means, as defined under 49 U.S.C. 5302, an area encompassing a population of 50,000 or more that has been defined and designated in the most recent decennial census as an urban area by the Secretary of Commerce.

Subpart B—Safety Plans

§ 673.11 General requirements.

(a) A transit agency or State must establish a Public Transportation Agency Safety Plan that meets the requirements of this part and, at a minimum, consists of the following elements:

(1) The Public Transportation Agency Safety Plan, and subsequent updates, must be signed by the Accountable Executive and approved by—

(i) For a large urbanized area provider, the Safety Committee established pursuant to § 673.19, followed by the transit agency's Board of Directors or an equivalent entity; or

(ii) For all other transit agencies, the transit agency's Board of Directors or an equivalent entity.

(2) The Public Transportation Agency Safety Plan must document the processes and activities related to Safety Management System (SMS) implementation, as required under subpart D of this part.

(3) The Public Transportation Agency Safety Plan must include annual safety performance targets based on the safety performance measures established under the National Public Transportation Safety Plan. Safety performance targets for the safety risk reduction program are only required for large urbanized area providers.

(4) The Public Transportation Agency Safety Plan must address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and the National Public Transportation Safety Plan. Compliance with the minimum safety performance standards authorized under 49 U.S.C. 5329(b)(2)(C) is not required until standards have been established through the public notice and comment process.

(5) Each transit agency must establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan.

(6) A rail transit agency must include or incorporate by reference in its Public Transportation Agency Safety Plan:

(i) An emergency preparedness and response plan or procedures that addresses, at a minimum, the assignment of transit worker responsibilities during an emergency; and coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area;

(ii) Any policies and procedures regarding rail transit workers on the

roadway the rail transit agency has issued; and

(iii) The transit agency's policies and procedures developed in consultation with the State Safety Oversight Agency to provide access and required data for the State Safety Oversight Agency's risk-based inspection program.

(7) The Public Transportation Agency Safety Plan of each large urbanized area provider must include a safety risk reduction program for transit operations to improve safety performance by reducing the number and rates of safety events, injuries, and assaults on transit workers. The safety risk reduction program must, at a minimum:

(i) Address the reduction and mitigation of vehicular and pedestrian safety events involving transit vehicles that includes safety risk mitigations consistent with § 673.25(d)(3);

(ii) Address the reduction and mitigation of assaults on transit workers that includes safety risk mitigations consistent with § 673.25(d)(4);

(iii) Include the safety performance targets set by the Safety Committee pursuant to § 673.19(d)(2) for the safety risk reduction program performance measures established in the National Public Transportation Safety Plan. These targets must be set—

(A) Based on a three-year rolling average of the data submitted by the large urbanized area provider to the National Transit Database (NTD);

(B) For all modes of public transportation; and

(C) Based on the level of detail the large urbanized area provider is required to report to the NTD. The Safety Committee is not required to set a target for a performance measure until the large urbanized area provider has been required to report three years of data to the NTD corresponding to such performance measure.

(iv) Include or incorporate by reference the safety risk mitigations identified and recommended by the Safety Committee as described in § 673.25(d)(5).

(b) A transit agency may develop one Public Transportation Agency Safety Plan for all modes of service or may develop a Public Transportation Agency Safety Plan for each mode of service not subject to safety regulation by another Federal entity.

(c) A transit agency must maintain its Public Transportation Agency Safety Plan in accordance with the recordkeeping requirements in subpart E of this part.

(d) A State must draft and certify a Public Transportation Agency Safety Plan on behalf of any small public transportation provider that is located in that State. A State is not required to draft a Public Transportation Agency Safety Plan for a small public transportation provider if that transit agency notifies the State that it will draft its own plan. In each instance, the transit agency must carry out the plan. If a State drafts and certifies a Public Transportation Agency Safety Plan on behalf of a transit agency, and the transit agency later opts to draft and certify its own Public Transportation Agency Safety Plan, then the transit agency must notify the State. The transit agency has one year from the date of the notification to draft and certify a Public Transportation Agency Safety Plan that is compliant with this part. The Public Transportation Agency Safety Plan drafted by the State will remain in effect until the transit agency drafts its own Public Transportation Agency Safety Plan.

(e) Agencies that operate passenger ferries regulated by the United States Coast Guard (USCG) or rail fixed guideway public transportation service regulated by the Federal Railroad Administration (FRA) are not required to develop Public Transportation Agency Safety Plans for those modes of service.

§ 673.13 Certification of compliance.

(a) Each direct recipient, or State as authorized in § 673.11(d), must certify that it has established a Public Transportation Agency Safety Plan meeting the requirements of this part by the start of operations. A direct recipient must certify that it and all applicable subrecipients are in compliance with the requirements of this part. A State Safety Oversight Agency must review and approve a Public Transportation Agency Safety Plan developed by a rail fixed guideway public transportation system, as authorized in 49 U.S.C. 5329(e) and its implementing regulations at 49 CFR part 674.

(b) On an annual basis, a direct recipient or State must certify its compliance with this part. A direct recipient must certify that it and all applicable subrecipients are in compliance with the requirements of this part.

§ 673.15 Coordination with metropolitan, statewide, and non-metropolitan planning processes.

(a) A State or transit agency must make its safety performance targets available to States and Metropolitan

Planning Organizations to aid in the planning process.

(b) To the maximum extent practicable, a State or transit agency must coordinate with States and Metropolitan Planning Organizations in the selection of State and MPO safety performance targets.

Subpart C—Safety Committees and Cooperation With Frontline Transit Worker Representatives

§ 673.17 Cooperation with frontline transit worker representatives.

(a) Each large urbanized area provider must establish a Safety Committee that meets the requirements of § 673.19.

(b) Each transit agency that is not a large urbanized area provider must:

(1) Develop its Public Transportation Agency Safety Plan, and subsequent updates, in cooperation with frontline transit worker representatives; and

(2) Include or incorporate by reference in its Public Transportation Agency Safety Plan a description of how frontline transit worker representatives cooperate in the development and update of the Public Transportation Agency Safety Plan.

§ 673.19 Safety Committees.

(a) *Establishing the Safety Committee.* Each large urbanized area provider must establish and operate a Safety Committee that is:

(1) Appropriately scaled to the size, scope, and complexity of the transit agency; and

(2) Convened by a joint labor-management process.

(b) *Safety Committee membership.* The Safety Committee must consist of an equal number of frontline transit worker representatives and management representatives. To the extent practicable, the Safety Committee must include frontline transit worker representatives from major transit service functions, such as operations and maintenance, across the transit system.

(1) The labor organization that represents the plurality of the transit agency's frontline transit workers must select frontline transit worker representatives for the Safety Committee.

(2) If the transit agency's frontline transit workers are not represented by a labor organization, the transit agency must adopt a mechanism for frontline transit workers to select frontline transit worker representatives for the Safety Committee.

(c) *Safety Committee procedures.*

Each large urbanized area provider must include or incorporate by reference in

its Public Transportation Agency Safety Plan procedures regarding the composition, responsibilities, and operations of the Safety Committee which, at a minimum, must address:

(1) The organizational structure, size, and composition of the Safety Committee and how it will be chaired;

(2) How meeting agendas and notices will be developed and shared, and how meeting minutes will be recorded and maintained;

(3) Any required training for Safety Committee members related to the transit agency's Public Transportation Agency Safety Plan and the processes, activities, and tools used to support the transit agency's SMS;

(4) The compensation policy established by the agency for participation in Safety Committee meetings;

(5) How the Safety Committee will access technical experts, including other transit workers, to serve in an advisory capacity as needed; transit agency information, resources, and tools; and submissions to the transit worker safety reporting program to support its deliberations;

(6) How the Safety Committee will reach and record decisions;

(7) How the Safety Committee will coordinate and communicate with the transit agency's Board of Directors, or equivalent entity, and the Accountable Executive;

(8) How the Safety Committee will manage disputes to ensure it carries out its operations. The Safety Committee may use the dispute resolution or arbitration process from the transit agency's Collective Bargaining Agreement, or a different process that the Safety Committee develops and agrees upon, but the Accountable Executive may not be designated to resolve any disputes within the Safety Committee; and

(9) How the Safety Committee will carry out its responsibilities identified in paragraph (d) of this section.

(d) *Safety Committee responsibilities.* The Safety Committee must conduct the following activities to oversee the transit agency's safety performance:

(1) Review and approve the transit agency's Public Transportation Agency Safety Plan and any updates as required at § 673.11(a)(1)(i);

(2) Set annual safety performance targets for the safety risk reduction program as required at § 673.11(a)(7)(iii); and

(3) Support operation of the transit agency's SMS by:

(i) Identifying and recommending safety risk mitigations necessary to reduce the likelihood and severity of

potential consequences identified through the transit agency's safety risk assessment, including safety risk mitigations associated with any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program;

(ii) Identifying safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended, including safety risk mitigations associated with any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program; and

(iii) Identifying safety deficiencies for purposes of continuous improvement as required at § 673.27(d), including any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program.

Subpart D—Safety Management Systems

§ 673.21 General requirements.

Each transit agency must establish and implement a Safety Management System under this part. A transit agency Safety Management System must be appropriately scaled to the size, scope and complexity of the transit agency and include the following elements:

- (a) Safety Management Policy as described in § 673.23;
- (b) Safety Risk Management as described in § 673.25;
- (c) Safety Assurance as described in § 673.27; and
- (d) Safety Promotion as described in § 673.29.

§ 673.23 Safety Management Policy.

(a) A transit agency must establish its organizational accountabilities and responsibilities and have a written statement of Safety Management Policy that includes the transit agency's safety objectives and a description of the transit agency's Safety Committee or approach to cooperation with frontline transit worker representatives.

(b) A transit agency must establish and implement a process that allows transit workers to report safety concerns, including assaults on transit workers, near-misses, and unsafe acts and conditions to senior management, includes protections for transit workers who report, and includes a description of transit worker behaviors that may result in disciplinary action.

(c) The Safety Management Policy must be communicated throughout the transit agency's organization.

(d) The transit agency must establish the necessary authorities, accountabilities, and responsibilities for

the management of safety amongst the following individuals or groups within its organization, as they relate to the development and management of the transit agency's SMS:

(1) *Accountable Executive.* The transit agency must identify an Accountable Executive. The Accountable Executive is accountable for ensuring that the transit agency's SMS is effectively implemented throughout the transit agency's public transportation system. The Accountable Executive is accountable for ensuring action is taken, as necessary, to address substandard performance in the transit agency's SMS. The Accountable Executive may delegate specific responsibilities, but the ultimate accountability for the transit agency's safety performance cannot be delegated and always rests with the Accountable Executive.

(i) The Accountable Executive of a large urbanized area provider must implement safety risk mitigations for the safety risk reduction program that are included in the Agency Safety Plan under § 673.11(a)(7)(iv).

(ii) The Accountable Executive of a large urbanized area provider receives and must consider all other safety risk mitigations recommended by the Safety Committee, consistent with requirements in §§ 673.19(d) and 673.25(d)(6).

(2) *Chief Safety Officer or Safety Management System (SMS) Executive.* The Accountable Executive must designate a Chief Safety Officer or SMS Executive who has the authority and responsibility for day-to-day implementation and operation of a transit agency's SMS. The Chief Safety Officer or SMS Executive must hold a direct line of reporting to the Accountable Executive. A transit agency may allow the Accountable Executive to also serve as the Chief Safety Officer or SMS Executive.

(3) *Safety Committee.* A large urbanized area provider must establish a joint labor-management Safety Committee that meets the requirements of § 673.19.

(4) *Transit agency leadership and executive management.* A transit agency must identify those members of its leadership or executive management, other than an Accountable Executive, Chief Safety Officer, or SMS Executive, who have authorities or responsibilities for day-to-day implementation and operation of a transit agency's SMS.

(5) *Key staff.* A transit agency may designate key staff, groups of staff, or committees to support the Accountable Executive, Chief Safety Officer, Safety Committee, or SMS Executive in

developing, implementing, and operating the transit agency's SMS.

§ 673.25 Safety Risk Management.

(a) *Safety Risk Management process.* A transit agency must develop and implement a Safety Risk Management process for all elements of its public transportation system. The Safety Risk Management process must be comprised of the following activities: hazard identification, safety risk assessment, and safety risk mitigation.

(b) *Hazard identification.* (1) A transit agency must establish methods or processes to identify hazards and potential consequences of the hazards.

(2) A transit agency must consider, as a source for hazard identification:

(i) Data and information provided by an oversight authority, including but not limited to FTA, the State, or as applicable, the State Safety Oversight Agency having jurisdiction;

(ii) Data and information regarding exposure to infectious disease provided by the CDC or a State health authority; and

(iii) Safety concerns identified through Safety Assurance activities carried out under § 673.27.

(c) *Safety risk assessment.* (1) A transit agency must establish methods or processes to assess the safety risk associated with identified hazards.

(2) A safety risk assessment includes an assessment of the likelihood and severity of the potential consequences of identified hazards, taking into account existing safety risk mitigations, to determine if safety risk mitigation is necessary and to inform prioritization of safety risk mitigations.

(d) *Safety risk mitigation.* (1) A transit agency must establish methods or processes to identify safety risk mitigations or strategies necessary as a result of the transit agency's safety risk assessment to reduce the likelihood and severity of the potential consequences. For large urbanized area providers, these methods or processes must address the role of the transit agency's Safety Committee.

(2) A transit agency must consider, as a source for safety risk mitigation:

(i) Guidance provided by an oversight authority, if applicable, and FTA; and

(ii) Guidelines to prevent or control exposure to infectious diseases provided by the CDC or a State health authority.

(3) When identifying safety risk mitigations for the safety risk reduction program related to vehicular and pedestrian safety events involving transit vehicles, including to address a missed safety performance target set by the Safety Committee under § 673.19(d)(2), each large urbanized area

provider and its Safety Committee must consider mitigations to reduce visibility impairments for transit vehicle operators that contribute to accidents, including retrofits to vehicles in revenue service and specifications for future procurements that reduce visibility impairments.

(4) When identifying safety risk mitigations for the safety risk reduction program related to assaults on transit workers, including to address a missed safety performance target set by the Safety Committee under § 673.19(d)(2), each large urbanized area provider and its Safety Committee must consider deployment of assault mitigation infrastructure and technology on transit vehicles and in transit facilities. Assault mitigation infrastructure and technology includes barriers to restrict the unwanted entry of individuals and objects into the workstations of bus operators.

(5) When a large urbanized area provider's Safety Committee, as part of the transit agency's safety risk reduction program, identifies and recommends under § 673.19(c)(6) safety risk mitigations, including mitigations relating to vehicular and pedestrian safety events involving transit vehicles or assaults on transit workers, based on a safety risk assessment conducted under § 673.25(c), the transit agency must include or incorporate by reference these safety risk mitigations in its ASP pursuant to § 673.11(a)(7)(iv).

(6) When a large urbanized area provider's Safety Committee recommends a safety risk mitigation unrelated to the safety risk reduction program, and the Accountable Executive decides not to implement the safety risk mitigation, the Accountable Executive must prepare a written statement explaining their decision, pursuant to recordkeeping requirements at § 673.31. The Accountable Executive must submit and present this explanation to the transit agency's Safety Committee and Board of Directors or equivalent entity.

§ 673.27 Safety Assurance.

(a) *Safety Assurance process.* A transit agency must develop and implement a Safety Assurance process, consistent with this subpart. A rail fixed guideway public transportation system, and a recipient or subrecipient of Federal financial assistance under 49 U.S.C. chapter 53 that operates more than one hundred vehicles in peak revenue service, must include in its Safety Assurance process each of the requirements in paragraphs (b), (c), and (d) of this section. A small public transportation provider only must include in its Safety Assurance process

the requirements in paragraphs (b) and (d) of this section.

(b) *Safety performance monitoring and measurement.* A transit agency must establish activities to:

(1) Monitor its system for compliance with, and sufficiency of, the transit agency's procedures for operations and maintenance;

(2) Monitor its operations to identify any safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended. For large urbanized area providers, these activities must address the role of the transit agency's Safety Committee;

(3) Conduct investigations of safety events to identify causal factors; and

(4) Monitor information reported through any internal safety reporting programs.

(c) *Management of change.* (1) A transit agency must establish a process for identifying and assessing changes that may introduce new hazards or impact the transit agency's safety performance.

(2) If a transit agency determines that a change may impact its safety performance, then the transit agency must evaluate the proposed change through its Safety Risk Management process.

(d) *Continuous improvement.* (1) A transit agency must establish a process to assess its safety performance annually.

(i) This process must include the identification of deficiencies in the transit agency's SMS and deficiencies in the transit agency's performance against safety performance targets required in § 673.11(a)(3).

(ii) For large urbanized area providers, this process must also address the role of the transit agency's Safety Committee, and include the identification of deficiencies in the transit agency's performance against annual safety performance targets set by the Safety Committee under § 673.19(d)(2) for the safety risk reduction program required in § 673.11(a)(7).

(iii) Rail transit agencies must also address any specific internal safety review requirements established by their State Safety Oversight Agency.

(2) A large urbanized area provider must monitor safety performance against annual safety performance targets set by the Safety Committee under § 673.19(d)(2) for the safety risk reduction program in § 673.11(a)(7).

(3) A large urbanized area provider that does not meet an established annual safety performance target set by the Safety Committee under § 673.19(d)(2) for the safety risk

reduction program in § 673.11(a)(7) must:

(i) Assess associated safety risk, using the methods or processes established under § 673.25(c);

(ii) Mitigate associated safety risk based on the results of a safety risk assessment using the methods or processes established under § 673.25(d). The transit agency must include these mitigations in the plan described at § 673.27(d)(4) and in the Agency Safety Plan as described in § 673.25(d)(5); and

(iii) Allocate its safety set-aside in the following fiscal year to safety-related projects eligible under 49 U.S.C. 5307 that are reasonably likely to assist the transit agency in meeting the safety performance target in the future.

(4) A transit agency must develop and carry out, under the direction of the Accountable Executive, a plan to address any deficiencies identified through the safety performance assessment as described in this section.

§ 673.29 Safety Promotion.

(a) *Competencies and training.* (1) A transit agency must establish and implement a comprehensive safety training program that includes de-escalation training, safety concern identification and reporting training, and refresher training for all operations transit workers and transit workers directly responsible for safety in the transit agency's public transportation system. The training program must include refresher training, as necessary.

(2) Large urbanized area providers must include maintenance transit workers in the safety training program.

(b) *Safety communication.* A transit agency must communicate safety and safety performance information throughout the transit agency's organization that, at a minimum, conveys information on hazards and safety risk relevant to transit workers' roles and responsibilities and informs transit workers of safety actions taken in response to reports submitted through a transit worker safety reporting program. A transit agency must also communicate the results of cooperation with frontline transit worker representatives as described at § 673.17(b) or the Safety Committee activities described in § 673.19.

Subpart E—Safety Plan Documentation and Recordkeeping

§ 673.31 Safety plan documentation.

At all times, a transit agency must maintain documents that set forth its Public Transportation Agency Safety Plan, including those related to the implementation of its SMS, and results

from SMS processes and activities. A transit agency must maintain documents that are included in whole, or by reference, that describe the programs, policies, and procedures that the transit agency uses to carry out its Public

Transportation Agency Safety Plan. These documents must be made available upon request by FTA or other Federal entity, or a State or State Safety Oversight Agency having jurisdiction. A transit agency must maintain these

documents for a minimum of three years after they are created.

[FR Doc. 2024-07514 Filed 4-10-24; 8:45 am]

BILLING CODE 4910-57-P