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## 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:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** The Federal Transit Administration (FTA) is proposing new requirements for Public Transportation Agency Safety Plans (PTASP) that include revised 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. FTA also proposes revisions to the regulation to coordinate and align with other FTA programs and safety rulemakings.

**DATES:** Comments should be filed by June 26, 2023. FTA will consider comments received after that date to the extent practicable.

**ADDRESSES:** You may send comments, identified by docket number FTA-2023-0007, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for sending comments.
- **Fax:** (202) 493-2251.
- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery/Courier:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

**Instructions:** All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For internet access to the docket to read background documents and comments received, go to <https://www.regulations.gov>. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For program matters, contact Stewart Mader, Office of Transit Safety and Oversight, (202) 366-9677 or [stewart.mader@dot.gov](mailto:stewart.mader@dot.gov). For legal matters, contact Heather Ueyama, Office of Chief Counsel, (202) 366-7374 or [heather.ueyama@dot.gov](mailto:heather.ueyama@dot.gov).

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

#### **SUPPLEMENTARY INFORMATION:**

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#### **I. Executive Summary**

##### *A. Purpose of Regulatory Action*

This Notice of Proposed Rulemaking (NPRM) proposes to amend the Public Transportation Agency Safety Plans (PTASP) regulation at 49 CFR part 673 with new requirements that would incorporate explicit 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(d) by adding to the PTASP requirements for public transportation systems that receive Federal financial assistance under 49 U.S.C. chapter 53 (chapter 53).

In response to these statutory changes, this NPRM proposes several revisions to the PTASP regulation, including

requirements for the development, update, and approval of Agency Safety Plans (ASP); the establishment of a Safety Committee; cooperation with frontline transit worker representatives in the development of ASPs; the establishment of 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 based on data submitted to the National Transit Database (NTD); the establishment of safety performance targets for risk reduction programs; the establishment of de-escalation training for certain transit workers; and the incorporation of guidelines from the CDC or a State health authority regarding exposure to infectious diseases into the agency’s SMS processes. FTA also proposes revisions to 49 CFR part 673 based on coordination and alignment with other FTA programs and forthcoming safety rulemakings.

Prior to publishing this NPRM, FTA engaged in stakeholder outreach regarding the new Bipartisan Infrastructure Law PTASP requirements. In accordance with the Department of Transportation’s Guidance on Communication with Parties outside of the Federal Executive Branch (Ex Parte Communications),<sup>1</sup> FTA has added a memorandum summarizing these communications to the docket for this rulemaking. Where FTA has incorporated stakeholder suggestions into its regulatory proposals, FTA discusses such suggestions in the corresponding sections below.

##### *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.

<sup>1</sup> Available at: <https://www.transportation.gov/regulations/memorandum-secretarial-officers-and-heads-operating-administrations>.

The Bipartisan Infrastructure Law made several changes to 49 U.S.C. 5329(d). This proposed rule would revise portions of part 673 to incorporate these new requirements. The Bipartisan Infrastructure Law amended 49 U.S.C. 5329(d)(1)(B) to require that each recipient serving an urbanized area with a population of fewer than 200,000 (small urbanized area) develop its ASP in cooperation with frontline employee representatives.

In addition, the Bipartisan Infrastructure Law added several new requirements that apply to each recipient of Urbanized Area Formula Program funds under 49 U.S.C. 5307 (section 5307) that serves an urbanized area with a population of 200,000 or more (large urbanized area). The statute requires these agencies to undertake the following activities:

- 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 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:

- 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)).

In addition, the Bipartisan Infrastructure Law requires that each agency's ASP address 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)).

### *C. Questions About Confidential Close-Call/Near-Miss Transit Worker Safety Reporting Programs*

This NPRM does not propose any new requirements related to transit worker safety reporting programs. Through voluntary review of ASPs and technical assistance provided by its PTASP Technical Assistance Center, FTA has observed that many transit agencies have incorporated mechanisms to allow for confidential close call/near-miss reporting as part of their transit worker safety reporting programs. FTA is interested in hearing from the transit industry and other interested stakeholders regarding any experience establishing confidential reporting methods for transit workers and would appreciate feedback to the following questions:

- Have transit agencies offered transit workers methods to submit confidential reports of near-misses or safety concerns?

- If so, please share a brief summary of such methods, including how transit agencies ensure reports are submitted confidentially.

- How many reports do such programs receive annually?

- How has this reporting improved or not improved transit agencies' ability to manage safety risk?

- What challenges, if any, have transit agencies encountered, including in protecting information to ensure reports remain confidential, and in taking action on reports that are redacted?

- What has been the annual cost of operating such programs?

- Have transit agencies participated in a close-call or near-miss reporting program facilitated by a third party to protect the confidentiality of reporters?

- If so, please share a brief summary of how the program works, including whether transit agencies receive only de-identified reports specific to the agency, or if de-identified reports are shared with all participants in the program.

- How many reports do transit agencies receive annually?

- How has this participation improved or not improved transit agencies' ability to manage safety risk?

- What are the annual estimated costs for participation in such programs?

- If transit agencies do not have a confidential close-call or near-miss reporting program, have such agencies assessed the feasibility of establishing a program? What are the expected benefits and barriers that transit agencies have identified, if any?

Respondents may respond to any question and do not need to respond to all questions.

## **II. Section-by-Section Analysis**

FTA proposes several terminology changes that would apply throughout part 673. FTA proposes to change the term "agency" to "transit agency" for clarity. FTA also proposes to replace the term "employee" with "transit worker" for consistency with the changes to section 673.5 discussed below. Similarly, where FTA incorporates Bipartisan Infrastructure Law requirements involving transit employees into the regulation, FTA uses the term "transit worker."

In addition, FTA proposes three terminology changes to ensure the regulatory language aligns with SMS terminology commonly used in the transit industry. FTA would:

- Replace the term "risk" with "safety risk,"

- Replace the term "mitigation" with "safety risk mitigation," and

- Replace the term “consequence” with “potential consequence.”

#### *Subpart A—General*

##### 1.1 Applicability

This section sets forth the applicability of the PTASP regulation. Currently, 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.

Through guidance, FTA has consistently interpreted this provision to mean that the PTASP regulation applies to two categories of recipients: (1) section 5307 recipients; and (2) rail transit agencies. For consistency with this existing practice, FTA proposes revising section 673.1(b) to clarify that the exception for section 5310 and section 5311 recipients does not apply to operators of rail fixed guideway public transportation systems. Accordingly, this change clarifies FTA’s existing practice that all rail transit agencies must meet the requirements of part 673 if they receive Federal financial assistance under chapter 53.

##### 1.2 Definitions

This section sets forth the definitions of key terms used in the regulation. FTA proposes several changes to this section for clarity, as well as several changes related to Bipartisan Infrastructure Law requirements.

#### *Amendments for Clarity*

FTA proposes adding, amending, and deleting several definitions in section 673.5. These modifications provide greater clarity and are not intended to change the application of any existing requirements.

FTA would remove the definitions of “accident,” “event,” “incident,” “occurrence,” and “serious injury” from section 673.5. In their place, FTA would add a single term: “safety event.” This change is intended to simplify the classification of safety events.

FTA proposes to add a definition of “emergency” to clarify requirements related to emergency response and preparedness plans. This definition would mirror the statutory definition in 49 U.S.C. 5324.

FTA would replace the existing term “Equivalent Authority” with “equivalent entity” to conform with the statutory term used in 49 U.S.C. 5329(d)(1)(A).

FTA would add definitions for the terms “near-miss” and “roadway” to clarify new requirements that FTA is proposing to the regulation.

FTA proposes to add a definition of “public transportation.” This definition mirrors the statutory definition provided in 49 U.S.C. 5302. Similarly, FTA would add definitions of the terms “potential consequence,” “recipient,” “direct recipient,” and “subrecipient” for clarity. All of these terms are used frequently in the regulation, but they were not defined previously in this section.

FTA proposes to make minor edits to the definition of “rail fixed guideway public transportation system” for clarity.

FTA would modify the existing terms “risk” and “risk mitigation” by adding the word “safety” before each to ensure regulatory language aligns with SMS terminology commonly used in the transit industry.

FTA would modify the definition of “Safety Management Policy,” “Safety Management System,” and “Safety Risk Management” for clarity and to ensure regulatory language aligns with SMS terminology commonly used in the transit industry.

FTA would modify the definition of “small public transportation provider” to align with the definition of Tier II Provider in FTA’s Transit Asset Management regulation (49 CFR 625). This is consistent with FTA’s existing interpretation of small public transportation provider. FTA notes that certain transit agencies will meet the definition of both “small public transportation provider” and “large urbanized area provider.” This would occur if the small public transportation provider serves a large urbanized area. In such cases, the transit agency must meet all large urbanized area provider requirements, including establishing a Safety Committee and safety risk reduction program.

Finally, FTA would amend the definition of “transit agency” to clarify FTA’s existing practice that PTASP applies only to rail transit agencies and section 5307 recipients and subrecipients, as discussed above.

#### *Amendments Related to the Bipartisan Infrastructure Law*

FTA proposes adding definitions to section 673.5 related to the new Bipartisan Infrastructure Law PTASP requirements.

The Bipartisan Infrastructure Law amended 49 U.S.C. 5302 to add a definition of “assault on a transit worker.” FTA would incorporate the

statutory definition of this term into section 673.5 without change.

FTA proposes to add a definition of “CDC,” which relates to the statutory requirement in 49 U.S.C. 5329(d)(1)(D) about minimizing exposure to infectious diseases. In addition, FTA proposes to add definitions for the terms “joint labor-management process,” “safety committee,” and “safety set aside.” Each of these terms relates to Bipartisan Infrastructure Law requirements for Safety Committees and safety risk reduction programs.

Many of the Bipartisan Infrastructure Law PTASP requirements only apply to section 5307 recipients and subrecipients that serve an urbanized area with a population of 200,000 or more (large urbanized area). FTA proposes to capture this category of transit agencies by adding a new defined term to section 673.5: “large urbanized area provider.” For clarity, FTA also proposes to define the term “urbanized area.” The proposed definition mirrors how the term is defined in 49 U.S.C. 5302.

FTA would make a minor change to the definition of “State Safety Oversight Agency” to add a citation to the State Safety Oversight Agency (SSOA) inspection provision at 49 U.S.C. 5329(k), which was added by the Bipartisan Infrastructure Law.

Finally, FTA would add a definition of “transit worker” that includes employees, contractors, and volunteers working on behalf of the transit agency. This definition would ensure that transit worker-related requirements, such as training, will apply to volunteers, such as volunteer transit operators who are a crucial part of the staff at some transit agencies, especially in rural areas.

#### *Subpart B—Safety Plans*

##### 673.11 General Requirements

This section establishes general PTASP requirements. FTA proposes revising section 673.11(a) to remove language about the initial regulatory deadline for establishing an ASP because the deadline has already passed. FTA also proposes to add the word “State” to clarify that States have a role in ASP development for certain small public transportation providers. This is a clarification that does not change any existing requirements.

The Bipartisan Infrastructure Law amended 49 U.S.C. 5329(d) to require that the Safety Committee of section 5307 recipients that serve a large urbanized area must approve the ASP and any updates to the ASP. Per statute, this approval must occur before the

transit agency's Board of Directors or equivalent entity approves the ASP or update. FTA proposes revising section 673.11(a)(1) to incorporate this statutory requirement. The requirement to obtain Safety Committee approval applies only to large urbanized area providers. For all other transit agencies, the existing requirement for Board or equivalent entity approval remains unchanged.

Section 673.11(a)(3) provides that ASPs must include safety performance targets based on the safety performance measures established under FTA's National Public Transportation Safety Plan (NSP). FTA proposes to clarify FTA's existing practice that the safety performance targets are set annually. FTA also proposes revising this section to clarify that performance targets for the safety risk reduction program under section 673.20 are required only for large urbanized providers.

FTA proposes revising section 673.11(a)(6) to add paragraph (ii) requiring rail transit agencies to include or incorporate by reference in their ASPs the policies and procedures regarding rail transit workers on the roadway. This requirement relates to FTA's forthcoming Roadway Worker Protection (RWP) proposed rule. This RWP proposal is responsive to National Transportation Safety Board (NTSB) recommendations related to roadway worker protection.

FTA also proposes revising section 673.11(a)(6) to add paragraph (iii) requiring rail transit agencies to include or incorporate by reference in their ASPs the policies and procedures to provide access to facilities and required data regarding the SSOA's risk-based inspection programs. This proposal relates to Bipartisan Infrastructure Law requirements regarding SSOA risk-based inspection programs at 49 U.S.C. 5329(k).

FTA proposes adding section 673.11(a)(7) to require large urbanized area providers to include in their ASP a safety risk reduction program that meets the requirements of section 673.20. Agencies may choose to document safety risk reduction program elements in the Safety Risk Management and Safety Assurance sections of their ASP.

FTA is not proposing any changes to 673.11(d), which requires a State to draft and certify an ASP for a small public transportation provider that is located in that State. However, FTA wants to make clear that 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 risk reduction program.

FTA proposes striking the current language at section 673.11(e) to remove reference to the "System Safety Program Plan" under part 659. The requirement to have a System Safety Program Plan has been replaced by the requirement to have an ASP, and FTA rescinded part 659 on February 7, 2022 (87 FR 6783). In response to this change, FTA would redesignate existing paragraph (f) as paragraph (e). In the new section 673.11(e), FTA proposes minor wording changes for clarity.

#### 673.13 Certification of Compliance

This section sets forth certification requirements. FTA proposes revising section 673.13(a) to remove an outdated initial certification deadline and to clarify FTA's existing practice that a direct recipient or State's initial PTASP certification must occur by the start of operations. In addition, FTA proposes to revise section 673.13 to clarify that only direct recipients and States must certify compliance with part 673. This is not a change to FTA's current practice. FTA notes for clarity that subrecipients are not required to certify compliance with PTASP; direct recipients certify on behalf of their subrecipients.

#### 673.17 Cooperation With Frontline Transit Worker Representatives

In a new section 673.17, FTA proposes requirements for transit agency cooperation with frontline transit worker representatives, as required by the Bipartisan Infrastructure Law. In section 673.17(a), FTA would incorporate 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 in cooperation with frontline transit worker representatives, as required by the Bipartisan Infrastructure Law. In this section, FTA also proposes 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.

#### *Subpart C—Safety Committee and Safety Risk Reduction Program*

FTA proposes creating a new subpart C, "Safety Committee and Safety Risk Reduction Program" that incorporates Bipartisan Infrastructure Law requirements for Safety Committees and Safety Risk Reduction Programs.

#### 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. FTA proposes a new section 673.19(a) in response to the statutory requirement that the Safety Committee be convened by a joint-labor management process and adds a requirement that the Safety Committee be appropriately scaled to the size, scope, and complexity of the transit agency.

In section 673.19(b), FTA incorporates the statutory requirement that the Safety Committee consist of an equal number of frontline transit worker representatives and management representatives. FTA notes that there must be an equal number of frontline transit worker representative and management representative voting members on the Safety Committee. However, this requirement does not prohibit designation of additional non-voting participants, such as management representative alternates who may serve in a voting capacity in the event of a management representative voting member absence, or frontline transit worker representative alternates who may serve in a voting capacity in the event of a frontline transit worker representative voting member absence. FTA also proposes a requirement that the Safety Committee include frontline transit worker representatives from major transit service functions to the extent practicable.

The Bipartisan Infrastructure Law requires that the frontline transit worker representatives be selected by a labor organization representing the plurality of the frontline workforce. FTA incorporates this statutory requirement into section 673.19(b). FTA also proposes a requirement that the Safety Committee include frontline transit worker representatives from major transit service functions to the extent practicable. FTA also proposes that 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. FTA is proposing this requirement to ensure that in situations where frontline transit workers are not represented by a labor organization, frontline transit workers select the frontline transit worker representatives.

FTA proposes section 673.19(c), which requires that certain policies and procedures about the composition, responsibilities, and operations of the Safety Committee be included or incorporated by reference in the ASP. One of these proposed policies and

procedures addresses how the Safety Committee will manage disputes and tie votes to ensure it carries out its operations. Through outreach meetings with FTA, some stakeholders voiced concerns that Safety Committees could become deadlocked. This has the potential to delay the development or update of an agency's ASP and the operation of the agency's SMS. FTA finds this concern to be valid and therefore proposes that ASPs include policies or procedures to address this situation. Additional details about FTA's stakeholder outreach meetings can be found in the docket to this rulemaking.

FTA proposes section 673.19(d), which 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. The proposed activities of the Safety Committee implement requirements of the Bipartisan Infrastructure Law.

#### 673.20 Safety Risk Reduction Program

The Bipartisan Infrastructure Law requires recipients serving large urbanized areas to 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: (1) a reduction of vehicular and pedestrian accidents involving buses, including measures to reduce visibility impairments for bus operators that contribute to accidents; and (2) the mitigation of assaults on transit workers, including the deployment of assault mitigation infrastructure and technology on buses. Section 5329(d)(1)(I) describes specific mitigations for reducing safety events, including retrofits to buses in revenue service and specifications for future procurements that reduce visibility impairments, and barriers to restrict the unwanted entry of individuals and objects into the workstations of bus operators.

To incorporate this requirement, FTA proposes a new section 673.20(a), which requires large urbanized area providers to establish a safety risk reduction program that includes the two statutory areas discussed above. FTA proposes that a key element of this program would be the consideration of safety risk mitigations consistent with proposed sections 673.20(a)(2) through (a)(4).

In these sections, FTA proposes that when carrying out the Safety Risk Management (SRM) process for risk relating to vehicular and pedestrian

safety events involving transit vehicles, and for risk relating to assaults on transit workers, a large urbanized area provider must consider specific mitigations. These safety risk mitigations are based on the mitigations listed in 49 U.S.C. 5329(d)(1)(I) described above. However, section 673.20(a)(2) would require consideration of operator visibility impairment mitigations for any type of transit vehicles, not just buses. Similarly, section 673.20(a)(3) would require consideration of assault mitigation infrastructure and technology in any type of transit vehicle and in transit facilities, not just buses. FTA believes that tying the safety risk reduction program to transit agencies' existing Safety Risk Management (SRM) process will support and reinforce consistent application of SMS practices for all safety risk mitigation, including for the two statutory areas identified in section 5329(d)(1)(I).

FTA is proposing this requirement pursuant to 49 U.S.C. 5329(d)(1)(I) and 49 U.S.C. 5329(d)(1)(C) and (D). In using the word "including" when describing the risk reduction program, 49 U.S.C. 5329(d)(1)(I)(i) and (ii) outline a non-exclusive list of program elements. FTA therefore believes that requiring consideration of additional mitigations in the risk reduction program is appropriate. In addition, 49 U.S.C. 5329(d)(1)(C) and (D) require that each agency's ASP include "methods for identifying and evaluating safety risks throughout all elements of the public transportation system," and "strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions," respectively. As described in FTA's 2018 PTASP final rule, "[e]ach of these requirements is consistent with the second component of SMS—Safety Risk Management." (83 FR 34418, at 34453). The proposed requirement to consider specific mitigations through the SRM process would enable agencies to evaluate visibility impairment and transit worker assault safety risks more effectively, and would enable them to minimize the exposure of the public, personnel, and property to related hazards and unsafe conditions. FTA believes that this requirement will lead to improved safety performance at all applicable transit agencies.

To incorporate the statutorily required role of the Safety Committee, FTA proposes section 673.20(a)(4). Pursuant to this section, when a Safety Committee performs a safety risk analysis, determines that particular safety risk mitigations would reduce assaults on transit workers and injuries

to transit workers, and recommends such mitigations to the Accountable Executive, the transit agency must implement one or more of these recommended mitigations. Consistent with existing PTASP regulation requirements, the Accountable Executive retains direction over the human and capital resources needed to develop and maintain the ASP and has ultimate accountability for the agency's safety performance. Accordingly, if in exercising this responsibility the Accountable Executive determines that safety risk mitigations recommended by the Safety Committee are not feasible or effective in improving the agency's overall safety performance, it may decline to implement such mitigation. The Accountable Executive should document such decisions consistent with the recordkeeping requirements of section 673.31.

The Bipartisan Infrastructure Law requires that the Safety Committees of recipients serving large urbanized areas establish performance targets for the safety risk reduction program using a 3-year rolling average of data submitted by the recipient to the NTD. FTA proposes to incorporate those requirements into section 673.20(b) and proposes that these targets must be set on an annual basis. These targets will be based on performance measures and standards that FTA will propose in a separate action, the National Public Transportation Safety Plan, which is to be published for public comment at a later date. As required by the Bipartisan Infrastructure Law, these performance measures for a safety risk reduction program must be included in the National Public Transportation Safety Plan (49 U.S.C. 5329(b)(2)(A)). Once those performance measures are established in the National Public Transportation Safety Plan, transit agencies will use these measures to set targets for the safety risk reduction program, as required by 49 U.S.C. 5329(d).

Some large urbanized area providers that qualify as Reduced Reporters for NTD reporting purposes may not currently report detailed safety event information to the NTD. FTA is considering revisions to NTD safety data forms to support more granular data collection from these transit agencies. However, these revisions have not gone into effect yet. Accordingly, for purposes of annual safety performance target setting for the safety risk reduction program, FTA is proposing to require that the Safety Committees of large urbanized area providers set these targets only based on the level of detail the transit agency is required to report

to the NTD. If a transit agency has not been required to report three years of data to the NTD relating to a performance measure yet, the Safety Committee would not set a risk reduction performance target for that specific measure yet. Target setting for the performance measure would begin once the transit agency has been required to report three years of data to the NTD corresponding to the performance measure.

FTA is not proposing to require that a defined amount of annual reduction be reflected in the safety risk reduction program performance targets. FTA believes that Safety Committees should 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.

FTA also proposes section 673.20(d), which leverages the continuous improvement processes established under section 673.27(d) to require that transit agencies monitor their safety performance against the annual safety performance targets the Safety Committee sets for the safety risk reduction program.

Section 673.20(e) incorporates Bipartisan Infrastructure Law requirements addressing failure to meet an annual safety performance target set under the safety risk reduction program. This includes the requirement that if a large urbanized area provider does not meet one of the safety risk reduction performance targets, it must allocate at least 0.75% of its section 5307 funds in the following fiscal year to safety-related projects eligible under section 5307 that are reasonably likely to assist the agency in meeting the target in the future. FTA proposes that large urbanized area providers that do not meet an established target assess the associated safety risk using the methods or processes established under section 673.25(c) and mitigate associated safety risk based on the results of the safety risk assessment.

#### *Subpart D—Safety Management Systems*

FTA proposes redesignating existing subpart C as subpart D, Safety Management Systems.

#### 673.23 Safety Management Policy

In section 673.23(a), FTA proposes adding a requirement for 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.

This ensures the policy describes the coordination with frontline transit workers required under the Bipartisan Infrastructure Law.

Section 673.23(b) currently requires agencies to establish and implement a safety reporting process. FTA proposes two changes to this paragraph. First, FTA proposes to replace the words "safety conditions" with "safety concerns," and to add a few examples of safety concerns. This change describes the reporting process requirement more accurately. Second, with respect to required protections for transit workers who report, FTA also proposes to delete the words "safety conditions to senior management." This wording is duplicative of information already conveyed in the paragraph. This is a minor change that does not alter any existing requirements.

In section 673.23(d)(1), FTA proposes adding a requirement for the Accountable Executive to receive and consider safety risk mitigation recommendations of the Safety Committee. This additional Accountable Executive responsibility ensures that the Safety Committee has a meaningful voice in safety-related decision-making. Further, in section 673.23(d)(3), FTA proposes to require that large urbanized area providers establish the necessary authorities, accountabilities, and responsibilities for the management of safety for the Safety Committee. In section 673.23(d)(5), FTA proposes adding the Safety Committee to the list of groups which the transit agency may designate as key staff in developing, implementing, and operating the transit agency's SMS. This addition relates to Bipartisan Infrastructure Law Safety Committee requirements and requires large urbanized area providers to address new Safety Committee requirements through the Safety Management Policy component of their SMS.

#### 673.25 Safety Risk Management

FTA proposes amending section 673.25(b)(2) to clarify existing requirements for transit agencies to consider certain data and information as a source for hazard identification. In addition, the Bipartisan Infrastructure Law requires ASPs to address minimizing exposure to infectious diseases, consistent with guidelines from the CDC or a State health authority. In response to this statutory requirement, FTA proposes also amending section 673.25(b)(2) to require transit agencies to consider data and information from the CDC or a State health authority regarding exposure to infectious disease as a source for hazard

identification. FTA also proposes that transit agencies consider safety concerns identified through the transit agency's Safety Assurance activities. FTA proposes this change to establish the link more clearly between Safety Risk Management and Safety Assurance activities.

In section 673.25(c)(2), FTA proposes wording changes to clarify the application of existing safety risk assessment requirements and the connection between safety risk assessment and safety risk mitigation. One of these changes clarifies that safety risk assessments should ultimately inform the prioritization of safety risk mitigation activity rather than simply the prioritization of identified hazards. This change is intended to clarify FTA's original intent that safety risk assessment activity informs the prioritization of safety resources to mitigate safety risk.

In section 673.25(d)(1), FTA proposes minor wording changes consistent with the changes proposed in section 673.5. FTA also proposes that the safety risk management process of large urbanized area providers must address the role of the agency's Safety Committee. This ensures that the SMS of these providers incorporates the Safety Committee's statutorily required responsibilities relating to safety risk management.

FTA proposes adding section 673.25(d)(2), which would require transit agencies to consider guidance provided by an oversight authority, if applicable, and FTA as a source for safety risk mitigation. In response to Bipartisan Infrastructure Law requirements, this paragraph would also require agencies to consider CDC or State health authority guidelines to prevent or control exposure to infectious diseases.

#### 673.27 Safety Assurance

FTA proposes amending the continuous improvement requirement in section 673.27(d)(1) to specify that a transit agency must establish a process to assess its safety performance annually. FTA proposes that the process 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 section 673.11(a)(3) and safety performance targets set by the Safety Committees of large urbanized area providers for the safety risk reduction program as required at section 673.20(b). This updated requirement clarifies FTA's intent for the frequency and substance of this performance assessment, and addresses industry

concerns that the regulation did not specify a timeline for assessing safety performance. For large urbanized area providers, FTA also proposes that the continuous improvement process must address the role of the transit agency's Safety Committee. This ensures that the SMS of these providers incorporates the Safety Committee's statutorily required responsibilities relating to continuous improvement.

FTA further proposes to require that rail transit agencies must address internal safety review requirements established by SSOAs as part of the continuous improvement element of Safety Assurance. FTA proposes minor wording changes in section 673.25(d)(2) for clarity.

In section 673.27(a), FTA proposes to extend the continuous improvement requirements to small public transportation providers. In the current regulation, small public transportation providers are exempt from this requirement. This change is 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. Certain small public transportation providers meet the definition of large urbanized area provider and are therefore subject to these statutory requirements. Additionally, under the existing rule, all small public transportation providers already are required to set safety performance targets based on the safety performance measures established in the NSP. FTA does not believe that the continuous improvement requirements will be burdensome for small public transportation providers. 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.

In addition, FTA proposes a change to the safety performance monitoring and measurement requirements in section 673.27(b). FTA proposes that for large urbanized area providers, these activities must address the role of the agency's Safety Committee. This ensures that the SMS of these providers incorporates the Safety Committee's statutorily required responsibilities relating to safety performance monitoring and measurement.

### 673.29 Safety Promotion

Pursuant to 49 U.S.C. 5329(d)(1)(H), each agency's ASP must include a comprehensive staff training program. The Bipartisan Infrastructure Law amended this provision to require that large urbanized area providers include maintenance workers and de-escalation training in their training programs.

To incorporate the de-escalation training requirement, FTA proposes adding language to section 673.29(a) that would require transit agencies to include de-escalation training in their comprehensive safety training program. This requirement would apply to all agencies, not just large urbanized area providers. FTA is proposing this requirement pursuant to 49 U.S.C. 5329(d)(1)(H)(i). In using the word "including" when describing the comprehensive safety training program, 49 U.S.C. 5329(d)(1)(H)(i) outlines a nonexclusive list of program elements. FTA therefore believes that requiring de-escalation training for operations personnel and personnel directly responsible for safety at all transit agencies is appropriate. FTA believes this is appropriate and necessary to enhance the safety outcomes for all transit workers and users of transportation, not just those in large urbanized areas.

FTA also proposes that the training program must include training on safety concern identification and reporting. This training requirement would address a common industry need for greater understanding of how to report safety concerns through safety reporting programs.

This section would also incorporate the statutory requirement that large urbanized area providers must include maintenance workers in their training programs in new section 673.29(a)(2).

In section 673.29(b), FTA proposes to require 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. FTA proposes this modified requirement to address the communication impacts resulting from the new requirements for cooperation with frontline transit worker representatives and joint labor-management 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*

FTA proposes establishing a new subpart E for Safety Plan Documentation and Recordkeeping.

### 673.31 Safety Plan Documentation

FTA proposes a minor edit to the safety plan documentation requirements in section 673.31 to clarify that a transit agency must make documents available upon request by a State having jurisdiction.

## III. 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"), 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 \$100 million or more. OMB has determined that the proposed rule is not significant within the meaning of Executive Order 12866 and has not reviewed it under that order.

### Overview and Need for Regulation

The proposed rule, which implements amendments made by the Bipartisan Infrastructure Law, would add requirements for transit agencies subject to the existing regulation for Public Transportation Agency Safety Plans. The applicable agencies include all rail transit agencies and all transit agencies receiving section 5307 funding. Agencies would need to incorporate de-escalation training into their safety training programs and would need to incorporate guidelines for infectious disease exposure into their safety management system processes. In addition, small public transportation providers would need to establish continuous improvement processes to assess safety performance; current regulation requires transit providers to establish processes but exempts small providers.

The proposed rule would also create requirements for transit agencies based on the urbanized areas they serve. Agencies serving urbanized areas with 200,000 or more people would need to establish safety committees, safety risk reduction programs with safety performance targets, and include maintenance workers in their safety training programs. The agencies would need to allocate at least 0.75 percent of

their section 5307 funding to eligible safety projects. If an agency did not meet a safety performance target, it would need to allocate its set-aside funding to projects that are reasonably likely assist the agency in meeting the target. Agencies serving urbanized areas with fewer than 200,000 people would need to develop their agency safety plans in cooperation with frontline transit worker representatives.

**Benefits**

The proposed rule would reduce the risk of fatalities and injuries for transit workers, bus passengers, drivers, and pedestrians if transit agencies adopt safety risk mitigations that they would not have adopted under current agency safety plans or spending levels. FTA expects that agencies would be more likely to adopt mitigations to reduce the risk of bus collisions and transit worker assault. Example mitigations include bus sensors and surveillance systems to detect objects and pedestrians, or bus operator barriers to protect drivers. At the same time, some mitigations like de-escalation training for transit operators have already been widely adopted. FTA currently does not have information to determine what additional mitigations agencies would adopt due to the proposed rule and has therefore not estimated the associated benefits.

FTA seeks information from commenters to estimate the benefits of the proposed rule. What safety interventions would agencies be more

likely to adopt as a result of developing risk reduction programs or explicitly considering bus collisions and transit worker assaults?

**Costs**

Transit agencies may incur economic costs to adopt safety interventions if the proposed rule leads to changes in safety plans or spending levels. While the proposed rule would require agencies to allocate at least 0.75 percent of section 5307 funds to eligible safety projects, the resulting changes in spending are unknown for two reasons. First, FTA does not have information to estimate the risk reduction targets agencies would set or the likelihood that agencies would not meet the targets. Second, if an agency spends more of its section 5307 funding on safety interventions but can offset the increased spending by spending less of its state and local funding, then total spending may increase by a smaller amount or even remain unchanged.

Transit agencies would also incur costs to meet the new administrative and reporting requirements. To estimate the costs, FTA subject-matter experts estimated the number of transit agencies affected, the number and type of staff involved, and the time needed (Table 1). FTA determined that the requirements would affect 428 agencies in large urbanized areas and 280 agencies in small urbanized areas. Within an agency, safety managers, operations managers, and frontline worker

representatives would spend the most time to meet the requirements each year. FTA then used the estimates to calculate costs for the first ten years of the rule from 2023—the assumed effective date of the rule—to 2032.

The estimates in Table 1 account for current transit agency practices. For de-escalation training, almost all agencies established programs after the Transportation Security Administration issued a security directive in January 2021 requiring mask use on public transportation.<sup>2</sup> The directive, which is no longer in effect as of April 2022,<sup>3</sup> 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.<sup>4</sup> For agency safety plans, FTA has the understanding that most agencies already involve frontline worker representatives; for that reason, the estimated hours and staff for frontline worker involvement only cover new reporting requirements.

Some agencies also began meeting requirements after FTA issued a Dear Colleague letter in February 2022 describing statutory changes in the Bipartisan Infrastructure Law.<sup>5</sup> In that case, however, FTA keeps the agencies in its cost analysis because agencies would not have incorporated the requirements without the Congressional mandate.

**TABLE 1—STAFF AND HOURS NEEDED TO MEET ADMINISTRATIVE AND REPORTING REQUIREMENTS**

Requirement	Affected entities	Staff	First-year hours	Annual hours
De-escalation training	12,000 frontline employees (5% of 240,000 as of June 2022)	Frontline personnel	2	0.25
Continuous improvement processes	572 small public transit providers	Chief Safety Officer	1	4
		Safety manager	1	8
Safety committee with frontline worker representatives.	428 agencies in large UZAs	HR manager	24	
		Safety manager	24	21
		Union representative	24	
		Operations manager		21
		Maintenance manager		21
		Frontline representative		63
Risk reduction program	428 agencies in large UZAs	Chief Safety Officer	1	1
		Safety manager	1	2
		Data analyst		8
Frontline worker involvement with agency safety plans.	270 agencies in small UZAs	Chief Safety Officer		2
		Safety manager	4	2

Source: FTA analysis.

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

2).<sup>6</sup> FTA used median hourly wages for workers in the Transit and Ground

<sup>2</sup> 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](https://www.tsa.gov/sites/default/files/sd-1582_84-21-01.pdf).

<sup>3</sup> 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](https://www.tsa.gov/press/statements/2022/04/18/statement-regarding-face-mask-use-public-transportation).

<sup>4</sup> Federal Transit Administration (August 2022). “FTA-Sponsored Training Courses.” <https://www.transit.dot.gov/regulations-and-guidance/safety/fta-sponsored-training-courses>.

<sup>5</sup> 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>.

<sup>6</sup> Bureau of Labor Statistics. 2022. “May 2021 National Occupational Employment and Wage Estimates: United States.” [https://www.bls.gov/oes/2021/may/oes\\_nat.htm](https://www.bls.gov/oes/2021/may/oes_nat.htm).



Passenger Transportation industry estimates, multiplied by 1.62 to account (North American Industry Classification for employer benefits.<sup>7</sup> System code 485000) as a basis for the

TABLE 2—OCCUPATIONAL CATEGORIES AND WAGES USED TO VALUE STAFF TIME [2021]

Staff	Occupational category	Code	Median hourly wage	Wage with benefits
HR manager	Human Resources Managers	11-3121	\$45.64	\$73.77
Safety manager	Occupational Health and Safety Specialists	19-5011	37.29	60.27
Union representative	Occupational Health and Safety Specialists	19-5011	37.29	60.27
Chief Safety Officer	Health and Safety Engineers	17-2111	49.21	79.54
Data analyst	Operations Research Analysts	15-2031	57.71	93.27
Frontline worker	Transportation and Material Moving Occupations	53-0000	22.10	35.72
Operations manager	General and Operations Manager	11-1021	45.60	73.70
Maintenance manager	Facilities Managers	11-3013	43.88	70.92

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

The administrative and reporting requirements of the proposed rule have estimated costs of \$2.4 million in the first year in 2021 dollars and annual costs of \$4.9 million in later years (Table 3). The largest annual costs are for de-escalation training (\$2.2 million) and the safety committees (\$2.1 million).

TABLE 3—FIRST-YEAR AND ANNUAL COSTS FOR ADMINISTRATIVE AND REPORTING REQUIREMENTS [2021]

Requirement	First-year costs	Annual costs
De-escalation training	\$868,000	\$2,171,000
Continuous improvement processes	76,000	433,000
Safety committee with frontline worker representatives	1,374,000	2,084,000
Risk reduction program	58,000	195,000
Frontline worker involvement with agency safety plans	45,000	52,000
<b>Total</b>	<b>2,420,000</b>	<b>4,934,000</b>

Totals may not sum due to rounding.

Summary have total costs of \$46.8 million in 2021 dollars and annualized costs of \$3.3 million at a 7 percent discount rate (discounted to 2023) and \$3.9 million at 3 percent. To quantify benefits and assess net benefits, FTA would need information on the safety interventions transit agencies would adopt.

TABLE 4—SUMMARY OF ECONOMIC EFFECTS, 2023–2033 [2021, discounted to 2023]

Item	Total	Annualized (7%)	Annualized (3%)
Benefits	Unquantified	.....	.....
Costs:			
De-escalation training	\$20,403,000	\$1,417,000	\$1,677,000
Continuous improvement processes	3,970,000	273,000	325,000
Safety committee with frontline worker representatives	20,132,000	1,411,000	1,662,000
Risk reduction program	1,810,000	125,000	149,000
Frontline worker involvement with agency safety plans	512,000	36,000	42,000
<b>Total costs</b>	<b>46,827,000</b>	<b>3,263,000</b>	<b>3,855,000</b>
Net benefits	Unquantified	.....	.....

Totals may not sum due to rounding.

<sup>7</sup> 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](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.

*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 proposed rule would not have a significant effect on a substantial number of small entities.

The proposed rule would require public transit agencies serving an urbanized area with a population of less than 200,000 to work with frontline transit worker representatives while developing agency safety plans. Most transit agencies are public-sector organizations. Under the Act, local governments and other public-sector organizations qualify as a small entity if they serve a population of less than 50,000. The rule would affect 280 agencies in small urbanized areas, with some qualifying as small entities under the Regulatory Flexibility Act.

FTA estimates that the requirement would have an annual cost of less than \$300 for a transit agency. Most agencies already involve frontline transit worker representatives and would only need to spend time on associated reporting. FTA estimates that a transit agency would need 4 hours of staff time—2 hours for a Chief Safety Officer; 2 hours for a safety manager—to meet the reporting requirement. Using occupational wage data from the Bureau of Labor Statistics as of May 2021, FTA estimates the value of the time spent at \$265.00, 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 a Notice of Proposed Rulemaking. 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 risk reduction program for transit operations, establishment of safety performance targets for the risk reduction program, and establishment of strategies to minimize exposure to infectious diseases.

*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 Order 12898 (Environmental Justice)*

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (<https://www.transportation.gov/transportation-policy/environmental-justice/departments-transportation-order-56102a>) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and

economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all 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 (<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/environmental-justice-policy-guidance-federal-transit>).

FTA has evaluated this action under the Executive Order, the DOT Order, and the FTA Circular and FTA has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

*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, Safety.

**Nuria I. Fernandez,**  
*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 proposes to amend 49 CFR chapter VI by revising part 673 of title 49 of the Code of Federal Regulations 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.
- 673.17 Cooperation with frontline transit worker representatives.

**Subpart C—Safety Committee and Safety Risk Reduction Program**

- 673.19 Safety Committee.
- 673.20 Safety risk reduction program.

**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(d), 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.

*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 urbanized area with a population of 200,000 or more as determined by Census data.

*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.

*Performance target* means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by FTA.

*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 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 Performance Target related to safety management activities.

*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 "urbanized 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 that meets the requirements of § 673.20.

(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.

**§ 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.

**Subpart C—Safety Committee and Safety Risk Reduction Program****§ 673.19 Safety Committee.**

(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 will be developed, 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) 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;

(5) How the Safety Committee will vote and record decisions;

(6) How the Safety Committee will coordinate with the transit agency's Board of Directors, or equivalent entity, and the Accountable Executive;

(7) How the Safety Committee will manage disputes and tie votes to ensure it carries out its operations; and

(8) 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);

(2) Set annual safety performance targets for the safety risk reduction program that meet the requirements of § 673.20(b); 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.

**§ 673.20 Safety risk reduction program.**

(a) Each large urbanized area provider must establish 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.

(1) The safety risk reduction program must, at a minimum, address:

(i) Reduction of vehicular and pedestrian safety events involving transit vehicles that includes consideration of safety risk mitigations consistent with paragraph (a)(2) of this section; and

(ii) Reduction and mitigation of assaults on transit workers that includes consideration of safety risk mitigations consistent with paragraph (a)(3) of this section and implementation of safety risk mitigations consistent with paragraph (a)(4) of this section.

(2) When carrying out the safety risk mitigation process under § 673.25(d) for risk relating to vehicular and pedestrian safety events involving transit vehicles, each large urbanized area provider must consider mitigations to reduce visibility impairments for transit vehicle operators that contribute to accidents, such as retrofits to vehicles in revenue

service and specifications for future procurements that reduce visibility impairments.

(3) When carrying out the safety risk mitigation process under § 673.25(d) for risk relating to assaults on transit workers, each large urbanized area provider must consider deployment of assault mitigation infrastructure and technology on transit vehicles. Assault mitigation infrastructure and technology includes barriers to restrict the unwanted entry of individuals and objects into the workstations of bus operators.

(4) When a Safety Committee recommends safety mitigations it has determined would reduce assaults on transit workers and injuries to transit workers based on a safety risk analysis conducted under § 673.25(c), the transit agency must implement one or more of those mitigations to reduce risk to an acceptable level, unless the Accountable Executive determines the mitigation will not improve the agency's overall safety performance.

(b) The Safety Committee of each large urbanized area provider must establish annual safety performance targets for the safety risk reduction program to reduce the number and rates of safety events, injuries, and assaults on transit workers based on the safety performance measures for the safety risk reduction program established in the National Public Transportation Safety Plan. The targets must be set—

(1) Based on a 3-year rolling average of the data submitted by the large urbanized area provider to the National Transit Database (NTD); and

(2) For all modes of public transportation.

(c) The Safety Committee of each large urbanized area provider is required to set targets for the safety risk reduction program only 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 3 years of data to the NTD corresponding to such performance measure.

(d) A large urbanized area provider must monitor safety performance against annual safety performance targets set for the safety risk reduction program using the continuous improvement process established under § 673.27(d);

(e) A large urbanized area provider that does not meet an established annual safety performance target set for the safety risk reduction program must—

(1) Assess associated safety risk, using the methods or processes established under § 673.25(c).

(2) Mitigate associated safety risk based on the results of the safety risk assessment using the methods or processes established under § 673.27(d)(1). These mitigations must be included in the plan described in § 673.27(d)(2).

(3) 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 performance target in the future.

#### **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 receives and considers recommendations for safety risk mitigations from the Safety Committee, as described in §§ 673.19(d) and 673.20(a)(4). 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.

(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: Safety hazard identification, safety risk assessment, and safety risk mitigation.

(b) *Safety 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 safety 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.

#### **§ 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 for the safety risk reduction program required under § 673.20(b).

(iii) Rail transit agencies must also address any specific internal safety review requirements established by their State Safety Oversight Agency.

(2) 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 described paragraph (d)(1) of 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.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 230419-0105]

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### **Fisheries of the Northeastern United States; Monkfish; Framework Adjustment 13**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.