DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 673

[Docket No. FTA–2015–0021]

RIN 2132–AB23

Public Transportation Agency Safety Plan

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration (FTA) is publishing a final rule for Public Transportation Agency Safety Plans as authorized by the Moving Ahead for Progress in the 21st Century Act (MAP–21). This final rule requires States and certain operators of public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53 to develop Public Transportation Agency Safety Plans based on the Safety Management System approach. Operators of public transportation systems will be required to implement the safety plans. The development and implementation of safety plans will help ensure that public transportation systems are safe nationwide.

DATES: The effective date of this rule is July 19, 2019.

FTA's Office of Transit Safety and Oversight (TSO) will host a series of webinars to discuss the requirements of the Public Transportation Agency Safety Plan (PTASP) final rule. The first two webinars will be held at 2 p.m. on Wednesday, July 25, 2018 and Tuesday, July 31, 2018.

ADDRESSES: To register for webinars and for information about future webinars, please visit *https://www.transit.dot.gov/about/events.*

FTA is committed to providing equal access for all webinar participants. If you need alternative formats, options, or services, contact *FTA-Knowledge@dot.gov* at least three business days prior to the event. If you have any questions, please email *FTA-Knowledge@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For general information, contact *PTASP_QA@dot.gov.* For program matters, contact Adrianne Malasky, Office of Transit Safety and Oversight, (202) 366–1783 or *Adrianne.Malasky@dot.gov.* For legal matters, contact Michael Culotta, Office of Chief Counsel, (212) 668–2170 or *Michael.Culotta@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

The public transportation industry remains among the safest surface transportation modes in terms of total reported safety events, fatalities, and injuries.[1] Nonetheless, given public

[1] See United States Department of Transportation, Bureau of Transportation Statistics, ''Table 2–1: Transportation Fatalities by Mode 1960–2016,'' at *https://www.bts.gov/archive/publications/national_transportation_statistics/table_02_01;* and ''Table

transportation service complexities, the condition of transit equipment and facilities, turnover in the transit workforce, and the quality of policies, procedures, and training, the public transportation industry remains vulnerable to catastrophic accidents.

This rule outlines requirements for Public Transportation Agency Safety Plans that would carry out explicit statutory mandates 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) (FAST Act) and codified at 49 U.S.C. 5329(d), to strengthen the safety of public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53. This rule requires the adoption of Safety Management Systems (SMS) principles and methods; the development, certification, implementation, and update of Public Transportation Agency Safety Plans; and the coordination of Public Transportation Agency Safety Plan elements with other FTA programs and rules, as specified in 49 U.S.C. 5303, 5304, and 5329.

B. Legal Authority

In Section 20021 of MAP–21, which is codified at 49 U.S.C. 5329, Congress directed FTA to establish a comprehensive Public Transportation Safety Program, one element of which is the requirement for Public Transportation Agency Safety Plans. Pursuant to 49 U.S.C. 5329(d), FTA must issue a final rule requiring operators of public transportation systems that receive financial assistance under Chapter 53 to develop and certify Public Transportation Agency Safety Plans.

C. Summary of Major Provisions

1. Summary of the Final Rule

This rule adds a new part 673, ''Public Transportation Agency Safety Plans,'' to Title 49 of the Code of Federal Regulations. The rule implements the requirements of 49 U.S.C. 5329(d).

One year after the effective date of this rule, each 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, must certify that it has established a comprehensive Public Transportation Agency Safety Plan (PTASP). 49 U.S.C. 5329(d)(1). At this time, the rule does not apply to an operator of a public transportation system that only receives Federal financial assistance under 49 U.S.C. 5310 (Section 5310), 49 U.S.C. 5311 (Section 5311), or both 49 U.S.C. 5310 and 49 U.S.C. 5311. Large transit providers must develop their own plans, have the plans approved by their Boards of Directors (or equivalent authorities), and certify to FTA that those plans are in place and comply with this part. Small public transportation providers that receive Urbanized Area Formula Program under 49 U.S.C. 5307 may have their plans drafted or certified by the State in which they operate. A small public transportation provider may opt to draft and certify its own plan.

At a minimum, and consistent with 49 U.S.C. 5329(d), each Public Transportation Agency Safety Plan must:

- Include the documented processes and procedures for the transit agency's Safety Management System, which consists of four main elements: (1) Safety Management Policy, (2) Safety Risk Management, (3) Safety Assurance, and (4) Safety Promotion, as discussed in more detail below (49 CFR 673.11(a)(2));
- Include performance targets based on the safety performance criteria established under the National Public Transportation Safety Plan (49 CFR 673.11(a)(3));
- Address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and National Public Transportation Safety Plan (49 CFR 673.11(a)(4)); and
- Establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan (49 CFR 673.11(a)(5)).

Each rail transit agency must include in its Public Transportation Agency Safety Plan an emergency preparedness and response plan, as historically required by FTA under the former regulatory provisions of the State Safety Oversight rule at 49 CFR part 659 (49 CFR 673.11(a)(6)).

A transit agency may develop one Public Transportation Agency Safety Plan for all modes of its service, or it may develop a Public Transportation Agency Safety Plan for each mode of service that is not subject to safety regulation by another Federal entity. 49 CFR 673.11(b). A transit agency must maintain records associated with its Public Transportation Agency Safety Plan. 49 CFR 673 subpart D. Any rail fixed guideway public transportation system that had a System Safety Program Plan (SSPP) compliant with the former regulatory provisions of 49 CFR part 659 as of October 1, 2012, may keep that plan in effect until one year after the effective date of this rule. 49 CFR 673.11(e). A transit agency that operates passenger ferry service regulated by the United States Coast Guard (USCG) or rail fixed guideway public transportation service regulated by the Federal Railroad Administration (FRA) is not required to develop a Public Transportation Agency Safety Plan for those modes of service. 49 CFR 673.11(f).

States and transit agencies must make their safety performance targets available to States and Metropolitan Planning Organizations (MPO) to aid in the planning process, and to the maximum extent practicable, States and transit agencies must coordinate with States and MPOs in the selection of State and MPO safety performance targets. 49 CFR 673.15.

On an annual basis, transit agencies and States must certify compliance with this rule. 49 CFR 673.13.

2. Summary of Public Comments

On February 5, 2016, FTA issued a Notice of Proposed Rulemaking (NPRM) for Public Transportation Agency Safety Plans. 81 FR 6344 (*https://www.gpo.gov/fdsys/pkg/FR-2016-02-05/pdf/2016-02017.pdf*). The public comment period closed on April 5, 2016. FTA received approximately 647 comments from approximately 77 entities, including States, transit agencies, trade associations, and individuals.

The majority of the comments addressed the administration of the rule. Over 100 comments focused on definitions, with the vast majority of those commenters requesting FTA to align terms and definitions with the terms and definitions that FTA recently finalized in other rules, such as the State Safety Oversight rule at 49 CFR part 674 and the Transit Asset Management rule at 49 CFR part 625. FTA received nearly 300 comments on issues relating to (1) the effective date and compliance date of the rule; (2) the drafting and certification of safety plans on behalf of recipients of FTA's Enhanced Mobility of Seniors and Individuals with Disabilities Program at 49 U.S.C. 5310 and other smaller recipients; (3) clarification of FTA's oversight process; (4) the need for FTA's technical assistance; (5) documentation and recordkeeping; and (6) the applicability of the rule.

FTA received over 80 comments on SMS. Many of the commenters expressed support for SMS, particularly given its flexibility and scalability.

1–40: U.S. Passenger Miles (Millions) 1960–2015,'' at *https://www.bts.gov/archive/publications/national_transportation_statistics/table_01_40.*

Some commenters requested clarification of the flexibility and scalability of SMS, and to that end, they requested that FTA develop and issue a safety plan template. Other commenters requested clarification regarding specific provisions of SMS. In the NPRM, FTA sought comments on alternative regulatory frameworks to SMS, and in response to this request, FTA received no comments.

Detailed comment summaries and responses are below.

3. Summary of the Major Changes to the Rule

In response to the public comments, FTA made a number of changes to the rule. Below is a summary of those changes, which are discussed in more detail in the sections that follow.

Section 673.1 Applicability

In the NPRM, FTA proposed to apply the rule to every ''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 specifically asked the public whether the rule should apply to recipients and subrecipients of funds under FTA's Enhanced Mobility of Seniors and Individuals with Disabilities Program at 49 U.S.C. 5310 (Section 5310). FTA also specifically asked the public for alternative regulatory frameworks that satisfy the statutory requirements of 49 U.S.C. 5329 and are tailored to fit the needs of smaller operators of public transportation.

FTA received numerous comments in response to these questions and the regulatory proposal. Several commenters suggested that FTA exempt Section 5310 recipients from the rule because they are smaller non-traditional transit providers. Several commenters suggested that FTA adopt a more streamlined and simplified approach that is more tailored for smaller operators. At least one commenter suggested that FTA exempt subrecipients of Section 5311 Rural Area Formula Program funds from the rule.

In light of these public comments and the need for further evaluation, FTA is deferring regulatory action at this time on operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds. This deferral will provide FTA time to further evaluate information and safety data related to these systems to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these systems. Thus, this final rule does not address operators of public transportation systems that only receive 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.

Section 673.5 Definitions

FTA updated the definitions of the terms ''Accountable Executive'' and ''Transit Asset Management Plan,'' and FTA changed the term ''Performance Criteria'' to ''Performance Measure,'' in an effort to align these terms and definitions with those in FTA's Transit Asset Management rule at 49 CFR part 625, which was published on July 26, 2016. FTA updated the definition of the term ''Safety Risk Management,'' added the term ''Rail Fixed Guideway Public Transportation System,'' and changed the term ''Safety Risk'' to ''Risk'' in an effort to align these terms and definitions with those in FTA's State Safety Oversight rule at 49 CFR part 674, which was published on March 16, 2016. FTA clarified in its definition of ''Safety Management System Executive'' that it means a ''Chief'' Safety Officer or an equivalent. FTA changed the term ''Safety Risk Evaluation'' to ''Safety Risk Assessment'' to add clarity to the final rule.

In the NPRM, FTA proposed to define ''operator of a public transportation system'' to exclude operators that ''provide service that is closed to the general public and only available for a particular clientele.'' This language was intended to narrow the type of Section 5310 recipients that would be subject to the rule. In light of FTA's decision to defer action on the applicability of the rule to all Section 5310 recipients and subrecipients—including operators that ''provide service that is closed to the general public and only available for a particular clientele''—FTA is removing this language from the definition of ''operator of a public transportation system.''

In the NPRM, FTA proposed to define ''Small Public Transportation Provider'' to mean ''a recipient or subrecipient of Urbanized Area Formula Program funds under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in revenue service and does not operate a rail fixed guideway public transportation system.'' In response to public comments and for consistency with the Transit Asset Management Rule (81 FR 48889), FTA changed the definition of the term ''Small Public Transportation Provider'' to mean 100 or fewer vehicles in ''peak'' revenue service, as opposed to revenue service generally.

Section 673.11(a)(6) General Requirements: Emergency Preparedness and Response Plans

Based on public comments, FTA will provide rail transit agencies with the option to either include an emergency preparedness and response plan as a section of their Public Transportation Agency Safety Plan, or they may incorporate an existing emergency preparedness and response plan into their Public Transportation Agency Safety Plan by reference.

Section 673.11(d) General Requirements; § 673.13 Certification of Compliance: The Drafting and Certification of Public Transportation Agency Safety Plans on Behalf of Section 5310 Recipients and Subrecipients

In the NPRM, FTA proposed to require States to draft and certify safety plans on behalf of certain recipients and subrecipients of funds under Section 5310 and the Section 5311 Formula Grants for Rural Areas Program. In light of the public comments from these recipients requesting exemptions from the rule and a more streamlined and tailored regulatory approach for smaller operators, and given FTA has decided to defer action on applicability of the rule to Section 5310 and Section 5311 recipients and subrecipients, FTA does not need to require States to draft and certify safety plans for those recipients and subrecipients at this time.

Section 673.23(a) Safety Management Policy

In the NPRM, FTA proposed to require transit agencies to develop a written Safety Management Policy, which would include safety performance targets. FTA received numerous comments noting that FTA also was proposing to require transit agencies to set safety performance targets in the General Requirements section of the rule, so the requirement in the Safety Management Policy section appeared redundant. FTA agrees, and to eliminate any redundancies, FTA deleted that requirement from the Safety Management Policy section of the rule.

Section 673.25 Safety Risk Management

In response to comments, FTA revised its Safety Risk Management requirements to add clarity to the safety hazard identification, safety risk assessment, and safety risk mitigation processes in the final rule.

Section 673.27 Safety Assurance

In the NPRM, FTA proposed to require all transit agencies to develop

and implement a comprehensive Safety Assurance process. FTA proposed to require all transit agencies to develop and implement processes for (1) safety performance monitoring and measurement, (2) management of change, and (3) continuous improvement.

FTA received comments seeking clarity on one of the requirements related to safety performance monitoring and measurement, specifically, the requirement for each transit agency to ''[m]onitor its operations to identify hazards not identified through the Safety Risk Management process established in § 673.25 of this subpart.'' 49 CFR 673.27(b)(2) (as proposed in the NPRM). Some commenters suggested that this requirement appeared redundant and duplicative of each of the requirements under Safety Risk Management. FTA agrees with these commenters, and to add clarity, reduce redundancy, and lower burdens, FTA eliminated this requirement from the final rule.

More significantly, FTA received numerous comments requesting a reduction in the regulatory requirements for small public transportation providers. Given the limited administrative and financial resources available to small public transportation providers, FTA believes that a reduction in their regulatory burdens is appropriate. To that end, and to address the concerns expressed by commenters, FTA eliminated significant Safety Assurance requirements for all small public transportation providers. In the final rule, small public transportation providers only need to develop processes for safety performance monitoring and measurement. Small public transportation providers are not required to develop and implement processes for management of change and continuous improvement. FTA believes that these changes in the final rule will reduce their burdens significantly. Rail fixed guideway public transportation systems and recipients and subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53 that have more than one hundred vehicles in peak revenue service must develop and implement Safety Assurance processes that include all of the regulatory requirements under 49 CFR 673.27, specifically, processes for safety performance monitoring and measurement, management of change, and continuous improvement.

Section 673.29(a) Safety Promotion

In the NPRM, FTA proposed to require transit agencies to establish comprehensive safety training programs for staff and contractors directly responsible for ''the management of'' safety. FTA received several comments expressing confusion over this requirement and the requirements of FTA's proposed Safety Certification Training Program Rule, which applies to staff and contractors who responsible for safety ''oversight'' on rail transit systems. In an effort to respond to the commenters and to eliminate confusion, FTA struck the language ''the management of'' from the rule, so it now requires safety training for staff and contractors who are ''directly responsible for safety.''

Section 673.31 Safety Plan Documentation

In the NPRM, FTA proposed to require transit agencies to maintain their safety plan documents for a minimum of three years. To add clarity in the final rule, FTA is requiring transit agencies to maintain safety plan documents for three years ''after they are created.''

Also, in the NPRM, FTA proposed to require a number of additional records related to a Public Transportation Agency Safety Plan. Specifically, FTA proposed to require transit agencies to maintain records related to (1) safety risk mitigations, (2) results of safety performance assessments, and (3) employee safety training. FTA received numerous comments requesting reduced recordkeeping burdens. FTA also received numerous comments, in general, from smaller transit operators requesting reduced regulatory burdens.

Upon review of these comments, FTA has eliminated the recordkeeping requirements in proposed 49 CFR 673.33 in their entirety. FTA believes that the records developed and maintained in accordance with 49 CFR 673.31 are sufficient to ensure that transit agencies are complying with the requirements of the statute and this final rule. FTA believes that this change in the final rule significantly will reduce the administrative, financial, and regulatory burdens on all transit operators.

D. Costs and Benefits

As discussed in greater detail below, FTA was able to estimate some but not all of the rule's costs. FTA was able to estimate the costs for transit agencies to develop and implement Public Transportation Agency Safety Plans, which are approximately $41 million in the first year, and $30 million in each subsequent year, with annualized costs of $31 million discounted at 7 percent. These costs result from developing and certifying safety plans, documenting SMS processes and procedures, implementing SMS, and maintaining records. FTA was not able to estimate the costs of actions that transit agencies would be required to take to mitigate risk as a result of implementing this rule, such as vehicle modifications, additional training, technology investments, or changes to operating procedures and practices. It is not possible for FTA to anticipate the strategies and actions agencies may adopt to address safety risks, or the time period over which these actions would occur.

FTA was unable to quantify the rule's benefits. To estimate safety benefits, one would need information regarding the causes of safety events and the factors that may cause future events. This information is generally unavailable in the public transportation sector, given the infrequency and diversity of the type of safety events that occur. In addition, one would need information about the safety problems that agencies are likely to find through implementation of their safety plans and the actions agencies are likely to take to address those problems. Instead of quantifying benefits, FTA estimated the potential safety benefits. The potential safety benefits are an estimate of the cost of all bus and rail safety events over a future 20-year period. The estimate is an extrapolation of the total cost of bus and rail events that occurred from 2010 to 2016.

Table 1 below shows the summary of the Costs and the Potential Benefits. The benefits of the rule primarily will result from mitigating actions, which largely are not accounted for in this analysis. FTA has not estimated the benefits of implementing the rule without mitigating actions, but expects they are unlikely to be large. Estimated costs for agencies' safety plans include certain activities that could yield safety improvements, such as improved communication, identification of hazards, and greater employee awareness, as well as increased accountability at the higher echelons of the organization. It is plausible that these activities alone could produce accident reductions that surpass the cost of developing the plan, though even greater reductions could be achieved in concert with other mitigating actions.

TABLE 1—SUMMARY OF THE COSTS AND THE POTENTIAL BENEFITS IF ADDITIONAL UNQUANTIFIED MITIGATION INVESTMENTS OCCUR

[2016 Dollars]

	Current dollar value	7% Discounted value	3% Discounted value
Qualitative Benefits	• Reduced bus and rail safety incidents with mitigation actions. • Reduced delays in operations.		
Estimated Costs (20-Year Estimate)	$602,485,710	$323,732,747	$450,749,898
Unquantified Costs	• Investments associated with mitigating safety risks (such as additional training, vehicle modification, operational changes, maintenance, and information dissemination).		
Estimated Cost (Annualized)	.....	30,558,081	30,297,473

II. Background

On July 6, 2012, the President signed into law MAP–21 (Pub. L. 112–141). MAP–21 authorized a number of fundamental changes to the Federal transit programs at 49 U.S.C. Chapter 53. This rule addresses the Public Transportation Agency Safety Plan within the Public Transportation Safety Program authorized under 49 U.S.C. 5329. This authority was reauthorized when the President signed into law the FAST Act on December 4, 2015.

The Public Transportation Safety Program consists of several key elements: The National Public Transportation Safety Plan, authorized by 49 U.S.C. 5329(b); the Public Transportation Safety Certification Training Program, authorized by 49 U.S.C. 5329(c); the Public Transportation Agency Safety Plans, authorized by 49 U.S.C. 5329(d); and the State Safety Oversight Program, authorized by 49 U.S.C. 5329(e). FTA has issued rules and guidance, and it will continue to issue rules and guidance, to carry out all of these plans and programs under the rulemaking authority of 49 U.S.C. 5329 and 5334(a)(11).

On October 3, 2013, FTA issued an Advance Notice of Proposed Rulemaking (ANPRM) for Public Transportation Agency Safety Plans, the National Public Transportation Safety Plan, the Safety Certification Training Program, and a new Transit Asset Management System. 78 FR 61251 (*http://www.gpo.gov/fdsys/pkg/FR-2013-10-03/pdf/2013-23921.pdf*). Through the ANPRM, FTA sought comments on 123 questions related to the implementation of the public transportation safety program and transit asset management; 42 of the 123 questions specifically were related to Public Transportation Agency Safety Plans. The public comment period for the ANPRM closed on January 2, 2014. In response to the ANPRM, FTA received comments from 167 entities, including States, transit agencies, trade associations, and individuals.

Following a comprehensive review of the comments, FTA issued several NPRMs for safety and transit asset management. In particular, FTA issued the NPRM for Public Transportation Agency Safety Plans on February 5, 2016. In this NPRM, FTA addressed comments related to the 42 questions in the ANPRM on Public Transportation Agency Safety Plans, specifically, question numbers 8–10, 17–31, 33–44, 47, 107–110, 112, and 116–121. Through the NPRM, FTA proposed to create a new part 673 in Title 49 of the Code of Federal Regulations, which would require each operator of a public transportation system to develop and implement a Public Transportation Agency Safety Plan. FTA proposed specific requirements for these safety plans in accordance with 49 U.S.C. 5329(d), including the following minimum requirements:

- An approval by the transit agency's board of directors, or an equivalent entity, and a signature from the transit agency's Accountable Executive;
- Documented processes and procedures for an SMS, which would include a Safety Management Policy, a process for Safety Risk Management, a process for Safety Assurance, and Safety Promotion;
- Performance targets based on the safety performance measures set out in the National Public Transportation Safety Plan;
- Compliance with FTA's Public Transportation Agency Safety Plan and FTA's Public Transportation Safety Program; and
- A process and timeline for conducting an annual review and update of the plan. In addition, rail transit agencies would be required to include an emergency preparedness and response plan in their Public Transportation Agency Safety Plans.

In light of the public interest in this rulemaking, and in an effort to provide guidance on the proposal and to solicit well-informed comments, FTA conducted numerous public outreach sessions and a webinar series related to the NPRM. Specifically, on February 12, 2016, FTA conducted public outreach for tribes and hosted a Tribal Technical Assistance Workshop wherein FTA presented its proposed rule and responded to technical questions from tribes. FTA subsequently delivered the same presentation during a webinar series open to all members of the public on February 24, March 1, March 2, and March 3. On March 7, FTA delivered the same presentation at an outreach session hosted by the National Rural Transit Assistance Program, which also was open to all members of the public. During each of these public outreach sessions and the public webinar series, FTA received and responded to numerous technical questions regarding the NPRM. FTA recorded the presentations, including the question and answer sessions, and made available the following documents on the public docket for this rulemaking (Docket FTA–2015–0021): (1) FTA's PowerPoint Presentation from the public outreach sessions and public webinar series (*https://www.regulations.gov/document?D=FTA-2015-0021-0012*); (2) a written transcript of FTA's public webinar of March 1, 2016 (*https://www.regulations.gov/document?D=FTA-2015-0021-0010*); (3) a consolidated list of every Question and FTA Answer from the public outreach sessions and public webinar series (*https://www.regulations.gov/*

document?D=FTA-2015-0021-0041); and (4) the results of polling questions from FTA's public outreach sessions (*https://www.regulations.gov/document?D=FTA-2015-0021-0011*). FTA also uploaded onto YouTube an audiovisual recording of its webinar from March 1, 2016. The video is available at the following link: *https://www.youtube.com/watch?v=FBj5HRatwGA&feature=youtu.be.*

III. Notice of Proposed Rulemaking and Response to Relevant Comments

As stated above, FTA issued an NPRM for Public Transportation Agency Safety Plans on February 5, 2016. 81 FR 6344 (*https://www.gpo.gov/fdsys/pkg/FR-2016-02-05/pdf/2016-02017.pdf*). The public comment period for the NPRM subsequently closed on April 5, 2016. FTA received approximately 647 comments from approximately 77 entities, including States, transit agencies, trade associations, and individuals. FTA reviewed all of the comments and took them into consideration when developing today's final rule. Some comments were outside the scope of this rulemaking and FTA did not respond to comments that were outside the scope.

FTA received a number of comments related to the definitions of terms that are defined in other safety rulemakings. For example, FTA received comments on the terms, ''Accident,'' ''Incident,'' and ''Occurrence,'' which FTA defined in the NPRM to provide clarity regarding the types of safety ''Events'' that a transit agency should investigate, and these terms are defined in the State Safety Oversight (SSO) rulemaking. Given that the Public Transportation Agency Safety Plan rule has a more inclusive universe of stakeholders than the SSO rule, FTA is including responses to the majority of the comments that it received related to these and other definitions included in other safety rules, but in this final rule, FTA does not respond to comments related to reporting thresholds and other requirements under the final SSO rule. On March 16, 2016, FTA issued a final rule for State Safety Oversight (see *https://www.gpo.gov/fdsys/pkg/FR-2016-03-16/pdf/2016-05489.pdf* for a discussion of comments received on these terms), and FTA has adopted definitions found in that rulemaking in this rulemaking, where appropriate. Similarly, FTA received several comments related to the definition of the term ''State of Good Repair,'' which FTA was required to define in a rulemaking for transit asset management pursuant to 49 U.S.C. 5326. On July 26, 2016, FTA issued a final rule for Transit Asset Management wherein FTA defines the term ''State of Good Repair,'' and FTA has adopted that definition in this rulemaking. Please review the preamble of the Transit Asset Management final rule for FTA's responses to the comments that it received related to the proposed definition of ''State of Good Repair'' (see *https://www.gpo.gov/fdsys/pkg/FR-2016-07-26/pdf/2016-16883.pdf*). Relatedly, a number of commenters noted inconsistencies with the definitions throughout FTA's several safety rulemakings. In response, FTA has aligned the definitions in today's rule with other safety rulemakings and the Transit Asset Management final rule to ensure consistency.

Below, the NPRM comments and responses are subdivided by their corresponding sections of the proposed rule and subject matter.

A. Scope and Applicability of Public Transportation Agency Safety Plans

1. Section 5310, Section 5311, Small Section 5307, and Tribal Operators

Comments: Several commenters supported FTA's proposal to require States to draft and certify safety plans on behalf of recipients and subrecipients of FTA financial assistance through the Enhanced Mobility of Seniors and Individuals with Disabilities Program at Section 5310. Several commenters also supported FTA's proposal only to apply this rule to Section 5310 recipients and subrecipients that provide service open to the public, and not to apply this rule to Section 5310 recipients and subrecipients that provide service closed to the public and only available for a particular clientele.

Several commenters recommended that FTA exempt all Section 5310 recipients and subrecipients from this rule. These commenters asserted that many Section 5310 operators are not traditional transit agencies—they are human service organizations with a small transportation service, and they do not have sufficient staff, money, or resources to implement all aspects of a safety plan. One commenter stated that recipients and subrecipients of FTA financial assistance under Section 5310 and Section 5311 should not be considered operators of public transportation, and thus, they should not be subject to this rule. Several commenters also requested that tribal transit operators be excluded from the requirements of this rule.

A few commenters asserted that the proposed delineation between ''general public'' and ''closed door'' is ambiguous. These commenters expressed concern that many smaller Section 5310 recipients may decide to discontinue transit service, thus reducing mobility for seniors and individuals with disabilities.

One commenter stated that any new regulations should be tailored for small operators, and that FTA should avoid adding additional requirements and regulatory burdens. This commenter requested that FTA consider an exemption for transit agencies that operate fewer than 30 vehicles in peak revenue service. Another commenter suggested requiring a limited set of streamlined and simplified requirements, without identifying what those requirements might be.

Response: FTA appreciates the comments that it received regarding the proposed applicability of this rule. Pursuant to the statutory requirements of 49 U.S.C. 5329(d), ''each recipient or State'' is required to draft and certify a safety plan. The statute defines ''recipient'' to mean ''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].''

Notwithstanding this definition, and in light of the public comments and need for further evaluation, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds. Further evaluation of information and safety data related to these operators is needed to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators. Consequently, the rule 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.

FTA disagrees with the suggestion to create a threshold of 30 vehicles in peak revenue service, and it is adopting the definition of ''operator of a public transportation system'' as ''a provider of public transportation as defined under 49 U.S.C. 5302(14).''

FTA agrees with the commenters who suggested that the final rule should be tailored for small operators and that the final rule should have simplified requirements. To that end, and as discussed in more detail below, FTA eliminated several significant requirements related to Safety Assurance for all small public transportation providers. Additionally, FTA eliminated requirements for Safety Assurance and a series of recordkeeping

requirements for all transit operators, regardless of size, in an effort to reduce their administrative, financial, and regulatory burdens.

2. Commuter Rail and Passenger Ferry Service

Comments: Several commenters supported FTA's proposal to exclude from this rule rail fixed guideway public transportation (commuter rail) service regulated by FRA. Several commenters requested FTA to clarify that the rule applies to rail transit systems not subject to regulation by FRA. Three commenters requested FTA to clarify what it means to exclude rail transit agencies subject to regulation by another Federal agency. One commenter urged FTA to ensure that the rule does not duplicate the efforts of State Safety Oversight Agencies (SSOAs) and overly burden transit agencies.

One commenter suggested that FTA replace the term ''commuter rail system'' with the term ''passenger rail system.'' This commenter stated that the term ''commuter'' is not defined in the rule, leaving no context for determining what types of rail systems would be excluded. The commenter also asserted that rail transit agencies might provide passenger rail service that is subject to FRA regulations, but that service may not be considered ''commuter'' service, thus resulting in a too-narrow description of ''commuter'' and a contradiction to FTA's intent to prevent ''duplicative, inconsistent, or conflicting regulations.''

Several commenters supported FTA's proposal to exclude from this rule passenger ferry service regulated by USCG. Two commenters expressed support for the exclusion of USCG-inspected ferry vessels from the proposed rule. However, these commenters suggested that FTA should revise the term ''passenger ferries'' to clarify that the exclusion refers to passenger-only ferry vessels and ferry vessels that carry both passengers and vehicles (the commenters suggested the phrase ''ferry as defined by title 46 United States Code 2101(10b)''). Additionally, this commenter urged FTA to clarify that the exclusion of USCG-inspected vessels applies to subparts C and D of the proposed rule, in addition to subpart B.

Response: FTA appreciates the support for its proposal to exclude passenger rail service regulated by FRA and passenger ferry service regulated by USCG from the requirements of this rule. As discussed throughout this document, this rule applies to each operator of a public transportation system, including rail fixed guideway public transportation passenger rail service that is not regulated by another Federal agency. To further clarify, to the extent that an operator of a public transportation system provides passenger rail service that is regulated by FRA and rail fixed guideway public transportation service that is not regulated by FRA, this rule only would apply to that portion of the rail fixed guideway public transportation service that is not regulated by FRA.

FTA appreciates the concerns regarding the use of the term ''commuter rail system,'' which is not defined in this rule, and the suggestion to replace the term ''commuter rail system'' with the term ''passenger rail system.'' Instead, in an effort to use terms consistently throughout all of FTA's rules and regulations, FTA is replacing the term ''commuter rail system'' with the term ''rail fixed guideway public transportation'' and is adopting the definition of this term as used in FTA's new State Safety Oversight (SSO) rule at 49 CFR part 674.

With respect to passenger ferry service, FTA clarifies that this rule would not apply to any passenger ferry service that is regulated by USCG, including passenger ferry service and ferry service that involves the transportation of both passengers and vehicles. The exclusion of ferry service regulated by USCG applies to the rule in its entirety.

3. Contracted Service

Comments: Several commenters requested FTA to clarify how the rule would apply to transit agencies that contract for transit service. A commenter stated that the proposed elements of PTASPs are being implemented in the majority of transit systems operated by contractors, but contractors generally do not have direct relationships with transit agencies' top leadership. A commenter requested that FTA clarify how contracted agencies should divide roles and responsibilities and implement SMS without having to revisit existing contractual agreements. This commenter also encouraged FTA to provide additional technical assistance to assist agencies operating in contract environments in the development and implementation of PTASPs. Another transit agency urged FTA to clarify the extent to which the implementation and administration of SMS principles could be delegated to contractors. One commenter stated that if inter-city bus service is contracted, then the contractor, not the transit agency, should have primary responsibility for safety and compliance with the rule.

Two commenters asked FTA to clarify the rule's application to paratransit service. One of these commenters requested clarification as to how the rule would apply to an instance where a contractor provides paratransit service for a Section 5311 recipient and a separate Section 5310 recipient.

Response: As noted above, the statutory provisions of 49 U.S.C. 5329(d) require each ''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]'' to draft and certify a safety plan. Consequently, this rule applies to FTA's recipients and subrecipients, unless the transit operator only receives Section 5310 and/or Section 5311 funds. To the extent that a recipient or subrecipient contracts for transit service, FTA will defer to the recipient or subrecipient to ensure that each of the requirements of this rule are being satisfied through the terms and conditions of its contract, including the identification of safety roles and responsibilities. Ultimately, under the statute, each FTA recipient or subrecipient has the responsibility to ensure compliance with this rule and to certify compliance annually—not a contractor.

Similarly, paratransit service—whether general public or ADA complementary, and including contracted paratransit service—is subject to this rule, unless the transit operator only receives Section 5310 and/or Section 5311 funds. To the extent that a contractor provides paratransit service for multiple FTA recipients, each FTA recipient ultimately has responsibility for ensuring that its transit operation complies with this rule.

B. Definitions

1. Accident

Comment: Several commenters expressed concerns with the proposed definition of ''Accident.'' Many of these commenters expressed concern with the phrase ''a report of a serious injury to a person'' within the definition of Accident. One commenter stated that ''serious injury'' relies on information that a transit agency is unlikely to possess or be able to validate. Another commenter expressed that this phrase would significantly increase transit agencies' notification and follow-up burdens. One commenter stated that the term ''Accident'' is a bias-laden term which suggests that an undesirable event could not be foreseen, prevented, or avoided. This commenter also asserted that the continued use of this

term diminishes advances made by safety and risk management professionals to adopt and promote bias-free language describing and categorizing incidents. Another commenter suggested that the proposed definition offers several categorizations for accidents without regard to cause, circumstance, or affected environment.

Several commenters suggested alternatives for the proposed definition of ''Accident.'' A commenter recommended using the threshold for accident notification in the former SSO rule at 49 CFR 659.33: ''[M]edical attention away from the scene for two or more individuals.'' Another commenter proposed that the definition for ''Accident'' should include a threshold of at least $100,000, otherwise every minor collision would be reportable in accordance with 49 CFR part 674, creating a burden on rail transit agencies' resources. This commenter suggested that accidents which result in property damage of $100,000 or less be classified as ''incidents,'' and be reportable to the SSOA and FTA, with a corresponding report to the National Transit Database (NTD) within thirty days. Another commenter remarked that the proposed definition of ''Accident'' should be more applicable to rail and bus/paratransit operations by using separate definitions for train and bus/paratransit accidents. For bus/paratransit, the commenter recommended that FTA should use the current Federal Motor Carrier Safety Administration (FMCSA) definition for ''Accident'' found in 49 CFR part 390. The commenter suggested that FTA could use an amended version of their proposed definition for ''Accident'' for rail operations that replaces ''a report of serious injury to a person,'' with ''injuries requiring immediate medical attention away from the scene for two or more individuals.''

Response: FTA included the definition of ''Accident'' in the proposed rule because the term appears in the definition of ''Event'' which is mentioned in the Safety Assurance section of the NPRM (a transit agency must develop a process to ''[i]nvestigate safety events to identify causal factors''). FTA defined ''Event'' as an ''Accident, Incident, or Occurrence,'' and to provide guidance to the industry on these terms, FTA defined them in its safety rules. Notably, FTA finalized a definition for ''Accident'' in its new SSO rule at 49 CFR part 674, and FTA is adopting that definition in today's rule to ensure consistency throughout FTA's regulatory framework for safety.

FTA did not propose any reporting or notification requirements in this rule. FTA established reporting and notification requirements in the new SSO rule at 49 CFR part 674 and FTA's NTD Reporting Manual. Today's rule requires transit agencies to develop safety plans, and this rule outlines the requirements for those plans. Accordingly, FTA will not amend those notification and reporting requirements through today's rule.

FTA disagrees with the commenter who suggested that the phrase ''serious injury'' will increase transit agencies' notification and follow-up burdens; this language should simplify, streamline, and make consistent any follow-up process. FTA also disagrees with the commenter who stated that the term ''Accident'' is a bias-laden term. Its use is intended to define the universe of safety Events that must be investigated. FTA disagrees with the suggestion that the proposed definition offers several categorizations for Accidents without regard to cause, circumstance, or affected environment. FTA has offered clarification on this term in Appendix A to the new SSO rule at 49 CFR part 674 (*https://www.gpo.gov/fdsys/pkg/FR-2016-03-16/pdf/2016-05489.pdf*).

FTA acknowledges that a transit agency may have difficulty ascertaining a precise type of injury due to medical privacy laws. FTA does not expect transit agencies to violate any medical privacy laws to determine whether an injury is serious. FTA does not expect transit agencies to seek medical records of individuals involved in Accidents that may have resulted in serious injuries.

FTA disagrees with the commenter who recommended using the threshold for accident notification in 49 CFR 659.33, ''medical attention away from the scene for two or more individuals,'' as FTA believes that a serious injury to a single person is of sufficient concern to warrant designation as an ''Accident.'' Additionally, ambulance transportation away from the scene may not necessarily be an accurate indicator of the actual gravity of the Event, given the possibility of ambulance operators transporting individuals with minor injuries.

FTA disagrees with the commenter who suggested that the definition of ''Accident'' include a threshold of at least $100,000, and that Events which result in property damage of $100,000 or less be classified as ''Incidents.'' FTA did not utilize the original $25,000 threshold for ''Accident'' in the SSO rule because most collisions involving rail transit vehicles exceeds $25,000 in property or equipment damage and FTA believes that any threshold for property damage is arbitrary when determining whether an Event qualifies as an Accident. Removal of the $25,000 threshold also eliminates any need to separate rail transit property from non-rail transit property when making an assessment of damages.

Finally, FTA disagrees with the commenter who suggested that the proposed definition of ''Accident'' be made more applicable to rail and bus/paratransit by using separate definitions for train and bus/paratransit accidents. FTA intends to be consistent with its definitions, especially since this final rule applies to all operators of public transportation systems.

2. Incident

Comments: One commenter stated that the proposed definition of ''Incident'' seems broad and undefined, asserting that under the proposed definition, any reported injury could be classified as an Incident. Another commenter asked how to distinguish between medical transport for serious and non-serious injuries. A commenter asked FTA to clarify what is considered ''damage to facilities, equipment, rolling stock, or infrastructure'' and how ''damage'' would be assessed to determine qualification for an Incident. Additionally, the commenter asked how a transit agency would differentiate damage and a simple mechanical issue, and whether every defect found on an inspection would now be considered ''damage.'' This commenter also remarked that the terms ''personal injury'' and ''injury,'' which are used in the definition for ''Incident,'' are not defined. A commenter suggested that the definition of ''Accident'' would be the better place to include one or more injuries requiring medical transport away from the scene.

One commenter asked whether a transit agency must track Incidents. Another commenter stated that the Appendix to 49 CFR part 674 requires rail transit agencies to report Incidents to FTA using NTD within thirty days; the commenter asked whether transit agencies providing bus transportation also must report bus-related incidents to FTA using NTD.

Response: FTA included the definition of ''Incident'' in the proposed rule because the term appears in the definition of ''Event'' which is mentioned in the Safety Assurance section of the NPRM (a transit agency must develop a process to ''[i]investigate safety events to identify causal factors''). FTA defined ''Event'' as an ''Accident, Incident, or Occurrence,'' and to provide guidance to the industry on these terms, FTA defined them in its safety rules. Notably, FTA finalized a

definition for ''Incident'' in its new SSO rule at 49 CFR part 674, and FTA is adopting that definition in today's rule to ensure consistency throughout FTA's regulatory framework for safety.

FTA disagrees with the commenter who stated that the definition of ''Incident'' is broad and undefined and that any reported injury could be classified as an Incident. As discussed in more detail in response to the comments on the definition for ''Serious Injury,'' FTA believes that there is a clear delineation between ''serious injury'' and ''non-serious injury.''

FTA provided guidance in Appendix A to 49 CFR part 674 on how to define ''damage to facilities, equipment, rolling stock, or infrastructure'' and how ''damage'' would be assessed to determine qualification for an Incident. In Appendix A, ''damage'' that meets the Incident threshold is any non-collision-related damage to equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency. Ultimately, each transit agency must assess the safety risk associated with any damage to its equipment facilities, equipment, rolling stock, or infrastructure, and whether it meets the definition of Accident, Incident, or Occurrence.

FTA does not believe that it is necessary to define ''injury'' or ''personal injury'' in this rule, and it defines ''Serious Injury'' for purposes of establishing a threshold by which an Event would be considered an Accident instead of an Incident. In today's rule, FTA has revised the definitions of ''Accident'' and ''Incident'' to make them consistent with FTA's SSO rule at 49 CFR part 674. Under the updated definitions, one or more ''serious injuries'' is the threshold for Accident and one or more non-serious injuries requiring medical transport away from the scene is considered an Incident.

Under FTA's new SSO rule at 49 CFR part 674, a rail transit agency must track and report an ''Incident'' through NTD, as has been the historical practice. Furthermore, a transit agency also must report Incident information for other modes to FTA through NTD. Please refer to the NTD Reporting Manual for further information on what information is collected on safety Events as a well as Accidents and Incidents, for both rail transit and bus agencies.

3. Occurrence

Comments: One commenter asked how damage would be differentiated from mechanical issues or normal wear-and-tear. This commenter asked FTA to clarify the relationship between ''Occurrence'' and ''Injury'' given that neither ''personal injury'' nor ''injury'' are defined in the rule. Another commenter asked FTA to define ''disrupt transit operations.'' Finally, one commenter recommended omitting the proposed definition because it is too broad and does not serve a clear purpose.

Response: FTA included the definition of ''Occurrence'' in the proposed rule because the term appears in the definition of ''Event'' which is mentioned in the Safety Assurance section of the NPRM (a transit agency must develop a process to ''[i]nvestigate safety events to identify causal factors''). FTA defined ''Event'' as an ''Accident, Incident, or Occurrence,'' and to provide guidance to the industry on these terms, FTA defined them in its safety rules. Notably, FTA finalized a definition for ''Occurrence'' in its new SSO rule at 49 CFR part 674, and FTA is adopting that definition in today's rule to ensure consistency throughout FTA's regulatory framework for safety.

FTA believes that there is a clear distinction between damage and mechanical issues or normal wear and tear. Damage is physical harm done to something or someone.[2] Mechanical issues and normal wear and tear are not the result of something or someone inflicting harm on equipment, facilities, equipment, rolling stock, or infrastructure.

A disruption to transit operations could be any interference with normal transit service at an agency. An Occurrence is a safety Event that only involves a disruption of transit service. A safety Event that results in a serious or non-serious injury would not be an Occurrence.

FTA disagrees with the commenter who suggested that FTA should omit the proposed definition of ''Occurrence'' because it does not serve a clear purpose. The definition helps identify the universe of activity that a transit agency should investigate because it could present a safety risk.

4. Serious Injury

Comments: Several commenters stated that transit agencies would not be able to obtain enough information about injuries to classify them as ''serious,'' given Federal Health Insurance Portability and Accountability Act (HIPAA) privacy regulations. These commenters suggested that HIPAA privacy regulations prevent transit agencies from obtaining personal medical information from individuals involved in accidents. One commenter remarked that, in their experience, hospital staff refused to provide personal medical information to a transit police officer.

One commenter recommended that FTA should explain how transit agencies and SSOAs can comply with this definition, and this commenter suggested that FTA create the legal authority for States to do so, or develop an alternative approach. A commenter remarked that if FTA has authority to obtain this type of information, then FTA should do so on its own accord. The commenter asked if it would meet one of the exemptions from the Government in the Sunshine Act if FTA collects information. One commenter asked how FTA would address and reconcile the proposed definition with other applicable Federal policies and regulations.

One commenter asked whether FTA would expect transit agencies, States, and SSOAs to obtain contact information for every individual involved in an accident, and then monitor local hospitals or contact these individuals in the seven-day period to determine if anyone involved in the accident had to be hospitalized for more than 48 hours as a result of this accident. Finally, one commenter asked whether a doctor would be required to respond to every transit event that has the possibility of being classified as an accident to triage the situation and determine whether the event meets the definition of an accident.

Several commenters expressed concern about the definition of ''Serious Injury'' and its associated burden on transit agency staff. A commenter concluded that the proposed definition would require transit agencies, States, and SSOAs to step outside their training to practice some form of medicine—for which they are not licensed—to comply with the proposed rule, unless transit agencies, States, and SSOAs are expected to hire trained medical personnel as a part of their programs. The commenter stated that transit agency staff may not be aware of the nature or extent of an individual's injury, and these staff may only know that an individual was transported away from the scene for medical attention with very limited ability (and no authority) to confirm the individual's injury status. A commenter stated that, in order to meet a similar FRA requirement, the commenter expends considerable resources following up on individual claims, and is sometimes unable to properly classify events for months or years after the event date. The commenter concluded that the resources needed to gather this

[2] See Merriam-Webster's Collegiate Dictionary (11th edition).

proposed information would be burdensome, as the volume of passengers is much greater for FTA.

A commenter asserted that transit agency staff could report certain findings on their initial incident reports, but this effort would be burdensome, and the transit agency staff would have to rely on eyewitness reports rather than medical professionals' opinions, rendering the effort unreliable. The commenter asked whether an initial patient/scene assessment would suffice, or whether a definitive medical diagnosis would be required.

Several commenters suggested alternatives to the proposed definition of ''Serious Injury.'' Two commenters recommended that FTA use the definition in the former SSO rule at 49 CFR 659.33, which states that an accident involves injuries if there is a need for ''immediate medical attention away from the scene for two or more individuals.'' According to these commenters, verifying transport away from the scene would have several benefits, such as: Not requiring transit agencies, States, and SSOAs to practice medicine to classify events; avoiding HIPAA complications; allowing events classified as accidents and incidents to be reported and investigated in a timely manner; being a more reasonable threshold for injury definitions; requiring only easily attainable information; and its alignment with NTD reporting requirements.

One commenter questioned how FTA determined the classification for ''serious'' and questioned how serious an injury could be if no medical treatment was sought for seven days. The commenter stated that FTA needs to define ''serious'' and remove the subjectivity of whether or not an injury is serious. Two commenters asked for the value of defining ''Serious Injury'' (that is, why does FTA want to collect this information and how would it enhance overall safety). One commenter recommended that FTA remove this definition from all of its safety rules.

Response: Through the Safety Assurance section of today's rule (49 CFR 673.27), FTA requires each operator of a public transportation system to develop a process for conducting investigations of safety events to identify causal factors. FTA defines the word ''Event,'' to mean an ''Accident, Incident, or Occurrence,'' and FTA defines ''Accident'' to mean, among other things, ''a report of a serious injury to a person.'' To provide guidance to the industry on this term, FTA defined ''Serious Injury'' in its safety rules, including its new SSO rule at 49 CFR part 674. FTA is adopting the definition of ''Serious Injury'' from the new SSO rule to ensure consistency throughout FTA's regulatory framework for safety.

FTA has addressed comments regarding its proposed definition of ''Serious Injury'' in the final SSO rule at 49 CFR part 674 (*https://www.gpo.gov/fdsys/pkg/FR-2016-03-16/pdf/2016-05489.pdf*) and in its responses to the definition of ''Accident,'' above. FTA acknowledges that a transit agency may have difficulty ascertaining a precise type of injury due to medical privacy laws, such as HIPPA. FTA does not expect transit agencies to violate these laws in order to obtain the information needed to determine whether an injury is serious, and it does not expect transit agencies to request the medical records of individuals involved in safety Events that may be classified as Accidents resulting in Serious Injuries. Nor does FTA expect transit agency staff to undergo medical training in order to determine whether an injury meets the threshold of ''serious.'' Instead, FTA expects safety personnel to exercise a common sense approach when evaluating injuries. As several commenters noted, some injuries may be readily known or observable at the scene of an event, in which case, a transit agency may make a determination as to whether an injury is serious. Other injuries may not be apparent until the individual undergoes a medical examination, in which case the injury would be deemed ''serious'' only if a transit agency becomes aware that the injury meets the threshold for seriousness. FTA believes that a transit agency may utilize these approaches when determining the seriousness of an injury, and it does not believe that it needs to reconcile the definition of ''Serious Injury'' with other laws.

Given the ability of transit agencies to make observations at the scenes of safety events and to evaluate data and information collected at these scenes, FTA does not believe that any burdens of this rule are unreasonable. FTA does not expect transit agencies to monitor local hospitals or contact individuals involved in safety events within the seven day period to determine if the individuals were hospitalized for more than 48 hours. FTA is not requiring doctors to respond to every safety Event that has the possibility of being classified as an Accident to triage the situation and determine whether the event meets the definition of an Accident, and FTA is not requiring transit agencies to hire medical personnel. In today's rule, FTA is requiring transit agencies to develop a process for conducting safety investigations.

5. Accountable Executive

Comments: FTA received numerous comments regarding its proposed definition of ''Accountable Executive.'' Several commenters provided input on the definition of ''Accountable Executive'' as it relates to ''Chief Safety Officer.'' One commenter stated that, according to the proposed rule, the Accountable Executive is responsible for implementing and maintaining the SMS; however, this should be a primary responsibility of the Chief Safety Officer. Another commenter asked whether an Accountable Executive would experience a conflict of interest if he or she also serves as the Chief Safety Officer or SMS Executive, as allowed under proposed 49 CFR 673.23(d)(2), because the duties also involve operational, financial, and other responsibilities that may be in conflict with safety responsibilities.

Several commenters recommended that FTA clarify in the final rule that State officials are not ''Accountable Executives'' unless the State is a transit operator, and if so, only with respect to the State's activities as a transit operator. Several commenters asked whether the Accountable Executive is the chief elected official, such as a county executive or mayor, in cases where the transit operator is a county or city government. A transit agency, with a general manager who is responsible for the day-to-day aspects of the transit system and a chief administrator who is responsible for the administrative aspects of the organization, asked how it would designate a single Accountable Executive who meets all of the criteria of 49 CFR part 673.

A few commenters expressed concerns about the overlapping and burdensome responsibilities of the Accountable Executive, which may not allow for sufficient attention to safety. Several commenters said the proposed definition may give an elected official or board chair the designation of an Accountable Executive despite serving at a policy, rather than an operational, level. A transit agency argued that the proposed definition is ambiguous and inconsistent with the proposed National Public Transportation Safety Plan, and some definitions state that the Accountable Executive is in charge of an asset management plan, while other areas omit this requirement. One commenter asserted that the job duties of planning staff are inherently much different from maintenance staff activities, and staff should report to their respective managers instead of a

single executive. Similarly, a commenter stated that, in some instances, a transit agency's reporting structure is shaped by State or local laws to promote a separation of duties and financial checks and balances, and these important governmental tenets should not be disrupted by the new safety requirements. Several commenters suggested that the definition of Accountable Executive may not be applicable in some non-traditional transit agency hierarchies.

Several commenters suggested that the Accountable Executive should be a general manager, president, or equivalent officer who is responsible for safety, asset management, and human resources, but not have full control over the budgeting process. Another commenter stated that that proposed definition may be inappropriate because having one Accountable Executive for SMS, the asset management plan, and the safety plan is ineffective because the Accountable Executive should be represented by different individuals for each regulatory program. The commenter recommended that FTA define an Accountable Executive to be ''an individual who is responsible for the Safety Management System and Agency Safety Plan, who shall be required to have a role in the [transit asset management plan] and investment prioritization for the respective agency.''

Response: Each transit operator must identify an Accountable Executive within its organization who ultimately is responsible for carrying out and implementing its safety plan and asset management plan. And to be clear, a State that drafts a plan on behalf of another recipient or subrecipient is not the Accountable Executive for those transit operators.

An Accountable Executive should be a transit operator's chief executive; this person is often the president, chief executive officer, or general manager. FTA understands that at many smaller transit operators, roles and responsibilities are more fluid. However, FTA believes that, even in circumstances where responsibilities are either shared or delegated, there must be one primary decision-maker who is ultimately responsible for both safety and transit asset management. It is a basic management tenet that accountabilities flow top-down. Therefore, as a management system, safety and transit asset management require that accountability reside with an operator's top executive.

FTA received numerous comments on its proposed definition of ''Accountable Executive'' in its rulemaking on transit asset management, and FTA directs readers to the final Transit Asset Management rule at 49 CFR part 625 for further information (*https://www.gpo.gov/fdsys/pkg/FR-2016-07-26/pdf/2016-16883.pdf*).

6. Chief Safety Officer

Comments: One commenter agreed with FTA that a Chief Safety Officer should not serve in other service, operational, or maintenance capacities. Several commenters agreed with FTA's proposal to allow Section 5310, Section 5311, and small public transportation providers to designate as the Chief Safety Officer a person who also undertakes other functions. Several commenters asked FTA to clarify the term ''adequately trained.''

One commenter expressed concern that FTA may be assuming that any rail transit agency is large enough to merit its own Chief Safety Officer with no additional operational or maintenance responsibilities, indicating that this requirement is burdensome because a rail transit agency would have to hire or contract a separate Chief Safety Officer for a limited role. The commenter suggested that FTA should permit an exemption for small rail transit agencies similar to the exemption for small public transportation providers to resolve this concern. This commenter also asked FTA to clarify whether a Chief Safety Officer has to be in the direct employ of a rail transit agency and whether he or she could be a part-time employee.

A commenter stated that FTA has proposed, but not promulgated, training rules for SSOA managers, Federal employees, and transit agency staff who are responsible for safety oversight, and argued that these training requirements also should apply to a Chief Safety Officer prior to designation by the Accountable Executive.

One commenter stated that the terms ''Chief Safety Officer'' and ''Safety Officer'' are inconsistently used, and the term ''Safety Officer'' was not defined in the NPRM. To rectify this inconsistency, the commenter, who concluded that it is implied that the Safety Officer is the Chief Safety Officer, suggested that FTA should replace the term ''Safety Officer'' with ''Chief Safety Officer.''

Response: FTA appreciates the support from commenters regarding its proposed definition of ''Chief Safety Officer.'' Given the different sizes of transit operators, and given the varying operating environments of transit systems across the nation, FTA is deferring to each transit operator to determine the level of training that is adequate for their Chief Safety Officer.

FTA disagrees with the commenter who suggested that a Chief Safety Officer at a rail transit agency should be able to have multiple roles within the organization. Given the more complex operating environments of rail transit systems and the increased safety risks in these environments, FTA will not allow the Chief Safety Officers for rail transit agencies to have additional operational and maintenance responsibilities; it is necessary to have a single individual wholly dedicated to ensuring safety. FTA believes that this role should be a full-time responsibility at rail transit agencies, unless a rail transit agency petitions FTA to allow its Chief Safety Officer to serve multiple roles given administrative and financial hardships with having a single, dedicated, and full-time Chief Safety Officer.

Finally, FTA notes that all references to the term ''Safety Officer'' in the NPRM were intended to mean the term ''Chief Safety Officer.''

7. Operator of Public Transportation System

Comments: One commenter suggested that an ''Operator of a Public Transportation System'' should be ''any organization, agency, or company that operates, or contracts someone to operate, any mode of transportation that is used by the general public in a defined city, State, or region.''

Response: The proposed rule defines ''Operator of a Public Transportation System'' as ''a provider of public transportation as defined under 49 U.S.C. 5302(14), and which does not provide service that is closed to the general public and only available for a particular clientele.'' Given that FTA is deferring action regarding the applicability of this rule to Section 5310 recipients, FTA has changed this definition in the final rule to be ''a provider of public transportation as defined under 49 U.S.C. 5302(14).'' The additional language—''and which does not provide service that is closed to the general public and only available for a particular clientele''—is not needed since the rule is not applicable to Section 5310 recipients at this time. FTA believes that the proposed definition is sufficiently broad to encompass the categories of transit providers referenced in the commenter's definition. FTA does not agree that the definition needs to specify that an operator provide service in a defined city, State, or region.

8. Rail Transit Agency

Comments: The proposed rule defines a ''Rail Transit Agency'' as ''any entity that provides services on a rail fixed

guideway public transportation system.'' One commenter asked FTA to clarify whether the proposed definition applies equally to a public transit operator and a contracted private firm that operates and maintains services on a rail fixed guideway public transportation system.

Response: This rule applies to any operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. Chapter 53, including rail transit operators that receive FTA funds and are not regulated by FRA, unless the operator only receives Section 5310 and/or Section 5311 funds. The application of this rule extends to contracted private firms that operate public transportation and receive FTA funds, but it does not extend to private contractors that provide service that is not public transportation.

9. Performance Target, Safety Performance Target, and Performance Criteria

Comments: One commenter remarked that the proposed definition for ''Performance Target'' needs clarity. Another commenter stated that FTA should consider deleting the proposed definition for ''Performance Target,'' because the proposed definition for ''Safety Performance Target'' is more appropriate for this safety-related rule. This commenter also suggested revising the definition of ''Safety Performance Target'' to ''a specific level of measurable performance for a given safety performance criteria over a specified timeframe.''

FTA proposed to define ''Performance Criteria'' as ''categories of measures indicating the level of safe performance within a transit agency.'' One commenter stated that this definition is confusing and possibly inconsistent with the proposed National Public Transportation Safety Plan. The commenter stated that the terms ''Criteria'' and ''Measures'' appear to be synonymous, and proposed the following definition for ''Performance Criteria'': ''Categories of safety performance measures that focus on the reduction of safety events, both for the public who use or interface with the rail system, and employees who operate and maintain the system.''

Response: As appropriate, FTA has incorporated into this rule definitions that appear in other rulemakings undertaken pursuant to 49 U.S.C. 5329 and 5326, as well as the final joint FHWA/FTA Planning Rule which was published May 27, 2016 (see *https://www.gpo.gov/fdsys/pkg/FR-2016-05-27/pdf/2016-11964.pdf*). Accordingly, FTA has revised the definition of ''Performance Target'' and added the definition of ''Performance Measure'' to match the definitions used in the joint FHWA/FTA Planning rule and FTA's Transit Asset Management rule.

To avoid redundancy, FTA is deleting the definition for ''Safety Performance Target'' and keeping the definition of ''Performance Target,'' since these terms are one and the same for purposes of this rule.

FTA had to reconcile the use of similar terms throughout its statutory authorizations for safety and asset management, including the terms ''criteria'' and ''measures.'' Although Congress used two different terms throughout 49 U.S.C. Chapter 53, it intended these terms to be synonymous. In the NPRM, FTA proposed to define ''Performance Criteria'' to mean ''categories of measures indicating the level of safe performance within a transit agency,'' but to eliminate confusion in this final rule, FTA removes that term, replaces it with the term ''Performance Measure,'' and incorporates the definition of ''Performance Measure'' as used in FTA's Transit Asset Management rule. Consequently, FTA uses the term ''Performance Measure,'' in the place of ''Performance Criteria,'' throughout this final rule.

10. Small Public Transportation Provider

Comments: The proposed rule defines ''Small Public Transportation Provider'' as ''a recipient or subrecipient of Urbanized Area Formula Program funds under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in revenue service and does not operate a rail fixed guideway public transportation system.''

Several commenters requested FTA to clarify that the ''100 buses in revenue service standard'' applies only to recipients of Section 5307 funds, and not recipients of Section 5310 or 5311 funds. One commenter asked whether the threshold of 100 vehicles in revenue service refers to total revenue fleet vehicles, peak vehicles, or something else. Another commenter that operates commuter rail service regulated by FRA, but has fewer than 100 buses in revenue service, asserted that they met the definition of a ''Small Public Transportation Provider.'' The commenter stated it posed this assertion to FTA during a webinar for this rulemaking on March 2, 2016, and it requested that FTA clarification the application of the rule to its scenario.

A couple of commenters remarked that the proposed definition for ''Small Public Transportation Provider'' differed between related rulemakings and notices, specifically the TAM proposed rule and FTA's Circular 9030.1E. Commenters noted that the TAM rule's reference to ''in revenue service'' is a typical definition in the industry and should be adhered to across all proposed rulemakings.

Other commenters suggested that the definition include providers with ''100 or fewer fixed-route vehicles,'' or be based on the service area's population rather than the number of buses. Additionally, one commenter suggested that vanpool fleets that are not open to the general public should be counted as revenue service vehicles.

Several commenters noted that significant differences exist between rail transit operators, large bus operators, and smaller operators, particularly in the ways in which they conduct business and in the rate of accidents and the consequences of those accidents. One commenter stated that the categories in the proposed rule are too broad and rigid and could have unintended consequences for small operators. The commenter remarked that the rigidity of a ''two-tier system'' could cause a Section 5307 recipient, with under 100 vehicles, to have their oversight provided by the State. Another commenter stated that the two-tier system does not take into account a Section 5311 recipient that may serve multiple counties with over 100 vehicles. The commenter remarked that there is no definition for this type of system within the ''tiers'' and that the Section 5311 recipient might be bumped into a higher category. One commenter suggested adding a third tier for systems operating fifty or fewer vehicles and no rail fixed guideway public transportation service to provide States with the opportunity to implement SMS scalable to the size and complexity of the transit organization.

Response: FTA appreciates the comments that it received regarding its proposed definition for ''Small Public Transportation Provider.'' FTA agrees with the commenters who suggested that FTA align this definition with the definition in the final TAM rule, and FTA agrees with the commenters who suggested that FTA create the threshold for Small Public Transportation Providers based on vehicles utilized in peak revenue service, as opposed to revenue service in general, as peak revenue service is a threshold commonly used in the transit industry. Therefore, in today's final rule, FTA defines ''Small Public Transportation Provider'' to mean ''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 and does not operate a rail fixed guideway public transportation system.''

11. Requests for New Definitions

Comments: One commenter requested that FTA add new definitions for the term ''safety performance assessment.'' One commenter recommended that FTA clarify whether the term ''Public Transportation Vehicle'' includes rail, bus, paratransit, maintenance, and non-revenue vehicles. Several commenters recommended that FTA define the term ''Transit Provider'' as follows: ''A State is not considered to be a transit provider by virtue of passing on funds to subrecipients under 49 U.S.C. 5310, 5311, or 5339, administering these programs, developing and implementing a TAM plan, or safety plan or certifying a safety plan, or taking any other steps required of a State by Chapter 53 of title 49, United States Code or other Federal statue, or by this or other FTA rules.''

Response: For purposes of implementing this rule, FTA does not find it necessary to further define the term ''safety performance assessment.'' Generally, this term refers to a transit agency's evaluation of its success of managing safety risks. To the extent there is any confusion over this term, FTA will provide technical assistance.

FTA notes that a public transportation vehicle may include rail, bus, paratransit, maintenance, and non-revenue vehicles, as the term is utilized in the definition of ''Accident.''

Finally, FTA did not propose to define the term ''Transit Provider'' in the NPRM, and FTA believes that the term is sufficiently descriptive and does not need to be defined in this rule.

C. General Requirements

Comments: Several commenters provided high-level feedback regarding the general requirements for PTASPs as proposed in 49 CFR 673.11. One commenter suggested that FTA should clearly emphasize that these elements are minimum requirements and that a transit agency should be able to enhance its SMS and incorporate tools and best practices that are proven to be effective, particularly given the adaptability, scalability, and flexibility of SMS.

One commenter asserted that the combination of the general requirements for each written safety plan, along with the requirements to ''establish SMS processes,'' results in a lack of clarity regarding the required contents of the actual document that a transit agency would consider to be its safety plan. This commenter stated that FTA should provide at least the same degree of specificity with regard to the required contents of a transit agency's written safety plan that FTA provided for SSPPs under the former SSO rule at 49 CFR part 659.

Response: As discussed throughout today's final rule, SMS is scalable and flexible, and it can be adapted to any transit agency's unique operating environment. The requirements in the rule provide the skeleton framework for safety plans, and FTA encourages transit agencies to incorporate tools and best practices that effectively mitigate and eliminate safety risks throughout their systems.

To be clear, each written safety plan must include the documented processes and procedures related to SMS, and the written plan must include each of the other requirements as outlined in the rule. FTA intentionally drafted broad, non-prescriptive requirements for SMS in an effort to develop a safety framework that could fit within the thousands of unique transit operating environments across the nation.

1. Role of the Accountable Executive

Comments: Pursuant to FTA's proposed provisions at 49 CFR 673.11(a)(1), each transit agency's Accountable Executive must sign the agency's safety plan and subsequent updates thereto. One commenter supported this provision and asserted that the requirement is essential for SMS and for maintaining a positive safety culture. Another commenter agreed that the Accountable Executive with budgetary authority should review and approve the safety plan.

A couple of commenters asked whether the Accountable Executive must be the same individual for purposes of approving the agency's safety plan and the agency's transit asset management plan, and they asked whether the Accountable Executive must be the individual explicitly ''responsible for implementing SMS.'' These commenters also inquired about the Accountable Executive's role for municipal government agencies, and they asked whether the head of a city's department of transportation, the head of a city's department of public works, or a city manager may serve as the Accountable Executive for a municipal government agency, as opposed to a city's mayor.

Response: As a preliminary matter, FTA distinguishes the role of the Accountable Executive from the role of a Board of Directors, or an Equivalent Authority. Pursuant to 49 CFR 673.11(a)(1), the Accountable Executive must sign the safety plan; the Board of Directors or an Equivalent Authority must approve the safety plan in accordance with 49 U.S.C. 5329(d)(1)(A).

Given the varying sizes and natures of transit systems, FTA defers to those systems in their designation of an Accountable Executive, so long as that single individual has the ultimate responsibility and accountability for the implementation and maintenance of the SMS of a public transportation agency; responsibility for carrying out the agency's transit asset management plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's public transportation agency safety plan and the agency's transit asset management plan. For municipal government agencies, that individual could be a county executive or a mayor, or it could be the head of a city's department of transportation, the head of a city's department of public works, or a city manager. FTA has offered this non-exhaustive list of examples of Accountable Executives for illustrative purposes only. And while many individuals within a transit agency may be responsible for ''implementing'' SMS, the Accountable Executive is the individual with the ultimately responsibility for SMS implementation at the agency.

2. Approval of a Public Transportation Agency Safety Plan

Comments: Pursuant to FTA's proposed provisions at 49 CFR 673.11(a)(1), each transit agency would be required to have its safety plan, and subsequent updates thereto, approved by the agency's Board of Directors, or an Equivalent Authority. One commenter supported this provision, indicating that this activity is essential for SMS and for maintaining a positive safety culture.

Several commenters asserted that the agency's Accountable Executive, not the Board of Directors, would be the more appropriate entity to approve the safety plan. These commenters stated that a Board of Directors, which can consist of limited-term elected officials, are not subject to the same training requirements as the Accountable Executive, and do not have the operational knowledge and expertise suitable for the review and approval of a safety plan. One of these commenters suggested that the Accountable Executive have top-level ownership of the safety plan, with a stipulated responsibility to educate and report to the Board of Directors on the agency's safety program.

Several commenters asked questions about the implementation of this

provision for agencies that lack Boards of Directors. A couple of commenters asked if transit agencies can request FTA to approve their ''Equivalent Authorities,'' or whether they must wait for an FTA oversight review to determine whether their Equivalent Authorities are consistent with the rule. A couple of commenters had specific questions regarding the adequacy of an Equivalent Authority. One example involved a streetcar being owned by a city, but being operated and maintained by a non-profit organization with its own Board of Directors. Another example involved a State Department of Transportation which does not have a Board of Directors, but instead, has an Administrator/CEO. One commenter asked FTA to provide a clear example of an ''Equivalent Authority'' if a recipient does not have a Board of Directors. Similarly, another commenter asserted that a State may have difficulty identifying an Equivalent Authority because a subrecipient may be a parish or county that does not necessarily have a Board of Directors. Another commenter recommended that an Equivalent Authority should have a thorough knowledge of a transit agency's daily operations and the authority to obtain operational and safety data so that it could provide safety oversight.

One commenter asked about the measure of ''approval'' for the Board of Directors, and inquired as to what that approval would denote in terms of safety responsibility.

Another commenter observed that a transit agency with rail and bus operations must have its safety plan approved by the SSOA for purposes of its rail operations, and suggested that FTA would have to approve the safety plan for purposes of its bus operations. This commenter expressed concern that, unless there are very clear guidelines for the review and approval of the safety plans, there is the potential for conflicting views and approvals, including approval of one operation and not the other.

Response: FTA appreciates concerns from commenters indicating that members of a transit agency's Board of Directors may not be fully educated in safety; however, through the statutory provisions of 49 U.S.C. 5329(d)(1)(A), Congress required each transit agency's Board of Directors, or an Equivalent Authority, to approve the agency's safety plan. Through the Safety Management Policy provisions of 49 CFR 673.23 and the Safety Promotion provisions of 49 CFR 673.29, each transit agency is required to identify individuals who are responsible for safety in their organization and to ensure that those individuals are adequately trained, including staff and executive leadership, and this requirement should extend to a transit agency's Board of Directors.

If a transit agency does not have a Board of Directors, then an Equivalent Authority may approve its safety plan. An Equivalent Authority is an entity that carries out duties similar to that of a Board of Directors, including sufficient authority to review and approve a safety plan. For example, an Equivalent Authority could be the policy decision-maker/grant manager for a small public transportation provider; the city council and/or city manager for a city; a county legislature for a county; or a State transportation commission for a State. Given the varying sizes and organizational structures of the thousands of recipients and subrecipients throughout the country, FTA is not providing a prescriptive definition of this term, and it is deferring to each transit agency to identify who would be an Equivalent Authority for its system. FTA intends its list of examples to be non-exhaustive and illustrative only.

The approval of the safety plan should mean that the Board of Directors or the Equivalent Authority accepts the safety plan as satisfactory, that the safety plan complies with each of the requirements of this rule, and that the safety plan effectively will guide the transit operator with the management of safety risks.

Finally, to clarify, FTA does not intend to collect and ''approve'' safety plans. FTA intends to ensure that transit agencies comply with this rule by reviewing their safety plans through FTA's existing Triennial Reviews and State Management Reviews. Through these oversight processes, FTA may collect various documents, including safety plans, to ensure compliance with this part, but FTA will not provide regular ''approvals'' of the plans. SSOAs, however, must approve the safety plans of rail fixed guideway public transportation operations within their jurisdictions.

3. Documentation of SMS Processes and Activities

Comments: Pursuant to FTA's proposed provisions at 49 CFR 673.11(a)(2), each transit agency would be required to document its processes and activities related to SMS in its safety plan. One commenter sought clarity regarding whether the safety plan must detail the processes and activities, or just indicate that such processes and activities exist. Another commenter asked which documents should be included in the safety plan, specifically whether the safety plan should include documents that are generated by the results of ongoing SMS activities, or only those documents which formally present a description of SMS processes.

Response: Each safety plan must include documented SMS processes; it is not sufficient to merely indicate in the safety plan that SMS processes exist. Through the practice and implementation of SMS, each transit agency may generate data and other documentation, but the safety plan itself must document each of the processes as outlined in this rule. FTA is providing discretion to each transit agency to decide for itself whether it will incorporate processes and documented activities beyond those required in today's final rule.

4. Safety Performance Targets

Comments: Pursuant to FTA's proposed provisions at 49 CFR 673.11(a)(3), each transit agency would be required to identify in its safety plan performance targets based on the safety performance measures that FTA establishes in the National Public Transportation Safety Plan. One commenter supported FTA's proposed list of safety performance measures as outlined in the National Public Transportation Safety Plan, but several commenters recommended that FTA expand the list of performance measures. One commenter recommended that FTA reduce its proposed list of safety performance measures to align with the safety outcomes that transit agencies currently report to NTD. One commenter stated that the proposed definition of ''Performance Criteria'' is confusing and inconsistent with the National Public Transportation Safety Plan. The commenter stated that the terms ''Criteria'' and ''Measures'' are synonymous, and proposed the following alternate definition: ''categories of safety performance measures that focus on the reduction of safety events, both for the public who use or interface with the rail system, and employees who operate and maintain the system.'' Several commenters requested that FTA provide agencies with additional guidance on the four basic safety performance measures.

One commenter asked whether the safety plan must contain specific quantitative performance targets for all performance measures. This commenter stated that specific quantitative targets would pose challenges for transit agencies and that all targets should be

broad and not static to allow agencies to adjust their targets as new information dictates. Several commenters requested FTA to allow transit agencies to update and revise their safety plans if FTA alters or adjusts performance measures.

Response: FTA appreciates the comments that it received regarding its proposed safety performance measures; however, the proper vehicle for addressing these comments is through the notice and comment process tied to FTA's proposed National Public Transportation Safety Plan (RIN 2132–ZA04). The National Public Transportation Safety Plan will identify FTA's safety performance measures, not today's rule for Public Transportation Agency Safety Plans. The Public Transportation Agency Safety Plan rule only requires transit agencies to set performance targets based on the performance measures established in the National Public Transportation Safety Plan. FTA will address all of the comments related to safety performance measures in the National Public Transportation Safety Plan, including the above-referenced comments that were directed to this rulemaking.

FTA notes that in the NPRM for this rule, FTA used the term ''Performance Criteria,'' which it proposed to define as ''categories of measures indicating the level of safe performance within a transit agency.'' FTA used this term because the language of 49 U.S.C. 5329 uses the term ''Performance Criteria.'' Other parts of FTA's authorizing statute, such as the Transit Asset Management provisions of 49 U.S.C. 5326, use the term ''Performance Measures.'' FTA believes that Congress intended the terms ''Performance Criteria'' and ''Performance Measures'' to be synonymous. To eliminate confusion over distinctions between these terms and to ensure consistency with the use of these terms throughout FTA's programs, FTA has removed the term ''Performance Criteria'' from today's final rule and replaced it with the term ''Performance Measure.''

Finally, in accordance with the statutory requirements of 49 U.S.C. 5329(d)(1)(E), each transit agency must include in its safety plan, ''performance targets based on the safety performance criteria and state of good repair standards.'' These targets must be specific numerical targets set by transit agencies themselves. FTA emphasizes, however, that the safety plan is intended to be a living document that evolves over time. FTA expects transit agencies to modify their safety plans, and to adjust their performance targets, as they collect data and implement SMS. Indeed, the performance targets may change from year to year, or more frequently, as safety data may necessitate.

5. Future Requirements in FTA's Public Transportation Safety Program and National Public Transportation Safety Plan

Comments: One commenter requested FTA to provide guidance on what it means to ''address'' the requirements and standards in its Public Transportation Safety Program and National Public Transportation Safety Plan. Another commenter expressed concern that FTA has not established formal standards for these requirements, and requested FTA to establish minimum measures and targets for safety performance and improvement.

Response: In today's final rule, FTA is requiring each transit agency to address—more specifically, to ensure that it is complying with—all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program at 49 CFR part 671 and the National Public Transportation Safety Plan. In particular, each transit agency must identify safety performance targets based on the performance measures that FTA establishes in the National Public Transportation Safety Plan. Additionally, FTA encourages transit agencies to adopt any voluntary minimum safety performance standards established in the National Public Transportation Safety Plan, until mandatory standards are established, in which case each transit agency must fully comply with those safety performance standards. To the extent that FTA amends its Public Transportation Safety Program Rule or the National Public Transportation Safety Plan in the future, FTA expects each transit agency to amend its safety plan, as appropriate.

6. Process and Timeline for Annual Review and Update

Comments: One commenter asked FTA to clarify if the timeline for the annual review process is determined by each transit agency, or whether there is a particular date by which an annual review and update is required.

Several commenters disagreed with the proposed requirement that the plans be updated annually. Some commenters suggested that safety plans only need to be updated every two years because the requirement for an annual update of safety plans is excessive and burdensome. Several of these commenters asserted that if annual action is needed, an annual review and status report would be less resource intensive. A few commenters suggested that safety plans need only to be updated every two years, unless there is a significant policy or change in condition (such as a fatality) that warrants a change. Another commenter recommended the same approach, but with updates required every three years rather than two years. One commenter suggested alternative review schedules ranging from every two years to every five years. One commenter suggested that organizations which meet various criteria should be placed on a five year review plan and they should be required to submit any requested updates to policies for review and approval.

One commenter asserted the review requirement should be consistent with FTA's proposed rule for Transit Asset Management Plans, which would require each transit agency to update its Transit Asset Management Plan at least once every four years. Additionally, this commenter suggested that the rule should require an update of a safety plan in any year when risk assessments result in the need for substantial mitigation, or if there are significant changes to asset inventory, condition assessments, or investment prioritization.

A couple of commenters asked about the required annual update as it may relate to a rail transit agency's SSPP annual reviews. A commenter asked whether the process for conducting annual reviews would likely be similar to the SSPP annual reviews, including requirements that an Accountable Executive would perform the review and that a transit agency document all updates and revisions. A commenter suggested that the proposed requirement to conduct an annual review and update the safety plan, as needed, differed from the requirement to conduct a formal annual internal audit of the SSPP.

A commenter expressed concern with FTA's decision to publish the National Public Transportation Safety Plan with no schedule for revision, which would cause transit agencies to continuously update their safety plans to coincide with any changes in FTA guidance documents. This commenter further encouraged FTA to define prescriptive elements of the annual review and update process to better guide agencies.

Response: Pursuant to the statutory provisions of 49 U.S.C. 5239(d)(1)(D), each operator of a public transportation system must develop a safety plan which includes ''a process and timeline for conducting an annual review and update of the safety plan.'' In light of this statutory language, today's final rule requires each transit agency to establish a process and timeline for conducting a review and update of its

safety plan, and this review and update must occur at least annually. 49 CFR 673.11(a)(5).

Given the diversity in transit systems across the country, and given each transit agency's unique operating environment, FTA is deferring to each transit agency to determine, for itself, the frequency of its safety plan reviews and updates each year, and the process for doing so. Each transit agency must certify compliance with these requirements through its annual Certifications and Assurances to FTA.

FTA disagrees with the commenters who proposed that the annual review period for the safety plans be changed to a less frequent time period, such as two years, three years, four years, or five years. The statutory provisions of 49 U.S.C. 5329(d)(1)(D) do not provide that latitude. Notwithstanding the statute, as a matter of a best safety practice, FTA believes that each transit agency should annually review its process for hazard identification and risk analysis in an effort to prevent safety events. As a transit agency collects data through the hazard identification and risk analysis processes, the transit agency should be evaluating its safety performance targets to determine whether they need to be changed, as well.

FTA agrees with the commenter who suggested that along with an annual review, a transit agency should update its safety plan at any point when risk assessments result in the need for substantial safety mitigation, or if there are significant changes to asset inventory, condition assessments, or investment prioritization.

Regarding the annual reviews of SSPPs, FTA notes that under its new public transportation safety program, the requirements for SSPPs under the former regulatory provisions of FTA's SSO rule at 49 CFR part 659 have been eliminated. Today's requirement for a PTASP under 49 CFR part 673 replaces the old requirement for an SSPP under 49 CFR part 659. Therefore, annual reviews of the PTASP now will be required, and SSPPs will become obsolete for rail transit agencies one year after the effective date of this final rule.

Finally, regarding the National Public Transportation Safety Plan, FTA will update the National Public Transportation Safety Plan when it believes it is necessary to do so, based on safety needs in the public transportation industry. FTA notes that it must make any changes to the National Public Transportation Safety Plan through the public notice and comment process, and the transit industry will have the opportunity to provide input on any changes to this document. Furthermore, FTA believes that changes to the National Public Transportation Safety Plan will not necessarily cause transit agencies to update their PTASPs. Currently, the National Public Transportation Safety Plan and the Public Transportation Agency Safety Plans are linked through the requirements for performance targets in agency safety plans based on the performance measures in the National Public Transportation Safety Plan.

7. Emergency Preparedness and Response Plans

Comments: Pursuant to the proposed provisions of 49 CFR 673.11(a)(6), each rail transit agency would be required to include an emergency preparedness and response plan in its safety plan. Although a commenter noted that there is no statutory language in 49 U.S.C. 5329 which requires emergency preparedness and response plans, the commenter agreed that this type of plan is important and should be included in safety plans. One commenter supported the requirement that transit agencies develop a plan for the delegation of responsibilities during an emergency, but encouraged FTA to include in the final rule a requirement that ensures transit agencies provide adequate training for workers responsible for tasks during emergencies.

Two commenters suggested that FTA should provide transit agencies with the option of separating their safety plans and their emergency preparedness and response plans, developing them as two separate documents. One of these commenters suggested that these documents are fundamentally different and the emergency preparedness and response plan contains information that should not be widely distributed. One of these commenters suggested that some transit agencies that have not previously complied with 49 CFR part 659 may have difficulty developing a robust emergency preparedness and response plan. This commenter also stated that FTA should take into consideration the time and resources needed to develop a comprehensive emergency response plan by publishing templates for these plans, offering assistance to those transit agencies developing them for the first time, and extending the implementation deadline for this final rule. Another commenter requested clarification regarding whether this final rule would require a System Security Plan and an emergency preparedness and response plan to be separate documents.

One commenter suggested that FTA revise the rule to allow a transit agency to include or reference the emergency preparedness and response plan in its safety plan. This commenter said this revision would be consistent with the intent of FTA in the Section-by-Section Analysis portion of the NPRM which states that this section would require that each rail transit agency ''include, or incorporate by reference'' the emergency preparedness plan in its safety plan.

Another commenter asked FTA to clarify the relationship between the emergency preparedness and response plans required in this rule to the emergency preparedness and response plans required in the former SSO provisions of 49 CFR 659.19(k).

Response: Although the statutory provisions of 49 U.S.C. 5329 do not require emergency preparedness and response plans, FTA's State Safety Oversight Rule historically has required rail transit agencies to have emergency preparedness and response plans as part of their SSPPs. Since rail transit agencies already have these plans in place, FTA is carrying over the requirement for those plans into today's rule. FTA's intent is to make transit safer, not to make transit less safe by eliminating historical requirements that have proven to be effective. FTA acknowledges the potential burdens on transit agencies that do not have these plans in place, and therefore, FTA only is requiring emergency preparedness and response plans from rail transit agencies, which should already have them in place. FTA agrees with the commenter who suggested that these plans are important, as recent safety events have demonstrated the need and utility of emergency preparedness and response plans, particularly for rail transit systems.

FTA agrees that rail transit agencies should develop plans to include the delegation of responsibilities during an emergency. FTA is deferring to transit agencies on how to document their emergency preparedness and response plans, and FTA will allow transit agencies to combine, include, incorporate by reference, or separate their emergency preparedness and response plans and their safety plans.

FTA is issuing templates and guidance for safety plans concurrently with the issuance of today's final rule. FTA intends to develop guidance specific to emergency preparedness and response plans in the future. FTA also will provide technical assistance to rail transit agencies that are modifying or developing emergency preparedness and response plans.

FTA notes that it no longer is requiring System Security Plans as previously required for rail transit agencies under the former regulatory

provisions of 49 CFR part 659—the responsibility for the oversight of transit security resides with the U.S. Department of Homeland Security's Transportation Security Administration (TSA). However, to the extent that a transit agency has a security plan, FTA will allow a transit agency to incorporate the security plan into its safety plan, if the transit agency desires.

In light of the above, FTA is revising the language in today's final rule to match the intent referenced in the NPRM's Section-by-Section Analysis, which states that each rail transit agency is required to ''include, or incorporate by reference'' an emergency preparedness and response plan in its safety plan. FTA directs readers to its SSPP–PTASP Crosswalk interim guidance document for further information on the relationship between SSPPs and PTASPs (*https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/PTSP_NPRM_SSPP_Side_by_Side.pdf*). Additional guidance will be forthcoming, and FTA will post it on its website (see *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-safety-oversight-tso*).

8. Multiple Modes of Transit Service

Comments: A few commenters supported FTA's proposed flexibility for transit agencies to develop one safety plan for all modes of transit. A couple of commenters stated that they would develop one safety plan for all modes. One of these commenters stated that updating and monitoring several plans is unrealistic and increases the workload and approval processes. This commenter also asked if FTA would issue rules specific to locally operated transit systems.

A couple of commenters encouraged the use of one safety plan that encompasses all modes of transportation. A commenter stated that if a transit agency develops one safety plan for all transportation modes, then that transit agency should identify those portions of its system that are regulated by another Federal entity and include any additional requirements from those Federal entities in the safety plan.

One commenter suggested that safety plans for all transit modes creates a difficult regulatory process for SSOAs, since SSOAs have regulatory authority over the rail mode only. This commenter recommended that FTA require rail transit agencies to develop a separate plan for rail, since the safety plan must be submitted to the SSOA for review and approval. Alternatively, the commenter requested that FTA include specific processes for SSOAs and rail transit agencies when dealing with a single plan covering multiple modes.

Response: FTA agrees with and appreciates the commenters who would like the flexibility to either have one safety plan or multiple safety plans for multiple modes of transit service. As FTA stated in the NPRM, it intends to allow flexibility and choice so that transit agencies may draft multiple plans or only one plan, as there are many different sizes and types of transit agencies—a single plan may work better for some agencies, whereas multiple plans for multiple modes of transit service may work better for others (especially the larger transit agencies that have multiple divisions and operate commuter rail, heavy rail, light rail, bus, and other transit modes).

FTA disagrees with commenters who would like to develop a single plan for all modes of transportation service, particularly service that is regulated by another Federal entity, such as FRA. Other Federal regulators may have specific requirements for safety plans that fall under their jurisdiction that may conflict with this final rule. Notably, FRA's statutory and regulatory framework for rail safety provides data protection in safety plans; FTA's statutory and regulatory framework does not. FTA is concerned that combining PTASPs and FRA-regulated safety plans would result in a loss of that data protection for the rail safety covered by FRA. Therefore, FTA will not allow a transit agency to combine its PTASP with a safety plan for service regulated by another Federal agency.

FTA disagrees that SSOAs will have difficulty approving safety plans that address rail and bus service. Indeed, SSOAs have regulatory authority over rail transit service only, and SSOAs should review only the rail components of safety plans. FTA will provide additional guidance and training in the future to assist SSOAs with their review and oversight of PTASPs and SMS.

D. State and Transit Agency Roles

1. Large Transit Agencies

Comments: One commenter recommended that the rule detail the requirements applicable to large transit agencies.

Response: Pursuant to this rule, every operator of a public transportation system—large and small—must comply with each of the requirements outlined in today's final rule, unless the operator only receives Section 5310 and/or Section 5311 funds. All sections and requirements of this rule as outlined in 49 CFR part 673 are applicable to large transit agencies, specifically, rail fixed guideway public transportation systems and recipients and subrecipients of FTA funds under 49 U.S.C. Chapter 53 that operate more than 100 vehicles in peak revenue service.

2. Small Public Transportation Providers, Section 5311 Providers, and Section 5310 Providers

2.1. States Must Draft and Certify Safety Plans on Behalf of Small Public Transportation Providers

2.1.1. Option for State-Wide or Agency-Specific Safety Plans

Comments: Several commenters responded to FTA's question as to whether FTA should require States to draft a single state-wide plan; individual safety plans for each Section 5310, Section 5311, and small public transportation provider located within that State; or defer to the State's preference. A few commenters recommended that each State should have the flexibility to choose whether the State will develop and certify a single state-wide plan or draft individual safety plans on for each agency. One commenter stated that the State should be required to draft an umbrella plan for more than just ''small public transportation providers'' and an agency can choose to use that plan or develop their own plan that complies with the overarching plan. Another commenter stated that state-wide plans should be generic and that States should develop an SMS that would be flexible enough to meet the needs of each of the individual transit agencies within their jurisdictions. This commenter also asked what might happen when a transit agency's safety plan differs from another transit agency's safety plan drafted by their State. One commenter suggested a ''hybrid'' approach whereby the State may draft a single safety plan, and include appendices that incorporate unique situations for certain transit agencies. Another commenter suggested that if a State develops a state-wide plan, then all transit providers should be required to provide copies of their plans and self-certifications to the State.

One commenter asserted that small urban and rural operations likely will be different, and if a State must draft separate safety plans for each transit agency, then this effort will be burdensome. On the other hand, the commenter asserted, if the State drafts only a single safety plan for all transit agencies under this regulatory provision, then the safety plans may be ineffective and meaningless.

In response to FTA's question as to how a single state-wide safety plan could respond to the Safety Risk

Management component of SMS (such as the identification of risks and hazards for each unique transit agency), several commenters stated there are already processes in place at State Departments of Transportation that can integrate individual SMS components of Safety Risk Management for small bus public transportation providers to enable the drafting of a state-wide agency safety plan.

Response: To provide maximum flexibility for States and transit providers, FTA is deferring to the States and the small public transportation providers within those States to determine whether each State will draft and certify a single state-wide safety plan for all small public transportation providers or whether it will draft and certify multiple individualized safety plans for each of these transit operators. FTA recommends as a best practice that each State draft and certify individualized safety plans on behalf of each of these small public transportation providers given the inherently unique safety concerns, issues, hazards, and risks for each transit operator. If a State drafts a single state-wide safety plan, then the State must ensure that the plan clearly identifies each transit operator that the plan will cover, the names of the Accountable Executives and Chief Safety Officers, the safety performance targets for each transit operator (and determined in conjunction with each operator), and the hazard identification, risk analysis, Safety Assurance, and other SMS processes for each transit operator (and developed in conjunction with each transit operator).

FTA notes that, in this rule, States are not required to draft and certify safety plans on behalf of transit operators that only receive Section 5310 and/or Section 5311 funds. As discussed above, FTA is deferring regulatory action regarding the applicability of this rule on these operators until a later date.

2.1.2. Drafting and Certifying Safety Plans for Small Section 5307 Providers

Comments: Several commenters suggested that States should not be required to draft and certify safety plans for small Section 5307 providers in large urbanized areas because these providers are not subrecipients of funds apportioned to States, they have a direct funding relationship with FTA, States do not review their grant applications, States do not review their NTD reports, and States do not provide their oversight.

A few of these commenters only supported the requirement that States draft and certify safety plans on behalf of open door Section 5310 and Section 5311 subrecipients. A couple of commenters supported the requirement that a State draft and certify safety plans on behalf of small Section 5307 providers operating 100 or fewer vehicles, as long as the final rule clarifies that the ''100 vehicles in revenue service'' criteria applies only to Section 5307 recipients, not Section 5310 or Section 5311 recipients.

Response: FTA notes that 49 U.S.C. 5329(d)(3)(B) provides that States may draft or certify safety plans on behalf of ''small public transportation providers'' that receive Section 5307 funds, even though, for recipients in large urbanized areas, no funding relationship exists between the States and those small Section 5307 recipients. In response to comments and to ensure consistency across FTA's safety rules and Transit Asset Management rule, FTA is defining ''small public transportation provider'' to mean ''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 and does not operate a rail fixed guideway public transportation system.'' A small Section 5307 provider may opt to draft and certify its own safety plan.

FTA notes that it received numerous comments requesting reduced requirements for small public transportation providers. Given their limited resources, FTA believes that a reduction in requirements for small public transportation providers is appropriate, and to that end, FTA eliminated Safety Assurance requirements for all small public transportation providers under 49 CFR 673.27(a).

2.2. Other Comments

Comments: One commenter expressed a concern about potential conflicts of interest regarding the drafting and certifying of safety plans. This commenter stated that if a State drafts and certifies a safety plan on behalf of a transit operator, and if the State is also the grant manager for the transit agency using the safety plan, then the State may monitor compliance with the safety plan that it drafted through grant compliance reviews. The commenter suggested that this situation may create a conflict of interest, similar to the conflict of interest that would arise if an SSOA drafted and certified a safety plan on behalf a rail transit agency subject to its jurisdiction.

One commenter asked whether a small transit provider may continue to use its safety plan drafted by its State if it grows to a size where it no longer would be considered small. In this scenario, the commenter asked how much time the transit provider would have to draft and certify a new safety plan.

One commenter recommended that FTA clarify the definition of the term ''State'' so that SSOAs would not draft or develop a transit agency's safety plan if a conflict of interest exists. Additionally, the commenter suggested adding the following language at the end of section 49 CFR 673.11: ''the State Safety Oversight Agency cannot be involved in the development of the Public Transportation Agency Safety Plans they are charged with overseeing.''

Response: FTA disagrees with the commenter who suggested that a potential conflict of interest would exist if a State drafted and certified a safety plan on behalf of a small transit provider. The funding relationships created by Congress differ from the new safety relationships in 49 U.S.C. 5329(d). From a federal perspective, the State has no role in safety enforcement or oversight of small Section 5307 providers. For rail transit agencies, the SSOAs serve in a different, independent role, and they are required by 49 U.S.C. 5329(e) to provide enforcement. Moreover, as a legal matter, the statutory provisions of 49 U.S.C. 5329(d) require States to draft and certify safety plans on behalf of small Section 5307 providers.

If a transit agency grows in size so that it no longer is considered ''small,'' then it would have one year to draft and certify its own safety plan. The safety plan developed by the State would remain in effect until the transit agency drafts its own safety plan.

Finally, FTA does not agree that the rule text should be clarified to distinguish between a State's role and an SSOA's role in the development and certification of safety plans. The rule provides that a State must draft and certify safety plans only on behalf of small public transportation providers that do not operate rail service, and that an SSOA must review and approve a rail transit agency's safety plan.

3. Small Transit Providers May Draft and Certify Their Own Safety Plans

Comments: Many commenters asserted that, when a transit agency ''opts out'' of the state-wide safety plan and drafts and certifies its own plan, then the final rule should clarify that the State has no further obligation related to the safety plan.

One commenter observed that the ''opt out'' provision places the decision on a State's responsibilities in the hands

of its subrecipients instead of the State, which is where that responsibility exists in the context of funding relationships. The commenter recommended that FTA clarify in the final rule that the State is responsible for its own safety plan and for those of its subrecipients, and that the determination of whether the State will draft plans for its subrecipients remains at the discretion of the State.

Response: If a transit agency ''opts out'' and decides to draft and certify its own safety plan, then the State has no further responsibility regarding that safety plan and the transit agency may seek guidance and technical assistance directly from FTA. FTA disagrees with the commenter who suggested that States should have the discretion to draft and certify safety plans. In an effort to reduce the administrative and financial burdens of small public transportation providers, and given the statutory requirements of 49 U.S.C. 5329(d), FTA is requiring States to draft and certify safety plans on behalf of small Section 5307 recipients and subrecipients. FTA is providing those recipients and subrecipients with the discretion to ''opt out'' of this arrangement (however, the State will not have the option to ''opt out,'' as this discretion lies with the small transit operator).

4. Direct and Designated Recipients Drafting and Certifying Safety Plans on Behalf of Smaller Transit Providers

Comments: Several commenters responded to FTA's question about whether a Section 5310 recipient should draft and certify their own safety plans if they are direct recipients, instead of having the States draft and certify their safety plans on their behalf. Many commenters stated that the designated or direct recipient should have this responsibility for themselves, given the fact that they do not receive their funds through the State under recent changes to the Section 5310 program under the FAST Act. One commenter supported the idea of having designated recipients draft and certify their own safety plans, as well as their subrecipients, only if the plans are based on templates provided by FTA. One commenter asked whether the State or the transit agency should be responsible for reviewing safety plans when a subrecipient receives funding through the transit agency and not the State.

Response: FTA appreciates the comments that it received regarding this issue. In light of the public comments that FTA received regarding the application of this rule to Section 5310 and Section 5311 recipients, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds. Further evaluation of information and safety data related to these operators is needed to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators. At this time, the rule 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. Consequently, States are not required to draft and certify safety plans on behalf of operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds.

Consistent with the statutory provisions of 49 U.S.C. 5329(d)(3)(B), a State still has the responsibility of drafting and certifying safety plans on behalf of small Section 5307 recipients, unless they opt to draft and certify their own safety plans. To ease the burdens with these efforts, FTA is issuing a safety plan template with today's rule to assist States and smaller operators with the drafting and certification of their plans.

E. Existing System Safety Program Plan Is Effective for One Year

1. General Comments

Comments: A couple of commenters suggested that the final SSO rule and the proposed PTASP rule are contradictory in terms of implementation deadlines, and they recommended that FTA allow an SSPP to remain in effect until an SSOA has approved a rail transit agency's new PTASP. One of these commenters stated that FTA should remove all requirements involving SSPPs from the final PTASP rule. One commenter asked if a rail transit agency must keep its SSPP and reference it in its PTASP.

Response: FTA acknowledges that the compliance dates in the final SSO rule at 49 CFR part 674 differ from those in the PTASP rule at 49 CFR part 673. These compliance dates are creations of statute. Pursuant to 49 U.S.C. 5329(e)(3), each State must have an SSO program compliant with the new SSO rule within three years after the effective date of that final rule. Pursuant to 49 U.S.C. 5329(d)(1), each operator of a public transportation system must have a PTASP compliant with the new PTASP rule within one year after the effective date of this final rule.

Although these compliance dates differ, an SSOA can apply the regulatory requirements of the PTASP rule and ultimately review and approve a PTASP based on those requirements, even if it has not fully developed its new program standard in accordance with the new SSO rule. As demonstrated through the SSPP–PTASP Crosswalk that FTA posted to this rulemaking docket, the substantive elements of the old SSPPs carry over into the SMS portions of PTASPs. The same basic requirements exist, albeit, reshuffled into a different format that is intended to more effectively address safety risks. Finally, the staff of SSOAs have been taking training courses in SMS in accordance with the interim rule for the Public Transportation Safety Certification Training Program. Given the above, FTA expects each SSOA to review and approve each PTASP of a rail transit agency within its jurisdiction, even if it has not fully complied with the new SSO rule at 49 CFR part 674.

Ultimately, the SSPP will become obsolete one year after the effective date of this final rule, and an agency's PTASP will replace the SSPP. However, if a transit agency would like to maintain the SSPP and use it as a reference document, it may do so. FTA only will conduct oversight, including Triennial and State Management Reviews, to ensure that a transit agency's PTASP complies with this rule, not its former SSPP. Given the April 15, 2019 deadline for updated SSO Programs under 49 CFR 674.11, FTA believes that the effective date and compliance date of today's final rule will provide rail transit agencies and their SSOAs with more time to harmonize their safety plans and program standards before they are finalized.

2. One-Year Compliance Timeframe

Comments: Several commenters provided input on the one-year compliance timeframe for the proposed rule. One commenter expressed support for the one-year compliance period, but stated that transit agencies may need more than one year to draft their safety plans, hire and train the necessary personnel, and certify the plan.

Some commenters stated that FTA should provide a longer compliance/implementation period for the rule. Several of these commenters remarked that the proposed compliance period is aggressive and may lead to rushed or subpar safety plans with limited SMS training for staff. The commenters also suggested that a longer compliance period may be necessary given the requirements for a signature from the Accountable Executive and approval from a Board of Directors. One commenter suggested that,

notwithstanding Federal requirements, State legislatures may not be able to amend State safety requirements prior to the compliance deadline for this rule, which may force some transit agencies to create two safety plans for purposes of Federal and State law, or be in non-compliance with the Federal and State laws.

Most commenters provided suggestions for an alternative compliance deadline, with many commenters suggesting that FTA extend the compliance deadline to two years. Several commenters suggested that FTA extend the compliance deadline or allow for a multi-part implementation or a transitional grace period for agencies to show progress with the development of their safety plans. A couple of commenters recommended that FTA extend the compliance period until one year after FTA issues templates for safety plans. One commenter stated that the compliance deadline for this rule should be tied to the finalization of the National Public Transportation Safety Plan. Several commenters also suggested aligning the compliance deadline of this rule with the two-year compliance deadline for the Transit Asset Management rule.

Response: As a preliminary matter, FTA notes that many commenters referred to the ''implementation'' deadline of this final rule, as opposed to the rule's ''compliance'' deadline. The compliance deadline is the date by which transit operators and States must comply with the final rule and have a safety plan in place. FTA emphasizes that this rule implements a statutory requirement that each operator of a public transportation system draft and certify a safety plan within one year after the effective date of this final rule. The safety plan must include all of the information, processes, and procedures as outlined in this rule. FTA expects each operator of a public transportation system to ''implement'' the processes and procedures outlined in its safety plan after it drafts and certifies that plan in accordance with this rule. That implementation should take place continually, and the implementation, particularly the implementation of SMS, should mature over time. But to comply with this rule, each operator of a public transportation system must draft and certify a safety plan within one year after the effective date of this final rule—that one-year deadline is the ''compliance'' deadline for this rule.

The one-year compliance deadline was created by the statutory provisions of 49 U.S.C. 5329(d)(1), and FTA does not have the flexibility to extend it. Nevertheless, FTA does not expect that all transit agencies will have fully implemented SMS one year after the effective date, but rather, FTA expects that transit agencies will have the processes and procedures put in place for SMS, including hazard identification, risk analysis, and the Safety Assurance procedures as outlined in Subpart C of this rule. The full implementation of SMS may take longer, in some cases years to fully mature in large multi-modal transit agencies. FTA is providing more guidance on how a transit agency may fully implement a mature SMS in the National Public Transportation Safety Plan, and it intends to provide additional guidance and technical assistance to the industry in the future.

FTA appreciates the comments that it received suggesting that transit agencies may need more than one year to certify compliance with the rule. Although, by statute, the compliance deadline must be one year from the rule's effective date, FTA has discretion on setting the effective date itself. In response to the public comments and in an effort to assist the industry with meeting the requirements of this rule, FTA is making the effective date one year after its publication date. As a result, transit agencies will have a total of two years (one year from the publication date to the effective date, plus another year from the effective date to the compliance deadline) to certify that they have safety plans meeting the requirements of 49 CFR part 673.

F. Certification of Safety Plans

Comments: Several commenters requested additional information on how agencies may certify compliance with this rule and what this certification means. One commenter remarked that the rule contains neither a definition nor an explanation of the term ''certification'' or ''certify.'' Two commenters questioned how an agency may certify their safety plans if FTA may adopt additional performance measures in the future.

One commenter expressed concern with self-certification, asserting that self-certification is not a reliable method for establishing effective safety management by public transportation providers. This commenter suggested that each transit agency should submit its safety plan to FTA for approval and certification so that FTA could verify that the plan satisfies the statutory and regulatory requirements.

Several commenters expressed concern over the one-year certification timeline, indicating that one year may not be enough time for transit agencies to certify compliance with the rule. One commenter suggested that FTA lengthen the certification period to two years, which would provide agencies with additional time and align the certification deadline for the compliance deadline for developing transit asset management plans as outlined in the TAM rule.

One commenter urged FTA to clarify the process by which a State should certify a safety plan on behalf of a Section 5310, Section 5311, or small Section 5307 recipient or sub-recipient. Additionally, the commenter asked who would conduct oversight on a safety plan if a small transit agency opts out of any plan developed by a State.

Response: As a statutory matter, pursuant to 49 U.S.C. 5329(d)(1), each recipient or State must ''certify'' that the recipient or State has established a comprehensive agency safety plan. Pursuant to 49 U.S.C. 5323(n), each recipient must submit to FTA a list of ''Certifications and Assurances'' as part of the grant award and oversight process during each fiscal year. FTA will use this existing Certifications and Assurances process to satisfy the statutory requirement for safety plan certifications. FTA has added a section to the list of Certifications and Assurances to address safety. FTA will issue future guidance on how States can certify safety plans and transit asset management plans on behalf of transit operators.

To the extent that FTA amends the National Public Transportation Safety Plan in the future, or any of its regulatory requirements in general, FTA will amend the annual list of Certifications and Assurances, as necessary.

FTA appreciates concerns regarding the self-certification process; however, FTA does not have the resources to collect and review hundreds of safety plans each fiscal year. Consequently, FTA intends to utilize its existing risk-based approach to oversight by using its Triennial Reviews and State Management Reviews to ensure compliance with this rule. FTA notes that it does not need to wait to review a safety plan every three years. FTA may review an agency's safety plan whenever it deems necessary.

As noted above, in response to the public comments and in an effort to assist the industry with meeting the requirements of this rule, FTA is making the effective date one year after its publication date. As a result, transit agencies will have a total of two years from the rule's publication date to certify that they have safety plans meeting the requirements of 49 CFR part 673.

G. SSOA Review and Approval of PTASPs for Rail Transit Systems

Comments: Pursuant to the proposed provisions at 49 CFR 673.13(a), each SSOA would be required to review and approve a PTASP developed by a rail fixed guideway system. Some commenters expressed concern with the one-year deadline that a transit agency has to certify its PTASP and the three-year deadline that an SSOA has to comply with the new SSO rule at 49 CFR part 674. One commenter recommended that FTA should allow rail transit agencies to certify compliance with the PTASP rule one year after the relevant SSOA develops its program standard pursuant to 49 CFR part 674. Several commenters questioned whether a rail transit agency must submit its PTASP to the SSOA by one year after the PTASP final rule's effective date, or whether the SSOA must approve the agency's PTASP by one year after the PTASP rule's effective date. Several commenters urged FTA to clarify whether SSOAs must update their program standards prior to approving rail transit safety plans since most SSOAs will be operating under a program standard based on 49 CFR part 659 when the PTASP final rule becomes effective.

A few commenters requested FTA to clarify the role of an SSOA with respect to PTASP certification. One commenter suggested that a PTASP should not be executed without SSOA approval. Several commenters suggested that FTA develop guidance for obtaining SSOA approval and a resolution process for situations in which a rail transit agency certifies compliance and then an SSOA does not approve the safety plan. Several commenters requested clarification of an SSOA's approval power and role, with a couple of these commenters encouraging FTA to modify the rule's text to make clear that SSOAs only have authority over rail transit systems. One commenter recommended that FTA require transit agencies that operate rail and bus service to develop separate safety plans for rail and bus service so that it is easier for SSOAs to approve the plans for rail safety.

A few commenters stated that FTA should define the SSOA's role and responsibilities in approving plans that contain modes of service not subject to state specific oversight rules, such as rules for bus transit. The commenters argued that while SSOAs are responsible for the review and approval of rail transit plans, FTA's proposed rule only specifies that bus agencies will self-certify.

Several commenters expressed concerns over the requirement to have the transit agency's Board of Directors and the SSOA approve the safety plan, fearing that this two-tiered review process could subject plans to conflicting evaluation criteria, which could weaken plans and cause delays in implementation.

One commenter suggested that FTA should clarify that SSPPs will become obsolete.

Response: As a preliminary matter, FTA notes that the comments above regarding state safety oversight are more appropriately addressed through FTA's SSO rule at 49 CFR part 674, which governs the activities of SSOAs. FTA's PTASP rule governs the activities of operators of public transportation systems. Nevertheless, to provide the industry with additional clarification regarding the role of SSOAs, FTA provides the responses below.

Through FTA's new SSO rule at 49 CFR part 674, each SSOA has a great deal of flexibility regarding the timing of its approval of a PTASP within its jurisdiction. Pursuant to the new rule, each SSOA is obliged to ''adopt and distribute a written SSO program standard'' consistent with the National Public Transportation Safety Plan and the PTASP rule (49 CFR 674.27(a)); ''explain'' an SSOA's ''role . . . in overseeing'' a rail transit agency's ''execution of its Public Transportation Agency Safety Plan'' (49 CFR 674.27(a)(4)); and ''describe the process whereby the SSOA will receive and evaluate all material submitted under the signature of [a rail transit agency's] accountable executive'' (49 CFR 674.27(a)(4)). Given these requirements, an SSOA could choose to ''approve'' a PTASP at virtually any point in time, and as often as it might like. FTA expects each SSOA to develop its program standard in consultation with the rail transit agencies within the SSOA's jurisdiction. FTA intends to provide deference to the State decision makers on this matter.

Optimally, an SSOA would have its program standard in place before reviewing the merits of a rail transit agency's PTASP, but it is not necessary, as a matter of law. An SSOA still operating under the old SSO rule at 49 CFR part 659 and transitioning to the new SSO rule at 49 CFR part 674 still can judge the adequacy of a rail transit agency's PTASP by applying the standards and regulatory requirements set forth in the new rules at 49 CFR parts 673 and 674.

Through the new SSO rule, FTA addresses scenarios in which an SSOA does not approve a PTASP. Pursuant to 49 CFR 674.29(c), ''In an instance in which an SSOA does not approve a Public Transportation Agency Safety Plan, the SSOA must provide a written explanation, and allow the [rail transit agency] an opportunity to modify and resubmit its . . . Plan for the SSOA's approval.'' This mechanism should lead to negotiations that resolve disagreements between an SSOA and a rail transit agency. In those instances in which an SSOA and a rail transit agency continue to disagree in good faith, FTA may step into the dispute to help the issue. If a rail transit agency is comfortable certifying its own compliance with the rules, but it receives objections or disapprovals from its SSOA, then FTA could take regulatory enforcement action under the Public Transportation Safety Program rule at 49 CFR part 670 (see *https://www.gpo.gov/fdsys/pkg/FR-2016-08-11/pdf/2016-18920.pdf*), as necessary and appropriate, to ensure compliance with the PTASP rule.

It is abundantly clear in 49 U.S.C. 5329(e) and FTA's new SSO rule at 49 CFR part 674 that an SSOA only has jurisdiction over a ''rail fixed guideway public transportation system'' that is not subject to regulation by FRA. Consequently, when reviewing a PTASP for an agency that operates rail fixed guideway public transportation and bus public transportation, an SSOA should focus its review on the rail fixed guideway public transportation system only, given the fact that as a legal matter, Federal law does not give an SSOA the authority to regulate the safety of bus systems. Unless provided by State law, an SSOA has no legal authority to compel a transit agency to change its safety practices for bus operations. FTA disagrees with the commenters who believe that FTA should require separate safety plans for rail and bus; FTA will defer to each transit agency to decide whether it is more appropriate for their system to have a single plan covering rail and bus (and other modes of transit) or whether to have multiple plans for each mode of transit.

Finally, FTA re-emphasizes that every operator of a public transportation system subject to this rule, or State, must certify compliance with this rule, whether it provides rail transit service, bus transit service, or other modes of transit service. SSPPs will become obsolete one year after the effective date of this final rule.

H. Safety Performance Targets and Performance-Based Planning

Comments: Pursuant to the proposed provisions at 49 CFR 673.15, each

transit agency or State would be required to make its safety performance targets available to States and MPOs to aid in the planning process, and each transit agency or State would be required to coordinate with States and MPOs in the selection of safety performance targets.

Several commenters generally supported the coordination provisions. One commenter supported flexibility in the target-setting process and coordination of targets between the State, regional, and transit agency levels. One commenter was encouraged that FTA acknowledged the vital role of the planning process in safety management and recommended that the Transit Asset Management Plans also be included in the coordination process.

A couple of commenters asked FTA to explain the purpose of communicating safety performance targets to States and MPOs. One commenter asked FTA to clarify the MPO's role in the planning process, stating that if an MPO has any approval or review authority of safety performance targets, then an MPO should be required to have the same safety expertise and training as an SSOA.

Several commenters asked whether a transit agency only would be required to make its targets available to a State and an MPO, or whether it also would be required to make the supporting performance data pertaining to those targets available to a State and an MPO. One commenter suggested that FTA avoid creating this requirement or to make a general requirement that transit agencies cooperate with States and MPOs in the planning process.

Several commenters expressed concerns with requiring coordination among planning organizations. They argued that this coordination would be unreasonably burdensome on some transit agencies. Several commenters argued that these provisions are not required by statute and that MPOs generally do not operate transit service and do not have transit operations and safety expertise or experience. Several commenters suggested that coordination should be revised to a ''consultation'' requirement. One commenter recommended that FTA delete these requirements, and that planning coordination should be encouraged through guidance instead.

Several commenters requested clarification on how a State or transit agency should coordinate with MPOs and States to select safety performance targets. One of these commenters argued that if by ''coordination,'' FTA's intent is that a transit agency share its PTASP (which will include performance targets) with States and MPOs, then FTA should clearly state such a requirement. Additionally, the commenter stated that the proposed rule did not specify which State agencies, other than MPOs, transit agencies are expected to coordinate with.

Several commenters asked which accountability measures will be used to ensure that coordination is occurring ''to the maximum extent practicable.'' One commenter asked what recourse an MPO would have if the State or transit operator chooses not to coordinate on target setting, claiming there is not a ''practicable'' way to do so. The commenter argued that the rule must recognize that target setting across multiple functions and dimensions would require an extremely robust degree of coordination and suggested removing that phrase.

One commenter stated that the proposed rule does not identify the responsibilities of the State in the planning process. Another commenter asked whether States and MPOs would be required to keep confidential any information related to safety performance targets.

One commenter stated that it is unclear how the development of performance targets at the State and MPO levels will impact individual transit agency targets in the future, particularly when FTA may develop safety performance targets under a separate NPRM. This commenter also said it is unclear how the State and MPO safety performance targets would impact individual transit agency safety plans, as these are to be determined at the local level by each individual transit agency.

Response: FTA appreciates the comments that it received in support of its proposed safety performance target provisions. FTA emphasizes that these requirements are rooted in the statutory provisions of 49 U.S.C. 5329(d)(1)(E), which requires each operator of a public transportation system subject to this rule to include in its PTASP ''performance targets based on [FTA's] safety performance criteria and state of good repair standards.'' Moreover, the statutory provisions of 49 U.S.C. 5303(h)(2)(B) and 49 U.S.C. 5304(d)(2)(B) further require that ''[s]election of performance targets by a metropolitan planning organization shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with sections . . . 5329(d)'' and ''[s]election of performance targets by a State shall be coordinated with the relevant metropolitan planning organizations to ensure consistency to the maximum extent practicable.'' Since these activities are required by law, FTA will not merely encourage these practices through guidance, as some commenters requested. FTA will require these practices as a legal matter. Moreover, FTA emphasizes that the PTASP rule only governs the activities of operators of public transportation systems. The recent FTA/FHWA joint planning rule 23 CFR part 450 governs the planning activities of transit agencies, States, and MPOs. FTA refers readers to the Final Rule dated May 27, 2016, for further guidance on the roles and responsibilities of States and MPOs in the planning process (see *https://www.gpo.gov/fdsys/pkg/FR-2016-05-27/pdf/2016-11964.pdf*).

In response to the question as to whether a transit agency only would be required to make its safety performance targets available to a State and an MPO, or whether it also would be required to make the supporting performance data pertaining to those targets available to a State and an MPO, FTA defers to the State and local processes developed by States and MPOs. FTA only requires that transit agencies coordinate with States and MPOs to the maximum extent practicable to assist those States and MPOs with the selection of Statewide and regional safety performance targets. At a minimum, FTA requires each operator of a public transportation agency to make its safety performance targets available to States and MPOs.

To ensure that a transit agency complies with these requirements, FTA intends to utilize its existing Triennial Reviews and State Management Reviews. FTA intends to ensure that MPOs comply with the joint planning rule through the existing MPO certification process.

Finally, FTA notes that it is not developing safety performance targets for the industry—it is developing safety performance measures by which each operator of a public transportation system, and each State and MPO, must set targets. These targets are intended to guide transit agencies, States, and MPOs with the prioritization of transportation investments. The goal is for the prioritization of capital investments that help meet safety performance targets and state of good repair targets.

I. Safety Management Systems

1. Safety Management Policy: General Comments

Comments: Numerous commenters expressed general support for the proposed Safety Management Policy provisions of 49 CFR 673.23.

Response: FTA appreciates the support from the transit industry on Safety Management Systems, and specifically the Safety Management Policy provisions of 49 CFR 673.23.

1.1. Safety Management Policy Statement

Comments: Several commenters encouraged FTA to allow for maximum flexibility in safety management policy statements and urged FTA to allow deviation in policy adoption whenever consistent with the overarching principles of SMS.

A few commenters expressed concern regarding the inclusion of safety performance targets in the safety management policy statement. One commenter suggested that it is inappropriate to include specific safety performance targets in an overarching safety management policy statement and suggested deleting the requirement from the rule. This commenter also suggested that FTA replace the term SMS with PTASP where references to safety performance targets are made. Another commenter urged FTA to clarify that the intent of including safety performance targets in the safety management policy statement is not to require annual updates of the target values, but rather, the measures that the targets address.

Response: FTA agrees with the commenters who suggested that the inclusion of safety performance targets in the safety management policy statement is unnecessary, and FTA has updated the rule text, accordingly. The location of this requirement under the ''Safety Management Policy'' section of this rule is redundant, given the fact that FTA is requiring each transit agency to establish safety performance targets through the ''General Requirements'' section of this rule at 49 CFR 673.11(a)(3). If a transit agency wishes to include its safety performance targets in its safety management policy, it may do so, although it may identify those targets in another section of its safety plan. The rule text in 49 CFR 673.23 now reads, ''A transit agency must establish its organizational accountabilities and responsibilities and have a written statement of safety management policy that includes the agency's safety objectives.''

To clarify, during a transit agency's annual review and update of its safety plan (which is required under 49 CFR 673.11(a)(5)), a transit agency may need to update its safety performance targets based on the data and safety conditions at that time, but a transit agency may not necessarily need to alter its target values each year. A transit agency only needs to examine them and decide, for itself, whether it should amend them.

1.2. Employee Reporting Program

Comments: Numerous commenters expressed support for FTA's proposed employee reporting program. Several commenters urged FTA to provide more detail on the requirements for employee reporting programs. Two commenters suggested that FTA encourage transit agencies to establish ''close call'' reporting programs. Another commenter requested guidance from FTA on how reports from employee reporting programs would be protected from disclosure.

One commenter supported non-punitive employee reporting, but stated that disciplinary actions for employee safety behaviors are the subject of collective bargaining at the majority of transit systems. As such, the commenter stated that collective bargaining agreements may affect disciplinary actions in employee reporting programs.

Response: FTA appreciates the support for employee reporting programs and believes it is an essential part of a transit agency's SMS. Pursuant to 49 CFR 673.23(b), FTA is requiring each transit agency to ''establish a process that allows employees to report safety conditions to senior management,'' and FTA is providing significant latitude and flexibility to transit agencies to determine their own processes for the reporting of safety conditions. These reporting processes could include hotlines, web-based reporting systems, form-based reporting systems, or direct reporting to management, but ultimately, each transit agency must decide the process and procedures that will work best within that individual agency.

''Close call'' reporting systems are a type of employee reporting, and FTA strongly supports the establishment of close call reporting systems, although these systems are not required.

Currently, FTA does not have statutory protections in place to protect safety information from public disclosure, as is the case with FRA and the System Safety Programs required of commuter and intercity passenger railroads under 49 CFR part 270 (see *http://www.fra.dot.gov/eLib/Details/L18294*). FTA requested these protections through the ''Grow America Act''. Following this request, in Section 3021 of the FAST Act, Congress authorized a study ''on evidentiary protection for public transportation safety program information.'' The results of this study will help inform the need to develop statutory and regulatory protections for safety data.

Finally, FTA acknowledges that disciplinary actions for employee safety behaviors may be the subject of collective bargaining agreements throughout the country. Consequently, many transit agencies may need to work with their labor unions to establish employee safety reporting programs that fit the needs of management and a transit agency's operational and maintenance staff.

1.3. Safety Accountabilities and Responsibilities

Comments: Two commenters expressed concern over the requirement that each transit agency employ an Accountable Executive and either a Chief Safety Officer or an SMS Executive. These commenters argued that this requirement could be overly burdensome for rural, specialized, tribal, or small transit systems where the administrative staff could be limited to only a single executive. One commenter suggested that FTA add language in the final rule that requires small transit agencies to hire necessary safety personnel. Another commenter urged FTA to clarify whether the Chief Safety Officer must be a direct employee of the transit agency or whether the Chief Safety Officer may be a position held by a part-time employee.

A few commenters provided input on the role of the Chief Safety Officer and other SMS executives. One commenter urged FTA to clarify the role of the Accountable Executive in relation to the Chief Safety Officer and the transit agency's Chief Executive Officer. The commenter argued that the proposed rule would require the Accountable Executive to implement and maintain SMS, but that responsibility should belong to the Chief Safety Officer. One commenter suggested that FTA identify the link between the transit agency's Chief Safety Officer or SMS Executive and the operations and asset management departments, which is integral for a successful SMS.

Response: FTA appreciates the comments that it received regarding the Accountable Executive and the Chief Safety Officer (or SMS Executive), however, FTA is requiring that each transit agency identify individuals to fill these positions in its system. FTA clarified in the NPRM for this rule, and it is clarifying again here, that at many smaller transit agencies, roles and responsibilities may be more fluid and shared. Nevertheless, even in circumstances where responsibilities are either shared or delegated, each transit agency must identify a single primary decision-maker, or ''Accountable Executive,'' who is ultimately

responsible for controlling the human and financial resources necessary to maintain and implement the transit agency's safety plan and transit asset management plan.

FTA acknowledges that small transit agencies may not have many executive staff, and therefore, FTA is allowing small Section 5307 recipients and subrecipients to identify a Chief Safety Officer, or ''SMS Executive,'' that may serve other functions, such as operations, maintenance, and grant administration. For these transit agencies, the Chief Safety Officer may be a full-time employee of the transit system who has responsibility for duties other than safety, a part-time employee of the transit system, or a contracted employee. To illustrate, in a small bus agency, the general manager or operations manager may be the same individual as the Chief Safety Officer or SMS Executive.

Given the increased safety risks and complex operations associated with rail transit systems, FTA is requiring each rail transit agency to identify a single full-time Chief Safety Officer solely dedicated to safety. These Chief Safety Officers cannot have responsibilities other than safety. Similarly, FTA expects bus transit systems that operate more than 100 vehicles in peak revenue service to have a dedicated Chief Safety Officer, given the increased safety risks in those systems, although, this is not a requirement.

The role of the Accountable Executive in relation to the Chief Safety Officer and transit agency's CEO may vary from system to system. In many cases, as a transit agency's CEO or president or general manager, that individual likely will serve as the Accountable Executive. The Accountable Executive and the Chief Safety Officer are responsible for implementing and maintaining a transit agency's SMS, although at smaller transit agencies, this individual may be the same person. Ultimately, as noted above, the Accountable Executive must be the individual with the authority to dedicate the human and financial resources to maintain and implement a transit agency's safety plan and transit asset management plan. The Accountable Executive should oversee, and the Chief Safety Officer should have a strong working relationship with, the operations and asset management departments at a transit agency in order for SMS to be successful and effective.

2. Safety Risk Management

2.1. Safety Risk Management: General Comments

Comments: Two commenters supported the general inclusion of a safety risk management process in a safety plan as detailed in the NPRM, but expressed concern about the level of data collection and assessment activities required. The commenters recommended that FTA provide best practices and technical assistance to assist States and transit agencies with the preparation and execution of safety risk management processes. Similarly, a commenter expressed concerns over the data requirements of the proposed rule, noting that the commenter's organization employs hazard identification and tracking logs, but the organization now would have to incorporate into its SMS the data obtained through these systems. The commenter asked FTA to clarify if it would need to apply a safety risk management process for paratransit services, and this commenter asked where transit asset management fits into the safety risk management process.

While stating that safety risk management is an essential component of SMS, a commenter asserted that the proposed provisions at 49 CFR 673.25 do not specify that hazard analysis, risk assessment, or safety certification is required for new and major capital projects. Additionally, the commenter suggested that the rule fails to address configuration management or risk assessments to system alterations, and it does not require transit agencies to consider the results of asset condition assessments while performing safety hazard identification activities. This commenter also asserted that the proposed rule suggests, but would not require, that the results of asset condition assessments and SMS analysis be considered in the determination of whether an asset meets the SGR standards under FTA's Transit Asset Management rule at 49 CFR part 625.

One commenter asked what the phrases ''new operations of service to the public'' and ''new operations or maintenance procedures'' mean, as used in the section-by-section analysis of the proposed 49 CFR 673.25(a). Additionally, the commenter stated that the definition of safety risk management is unclear.

Two commenters encouraged FTA to allow flexibility in the hazard identification and risk management processes. One of these commenters stated that transit agencies should be encouraged to incorporate existing hazard identification and risk management processes, and evaluate any new processes that may be more effective. The other commenter asked whether a transit agency must develop its own safety risk management process, or whether FTA will establish a nationwide model.

One commenter remarked that there are organizational pressures exerted on the safety staff and other personnel who participate in the safety risk management process to rate safety risk as low as possible. This commenter expressed a hope that with the full implementation of SMS in an organization, these types of organizational pressures would dissipate under a positive safety culture, but cautioned that the development of a positive safety culture could take five to six years, or even longer, in many organizations.

Response: FTA appreciates the support from the industry on the proposed safety risk management process. FTA intends this process to be flexible, and it avoided prescriptive requirements in this rule. For example, the level of data collection and assessment activities will vary from agency to agency. For some transit agencies, data collection and analysis processes could be conducted using computer software programs; at other transit agencies, especially at smaller transit agencies, the data collection and analysis processes could involve a transit agency's management team, staff, and bus operators meeting in a room and discussing the most significant safety hazards and evaluating any associated risks. FTA has produced a safety plan template with this final rule, and it should assist transit agencies with the development of Safety Risk Management processes and considerations. To be clear, this rule applies to any transit service not regulated by another Federal agency, including general public and ADA complementary paratransit service, so each transit service provider will need to develop a safety plan which includes a Safety Risk Management process.

Also, each transit agency must apply its Safety Risk Management processes—and all other SMS processes—to all elements of its operations, including the design, construction, and operation of major capital projects, New Starts and Small Starts projects, and any other extension or expansion of transit service. These requirements extend to any ''new operations or maintenance procedures,'' meaning, any new operations or maintenance processes for railcars, buses, track, facilities, or other service or infrastructure undertaken by

a transit agency. FTA is providing a great deal of flexibility here and is allowing systems to determine the hazards and risks for which it will prioritize and mitigate from an individual agency level. A transit agency also must apply its Safety Risk Management process to its existing operations and maintenance procedures, and all other aspects of its system. Pursuant to 49 CFR 673.5, FTA is defining the term ''Safety Risk Management'' to mean ''a process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.'' FTA outlines the scope of necessary procedures within Safety Risk Management 49 CFR 673.25.

With respect to condition assessments, FTA expects each transit agency to consider the results of its condition assessments undertaken pursuant to its Transit Asset Management plan when it conducts SMS activities. For example, if an asset does not meet a transit agency's state of good repair targets, then the transit agency may conduct Safety Risk Management activities and analysis to determine whether the asset presents a safety hazard and any safety risks. The transit agency could mitigate any risks and prioritize investments in its capital plan, accordingly. In an effort to provide flexibility and scalability, FTA defers to each transit agency to determine for itself its own processes and procedures for these activities.

FTA agrees with commenters who suggested that transit agencies should be encouraged to incorporate existing hazard identification and risk management processes, and utilize any new processes that may provide a more effective means of identifying and addressing safety hazards and safety risks. FTA is providing a safety plan template, technical assistance, and guidance to assist transit agencies with the development and implementation of Safety Risk Management, and it is not applying a one-size-fits-all model for the industry since safety hazards and safety risks vary significantly nationwide.

One of the goals of this rule is create stronger and more positive safety cultures within transit agencies, and FTA expects that a transit agency's personnel would not feel pressure to rate all safety risks as low as possible. To the extent this sentiment exists within a transit agency, FTA anticipates that these types of practices would dissipate as a transit agency implements its SMS over time. FTA agrees that it may take a few months to even a few years to fully implement a mature SMS, and FTA will provide guidance and technical assistance to the industry, as necessary.

2.2. Safety Hazard Identification and Analysis

Comments: One commenter suggested that FTA clarify the distinction between safety hazard analysis and safety risk evaluation. This commenter asserted that FTA should articulate this distinction because the concepts of evaluation and analysis are used interchangeably in common language. Another commenter asked FTA to define the term ''consequence.''

A commenter encouraged FTA to establish standard processes for hazard identification and provided FTA with the hazard analytical methods and safety risk determination techniques adapted from the U.S. Department of Defense's Military Standard 882 series of standards as a model for national standardization. Similarly, one commenter suggested that FTA specify that transit agencies must utilize data and information from oversight authorities, including FTA, when conducting hazard identification and risk analysis.

Response: In an effort to provide clarity to the Safety Risk Management process, FTA has amended the terminology used in the final rule. A transit agency must develop a Safety Risk Management process that is comprised of three steps: (1) Safety hazard identification, (2) safety risk assessment, and (3) safety risk mitigation. A transit agency must first identify potential hazards throughout its system, and then it must analyze these hazards to determine whether they present safety risks and safety consequences. After a transit agency identifies and analyzes potential hazards and consequences, the agency must undertake activities to assess and prioritize the safety risk associated with the potential consequences of the identified safety hazards, in accordance with 49 CFR 673.25(c). This process includes an evaluation wherein the transit agency assigns a level of probability and severity to the consequences, and then develops mitigation, as necessary and appropriate. FTA encourages transit agencies to utilize computer software programs for safety risk assessment and mitigation, although smaller transit operators may not need them.

FTA has taken efforts to avoid requiring prescriptive processes for hazard identification and risk analysis. FTA encourages transit agencies to review the U.S. Department of Defense's Military Standard 882 (available at *http://www.system-safety.org/Documents/MIL-STD-882E.pdf*) and utilize the hazard analytical methods and safety risk determination techniques, to the extent appropriate, but FTA is not mandating that transit agencies adopt any particular method of process for hazard identification and risk analysis—FTA is providing transit agencies with flexibility given the large range of sizes and types of operators nationwide. Finally, FTA will not specify the type of data and information that oversight authorities must share with transit agencies. Oversight authorities and transit agencies will need to make these decisions for themselves.

3. Safety Assurance

3.1. Safety Assurance: Safety Performance Monitoring and Measurement

Comments: Pursuant to the proposed provisions at 49 CFR 673.27(b)(2), each operator of a public transportation system would be required to monitor its operations to identify any potential safety hazards not previously identified through the Safety Risk Management process outlined in proposed 49 CFR 673.27. One commenter suggested that FTA delete this requirement because, presumably, transit agencies already would have established activities to identify potential safety hazards as part of their Safety Risk Management processes. One commenter suggested deleting the word ''any'' in the requirement because the word suggests that safety risk mitigations may not exist and/or the transit agency's Safety Risk Management Process is broken. One commenter asked what type of hazards might not be identified in the Safety Risk Management process and asked whether the proposed requirement indicates a flaw in the Safety Risk Management process.

A couple of commenters requested clarification of the term ''safety event'' as used in proposed 49 CFR 673.27(b)(4). Specifically, a transit agency asked if a ''safety event'' in this provision is the same as ''Event'' as defined in the proposed rule. If the terms are the same, then the commenter asked whether a transit agency would have to develop a process for investigating ''Accidents,'' ''Incidents,'' and ''Occurrences.'' Additionally, the commenter asked to whom it should report a ''safety event,'' if anyone.

Two commenters asserted that this aspect of SMS appears one-size-fits-all, perhaps appropriate for a large agency operating a rail system but burdensome for small-urban, rural, specialized, and

tribal transit agencies. Several commenters recommended that FTA should establish minimal monitoring requirements for Section 5310, Section 5311, and small Section 5307 recipients. These requirements should be scalable and reflect the size and scope of these organizations.

Response: FTA appreciates the comments that it received regarding the Safety Assurance processes proposed in the NPRM. FTA agrees with the commenter who suggested that the requirement for transit agencies to continually monitor their operations to identify any potential safety hazards that it might not have captured when undertaking its Safety Risk Management process is a redundant requirement. FTA has eliminated this requirement for all transit operators in the final rule.

Under the proposed provisions for Safety Assurance at 49 CFR 673.27(b)(4), a transit agency would be required to establish a process to: ''Investigate safety events to identify causal factors.'' FTA proposed the following definition for the word, ''event,'' as used throughout the rule: ''Accident, Incident, or Occurrence.'' Therefore, each transit agency must develop procedures for investigating Accidents, Incidents, and Occurrences.

As discussed throughout this rulemaking, SMS is scalable, and FTA is providing transit agencies with great latitude and flexibility in developing procedures for investigating Events. For example, a small bus operator may develop a simple process for investigating the cause of a bus accident. The process may involve an on-site examination of the vehicle and the scene, a review of any video recordings from cameras mounted inside or outside of the bus, an interview with the bus operator and witnesses at the scene, and a toxicology test for the bus operator. A large rail operator may need to develop a more robust process for investigating the cause of a rail car accident, involving communications between safety and operating divisions of the transit agency, a shutdown of track operations, the deployment of designated safety inspectors and engineers, a comprehensive investigative report, etc. FTA is not prescribing any particular process for investigating safety events, but it notes that, as part of the larger safety management process, it is critical for transit agencies to identify and understand the causes of the Accidents, Incidents, and Occurrences in their systems so that the circumstances leading to the Events can be mitigated and prevented in the future.

FTA notes that its reporting requirements for safety events are outlined in the National Transit Database Reporting Manuals (see *https://www.transit.dot.gov/ntd*). Rail transit agencies should follow the notification and reporting requirements of the new SSO rule at 49 CFR part 674, including Appendix A to that rule. FTA is not requiring any reporting through this PTASP rule.

Finally, FTA agrees with the commenters who recommended that FTA should establish minimal monitoring requirements for smaller transit operators. Consequently, in today's final rule, FTA has eliminated many of the Safety Assurance requirements for all small public transportation providers. Small public transportation providers only would need to develop procedures for safety performance monitoring and measurement; they would not need to develop procedures for management of change and continuous improvement. FTA believes that these revisions reduce the administrative, financial, and regulatory burdens for small transit providers significantly and help them transition to the new part 673. Rail fixed guideway public transportation systems, and FTA recipients and subrecipients that operate more than 100 vehicles in peak revenue service, would be required to develop safety plans that include all of the processes under Safety Assurance, namely, safety performance monitoring and measurement, management of change, and continuous improvement.

3.2. Safety Assurance: Management of Change

Comments: One commenter emphasized the importance of the proposed provisions at 49 CFR 673.27(c) involving the management of change and assessing changes that may introduce new hazards or impact a transit agency's safety performance. This commenter suggested moving these requirements from the Safety Assurance provisions of the rule to the Safety Risk Management provisions of the rule, indicating that this relocation would elevate the importance of the requirement. One commenter requested clarification regarding which changes might impact a transit agency's safety performance.

Another commenter encouraged FTA to include Management of Change within the SMS context, stating that safety within the scope of capital projects, acquisitions, procurements, and system changes only fully can be measured and verified through system safety engineering practices and principles. This commenter argued that Management of Change within the context of SMS should include effective safety management procedures and processes to ensure that plans, policies, procedures, and practices effectively are measured and incorporated into an overall Management of Change program. One commenter expressed confusion over the provision for transit agencies to map updates of their safety plans to Safety Assurance instead of Safety Management Policy.

Response: The Safety Assurance element of SMS involves the continual monitoring of a transit agency's safety performance. Safety Assurance activities serve as a check on the Safety Risk Management of a transit agency. The procedures are designed to ensure that safety risk mitigations are effective, to collect safety performance data that will help a transit agency predict future safety events and mitigate or eliminate them, and to analyze the potential safety risks of any new practices or procedures adopted by a transit agency. For these reasons, the ''Management of Change'' activities are housed within Safety Assurance. Each transit agency must establish a process for identifying and assessing changes that may introduce new hazards or impact the transit agency's safety performance, and if the 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. FTA disagrees with the commenter who suggested that moving these procedures from Safety Assurance to Safety Risk Management will elevate their importance—ultimately, these all are requirements for safety plans. FTA is providing each transit agency with great latitude and flexibility in developing these procedures and identifying the types of changes in its system that could impact safety performance. These changes may include changes to the design of a new public transportation system, service changes to the existing public transportation system, new operational or maintenance procedures, new organizational changes, and changes to internal standard operating procedures, such as changes to procurement or safety management processes. Each of the SMS procedures are equally important and are designed to work together as a system for managing safety risks in a transit agency.

In response to the commenter who encouraged FTA to include Management of Change within the SMS context, FTA makes clear that all of the activities within Safety Assurance—Safety Performance Monitoring,

Management of Change, and Continuous Improvement—are core components of SMS.

Finally, as noted above, under today's final rule small public transportation providers are not subject to the management of change requirements under Safety Assurance. These requirements only apply to rail fixed guideway public transportation systems and FTA recipients and subrecipients that operate more than one hundred vehicles in peak revenue service.

3.3. Safety Assurance: Continuous Improvement

Comments: One commenter sought clarification on the term ''continuous improvement,'' and another commenter recommended replacing the term ''continuous'' in proposed 49 CFR 673.27(d) with ''continual'' because ''continuous'' suggests no room to backslide. Additionally, the commenter suggested replacing the phrase, ''If a transit agency identifies any deficiencies . . . , '' in proposed 49 CFR 673.27(d)(2) with the phrase, ''When a transit agency . . . , '' to maintain consistency with the spirit of SMS.

One commenter stated that transit agencies have developed practices for a variety of safety oversight programs to assess and ensure continuous improvement of safety performance. The commenter encouraged FTA to allow transit agencies to continue the development and execution of effective system safety oversight functions, such as safety audits, observations, inspections, assessments, and data analysis, in order to strengthen this component and work towards fully achieving the SMS model.

Response: FTA notes the suggested changes to the verbiage in 49 CFR 673.27(d), but these suggestions are stylistic in nature, and offer no substantive amendments to the regulatory text.

FTA appreciates the commenter who noted the various safety oversight programs that transit agencies have developed over the years to manage safety risk. FTA is providing transit agencies with great latitude and flexibility in developing procedures for managing safety risk, and through the requirements outlined in today's rule, transit agencies should be developing procedures for conducting safety observations, inspections, assessments, and data analysis. FTA expects that the continual efforts tied to safety implementation will improve a transit system's safety performance by reducing, mitigating, and preventing safety outcomes.

Finally, as noted above, under today's final rule small public transportation providers are not subject to continuous improvement requirements under Safety Assurance. These requirements only apply to rail fixed guideway public transportation systems and FTA recipients and subrecipients that operate more than one hundred vehicles in peak revenue service.

4. Safety Promotion

Comments: Several commenters supported the establishment of a comprehensive safety training program, including refresher training, through the Safety Promotion element of SMS. Several commenters provided input on or asked questions about the types of employees who would be subject to training. A few commenters expressed concern with the phrase ''directly responsible for the management of safety,'' asserting that this language is vague and could be interpreted inconsistently. One commenter stated that FTA should replace this phrase with the terminology in FTA's proposed Public Transportation Safety Certification Training Program rule at 49 CFR 672.13, which requires transit agencies to ''designate its personnel who are directly responsible for safety oversight and ensure that they comply with the applicable training requirements.'' Another commenter expressed concern that this phrase could be misinterpreted by transit agencies to imply that only management or safety department employees would be subject to a comprehensive safety training program. The commenter suggested that safety training should include all levels of employees at a transit agency and recommended that FTA change this language to cover all employees and contractors. One commenter, however, stated that transit agencies should not be required to train contractors. Another commenter suggested that the terminology used to describe categories of employees is not consistent with the terminology used in 49 CFR part 674, without qualification. Another commenter stated the rule should specify that the training program should apply to the Accountable Executive.

Several commenters recommended that FTA not apply the training requirements to Section 5310 and Section 5311 operators, arguing that the development and implementation of a training program would be a financial and administrative burden. These commenters suggested that FTA should only mandate driver safety training for these operators. Another commenter indicated that live, face-to-face training is preferred, but noted that this type of training is difficult to schedule and suggested that FTA provide online training and host workshops for the industry.

Several commenters requested additional clarification regarding the proposed training provisions. One commenter asked if FTA would ''grandfather'' in existing agency safety training programs. Another commenter asked what constitutes a ''comprehensive safety training program'' and whether FTA foresees any minimum requirements for this program. Another commenter asked whether FTA would provide further guidance on the specific types of safety training that it would require. One commenter believed that FTA's intent is to create a single, comprehensive training program, but references to training throughout the rule make that unclear. One commenter suggested that Safety Promotion could include certifications and evaluations, including a driver report card and/or a professional transit driver program.

Response: FTA appreciates the comments that it received supporting the safety training program. FTA emphasizes that this program is a statutory requirement under 49 U.S.C. 5329(d)(1)(G), which requires each operator of a public transportation system to establish ''a comprehensive staff training program for the operations personnel and personnel directly responsible for safety'' and includes ''completion of a safety training program'' and ''continuing safety education and training.''

Given the unique operating environments and operating systems of each transit agency, FTA is providing great latitude and flexibility in complying with these provisions. Each transit agency should determine for themselves the classes of employees who are directly responsible for safety in that unique system. These employees could include vehicle operators, maintenance staff, dispatchers, the Chief Safety Officer, the Accountable Executive, and other agency staff and management who have direct responsibility for safety. The training program should cover all levels of employees and contractors, and FTA disagrees with the commenter who suggested that these provisions should not apply to contractors. In many systems, contractors have direct responsibility for safety, particularly in circumstances where a transit agency contracts for service, and it is critical that these individuals have training in safety.

In response to the commenters who recommended that FTA not apply the training requirements to Section 5310 and Section 5311 operators, FTA notes that it is deferring regulatory action regarding the applicability of this rule to these recipients and subrecipients until a later time. FTA is providing the industry with template safety plans and training courses, including online training courses, to assist small and large transit agencies with the development of training programs.

In response to the question regarding whether FTA would ''grandfather'' in existing safety training programs, FTA does not find a need to do so. Certainly, transit agencies can use existing safety training programs, or augment those programs, so long as they meet the requirements in this rule. FTA is not issuing any prescriptive requirements regarding these training programs because it does not believe that a one-size-fits all approach is appropriate. FTA agrees with the commenter who suggested that Safety Promotion could include certifications and evaluations, including a driver report card and/or a professional transit driver program, although FTA is not requiring this type of documentation. Ultimately, each transit agency must determine what is best for its system. Finally, FTA agrees with the commenters who stated that the language in this section could be ''misinterpreted by transit agencies to imply that only management or safety department employees would be subject to a comprehensive safety training program'' and does intend to create confusion between today's rule and the Safety Certification Training Program rule. Therefore, FTA is updating the language in 49 U.S.C. 673.29 to state: ''A transit agency must establish and implement a comprehensive safety training program for all agency employees and contractors directly responsible for safety in the agency's public transportation system.''

5. Scalability of SMS

Comments: Many commenters requested guidance and technical assistance on how SMS could be scaled for small transit providers. One commenter urged FTA to keep guidance and templates at a high level so that they can be tailored to fit the unique needs and circumstances of the broad range of transit agencies subject to the PTASP rule.

Several commenters stated that an appropriately scaled safety plan is particularly important in a zero fatality environment, and FTA should clarify that the transit agency, or the State, is responsible for deciding how to scale the plan. These commenters suggested that FTA revise 49 CFR 673.21 by replacing ''appropriately scaled'' with ''appropriately scaled by the provider, or if applicable, the State.''

One commenter urged FTA to emphasize in the final rule that SMS provides flexibility and adaptability, and it urged FTA to avoid developing prescriptive and restrictive standards for transit agencies that may create major program gaps and limitations. Similarly, another commenter stated that FTA should allow for local choice in implementing SMS plans and programs, asserting that local flexibility would lead to greater and more comprehensive safety plans across individual systems.

Several commenters suggested that the rule lacks detail, and they indicated that FTA should add more detail to the various processes and procedures required, and that FTA should develop templates and associated technical assistance manuals where the requirements could be presented differently based on size, mode, and safety record. One commenter appreciated FTA's efforts to create a rule that considers each transit agency's uniqueness; however, this commenter concluded that the final rule should include identifiable and clearly stipulated requirements which can then be tailored to the individual characteristics of a transit agency.

Response: FTA appreciates the comments that it received regarding the need for technical assistance, guidance, and templates for safety plans. Concurrent with this final rule, FTA is issuing a safety plan template for the industry. FTA is not requiring transit agencies to use the template, but rather, FTA is releasing it as a guide to assist States and transit agencies with the development of their safety plans. Ultimately, each operator of a public transportation system must decide for itself the processes and procedures within the SMS framework that are most appropriate for its unique operating environment. A small bus operator may have simpler processes and procedures than a large rail operator. In situations where a State is drafting a safety plan on behalf of a small public transportation provider, the State and the small public transportation provider should work together and collaborate on the development of processes and procedures that are most appropriate for the operator.

FTA appreciates the comments noting the flexibility and adaptability of SMS, which FTA has emphasized throughout this rulemaking. FTA has taken great efforts to avoid the development of prescriptive and restrictive standards for transit agencies that may create major program gaps and limitations.

Finally, FTA believes that the requirements in the rule satisfy the minimum requirements of the statute at 49 U.S.C. 5329(d), and if the requirements were any more prescriptive, transit agencies would not have the flexibility that they need to tailor their safety plans to their unique operating environments. If this were the case, the safety plans would be more difficult to develop, and ultimately, less useful in mitigating and preventing safety events. FTA believes that today's rule strikes an appropriate balance in providing a general framework for safety plans and for allowing flexibility and scalability for each individual transit agency.

6. SMS and Safety Culture

Comments: A few commenters emphasized the need for communication between management and agency staff, and they noted the need for a healthy safety culture. One commenter supported the requirement that transit agencies use SMS principles to help achieve a high level of safety, and noted that, to achieve a high level of safety, management at transit agencies must listen to and incorporate the input from their frontline workers and their unions who have daily, firsthand experiences and in-depth knowledge of the transit systems. One commenter acknowledged that training and communication are key components of an effective SMS, but also noted that listening to employees, seeking their feedback, and ensuring a positive culture of safety in their work are also important components of SMS. Another commenter stated that local unions may present administrative challenges in adopting a positive and healthy safety culture.

Response: FTA appreciates the comments that it received regarding the need for a positive and healthy safety culture, and each of the requirements of this rule is designed to help ensure a positive safety culture at each transit agency. FTA wholeheartedly agrees that communication between management and staff, including labor unions, is critical in achieving a positive and healthy safety environment and in reducing safety events. One of the key requirements in today's rule is an employee reporting program, which will allow the frontline staff who have in-depth knowledge of the transit system to report unsafe conditions to management without fear of reprisal. FTA believes that these programs will help support a positive safety culture within transit organizations.

J. Safety Plan Documentation and Recordkeeping

1. Safety Plan Documentation

Comments: Two commenters recommended that transit agencies should keep their safety plan documents for more than three years. One of these commenters recommended that transit agencies be required to retain documentation for a minimum of fifteen years, or at least five triennial review cycles. Another commenter asserted that the data contained in the safety plan documentation would be valuable in determining historical trends in a transit agency's safety performance over time, so extending the minimum retention period would allow for more robust historical assessments.

Response: FTA recognizes the value associated with having access to years of data to assist with assessing historical trends. However, such a requirement must be balanced against the costs associated with maintaining such data over an extended timeframe as suggested by the commenter. With that in mind, FTA believes its proposal that transit agencies maintain documents required by this part for a minimum of three years is reasonable relative to cost and effort, and also aligns well with the three year period for Triennial Reviews and State Management Reviews. This requirement would not bar those transit agencies desiring to maintain documents beyond three years from doing so, and FTA would encourage this practice. Accordingly, the proposed three year minimum requirement is included in the final rule.

2. Safety Plan Records

Comments: Several commenters asked which records should be maintained related to training. One commenter asserted that employee training records under the Public Transportation Safety Training Certification Program are already stored in FTA's training portal. Another commenter stated that its agency maintains a Learning Management System to schedule and track training, and this commenter questioned whether this existing system is sufficient or whether the agency will need to keep additional records. One commenter urged FTA to require transit agencies to maintain additional records beyond what is required in the proposed rule.

One commenter requested clarification on whether the requirements to keep training records apply to locally operated transit systems. One commenter stated that it will maintain records on the SMS requirements for transit agencies that utilize a safety plan drafted by a State.

Response: FTA notes that the training required under the Public Transportation Safety Certification Training Program at 49 CFR part 672 is required of those who are ''directly responsible for safety oversight'' of the public transit system. FTA has developed a web portal to maintain the training records for those subject to the requirements of that rule. Today's final PTASP rule requires the development of a comprehensive staff training program for operations personnel and personnel who are ''directly responsible for safety.'' Thus, there are two different types of safety training requirements, applicable to different employees of a transit system.

The requirements of today's final rule include the completion of a safety training program and continuing safety education and training. Such training may or may not also include training requirements in accordance with the Public Transportation Safety Certification Training Program Rule at 49 CFR part 672. FTA emphasizes that each transit agency will have discretion and flexibility with regard to the requirements of the safety training program under this part. FTA encourages transit agencies to maintain training records to the maximum extent practicable, but in today's final rule, FTA is not requiring transit agencies to maintain these records and it has removed Section 673.33 ''Safety Plan Records'' in its entirety for all transit agencies. Specifically, transit agencies are not required to maintain records of safety risk mitigations, results from safety performance assessments, and employee training. FTA believes that this revision from the NPRM to the final rule responds to the industry's concerns regarding recordkeeping and it significantly will reduce the administrative and financial burdens for all transit operators.

3. Other Comments on Documentation and Recordkeeping

Commenters: Numerous commenters stated that transit agencies need data protection for the information in their safety plans. The commenters argued that SMS, by its nature, requires full and open review, evaluation, and prioritization of risk, and the possibility that these safety reviews could be released through the Freedom of Information Act (FOIA), State sunshine laws, or obtained through judicial proceedings serve as a barrier to well-documented and robust self-examination. The commenters encouraged FTA to state its intent to protect agency analyses to the full extent possible and pursue full authority to exempt safety analyses from discovery and use in judicial proceedings. One commenter suggested that FTA incorporate a confidentiality provision into the rule similar to the provisions in the old SSO rule at 49 CFR part 659.

One commenter suggested that the rule should acknowledge disclosure laws differ between States and that the rule should be written so that transit agencies are not required to disclose records to plaintiffs or allegedly injured parties if a State law does not require them to do so.

Response: When FTA first promulgated its SSO rule in 1995, FTA recognized that rail transit agencies often face litigation arising from accidents, and that the release of accident investigation reports can compromise both the defense of litigation and the ability of agencies to obtain comprehensive, confidential analyses of accidents. Thus, the former SSO rule at 49 CFR 659.11 provided that a state ''may withhold an investigation report that may have been prepared or adopted by the oversight agency from being admitted as evidence or used in a civil action for damages.'' Courts are left to determine whether to admit investigation reports into evidence for litigation, in accordance with the relevant State law and the courts' rules of evidence.

Unlike NTSB accident reports, which cannot be admitted into evidence or used in civil litigation in a suit for damages arising from an accident, there is no such protection for data under FTA's safety rules (see 49 U.S.C. 1154(b) regarding NTSB investigations). Rather, States may enact statutes regarding the admissibility into evidence of accident investigation reports or safety data and analysis conducted in compliance with FTA requirements. FTA emphasizes that any protections must be based on State, not Federal, law and rules of evidence.

With regard to safety records in the possession of FTA, FTA will maintain the confidentiality of accident investigations and incident reports to the maximum extent permitted under Federal law, including the various exemptions under FOIA. Documents submitted to FTA are subject to FOIA and are generally releasable to the public upon request. However, unlike other Federal safety regulatory agencies such as FRA and FAA, Congress has yet to provide FTA with statutory authority to otherwise exempt safety-related information from disclosure. Section 3021 of the FAST Act authorized FTA to undertake a study to determine

whether data protection is necessary. FTA notes that its confidential treatment of information would not preempt State law; therefore, transit agencies still would be required to comply with their State's laws regarding the treatment of such information and should exercise their use of this provision accordingly.

4. Database Systems

Comments: One commenter expressed concern over integrating existing database systems and requested clarification from FTA on how to do so. The commenter urged FTA to clarify which data categories FTA expects to add to existing databases to capture information, and provide additional information on how it will support additional data management systems that agencies will need to acquire as a result of the rule.

Response: Each transit agency will have to determine for itself how it will integrate databases. FTA supports the use of data management systems if a transit agency determines that these systems are necessary to manage safety risks. However, FTA does not foresee transit agencies having to integrate or create new databases, necessarily, in order to comply with the requirements of 49 CFR part 673.

5. Staffing and Resources as a Result of Documentation and Recordkeeping

Comments: Two commenters expressed concern that the documentation and recordkeeping requirements in the proposed rule will produce a need for additional staffing and stretch already limited resources. The commenters stated that recordkeeping and documentation must be scalable.

Response: FTA understands that agencies will need to expend resources to comply with the documentation requirements. FTA has sought to minimize the rule's paperwork burdens and agrees that such requirements for documentation and recordkeeping must be scalable. To this end, FTA has eliminated many of its proposed recordkeeping requirements in their entirety. Specifically, transit agencies are not required to maintain records of safety risk mitigations, results from safety performance assessments, and employee training. FTA believes that this revision from the NPRM to the final rule responds to the industry's concerns regarding recordkeeping and it significantly will reduce the administrative and financial burdens for all transit operators. FTA reiterates that service providers within the public transportation industry can vary greatly based on size, complexity, and operating characteristics. Transit agencies need safety processes, activities, and tools that scale to the size, complexity, and uniqueness of their systems, and SMS provides such an approach. Therefore, FTA believes that the documentation that is kept for a smaller bus agency may be less voluminous and less complex than those of large rail or multi-modal transit agencies. Moreover, FTA is issuing a safety plan template concurrent with the issuance of this final rule. This template will reduce the burden on transit agencies in developing the documentation necessary (that is, the safety plan) to comply with this rule.

K. Funding

Comments: Several commenters asserted that the proposed rule results in additional costs relating to, among other provisions, reviews, training, software or software upgrades, and the scalability and implementation of SMS. The commenters expressed concern that these additional costs may impact their limited available resources and expressed concern that no additional resources would be provided to support the costs of achieving compliance. Several commenters remarked that this rulemaking seems like an unfunded mandate. These commenters also asked whether there would be additional Federal resources provided to implement the new safety plans. Another commenter asserted that costs related to oversight responsibilities should be eligible for reimbursement by States.

Response: FTA recognizes there are costs associated with implementing the requirements of this rule; however, this rule is a requirement of 49 U.S.C. 5329(d). FTA recognizes the need for increased investments in transit, but Congress determines the specific levels of funding available to FTA recipients. To this extent, FTA disagrees with those commenters who suggested that these requirements are an unfunded mandate. States and operators of public transportation systems may use Federal funding provided through the existing Section 5303, Section 5304, Section 5307, Section 5309, Section 5310, Section 5337, and Section 5339 programs to comply with the requirements in this rule, that is, developing and implementing their safety plans. Costs related to oversight by SSOAs are eligible for Federal reimbursement through the State Safety Oversight Grant Program created by 49 U.S.C. 5329.

In an effort to further reduce the administrative, financial, and regulatory burdens on recipients, FTA will provide technical assistance in the form of templates and guidance documents to assist with the development of safety plans. FTA also is providing training courses to assist the industry with compliance with this rule. FTA has removed Section 673.33 ''Safety Plan Records'' from the final rule in response to comments from the industry and to reduce costs for individual transit systems. FTA is deferring action regarding the applicability of this rule to the smaller recipients and subrecipients that only receive Section 5310 and/or Section 5311 funds so that it can evaluate additional information and safety data to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

L. Staffing

Comments: Several commenters expressed concerns about the limited staff of many transit agencies and asserted that compliance with the proposed rule, notably the administrative requirements, would require agencies to hire more staff, including contractors or expert consultants, thus increasing costs. One commenter expressed that medium-sized transit agencies may have difficulty absorbing the costs that may be necessary to hire more than one individual without additional funding. One commenter expressed concern that placing increasing requirements on State Department of Transportation staff could create unintended consequences, such as a reduction in work quality or causing staff to forego other critical work.

Response: FTA understands the concerns expressed by some commenters about the staffing resources needed to comply with the rule. Irrespective of the Federal funding stream, FTA continues to believe the scalability and flexibility in safety plan development will not unduly burden any particular transit agency. Given the scalability of SMS, transit agencies may have to reorganize existing staffing resources instead of hiring additional ones. Moreover, to reduce staffing burdens on transit agencies and States, FTA is issuing a safety plan template concurrent with this final rule. In accordance with 49 U.S.C. 5329(d), FTA also is requiring that States draft and certify plans on behalf of small public transportation providers which will further reduce the burden on smaller agencies. FTA is deferring action regarding the applicability of this rule to smaller recipients and subrecipients that only receive Section 5310 and/or

Section 5311 funds so that it can evaluate additional information and safety data to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

M. Enforcement and Oversight

1. Triennial Reviews and State Management Reviews

Comments: A few commenters preferred FTA's review of safety plans as part of the existing Triennial Review and State Management Review oversight processes, rather than annual reviews. One commenter asked FTA to provide more clarity on the State Management Review process. One commenter suggested that FTA could utilize findings from these oversight reviews for purposes of informing the transit industry on safety trends and best practices.

A few commenters expressed concern that FTA may conduct oversight and enforcement of this rule outside of the traditional Triennial Review and State Management Review processes, but FTA did not explain how this additional oversight may impact transit agencies and SSOAs. The commenters recommended that FTA issue guidance explaining this additional oversight so that States, SSOAs, and transit agencies can effectively anticipate and respond to this process, and so that FTA may administer it consistently nationwide. Commenters suggested that FTA should detail procedures for additional reviews or audits outside the normal review schedule, including an advanced notice process and an identification of roles for the SSOAs.

One commenter asked whether and to what extent reviewers could reject performance targets during the Triennial Review process. Another commenter asked about the consequences of a transit agency's failure to meet its safety goals.

Response: As a preliminary matter, pursuant to the statutory provisions of 49 U.S.C. 5329(d)(1)(D), each operator of a public transportation system is required to conduct an annual review and update of its safety plan. This annual review and update is a process to be undertaken by each transit agency independent of the triennial oversight process conducted by FTA. FTA will issue future guidance on any changes to the Triennial Review and State Management Review processes, including the role of an SSOA, to the extent necessary. FTA will not use the National Public Transportation Safety Plan to inform the industry how it will conduct the Triennial Review or State Management Review processes.

FTA will conduct additional oversight and enforcement of this rule outside of the Triennial Review and State Management Review processes as necessary and appropriate. FTA notes that its new Public Transportation Safety Program rule at 49 CFR part 670 outlines its authority to conduct investigations, inspections, audits, and examinations on transit systems. FTA will make oversight and enforcement determinations on a case-by-case basis.

Finally, FTA Triennial and State Management reviewers will not ''reject'' a transit agency's safety performance targets; however, they will ensure that each transit agency has identified safety performance targets based on the safety performance measures established in the National Public Transportation Safety Plan. To the extent that a transit agency does not meet its safety goals, then using its safety plan as guide, the transit agency must determine for itself which efforts it must undertake to do so.

2. State Oversight

Comments: One commenter stated that a State may reasonably be required to provide oversight in drafting a safety plans, but for some States with multiple responsibilities and multiple recipients and subrecipients of Section 5310 and Section 5311 funds, the additional responsibility of oversight of small Section 5307 operators could be daunting. One commenter remarked that incorporating oversight of public transit systems into the existing SSO program would require additional trained personnel.

Response: As discussed above, FTA is not requiring States to provide oversight of safety plans. States only are required to draft and certify the safety plans on behalf of small Section 5307 operators (unless the operator decides to draft and certify its own safety plan). FTA is responsible for providing oversight and enforcement of all safety plans, and it will utilize the existing Triennial Review and State Management Review processes to do so (with the exception of SSOAs, which have primary safety oversight and enforcement responsibility over rail transit systems). To ease the burden on States, FTA is issuing a safety plan template with this final rule. Also, as discussed above, there is no Federal legal authority for an SSOA to provide safety oversight of a bus system, and this rule does not contemplate an SSOA taking on that role.

3. Other Comments

Comments: One commenter encouraged FTA to provide standard thresholds that it would use to determine the need for a safety audit, this way, FTA would not appear to be arbitrary or inconsistent. This commenter also recommended that FTA provide each transit agency with the opportunity to answer questions and provide additional information to assist safety oversight reviewers.

One commenter asked if FTA would analyze the public's role in collisions rather than concentrating its oversight on transit agencies, arguing that, without addressing the public's interaction with the transit system, transit agencies may risk Federal funding if they do not meet their safety performance targets. Additionally, the commenter asked if FTA would have funding available for purposes of education (internal and external to include educating the public on safety), engineering (highway and vehicle designs), and enforcement if a transit agency fails to meet its safety performance targets.

Response: Through MAP–21 and the FAST Act, Congress provided FTA with significant authority to conduct oversight, inspections, investigations, audits, examinations, and testing, as well as enforcement actions. (49 U.S.C. 5329(f)–(g)). FTA has issued a new regulation at 49 CFR part 670 entitled the ''Public Transportation Safety Program'' rule. FTA directs readers to that rulemaking for issues related to safety audits conducted by FTA.

FTA has identified NTD reporting thresholds for an ''Incident,'' and those thresholds can be found in Appendix A to FTA's new SSO rule at 49 CFR part 674 (*https://www.gpo.gov/fdsys/pkg/FR-2016-03-16/pdf/2016-05489.pdf*). These thresholds do not limit FTA's authority to conduct a safety audit in the case of an Incident.

FTA notes that the statutory framework of 49 U.S.C. 5329(d) authorizes FTA to regulate operators of public transportation systems, not the riding public. Nevertheless, through the SMS framework, each transit operator is required to develop processes and procedures for addressing safety risks in all aspects of their systems, and therefore, they must consider the public's role and interaction with their systems when identifying hazards and evaluating risks.

Finally, as discussed throughout this final rule, FTA does not have control over its annual funding levels and appropriations. However, FTA supports the use of Federal funding for purposes

of education, engineering, and enforcement activities, and these types of activities may fall within the scope of eligibility for various funding programs under 49 U.S.C. Chapter 53.

N. NTD Reporting

Comments: One commenter recommended that FTA continue collecting additional safety reporting data through existing programs such as the NTD, which is currently used by transit agencies to report safety incidents.

Another commenter remarked that 49 CFR part 673 does not discuss reporting to FTA through NTD. Additionally, the commenter asked if FTA intends to substantially change the NTD reporting requirements upon the effective date of the proposed PTASP rule.

Response: During this rulemaking, FTA issued a ''Notice of Request for Comments on Updates to National Transit Database Safety Information Collection'' (*https://www.gpo.gov/fdsys/pkg/FR-2014-08-21/pdf/2014-19787.pdf*). FTA issued a ''Supplemental Notice and Response to Comments on National Transit Database'' (*https://www.gpo.gov/fdsys/pkg/FR-2015-11-18/pdf/2015-29384.pdf*). FTA issued final reporting requirements on July 26, 2016, and they are available here: *https://www.gpo.gov/fdsys/pkg/FR-2016-07-26/pdf/2016-17075.pdf.* Through today's final rule, FTA is not requiring any reporting of any information to any entity.

O. Security

Comments: Several commenters expressed concerns that the proposed rule did not address security, including terrorism, trespassing, vandalism, assaults, robberies, and cyber threats on transit systems. One commenter suggested that FTA address security and safety of the general public in this rule.

One commenter stated that the TSA is unable to establish cybersecurity requirements for transit control systems due to lack of funding and expertise. This commenter warned that the U.S. Department of Transportation's focus on transportation safety must include an emphasis on transportation control system security to guarantee the safety of associated transportation systems.

One commenter stated that FTA should provide direction regarding security and terrorism preparedness, noting that these preparations should be coordinated with TSA.

Response: As a preliminary matter, TSA has the prerogative and responsibility for all rulemakings on security in public transportation. Specifically, under the Implementing the Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53), the September 2004 Memorandum of Agreement between DOT and DHS, and the September 2005 modal annex between FTA and TSA, DHS is tasked with the responsibility for carrying out a national strategy for public transportation security to minimize security threats and to maximize the ability of public transportation agencies to mitigate damage from terrorist attacks and other major incidents. While this legislation and these agreements do not preclude transit agencies from implementing measures securing their assets, FTA is not requiring agencies to do so through this final rule. FTA recognizes, of course, that some of the steps that a transit agency takes to ensure the personal safety and security of its riders and employees will overlap with steps it takes to secure its system from a terrorist attack; for example, the steps an agency takes may be part of a threat and vulnerability assessment. FTA notes that a transit agency's expenses for safety and security will continue to be eligible for Federal reimbursement under 49 U.S.C. Chapter 53.

P. SSPP–PTASP Crosswalk

Comments: Although not a part of the PTASP NPRM, several commenters provided input on FTA's ''Crosswalk Matrix: 49 CFR part 659.19 System Safety Program Plan Requirements with Proposed Requirements for Public Transportation Agency Safety Plans,'' which it uploaded onto the docket for this rule. FTA intended this document to provide additional guidance to rail transit systems as to how the 21 elements of an SSPP would fit within the new regulatory requirements for a PTASP.

Several commenters expressed concerns that the crosswalk lumps some SSPP elements into a few categories for PTASPs, and these commenters asserted that the six most complicated SSPP elements are listed under multiple pillars of SMS. A few commenters asserted that some of the 21 elements of SSPPs fit into other pillars of SMS. One commenter encouraged FTA to work with rail transit systems to better align this matrix and promote a better understanding of SMS. One commenter suggested that performance targets should be listed under Safety Assurance, rather than Safety Management Policy. Another commenter provided several detailed suggestions for revised mapping of the SSPP elements with SMS.

Response: FTA agrees that the new PTASP places the former elements of SSPPs into fewer categories, and this is a result of a new statutory framework under 49 U.S.C. 5329. The statutory provisions of 49 U.S.C. 5329(d) provide specific requirements for PTASPs, and through the design of the new PTASP rule, FTA's intent is to ensure that rail transit systems will not become less safe than they were under the former SSO rule at 49 CFR part 659. Additional, more comprehensive guidance regarding the relationship between SSPPs and PTASPs is forthcoming, and FTA will post that guidance on its website (see *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-safety-oversight-tso*).

FTA agrees that some of the SSPP elements may be listed under multiple elements of SMS, but FTA believes that this mapping most appropriately connects the PTASP requirements to former SSPP elements. FTA disagrees that safety performance targets should be included under Safety Assurance, rather than Safety Management Policy because safety performance targets guide the safety management decisions, investment decisions, and policy decisions of a transit agency, all critical tenets of Safety Management Policy. Notwithstanding this connection between the former SSPPs and PTASPs, FTA only is requiring transit agencies to set safety performance targets as part of the ''General Requirements'' section of this final rule (49 CFR 673.11(a)((3)); to avoid redundancy, FTA is not also establishing this requirement in the ''Safety Management Policy'' section, although, transit agencies may include safety performance targets in their Safety Management Policies if they so choose.

Q. Safety Performance Measures

Comments: Several commenters urged FTA to revise the performance measures proposed in the National Public Transportation Safety Plan. Multiple commenters urged FTA to delete the proposed ''reliability'' performance criterion for the following reasons: Transit agencies currently do not report reliability data to NTD; the reliability performance measure is redundant of the TAM rule; reliability is a maintenance-related measure, not a safety measure; reliability is not easily quantified; and reliability could vary considerably between transit agencies.

One commenter sought further guidance regarding FTA's four proposed safety performance measures. This commenter suggested that without additional detail, transit agencies would not be able to determine the standards by which FTA and SSOAs would measure and evaluate the

appropriateness of the safety performance targets established by the agencies.

Response: FTA appreciates the comments that it received regarding safety performance measures; however, FTA notes that today's rule does not establish safety performance measures—FTA's National Public Transportation Safety Plan establishes the measures. FTA is addressing comments regarding the safety performance measures in the notice and comment process for the National Public Transportation Safety Plan.

R. Technical Assistance and Guidance

Comments: Numerous commenters supported FTA's proposal to issue a safety plan template and to provide technical assistance to industry on the development and implementation of safety plans, particularly to address the scalability of SMS to different transit modes and system sizes.

Some commenters stated that FTA should allow transit agencies to attach an appendix to the safety plan template, which would allow a State to avoid drafting multiple unique plans and capture a few unique issues. Several commenters stated that FTA clearly should allow a State to draft a template statewide safety plan or a series of individual safety plans tailored for each unique transit agency. One commenter stated that a transit agency should have the ability to tailor guidance and templates to its own needs, as long as it satisfies the substantive requirements of the final PTASP rule. Another commenter stated that it was looking forward to receiving implementation and gap analysis checklists.

Several commenters noted that there is no mandated timeframe for when FTA will provide technical assistance tools and urged FTA to provide them in a timely manner. Several commenters urged FTA to make PTASP templates available in advance of any implementation deadline; some commenters urged FTA to make PTASP templates available concurrently with this final rule. One commenter suggested that, if FTA is unable to provide PTASP templates on the day that the final rule is published, then FTA should change the implementation deadline to be one year from the date that FTA issues PTASP templates. Another commenter stated that FTA should refrain from issuing a final rule until FTA develops guidance and PTASP templates. One commenter recommended that FTA provide technical assistance tools to States upon request.

Several commenters requested other forms of technical assistance, including an FTA-sponsored website featuring national-level safety performance measurement data, online training, safety workshops, examples of industry best practices, and lessons learned in implementing SMS.

Response: FTA appreciates the support from commenters regarding its development of a safety plan template and other guidance and technical assistance. FTA recognizes the administrative and financial burdens that this rule may impose on the industry, and FTA intends to reduce these burdens through templates, guidance, and technical assistance. Ultimately, the safety plan template, guidance, and technical assistance will help reduce, mitigate, and eliminate hazards and risks and will help make public transportation safer. For these reasons, today, FTA is issuing a template for safety plans concurrent with the issuance of this rule. The safety plan template is generic, minimalistic, and addresses each of the requirements of today's final rule. States and transit agencies can tailor the template to meet the needs of the numerous unique operating environments across the nation.

FTA is providing deference to States in the development of plans on behalf of operators of public transportation. A State may draft a single statewide safety plan, it may draft a unique safety plan for each individual transit operator, it may develop a generic statewide safety plan with a more tailored appendix outlining various processes and procedures for each unique transit operator, or it may develop another method for complying with the rule, so long as the statewide plan or the individualized plans satisfy each of the elements of this rule and contain each of the required processes and procedures for SMS. Transit agencies are free to tailor guidance and templates to meet their own needs, so long as their safety plans satisfy the requirements of this rule. If a State drafts a statewide safety plan, then each individual operator that it covers should keep its plan on file, and the plan should include the relevant and unique information for that particular operator, such as the names of the Accountable Executive and Chief Safety Officer and the operator's safety performance targets.

FTA notes that it has been developing a website through which it has been providing technical assistance, including information related to safety performance, training, examples of industry best practices, and lessons learned in implementing SMS. The website is located at the following link: *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-safety-oversight-tso.* FTA has been uploading information onto this website, including guidance and other forms of technical assistance, as it becomes available. FTA encourages the transit industry to utilize the tools on this website with its development and implementation of successful safety practices, and it also encourages the industry to provide feedback on this website, as it evolves, through the ''Contact Us'' tool at the following link: *https://ftawebprod.fta.dot.gov/ContactUsTool/Public/NewRequest.aspx.*

Finally, as mentioned above, in an effort to assist the industry with meeting the requirements of this rule, FTA is making the effective date one year after its publication date. As a result, transit agencies will have a total of two years from the publication date to certify that they have safety plans meeting the requirements of 49 CFR part 673.

S. Coordination With Other Entities

Comments: Two commenters expressed concern with the potential for inconsistency and duplication between FTA and FRA safety regulations. One commenter urged FTA to coordinate its NTD with FRA's Accident/Incident Report Generator.NET (AIRGNET) to establish consistent terminology, reporting requirements, audit requirements, training requirements, and safety plan requirements.

One commenter recommended that FTA adopt safety standards and methodologies developed by the U.S. Department of Defense, including system safety analytical methods to assess hazards and consequences and system safety engineering principles and techniques to develop and design mitigation. Two commenters encouraged FTA to establish an advisory committee of transit operators to assist with the development of policies and procedures for smaller operators.

Response: FTA makes clear through today's rule that transit agencies that operate a rail fixed guideway public transportation system subject to regulation by FRA do not have to develop safety plans for that mode of service. 49 CFR 673.11(f). FTA does not intend to issue safety regulations that conflict or are inconsistent with FRA's safety regulations, and to that end, FTA has coordinated and will continue to coordinate with FRA on the development and implementation of this rule. FTA also has taken great efforts to ensure that terminology,

definitions, reporting requirements, training requirements, and regulatory enforcement efforts are consistent with other Federal safety and reporting regulations to the maximum extent possible.

FTA appreciates the suggestion that it should adopt safety standards and methodologies developed by the U.S. Department of Defense, including system safety analytical methods to assess hazards and consequences and system safety engineering principles and techniques to develop and design mitigations; FTA is adopting the SMS approach to addressing safety risk, which is consistent with the approach taken by other modes within the U.S. Department of Transportation.

Finally, as FTA develops and issues guidance and best practices for safety, FTA intends to consult with the transit industry, including the Transit Advisory Committee for Safety, to the maximum extent practicable.

T. Nexus Between the PTASP Rule and Other FTA Requirements

Comments: Numerous commenters suggested that FTA clarify the nexus between the PTASP rule and other related FTA requirements, specifically, the National Public Transportation Safety Plan, the SSO rule, the Safety Certification Training Program rule, the Bus Testing rule, and the Transit Asset Management rule. These commenters recommended that FTA clearly define the link between the PTASP rule and other FTA requirements, especially the Transit Asset Management rule, to be consistent to avoid conflicting regulations. One commenter recommended that, to foster a strong culture of safety, FTA should extend data protection to asset management analyses.

One commenter urged FTA to reinforce the link between the PTASP rule and the SSO rule, arguing that FTA should work to strengthen and streamline the mitigation, reporting, and notification processes.

Response: FTA appreciates the comments that it received regarding the connection between the PTASP rule and other related FTA regulations. With respect to the National Public Transportation Safety Plan, FTA emphasizes that the Plan establishes safety performance measures to which each operator of a public transportation system must set performance targets in their safety plans, as required in the PTASP rule.

In the SSO rule, FTA requires each SSOA to develop a program standard which, among other things, establishes minimum safety standards for the safety of all rail fixed guideway public transportation systems within its jurisdiction. FTA also requires each SSOA to approve the PTASP of every rail fixed guideway public transportation system within its jurisdiction. Each SSOA should review those safety plans to ensure that they are compliant with the PTASP rule, the National Public Transportation Safety Plan, and its own program standard. FTA notes that the PTASP rule does not add any additional notification or reporting requirements; those requirements are outlined in the SSO rule and the NTD Reporting Manuals.

In the Safety Certification Training Program rule, FTA establishes minimum training requirements for transit agency employees and contractors who are directly responsible for safety oversight of rail fixed guideway public transportation systems that receive FTA funds. In the PTASP rule, FTA requires each operator of a public transportation system to establish a comprehensive safety training program for all employees and contractors directly responsible for safety. In this section of the safety plan, a rail transit system also may include its training program for employees and contractors who are directly responsible for safety oversight.

In the Bus Testing rule, FTA requires recipients of FTA funds to test buses to ensure that they meet minimum performance standards, a scoring system, and a pass/fail threshold if they are using FTA funds to procure the buses. This rule exists separate and apart from the PTASP rule, but transit agencies may incorporate by reference into their safety plans any processes and procedures that they utilize for bus testing pursuant to the Bus Testing rule.

Finally, in the Transit Asset Management rule, FTA requires transit agencies to conduct asset inventories and then perform condition assessments on their assets. Those condition assessments should inform the SMS activities that a transit agency undertakes pursuant to its safety plan. To illustrate how these rules work together, if a transit agency finds through a condition assessment that an asset is not meeting its state of good repair standards, then the transit agency may conduct safety hazard identification and safety risk assessment analysis on that asset. The transit agency may mitigate any safety risks, as necessary, and it may reprioritize its capital plan in accordance with the FTA and FHWA Planning rule at 23 CFR part 450. FTA notes that it addressed any comments related to asset management in the final Transit Asset Management rule.

U. Americans With Disabilities Act Issues

Comments: One commenter stated that the proposed rule should not conflict with the Americans with Disabilities Act laws and regulations, and vice-versa. The commenter urged FTA to clarify how it will treat safety issues and incidents that may conflict with ADA requirements, remarking that agencies should not be subject to inspections, audits, examinations, investigations, directives, or other possible sanctions for adhering to ADA requirements.

Response: FTA does not intend the PTASP rule to conflict with the ADA and its implementing regulations, which are designed to prevent and eliminate discrimination. Nevertheless, to the extent that a transit agency is undertaking action to comply with the ADA—such as the construction of capital projects to make facilities ADA-compliant; the installation of accessible features on vehicles, platforms, and other transit facilities; and the provision of paratransit service—FTA expects that action to be undertaken safely and in accordance with this final rule and a transit agency's safety plan.

V. Other Comments on the Rule

Comments: One commenter suggested that all transit agencies should have safety plans only for maintenance and training, and that States should review safety plans only if a transit agency has safety issues. One commenter encouraged FTA to incorporate occupational health issues into the rule, focusing on driver assault, restroom breaks, and fatigue management. Another commenter encouraged FTA to join a ''Journey to Safety Excellence—a cycle of improvement that aims for a continuous reduction of risk with a goal of zero harm,'' stating that integrating the principles of the ''Journey to Safety Excellence'' into workplace safety strategies can make a great difference in saving lives and preventing injuries. One commenter remarked that zero is the only goal that transit agencies should establish in their performance targets.

A commenter expressed disapproval for the guidelines FRA developed for rail vehicle crashworthiness, citing the Union International des Chemins de Fers (UIC), an international rail regulatory body, as an alternative example. This commenter urged FTA to use UIC as an example and expressed hope that FTA can serve as a role model for FRA.

Response: FTA disagrees with the commenter who suggested that all

transit agencies should have safety plans only for maintenance and training, and that States should review safety plans only if a transit agency has safety issues. FTA's authorizing statute at 49 U.S.C. 5329(d)(1)(B) mandates that each operator of a public transportation system establish ''methods for identifying and evaluating safety risks throughout all elements of the public transportation system.'' This requirement would extend beyond mere maintenance and training, and in this final rule, FTA makes clear that transit agencies should address safety risks in all aspects of their systems, including maintenance, training, operations, construction of new facilities, rehabilitation of existing facilities, etc. Moreover, the statutory provisions of 49 U.S.C. 5329(d) require States to ''draft'' and ''certify'' safety plans on behalf of small Section 5307 operators. States cannot merely review plans if one of these transit agencies has ''safety issues.''

FTA appreciates the comment that it received regarding occupational health issues. To the extent that occupational health issues may be safety hazards and present safety risks, transit agencies should be addressing them through the SMS processes outlined in their safety plans. FTA will issue rules regarding operator assault in the future.

Regarding the establishment of ''zero'' as the only feasible goal in performance targets, FTA only is creating safety performance measures by which transit agencies are to set performance targets. FTA is not mandating any particular goal or target; it is deferring to each transit agency, MPO, and State and to set targets for each of their unique systems and geographical areas.

Finally, FTA notes that this final PTASP rule does not establish guidelines for rail vehicle crashworthiness. Please see the National Public Transportation Safety Plan, available on FTA's website, for more information regarding safety performance standards for public transportation vehicles.

W. Regulatory Impact Analyses

1. Costs

Comments: One commenter concluded that FTA underestimated the costs associated with the implementation of the rule. Similarly, a transit agency estimated cost increases to ensure compliance with the rule.

Several commenters provided specific cost estimates related to the proposed requirements. One commenter remarked that upgrading its surveillance system on buses would cost approximately $2 million and that it installed driver barriers in 30 new buses, at a cost of $4,202 per barrier, totaling $126,060. This commenter stated that the additional recordkeeping could require the purchase of new equipment and tracking software and the hiring and training of additional staff, which would result in costs of at least $4 million. This commenter asserted that staffing at the administrative level would cost about $85,000 annually and contractor personnel would cost about $75,000 annually. This commenter asserted that training for administrative staff would cost about $30,000 per person, and training for contractor personnel would cost about $10,000 per person. One commenter estimated that it would cost a State $200,000 annually to adequately perform any oversight responsibilities. One commenter estimated that its initial investment could reach at least $1 million for a risk management information system, training, and personnel. One commenter stated that it could not estimate the cost of coordination with MPOs on the establishment of performance targets.

Response: FTA appreciates the comments on the costs of the proposed rule. It is a challenge to develop cost estimates for the rule that can be representative of any one agency given the differences in agency size, modes, location, and level of maturity of safety programs. The regulatory analysis acknowledges that mitigation costs of identified risks are not included in the estimated cost of the proposed rule. The cost of onboard surveillance systems and driver barriers are mitigation costs. Typically, a transit agency makes these types of investment decisions with the understanding that there will be benefits of the mitigation that exceed the costs of the mitigation. Today's rule does not recommend any specific mitigation, and does not require agencies to implement mitigations that have greater costs than benefits.

The annual personnel costs of recordkeeping cited by the commenter are considerably higher than the estimated cost in the proposed rule. FTA's cost estimate for this particular type of agency is $20,000 for staff; $15,000 for information technology; and $4,000 for training, excluding travel costs. FTA cannot estimate costs for specific agencies, since FTA does not know how these costs would vary by size within each category. The larger the agency, the greater the amount of data and records that need to be maintained, with the possibility of significant economies of scale for certain recordkeeping tasks, but increased complexity in others, possibly requiring more sophisticated systems than those of the smaller agencies. It is possible that a large transit agency may need one additional full time staff and a contractor (at a total cost of $160,000 per year) to maintain records. Most likely, these individuals would be performing other duties. It also is possible that the initial set up costs may be higher for those who may not have the expertise in this area. FTA does not anticipate that these costs will be continual. Therefore, while FTA accepts that the cost estimates in the NPRM may be low for some agencies, FTA does not believe that the costs would be as high as suggested by the commenter and continuous into the future.

The commenter's estimated cost of $200,000 for ''oversight'' is significantly higher than FTA's estimated total State cost estimate of $18,000. FTA emphasizes it is not requiring States to conduct safety oversight through this rule; FTA is only requiring States to draft and certify safety plans on behalf of particular operators of public transportation systems. Moreover, with today's rule, FTA is providing a safety plan template which significantly will reduce costs to States and operators, particularly for the smaller operators. Therefore, FTA believes that the commenter overestimated the costs significantly.

The commenter's $1 million estimate for a risk management information system and associated staff may not be unreasonable. FTA estimates annual costs in the range of $15,000 to $20,000 for information technology systems for rail transit agencies and for large bus operators that receive Section 5307 funds. FTA estimates additional staff costs for risk assessment and assurance activities of approximately $60,000 per year for large Section 5307 operators. These costs would total $1 million over a span of thirteen years, at which time information technology systems may need to be updated. It is possible that the costs would be higher during the initial years and significantly reduced in subsequent years. Also, it is possible that the information technology system will be used for multiple tasks, some of which may not be related to this rule.

2. Benefits

Comments: One commenter questioned what benefit, if any, would be achieved from the rule if FTA is unable to provide evidence to show that the implementation of the rule would increase safety and reduce transit incidents. The commenter asserted that it seems unreasonable to require an ''economically significant'' expenditure of limited transit agency funds when

funds should be used for state of good repair and transit asset management needs. Another commenter concluded that FTA is premature in estimating economic benefits through the Regulatory Impact Analysis before this rulemaking is effective and implemented.

One commenter stated that a positive return on investment (ROI) may not be possible without adequate resources, and this commenter asserted that the NPRM does not specify whether an ROI would exceed a break-even point. The commenter asked to review actual results of implementing SMS to help justify the anticipated level of investment, suggesting that SMS should be piloted in a few transit agencies before being implemented nationally.

Response: As discussed in other sections of this rule and as discussed in more detail below, today's regulatory provisions are required by statute under 49 U.S.C. 5329(d), and FTA is implementing SMS in the least prescriptive way possible.

Safety Management Policy is the foundation of the organization's SMS. The safety management policy statement clearly states the organization's safety objectives and sets forth the policies, procedures, and organizational structures necessary to accomplish the safety objectives. It clearly delineates management and employee responsibilities for safety throughout the organization. It also ensures that management is actively engaged in the oversight of the organization's safety performance by requiring regular review of the safety policy by a designated Accountable Executive (general manager, president, or other person with similar authority). Within the context of the Public Transportation Agency Safety Plan, an organization's safety objectives will be articulated through the setting of performance targets based on, at a minimum, the safety performance measures established in the National Public Transportation Safety Plan. See 49 U.S.C. 5329(d)(1)(E).

Pursuant to the statutory requirements of 49 U.S.C. 5329(d)(1)(B) and (C), each agency's Public Transportation Agency Safety Plan must 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.'' Each of these requirements is consistent with the second component of SMS—Safety Risk Management—which requires the development of processes and activities to help the organization better identify hazards associated with its operational systems. Once identified, a transit agency must evaluate the safety risk associated with the potential consequences of these hazards, and then institute mitigations, as necessary, to control the consequences or minimize the safety risk.

The statutory requirements of 49 U.S.C. 5329(d)(1)(B), (C), and (D)—''methods for identifying and evaluating safety risks throughout all elements of the public transportation system,'' ''strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions,'' and ''a process and timeline for conducting an annual review and update of the safety plan''—encompass the requirements of the third component of SMS: Safety Assurance. Safety Assurance requires an organization to monitor its safety performance, and it is designed to ensure that the organization meets or exceeds its safety objectives through the collection, analysis, and assessment of data. Through regular reviews and updates of its safety plan, a transit agency would evaluate changes to its operations that might introduce new safety risks. If a transit agency identifies safety risks through its safety performance assessments, then it must take action to correct any safety deficiencies. All of these efforts are intended to minimize the exposure of the public, personnel, and property to safety hazards and unsafe conditions. To minimize administrative, financial, and regulatory burdens under Safety Assurance, FTA has reduced requirements for small public transportation providers and has developed a minimal set of Safety Assurance provisions under 49 CFR 673.27.

The fourth component of SMS—Safety Promotion—involves the training, awareness, and communication that support safety. The training aspect of SMS is consistent with the statutory requirement of 49 U.S.C. 5329(d)(1)(G) for a comprehensive staff training program for operations personnel and personnel directly responsible for safety.

FTA is intending to implement 49 U.S.C. 5329(d) in the least prescriptive way possible by designing minimalistic regulatory requirements that mirror the relevant statutory provisions. By utilizing SMS in the regulatory framework, transit operators of varying sizes, complexities, and operating characteristics can build safety plans that are flexible and scalable to meet their unique safety needs. Through its scalability, SMS helps reduce the costs and burdens associated with developing and implementing safety plans. Also, as noted above, FTA eliminated several significant Safety Assurance requirements for small public transportation providers in this final rule.

While FTA is unable to provide definitive evidence that the implementation of this rule would increase safety by reducing incidence of safety events, FTA fully anticipates that safety benefits will be realized if this rule is implemented. By adopting a systematic approach to safety through the development of the safety plan and the practice of SMS, transit agencies are expected to reduce the risk and probability of safety incidents. FTA expects that a proactive approach to managing safety risks is more effective than a reactive approach. The SMS approach to safety, which involves collecting data, predicting and mitigating future safety events, training, accountability, and open communication will reduce safety events and improve safety outcomes in the future. Indeed, state of good repair investments could prevent and mitigate future safety events.

FTA currently is conducting an SMS pilot program at a large multi-modal transit agency and is planning to implement two additional pilot programs for bus agencies to better understand how a transit agency would implement SMS. The results of these pilot programs will help inform FTA's efforts to provide guidance to the industry on SMS implementation. FTA notes that the benefits of SMS implementation may take years to be realized, and in turn, taking time for the benefits of SMS to be fully estimated and quantified.

In light of various public comments, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds. FTA is deferring action pending further evaluation of additional information and safety data related to these operators to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

Six years after the compliance date for this rule, FTA plans to prepare a report evaluating the benefits and effectiveness of the regulatory framework provided by this rule. In this report, FTA plans to utilize the results of the pilot program and information gathered from oversight reviews, which will include an evaluation of the flexibility and scalability of the SMS framework in developing and implementing safety

plans. The results in this report will be made available for public comment to help inform any future amendments that may be needed to the regulatory framework that improves the PTASP process and furthers the goal of public transportation safety.

3. Regulatory Flexibility Act

Comments: Several commenters provided input on the rule's impact to small entities. Several commenters asserted that small to medium sized transit agencies face budget constraints and expressed concern that these agencies may need to hire additional staff to comply with the rule or reduce transit service.

Several commenters expressed concern that FTA crafted the NPRM with only rail transit systems in mind. One commenter stated that the excellent safety record of rural transit systems warrants a limited approach to Federal safety regulation regarding rural bus systems, which would enable operators to focus scarce resources on safely delivering transit services, not on regulatory compliance. The commenter warned that if FTA does not tailor the rule to small transit systems, then many small bus operators would have to shift funds and personnel from the actual delivery of service to compliance with safety rules. The commenter asserted that MAP–21 reduced the portion of Section 5311 funds available for program administration from 15 percent to 10 percent. The commenter noted that, in Senate Report 3638, the Senate Committee on Banking, Housing, and Urban Affairs indicated its intent that FTA take a ''measured approach,'' and not a ''one size fits all'' approach, to safety.

One commenter stated that FTA's Regulatory Flexibility Act analysis is somewhat misleading, particularly where tribal governments are concerned. Due to the modest amount of funding available to tribes, the commenter concluded that the cost associated with developing a safety plan for tribal governments is much higher than FTA's estimate of 0.5 to 1.5 percent; the commenter asserted that the costs are closer to 5.5 to 15.5 percent.

Response: FTA has taken significant efforts to reduce the burden on small transit agencies. For small Section 5307 operators, FTA is requiring States to draft and certify their safety plans. FTA designed the requirements of today's rule, particularly the SMS requirements, to be scalable, flexible, and not prescriptive for small transit operators. Moreover, FTA developed a safety plan template for small operators to assist them with the development of their plans. FTA is offering live and online training to small transit operators, and it is offering any technical assistance that might be needed. FTA notes that many small transit agencies already have processes and procedures in place that comply with the requirements of today's rule, and given the safety record of many smaller operators, significant mitigation may not be necessary. FTA emphasizes that the statutory requirements of 49 U.S.C. 5329 make the rule applicable to any operator of a public transportation system, and small operators are not excluded from the rule.

To accommodate small public transportation providers and to reduce their administrative, financial, and regulatory burdens, FTA made significant changes to its proposed regulatory framework in the NPRM. FTA eliminated a Safety Assurance requirement for all transit agencies to monitor their operations to identify hazards not identified through their Safety Risk Management processes. Also, FTA eliminated an entire section of recordkeeping requirements related to safety risk mitigation, safety performance assessments, and employee safety training. FTA further tailored the rule for small operators and reduced their requirements under Safety Assurance. Small public transportation providers only need to develop processes for safety performance monitoring and measurement; they do not need to develop processes for management of change and continuous improvement. Through the elimination of these requirements for small public transportation providers, and through this tailored approach, FTA believes that it has reduced their burdens significantly.

Finally, FTA notes that in light of various public comments, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds. FTA is deferring action pending further evaluation of information and safety data related to these operators to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

X. Tribal Issues

1. Applicability of the Rule to Tribes

Comments: Several commenters suggested that some tribes operate modest public transportation systems and receive Federal financial assistance through either the discretionary or formula tribal transit programs under 49 U.S.C. 5311. One commenter stated that some tribes receive funds as subrecipients of States under 49 U.S.C. 5311, and therefore, FTA should exclude those subrecipients from this rule. The commenter also requested FTA to clarify the applicability of this rule to tribes. Finally, this commenter recommend that FTA's final rule exempt tribes from the definition of ''recipient'' under the proposed provisions of 49 CFR 673.1 until FTA has undertaken additional consultation with tribes and develops a template safety plan.

Response: FTA appreciates the commenter who stated that tribes operate modest public transportation systems, and in response, FTA has designed this rule to be as flexible and scalable as possible for smaller operators. In light of various public comments, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds, including tribal transit operators. FTA is deferring action pending further evaluation of additional information and safety data related to these operators to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

FTA has undertaken consultation with tribes throughout this rulemaking, and these efforts are described in more detail below.

2. The State's Role in Tribal Safety Plans

Comments: A few commenters recommended that FTA require tribes to develop their own safety plans, even if they are a State's subrecipients under 49 U.S.C. 5311, unless a State voluntarily agrees to draft and certify a safety plan for a tribal subrecipient. Some commenters expressed concerns that a State's preparation of safety plans for tribes could interfere with tribal sovereignty. One commenter suggested that a State's interaction with a tribe in relation to a safety plan is unwarranted and inconsistent with the laws and treaties that govern the status and protections for tribes. The commenter asserted that the Tribal Transit Program funded under 49 U.S.C. 5311(c) is not a subset of the Section 5311 program; it is a separate and direct tribal program and the rules associated with its administration should be structured accordingly. Several commenters stated that there often are positive relationships between States and tribes, but FTA should not treat tribes as subcomponents of State transit systems given the independent status of tribes.

One commenter expressed concern that FTA would be less willing to provide technical assistance to tribes if States draft and certify their safety plans.

Response: FTA recognizes the administrative and financial burdens that this rule may impose upon smaller transit operators, such as tribes. In an effort to relieve this burden, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds, including tribal transit operators. FTA is deferring action pending further evaluation of information and safety data to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

3. Financial Impact on Tribes

Comments: Several commenters stated that the proposed rule would result in administrative costs to tribes, such as costs for additional staff time and resources. One commenter stated that, like many other smaller transit agencies, tribal transit managers may have many different roles and shared duties, so the requirement for an Accountable Executive may be problematic because the staff are not structured in the way the proposed rule seems to envision. The commenter said that compliance with the rule may require consultants or new staff to handle the extra reporting paperwork and separation of positions, which would be difficult with limited resources. This commenter recommended that FTA should incorporate the following language somewhere into its rule: ''at agencies where such delineations exist between administrative positions.''

Several commenters noted that some tribes receive limited funding. One commenter stated that the average annual apportionment for tribal transit agencies is almost $220,000 and the average annual discretionary award is about $77,000, and some of 100 tribes participating in the Tribal Transit Program have apportionments as low as $4,000 annually. Several commenters argued that, for a tribe whose only source of Federal funding for its Tribal Transit Program is a $25,000 grant, the compliance costs associated with this rule (such as personnel time and the possible need for outside consultants) could easily consume the entire grant. The commenter stated that, although States divide more than $8.6 billion in Federal transit grants for Federal Fiscal Year 2016, tribes receive only $30 million under the Tribal Transit Program and an extra $5 million for the discretionary Tribal Transit Program under 49 U.S.C. 5311.

Response: FTA acknowledges that many smaller transit operators, including tribes, may experience substantial costs in complying with this rule. In light of the potential financial burden on smaller operators, including tribes, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds. FTA is deferring action pending further evaluation of information and safety data related to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

4. Tribal Consultation

Comments: Several commenters expressed concern regarding FTA's consultation with tribes. Several commenters alleged that FTA conducted no consultation with tribes, including meetings, conference calls, or webinars. Several commenters suggested that FTA conduct additional consultation with tribes, particularly given their smaller sizes.

Several commenters disagreed with FTA's preliminary determination that the rule would not have a substantial direct effect on tribes or impose substantial direct compliance costs on tribes, which is the criteria that would trigger tribal consultation under Executive Order 13175 and the U.S. Department of Transportation's tribal consultation policy. One commenter stated that the rule would have direct effects on tribes by adding regulatory requirements on them, thus changing the relationship between tribes and the Federal government with respect to the inspection, investigation, audits, examinations, and testing of transit infrastructure and rolling stock. This commenter expressed concern that courts have emphasized the need for advance consultation with tribes on rulemaking efforts that may impact them, and cited *Wyoming* v. *Department of the Interior* in which the U.S. District Court for the District of Wyoming issued a preliminary injunction against Bureau of Land Management's hydraulic fracturing regulations because the agency failed to adequately consult with tribes.

Another commenter stated that the promulgation of this rule may conflict with the Tribal Self-Governance Program created by the FAST Act, and asserted that the Tribal Self-Governance Program requires a negotiated rulemaking committee to develop rules and regulations for all modes of funding and U.S. Department of Transportation programs, led by the U.S. Department of Transportation's Deputy Assistant Secretary for Tribal Government Affairs.

One commenter suggested that, instead of requiring States to draft and certify safety plans on behalf of tribes, FTA should work with tribes to develop a model safety plan specifically for tribes.

Response: As a preliminary matter, FTA notes that it conducted extensive outreach with tribes throughout this rulemaking. Specifically, on February 12, 2016, FTA conducted public outreach for tribes and hosted a Tribal Technical Assistance Workshop wherein FTA presented its proposed rule and responded to numerous technical questions from tribes. FTA subsequently delivered the same presentation during a webinar series open to all members of the public on February 24, March 1, March 2, and March 3. On March 7, FTA delivered the same presentation at an outreach session hosted by the National Rural Transit Assistance Program, which also was open to all members of the public. During each of these public outreach sessions and the public webinar series, FTA received and responded to numerous technical questions regarding the NPRM. FTA recorded the presentations, including the question and answer sessions, and made available the following documents on the public docket for this rulemaking (Docket FTA–2015–0021): (1) FTA's PowerPoint Presentation from the public outreach sessions and public webinar series (*https://www.regulations.gov/document?D=FTA-2015-0021-0012*); (2) a written transcript of FTA's public webinar of March 1, 2016 (*https://www.regulations.gov/document?D=FTA-2015-0021-0010*); (3) a consolidated list of every Question and FTA Answer from the public outreach sessions and public webinar series (*https://www.regulations.gov/document?D=FTA-2015-0021-0041*); and (4) the results of polling questions from FTA's public outreach sessions (*https://www.regulations.gov/document?D=FTA-2015-0021-0011*). FTA also uploaded onto YouTube an audiovisual recording of its webinar from March 1, 2016. The video is available at the following link: *https://www.youtube.com/watch?v=FBj5HRatwGA&feature=youtu.be.*

FTA also notes that, in advance of publishing an NPRM, FTA sought comment from the transit industry, including tribes, on a wide range of topics pertaining to safety and asset management through an ANPRM. In the

NPRM, FTA asked specific questions about how today's rule should apply to tribal recipients and subrecipients of Section 5311 funds.

In light of the comments that FTA received from tribes throughout the rulemaking process, FTA is deferring regulatory action regarding applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds, including tribal transit operators. FTA is deferring action pending further evaluation of additional information and safety data to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

IV. Section-by-Section Analysis

Subpart A—General

673.1 Applicability

This section explains that this regulation applies to all States, local governmental authorities, and other operators of public transportation systems that are recipients and subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53. At this time, the regulation 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. In accordance with 49 U.S.C. 5329(d), a Public Transportation Agency Safety Plan is required of all operators of public transportation systems, whereas in the past, a ''system safety program plan'' only was required of rail fixed guideway public transportation systems, in accordance with the former regulatory provisions at 49 CFR 659.17. Each operator of a public transportation system must comply with today's rule within one calendar year of this rule's effective date.

673.3 Policy

This section explains that FTA is utilizing the principles and methods of SMS as the basis for this regulation and all other regulations and policies FTA has issued and will issue under the authority of 49 U.S.C. 5329, to the extent practicable and consistent with law and other applicable requirements (such as those for regulatory review). FTA's standards for SMS are flexible and scalable and may be tailored to the size and operating complexity of the transit operator.

673.5 Definitions

This section sets forth a number definitions, many of which are based on the principles and methods of SMS. Most notably, readers should refer to ''Accountable Executive,'' ''Hazard,'' ''Operator of a Public Transportation System,'' ''Safety Assurance,'' ''Safety Management System,'' ''Safety Management Policy,'' ''Safety Promotion,'' ''Safety Risk Management,'' and ''Small Public Transportation Provider.'' In recent years, SMS has emerged as the preferable practice for enhancing safety in all modes of transportation, and the Secretary of Transportation instructed each of the Department's operating administrations to develop rules, plans, and programs to apply SMS to their grant recipients and regulated communities. Many of the SMS-related definitions in § 673.5 are similar to those set forth in FAA's SMS regulation, entitled ''Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders,'' 14 CFR parts 5 and 119, 80 FR 1308, Jan. 8, 2015.

Additionally, a set of frequently asked questions about SMS are available on FTA's website at *http://www.fta.dot.gov/tso_15177.html.* FTA is incorporating these same definitions for SMS in its related rulemakings for the Public Transportation Safety Program and the Public Transportation Safety Certification Training Program, and FTA is incorporating these same definitions into the National Public Transportation Safety Plan.

FTA includes a definition for ''Accountable Executive'' that identifies the person at a transit agency that has the responsibility and accountability for the implementation of SMS and control and direction of the Public Transportation Agency Safety Plan and the Transit Asset Management Plan. FTA includes definitions for ''Safety Risk Management,'' ''Risk,'' ''Safety Assurance,'' and ''Safety Management Policy,'' all key terms to the implementation of SMS.

This section also defines a number of terms used repeatedly throughout the other safety programs authorized by 49 U.S.C. 5329. Some of these terms are included in FTA's new State Safety Oversight Rule at 49 CFR part 674, which was issued prior to today's final rule. FTA intends to have the same definitions for all terms utilized in its safety programs. Readers should refer, specifically, to the definitions of ''Accident,'' ''Event,'' ''Hazard,'' ''Incident,'' ''Investigation,'' ''Occurrence,'' ''Transit Agency,'' and ''Rail Transit Agency.'' FTA has updated its definitions of ''Accountable Executive,'' ''Safety Risk Assessment,'' ''Safety Risk Management,'' and ''Transit Asset Management Plan'' to make them consistent with definitions of these terms utilized in the SSO rule and the Transit Asset Management rule which were issued prior to today's final rule. FTA also added a definition of ''Rail Fixed Guideway Public Transportation System,'' which it defined in its SSO rule.

Pursuant to 49 U.S.C. 5329(d)(3)(B), FTA must issue a rule that designates which 49 U.S.C. 5307 small public transportation providers may have States draft Public Transportation Agency Safety Plans on their behalf. This section defines ''Small Public Transportation Provider'' (in accordance with 49 U.S.C. 5329(d)(3)(B)) as ''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 and does not operate a rail fixed guideway public transportation system.''

FTA includes definitions for the terms ''National Public Transportation Safety Plan,'' ''Transit Asset Management Plan,'' and ''Equivalent Authority,'' all of which are consistent with the use of those terms in the statutes and FTA's related rulemakings on safety and transit asset management.

Subpart B—Public Transportation Agency Safety Plans

673.11 General Requirements

This section outlines the minimum elements to be included in a Public Transportation Agency Safety Plan. Pursuant to 49 U.S.C. 5329(d)(1), this section requires each operator of public transportation subject to this rule to develop and certify that it has a Public Transportation Agency Safety Plan consistent with this part. In accordance with 49 U.S.C. 5329(d)(3)(B), § 673.11(d) requires each State to draft the Public Transportation Agency Safety Plan for small transportation providers as defined in today's final rule. A State is not required to develop a Public Transportation Agency Safety Plan for a small public transportation provider if that agency notifies the State that it will develop its own plan.

In accordance with 49 U.S.C. 5329(d)(1)(A), § 673.11(a)(1) requires that each Public Transportation Agency Safety Plan, and any updates thereto, must be signed by the transit agency's designated Accountable Executive and approved by the transit agency's Board of Directors, or an Equivalent Authority. In today's final rule, the accountability for the contents of a Public Transportation Agency Safety Plan is formally elevated to the Accountable Executive and Board of Directors.

In accordance with 49 U.S.C. 5329(d)(1)(B), (C), (D), (E), (F), and (G), a transit agency must establish: Methods for identifying and evaluating safety risks throughout all elements of its public transportation system; strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions; a process and timeline for conducting an annual review and update of its safety plan; safety performance targets; a Chief Safety Officer who reports directly to the general manager, president, or equivalent officer; and a comprehensive staff training program for the operations personnel and personnel directly responsible for safety. These statutory requirements fit into the four key pillars of SMS: Safety Management Policy, Safety Risk Management, Safety Assurance, and Safety Promotion. Consequently, FTA is requiring each transit agency to develop and implement an SMS under § 673.11(a)(2); this SMS will satisfy the statutory requirements of 49 U.S.C. 5329(d)(1)(B), (C), (D), (E), (F), and (G). FTA recognizes that a Public Transportation Agency Safety Plan for a large, multi-modal, complex public transportation system most likely will be more complex than that of a very small bus operator. The scalability of SMS will allow transit agencies to develop safety plans that will meet the unique needs of their operating environments. FTA established a minimal set of Safety Assurance requirements for small public transportation providers to minimize their administrative, financial, and regulatory burdens.

In accordance with 49 U.S.C. 5329(d)(1)(E), § 673.11(a)(3) requires that each Public Transportation Agency Safety Plan must include safety performance targets based on the safety performance measures established by FTA in the National Public Transportation Safety Plan. In the National Public Transportation Safety Plan, FTA is adopting four initial safety performance measures: (1) Fatalities, (2) Injuries, (3) Safety Events, and (4) System Reliability. These safety performance measures are intended to reduce safety events, fatalities, and injuries. These measures are broad so that they will be relevant to all public transportation modes, and they are intended to focus transit agencies on the development of specific and measureable targets, as well as the actions each agency would implement to improve their own safety outcomes. Through the SMS process, FTA expects transit agencies to develop their own performance indicators and regularly monitor the performance of their systems to ensure that they are meeting their targets and improving safety outcomes. FTA expects transit agencies to evaluate their safety performances and determine whether they should change their safety performance targets at least annually when the transit agencies are reviewing and updating their Public Transportation Agency Safety Plans. A State or transit agency must make its safety performance targets available to States and Metropolitan Planning Organizations (MPO) to aid States and MPOs in the selection of their own performance targets.

Pursuant to § 673.11(a)(4), each Public Transportation Agency Safety Plan must address any standards or requirements, as applicable, set forth in FTA's Public Transportation Safety Program and FTA's National Public Transportation Safety Plan.

In accordance with 49 U.S.C. 5329(d)(1)(D), § 673.11(a)(5) requires that each transit agency must establish a process and timeline for conducting an annual review and update of its Public Transportation Agency Safety Plan.

Pursuant to § 673.11(a)(6), each rail transit agency must include, or incorporate by reference, in its Public Transportation Agency Safety Plan an emergency preparedness and response plan. Each emergency preparedness and response plan should address, at a minimum: The assignment of employee responsibilities, as necessary and appropriate, during an emergency; the integration of responses to all hazards, as appropriate; and processes for coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area. FTA understands that a transit agency may have developed an emergency preparedness and response plan that addresses these minimum requirements in accordance with regulations from other Federal and State agencies. Historically, FTA has required rail fixed guideway public transportation systems to have emergency preparedness plans through the former State Safety Oversight rule at 49 CFR 659.19(k). FTA intends to require rail transit systems to continue to implement the twenty-one elements of their SSPPs as required under the former provisions of 49 CFR part 659; FTA has repackaged the elements of SSPPs into the four elements of SMS required in today's rule. FTA is establishing the requirement for emergency preparedness and response plans in today's rule under § 673.11(a)(6), and the elements of SMS in Subpart C cover remaining requirements. FTA has developed a crosswalk between each of the twenty-one elements of system safety program plans and each of the elements of SMS. FTA added this crosswalk to the docket and made the crosswalk available on its website as a guidance document at *http://fta.dot.gov/tso.html.* Additional, more comprehensive guidance regarding the relationship between SSPPs and PTASPs is forthcoming, and FTA will post that guidance on its website (see *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-safety-oversight-tso*).

FTA notes that there are safety models that include emergency preparedness as a key element. For example, FAA requires certain air carriers to have emergency preparedness plans. *See* 14 CFR 5.27. Additionally, FRA recently issued a final System Safety Program rule under 49 CFR part 270 which requires railroads to have emergency preparedness plans (see *http://www.fra.dot.gov/eLib/Details/L18294*). Recent safety-related events have demonstrated the need for emergency preparedness plans in improving safety outcomes nationally.

In addition to the above general requirements, FTA expects a transit agency to comply with all other applicable Federal, State, and local requirements, laws, regulations, and codes as they may relate to safety.

Pursuant to § 673.11(b), a transit agency may develop one Public Transportation Agency Safety Plan for all modes of transit service, or it may develop separate Public Transportation Agency Safety Plans for each mode of service not subject to safety regulation by another Federal entity. If a transit agency has a safety plan for its commuter rail service, passenger ferry service, or aviation service, then the transit agency may not use that plan for purposes of satisfying 49 CFR part 673; the transit agency must develop a separate Public Transportation Agency Safety Plan consistent with this part.

Pursuant to § 673.11(c), each transit agency must maintain its Public Transportation Agency Safety Plan in accordance with the recordkeeping requirements of Subpart D.

Pursuant to § 673.11(d), each State must draft and certify a Public Transportation Agency Safety Plan on behalf of any small public transportation provider located inside of that particular State. A State is not required to draft a Public Transportation Agency Safety Plan if a small public transportation provider notifies the State that it will draft its own plan. In either instance, the transit agency must

ultimately implement and carry out its safety 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, and the transit agency would have one year from the date of the notification to draft and certify a Public Transportation Agency Safety Plan that is compliant with this part.

Pursuant to § 673.11(e), any rail fixed guideway public transportation system that had an SSPP, in accordance with the former SSO rule at 49 CFR part 659 as of October 1, 2012, may keep that plan in effect until one year after the effective date of this final rule.

Pursuant to § 673.11(f), agencies that operate passenger ferries regulated by USCG or rail fixed guideway public transportation service regulated by FRA are not required to develop safety plans for those modes of service.

673.13 Certification of Compliance

In accordance with 49 U.S.C. 5329(d)(1), § 673.13(a) provides that not later than one year after the effective date of the final rule, each transit agency must certify its compliance with the requirements of this part. For small public transportation providers, a State must certify compliance unless the provider opts to draft and certify its own safety plan. In those cases where a State certifies compliance for a small public transportation provider, this certification also must occur within one year after the effective date of this final rule.

In addition to certification, and consistent with the new SSO rule at 49 CFR part 674, each SSOA must review and approve each Public Transportation Agency Safety Plan for every rail transit system within its jurisdiction. In accordance with 49 U.S.C. 5329(e)(4)(iv), an SSOA must have the authority to review, approve, oversee, and enforce the implementation of the Public Transportation Agency Safety Plans of transit agencies operating rail fixed guideway public transportation systems.

Section 673.13(b) requires that each transit agency or State certify compliance with part 673 on an annual basis.

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

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

Subpart C—Safety Management Systems

673.21 General Requirements

This section outlines the SMS elements that each transit agency must establish in its Public Transportation Agency Safety Plan. Under today's final, each transit agency must implement an SMS, and each transit agency should scale the SMS to the size, scope, and complexity of the transit agency's operations. Each transit agency must establish processes and procedures which include the four main pillars of SMS: (1) Safety Management Policy; (2) Safety Risk Management; (3) Safety Assurance; and (4) Safety Promotion. FTA expects that the scope and detail for each activity will vary based on the size and complexity of the system. FTA anticipates that activities, and documentation of those activities, for a small bus transit agency will be substantially less than those of a large multi-modal system. FTA has developed a minimal set of requirements under Safety Assurance for all small public transportation providers. To help clarify SMS development and implementation, FTA is issuing guidance and a safety plan template to the industry concurrent with today's final rule, and FTA designed these documents to accommodate the variance in transit system mode, size, and complexity.

673.23 Safety Management Policy

Pursuant to § 673.23(a), a transit agency must establish the organizational accountabilities and responsibilities necessary for implementing SMS and capture these under the first component of SMS, Safety Management Policy. The success of a transit agency's SMS is dependent upon the commitment of the entire organization and begins with the highest levels of transit agency management. The level of detail for organizational accountabilities and responsibilities should be commensurate with the size and complexity of the transit agency.

The Safety Management Policy statement must contain the transit agency's safety objectives. These objectives should include a broad description of the agency's overarching safety goals, which would be based upon that agency's unique needs.

Pursuant to § 673.23(b), a transit agency must include in its Safety Management Policy statement a process that allows employees to report safety conditions to senior management. This process must provide protections for employees who report safety conditions to senior management and a description of behaviors that are unacceptable and that would not be exempt from disciplinary actions. These procedures are critical for ensuring safety. A reporting program allows employees who identify safety hazards and risks in the day-to-day duties to directly notify senior personnel, without fear of reprisal, so that the hazards and risks can be mitigated or eliminated. NTSB has emphasized the need for transit agencies to have non-punitive employee safety reporting programs,[3] and this need was discussed at length in NTSB's Investigative Hearing on the WMATA Smoke and Electrical Arcing Incident in Washington, DC on June 23 and 24, 2015.[4]

Pursuant to § 673.23(c), the Safety Management Policy statement must be communicated throughout the transit agency, including the Board of Directors (or equivalent authority), and each transit agency must make its Safety Management Policy statement readily available to all of its employees and contractors.

Pursuant to § 673.23(d), each transit agency must establish its accountabilities, responsibilities, and organizational structure necessary to meet its safety objectives, particularly as they relate to the development and management of the transit agency's SMS. The level of detail in this section of the safety plan should be commensurate with the size and complexity of a transit agency's operations. At a minimum, a transit agency must identify an Accountable Executive, a Chief Safety Officer or SMS Executive, and agency leadership, executive management, and key staff who would be responsible for the implementation of a transit agency's safety plan.

[3] NTSB issued Safety Recommendation R–10/02 for the WMATA Metrorail train collision accident on June 22, 2009, found at: *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1002.pdf*. Through this report, NTSB recommends that ''FTA facilitate the development of non-punitive safety reporting programs at all transit agencies [in order] to collect reports from employees in all divisions within their agencies.''

[4] See the NTSB's hearing materials at *http://www.ntsb.gov/news/events/Pages/2015_WMATA_Washington_DC_IHG_Agenda.aspx*. and *http://dms.ntsb.gov/pubdms/search/document.cfm?docID=432379&docketID=57383&mkey=90596*.

673.25 Safety Risk Management

Pursuant to § 673.25(a), each transit agency must establish and implement its process for managing safety risk, including the following three steps: (1) Safety hazard identification, (2) safety risk assessment, and (3) safety risk mitigation, for all elements of its public transportation system, including changes to its public transportation system that may impact safety performance. At a minimum, FTA expects each transit agency to apply its safety risk management process to its existing operations and maintenance procedures, the design of a new public transportation system and other capital projects, changes to its existing public transportation system, new operations of service to the public, new operations or maintenance procedures, organizational changes, and changes to operations or maintenance procedures. Additionally, FTA expects each transit agency to develop measures to ensure that safety principles, requirements, and representatives are included in the transit agency's procurement process.[5]

Pursuant to § 673.25(b)(1), each transit agency must establish a process for safety hazard identification, including the identification of the sources, both proactive and reactive, for identifying hazards and their associated consequences. Activities for hazard identification could include formalized processes where a transit agency identifies hazards throughout its entire system, logs them into a database, performs risk analyses, and identifies mitigation measures. These activities also could include safety focus groups, reviews of safety reporting trends, and for smaller bus systems, it could mean holding a meeting with a few bus drivers, discussing hazards on the system, deciding which ones pose the greatest risk, and then developing mitigation.

A transit agency must apply its process for safety hazard identification to all elements of its system, including but not limited to its operational activities, system expansions, and state of good repair activities. FTA encourages transit agencies to take into account bicycle and pedestrian safety concerns, along with other factors, as agencies are conducting Safety Risk Management.[6] A transit agency should consider the results of its asset condition assessments when performing safety hazard identification activities within its SMS. The results of the condition assessments, and subsequent SMS analysis, will inform a transit agency's determination as to whether an asset meets the state of good repair standards under 49 CFR part 625.

Pursuant to § 673.25(b)(2), each transit agency must include, as a source for safety hazard identification, data and information provided by an oversight authority and FTA.

Safety hazard identification activities should be commensurate with the size of the transit agency's operations. For example, the number of identified hazards for a small rural bus system may be less than the number of hazards identified for a large multi-modal system.

Pursuant to § 673.25(c), each transit agency must establish procedures for assessing and prioritizing safety risks related to the potential consequences of hazards identified and analyzed in § 673.25(b). Each transit agency must assess safety risks in terms of probability (the likelihood of the hazard producing the potential consequences) and severity (the damage, or the potential consequences of a hazard, that may be caused if the hazard is not eliminated or its consequences are not successfully mitigated).

Pursuant to § 673.25(d), each transit agency also must establish criteria for the development of safety risk mitigations that are necessary based on the results of the agency's safety risk assessments. For example, a transit agency may decide that the criteria for developing safety risk mitigations could be the identification of a safety risk, benefit-cost analysis, a system level change (such as the addition of new technology on a vehicle), a change to operational procedures, or the expansion of service. To further illustrate these examples, a transit agency may color code different levels of safety risk (''red'' as high, ''yellow'' as medium, and ''green'' as minor) and develop different types of safety risk mitigations to correspond to those levels.

673.27 Safety Assurance

Pursuant to § 673.27(a), each transit agency must develop and implement a process for Safety Assurance. Rail fixed guideway public transportation systems and recipients and subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53 that operate more than one hundred vehicles in peak revenue service must develop processes for (1) safety performance monitoring and measurement, (2) management of change, and (3) continuous improvement. Small public transportation providers only need to develop a process for safety performance monitoring and measurement. Each transit agency's safety assurance activities should be scaled to the size and complexity of its operations. Through these activities, each transit agency should accurately determine whether it is meeting its safety objectives and safety performance targets, as well as the extent to which it is effectively implementing its SMS. Each transit agency must conduct an annual review of the effectiveness of its safety risk mitigations.

Pursuant to § 673.27(b), each transit agency must identify the data and information that it will collect from its operations, maintenance, and public transportation services so that it may monitor the agency's safety performance as well as the effectiveness of its SMS. Each transit agency must monitor its operations and maintenance protocols and procedures, and any safety risk mitigations, to ensure that it is implementing them as planned.

Each transit agency must investigate safety events (as defined in this final rule) and any reports of non-compliance with applicable regulations, standards, and legal authority. Finally, each transit agency must continually monitor information reported to it through any internal safety reporting programs, including the employee safety reporting program.

Pursuant to § 673.27(c), rail fixed guideway public transportation systems and recipients and subrecipients that are subject to this rule and operate more than one hundred vehicles in peak revenue service must manage changes in their systems. These transit agencies must develop processes for identifying and assessing changes that may introduce new hazards or impact safety performance. If a transit agency determines that a change might impact safety, then the transit agency would need to evaluate the change using Safety Risk Management activities established under § 673.25. These changes would include changes to operations or maintenance procedures, changes to service, the design and construction of major capital projects (such as New Starts and Small Starts projects and associated certifications), organizational changes, and any other changes to a transit agency's system that may impact safety performance. Each rail transit agency should include a description of the safety certification process that it uses to ensure that safety concerns and hazards are adequately addressed prior to the initiation of passenger operations

[5] *See* FTA's former State Safety Oversight rule at 49 CFR 659.19(u).

[6] The United States Department of Transportation is administering a bicycle and pedestrian safety initiative, and FTA encourages transit agencies to consider that initiative when developing their safety plans (see *https://www.transportation.gov/safer-people-safer-streets*).

for News Starts and other major capital projects to extend, rehabilitate, or modify an existing system, or to replace vehicles and equipment.

Pursuant to § 673.27(d), rail fixed guideway public transportation systems and recipients and subrecipients that are subject to this rule and operate more than one hundred vehicles in peak revenue service must regularly assess their safety performance. If a transit agency identifies any deficiencies during a safety performance assessment, then it must develop and carry out, under the direction of the Accountable Executive, a plan to address the identified safety deficiencies. FTA expect each transit agency to conduct a safety performance assessment at least annually, and the safety performance assessment can be completed in conjunction with the annual review and update to its overall safety plan as required by 49 U.S.C. 5329(d)(1)(D) and 49 CFR 673.11(a)(5).

673.29 Safety Promotion

This section requires each transit agency to establish competencies and training for all agency employees directly responsible for safety, and to establish and maintain the means for communicating safety performance and SMS information. Pursuant to § 673.29(a), each transit agency must establish a comprehensive safety training program. Through the safety training program, each transit agency must require each employee, as applicable, to complete training to enable the individual to meet his or her role and responsibilities for safety, and to complete refresher training, as necessary, to stay current with the agency's safety practices and procedures.

Pursuant to § 673.29(b), each transit agency must ensure that all employees are aware of any policies, activities, and procedures that are related to their safety-related roles and responsibilities. Safety communications may include information on hazards and safety risks that are relevant to the employee's role and responsibilities; explain reasons that a transit agency introduces or changes policies, activities, or procedures; and explain to an employee when actions are taken in response to reports submitted by the employee through the employee safety reporting program. FTA expects that each transit agency would define the means and mechanisms for effective safety communication based on its organization, structure, and size of operations.

Subpart D—Safety Plan Documentation and Recordkeeping

673.31 Safety Plan Documentation

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

V. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and USDOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); tailor its regulations to impose the least burden on society; assess all costs and benefits of available regulatory alternatives; and, if regulation is necessary, to select regulatory approaches that maximizes net benefits—including potential economic, environmental, public health, and safety effects, distributive impacts, and equity. Executive Order 13563 also emphasizes the importance of harmonizing rules and promoting flexibility.

FTA drafted this final rule in accordance with the principles set forth in Executive Orders 12866 and 13563. FTA has determined that this final rule is a significant regulatory action due to significant public interest in the area of transit safety. However, this rule is not estimated to be ''economically significant'' within the meaning of Executive Order 12866.

As discussed in greater detail below, FTA was able to estimate some, but not all, of the rule's costs. FTA was able to estimate the costs for transit agencies to develop and implement Public Transportation Agency Safety Plans which are approximately $41 million in the first year, and $30 million in each subsequent year, with annualized costs of $31 million discounted at 7 percent. These costs result from developing and certifying safety plans, documenting the SMS approach, implementing SMS, and associated recordkeeping. FTA was not able to estimate the costs of actions that transit agencies would be required to take to mitigate risk as a result of implementing this rule, such as vehicle modifications, additional training, technology investments, or changes to operating procedures and practices.

FTA has placed in the docket a final Regulatory Impact Analysis (RIA) that analyzes the benefits and costs of the regulatory changes in accordance with Executive Orders 12866 and 13563, and United States Department of Transportation (USDOT) policy.

Through this final rule, FTA requires all operators of public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53 to develop and implement Public Transportation Safety Plans in accordance with 49 U.S.C. 5329, using the SMS approach. As discussed above, FTA is deferring regulatory action at this time regarding recipients of FTA financial assistance under 49 U.S.C. 5310 and/or 49 U.S.C. 5311.

SMS is a flexible, scalable approach to safety that has been widely adopted across multiple modes of transportation in both the public and private sectors and overlaps significantly with the requirements included in 49 U.S.C. 5329. It employs a systematic, data-driven approach in which risks to safety are identified, then controlled or mitigated to acceptable levels. SMS brings business-like methods and principles to safety, similar to the ways in which an organization manages its finances, through safety plans, with targets and performance indicators, and continuous monitoring of safety performance throughout an organization.

In addition to responding to the specific statutory mandate, this final rule responds to National Transportation Safety Board (NTSB) recommendations regarding an expansion of SMS to reduce the risks of transit crashes. From 2004 to 2016, NTSB reported on eleven transit accidents that, collectively, resulted in 16 fatalities, 386 injuries, and over $30 million in property damages. Although transit systems have historically been among the safest means of surface transportation, the transit industry is facing increased pressures at a time when ridership has grown, infrastructure is aging, and large numbers of the workforce are retiring. During that same 2004–2016 time period, transit agencies reported over 290,000 incidents and other events,

more than 2,600 fatalities, and over 301,000 injuries to the NTD.

This RIA provides quantitative estimates of the expected compliance costs associated with the rule. Costs for transit agencies were estimated based on the staff labor hours, information technology systems, and travel costs associated with implementing the requirements of the proposed rule, with adjustments for agency size and for agencies' existing level of maturity with SMS approaches. FTA estimated three main cost areas: (1) Developing and certifying safety plans; (2) implementing and documenting the SMS approach; and (3) associated recordkeeping. Staff time was monetized using data on wage rates and benefits in the transit industry. Over the 20-year analysis period, total costs are estimated at $324 million in present value (using a 7% discount rate), or the equivalent of $31 million per year.

As previously noted, FTA was unable to estimate the cost of actions that agencies would take to mitigate or eliminate safety problems identified through implementation of their safety plans. FTA is unaware of information sources or methods to predict with sufficient confidence the number or type of safety problems agencies will identify through implementation of their safety plans, or the number, type, and cost of actions that agencies will take to address such problems. For similar reasons, FTA also is unable to quantify the rule's benefits. FTA sought information from the public through the NPRM for this rulemaking that would assist FTA with analyzing the benefits and costs of actions by agencies to mitigate or eliminate safety problems such as the number, types, benefits, and costs of such actions, but FTA did not receive adequate data from the public to assist with this effort.

FTA calculated potential safety benefits that could be realized by bus and rail modes if safety management practices outlined in the rule are followed to identify and implement investment strategies to reduce safety risk. FTA monetized benefits using information on transit crash costs, including direct costs and USDOT-standard statistical values for fatality and injury prevention. Although many other sectors report reductions in safety incidents after adopting SMS, it is not possible to transfer that experience to the transit industry due to the differences in organizational structures and practices.

FTA was unable to quantify the rule's benefits. To estimate safety benefits, one would need information regarding the causes of safety events and the factors that may cause future events. This information is generally unavailable in the public transportation sector, given the infrequency and diversity of the type of safety events that occur. In addition, one would need information about the safety problems that agencies are likely to find through implementation of their safety plans and the actions agencies are likely to take to address those problems. Instead of quantifying benefits, FTA estimated the potential safety benefits if additional unquantified mitigation investments occur. The potential safety benefits are an estimate of the cost of bus and rail safety events over a future 20-year period. FTA extrapolated the estimate based on the cost of bus and rail incidents that occurred from 2010 to 2016, assuming no growth in the number of incidents in the future.

The benefits of SMS primarily will result from mitigating actions. As previously stated, FTA could not account for the benefits and costs of such actions in this analysis. FTA has not estimated the benefits of implementing SMS without mitigating actions, but expects such benefits are unlikely to be large. Estimated costs for the Public Transportation Agency Safety Plans include certain activities that likely will yield safety improvements, such as improved communication, identification of hazards, and greater employee awareness. It is plausible that these changes alone could produce reductions in safety events that surpass estimated costs.

Under the performance management framework established by MAP–21, States, MPOs, and transit providers must establish targets in key national performance areas to document expectations for future performance. Pursuant to 49 U.S.C. 5303(h)(2)(B)(ii) and 5304(d)(2)(B)(ii), States and MPOs must coordinate the selection of their performance targets, to the maximum extent practicable, with performance targets set by transit providers under 49 U.S.C. 5326 (transit asset management) and 49 U.S.C. 5329 (safety), to ensure consistency.

In the joint FTA and FHWA Planning Rule, both agencies indicate that their performance-related rules would implement the basic elements of a performance management framework, including the establishment of measures and associated target setting. Because the performance-related rules implement these elements and the difficulty in estimating costs of target setting associated with unknown measures, the joint FTA and FHWA Planning Rule did not assess these costs. Rather, FTA and FHWA proposed that the costs associated with target setting at every level would be captured in each agency's respective ''performance management'' rules. For example, in its second performance management rule NPRM, FHWA assumes that the incremental costs to States and MPOs for establishing performance targets reflect the incremental wage costs for an operations manager and a statistician to analyze performance-related data.

The RIA accompanying the joint FTA and FHWA Planning Rule captures the costs of the effort by States, MPOs, and transit providers to coordinate in the setting of State and MPO transit performance targets for state of good repair and safety. FTA believes that the cost to MPOs and States to set transit performance targets is included within the costs of coordination. FTA requested comments on this issue through this rulemaking, and it received none.

A summary of the potential benefits and costs of this rule is provided in Table 2 below.

TABLE 2—SUMMARY OF THE COSTS AND THE POTENTIAL BENEFITS IF ADDITIONAL UNQUANTIFIED MITIGATION INVESTMENTS OCCUR

	Current dollar value	7% Discounted value	3% Discounted value
Bus Events (20-Year Estimate)	$78,698,984,508	$38,413,831,624	$56,680,780,091
Rail Events (20-Year Estimate)	45,019,196,393	21,974,360,164	32,423,838,587
Total Potential Benefits (20-Year Estimate)	123,718,180,901	60,388,191,787	89,104,618,678
Qualitative Benefits	• Reduced safety incidents with mitigation actions. • Reduced delays in operations.		

TABLE 2—SUMMARY OF THE COSTS AND THE POTENTIAL BENEFITS IF ADDITIONAL UNQUANTIFIED MITIGATION INVESTMENTS OCCUR—Continued

	Current dollar value	7% Discounted value	3% Discounted value
Estimated Costs (20-Year Estimate)	602,485,710	323,732,747	450,749,898
Unquantified Costs	• Investments associated with mitigating safety risks (such as additional training, vehicle modification, operational changes, maintenance, and information dissemination).		
Estimated Cost (Annualized)	.....	30,558,081	30,297,473

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

Executive Order 13771 applies to any action considered ''significant'' under Executive Order 12866 that imposes total costs greater than zero. Actions subject to Executive Order 13771 must be offset by the elimination of existing costs associated with at least two prior regulations. This final rule is an action under Executive Order 13771 because it is considered a ''significant regulatory action'' under Executive Order 12866.

Regulatory Flexibility Act

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

The rule will affect approximately 625 small entities, most of which are small government entities and small non-profit organizations that operate public transportation systems in small-urbanized areas. Compliance costs will vary according to agency size and complexity, the extent of current SMS practices, and the extent of current asset management practices. Costs are illustrated by an example calculation for a small operator (less than one hundred non-rail vehicles in maximum revenue service) of a public transportation system that receives Formula Grants for Urbanized Areas under 49 U.S.C. 5307, for which compliance costs are approximately $20,600 per agency (this estimate excludes the cost of mitigating actions). For the sake of comparison, while transit agency operations budgets vary significantly, the average for small Section 5307 agencies is around $6.3 million per year. Thus, the estimated costs of the rule are around 0.3% of agency budgets for small Section 5307 agencies. FTA is minimizing the costs for smaller operators of public transportation systems by requiring the States in which they are located to draft and certify Public Transportation Agency Safety Plans on their behalf, unless the operator chooses to develop and certify its own plan. Additionally, to lower the costs for smaller operators of public transportation systems, FTA is adopting the SMS approach to safety, which is scalable for the specific needs of a particular transit agency. To further reduce the burdens of this final rule, FTA tailored it by eliminating a series of Safety Assurance requirements specifically for small public transportation providers. As discussed in other sections of this document, small public transportation providers only need to develop Safety Assurance procedures for performance monitoring and measurement; they would not need to develop Safety Assurances procedures for management of change and continuous improvement. FTA also eliminated certain Safety Assurance and recordkeeping requirements for all transit operators, including small public transportation providers, to minimize the rule's costs. Concurrent with today's final rule, FTA is issuing a safety plan template with instructions and considerations to assist transit agencies with the development of their plans and to help reduce the overall costs associated with that effort.

Overall, while the rule may affect a substantial number of small entities, these impacts would not be significant due to the low magnitude of the costs. Moreover, FTA has designed the rule to allow flexibility for small entities. FTA is providing additional analysis of the Regulatory Flexibility Act's application to this rule in Regulatory Impact Analysis posted to the docket.

Unfunded Mandates Reform Act of 1995

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48; codified at 2 U.S.C. 1501 *et seq.*).

Pursuant to 2 U.S.C. 1501(8), one of the purposes of the Unfunded Mandates Reform Act is to consider ''the effect of . . . Federal statutes and regulations that impose Federal intergovernmental mandates.'' The term ''Federal intergovernmental mandate'' is defined at 2 U.S.C. 658(5)(A)(i) to mean ''any provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, except . . . a condition of Federal assistance.''

Given the fact that FTA's authorizing statute at 49 U.S.C. 5329(d) makes the development and implementation of Public Transportation Agency Safety Plans a condition of FTA Federal financial assistance, and given that FTA is proposing to require transit agencies to annually certify that they have safety plans consistent with this rule as a condition of that Federal financial assistance, this rule will not impose unfunded mandates.

Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria established by Executive Order 13132, and FTA has determined that this rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act (PRA)

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. *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 the Information Collection Request abstracted below. FTA acknowledges that this rule entails the collection of information to implement the Public Transportation Agency Safety Plan requirements of 49 U.S.C. 5329(d). Specifically, an operator of a public

transportation system must do the following: (1) Develop and certify a Public Transportation Agency Safety Plan; (2) implement and document the SMS approach; and (3) associated recordkeeping. As discussed above, FTA is deferring regulatory action at this time regarding recipients of FTA financial assistance under 49 U.S.C. 5310 and/or 49 U.S.C. 5311.

FTA sought public comments to evaluate whether the proposed collection of information is necessary for the proper performance of FTA's functions, including whether the information will have practical utility; whether the estimation of the burden of the proposed information collection is accurate, including the validity of the methodologies and assumptions used; ways in which the quality, utility, and clarity of the information can be enhanced; and whether the burden can be minimized, including through the use of automated collection techniques or other forms of information technology. FTA received no public comments on these issues.

Readers should note that the information collection would be specific to each operator of a public transportation system in an effort to facilitate and record the operator's safety responsibilities and activities. The paperwork burden for each operator of a public transportation system will be proportionate to the size and complexity of its operations. For example, an operator of a rail fixed guideway system and a bus system may need to generate more documentation than an operator of a bus system only.

Also, readers should note that FTA has required rail fixed guideway public transportation systems to develop System Safety Program Plans and System Security Plans in accordance with the former regulatory requirements at 49 CFR part 659. FTA has collected information from States and State Safety Oversight Agencies regarding these plans, and FTA anticipates that operators of rail fixed guideway systems will utilize some of this documentation for purposes of developing Public Transportation Agency Safety Plans. Please see FTA's currently approved collection, 2132–0558, available at *http://www.reginfo.gov/public/do/PRAMain.*

Type of Collection: Operators of public transportation systems.

Type of Review: OMB Clearance. New 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; and (3) associated recordkeeping.

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 creation of Public Transportation Agency Safety Plans, FTA would be unable to determine each 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(14). 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. The total number of respondents is 336. This figure includes 242 respondents that are States, direct recipients, rail fixed guideway systems that receive Urbanized Area Formula Program funds under 49 U.S.C. 5307, or large bus systems that receive Urbanized Area Formula Program funds under 49 U.S.C. 5307. This figure also includes 94 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.

ESTIMATED TOTAL ANNUAL BURDEN HOURS ON RESPONDENTS

	Total responses	Burden hours per response	Total annual burden
Rail:			
Development/Certification	60	48	2,862
Implement/Document	60	1,114	66,869
Recordkeeping	60	43	2,562
Large 5307:			
Development/Certification	127	48	6,123
Implement/Document	127	760	96,581
Recordkeeping	127	42	5,298
Small 5307:			
Development/Certification	94	19	1,773
Implement/Document	625	270	168,622
Recordkeeping	625	38	23,647
States/Direct Recipients:			
Development/Certification	55	40	2,206
Implement/Document	55	0	0
Recordkeeping	55	0	0
Grand Total	336	2,422	376,543

FTA calculated costs using the same methodology that it used for the Regulatory Impact Analysis. FTA summarized the PRA costs in the table below. The total PRA cost of the rule is approximately $33 million per year averaged over the first three years, which is an average of $98,791 per respondent per year, or $38,256 per response per year.

PRA costs	Year 1	Year 2	Year 3	Total
Rail:				
Development/Certification	$733,863	$86,858	$86,858	$907,579

PRA costs	Year 1	Year 2	Year 3	Total
Implement/Document	9,366,439	6,651,817	6,651,817	22,670,072
Recordkeeping	1,179,917	1,179,917	1,179,917	3,539,750
Large 5307:				
Development/Certification	1,624,085	137,866	137,866	1,899,818
Implement/Document	9,235,788	6,593,697	6,593,697	22,423,182
Recordkeeping	1,830,066	1,830,066	1,830,066	5,490,199
Small 5307:				
Development/Certification	436,058	48,929	48,929	533,917
Implement/Document	12,166,099	9,118,251	9,118,251	30,402,601
Recordkeeping	3,565,974	3,565,974	3,565,974	10,697,922
States/Direct Recipients:				
Development/Certification	425,782	20,045	20,045	465,871
Implement/Document	0	0	0	0
Recordkeeping	183,333	183,333	183,333	550,000

National Environmental Policy Act

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), requires Federal agencies to analyze the potential environmental effects of their proposed actions either through a Categorical Exclusion, an Environmental Assessment, or an Environmental Impact Statement. This rule is categorically excluded under FTA's NEPA implementing regulations at 23 CFR 771.118(c)(4), which covers planning and administrative activities that do not involve or lead directly to construction, such as the promulgation of rules, regulations, directives, and program guidance. FTA has determined that no unusual circumstances exist and that this Categorical Exclusion is applicable.

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

Executive Order 12898 directs every Federal agency to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on minority populations and low-income populations. The DOT's environmental justice initiatives accomplish this goal by involving the potentially affected public in developing transportation projects that fit harmoniously within their communities without sacrificing safety or mobility. FTA has developed a program circular addressing environmental justice in transit projects, Circular 4703.1, *Environmental Justice Policy Guidance for Federal Transit Administration Recipients.* The Circular is designed to provide a framework to assist recipients as they integrate principles of environmental justice into their transit decision-making process. The Circular contains recommendations for State DOTs, MPOs, and transit providers on (1) how to fully engage environmental justice populations in the transportation decision-making process; (2) how to determine whether environmental justice populations would be subjected to disproportionately high and adverse human health or environmental effects of a public transportation project, policy, or activity; and (3) how to avoid, minimize, or mitigate these effects. This rule will not cause adverse environmental impacts, and as a result, minority populations and low-income populations will not be disproportionately impacted.

Executive Order 12630 (Taking of Private Property)

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

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 rule will not cause an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175 (Nov. 6, 2000), and has determined 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.

Notwithstanding the above, FTA notes that it conducted extensive outreach with tribes throughout this rulemaking. Specifically, on February 12, 2016, FTA conducted public outreach for tribes and hosted a Tribal Technical Assistance Workshop wherein FTA presented its proposed rule and responded to numerous technical questions from tribes. FTA subsequently delivered the same presentation during a webinar series open to all members of the public on February 24, March 1, March 2, and March 3. On March 7, FTA delivered the same presentation at an outreach session hosted by the National Rural Transit Assistance Program, which also was open to all members of the public. During each of these public outreach sessions and the public webinar series, FTA received and responded to numerous technical questions regarding the NPRM. FTA recorded the presentations, including the question and answer sessions, and made available the following documents on the public docket for this rulemaking (Docket FTA–2015–0021): (1) FTA's PowerPoint Presentation from the public outreach sessions and public webinar series (*https://www.regulations.gov/document?D=FTA-2015-0021-0012*); (2) a written transcript of FTA's public webinar of March 1, 2016 (*https://www.regulations.gov/document?D=FTA-2015-0021-0010*); (3) a consolidated list of every Question and FTA Answer from the public outreach sessions and public webinar series (*https://www.regulations.gov/document?D=FTA-2015-0021-0041*); and (4) the results of polling questions from FTA's public outreach sessions (*https://www.regulations.gov/document?D=FTA-2015-0021-0011*). FTA also uploaded onto YouTube an audiovisual recording of its webinar

from March 1, 2016. The video is available at the following link: *https://www.youtube.com/watch?v=FBj5HRatwGA&feature=youtu.be.*

FTA also notes that, in advance of publishing an NPRM, FTA sought comment from the transit industry, including tribes, on a wide range of topics pertaining to safety and asset management through an ANPRM. In the NPRM, FTA asked specific questions about how today's rule should apply to tribal recipients and subrecipients of Section 5311 funds.

In light of the comments that FTA received from tribes in response to the NPRM, and in an effort to further reduce the burdens of this final rule, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds, including tribal transit operators. FTA is deferring action pending further evaluation of information and safety data to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

Executive Order 13211 (Energy Effects)

FTA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that this rule is not a significant energy action under that Executive Order because it 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.

Privacy Act

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

Statutory/Legal Authority for This Rulemaking

FTA is issuing this final rule under the authority of section 20021 of MAP–21, which requires public transportation agencies to develop and implement comprehensive safety plans. This authority was reauthorized under the FAST Act. The authority is codified at 49 U.S.C. 5329(d).

Regulation Identification Number

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

List of Subjects in 49 CFR Part 673

Mass transportation, Safety.

K. Jane Williams,

Acting Administrator.

■ For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5329(d) and 5334, and the delegations of authority at 49 CFR 1.91, FTA hereby amends Chapter VI of Title 49, Code of Federal Regulations by adding part 673 to read as follows:

PART 673—PUBLIC TRANSPORTATION AGENCY SAFETY PLANS

Subpart A—General

Subpart B—Safety Plans

Subpart C—Safety Management Systems

Subpart D—Safety Plan Documentation and Recordkeeping

Authority: 49 U.S.C. 5329(d) and 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.

§ 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:

Accident means an Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision of public transportation vehicles; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.

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

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.

Equivalent Authority 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.

Event means any Accident, Incident, or Occurrence.

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.

Incident means an event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.

Investigation means the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.

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.

Occurrence means an Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a transit agency.

Operator of a public transportation system means a provider of public transportation as defined under 49 U.S.C. 5302(14).

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 the Federal Transit Administration (FTA).

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 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, or any such system in engineering or construction. Rail fixed guideway public transportation systems 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.

Risk means the composite of predicted severity and likelihood of the potential effect of a hazard.

Risk mitigation means a method or methods to eliminate or reduce the effects of hazards.

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 Management Policy means a transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.

Safety Management System (SMS) means the formal, top-down, 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 risks and hazards.

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

Safety Risk Management means a process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.

Serious injury means any injury which:

(1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received;

(2) Results in a fracture of any bone (except simple fractures of fingers, toes, or noses);

(3) Causes severe hemorrhages, nerve, muscle, or tendon damage;

(4) Involves any internal organ; or

(5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

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 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 the regulations set forth in 49 CFR part 674.

Transit agency means an operator of a public transportation system.

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.

Subpart B—Safety Plans

§ 673.11 General requirements.

(a) A transit agency must, within one calendar year after July 19, 2019, 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 the agency's Board of Directors, or an Equivalent Authority.

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

(3) The Public Transportation Agency Safety Plan must include performance targets based on the safety performance measures established under the National Public Transportation Safety Plan.

(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 an emergency preparedness and response plan or procedures that addresses, at a minimum, the assignment of employee 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.

(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 D 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 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) Any rail fixed guideway public transportation system that had a System Safety Program Plan compliant with 49 CFR part 659 as of October 1, 2012, may keep that plan in effect until one year after July 19, 2019.

(f) 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 agency safety plans for those modes of service.

§ 673.13 Certification of compliance.

(a) Each transit agency, 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 one year after July 19, 2019. A State Safety Oversight Agency must review and approve a Public Transportation Agency Safety Plan developed by rail fixed guideway 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 transit agency, direct recipient, or State must certify its compliance with this part.

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

(a) A State or transit agency must make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process.

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

Subpart C—Safety 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 agency's safety objectives.

(b) A transit agency must establish and implement a process that allows employees to report safety conditions to senior management, protections for employees who report safety conditions to senior management, and a description of employee behaviors that may result in disciplinary action.

(c) The safety management policy must be communicated throughout the agency's organization.

(d) The transit agency must establish the necessary authorities, accountabilities, and responsibilities for the management of safety amongst the following individuals within its organization, as they relate to the development and management of the transit agency's Safety Management System (SMS):

(1) *Accountable Executive.* The transit agency must identify an Accountable Executive. The Accountable Executive is accountable for ensuring that the agency's SMS is effectively implemented, throughout the agency's public transportation system. The Accountable Executive is accountable for ensuring action is taken, as necessary, to address substandard performance in the agency's SMS. The Accountable Executive may delegate specific responsibilities, but the ultimate accountability for the transit agency's safety performance cannot be delegated and always rests with the Accountable Executive.

(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 an 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) *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 an agency's SMS.

(4) *Key staff.* A transit agency may designate key staff, groups of staff, or committees to support the Accountable Executive, Chief Safety Officer, or SMS Executive in developing, implementing, and operating the 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 consequences of the hazards.

(2) A transit agency must consider, as a source for hazard identification, data and information provided by an oversight authority and the FTA.

(c) *Safety risk assessment.* (1) A transit agency must establish methods or processes to assess the safety risks associated with identified safety hazards.

(2) A safety risk assessment includes an assessment of the likelihood and severity of the consequences of the hazards, including existing mitigations, and prioritization of the hazards based on the safety risk.

(d) *Safety risk mitigation.* A transit agency must establish methods or processes to identify mitigations or strategies necessary as a result of the agency's safety risk assessment to reduce the likelihood and severity of the consequences.

§ 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 paragraph (b) 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 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;

(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.

(2) If a transit agency identifies any deficiencies as part of its safety performance assessment, then the transit agency must develop and carry out, under the direction of the Accountable Executive, a plan to address the identified safety deficiencies.

§ 673.29 Safety promotion.

(a) *Competencies and training.* A transit agency must establish and implement a comprehensive safety training program for all agency employees and contractors directly responsible for safety in the agency's public transportation system. The training program must include refresher training, as necessary.

(b) *Safety communication.* A transit agency must communicate safety and safety performance information throughout the agency's organization that, at a minimum, conveys information on hazards and safety risks relevant to employees' roles and responsibilities and informs employees of safety actions taken in response to reports submitted through an employee safety reporting program.

Subpart D—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 Safety Management System (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 agency uses to carry out its Public Transportation Agency Safety Plan. These documents must be made available upon request by the Federal Transit Administration or other Federal entity, or a 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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