



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: Notice of Proposed Rulemaking (NPRM): request for comments

SUMMARY: The Federal Transit Administration (FTA) is proposing requirements for Public Transportation Agency Safety Plans as authorized by Section 20021 of the Moving Ahead for Progress in the 21st Century Act (MAP-21). This proposed rule would require operators of public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53 to develop and implement Public Transportation Agency Safety Plans based on the Safety Management System approach. Development and implementation of agency safety plans will help ensure that public transportation systems are safe nationwide. FTA seeks public comments on all aspects of this proposed rule, including information related to its benefits and costs, as well as alternative approaches that may more cost-effectively satisfy the statutory requirements and help ensure the safety of the nation's public transportation system.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Any comments filed after this deadline will be considered to the extent practicable.

FTA will hold webinars to explain the proposed rule. Interested stakeholders should check FTA's website for days and times of webinars: <http://www.fta.dot.gov/calendar.html>.

Additionally, FTA will hold a listening session on Wednesday, March 16, 2016, in conjunction with the American Public Transportation Association's Legislative Conference. The listening session will be held at the JW Marriott, 1331 Pennsylvania Avenue NW, Washington, DC 20004 at 9:30 a.m.

ADDRESSES: Please submit your comments by only one of the following methods, identifying your submission by Docket Number (FTA-2015-0021) or Regulatory Identification Number (RIN) (2132-AB23).

- Federal eRulemaking Portal: Submit electronic comments and other data to <http://www.regulations.gov>.
- U.S. Mail: Send comments to Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building, Ground Floor, at 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations, U.S. Department of Transportation, at (202) 493-2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket Number (FTA-2015-0021 for this notice or Regulation Identifier Number (RIN) 2132-AB23), at the beginning of your comments. If sent by mail, submit two copies of your comments. Due to

security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the United States Department of Transportation's (DOT) Privacy Act system of records notice for the DOT Federal Docket Management System (FDMS) in the **Federal Register** published on December 29, 2010 (75 FR 82132) at <http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf>.

FOR FURTHER INFORMATION CONTACT:

For program matters, contact Brian Alberts, Office of Transit Safety and Oversight, (202) 366-1783 or Brian.Alberts@dot.gov. For legal matters, contact Michael Culotta, Office of Chief Counsel, (212) 668-2178 or Michael.Culotta@dot.gov.

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

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I. Executive Summary

A. Purpose of Regulatory Action

The public transportation industry remains among the safest surface transportation modes in terms of total reported safety events, fatalities, and injuries.¹ Nonetheless, given the complexity of public transportation service, the condition and performance of transit equipment and facilities, turnover in the transit workforce, and the quality of procedures, training, and supervision, the public transportation industry remains vulnerable to catastrophic accidents.

This Notice of Proposed Rulemaking (NPRM) proposes 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 recently was reauthorized by the Fixing America’s Surface Transportation Act (Pub. L.

¹ See United States Department of Transportation, Bureau of Transportation Statistics, “Table 2-1: Transportation Fatalities by Mode 1960-2013,” at http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/publications/national_transportation_statistics/html/table_02_01.html mfd; and “Table 1-40: U.S. Passenger Miles (Millions) 1960-2013,” at http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/publications/national_transportation_statistics/html/table_01_40.html.

114-94; December 4, 2015) and codified at 49 U.S.C. 5329(d), to strengthen the safety of public transportation systems that receive Federal financial assistance under Chapter 53. This NPRM proposes requirements for the adoption of Safety Management Systems (SMS) principles and methods; the development, certification, and update of Public Transportation Agency Safety Plans; and the coordination of Public Transportation Agency Safety Plan elements with other FTA programs and proposed rules, as specified in 49 U.S.C. 5329.

B. Statutory Authority

In Section 20021 of MAP-21, 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. FTA also is required to issue a rule designating certain Urbanized Area Formula Program recipients under 49 U.S.C. 5307 that may have their Public Transportation Agency Safety Plans drafted or certified by a State. 49 U.S.C. 5329(d)(3)(B). Further, FTA must allow States to draft and certify Public Transportation Agency Safety Plans for Rural Area Formula Program recipients and subrecipients under 49 U.S.C. 5311. 49 U.S.C. 5329(d)(3)(A).

C. Summary of Major Provisions

The proposed rule would add a new Part 673, “Public Transportation Agency Safety Plans,” to Title 49 of the Code of Federal Regulations. The rule would implement the requirements of 49 U.S.C. 5329(d).

One year after FTA issues a final rule to carry out Section 5329(d), each State, local governmental authority, and 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 and implemented a comprehensive Public Transportation Agency Safety Plan. 49 U.S.C. 5329(d)(1). FTA proposes that large transit providers that are direct recipients of Section 5307 funds would develop their own plans, have the plans approved by their Boards of Directors (or equivalent authority), and certify to FTA that those plans are in place. FTA also proposes that transit providers which receive funds under the Enhanced Mobility of Seniors and Individuals with Disabilities Program authorized by 49 U.S.C. 5310 (which tend to be much smaller transit providers) and transit providers that receive funds under the Rural Area Formula Program authorized by 49 U.S.C. 5311, as well as small public transportation providers as defined in this NPRM, may have their plans drafted or certified by the State in which they operate.

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

- Include a Safety Management System consisting of four main pillars: (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, and the state of good repair standards established in the regulations that implement the National Transit Asset Management System and are included in 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)).

FTA proposes that 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 its State Safety Oversight Rule at 49 CFR part 659. 49 CFR 673.11(a)(6).

A transit agency would be able to develop one Public Transportation Agency Safety Plan for all modes of service, or it may develop a Public Transportation Agency Safety Plan for each mode of service not subject to safety regulation by another Federal entity. 49 CFR 673.11(b). A transit agency would be required to 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 compliant with 49 CFR Part 659 as of October 1, 2012, would be able to keep that plan in effect until one year after the effective date of the final rule. 49 CFR 673.11(e). Agencies that operate passenger ferries regulated by the United States Coast Guard (USCG) or commuter rail service regulated by the Federal Railroad Administration (FRA) would not be required to develop agency safety plans for those modes of service. 49 CFR 673.11(f).

A State or transit agency would be required to make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process, and to the maximum extent practicable, a State or transit agency would be required to coordinate

with States and Metropolitan Planning Organizations in the selection of State and MPO safety performance targets. 49 CFR 673.15.

On an annual basis, a transit agency or State would be required to certify its compliance with this rule. 49 CFR 673.13.

D. Costs and Benefits (Table)

FTA has determined that this proposed rule likely is “economically significant” under Executive Order 12866, in that it may lead to transit agencies making investment and prioritization decisions related to mitigation of safety risks that would result in economic impacts that could exceed \$100 million in a year. However, as discussed in greater detail below, FTA was unable to quantify the potential impacts of this rule beyond the costs for transit agencies to develop and implement Public Transportation Agency Safety Plans. FTA was able to estimate costs of approximately \$86 million in the first year, and \$70 million per year thereafter. These costs result from developing and certifying safety plans, documenting the SMS approach, implementing SMS, and associated recordkeeping. The estimated costs do not include 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. The annualized cost of proposed requirements is estimated to be approximately \$71 million.

FTA could not estimate the benefits of the proposed rule. To estimate safety benefits, one would need to understand the exact causes of the accidents and the factors that may cause future accidents. This information is generally unknown in this sector, given the infrequency and diversity of the type of safety incidents 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, FTA conducted a breakeven analysis that compares the estimated costs (absent the cost of mitigations beyond those specifically required by the rule such as training) to a pool of potential safety benefits. The pool of potential safety benefits is an estimate of the cost of all bus and rail incidents over a future 20-year period. The estimate is an extrapolation of the total cost of bus and rail incidents that occurred from 2010 to 2014.

As Table 1 below shows, the amount of incident reduction needed to breakeven with estimated costs is low. However, benefits of SMS will primarily result from mitigating actions, which are largely not accounted for in this analysis. FTA has not estimated the benefits of implementing SMS 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. It is plausible that these activities alone could produce accident reductions that surpass the breakeven level, though even greater reductions could be achieved in concert with other mitigating actions.

This analysis assumes that benefits are realized from reducing both rail and bus incidents after adjusting for the estimated breakeven threshold for the proposed State Safety Oversight and Safety Training Rules (RINs 2132-AB19 and 2132-AB25 respectively), to which the rail agencies also will be subject when finalized.

Table 1: Summary of Breakeven Analysis²

	Current Dollar Value	7% Discounted Value	3% Discounted Value
Bus Incidents (20-Year Estimate)	\$86,999,489,120	\$40,894,178,605	\$58,084,884,054
Rail Incidents (20-Year Estimate)	\$37,680,410,444	\$17,711,706,703	\$25,157,185,334
Total Pool of Benefits (20-Year Estimate)	\$124,679,899,564	\$58,605,885,309	\$83,242,069,388
Estimated Costs (20-Year Estimate)	\$1,407,680,883	\$752,319,890	\$1,050,876,643
Benefits and Costs of Mitigating Actions	Not Estimated	Not Estimated	Not Estimated
Estimated Cost (Annualized)	—	\$71,013,675	\$70,635,417
Breakeven Threshold Including Bus and Rail	—	1.28%	1.26%

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 NPRM addresses the Public Transportation Agency Safety Plan within the Public Transportation Safety Program authorized under 49 U.S.C. 5329.

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 will issue rules and guidance to carry

² The costs in this table and the breakeven threshold do not account for actions by agencies to mitigate or eliminate safety risks identified through implementation of their safety plans (beyond those specifically required by the rule, such as training).

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 the National Public Transportation Safety Plan, the Safety Certification Training Program, and the Public Transportation Agency Safety Plans. 78 FR 61251. Through the ANPRM, FTA also sought public comment on transit asset management, given FTA's statutory directive to develop and implement a Transit Asset Management System under 49 U.S.C. 5326. FTA is addressing the National Public Transportation Safety Plan, the Safety Certification Training Program, and the Transit Asset Management System through separate rulemakings and guidance documents. Each of these programs will contribute to the establishment of a comprehensive framework that will help to ensure public transportation systems are safe nationwide.

In most instances, the requirements of the Public Transportation Agency Safety Plans will apply to each recipient and subrecipient of FTA funding, regardless of the mode(s) of transit provided. However, two provisions limit FTA's regulatory jurisdiction. First, FTA is prohibited from establishing safety performance standards for rolling stock that is already regulated by another Federal agency. 49 U.S.C. 5329(b)(2)(C)(i). Second, the requirements of the Public Transportation Agency Safety Plans will not apply to rail transit systems to the extent that they are already subject to regulation by FRA. 49 U.S.C. 5329(e)(1) and (e)(2). Further, to the extent that any other Federal agency already regulates the safety of a particular mode of public transportation, FTA does not intend to publish duplicative, inconsistent, or conflicting regulations.

Today's proposed rule for establishing and certifying Public Transportation Agency Safety Plans takes into account the size, complexity, and operating environments of applicable recipients. FTA proposes the incorporation of SMS principles and methods to support Public Transportation Agency Safety Plan development and implementation. SMS provides transit agencies flexibility in establishing processes and activities to address safety risks within their agencies in a scalable manner.

Until FTA issues a final rule to carry out Section 5329(d), existing system safety and security program plans required of rail fixed guideway systems under 49 CFR part 659 will remain in effect. 49 U.S.C. 5329(d)(2). Within one year of the Public Transportation Agency Safety Plan final rule's effective date, all operators of public transportation systems that receive Chapter 53 funds would be required to draft and certify their Public Transportation Agency Safety Plans, unless a State is otherwise required to do so on behalf of the public transportation provider, in which case, the State also would have one year after the rule's effective date to draft and certify its Public Transportation Agency Safety Plans. Public transportation providers that operate multiple modes of transit service would have the option of preparing separate Public Transportation Agency Safety Plans for each mode, or preparing one Public Transportation Agency Safety Plan for all modes operated by the provider. If separate safety plans are developed for multiple modes under FTA's jurisdiction, each Public Transportation Agency Safety Plan (for example, one for bus service and one for rail transit service) must comply with the final rule.

A. History

Prior to MAP-21, FTA's authority to require safety plans was limited to rail transit agencies subject to FTA's State Safety Oversight Rule. Under existing 49 CFR part 659, any State that has a rail fixed guideway system not subject to FRA regulation is required to establish a state safety oversight agency, and each state safety oversight agency must require each rail fixed guideway system within its jurisdiction to develop a system safety and a system security program plan. These plans are reviewed and approved by state safety oversight agencies. 49 CFR 659.17. MAP-21 authorized significant changes to FTA's State Safety Oversight Program, and FTA is undergoing a rulemaking to effectuate those changes. The history of 49 CFR part 659, and its relationship to the Public Transportation Safety Program and today's notice, can be viewed in the NPRM for 49 CFR part 674, which is the proposed new location for the State Safety Oversight Rule in the Code of Federal Regulations. See 80 FR 11002, Feb. 27, 2015 (<http://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03841.pdf>).

In addition to requiring safety and security plans for rail fixed guideway systems, FTA established and currently manages a voluntary Bus Safety Program that has encouraged bus transit agencies to develop system safety program plans to implement safety program activities. The voluntary program has been very well received and has promoted coordination among FTA, the Community Transportation Association of America (CTAA), and the American Public Transportation Association (APTA) to provide technical assistance to bus transit agencies to support system safety program plan development and implementation. Through FTA's Bus Safety Program, more States have recommended that their bus transit agencies develop safety

plans using templates provided by FTA through its safety website. In addition, a number of States require both rail and bus transit agencies to develop system safety program plans.

The aforementioned efforts demonstrate that many transit agencies embrace the concept and benefits of developing safety plans in order to document their safety program activities, as well as ensure commitment from agency executives who often review and sign the safety plan or policy statement.

Pursuant to 49 U.S.C. 5329(d), Public Transportation Agency Safety Plans must be drafted and certified by each transit agency regardless of mode, with the exception of transit providers that receive funds under 49 U.S.C. 5311 (Section 5311) and small public transportation providers as defined in this NPRM, which may have their plans drafted and certified by the State. In addition to this statutory requirement, FTA is proposing that the State must draft and certify Public Transportation Agency Safety Plans for operators of public transportation that receive funds under 49 U.S.C. 5310 (Section 5310), in an effort to alleviate the regulatory, administrative, and financial burdens on the small recipients in this program. FTA proposes that a Section 5310, Section 5311, or small public transportation provider may opt to draft and certify their own plan. Today's proposed rule helps advance the regulatory steps taken by FTA and States previously and the voluntary efforts taken by industry associations, States, and transit providers to improve transit safety.

B. General Requirements

Pursuant to 49 U. S.C. 5329(d)(1), each Public Transportation Agency Safety Plan must include, at minimum:

- A requirement that the board of directors, or equivalent entity, approve the plan and any updates;
- Methods for identifying and evaluating safety risks throughout all elements of the recipient's 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 the plan;
- Performance targets based on the safety performance criteria and state of good repair standards set out in the National Public Transportation Safety Plan;
- Assignment of an adequately trained Safety Officer who reports directly to the general manager, president, or equivalent officer of the recipient; and
- A comprehensive staff training program for operations personnel and personnel directly responsible for safety that includes the completion of a safety training program and continuing safety education and training.

C. The Safety Management Systems (SMS) Approach

Public transportation is one of the safest modes of travel.³ However, public transportation incidents occur, and the potential for catastrophic events remains. In recent years, there have been several major transit accidents that resulted in fatalities, injuries, and significant property damage. From 2004 to 2013, the National Transportation Safety Board (NTSB)

³ See United States Department of Transportation, Bureau of Transportation Statistics, "Table 2-1: Transportation Fatalities by Mode 1960-2013," available at http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/publications/national_transportation_statistics/html/table_02_01.html_mfd; and "Table 1-40: U.S. Passenger Miles (Millions) 1960-2013," available at http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/publications/national_transportation_statistics/html/table_01_40.html.

reported on nine transit accidents that, collectively, resulted in 15 fatalities, 297 injuries, and over \$30 million in property damages. During that same period, transit agencies reported over 40,000 incidents, approximately 2,000 fatalities, and over 76,000 injuries to FTA's National Transit Database.⁴

The NTSB has investigated a number of these accidents and has issued reports identifying the probable causes and contributing factors, including deficiencies in the training and supervision of employees;⁵ deficiencies in the maintenance of equipment and infrastructure;⁶ and deficiencies in safety management and oversight, such as weaknesses in transit agencies' safety rules and procedures,⁷ lack of safety cultures within transit agencies,⁸ and lack of adequate oversight by State and Federal agencies.⁹ The deficiencies identified by NTSB will continue to plague the transit industry as infrastructure ages, skilled employees retire, and transit agencies continue to endure financial stresses. Through implementation of the Public Transportation Safety Program, including today's Public Transportation Agency Safety Plan proposed rulemaking, FTA's goal is to address these deficiencies and improve the safety of public transportation.

⁴ National Transit Database, Major-Only Time Series, <http://www.ntdprogram.gov/ntdprogram/data.htm>.

⁵ For example, the National Transportation Safety Board (NTSB) issued Safety Recommendation R-15-010 for the Washington Metropolitan Area Transit Authority's (WMATA) Metrorail incident on January 12, 2015, and NTSB issued Safety Recommendations R-15-20 and R-15-021 for the Chicago Transit Authority's (CTA) incident on March 24, 2015. NTSB's reports for these recommendations are pending.

⁶ NTSB issued Safety Recommendation R-15-008 for the WMATA Metrorail incident on January 12, 2015; NTSB's report for this incident is pending. NTSB also issued several Safety Recommendations in Report RAR-10/02.

⁷ NTSB issued Safety Recommendations R-15-009 and R-15-011 for the WMATA Metrorail incident on January 12, 2015; NTSB's report for these recommendations is pending. NTSB also issued several Safety Recommendations in Reports RAB-15-02, RAR-12/04, and RAR-10/02.

⁸ NTSB cited safety culture concerns in Reports SIR-14/03 and RAR-07/02.

⁹ NTSB issued Safety Recommendation R-15-007 for the WMATA Metrorail incident on January 12, 2015, and Safety Recommendations R-15-018 and R-15-019 for the CTA incident on March 24, 2015. NTSB's reports for these recommendations are pending. NTSB also issued several safety recommendations in Reports RAR-12/04, RAR-11/01, and RAR-10/02.

In order to advance a comprehensive approach to safety decision-making, FTA is proposing to adopt an SMS approach to developing and implementing the Public Transportation Safety Program, and specifically the Public Transportation Agency Safety Plans. Following a recommendation from FTA's designated Federal Advisory Committee—the Transit Advisory Committee for Safety (TRACS)¹⁰—on May 13, 2013, the FTA Administrator issued a Dear Colleague Letter¹¹ and answers to Frequently Asked Questions (FAQs)¹² to the transit industry stating FTA's intention to adopt the SMS approach as the basis for its initiatives to improve the safety of public transportation. This NPRM seeks comment on proposed SMS processes and activities and their documentation in the Public Transportation Agency Safety Plans. This NPRM also seeks public comments on alternatives to requiring adoption of SMS, such as promoting adoption of SMS through guidance or technical assistance (while also promulgating regulations that satisfy the statutory requirements of 49 U.S.C. 5329(d)).

Safety management is based on the fact that safety is not an absolute condition—there always will be hazards and risks in public transportation. However, an approach of primarily reacting to accidents and incidents by prescribing measures to prevent recurrence alone will not contribute to sustaining and improving public transportation safety.

Modern SMS practices that systematically and proactively identify the factors that contribute to unsafe events, and prevent or minimize the likelihood of their occurrence, have proven effective in other transportation sectors. Such practices call for setting safety goals and objectives, defining clear levels of accountability and responsibility for safety, establishing

¹⁰ Implementing Safety Management System Principles in Rail Transit Agencies, available at http://www.fta.dot.gov/documents/TRACS_Ltr_Rpt_SMS_fnl.pdf.

¹¹ The Dear Colleague Letter is available at http://www.fta.dot.gov/newsroom/12910_15391.html.

¹² The SMS FAQs are available at http://www.fta.dot.gov/tso_15177.html.

proactive approaches to identifying hazards and managing safety risks in day-to-day activities, establishing safety risk-based resource allocation, monitoring and evaluating performance towards goals, and continuous learning and improvement. SMS is a significant improvement over more “reactive” safety activities, which tend to focus on discovering and mitigating the cause of an accident only after that accident has occurred.

SMS integrates safety into all aspects of a transit system’s activities, from planning to design, to construction, to operations, and to maintenance. SMS builds on the public transportation industry’s three decades of experience with system safety by bringing management processes, integrated data analysis, and organizational culture more squarely into the industry’s overall risk management framework. SMS is a management approach that provides processes that ensure each public transportation agency, no matter its size or service environment, has the necessary organizational structures, accountabilities, policies, and procedures in place to direct and control resources to manage safety optimally. When fully applied, the SMS approach provides a set of decision-making tools that allow transit agencies to prioritize safety when making informed operating and capital investment decisions.

SMS is comprised of four essential components: (1) Safety Management Policy, (2) Safety Risk Management, (3) Safety Assurance, and (4) Safety Promotion. Each of these components, or “pillars,” is consistent with 49 U.S.C. 5329(d). The table below illustrates the connection between each of the statutory requirements for safety plans and the pillars of SMS.

Table 2: Crosswalk Between the Statutory Requirements for Safety Plans and the Pillars of SMS

Statutory Provision	Safety Plan Must Include:	SMS Pillar
49 U.S.C. § 5329(d)(1)(A)	“a requirement that the board of directors (or equivalent entity) of the recipient approve the agency safety plan and any updates to the agency safety plan”	Safety Management Policy
49 U.S.C. § 5329(d)(1)(B)	“methods for identifying and evaluating safety risks throughout all elements of the public transportation system of the recipient”	Safety Risk Management
49 U.S.C. § 5329(d)(1)(C)	“strategies to minimize exposure of the public, personnel, and property to hazards and unsafe conditions”	Safety Risk Management
49 U.S.C. § 5329(d)(1)(D)	“a process and timeline for conducting an annual review and update of the safety plan of the recipient”	Safety Assurance
49 U.S.C. § 5329(d)(1)(E)	“performance targets based on the safety performance criteria and state of good repair standards”	Safety Management Policy
49 U.S.C. § 5329(d)(1)(F)	“assignment of an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the recipient”	Safety Management Policy
49 U.S.C. § 5329(d)(1)(G)	“a comprehensive staff training program for the operations personnel directly responsible for safety of the recipient”	Safety Promotion

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 criteria established in the National Public Transportation Safety Plan, and state of good repair standards based on the definition of that term established under the National Transit Asset Management System Rule. See 49 U.S.C. 5329(d)(1)(E).

Pursuant to the statutory requirements at 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 would 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. Additionally, FTA proposes to require a transit agency to perform hazard

identification activities on those assets that do not meet the state of good repair standards established under the National Transit Asset Management System.

The statutory requirements at 49 U.S.C. 5329(d)(1)(B), (C), and (D) also encompass the requirements of the third component of SMS—Safety Assurance. Safety Assurance requires an organization to monitor the effectiveness of safety risk mitigations established under Safety Risk Management. Safety Assurance is also designed to ensure that the organization meets or exceeds its safety objectives through the collection, analysis, and assessment of data about the organization’s performance. One of the keys elements of Safety Assurance is a regular review and update of a transit agency’s SMS and overall safety plan to ensure their effectiveness.

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 for a comprehensive staff training program for operations personnel and personnel directly responsible for safety. 49 U.S.C. 5329(d)(1)(G).

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 size, complexity, and uniqueness of the transit system. SMS provides such an approach. SMS is flexible, and can be scaled to the mode, size, and complexity of any transit operator, in any environment—urban, suburban, or rural. The extent to which the transit agency’s SMS processes, activities, and tools are used and documented will vary from agency to agency. For a small bus operation, SMS is going to be simple and straightforward. For a larger transit agency with hundreds or thousands of employees and multiple modes, SMS is going to be more complex.

SMS scales itself to reflect the size and complexity of the operation, but the fundamental accountability remains the same. SMS establishes the accountabilities, processes and activities necessary to ensure that appropriate information rises to the highest levels of the organization to support decision-making related to safety risk. However, each transit agency will determine the level of detail necessary to identify and evaluate its own unique safety risks and target its resources to manage those safety risks.

Other modes of transportation, such as the aviation and rail industries, have adopted SMS as the foundation and framework for their safety systems given the success of SMS in preventing and mitigation safety outcomes. For example, the Federal Aviation Administration (FAA) recently adopted SMS and promulgated a regulation which requires certain air carriers to develop safety plans based on the principles of SMS.¹³ In the rail industry, FRA is proposing to adopt SMS in its rulemaking which would require railroads to develop system safety program plans, largely based on the principles of SMS, under 49 CFR part 270.

There is also preliminary evidence of the success of SMS as an effective method of mitigating and preventing safety outcomes in other modes of transportation in other parts of the world. For example, Transport Canada has noted that, in the area of rail safety:

[N]ot only have qualitative benefits been identified, but statistics reflect a correlation between the introduction of the safety management system approach in 2001 and improved safety statistics. Statistical analysis . . . indicates a downward trend in accident rates . . . over the past 10 years. Moreover, since 2007, train accidents have decreased by 23% and passenger train accidents have

¹³ See FAA's Final Rule, "Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders," 14 CFR Parts 5 and 119, 80 FR 1308, Jan. 8, 2015.

decreased by 19%. This decrease can be linked to increased levels of consultation and communication between the three largest railway companies and Transport Canada, enhanced focus on safety management systems, and a variety of new safety initiatives related to operations and infrastructure. It is therefore expected that updates to safety management systems would help further reduce the number of accidents, fatalities and injuries, and property damage.¹⁴

In short, FTA believes that SMS is the most effective way of preventing and mitigating safety events in the transit industry. Notwithstanding the above, FTA seeks comments from the public on alternative regulatory requirements, potentially in combination with non-mandatory guidance, that would satisfy the statutory requirements of 49 U.S.C. 5329(d) and that may more cost-effectively improve the safety of the nation's public transportation systems. FTA specifically invites the public to provide information to allow the comparison of the benefits and costs of FTA's proposed requirements to alternative approaches.

D. The Role of the Accountable Executive with Public Transportation Agency Safety Plans and Transit Asset Management Plans

Each transit agency has a process by which it budgets, allocates funds, and plans for the future. In most cases, this decision-making process is led by a President, General Manager, or Chief Executive Officer who formulates and proposes capital and operating budgets. For purposes of the Public Transportation Agency Safety Plan and Transit Asset Management Plan rules, FTA is proposing to require transit agencies to identify these individuals as the "Accountable Executives" for those agencies. The Accountable Executive would be responsible

¹⁴ See <http://gazette.gc.ca/rp-pr/p2/2015/2015-02-25/html/sor-dors26-eng.php>.

approving the transit agency's Public Transportation Agency Safety Plan, and any updates thereto. The Accountable Executive would be responsible for the implementation and maintenance of the SMS. This Accountable Executive also would be responsible for making decisions over the human and capital resources needed to develop and maintain the agency's Transit Asset Management Plan required by 49 U.S.C. 5326. FTA intends that the individual who is responsible for making decisions related to the condition of the agency's capital assets, particularly whether those assets are in a state of good repair, is also responsible for implementing the agency's SMS and determining whether those assets are presenting any safety risks. This individual must have the ability to make budgetary, operational, and capital program decisions to address these competing needs and issues.

Ultimately, the decisions made by the Accountable Executive regarding the proposed capital and operating budgets typically are presented for approval to the transit agency's Board of Directors or equivalent entity. An Accountable Executive and members of the transit agency's Board of Directors must make strategic decisions regarding operational and service demands, capital investments, and the safety resource needs of the system. This often can be challenging due to budget constraints and service demand pressures. It is important that safety receives appropriate attention by the Accountable Executive and Board of Directors as they make decisions regarding operating and capital budgets. Within an SMS environment, the Accountable Executive would rely on outputs of SMS processes and activities to ensure that a transit agency's strategic planning is informed and transparent with regard to the role of safety in decision-making.

III. Advance Notice of Proposed Rulemaking and Response to Relevant Comments

As discussed above, FTA issued an ANPRM on October 3, 2013. 78 FR 61251 (<http://www.gpo.gov/fdsys/pkg/FR-2013-10-03/pdf/2013-23921.pdf>). The comment period closed on January 2, 2014. The ANPRM sought comment on 123 questions related to the implementation of the public transportation safety program and transit asset management. In response to the ANPRM, FTA received comments from 167 entities, including States, transit agencies, trade associations, and individuals. FTA received and reviewed approximately 2,500 pages of comments. Throughout the ANPRM, FTA expressed its intention to adopt a comprehensive approach to safety that would be scalable and flexible.

Of the 123 questions presented in the ANPRM, FTA is addressing 42 questions in this notice related to Public Transportation Agency Safety Plans. Specifically, FTA addresses the following questions in this notice: 8-10, 17-31, 33-44, 47, 107-110, 112, and 116-121.

To reduce the burden on readers, where applicable and possible, FTA provides a summation and/or reference to the State Safety Oversight Program, or Public Transportation Safety Program NPRMs as a way to direct the reader to the appropriate discussion and limit redundancy.

FTA took relevant comments into consideration when developing this proposed rule. Below, the ANPRM comments and responses are subdivided by subject and corresponding question numbers.

- A. Scope and Applicability of Public Transportation Agency Safety Plans
- B. Safety Management Systems

- C. Public Transportation Agency Safety Plan Development, Certification, and Oversight
 - D. Role of the Board of Directors (or Equivalent Authority) and the Chief Safety Officer
 - E. Coordination of Public Transportation Agency Safety Plan with Other MAP-21 Programs and Rules
- A. Scope and Applicability of Public Transportation Agency Safety Plans (Questions 22, 31, 33 and 43)**

In the Plan Requirements section of the ANPRM, FTA sought input on the costs and benefits of including rail, bus, and other public transportation modes under one Public Transportation Agency Safety Plan for those agencies that operate multiple modes of public transportation. The State's Role section of the ANPRM sought comment on the applicability of Public Transportation Agency Safety Plan requirements to recipients of Section 5311 Tribal Transit Formula and Tribal Transit Discretionary Program funds. The ANPRM also sought comment on how to define small public transportation providers under 49 U.S.C. 5307 (Section 5307) and whether or not the scope of Public Transportation Agency Safety Plan requirements should be less stringent for smaller public transit providers.

Comments: Commenters were evenly split on whether multiple modes should be combined into one agency-wide safety plan or whether multi-modal agencies should develop separate safety plans for each of their modes. Many commenters felt strongly that a single plan should be adopted in order to maintain agency-wide consistency and uniformity in overall safety culture. Other commenters suggested that rail and bus modes require separate safety plans due to inherent differences in safety concerns and focus. Additional respondents requested that FTA allow

flexibility on this matter, leaving it up to each individual agency as to whether to adopt separate safety plans by mode or to combine all modes into one agency-wide safety plan.

In regards to 49 U.S.C. 5311 Tribal recipients, some commenters stated that FTA should decide how best to apply safety plan provisions to these recipients. Other commenters suggested that Section 5311 Tribal recipients should report directly to FTA, and others stated that Tribal recipients should be included in standard statewide safety plans. Additionally, a few commenters suggested that 49 U.S.C. 5329(d) does not apply to State subrecipients or Tribal Transit recipients. One commenter recommended that Public Transportation Agency Safety Plan requirements should apply equally to all recipients, including those receiving funds through the Tribal Transit Formula and Tribal Transit Discretionary Programs.

In terms of whether or not requirements should be less stringent for smaller public transit providers, several commenters suggested that, while there should be consistency in the approach to safety, smaller transit providers should not be subjected to overly burdensome requirements and should be allowed to implement less stringent approaches to safety management. These and other commenters also suggested that, if possible, smaller transit providers should be able to pool resources with States or other transit providers for expenses associated with acquiring safety training, if possible. To this point, a few commenters recommended that FTA adopt CTAA's Certified Safety and Security Officer Certification Program as a way to minimize additional training cost for small transit providers. In general, many commenters recommended that the scope of FTA's requirement should be scalable and flexible enough to recognize that smaller transit operations may contain fewer safety risks than those of larger transit agencies.

With respect to FTA's question as to how it should define small Section 5307 public transportation providers, several commenters recommended that the definition should be based on either the population of the urbanized area (UZA) that the transit agency serves or by the number of vehicles in operation during peak service. Specifically, commenters stated that either a population between 50,000 and 200,000, or a population of 200,000 or less, should be used as the threshold to define a small Section 5307 public transportation provider. Other commenters stated that 100 buses or fewer in peak service should be the threshold set for a small Section 5307 public transportation provider, as it is a measure familiar throughout the entire public transportation industry and less subject to variation than other similar measures. A few commenters recommended that the definition used for waivers in the National Transit Database (NTD)—thirty or fewer vehicles across all modes and types of service—should be used as the measure to define a small Section 5307 public transportation provider. Other commenters suggested that FTA define these agencies by size of area served, revenue miles, or passenger counts. Finally, a few commenters suggested that the States should have no role in overseeing the safety of small Section 5307 public transportation providers.

Response: In today's NPRM, FTA proposes that a transit agency may include more than one mode of service in a single plan, or may have individual safety plans for each mode of service. FTA agrees that flexibility is important on this matter, and that each agency should have discretion in deciding which approach is appropriate for its particular operations. FTA does not intend to promulgate safety regulations that will apply to either commuter rail systems that are regulated by the FRA or to ferry systems that are regulated by the United States Coast Guard

(USCG). FTA invites additional comments on how FTA could support the development of Public Transportation Agency Safety Plans for transit agencies of different sizes and modes.

Although FTA is proposing to provide flexibility to transit agencies so that they can determine for themselves whether they will develop a single safety plan for all modes of transit, or whether they will develop individual safety plans for each mode, FTA is not proposing to allow transit agencies to utilize their FRA-required commuter railroad safety plans for other modes of transit regulated by FTA. FTA notes that on September 7, 2012, FRA issued an NPRM related to its System Safety Program. 77 FR 55406. In this NPRM, FRA proposes to require any railroad that operates intercity or commuter passenger train service and any railroad that provides commuter or other short-haul rail passenger train service to develop a System Safety Program Plan. FRA proposes to protect from discovery, evidence, and Federal and State court proceedings any information compiled or collected solely for the purpose of developing, implementing, or evaluating a System Safety Program Plan, including a railroad's analysis of its safety risks and its identification of safety risk mitigation measures. Given FRA's proposal and given the fact that FTA does not have similar statutory authority to protect data, an operator of a public transportation system which provides commuter rail service regulated by FRA would not be able to use its System Safety Program Plan for other modes of public transportation. The public transportation provider would be required to develop a separate plan or plans for its other modes of public transportation subject to FTA's safety regulation.

In today's NPRM, FTA proposes, consistent with the statutory mandate, that requirements of Part 673 would apply to all operators of public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53. FTA proposes to define an

operator of a public transportation system to mean a provider of public transportation as defined under 49 U.S.C. 5302(14). This definition generally includes regular, continuing shared ride surface transportation that is open to the public, and which does not provide service that is closed to the general public and only available for particular clientele, such as Section 5310-funded service that is not open to the general public and only available for a particular clientele. FTA invites comments from the public regarding the definition of the term, “operator of a public transportation system.”

While Congress did not specify that Section 5310 providers could have their plans drafted or certified by a State, FTA notes that 49 U.S.C. 5329 applies to all operators of public transportation systems that receive Chapter 53 funds. The definition of public transportation in 49 U.S.C. 5302 includes services that “are open to a segment of the general public defined by age, disability, or low income.” The Section 5310 program historically has funded vehicles for non-profit agencies that serve these segments of the general public, either in open door service or closed door service available only to clients of a particular agency or agencies. Importantly, not every entity that receives Section 5310 funds is a small non-profit agency with one or two FTA-funded vehicles. Many Section 5310 providers operate substantial fixed route or demand response service, including ADA complementary paratransit service, and in many cases these entities also receive urbanized (Section 5307) or rural area (Section 5311) formula funds.

FTA therefore is proposing that the type of service, rather than the source of FTA funds, be the deciding factor in determining whether a Section 5310 recipient must have a Public Transportation Agency Safety Plan. In the case when a Section 5310 provider operates service that is open door service (open to a segment of the general public), FTA proposes that the

Section 5310 provider must have its Public Transportation Agency Safety Plan drafted and certified by a State, unless the Section 5310 provider opts to draft and certify its own plan. Most of these Section 5310 providers are smaller operators of public transportation systems, and through this requirement, FTA intends to alleviate the administrative and financial burdens placed on Section 5310 providers in complying with this part. In the case when a Section 5310 provider operates service that is closed to the general public and only available for a particular clientele, FTA proposes that neither the State nor the Section 5310 provider would be required to develop and certify a Public Transportation Agency Safety Plan. In other words, nonprofit and other community service organizations that receive Section 5310 funds and provide closed door service would not be required to draft and certify Public Transportation Agency Safety Plans.

FTA seeks comments from the public on these proposals, particularly as to whether a Section 5310 provider operating a public transportation system should be required to develop and implement a Public Transportation Agency Safety Plan, whether or not the entity also receives Section 5307 or Section 5311 funds, and if so, whether that plan should be drafted and certified by a State. FTA also seeks comment as to whether a designated recipient under 49 U.S.C. 5310 should draft and certify Public Transportation Agency Safety Plans on behalf of Section 5310 providers in large urbanized areas instead of the State, or if the States should draft and certify those plans.

FTA anticipates scalability and flexibility in agency plan development, and FTA will provide substantial technical assistance and guidance to all recipients and subrecipients. Proposed requirements in today's NPRM recognize the variance in size, complexity, and operating characteristics of the public transportation industry.

Because 49 U.S.C. 5329(d) provides that States may draft and certify Public Transportation Agency Safety Plans for Section 5311 providers (most of which are smaller transit agencies) and small public transportation providers under Section 5307, and because SMS implementation is inherently scalable, FTA believes that today's proposal provides sufficient flexibility for States and small transit providers, such that they would not be expected to incur expenses for safety management equal to those of a large transit agency. While FTA proposes that 49 CFR part 673 would apply to all Chapter 53 operators of public transportation systems, the proposed requirements may be scaled to address variances in transit agency size, complexity, and operating environment.

In today's NPRM, FTA proposes to define small public transportation providers under Section 5307 based on vehicles operating in revenue service. Any public transportation provider that does not operate rail fixed guideway service and operates 100 or fewer vehicles in revenue service, including fixed route, general public paratransit, and Americans with Disabilities Act complementary paratransit, would be considered a small Section 5307 public transportation provider for purposes of Public Transportation Agency Safety Plan development and certification.

FTA considered various alternatives suggested by commenters, such as using a lower vehicles operating in revenue service threshold or UZA population. FTA evaluated each alternative, assessing safety performance, resource burden, and consistency with other FTA programs and definitions. Ultimately, FTA agreed with commenters that recommended the 100 or fewer vehicles operating in revenue service option because it results in a lower degree of burden placed on individual Section 5307 public transportation providers and it creates

alignment with FTA’s Transit Asset Management Program proposed rule. By using this number, FTA is trying to ensure that the lowest administrative, financial, and regulatory burdens are placed on the transit industry, including small transit providers. This is a number that the industry commonly uses to define small Section 5307 bus agencies, particularly in regards to FTA operating assistance. See 49 U.S.C. 5307(a)(2)(B). FTA also is proposing to use this number as a benchmark in its Transit Asset Management NPRM, so FTA is proposing to use the 100-bus threshold here for consistency.

B. Safety Management Systems (Questions 17-21, 27-28)

Section I of the ANPRM highlighted FTA’s intention to propose the SMS approach as the foundation for the development, implementation, oversight, and enforcement of the new Public Transportation Safety Program.

The ANPRM posed several questions related to SMS, including questions related to: (1) barriers to SMS adoption; (2) the need for technical assistance; (3) the current use of SMS in the transit industry and alternative approaches; and (4) the current practices and challenges with the management of safety risks. These ANPRM questions also related to the adoption of SMS by FTA and the use of SMS to inform Public Transportation Agency Safety Plans.

1. Barriers to SMS Adoption and Need for Technical Assistance

Comments: Several commenters suggested that the SMS approach may be burdensome for smaller transit agencies to implement, and identified or listed barriers or challenges to adopting SMS principles. Specifically, these commenters suggested the following as barriers to adoption: a lack of financial resources, inconsistent or insufficient training on SMS (both classroom and online), limited staffing for development and implementation of SMS, the burden of additional

data collection and documentation, and concern that SMS is a departure from tried and true safety practices. Many respondents requested that training programs be scalable based on agency size; several responders pointed out that attendance at off-site training programs would be practically impossible for small agencies, where a single employee is often the only person capable of fulfilling critical agency functions. There were many requests for FTA to provide training programs online to ease this burden on already taxed agencies and employees. Other commenters noted the challenges for agencies with boards of directors consisting of local politicians whose decisions are subject to political pressure; the importance of distinguishing between the FRA-required model and the SMS model for agencies that operate in a shared rail corridor; and the ability of FTA to provide clear guidance on defining how SMS principles are to be interpreted and applied. Additionally, a few commenters suggested that SMS might be challenging to implement within the current management/labor collective bargaining agreement process. Other commenters suggested that, for a system that contracts for some or all of its service, implementing SMS would be challenging and difficult. A few commenters stated that the practical benefit from a fully-implemented SMS far outweighs the effort needed to overcome potential challenges. Conversely, a few other commenters were opposed to any adoption of SMS by Federal regulation whatsoever.

Response: FTA proposes to adopt SMS as the framework for managing safety risks in the transit industry because SMS is flexible and scalable, and also provides a level of implementation that is commensurate with the size and complexity of transit agencies. For additional information on SMS, FTA recommends readers review Appendix A to FTA's NPRM on State Safety Oversight Programs (see 80 FR 11002, Feb. 27, 2015; <http://www.gpo.gov/fdsys/pkg/FR-2015-02->

[27/pdf/2015-03841.pdf](https://www.fta.dot.gov/documents/FTA_SMS_Framework_guidance_document.pdf)), FTA's SMS Framework guidance document (see http://www.fta.dot.gov/documents/FTA_SMS_Framework.pdf), and FTA's forthcoming National Public Transportation Safety Plan. Today's proposal reflects key elements of the law that are consistent with SMS principles and methods. Each element of 49 U.S.C. 5329(d)(1) sets forth requirements for transit agency safety management that are critical to an effective SMS, namely: executive management accountability, the identification of hazards, the evaluation of safety risks, the strategies to mitigate these safety risks, regular reviews of a transit agency's safety system, direct lines of safety reporting, and a commitment to safety training.

SMS processes and activities can assist transit agencies in identifying safety concerns and issues, evaluating these concerns for their potential impact on transit safety, and developing cost-effective mitigations to address safety concerns so that an accident or safety event can be prevented. FTA does not agree that SMS is a departure from tried and true safety practices. SMS, as a management system, embraces current safety practices and activities, and ensures that transit agency executive management is presented with timely information to act on safety risks in a proactive manner.

Today's rulemaking proposes that each transit agency would be required to implement SMS. FTA believes that it is critical for each transit agency to work through the process of identifying and managing safety risks that may be unique to its size, operations, and operating environment. Because SMS processes, activities and tools can be adapted to the size, complexity, and uniqueness of the transit agency, FTA believes it is the best approach to address the requirements set forth in 49 U.S.C. 5329(d)(1). For example, the safety reporting program of a large agency might require rather important and robust IT support for data management and

several safety data analysts, whereas the same program for a small agency might be administered with a spreadsheet for data management and a part-time safety analyst or a staff person who analyzes safety data as an ancillary duty.

To reduce the administrative, financial, and regulatory burdens on small public transportation providers, the proposed rule requires States to draft and certify Public Transportation Agency Safety Plans—and documentation of SMS processes therein—for Section 5310, Section 5311, and small public transportation providers, unless those providers opt to draft and certify their own safety plans. Although FTA proposes to require States to draft and certify Public Transportation Agency Safety Plans, FTA proposes that each recipient which operates a public transportation system implement its own safety plan, regardless of the size of the agency. In other words, States will lend their resources and technical expertise to smaller operators of public transportation by drafting the safety plans and by certifying to FTA that the plans they drafted satisfy all of FTA’s requirements. The plans will include various elements, such as processes for identifying safety hazards and risks, processes for evaluating those safety hazards and risks, and processes for mitigating those safety hazards and risks, as appropriate. The transit agencies will have to perform those activities themselves—not the States—thus, the individual transit agencies are responsible for “implementing” and “carrying out” the plans that are drafted by the States, but the States will be ultimately responsible for drafting and certification functions (unless a small transit agency opts to draft and certify its own agency safety plan). Additionally, each transit agency would be responsible for implementing SMS that scales to the size and complexity of the organization. As a result, FTA expects that the Public Transportation Agency Safety Plan also will scale for smaller organizations.

In an effort to further reduce the administrative, financial, and regulatory burdens on recipients and other public transportation operators, FTA will develop and issue templates for Public Transportation Agency Safety Plans for agencies of different sizes. FTA also will develop and issue guidance and other tools, and provide technical assistance, to support SMS development and implementation.

Some commenters suggested that a need for SMS training exists, and that transit agencies may experience challenges with the development and implementation of SMS. To address these concerns, FTA will continue to develop and provide safety training for the industry, and FTA also will collect and provide information on other sources of outside SMS training. Currently, FTA provides a number of courses to support transit agency safety training needs. FTA intends to expand these offerings, including online courses, to support general safety training, as well as training on SMS principles and methods. FTA is piloting SMS training courses. Additionally, FTA will launch an Agency SMS Implementation Pilot Program to help reduce the burden on transit agencies for developing SMS by identifying effective safety practices, including training that will be shared with the industry. These efforts, coupled with technical guidance, will directly assist those agencies for which a lack of training and guidance may be a barrier to SMS implementation. Recently, FTA issued Final Interim Safety Certification Training Provisions which set forth the safety training requirements for Federal and State Safety Oversight Agency personnel and their contractors who conduct safety oversight audits and examinations of public transportation systems not otherwise regulated by another Federal agency. See 80 FR 10619 (Feb. 27, 2015) (<http://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03842.pdf>). Consistent with the statutory provisions of 49 U.S.C. 5329(d)(1)(G), FTA's proposed training

requirements and technical assistance discussed in this NPRM are intended to address the training needs of those individuals directly responsible for safety, and they are intended to complement the requirements and technical assistance for safety oversight personnel as discussed in the Final Interim Safety Certification Training Provisions.

FTA disagrees with commenters who suggested that there might be additional challenges with SMS adoption because of political and legal issues with Boards of Directors and local politics. Just as a Board of Directors is responsible for the service levels provided to the community and budgets adopted, they are also accountable for safety outcomes. FTA believes that SMS provides greater transparency in the prioritization of, and decision-making regarding, a transit agency's safety risks. Today's notice mirrors statutory language in 49 U.S.C. 5329(d) with respect to executive level accountability and would require that a transit agency's Board of Directors (or equivalent authority) review and approve the Public Transportation Agency Safety Plan.

One commenter suggested that a challenge to SMS adoption may be the difficulty in distinguishing between the FRA-required safety model and the SMS model. FTA believes that SMS implementation encourages coordination in Safety Risk Management for all modes operated by a transit agency. However, and in response to this comment, FTA notes that it has different statutory authority than FRA for regulating safety, and to the extent another Federal agency already regulates safety of a particular mode of transportation, FTA does not intend to promulgate duplicative, inconsistent, or conflicting regulations. Therefore, agencies that operate passenger ferries regulated by the United States Coast Guard or commuter rail service regulated by FRA would not have to develop FTA safety plans for those modes of service. FTA seeks

public comments on whether any aspect of this proposed rule is duplicative, inconsistent, or conflicts with other Federal agency regulations.

With respect to comments related to perceived challenges in SMS implementation due to management/labor collective bargaining agreements or for systems that contract for service, today's proposed rule does not include requirements regarding collective bargaining, and FTA anticipates that each transit agency would benefit from increased information on safety issues and performance.

2. Current use of SMS in the Transit Industry and Alternative Approaches

Comments: Several commenters suggested that they currently practice SMS-related activities, and provided detailed responses. Commenters identified, in part, the following list of activities and practices: data-driven safety performance management; employee safety reporting programs; committee structures to support safety communication and safety risk evaluation; safety management policy statements; senior management accountability; safety audits and inspections; designated Safety Officers and staff; safety accountabilities and responsibilities; proactive hazard identification and analysis; accident investigation to determine probable cause; safety promotion and communication; and safety training. One commenter indicated that his agency has reorganized its safety department to reflect the four major components of SMS.

Some commenters indicated that they provide alternative safety management approaches. Some suggested that FTA adopt a centralized, State or regional, safety management or other approach that would lessen the burden for States. One commenter suggested that FTA provide an option for transit agencies that operate fewer than 100 vehicles, or other small transit agencies, to participate in insurance risk pools (and be exempted from any requirement to

develop and implement SMS), while other commenters expressed their opposition to any rulemaking by FTA on SMS because they did not want to be subject to Federal regulations on safety. Finally, several commenters indicated that they were in agreement with FTA's adoption of SMS.

Response: FTA believes that SMS builds on industry safety practices, which is evidenced by the number of SMS-related activities currently being practiced by several of the commenters. FTA proposes to adopt SMS to guide the advancement of FTA's safety rulemakings, and therefore, today's rule proposes that Public Transportation Agency Safety Plans must address the basic four components of SMS: (1) Safety Management Policy, (2) Safety Risk Management, (3) Safety Assurance, and (4) Safety Promotion (explained in more detail in the Section-by-Section Analysis of Subpart C of the Public Transportation Agency Safety Plan, below).

Recipients may utilize additional safety management practices, but recipients would be required to meet the basic requirements as set forth in today's proposed rule. Based on comments received, FTA is confident that the transit industry already has some elements of SMS in place.

With respect to commenters who suggested a more centralized State management approach, today's proposal requires States to draft and certify Public Transportation Agency Safety Plans on behalf of Section 5310, Section 5311, and small public transportation providers (as defined in this NPRM). FTA disagrees with the commenter who proposed that transit agencies operating fewer than 100 vehicles be exempt from SMS requirements in favor of insurance risk pools. While insurance risk pools may take into account safety risk, FTA does not believe that they meet all elements of an SMS, nor do they satisfy all of the statutory

requirements of Public Transportation Agency Safety Plans. Nothing in today's proposal would prevent transit agencies from participating in insurance risk pools in addition to implementing a Public Transportation Agency Safety Plan with SMS.

3. Current Practices and Challenges with the Management of Safety Risk Related to Human Factors

Comments: Many commenters stated they currently apply some type of risk-based approach in managing safety risks related to human factors. These approaches included drug and alcohol program testing, post-incident testing, commercial driver's license physical examination requirements, fitness for duty physical examinations, medical evaluations, application of the Federal Motor Carrier Safety Administration's hours of service regulations, fatigue awareness training, medication reporting, sleep disorder screening, and evaluating the ability of employees to comply with procedures and rules.

One commenter suggested that another potential issue with adopting a risk-based approach to human factors relates to transit employees' rights to health privacy. A few commenters recommended that FTA take a statistical sample approach to gather data on this subject, which could inform and guide further formulation of agency safety plan requirements.

Response: FTA is encouraged that many transit agencies already take a risk-based approach in managing safety risks related to human factors, and are doing so through a number of different methods, including those listed above. This is a positive step towards implementing the Safety Risk Management component of SMS, and FTA encourages agencies to continue to conduct these risk-based approaches to managing safety risks related to human factors. FTA also encourages agencies to take into account bicycle and pedestrian safety concerns, along with other

factors, as agencies are conducting Safety Risk Management.¹⁵ As discussed above, FTA intends to provide additional guidance, technical assistance, and training regarding SMS.

C. Public Transportation Agency Safety Plan Development, Certification, and Oversight (Questions 25-26, 30, 34-42, 44-47, 107-110, 112)

The ANPRM posed several questions related to the development, certification, and oversight of Public Transportation Agency Safety Plans. Specifically, FTA sought comments in the following areas: (1) plan drafting and updating, (2) plan certification, (3) the role of the State, and (4) oversight of the plan. Questions regarding the drafting, certification, or oversight of a Public Transportation Agency Safety Plan that included reference to the role of the State are addressed in Section 3: Role of the State, below.

1. Plan Drafting and Updating

Comments: Many commenters suggested that FTA can reduce the administrative burden of drafting Public Transportation Agency Safety Plans by providing transit agencies with templates, models, and assistance to support agency safety plan development. Some commenters stated that FTA should provide the safety plan templates and a few others stated that State Departments of Transportation (State DOTs) should provide the templates. Other commenters stated that FTA could reduce the burden by not requiring annual safety plan updates. A few commenters recommended that either FTA not promulgate or reduce the requirements for small transit providers. Finally, a few commenters suggested that FTA utilize only the current level of NTD reporting requirements, and not expand safety data reporting, as it would add unnecessary burdens.

¹⁵ Secretary Anthony Foxx recently issued a bicycle and pedestrian safety initiative, and FTA encourages transit agencies to consider that initiative when developing their safety plans (see http://www.dot.gov/sites/dot.gov/files/docs/safer_people_safer_streets_summary_doc_acc_v1-11-9.pdf).

Response: As mentioned previously, FTA intends to provide States and the industry with templates to guide and support Public Transportation Agency Safety Plan development. FTA does not anticipate that a small transit provider (or its State in the case of Section 5310, Section 5311, and small public transportation providers) would require as complex of a Public Transportation Agency Safety Plan as a larger transit provider. One of the key elements of Public Transportation Agency Safety Plans would be the development and implementation of SMS principles, and inherent to SMS is its scalability and flexibility. FTA anticipates the scalability and flexibility in plan development will not unduly burden any particular recipient, and to reduce any burdens, FTA intends to develop and issue to the industry electronic templates, guidance, and training.

FTA is proposing that recipients and other operators of public transportation systems update their Public Transportation Agency Safety Plans annually so that they remain current to meet evolving needs and so that they capture any new best practices in the industry. Readers should note that reviews and updates to a Public Transportation Agency Safety Plan developed by rail fixed guideway systems must adhere to the requirements that are codified at 49 CFR part 659, until FTA issues a final rule for State Safety Oversight at 49 CFR part 674.

2. Plan Certification and Review

FTA sought comment on the mechanics of Public Transportation Agency Safety Plan certification, including the certification for subrecipients; whether a self-assessment, or set of procedures, should be followed prior to certification; and the role of FTA in reviewing plans and certifications.

Comments: Many commenters responded that they preferred the use of FTA's annual Certifications and Assurances process for certifying that Public Transportation Agency Safety Plans comply with FTA's statutory and regulatory requirements, particularly given the industry's familiarity with this process as it is used currently for FTA's standard grant programs. Several of these same commenters suggested that subrecipient certification should be a separate process between the subrecipient agency and the designated recipient (or State). In addition, a few commenters stated that certification should not be through FTA's annual Certification and Assurance process, and a few commenters stated that recipients should self-certify. Several commenters also suggested that FTA should review the safety plans as part of FTA's Triennial and State Management Review (SMR) oversight processes, and not as part of the grant approval process.

Many commenters indicated that they do not support FTA's review of Public Transportation Agency Safety Plan certifications on the basis of a weighted random sample. A few commenters suggested that Public Transportation Agency Safety Plan certifications be reviewed on the basis of a weighted random sample, as a suitable alternative to reviewing all plans. Some commenters also indicated that, although a weighted random sample could be appropriate, it is important that the system is not overly burdensome.

Some commenters suggested that FTA establish self-assessment procedures, but only one commenter indicated that FTA should establish procedures for recipients to follow before certifying their Public Transportation Agency Safety Plans. Many commenters suggested that it would be helpful if FTA established a self-assessment checklist, or a tool for recipients to utilize, to assist with the certification of their Public Transportation Agency Safety Plans. Many of these

same commenters added that the self-assessment tool should make clear which components of the plans are required by law, and which components are at the recipient's discretion. A few commenters indicated that an FTA self-assessment tool would not be helpful because agencies differ substantially in their plans and practices.

Response: In keeping with the statutory requirements of 49 U.S.C. 5329(d), and many of the comments, FTA proposes that each transit agency self-certify that it has established a Public Transportation Agency Safety Plan that complies with all of FTA's statutory and regulatory requirements through FTA's annual Certification and Assurances process. FTA proposes that States are required to certify on behalf of subrecipients, which is discussed in greater detail below. FTA is not proposing that it review safety plans prior to grant approval, but FTA intends to review the plans through its Triennial Review and SMR oversight processes. FTA intends to conduct additional oversight of Public Transportation Agency Safety Plans and SMS programs, outside of the standing Triennial Review and SMR processes, at its discretion. FTA will consider developing a self-assessment tool, although this notice does not propose the use of a self-assessment tool prior to agency safety plan certification. In addition, FTA intends to provide the industry with technical assistance, as needed.

3. Role of the State

The ANPRM posed several questions related to the role of States in regards to Public Transportation Agency Safety Plans. In the State's Role section of the ANPRM, FTA sought comments with respect to States and Section 5311 and small Section 5307 public transportation providers, including: (1) the drafting and updating of Public Transportation Agency Safety Plans, (2) certifying Public Transportation Agency Safety Plans, and (3) overseeing and

reviewing the implementation of Public Transportation Agency Safety Plans (covered in the subsequent “Oversight of Public Transportation Agency Safety Plans” section).

a. Role of the State in Drafting Public Transportation Agency Safety Plans

Comments: Many commenters recommended that FTA should allow States to draft State safety plans for subrecipients. Many commenters indicated their support for a national and/or statewide template to support States’ development of Public Transportation Agency Safety Plans, as it would relieve the burden on States and bring more consistency to the plans. A subset of these commenters recommended that FTA work closely with industry associations such as CTAA and APTA in the development of the national or statewide Public Transportation Agency Safety Plan templates, including those that could be modified to reflect individual transit agency operating needs.

Given the significant degree of variance in transit agencies’ size, complexity, and operating environments, several commenters suggested that FTA should not allow States to develop statewide plans applicable to subrecipients and small public transportation providers. These commenters recommended that FTA require transit agencies to develop their own Public Transportation Agency Safety Plans. Other commenters agreed, stating that Public Transportation Agency Safety Plans should reflect local safety implementation and that a statewide plan may not provide sufficient detail for the management of safety from agency to agency. Other commenters responded with concern that States may not have sufficient resources and technical capacity to develop Public Transportation Agency Safety Plans. Finally, a few commenters suggested that it would be too great of an administrative burden on States to develop Public Transportation Agency Safety Plans.

Many commenters indicated that the ability to modify the statewide safety plan template would be important because safety risks can vary from agency to agency. Several commenters believed that there would be utility with FTA or State-generated templates to support Public Transportation Agency Safety Plan development. A few commenters suggested that FTA allow States to have the option of developing statewide plans, and these commenters recommended that FTA should not require States to develop statewide plans.

In terms of the number of safety plans that a State might be expected to draft, many commenters stated that this number could vary from state-to-state and range anywhere from 20 to 70 plans. Another set of commenters stated that the number of safety plans a State might be expected to draft should be determined by the State.

Response: In this NPRM, FTA proposes to require States to draft Public Transportation Agency Safety Plans on behalf of Section 5310, Section 5311, and small public transportation providers. FTA agrees with commenters who recommended that FTA should require States to develop plans on behalf of these providers. As discussed above, this proposal is consistent with the statutory provisions of 49 U.S.C. 5329(d)(3), and it reduces the administrative, financial, and regulatory burden on smaller transit agencies that may not have the resources or technical expertise to draft and certify Public Transportation Agency Safety Plans. The number of safety plans that a State may prepare will vary from state-to-state, and although FTA is requiring the State to develop the plan, FTA is not instructing States on how to develop those plans. For example, a State may draft a single statewide plan or it may draft individual plans on behalf of each Section 5310, Section 5311, and small public transportation provider. FTA proposes that

each Section 5310, Section 5311, and small public transportation provider may opt to draft their own plan if they choose to do so.

In addition, FTA seeks comments from the public regarding the following questions: If a State was to draft a statewide plan, how would the plan respond to the SMS component of Safety Risk Management (i.e. identification of individual agency risks and hazards)? Should FTA require drafting of single statewide plans or individual safety plans on behalf of Section 5310, Section 5311, and small public transportation providers in that State? Or should FTA defer to the State's preference on this requirement?

With respect to the potential burden of plan development, FTA agrees with commenters that templates and guidance would be beneficial. FTA plans to provide technical assistance, training, and templates to support plan development. Similar to the variety of safety plan templates that FTA has provided in the past as part of its Bus Safety Program, FTA will provide safety plan templates for states and transit agencies, keeping in consideration differences in size, complexity and operating characteristics.

b. Role of State in Certifying Public Transportation Agency Safety Plans

In its ANPRM, FTA sought comments with respect to the type of assistance that should be provided to States that choose to certify to FTA the Public Transportation Agency Safety Plans on behalf of small operators. FTA also sought comments on the types of requirements and procedures that FTA should establish for State certification of safety plans.

Comments: Many commenters suggested that a significant burden would be imposed upon States if FTA required them to certify each and every Public Transportation Agency Safety Plan. These commenters expressed that, in part, the burden would be due to a lack of staff resources at

States and the amount of time that staff would need to review and certify individual safety plans. A number of commenters suggested that FTA should allow maximum flexibility for States. A few commenters suggested that the burden would be minimal since they already have a role in monitoring agency safety plans. Many commenters suggested that FTA could reduce the overall administrative burden if it provides technical assistance and sample templates. Many commenters stated that FTA should not establish any requirements or procedures for States that draft and certify Public Transportation Agency Safety Plans for subrecipients. Other commenters expressed an opinion that 49 U.S.C. 5329(d) does not require States' subrecipients to develop safety plans. A few commenters suggested that FTA should establish requirements for States that develop and certify Public Transportation Agency Safety Plans for their subrecipients.

Response: FTA proposes to require each State to review and certify Public Transportation Agency Safety Plans for all Section 5310, Section 5311, and small public transportation providers in that State. FTA also proposes to require States to certify individual subrecipient plans, or certify a statewide plan on behalf of its subrecipients, particularly given the statutory requirement at 49 U.S.C. 5329 that any “operator of a public transportation system” which receives Chapter 53 financial assistance must draft and certify a Public Transportation Agency Safety Plan, regardless of its status as a recipient or subrecipient. In addition, any Section 5310, Section 5311, or small public transportation provider that opts to draft its own plan may also certify its own plan. With respect to the process for certification of Public Transportation Agency Safety Plans, as noted above, FTA proposes to use its annual Certifications and Assurances process for the certification of the plans.

4. Oversight and Review of Public Transportation Agency Safety Plans

The State's Role section of the ANPRM posed questions relating to the purview a State might have in overseeing subrecipients, how oversight should be provided, and the time estimated to provide such oversight. In addition, FTA asked those States that currently perform safety operations oversight for non-rail modes, to provide information on these programs. Finally, this section posed questions about the annual review of Public Transportation Agency Safety Plans.

Comments: Many commenters suggested that States should provide oversight of transit agencies for which the State drafts and certifies the Public Transportation Agency Safety Plan (or statewide safety plan). Other commenters suggested that this form of oversight could represent a conflict of interest for the State. Additional commenters suggested that States do not have the staff and expertise to draft and certify plans.

Many commenters suggested that FTA should require State DOTs to maintain lists of certified subrecipients that have established safety plans or are covered by a statewide plan. A few commenters noted that some states already maintain lists of subrecipients. Other commenters suggested that State DOTs should not be required to maintain these types of lists, either because all Section 5311 subrecipients already will be covered by a state management plan, or in their opinion, 49 U.S.C. 5329(d) does not require individual safety plans for State DOT subrecipients so there is no need to maintain a list.

In response to FTA's question regarding current safety oversight practices, some commenters stated that they do not currently perform safety oversight for non-rail modes. Other commenters suggested that the oversight role could be effectively streamlined by combining bus

oversight into each State's existing rail oversight program, but other commenters disagreed. Additional commenters stated that combining oversight of rail and non-rail transit safety may work in some States, but it may not work in others, and therefore, FTA should not require transit agencies to combine oversight practices. Some commenters stated that bus and rail system elements are very different, so the oversight programs would be best administered separately. Many commenters recommended that States should have some sort of oversight role of non-rail transit systems and could combine bus oversight into each State's existing rail oversight program, but others disagreed that they could be combined. Finally, several commenters suggested that additional financial and staffing resources would be necessary if FTA requires States to provide oversight of non-rail transit, and that adding additional staff would take considerable time.

Many commenters suggested that FTA should not have a role in reviewing the Public Transportation Agency Safety Plans. Other commenters recommended that FTA review the Public Transportation Agency Safety Plans through the Triennial and SMR review processes. Finally, many commenters suggested that an annual review would be too frequent for transit agencies that only provide bus service, and an annual review may increase a transit agency's operating costs and be difficult to implement without diverting resources from other agency programs.

Response: With today's notice, FTA does not propose additional oversight requirements for States that draft and certify Public Transportation Agency Safety Plans. FTA anticipates that oversight for Public Transportation Agency Safety Plan implementation for agencies that do not operate a rail fixed guideway system would be conducted primarily through FTA's SMR and

Triennial Review Programs. FTA is likely to conduct additional oversight of Public Transportation Agency Safety Plans outside of these programs. FTA agrees with commenters who suggested that States likely already maintain lists of subrecipients, and therefore is not proposing a requirement for additional subrecipient lists.

With respect to the review of Public Transportation Agency Safety Plans, as mentioned earlier, FTA intends to maintain the authority to review the plans during SMR and Triennial Reviews or at its sole discretion, such as in the event that FTA identifies circumstances posing a safety risk. FTA disagrees with commenters who suggested that an annual review would be too frequent. Pursuant to 49 U.S.C. 5329(d)(1)(D), transit agencies are required to perform annual reviews of their Public Transportation Agency Safety Plans. FTA proposes that each transit agency document its timeline for an annual review and update, as necessary, of its Public Transportation Agency Safety Plan (§ 673.11(a)(7)).

D. Role of the Board of Directors (or Equivalent Authority) and the Chief Safety Officer (Questions 23, 29)

In the Plan Requirements section of the ANPRM, FTA posed a question regarding the role of a transit agency's Board of Directors (or equivalent authority) with the approval of its Public Transportation Agency Safety Plan. FTA also posed questions regarding the roles and responsibilities of a transit agency's executive leadership, including the combination of roles and responsibilities, particularly in smaller operations, where the same individual may function as the transit agency's general manager, operations manager, and Safety Officer. Related to this question, FTA asked if the combination of these roles could cause any conflict of interest between safety and any other agency responsibilities.

1. Board of Directors (or Equivalent Authority)

Comments: Many commenters suggested that if a Transit agency does not have a Board of Directors, “equivalent entities” to a Board of Directors generally would be those that have authority to make day-to-day policy decisions. In the cases where a transit agency does not have a Board of Directors, several commenters suggested that FTA should allow a transit agency’s General Manager to certify that it has reviewed a Public Transportation Agency Safety Plan through FTA’s Certifications and Assurances process. Other commenters noted that the attributes, functions, and authorities of an “equivalent entity” to a Board of Directors should be the same as that of a Board of Directors. A few commenters suggested that, in some instances, boards of directors and equivalent entities may be serving in a volunteer capacity, and lack the experience and knowledge to develop or certify safety plans. These commenters suggested that only the State or FTA may have the experience and knowledge to develop and certify Public Transportation Agency Safety Plans. A few commenters stated that if there is no Board of Directors, then only the State (or State Safety Oversight Agency) or FTA should be allowed to approve Public Transportation Agency Safety Plans.

Response: FTA is proposing to define the term “Equivalent Authority” to mean an entity that carries out duties similar to that of a Board of Directors, including, at the very minimum, sufficient authority to review and approve a recipient or subrecipient’s Public Transportation Agency Safety Plan. If a recipient or subrecipient does not have a Board of Directors to review and approve a Public Transportation Agency Safety Plan, then FTA proposes that the recipient or subrecipient must identify an “Equivalent Authority” as defined in today’s proposal. For example, an “Equivalent Authority” could be the policy decision-maker/grant manager for a

Section 5310, Section 5311, or 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. Pursuant to 49 U.S.C. 5329(d)(1)(A), FTA proposes that each Public Transportation Agency Safety Plan, and subsequent updates, would be reviewed and approved by the Board of Directors (or Equivalent Authority).

Regarding the role of State Safety Oversight Agencies, it would be a conflict of interest for those oversight authorities to be involved in the development of the Public Transportation Agency Safety Plans that they are charged with overseeing. Consequently, FTA is not proposing that a State Safety Oversight Agency serve as an “Equivalent Authority” for purposes of this rule.

2. Chief Safety Officer

Comments: When asked what other responsibilities might be combined with the Safety Officer role, particularly in smaller operations where the same individual may function as the general manager, operations manager, and Safety Officer, many commenters acknowledged that the Safety Officer position could be combined with other complementary non-operational positions, but these commenters recommended that the Safety Officer position should not be combined with operational roles because the combined duties would create a conflict of interest. Many other commenters noted that small agencies do not have the resources to dedicate a single position to a Safety Officer role, and in some cases, combine operational, maintenance, and safety functions under a single individual. A few commenters stated that a Safety Officer very likely will serve many functions within small transit agencies, and these commenters believe that there are no conflicts of interest with this arrangement.

A few commenters suggested that a transit agency could combine the following responsibilities with the Safety Officer position: training, emergency preparedness and management, security, risk management (claims), quality assurance, and environmental management. One commenter also stated that FTA needs to be very diligent about codifying new requirements, and should consider a different set of rules for the 20 to 50 largest transit providers than for smaller operators nationwide.

Response: Pursuant to 49 U.S.C. 5329(d)(1)(F), a Public Transportation Agency Safety Plan must include the “assignment of an adequately trained Safety Officer who reports directly to the general manager, president, or equivalent officer of the recipient.” The intent for this direct reporting relationship is to ensure that safety matters are directly and routinely elevated from the most senior Safety Officer to the Accountable Executive.

FTA agrees that many smaller agencies may not have sufficient resources for a dedicated Safety Officer. In many cases, a transit agency’s Safety Officer may serve several other functions, including those related to safety, operations, and maintenance. Consequently, FTA proposes that Section 5310, Section 5311, and small public transportation providers may assign an adequately trained Safety Officer to serve other agency functions. For example, it would be reasonable to anticipate that in a very small bus transit agency, the general manager or operations manager may be the same individual as the Safety Officer.

Notwithstanding this proposal for smaller transit providers, FTA believes that it is preferable for larger transit systems to have a Safety Officer who focuses exclusively on safety-related issues, so for rail fixed guideway systems and all other recipients, FTA proposes that the Safety Officer may not also serve in an operational or maintenance capacity, and that the Safety

Officer must report directly to the chief executive officer, general manager, president, or other equivalent officer.

E. Coordination of Public Transportation Agency Safety Plan with Other MAP-21 Programs and Plans (Questions 8-10, 24, 116-121)

In the ANPRM, FTA discussed the statutory requirements regarding coordination of the Public Transportation Agency Safety Plan with the National Public Transportation Safety Plan at 49 U.S.C. 5329(b) and the Transit Asset Management System at 49 U.S.C. 5326. FTA also discussed the statutory requirements regarding coordination of the Public Transportation Agency Safety Plan with the planning requirements at 49 U.S.C. 5303 and 49 U.S.C. 5304. These provisions require Metropolitan Planning Organizations (MPOs) and States to coordinate the selection of their performance targets with the performance targets set by FTA recipients for safety and state of good repair.

Comments: Commenters generally opposed FTA issuing prescriptive criteria for safety, state of good repair, or statewide and metropolitan planning processes. To address the law's requirements, commenters generally encouraged FTA to allow transit agencies to establish their own safety and state of good repair definitions, and to allow transit agencies to develop their own performance measures in their Public Transportation Agency Safety Plans. Several commenters expressed the opinion that state of good repair considerations should only become relevant when safety issues are identified. These commenters generally recommended that FTA focus the Public Transportation Agency Safety Plan and SMS implementation on processes used to ensure the identification of these issues. Other commenters disputed the existence of a nexus or connection between state of good repair and safety. Several commenters pointed out that although safety is an important consideration in state of good repair, it is only one consideration,

and existing processes and capabilities already account for safety issues in asset management and statewide/MPO planning processes.

Many commenters believed that FTA should not establish any other requirements for integrating Public Transportation Agency Safety Plans and Transit Asset Management Plan goals, measures, and targets into each other or the transportation planning process. Other commenters stated that FTA should not establish any requirements regarding coordination. Some commenters stated that the MPO Certification process is the most appropriate venue to ensure that Public Transportation Agency Safety Plan's and the Transit Asset Management Plan's goals, measures, and targets from individual transit systems are integrated into the metropolitan transportation planning process. A small group of commenters recommended that any FTA requirements be as general as possible and not undercut fundamental State and local prerogatives.

Response: FTA recognizes that safety is only one factor in the transit asset management and statewide and local planning processes, and likewise, that safety programs do not deal exclusively with asset condition and capital investments but rather touch on a wide variety of operational, engineering, and maintenance activities. While the connections between and among safety, transit asset management, and statewide and metropolitan planning may appear tenuous to some commenters, MAP-21 makes them a matter of law. Specifically, Congress authorized a new Transit Asset Management Program at 49 U.S.C. 5326 to establish a system to monitor, manage, and improve the state of good repair of the nation's public transportation capital assets. Further, in the enhanced requirements for Statewide and Metropolitan planning at 49 U.S.C. 5303(h)(2)(B)(iii) and 5304(d)(2)(B)(ii), respectively, Congress mandated that the performance

targets set in the Metropolitan and Statewide Planning processes be “coordinate[d] to the maximum extent practicable” with transit agencies’ performance targets for safety and asset management. In their entirety, the requirements of 49 U.S.C. 5329, 5326, 5303 and 5304 support one another and the coordination of national, State, and local efforts to improve transit safety and increase the reliability and performance of the nation’s public transportation systems.

Pursuant to 49 U.S.C. 5329(b)(2)(B), FTA must develop and implement a National Public Transportation Safety Plan that includes safety performance criteria and the definition of state of good repair, which must be defined through a transit asset management rulemaking. 49 U.S.C. 5326(b)(1) and (d). Pursuant to 49 U.S.C. 5329(d)(1)(E), a Public Transportation Agency Safety Plan must include safety performance targets based on the safety performance criteria in the National Public Transportation Safety Plan and the state of good repair standards established under the National Transit Asset Management System. 49 U.S.C. 5329(b)(2), 49 U.S.C. 5326(b)(1).

Although not required in this proposed rule, pursuant to the planning requirements at 49 U.S.C. 5303 and 5304 and the proposed regulations thereunder at 23 CFR part 450 (see 79 FR 31784, June 2, 2014), States and MPOs must integrate into the Statewide and metropolitan planning processes the developed goals, objectives, performance measures, and targets described in the Public Transportation Agency Safety Plans and Transit Asset Management Plans, either directly or by reference. Further, in the Statewide Long Range Plans and Metropolitan Transportation Plans, States should and MPOs must (1) describe the safety and asset management performance measures and targets; (2) report on the condition of the transit systems with respect to the safety and asset management performance targets; and (3) report on the

progress achieved in meeting the safety and asset management performance targets in comparison with the conditions reported in previous years. 49 U.S.C. 5303(i)(2)(B) and (C); 49 U.S.C. 5304(f)(7). States and MPOs also must coordinate in the selection of transit safety performance and state of good repair targets with the transit agencies to the maximum extent practicable. 49 U.S.C. 5303(h)(2)(B)(ii); 49 U.S.C. 5304(d)(2)(B)(ii). Finally, transportation improvement programs (TIPs) and statewide transportation improvement programs (STIPs) must include, to the maximum extent practicable, a discussion of the anticipated effects of the TIP or STIP toward achieving the safety and asset management performance targets, linking the safety and asset management investment priorities to those performance targets. 49 U.S.C. 5303(j)(2)(D); 49 U.S.C. 5304(g)(4).

The integration of a transit agency's safety and asset management performance targets into the State and MPO planning process would inform States and MPOs in the setting of their goals, objectives, and investment strategies for public transportation. This integrated planning process should result in States and MPOs being able to identify investment and management strategies to improve or preserve the safety of public transportation systems and the condition of transit capital assets.

In today's NPRM, FTA proposes in § 673.11(a)(3) that transit agencies must include in their Public Transportation Agency Safety Plans performance targets that are based on the safety performance criteria and state of good repair standards established by FTA under its National Public Transportation Safety Plan and the National Transit Asset Management System, respectively. In § 673.15, FTA proposes to require transit agencies to coordinate with States and MPOs in the selection of State and MPO safety performance targets.

In addition, the development of safety performance criteria by FTA and safety performance targets by transit agencies support FTA’s overall efforts to monitor the safety performance of the public transportation industry, in keeping with recommendations made by the U.S. Government Accountability Office in its January 2011 report, “FTA Programs are Helping Address Transit Agencies’ Safety Challenges, but Improved Performance Goals and Measures could Better Focus Efforts” (<http://www.gao.gov/new.items/d11199.pdf>).

FTA is providing additional information regarding the coordination of Public Transportation Agency Safety Plans, the Public Transportation Safety Program, National Public Transportation Safety Plan, and Transit Asset Management Plans in separate NPRMs issued to implement the MAP-21 provisions codified at 49 U.S.C. 5329(b) and 5326, respectively. FTA and FHWA jointly issued an NPRM on June 2, 2014, that proposes new requirements for Metropolitan, Statewide and Non-Metropolitan Planning to implement the new MAP-21 provisions codified at 49 U.S.C. 5303 and 5304, and in the future, FTA and FHWA will issue a joint final rule to guide the new performance-based approach to planning. See 79 FR 31784.

Section-by-Section Analysis

Subpart A - General

673.1 Applicability

This section explains that this regulation would apply to all States, local governmental authorities, and other operators of public transportation systems that are recipients of Federal financial assistance under 49 U.S.C. Chapter 53. In accordance with 49 U.S.C. 5329(d), a Public Transportation Agency Safety Plan would be required of all operators of public transportation systems, whereas in the past, a “system safety program plan” was only required of rail fixed

guideway systems, currently codified in 49 CFR 659.17. This requirement would go into effect one year after the effective date of the final rule.

673.3 Policy

This section explains that FTA proposes the use of principles and methods of SMS as the basis for this regulation and all other regulations and policies FTA 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). It further proposes FTA's intent to set standards for SMS that are flexible and can be tailored to the size and operating complexity of the recipient.

673.5 Definitions

This section sets forth a number of proposed definitions, many of which are based on the principles and methods of SMS. For example, readers should refer to "Accountable Executive," "Hazard," "Operator of a Public Transportation System," "Safety Assurance," "Safety Management System," "Safety Management Policy," "Safety Promotion," and "Safety Risk Management." 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. See http://www.fedeval.net/docs/2012Coplen_1.pdf. Many of the definitions for applying the principles and methods of SMS in proposed § 673.5 are very similar to those set forth in the FAA's SMS regulation, titled "Safety Management Systems for Domestic, Flag, and

Supplemental Operations Certificate Holders,” 14 CFR Parts 5 and 119, 80 FR 1308, Jan. 8, 2015.

In addition, both the Administrator’s May 13, 2013 Dear Colleague letter and a set of frequently asked questions about SMS are available on FTA’s web site at http://www.fta.dot.gov/tso_15177.html. Finally, FTA has provided its “Safety Management Systems Framework,” in Appendix A to FTA’s State Safety Oversight NPRM. 80 FR 11002, Feb. 27, 2015 (<http://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03841.pdf>). FTA anticipates that it will be incorporating these same definitions for applying SMS to public transportation in its related rulemakings for the Public Transportation Safety Program and the Public Transportation Safety Certification Training Program.

FTA proposes to include 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 proposes to include definitions for “Safety Risk Management,” “Safety Risk,” “Safety Assurance,” and “Safety Management Policy,” all key terms to the implementation of SMS.

This section also proposes a number of definitions for terms used repeatedly throughout the other safety programs authorized by 49 U.S.C. 5329. Some of these terms are included in FTA’s proposed State Safety Oversight NPRM which was issued prior to this NPRM, but the wording of the definitions has been slightly changed in today’s rulemaking for sake of clarity. FTA’s intent is for all terms to have the same definition in all of its safety programs, and FTA will reconcile those terms in the appropriate rulemakings. Readers should refer, specifically, to

the definitions of “Accident,” “Event,” “Hazard,” “Incident,” “Investigation,” “Occurrence,” and “Transit Agency.”

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 proposes a definition for “Small Public Transportation Provider” (in accordance with 49 U.S.C. 5329(d)(3)(B)) as a Section 5307 recipient or subrecipient that does not operate rail fixed guideway service and operates 100 or fewer vehicles in revenue service.

New definitions are proposed 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 proposes the minimum requirements for the elements to be included in a Public Transportation Agency Safety Plan. Pursuant to 49 U.S.C 5329(d)(1), this section proposes that each operator of public transportation that receives Federal financial assistance under 49 U.S.C. Chapter 53 must develop and certify a Public Transportation Agency Safety Plan. As provided by 49 U.S.C. 5329(d)(3)(A), § 673.11(d) proposes that a State must draft the Public Transportation Agency Safety Plan for 49 U.S.C. 5310 and 5311 providers, as well as for any small public transportation providers as defined in today’s NPRM. A State is not required to develop a Public Transportation Agency Safety Plan for a particular transit agency that receives

Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or a small public transportation provider, if that agency notifies the State that it will develop its own plan.

Section 673.11(a)(1) proposes that the Public Transportation Agency Safety Plan, and any updates, must be signed by the transit agency's designated Accountable Executive and be approved by the transit agency's Board of Directors, or equivalent entity. This proposal is consistent with the statutory requirement in 49 U.S.C. 5329(d)(1)(A) that a Board of Directors (or equivalent entity) approve the transit agency's safety plan. In short, under today's NPRM, accountability for the contents in the Public Transportation Agency Safety Plan is formally elevated to the Accountable Executive and Board of Directors. Section 673.11(a)(7) proposes that this occurs annually to a timeline established by the agency, or State, in accordance with 49 U.S.C. 5329(d)(1)(D).

Pursuant to 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 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, as discussed in more detail above: Safety Management Policy, Safety Risk Management, Safety Assurance, and Safety Promotion. Consequently, FTA proposes to require 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). In this proposal, 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.

Proposed § 673.11(a)(3) explains that each Public Transportation Agency Safety Plan must include safety performance targets based on the safety performance criteria and state of good repair measures established by FTA in the National Public Transportation Safety Plan. In the National Public Transportation Safety Plan, FTA is proposing to adopt four initial safety performance criteria: (1) Fatalities, (2) Injuries, (3) Safety Events, and (4) System Reliability.¹⁶ These safety performance criteria represent categories of measures that 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 measurable 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 is proposing to adopt these measures through a separate notice and comment process, and FTA directs readers to that docket if readers are interested in submitting comments on the safety performance criteria. FTA expects transit agencies to evaluate their safety performances and determine whether they should change their safety performance targets at least

¹⁶ FTA may adopt additional performance criteria through future public comment processes.

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.

Section 673.11(a)(4) proposes that a Public Transportation Agency Safety Plan must address any future standards or requirements, as applicable, set forth in FTA's Public Transportation Safety Program and FTA's National Public Transportation Safety Plan.

Section 673.11(a)(5) proposes that each transit agency must establish a process and timeline for conducting an annual review and update of its Public Transportation Agency Safety Plan.

Proposed § 673.11(a)(6) would require that each rail transit agency include, or incorporate by reference, in its Public Transportation Agency Safety Plan an emergency preparedness and response plan. FTA intends that each emergency preparedness and response plan would 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 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. Notably, FTA currently requires rail fixed guideway systems to have emergency preparedness plans through the 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 system

safety program plans as currently required under 49 CFR part 659; the pillars of SMS cover the remaining twenty elements. FTA has developed a crosswalk analysis between each of the twenty-one elements of system safety program plans and each of the elements of SMS. FTA is adding this crosswalk to the docket, and FTA is making the crosswalk available on its website at <http://fta.dot.gov/tso.html>.

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 is proposing to require railroads to have emergency preparedness plans. See 77 FR 55403 (Sept. 7, 2012). 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 would expect a transit agency to comply with all other applicable Federal, State, and local requirements, laws, regulations, and codes as they may relate to safety.¹⁷

Section 673.11(b) proposes that the Public Transportation Agency Safety Plan may include more than one mode of service. However, 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. FTA invites specific comment on how FTA could support the development of Public Transportation Agency Safety Plans for Transit Agencies of different sizes and modes.

¹⁷ See FTA's State Safety Oversight Rule at 49 CFR 659.19(r) (2015).

Section 673.11(c) proposes that a transit agency must maintain its Public Transportation Agency Safety Plan in accordance with the recordkeeping requirements of Subpart D of this Part.

Section 673.11(d) proposes that a State must draft and certify a Public Transportation Agency Safety Plan on behalf of any 49 U.S.C. 5310, 49 U.S.C. 5311, or small public transportation provider. A State is not required to draft a Public Transportation Agency Safety Plan if a 49 U.S.C. 5310, 49 U.S.C. 5311, or small public transportation provider notifies the State that it will draft its own plan. In either 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 would be required to 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.

Section 673.11(e) proposes that any rail fixed guideway system that had a system safety program plan, as per requirements set forth in 49 CFR part 659 as of October 1, 2012, may keep that plan in effect until one year after the effective date of the final rule.

§ 673.11(f) proposes that agencies that operate passenger ferries regulated by USCG or commuter rail service regulated by FRA are not required to develop agency safety plans for those modes of service.

673.13 Certification of compliance

Section 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 transit agencies that receive Federal funding under 49 U.S.C. 5310, 49 U.S.C. 5311, and those

identified as small public transportation providers under 49 U.S.C. 5307, 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 49 U.S.C. 5310, 49 U.S.C. 5311, or small public transportation provider under 49 U.S.C. 5307, this certification must also occur within one year after the effective date of the final rule.

In addition to certification, Public Transportation Agency Safety Plans that are developed by transit agencies with rail transit systems must also be reviewed and approved by the appropriate State Safety Oversight Agency as per the requirements set forth in 49 CFR part 659, and the future recodification of those requirements at 49 CFR part 674. In accordance with 49 U.S.C. 5329(e)(4)(iv), State Safety Oversight Agencies 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

This section proposes to require a State or transit agency to make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process. This section also proposes to require, 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 NPRM, each transit agency would be required to implement an SMS; however, FTA would require that each transit agency would scale the SMS to the size, scope, and complexity of the transit agency's operations. Each transit agency would be required to establish its activities to 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. To help clarify SMS development and implementation, FTA intends to provide guidance to the industry, including templates designed to accommodate the variance in transit system mode, size and complexity.

673.23 Safety Management Policy

Under proposed § 673.23(a), a transit agency would be required to 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. FTA expects that the level of detail for organizational accountabilities and responsibilities would be commensurate with the size and complexity of the transit agency.

The Safety Management Policy statement would contain the transit agency's safety objectives. These objectives would include a broad description of the agency's overarching safety goals, which would be based on that agency's unique needs. The Safety Management Policy statement also would include a reference to the agency's safety objectives and performance targets.

Under § 673.23(b), a transit agency would need to include in its Safety Management Policy statement a process that allows employees to report safety conditions to senior management. This process would 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. This is a critical SMS element 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 confidential employee safety reporting programs,¹⁸ and this need was discussed at length in NTSB's Investigate Hearing on the WMATA Smoke and Electrical Arcing Incident in Washington, DC on June 23 and 24, 2015.¹⁹

Section 673.23(c) proposes that the Safety Management Policy statement is communicated throughout the transit agency, as well as to the Board of Directors (or equivalent authority), and is made readily available to all employees of the transit agency and contractors.

¹⁸ NTSB issued Safety Recommendation R-10/02 for the WMATA Metrorail train collision accident on June 22, 2009, found at: <http://www.nts.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."

¹⁹ See the NTSB's hearing materials at http://www.nts.gov/news/events/Pages/2015_WMATA_Washington_DC_IHG_Agenda.aspx, and <http://dms.nts.gov/pubdms/search/document.cfm?docID=432379&docketID=57383&mkey=90596>.

Section 673.23(d) proposes that the transit agency establish its accountabilities and responsibilities necessary to meet the established safety performance targets. In general, a transit agency would need to describe its organizational structure and the procedures it must adopt in order for it to meet its safety performance targets. A transit agency would describe the authorities, accountabilities, and responsibilities for safety management as they relate to the development and management of the transit agency's SMS. The level of detail in this section would be commensurate with the size and complexity of transit agency operations. At a minimum, a transit agency would need to 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.

673.25 Safety Risk Management

Section 673.25(a) proposes that each transit agency establish and implement its process for managing safety risk, including the identification of hazards, analysis of hazards, evaluation of safety risk, and mitigation of safety risk, in all elements of its public transportation system, including changes to its public transportation system that may impact safety performance. At a minimum, FTA would expect a transit agency to apply its safety risk management process to the design of a new public transportation system, changes to its existing public transportation system, new operations of service to the public, new operations or maintenance procedures or organizational change, and changes to operations or maintenance procedures. Additionally, FTA would expect a transit agency to develop measures to ensure that safety principles, requirements, and representatives are included in the transit agency's procurement process.²⁰

²⁰ See FTA's State Safety Oversight Rule at 49 CFR 659.19(u).

Section 673.25(b)(1) would require a transit agency to establish a process for hazard identification and analysis, including the identification of the sources, both proactive and reactive, for identifying hazards. Activities for hazard identification analysis 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 sitting down with a few operators in a room, discussing hazards on the system, deciding which ones pose the greatest risk, and then developing mitigation.

A transit agency must apply its process for hazard identification and analysis to all aspects of its system, including but not limited to its operational activities, system expansions, and state of good repair activities. A transit agency should consider the results of its asset condition assessments while 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.

Section 673.25(b)(2) would require a transit agency to include, as a source for hazard identification and analysis, data and information provided by an oversight authority and the FTA.

FTA proposes that hazard identification and analysis activities are commensurate with the size of the transit agency operations. For example, FTA would anticipate that 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.

Section 673.25(c) proposes that a transit agency establish activities for the evaluation and prioritization of safety risks related to the potential consequences of hazards identified and analyzed in § 673.25(b). Transit agencies would need to evaluate safety risks in terms of both 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).

A transit agency also would need to establish criteria for the development of safety risk mitigations that are necessary based on the results of the agency's safety risk evaluation. 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

Section 673.27(a) proposes that a transit agency develop and implement safety assurance activities that include safety performance monitoring and measurement and continuous improvement. FTA would expect that a transit agency's safety assurance activities would be scaled to the size and complexity of its operations, with the objective being that a transit agency can accurately determine whether or not it is meeting its safety objectives and safety performance targets, as well as the extent to which its SMS is being implemented effectively.

Each transit agency would be required to conduct an annual review of its safety risk mitigations. FTA anticipates that each transit agency would identify those safety risk mitigations that should be reviewed each year to ensure they are still effective.

In § 673.27(b), FTA proposes that a transit agency identify the data and information that it must 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. Under this section, a transit agency would be responsible for the ongoing monitoring of its operations and maintenance protocols and procedures, and any safety risk mitigations, to assure that they are being implemented as planned.

This section proposes that a transit agency investigate safety events (as defined in this NPRM) and any reports from non-compliance with applicable regulations, standards, and applicable legal authority. Finally, the section would require the continuous monitoring of information reported through the employee safety reporting program.

In § 673.27(c), a transit agency would be required to manage changes in its system. A transit agency would be required to develop a process for identifying and assessing changes that may introduce new hazards or impact the transit agency's 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.

In § 673.27(d), a transit agency would be required to regularly assess its safety performance. If a transit agency identifies any deficiencies during a safety performance assessment, it would be required to develop and carry out, under the direction of the Accountable Executive, a plan to address the identified safety deficiencies. FTA would expect a 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 in § 673.11(a)(5).

673.29 Safety Promotion

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

Section 673.29(b) would require a transit agency to ensure that all employees are aware of any policies, activities, and procedures that are related to their role and safety management responsibilities. Safety communications would 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 communicates to an employee when actions are taken in response to reports submitted by the employee through an employee safety reporting program. FTA expects that each transit agency would define the means and mechanisms for effective safety communication based on their organization, structure, and size of operations.

Subpart D – Safety Plan Documentation and Recordkeeping

673.31 Safety Plan documentation

This section proposes that transit agencies keep records of their documents that meet the requirements of this part. FTA would expect 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 results from SMS processes and activities. For the purpose of reviews, investigations, audits, or other purposes, the section proposes that these documents be made available to FTA, State Safety Oversight Agencies in the case of rail transit systems, and other Federal agencies as appropriate. A transit agency would be required to maintain any of these documents for a minimum of three years.

673.33 Safety Plan records

This section proposes that, in addition to the documents indicated above, a transit agency must maintain, at a minimum, the following records: safety risk mitigations, results from a transit agency's safety performance assessment, and records of employee safety training. FTA anticipates that the amount of records maintained by each transit agency would vary based on the agency's size and complexity. For example, it is reasonable to expect that a smaller agency would have fewer safety risk mitigations and employee training records to maintain, whereas a large transit agency may have a robust safety management information system to track and monitor its safety risk mitigations, and perhaps another system dedicated to tracking employee safety training. For safety performance monitoring and measurement, the section proposes that the transit agency maintain documentation that it would use to determine how well it is meeting

its safety objectives and safety performance targets, as well as safety performance indicators used to determine the effectiveness of SMS implementation.

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.

This proposed rule has been drafted and reviewed in accordance with the principles set forth in Executive Orders 12866 and 13563. FTA has determined that this proposed rule likely is “economically significant” under Executive Order 12866, in that it may lead to transit agencies making investment and prioritization decisions related to mitigation of safety risks that would result in economic impacts that could exceed \$100 million in a year. However, as discussed in greater detail below, FTA was unable to quantify the potential impacts of this rule beyond the costs for transit agencies to develop and implement Public Transportation Agency Safety Plans. FTA was able to estimate costs of approximately \$86 million in the first year, and \$70 million per year thereafter. These costs result from developing and certifying safety plans, documenting the SMS approach, implementing SMS, and associated recordkeeping. The estimated costs do

not include 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. The annualized cost of proposed requirements is estimated to be approximately \$71 million. FTA requests comment on any information that could assist in quantifying the costs, benefits, and transfers associated with this rulemaking.

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

FTA also conducted this analysis to satisfy the statutory requirement at 49 U.S.C. 5329(h)(1) that it take into consideration the costs and benefits related to each action that it takes under 49 U.S.C. 5329, including this proposed rule.

The proposed rule would require 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 as required by Section 20021 of the Moving Ahead for Progress in the 21st Century Act (MAP-21), now codified at 49 U.S.C. 5329, using the SMS approach.

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. 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 legislative mandate, the proposed rule responds to National Transportation Safety Board (NTSB) recommendations about expanding the use of SMS to reduce the risks of transit crashes. From 2004 to 2013, NTSB reported on nine transit accidents that, collectively, resulted in 15 fatalities, 297 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 is growing, infrastructure is aging, and large numbers of the workforce are retiring. During that same 2004-2013 time period, transit agencies reported over 40,000 incidents, more than 2,000 fatalities, and over 76,000 injuries to FTA's National Transit Database.

This RIA provides quantitative estimates of the expected compliance costs associated with the proposed rule. Costs for transit agencies were estimated based on the staff labor 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. Three main cost areas were estimated: (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 \$752 million in present value (using a 7% discount rate), or the equivalent of \$71 million per year.

As previously stated, 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. This is because 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 estimate the benefits of these actions. FTA seeks information from the public for 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.

With respect to State and MPO performance target setting, FTA forecasted benefits based on the estimated impact of the SMS approach on reducing transit crashes and their associated societal costs, including fatal and non-fatal injuries, property damage, and other costs. Safety benefits were calculated for both bus and rail modes. However, since the rail agencies are subject to additional safety rules, analysis also was undertaken excluding the rail modes. Benefits were monetized 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 incident 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 could not estimate the benefits of this proposed rule. To estimate safety benefits, one would need to understand the exact causes of the accidents and the factors that may cause future accidents. This information is generally unknown in this sector, given the infrequency and diversity of the type of safety incidents that occur. Instead, FTA conducted a breakeven analysis that compares the costs that FTA was able to estimate (absent the cost of mitigations) to a pool of potential safety benefits. The pool of safety benefits is an estimate of the cost of bus and rail incidents over a future 20-year period. The estimate is an extrapolation based on the cost of bus and rail incidents that occurred from 2010 to 2014.

As the table below shows, the amount of incident reduction needed to breakeven with the costs of the proposed rule that were estimated is low. However, benefits of SMS primarily will result from mitigating actions. As previously stated, the benefits and costs of such actions are not accounted for 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 accident reductions that surpass estimated costs.

This analysis assumes that benefits are realized from reducing both rail and bus incidents after adjusting for the estimated breakeven threshold for the proposed State Safety Oversight and Safety Training Rules (RINs 2132-AB19 and 2132-AB25 respectively), to which the rail agencies also will be subject when finalized.

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 NPRM, both agencies indicated 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 NPRM 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, FHWA's second performance management rule NPRM, published after the joint FTA and FHWA Planning NPRM, 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 that accompanied the joint FTA and FHWA Planning Final Rule captured 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 requests comments on this point. Will there be any additional costs for States and MPOs in target setting beyond the coordination costs included in the planning rule? If so, what would those costs be? To the extent that responses to these questions cause the agency to adjust any of its cost assumptions, those changes will be reflected in the final rule and any related information collections.

A summary of the benefits and costs of this proposed rule is provided in Table 3 below, which also is included in Table 1 above.

Table 3: Reduction in Cost of Bus and Rail Incidents Needed to Breakeven with Estimated Costs²¹

	Current Dollar Value	7% Discounted Value	3% Discounted Value
Bus Incidents (20-Year Estimate)	\$86,999,489,120	\$40,894,178,605	\$58,084,884,054
Rail Incidents (20-Year Estimate)	\$37,680,410,444	\$17,711,706,703	\$25,157,185,334
Total Pool of Benefits (20-Year Estimate)	\$124,679,899,564	\$58,605,885,309	\$83,242,069,388
Estimated Costs (20-Year Estimate)	\$1,407,680,883	\$752,319,890	\$1,050,876,643
Benefits and Costs of Mitigating Actions	Not Estimated	Not Estimated	Not Estimated
Estimated Cost (Annualized)	—	\$71,013,675	\$70,635,417
Breakeven Threshold Including Bus and Rail	—	1.28%	1.26%

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 proposed rule on small entities and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The proposed rule would affect roughly 2,125 small entities, most of which are small government entities and small non-profit organizations that operate public transportation systems in non-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

²¹ The costs and breakeven threshold in this table do not account for actions by agencies to mitigate or eliminate safety risks identified through implementation of their safety plans other than those mitigation actions prescribed in the rule, such as training.

are illustrated by an example calculation for a small operator of a public transportation system that receives Formula Grants for Rural Areas under 49 U.S.C. 5311, for which compliance costs range from an average of \$12,000 per Section 5310 agency, to roughly \$31,000 per small Section 5307 agency (these estimates exclude 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, and Section 5311 agencies average \$1 million per year. Thus, the estimated costs of the rule are around 0.5% to 1.5% of agency budgets. FTA proposes to mitigate 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 mitigate the costs for smaller operators of public transportation systems, FTA is proposing to adopt the SMS approach to safety, which is scalable and tailored for the specific needs of a particular transit agency.

Overall, while the proposed rule would 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 proposed rule to allow flexibility for small entities. FTA is providing additional analysis of the Regulatory Flexibility Act's application to this proposed rule in Regulatory Impact Analysis posted to the docket.

Unfunded Mandates Reform Act of 1995

This proposed 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 proposed 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 proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this proposed 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 proposed 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 NPRM 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 would do the following: (1) develop and certify a Public Transportation Agency Safety Plan; (2) implement and document the SMS approach; and (3) associated recordkeeping.

FTA seeks public comment 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.

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 would be proportionate to the size and complexity of its operations. For example, an operator of both 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 already requires rail fixed guideway public transportation systems to develop System Safety Program Plans and System Security Plans in accordance with the requirements of 49 CFR part 659. FTA collects 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 Public Transportation Agency Safety Plan reporting requirements, 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), which do not provide service that is closed to the general public and only available for a particular clientele. The total number of respondents is 561. This figure includes 242 respondents that are States, rail fixed guideway systems that receive Urbanized Area Formula Program funds under 49 U.S.C. 5307, and large bus systems that receive Urbanized Area

Formula Program funds under 49 U.S.C. 5307. This figure also includes 319 respondents that would have their Public Transportation Agency Safety Plans drafted and certified by the State in which they are located, including small public transportation providers 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; recipients of Formula Grants for Rural areas under 49 U.S.C. 5311; and operators of public transportation systems that receive Formula Grants for the Enhanced Mobility of Senior and Individuals with Disabilities under 49 U.S.C. 5310.

Frequency: Annual.

Estimated Total Annual Burden of Costs and Hours on Respondents:

Tier I Respondents (Operating Over 100 Vehicles and Rail Fixed Guideway Service): Total

Annualized Burden Hours and Costs²²

Agency Type	Agency Safety Plan Item	Number of Respondents	Annual Burden Hours per Respondent	Total Annual Burden Hours	Total Annual Cost (\$)
States	Development / Certification	55	111	6,082	\$210,010
	Implementation / Documentation	55	0	0	\$0
	Record Keeping	55	0	0	\$0
5307 Rail	Development / Certification	60	48	2,862	\$255,660
	Implementation / Documentation	60	699	41,956	\$3,893,019
	Record Keeping	60	238	14,274	\$2,051,779
5307 Large Bus	Development / Certification	127	48	6,123	\$583,332
	Implementation / Documentation	127	771	97,943	\$6,856,950
	Record Keeping	127	232	29,520	\$3,290,570
Total Tier I		242	821	198,760	\$17,141,321

²² The total annual cost includes labor and non-labor costs for travel and information technology.

Tier II Respondents (Operating 100 or Fewer Vehicles and No Rail Fixed Guideway Service):

Total Annualized Burden Hours and Costs²³

Agency Type	Agency Safety Plan Item	Number of Respondents	Annual Burden Hours per Respondent	Total Annual Burden Hours	Total Annual Cost (\$)
5307 Small Bus	Development / Certification	94	19	1,773	\$170,092
	Implementation / Documentation	625	355	221,601	\$11,724,615
	Record Keeping	625	242	150,938	\$8,714,824
5311 Bus	Development / Certification	195	14	2,767	\$265,343
	Implementation / Documentation	1300	279	362,875	\$19,199,240
	Record Keeping	1300	190	247,163	\$14,270,660
5310 Bus	Development / Certification	30	11	319	\$30,617
	Implementation / Documentation	200	227	45,463	\$2,405,367
	Record Keeping	200	21	4,129	\$238,386
Total Tier II		2125	488	1,037,026	\$57,019,144

The total PRA cost of the rule would be approximately \$74.2 million per year averaged over the first three years and \$31,110 per respondent per year on average.

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 proposed rule is categorically excluded under FTA’s NEPA implementing

²³ The total annual cost includes labor and non-labor costs for travel and information technology.

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

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this proposed 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.

Executive Order 13211 (Energy Effects)

FTA has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that this proposed 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

This rulemaking is issued 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

Public Transportation Agency Safety Plan

Issued in Washington, D.C., under authority delegated in 49 CFR 1.91.

Therese McMillan

Acting Administrator

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

Title 49—Transportation

PART 673—PUBLIC TRANSPORTATION AGENCY SAFETY PLANS

Subpart A—General

Sec.

673.1 Applicability

673.3 Policy

673.5 Definitions

Subpart B—Safety Plans

673.11 General requirements

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Subpart C—Safety Management Systems

673.21 General requirements

673.23 Safety management policy

673.25 Safety Risk Management

673.27 Safety assurance

673.29 Safety promotion

Subpart D—Safety Plan Documentation and Recordkeeping

673.31 Safety plan documentation

673.33 Safety plan records

Authority: 49 U.S.C. 5329(d), 5334; 49 C.F.R. 1.91

Subpart A—General

§ 673.1 Applicability.

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.

§ 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. All rules, regulations, policies, guidance, best practices, and technical assistance administered under FTA's safety authority will, to the extent practicable and consistent with legal and other applicable requirements, follow the principles and methods of SMS. 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 and accountability for the implementation and maintenance of the Safety Management System of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

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), and which does not provide service that is closed to the general public and only available for a particular clientele.

Performance criteria means categories of measures indicating the level of safe performance within a transit agency.

Performance target means a specific level of performance for a given performance measure over a specified timeframe.

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

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 Safety Officer or an equivalent.

Safety performance target means a Performance Target related to safety management activities.

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

Safety risk means the assessed probability and severity of the potential consequence(s) of a hazard, using as reference the worst foreseeable, but credible, outcome.

Safety risk evaluation 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 Safety Management System 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 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.

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 that receives Federal financial assistance under 49 U.S.C. Chapter 53.

Transit Asset Management Plan means a plan developed by a recipient or Group Plan pursuant to 49 CFR part 625 that includes, at minimum, capital asset inventories and condition assessments, decision support tools, and investment prioritization.

Subpart B—Safety Plans

§ 673.11 General requirements.

(a) A transit agency must within one calendar year after publication of the final rule, 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 entity equivalent to a Board of Directors.

(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 criteria established under the National Public Transportation Safety Plan, and the state of good repair standards established in the regulations that implement the National Transit Asset Management System and are included in 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 rulemaking 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 also must include 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 transit agency that receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, and any small public transportation provider located in that State. A State is not required to draft a Public Transportation Agency Safety Plan for a particular transit agency that receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or 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.

(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 the effective date of the final rule].

(f) Agencies that operate passenger ferries regulated by the United States Coast Guard (USCG) or commuter rail 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 by [one year after the effective date of the final rule]. 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 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 transit agency and include the following elements:

- (a) Safety Management Policy as described in § 673.23 of this subpart;
- (b) Safety Risk Management as described in § 673.25 of this subpart;
- (c) Safety Assurance as described in § 673.27 of this subpart; and
- (d) Safety Promotion as described in § 673.29 of this subpart.

§ 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 and safety performance targets.

(b) A transit agency must establish 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 may designate a Chief Safety Officer or SMS Executive who may be given 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, 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: identification of safety hazards, analysis of safety hazards, safety risk evaluation, and safety risk mitigation.

(b) *Safety hazard identification and analysis.* (1) A transit agency must establish a process for hazard identification and analysis.

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

(c) Safety risk evaluation and mitigation. (1) A transit agency must establish activities to evaluate and prioritize the safety risk associated with the potential consequences of safety hazards. Safety risks must be evaluated in terms of probability and severity and take into account mitigations already in place to reduce the probability or severity of the potential consequence(s) analyzed.

(2) A transit agency must establish criteria for the development of safety risk mitigations that are necessary based on the results of the agency's safety risk evaluation.

§ 673.27 Safety assurance.

(a) *Safety assurance process.* A transit agency must develop and implement a safety assurance process, consistent with this subpart.

(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 hazards not identified through the Safety Risk Management process established in § 673.25 of this subpart;

(3) Monitor its operations to identify any safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended;

(4) Investigate safety events to identify causal factors; and

(5) 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 a comprehensive safety training program for all agency employees and contractors directly responsible for the management of 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.

§ 673.33 Safety plan records.

In addition to any documents or records required elsewhere in this part, a transit agency must maintain records of the following items:

- (a) Safety risk mitigations developed in accordance with § 673.25;
- (b) Results from the transit agency's safety performance assessments as required under § 673.27; and
- (c) Employee safety training taken for purposes of compliance with this part and the Public Transportation Agency Safety Training Certification Program.

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