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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 671

[Docket No. FTA-2023-0024]

RIN 2132-AB41

Rail Transit Roadway Worker Protection

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

ACTION: Final rule.

SUMMARY: The Federal Transit Administration (FTA) is publishing a final rule for minimum safety standards for rail transit roadway worker protection (RWP) to ensure the safe operation of public transportation systems and to prevent safety events, fatalities, and injuries to transit workers who may access the roadway in the performance of work. This final rule applies to rail transit agencies (RTAs) covered by the State Safety Oversight (SSO) program, SSO agencies (SSOAs), and rail transit workers who access the roadway to perform work. This final rule sets minimum standards for RWP program elements, including an RWP manual and track access guide; requirements for on-track safety and supervision, job safety briefings, good faith safety challenges, and reporting unsafe acts and conditions and near-misses; development and implementation of risk-based redundant protections for workers; and establishment of RWP training and qualification and RWP compliance monitoring activities. RTAs are expected to comply with these Federal standards as a baseline and use their existing Safety Management System (SMS) processes to determine any additional mitigations appropriate to address the level of RWP risk identified. This final rule requires SSOAs to oversee and enforce implementation of the RWP program requirements.

DATES: The effective date of this final rule is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

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I. Executive Summary

A. Purpose and Summary of Regulatory Action

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. As part of its internal SMS, FTA established a Safety Risk Management (SRM) program to proactively address safety concerns impacting the transit industry and to systematically apply FTA's statutory oversight authority to improve the safety of the nation's transit infrastructure through the Public Transportation Safety Program.

The process follows a five-step approach: (1) identify safety concerns; (2) assess safety risk; (3) develop mitigation; (4) implement mitigation; and (5) monitor safety performance. In general, as a result of the first two steps, FTA may develop and advance appropriate mitigations to address a safety hazard, such as safety regulations, general or special directives, safety advisories, or technical assistance and training activities.

In 2019, FTA began piloting the SRM process to focus on high-priority safety risks and identified the roadway worker protection (RWP) safety concern as a topic for analysis. As part of FTA's assessment of the safety risk, FTA reviewed the rail transit industry's existing approaches to RWP. This review showed that on a national level, these approaches do not adequately protect transit workers from rail transit vehicles and other roadway hazards. As a result, FTA determined that a Federal baseline RWP program is an appropriate mitigation and is issuing this regulation to reduce fatalities and serious injury events involving rail transit workers that must access the roadway in the performance of their work.

This final rule requires rail transit agencies (RTAs) covered by the State Safety Oversight (SSO) program under 49 CFR part 674 (part 674) to implement a baseline RWP program to provide a standardized and consistent approach to protecting roadway workers industry-wide, overseen and enforced by State Safety Oversight Agencies (SSOAs).

This final rule prohibits the use of individual rail transit vehicle detection as a sole form of protection for workers on the roadway. It sets requirements for RTAs to conduct a safety risk assessment, use their existing documented SRM processes required under the Public Transportation Agency Safety Plans (PTASP) regulation at 49 CFR part 673 (part 673), to identify and establish redundant protections for each category of work that roadway workers perform on the roadway or track. Redundant protections may include procedures, such as foul time and advance warning systems, and also physical protections to stop trains in advance of workers, such as derailers and shunts. The SSOA must review and approve the RTA's RWP program, including the safety risk assessment and redundant protections.

The safety risk assessment must be consistent with the RTA's Agency Safety Plan (ASP) and the SSOA's program standard. RTAs may supplement the safety risk assessment with engineering assessments, inputs from the Safety Assurance process established under § 673.27, the results of safety event investigations, and other SRM strategies and approaches.

To ensure effective implementation and oversight of the RWP program and redundant protections, this final rule also requires RWP training and compliance-monitoring activities, supplemented by near-miss reporting and SSOA oversight and auditing.

B. Statutory Authority

Congress directed FTA to establish a Public Transportation Safety Program in the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112-141) (MAP-21), which was reauthorized by the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114-94), and the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58). FTA is authorized to regulate public transportation systems that receive Federal financial assistance under Chapter 53 of Title 49, United States Code (U.S.C.). FTA's safety program is authorized by 49 U.S.C. 5329.

49 U.S.C. 5329(f)(7) authorizes FTA to issue rules to carry out the Public Transportation Safety Program, and 49 U.S.C. 5329(b)(2) directs FTA to develop and implement a National

Public Transportation Safety Plan (National Safety Plan) that includes minimum safety standards to ensure the safe operation of public transportation systems. In 2017, FTA published its first iteration of the National Safety Plan, which was intended to be FTA's primary tool for communicating with the transit industry about safety performance (82 FR 5628). Subsequently, on April 10, 2024, FTA published an updated version of the National Safety Plan (89 FR 25316). While FTA has previously published a National Safety Plan document that includes only voluntary standards, 49 U.S.C. 5329(f) provides FTA with the discretion and authority to issue mandatory minimum standards to ensure the safe operation of public transportation systems that consider, to the extent practicable, relevant recommendations of the National Transportation Safety Board (NTSB), best practices standards developed by the public transportation industry, any minimum safety standards or performance criteria being implemented across the public transportation industry, as well as any additional information that the Secretary determines necessary and appropriate. FTA's RWP rule establishes minimum standards that consider and are responsive to NTSB recommendations that focus on the need for Federal regulation and minimum RWP requirements, best practices and voluntary standards issued by the American Public Transportation Association (APTA), as well as the results of research and safety event reviews conducted by FTA.

C. Summary of Key Provisions

This final rule establishes minimum safety standards to protect transit workers who may access the roadway in the performance of work.

The final rule requires each RTA to adopt and implement an RWP program to improve transit worker safety that is consistent with Federal and State safety requirements and is approved by its SSOA. The RWP program must be documented in a dedicated RWP manual, which includes the following: (1) terminology, abbreviations, and acronyms used to describe the RWP program activities and requirements; (2) RWP program elements; (3) a definition of RTA and transit worker responsibilities for the RWP program; (4) training, qualification, and

supervision required for transit workers to access the roadway, by labor category or type of work performed; and (5) processes and procedures to provide adequate on-track safety for all transit workers who may access the roadway in the performance of their work, including safety and oversight personnel.

The RWP manual must include or incorporate by reference a track access guide to support on-track safety. The track access guide must be based on a physical survey of the track geometry and condition of the transit system.

The final rule requires the RTA to completely review and update its RWP manual at least every two years. Updates to the manual must reflect current conditions, lessons learned in implementing the RWP program as described in the manual, and information provided by the SSOA and FTA. The first review must be conducted within two years of the SSOA's initial approval of the RWP manual.

The final rule prohibits the use of individual rail transit vehicle detection. Each RTA is required to conduct a safety risk assessment to identify redundant protections for all workers to be included in the RWP program and manual. Protections must be based on the category of work being performed. Tasks demanding more attention from roadway workers, including the use of tools and equipment, may require RTAs to implement greater levels of protection based on the results of the safety risk assessment.

In addition, the final rule requires comprehensive job safety briefings, a good faith safety challenge provision, and required reporting of near-misses. Formal training and qualification programs are required for all workers who access the roadway. RTAs also must adopt a program for RWP program compliance auditing and monitoring.

SSOAs are responsible for approving, overseeing, and enforcing implementation of the requirements in the final rule for each RTA in their jurisdiction, including the RWP manual and supporting training and qualification programs.

Summary of Changes

FTA made revisions throughout the rule in response to comments. FTA also made non-substantive technical edits throughout the rule to correct citations and typographical errors and for clarity.

In response to questions about the timeframe for implementation of the new RWP program requirements, FTA has included a provision in the final rule that provides RTAs with one year from the effective date of the rule to develop a compliant RWP program and obtain SSOA approval. FTA made changes to several definitions used throughout the rule. Those specific changes are detailed in II.D. below. FTA struck the word "all" from the SSOA requirement to review training and qualification records for transit workers who must enter a track zone to perform work at § 671.25(c)(2)(i)(E).

FTA added language at § 671.31(a)(5) that clarifies that the RTA may designate a single roadway worker in charge for the entire working limit and that, if a single roadway worker in charge is designated over multiple work groups within a working limit, each work group should be accompanied by an employee qualified to the level of a roadway worker in charge who shall be responsible for direct communication with the roadway worker in charge.

FTA updated § 671.31(b)(2) to clarify that in the event of an emergency, the roadway worker in charge must warn each roadway worker to immediately leave the roadway and not return until on-track safety is reestablished and a job safety briefing is completed.

At § 671.33(b)(3), FTA removed references to Federal Railroad Administration and Occupation Safety and Health Administration guidance, and added, as clarification, the requirement for job safety briefing elements to explicitly address the status of power and hazards explicitly related to electrified system for RTAs with electrified systems. FTA also added general emergency response information at § 671.33(b)(4) and the inclusion of an emergency contact number for the roadway worker in charge at § 671.33(b)(8).

FTA revised § 671.33(c)(2) to clarify requirements for roadway workers to individually acknowledge, in writing, both the receipt and understanding of the job safety briefing and the

requirement to use required personal protective equipment. In addition, FTA updated the language in § 671.33(c)(3) to clarify that the roadway worker in charge confirms in writing that they have received written acknowledgement of the job safety briefing from roadway workers rather than attesting that each roadway worker understands the job safety briefing.

FTA also revised the language in § 671.33(d) to require a follow-up briefing in the event of a change in on-track safety conditions.

The good faith safety challenge process at § 671.37(c) has been revised for clarity. The rule now explicitly clarifies that the roadway work group must remain clear of the roadway or track zone until a challenge and refusal is resolved.

FTA also updated § 671.39(a)(2) to clarify FTA's intent that it is the RTA's responsibility to establish redundant protections to ensure on-track safety for multiple roadway groups within a common work area.

FTA has revised § 671.39(d)(2) to clarify that redundant protections may include but are not limited to the listed protections.

FTA changed the frequency of the RWP Compliance Monitoring Program reporting from monthly to quarterly (§ 671.43(b)(1)).

D. Summary of Economic Analysis

The final rule, which sets minimum safety standards for RWP programs, will benefit roadway workers by reducing their risk of fatalities and injuries. FTA analyzed national transit worker safety data from 2008 to 2020 and identified safety events that would have been prevented if agencies had implemented the protections required by this final rule. On average, the rule would prevent an estimated 1.2 fatalities and 2.4 injuries per year, resulting in annual safety benefits of $16.2 million in undiscounted 2023 dollars. To meet the minimum safety standards, RTAs and SSOAs would incur an estimated $2.6 million in start-up costs plus $13.7 million in ongoing annual costs. The largest ongoing annual costs are for redundant worker protections ($6.4 million) and RWP training ($5.1 million).

Table ES-1 summarizes the potential effects of the rule over a ten-year analysis period from 2025 to 2034. In 2023 dollars, the rule would have annualized net benefits of $2.0 million at a 2 percent discount rate (discounted to 2025), $2.0 million at a 3 percent rate, and $1.8 million at a 7 percent rate.

Table ES-1 – Summary of Economic Effects (2023 Dollars, Discounted to 2025)

Item	Annualized Value (2% Discount Rate)	Annualized Value (3% Discount Rate)	Annualized Value (7% Discount Rate)
Benefits	$15,835,205	$15,681,465	$15,095,242
Costs	$13,840,028	$13,721,849	$13,273,086
Net benefits	$1,995,177	$1,959,615	$1,822,156

II. Notice of Proposed Rulemaking and Response to Comments

FTA issued a notice of proposed rulemaking (NPRM) for Rail Transit Roadway Worker Protection (RWP) on March 25, 2024 (89 FR 20605).[1] The public comment period for the NPRM closed on May 24, 2024.

FTA received comments from over 7100 unique respondents, including RTAs, SSOAs, labor unions, industry businesses and organizations, private individuals, and the National Transportation Safety Board (NTSB). FTA also received ex parte comments about the rulemaking, which are summarized in the rulemaking docket.

FTA reviewed all relevant comments and took them into consideration when developing this final rule. FTA addresses these comments in the corresponding sections below. Some comments were outside the scope of this rulemaking, and FTA does not respond to comments in this final rule that were outside the scope.

In response to comments, FTA made several changes to the final rule which are summarized above and discussed in more detail in the corresponding sections below.

A. General

[1] Rail Transit Roadway Worker Protection, 88 FR 20605 (March 25, 2024). https://www.federalregister.gov/documents/2024/03/25/2024-06251/rail-transit-roadway-worker-protection

1. SUPPORT FOR REGULATION

Comments: FTA received 7,103 comments of support from individuals as part of a "response campaign" that provided a form letter for individuals to upload to the *Federal Register* along with their names and addresses. This letter expressed strong support for FTA's proposed rule aimed at protecting rail transit workers, including support for preventing unsafe working conditions on the rail transit roadway, acknowledgment that FTA's proposed rule aligns with long-standing recommendations from the NTSB, broad concern over worker safety and understaffing issues, and the urgency for finalizing and implementing the new rule quickly to save lives and prevent injuries.

Some individuals personalized the form letter with additional comments. Most of these commenters agreed that rail transit workers are exposed to dangerous working conditions; should have the right to refuse to work in unsafe conditions; and should be able to report unsafe acts, conditions, and near-misses without fear of retaliation. Other personal comments emphasized the importance of a safe working environment. Some commenters included details about themselves or mentioned that family members or friends worked on the rail transit roadway. Many of these personal comments also expressed the need to address unsafe working conditions, long hours, understaffing, and the prioritization of profits over safety.

FTA also received comments of support from the NTSB, three SSOAs, four RTAs, two industry associations, fourteen labor organizations, one vendor, and multiple individuals. These commenters generally applauded FTA for taking action to address roadway worker safety in the transit industry and were supportive of FTA establishing standardized and robust safety standards to protect these essential workers. Commenters noted that the rule would signal a significant shift for the industry and emphasize the importance of ensuring that tasks are performed safely. Commenters urged FTA to act quickly to finalize this rule and noted support for the rule despite possible increased costs.

The NTSB expressed appreciation for FTA's consideration of many of the NTSB's safety recommendations on this topic and support for the proposals that address specific NTSB safety recommendations.

One SSOA commenter stated that the SSOA agrees with the purpose and intent of this proposal but suggested that RTAs should be allowed to comply with this rule in a manner that is not obstructive to operations. One SSOA commenter noted the important role SSOAs play in enforcing Federal requirements through auditing, inspections, deficiency resolution, and technical assistance. The commenter added that the SSOA supports many of the proposed changes, but suggested adjustments. Another SSOA commented that they are pleased that FTA recognizes the potential need for SSOAs to prescribe more stringent standards. The SSOA expressed support for specific requirements related to the proposed regulation's requirements that RTAs have an RWP manual, review and update it biennially, and share it with their SSOA. The commenter added that moving from piecemeal updates to a biennial update process, initial and refresher training requirements, and annual audits would lead to greater RTA compliance with RWP programs and improved worker safety.

An RTA commenter expressed support for the proposed requirement that RTAs develop a track access guide for on-track safety. One industry association commenter stated that a mandated RWP program is something that freight industry contractors have become accustomed to and fully recognize as an essential part of roadway worker safety. Another industry association commenter stated that the association supports FTA's proposed regulation where it leverages existing program elements, when possible, to promote efficient enhancements of the regulatory framework; increases involvement from frontline transit workers in safety-related decision-making; promotes or requires the meaningful use of safety data for safety-related decision-making; and clarifies roles, responsibilities, and reporting thresholds needed to comply with the regulation. In addition, the industry association commenter encouraged FTA to continue to hone and clarify its regulatory language, strengthen meaningful collaboration and

communication with agencies and organizations to develop its standards and minimum requirements, and provide clear and consistent guidance to transit and oversight agencies affected by the public transportation safety regulation. Another industry organization, the American Public Transportation Association (APTA), emphasized its support of FTA's efforts and strongly urged FTA to utilize the APTA standard for RWP, which it noted was recently updated and was prepared with input from a very diverse group of RTAs and business members.

One labor organization commenter agreed with the alignment of on-track safety regulations with the Federal Railroad Administration's (FRA) standards, which would ensure a heightened level of safety for workers as they carry out their daily responsibilities. Another labor organization commenter supported FTA's recommendations for aligning rail industry track worker safety with best-demonstrated practices that have proven beneficial to freight service engineers, conductors, and assistant conductors. The commenter also expressed support for FTA's proposal to implement job safety briefings, good faith safety challenges for workers whose safety is in jeopardy, additional formal safety training and qualifications for railroad workers whose duties involve being on and about the tracks, and full, formal reporting of near-misses or close calls that occur on or near railroad tracks. The commenter pointed out that all of the safety redundancies in the RWP are necessary and welcome. Another labor organization commented that it is hopeful that FTA will utilize this rulemaking process as a starting point to establish more specific and prescriptive RWP standards in the future. One international labor organization shared its trackwork collective bargaining agreement (CBA) clauses and Rail Safety Management Committee rules to assist FTA in further discussions and in the process of implementing new safety standards to protect railway workers and to improve the overall safety of public transport systems.

One vendor suggested that FTA use clarified guidance, circulars, or appendices, as appropriate, to define these standards in line with industry best practice.

An individual commenter noted that using the SSOAs as an oversight metric provides additional scrutiny to ensure compliance with safety standards. One individual commenter stated their strong support for FTA's new rule protecting rail workers and commented that the rule is necessary because of understaffing and increased assaults on transit workers. Another individual commenter stated their support for FTA's proposal to increase safety standards for rail transit roadway workers and added that anyone working on a roadway or near a railroad crossing deserves a safe work environment. One individual noted that they particularly support the proposed requirements for redundant protections and comprehensive safety risk assessments, which are vital for mitigating the unique dangers rail workers face. In addition, the commenter stated that the requirement to prohibit reliance on individual rail transit vehicle detection as the sole form of protection resonates with the need for multifaceted safety approaches. One individual commenter agreed that job safety briefings; good faith safety challenges; and reporting unsafe acts, conditions, and near-misses would help with information transparency, allowing for increased transit worker safety. One individual commenter noted that the proposal's requirements to enhance job safety briefings and good faith safety challenges and establish clear protocols for reporting unsafe acts and conditions align with pro-union principles of empowering workers and ensuring that their voices are heard and acted upon in the workplace. One individual who commented noted that the proposal emphasizes the importance of adequate training and qualifications of rail transportation workers and the need to establish RWP-compliance-monitoring activities.

One anonymous individual commenter stated that FTA's emphasis on the importance of comprehensive safety protocols, notably the prohibition of sole reliance on individual rail transit vehicle detection, would ensure multiple layers of protection for railway workers.

FTA Response: FTA appreciates the extensive support for this rule from all stakeholders advocating for RWP in the rail transit industry. FTA agrees with the many comments that support the need for this rule due to the exposure of transit workers to dangerous working

conditions when performing duties on or near the roadway. FTA has developed this rule to address many of the concerns that supporters have voiced in their comments. FTA designed the rule to be flexible and to address risks and challenges that RTAs face, as well as competing priorities for safety in the rail transit environment. This rule is also designed and intended to provide protections together with existing safeguards and regulations, including the PTASP regulation (49 CFR part 673).

FTA also appreciates the references and suggestions that commenters provided for rule development, including the considerations to align this rule with FRA standards and best practices, incorporate safety redundancies, reference the recently updated APTA standard for RWP, and review clauses from an international labor organization trackwork CBA and rules from the Rail Safety Management Committee to assist with development of the new RWP safety standards. As noted by many supporting commenters, the rule considers RWP-related NTSB recommendations as well as existing practices implemented through the FRA and RTAs that effectively support roadway worker safety. Some of these practices include requiring job safety briefings, instituting practices for good faith safety challenges to allow workers to refuse in good faith assignments in unsafe conditions, establishing a safety reporting program, ensuring adequate training and qualifications for workers, and ensuring multiple layers of protection for workers.

FTA welcomes the support for the role of the SSOA in enforcing the RWP programs and practices at RTAs including the review of the RWP manuals and RWP program implementation. While a few SSOAs suggested more stringent timeframes for RWP manual updates, training requirements, and audit activities, FTA's rule does provide opportunities for SSOAs to go above and beyond its requirements, as appropriate, in order to effectively oversee and enforce RWP practices at the RTAs within their jurisdiction.

FTA is encouraged to hear from a commenter that the freight industry has become accustomed to and fully recognizes RWP as an essential part of roadway worker safety. FTA

also appreciates the support for the track access guide for on-track safety and the rule's application to railroad crossings.

FTA confirms that this rulemaking is a starting point for RWP and will consider strengthening requirements through the rulemaking process, if necessary, in the future. As requested by a number of commenters, FTA will plan to provide further guidance on RWP practices outside of this final rule, as well as present opportunities for collaboration with the rail transit industry and SSOAs in sharing best practices on RWP.

Finally, FTA is pleased to hear from many commenters that this rule signals a positive shift for the safety of rail transit RWP.

2. IMPLEMENTATION TIMEFRAME

Comments: One industry association, two RTAs, and one individual commented on the implementation timeframe for the rule. The industry association expressed concern with the requirement for RTAs to submit their RWP program and manual to the SSOA for initial approval within 90 days, and strongly urged FTA to extend the deadline to at least 180 days. One RTA remarked that developing, implementing, updating, and maintaining an RWP program, as well as addressing "numerous downstream effects," will require a substantial investment of time and effort. The RTA noted that it is imperative that enough time is provided to safely roll out and manage a new rules program and suggested that FTA set an implementation period of no less than three years.

Another RTA commented that transitioning to a new RWP program could be challenging for RTAs that will have to overhaul their existing safety protocols and stated that the regulation should provide a flexible timeline for implementation to allow agencies enough time to adapt to the new requirements without compromising current safety measures.

One individual questioned why the regulation is just now going into effect and then asked how long it will take for everything to be put in place.

FTA Response: FTA agrees with the commenter that 90 days would be an insufficient timeframe to accommodate the development of the RTA's RWP program. Further, FTA agrees that setting up an RWP program will take time and effort and may require RTAs to revise existing programs. FTA has included in the final rule a provision, at § 671.1(d), that provides RTAs with one year from the effective date of the rule to develop an RWP program and manual and obtain SSOA approval. FTA believes that this one-year implementation timeframe balances the urgency of addressing RWP-related safety risk with the time and effort required by RTAs and SSOAs to comply with the rule requirements. FTA believes that the suggestion of three years is too long, given that FTA offers agencies significant flexibilities in how to structure their RWP programs under this rule, and recent FTA audits have revealed that unsafe conditions and practices persist in the industry and pose a substantial risk to workers.

FTA notes that safety-related regulations for RTAs have been in place since the initial 49 CFR part 659 Rail Fixed Guideway Systems State Safety Oversight rule was finalized and went into effect January 26, 1996. Since then, rail transit safety has seen improvements, and in some cases setbacks, and regular revisions of regulations have continued enhancing safety for the rail transit industry.

3. STANDARDS

Comments: One labor organization, one industry association, and one RTA provided comments related to RWP standards. The labor organization expressed concern over FTA's management-driven approach of issuing open-ended directives to address identified hazards instead of promulgating specific safety standards. They recommended that FTA adopt a standards-driven approach and develop specific standards for each element of the RWP program following the publication of this rule.

One RTA and industry association (APTA) recommended that FTA adopt the APTA standards because they provide a solid foundation for the governing documents of a rail system and are meant to be scalable without being overly prescriptive.

FTA Response: Due to the varying RTA operating characteristics and environments, this final rule establishes minimum standards as a baseline for rail transit RWP, which will provide important protections for workers. While FTA did not adopt APTA's standards, in developing this rule FTA did consider APTA's standards along with FTA's internal Safety Risk Assessment findings, NTSB recommendations, FRA regulations, California General Order No. 175-A regulations, common industry practices, and recommendations from the Transit Advisory Committee for Safety (TRACS). FTA declines to adopt wholesale any of the above-mentioned RWP standards and views the requirements finalized in this final rule as most appropriate for the transit industry. FTA notes that the final rule allows RTAs and SSOAs to establish additional or more stringent rules that are consistent with this part. FTA believes that it would be difficult to develop standards for all RWP elements that would be appropriate for the varying sizes of agencies subject to this rule. However, FTA will continue to monitor RWP safety concerns after the implementation of this rule to ensure effectiveness and may take additional action in the future.

4. OTHER COMMENTS

Comments: One SSOA, one labor organization, one individual, two RTAs, and the NTSB provided additional general comments on FTA's proposed part 671. The SSOA suggested that FTA should use the term "Public Transportation Agency Safety Plan (PTASP)" rather than "Agency Safety Plan (ASP)" since "PTASP" is defined throughout Federal regulations and is used as an industry standard for consistency with Federal statute and regulation.

The labor organization suggested that FTA provide a process for RTAs to request a variance where the RTAs can propose an alternative approach that does not compromise roadway worker safety to address any concerns regarding flexibility (size and scope) for RTAs. The commenter emphasized that FTA must take responsibility for enforcing standards and discouraged RTA self-monitoring, citing that this practice has contributed to the troubling roadway worker safety record that necessitated the proposed rule. Similarly, regarding

implementation and oversight of the RWP requirements, an individual recommended FTA increase monitoring and evaluation of local implementation to ensure these measures are effective and support safety improvements for rail transit workers.

The NTSB encouraged FTA to address Safety Recommendation R-14-41 in future rulemaking, which recommends that FTA revise its SSO program regulation to require all federally funded rail transit properties to comply with certain Occupational Safety and Health Administration (OSHA) requirements.

An RTA commenter noted that the proposed rule will impact how an RTA handles city permits, traffic control, maintenance, and operations. The commenter added that allowing flexibility in following the law will help RTAs better protect transit workers in a format consistent with the rule's intent and meet industry best practices. Another RTA asked FTA to consider the burden that this and other additional regulations place on small transit providers and consider that regulations that might be manageable for larger systems could be overwhelming for small urban and rural transit systems, especially given their limited labor pool and high-cost operating environment. The commenter warned that implementing new regulations before recent PTASP requirements are fully adopted may not be sustainable with existing resources and funding levels.

FTA Response: FTA uses the acronym "PTASP" to refer to the regulation, 49 CFR part 673, and to describe associated regulatory requirements established in part 673. FTA uses the acronym "ASP" to refer to the agency safety plan required by the PTASP regulation. FTA reiterates that, due to the varying RTA operating characteristics and environments, this final rule establishes minimum safety standards as a baseline for rail transit RWP and allows RTAs flexibility in developing RWP programs. Because there is significant flexibility in how RTAs can interpret and implement protections, FTA does not believe a formal process for requesting a variance is necessary. Congress has delegated direct safety oversight of RTAs to the SSOAs through 49 U.S.C. 5329(e). Therefore, FTA believes that the SSOA is best equipped to provide

first-level oversight of compliance with this rule that goes beyond RTA self-monitoring. FTA will continue to monitor SSOA oversight through existing processes and will receive RTA RWP programs from the SSOAs following their approval.

FTA confirms that it will consider the NTSB recommendation for potential future efforts.

FTA is mindful of burdens on localities and small RTAs and reiterates that this final rule allows RTAs flexibility in developing RWP programs that best fit an RTA's needs based on operating characteristics and environments. For small urban and rural systems, FTA expects that RWP programs developed by these systems may be less complex, and therefore may not significantly impact staffing needs. FTA will provide additional technical assistance to smaller transit providers regarding the expectations of the rule. Additionally, as noted above, FTA is including in the final rule a provision that provides RTAs a one-year implementation timeframe to finalize their RWP programs and obtain SSOA approval, by which time all agencies subject to PTASP will have fully adopted the updated requirements under part 673.

B. **Section 671.1 – Purpose and Applicability**

FTA received submissions from 16 commenters related to § 671.1's proposed requirements.

1. FLEXIBILITY AND SCALABILITY

Comments: FTA received comments from SSOAs, RTAs, an industry association, and individuals regarding the flexibility and scalability of the proposed rule. One commenter emphasized that FTA should consider the particular needs and realities of RTAs because operating environments and technical conditions among RTAs vary significantly. The commenter recommended that FTA work with local safety regulators and railroad operators before the regulation is implemented to ensure the regulation considers local specifics. One SSOA and multiple RTAs noted that the proposed requirements appear to focus on larger RTA systems and the safety events occurring on those systems and recommended that FTA consider how the size of an RTA system will impact the RTA's implementation of RWP requirements.

Two SSOAs, several RTAs, and one industry association expressed their view that the proposals did not sufficiently consider different levels of risk and operating environments and may be burdensome or unattainable for street-running streetcar systems, inclined planes, or systems in similar environments and small and medium-sized RTAs in small urban or rural communities. The RTAs and an SSOA emphasized the need for scalability, including one RTA request that the rule be flexible or that FTA grant waivers or alternatives at a scaled-down level for RTAs that do not experience the same roadway worker risk as heavy rail agencies. One industry association requested a bifurcated final rule that imposes requirements that are commensurate with the system size and level of risk, while another industry association advocated for a nationally recognized program consistent with the regulation with consideration for the nuances of different operations. A commenter suggested that differentiating rule requirements between types of rail systems will help RTAs track what is more applicable to their systems.

FTA Response: FTA acknowledges commenters' concerns regarding the applicability of the rule for diverse RTAs providing service in different operating environments, under different operating plans, with different equipment and conditions, and with varying levels of associated risk. FTA intends the rule to be flexible enough to allow RTAs to craft an RWP program that complies with the RWP program requirements and fits the size and complexity of each agency. While FTA agrees that larger and heavy rail systems may experience more frequent RWP-related events or have a need for a more robust RWP program, FTA believes that hazards exist on and near the roadway for all RTAs, regardless of size. FTA has considered the difference in size and operating environments across the country and anticipates that RWP programs will not look the same due to the variability of needs. For example, the requirement for redundant protections prescribes that agencies use a safety risk assessment to implement protections that are proportional to the RTA's determined risk, which will not be the same across agencies.

Smaller systems may opt to develop RWP programs and correlated documentation that are briefer and more basic based on the RTA's self-assessed level of risk, while larger and more complex systems will necessarily have more complex and detailed RWP programs.

While FTA acknowledges that a bifurcated rule could potentially create more specific requirements based on the size of the RTA, FTA believes it would be difficult, even in a bifurcated rule, to address the nuances of various RTAs' operating practices and environments more fully. FTA believes the rule is sufficiently flexible to address all system sizes and therefore that it does not need to be bifurcated. Likewise, FTA declines to establish a nationally recognized program consistent with the regulation, as a national program would face the same challenge of attempting to cover the nuances of various operators.

2. REVENUE SERVICE

Comments: FTA received comments from one RTA and one industry association seeking clarification on whether the rule would apply to vehicles on storage tracks and/or during the design and construction of a system, or whether the rule applies only to vehicles in revenue service. The industry organization recommended that the requirements apply only when trains are in revenue service because of the difference in risks.

FTA Response: To protect workers against various hazards, FTA confirms that this rule applies to any rail fixed guideway public transportation system, including those in engineering or construction. In FTA's safety risk analysis of hazards associated with RWP, it was determined that hazards are not limited to times when vehicles are in revenue service. FTA is aware of RWP-related safety events that have involved other on-track rail equipment, outside of revenue service times and off revenue service tracks. As such, FTA has defined "on-track safety" to mean freedom from the danger of being struck by a moving rail transit vehicle or other equipment," which includes non-revenue service vehicles. While there may be a difference in the level of risk between revenue and non-revenue service, FTA believes that all transit workers working on revenue and non-revenue service will benefit from the protections identified by this rule.

3. ROADWAY WORKERS AND TRANSIT WORKERS

Comments: FTA received several comments requesting clarification of the difference between "roadway workers" and "transit workers" and their respective responsibilities under the regulation. One RTA commenter recommended that the RWP program be specific to roadway workers and not include transit workers. One vendor suggested modifying the end of § 671.1(c) to remove the language "in the performance of work," which they commented would broaden the applicability of the rule. An RTA and an industry association suggested adding language to § 671.1(c) to specify that this part applies to transit workers who "perform work within a track zone" to clarify the applicability of the rule.

FTA Response: FTA appreciates the request to clarify the difference between the terms "transit workers" and "roadway workers" as used throughout the rule. FTA intends for the rule to provide protection for all transit workers who access the roadway to perform work. FTA has defined a "transit worker" to mean " any employee, contractor, or volunteer working on behalf of the RTA or SSOA." In comparison, a "roadway worker means a transit worker whose duties involve inspection, construction, maintenance, repairs, or providing on-track safety such as flag persons and watchpersons on or near the roadway or right-of-way or with the potential of fouling track." In other words, not all transit workers will be roadway workers. Because FTA intends for RWP policies, process, and procedures to prevent safety events for all transit workers, not just roadway workers, FTA disagrees with the suggestion to make the rule specific to "roadway workers."

FTA declines to revise § 671.1(c) as suggested by commenters because FTA believes the language in § 671.1(c) is sufficiently clear and has identified the individuals subject to the rule requirements throughout the regulation.

4. GENERAL

Comments: FTA received general comments on the applicability of the rule. An industry association inquired about the applicability of this rule to transit systems with shared corridors

with FRA tracks. An SSOA asked about the applicability of the regulation to individuals or groups performing work on the right-of-way that are not associated with the RTA, such as personnel from Federal, State, and local agencies, and utilities. One RTA asked that FTA clarify how it determined that existing measures across the nation are not adequately protecting transit workers and whether FTA's identification of RWP as a safety risk included data specific to streetcar or light rail systems.

FTA Response: Nothing in this final rule changes any existing FRA requirement that may apply to a rail transit system, and this part does not apply to rail systems that are already subject to the safety oversight of FRA. This final rule applies to all RTAs covered by the SSO program and RTAs that share corridors with FRA tracks should consider this configuration when developing their RWP programs.

The rule applies to RTAs, SSOAs, and transit workers who access any rail fixed guideway public transportation system in the performance of their work. The rule does not apply to individuals who are trespassing, transit workers accessing the track for reasons other than the performance of work, or routine pedestrian activity where applicable. Transit workers who access the roadway in the performance of their work must follow the RTA's RWP program access and rules practices with minimum standards established by this regulation. FTA agrees that there are others who may need to access the track who are not transit workers. Therefore, and in response to comments, FTA has added language to the final rule, at § 671.21(a)(8) that requires RTAs to include procedures in their RWP programs to provide an escort, as needed, for individuals that are not RWP-certified and do not fall into the categories of roadway worker, transit worker, or emergency personnel, who may need to access the track zone such as utilities workers.

FTA's internal SRM process identified RWP as a safety concern for analysis and determined that a Federal baseline RWP program is an appropriate mitigation. FTA considered

information and data specific to streetcar and light rail systems during the SRM process and while drafting the NPRM and final rule.

C. Section 671.3 – Policy

Comments: One SSOA and one RTA provided FTA with comments relevant to § 671.3. One commenter suggested referencing the ASP in this section because that is the document where the RTA establishes its SMS process. An RTA recommended adding a section into this requirement stating that if the SSOA desires more stringent RWP-related requirements beyond the regulation, then the SSOA must collaborate with the RTA in the development of these additional requirements.

FTA Response: FTA has included references to part 673 where appropriate throughout this rule, including in this section at § 671.3(b), where FTA requires RWP standards to be integrated into the RTA's SMS and Safety Assurance processes. FTA declines to add to this section a requirement for an SSOA to collaborate with the RTAs on any additional RWP-related requirements contained in the SSO's program standard that go beyond the requirements established in this final rule. While FTA encourages SSOAs and RTAs to work together whenever feasible, SSOAs play a critical role overseeing safety at RTAs, and as such, should have latitude to prioritize safety concerns and hazards at the RTAs they oversee. The SSO regulation at 49 CFR part 674 requires SSOAs to establish a disposition process that defines how the SSOA will address any comments the RTA makes with respect to the SSO program standard and FTA expects the requirements of this final rule and part 674 requirements to operate in concert.

D. Section 671.5 – Definitions

FTA received several comments, both general and specific, related to § 671.5 definitions.

1. GENERAL

Comments: One industry association commenter requested flexibility to allow RTAs to continue to use their existing, long-standing agency RWP terminology since transit workers have

been trained on and are familiar with the terminology unique to their operating environments. The association expressed concern that changing RTA terminology may introduce hazards, including the potential for miscommunication and misapplication.

One RTA commenter recommended that FTA revise the definitions proposed in the NPRM to be consistent with those in APTA's RWP Program Requirements Standard (APTA RT-OP-S -106-11, Rev.2), noting that misalignment with APTA terminology may have a broader impact beyond the RWP manual such as on other RTA governing documents. The commenter noted that updating existing RTA terminology, such as in procedures and on forms, would require significant work and additional resources.

One vendor commented that RTAs should work with APTA and other industry groups to develop common operations terminology by geography and/or type of operations.

FTA Response: FTA acknowledges that changes to terms and definitions may have an impact on RTAs and their existing RWP programs. FTA encourages RTAs to use the definitions in this final rule in their RWP programs for consistency in RWP programs across RTAs. However, the final rule does not require RTAs to adopt these terms, and RTAs may use their own definitions as appropriate. Through the final rule, FTA has developed a set of common terminology and considered multiple sources for definitions to be used in the development of this rule, including APTA's standard. However, FTA declines to simply adopt the definitions in APTA's RWP standard. When possible, FTA has opted to be consistent with FRA regulations. This decision will create commonly understood practices and terminology across the rail systems subject to Federal oversight, helps align FTA and FRA safety priorities, and ensure consistency for agencies that may be subject to both FRA and FTA regulations, among other benefits.

2. ACCOUNTABLE EXECUTIVE

Comments: FTA received a comment from an SSOA that suggested removing "ultimate responsibility" from the proposed definition of Accountable Executive, and replacing it with "the power and authority," because the meaning of "ultimate responsibility" is unclear and potentially

unattainable. The SSOA commenter noted that the Board of Directors can also control or direct the human and capital resources needed to develop, maintain, and implement the ASP.

FTA Response: FTA declines to revise the definition as it would be inconsistent with the definition of Accountable Executive that FTA has established in part 673 and part 674. As these terms all refer to the same person within a transit agency, FTA believes consistency across the regulations is imperative and is finalizing the definition as proposed.

3. AMPLE TIME

Comments: FTA received comments from two RTAs, one SSOA, and one vendor regarding the proposed definition of "ample time." One RTA commenter noted that the definition implies two options for work crews to exercise: vacating the track zone or entering a place of safety, which is defined as "outside of the track zone." This commenter recommended that FTA review the "place of safety" definition in conjunction with the "ample time" proposed definition to ensure the two do not conflict. Another RTA commenter submitted a recommendation for revising the "ample time" definition by replacing "to be clear of the track zone or in a place of safety 15 seconds before" with "to occupy a place of safety for no less than 15 seconds before" and "at the maximum authorized speed" with "at the civil speed limit." The RTA noted that using "maximum authorized speed" could potentially introduce human error to reduce the time needed to find safety. The SSOA commenter suggested adding "at least" before "15 seconds" and "or equipment" after "a rail transit vehicle." The comment from the vendor noted support for the definition with the clarification that "ample time" should be calculated from the moment the roadway worker is in a place of safety and clear of the track zone. Additionally, the vendor asked for clarification about whether "maximum authorized speed," as used in this proposed definition, is calculated based on line speed or a reduced speed enforced through control measures.

FTA Response: As suggested by the commenters, FTA reviewed the definitions of "place of safety" and "ample time" and determined they are not conflicting and notes these terms are

consistent with the FRA RWP regulation. FTA considered the suggestions to revise the definition but declines to make changes as it views them as unnecessary. First, FTA notes that if a rail vehicle is moving above the authorized speed, the operator is violating the operating rules. Second, FTA declines to add "at least" before "15 seconds" to the definition, as the definition as proposed sufficiently establishes that 15 seconds is the baseline required time for workers to be clear of the track zone or in a place of safety. While 15 seconds is commonly adopted in the industry as an appropriate minimum time for workers to clear the track zone or enter a place of safety, FTA recognizes that some RTAs may wish to prescribe additional or more stringent time requirements consistent with this part. FTA believes it is unnecessary to add "or equipment" to the definition because the final rule defines "rail transit vehicle" as "any rolling stock." Therefore, FTA is finalizing the definition as proposed. FTA declines to opine on how to calculate "ample time" in this final rule but may provide guidance to RTAs in the future. FTA notes this calculation will vary based on an RTA's unique operating characteristics. FTA refers readers to the "maximum authorized speed" definition in this rule, which is calculated and established by an RTA based on the rail transit vehicle control system, service schedule, and operating rules.

4. EQUIVALENT PROTECTION

Comments: One SSOA commenter asked FTA to clarify in the definition whether the SSOA must approve or concur with the "equivalent protection" after the RTA demonstrates to the SSOA that the alternative design, material, or method will provide equal or greater safety for roadway workers. The commenter recommended clarification on what happens if the SSOA does not agree with the protection.

FTA Response: FTA is finalizing the definition as proposed. FTA believes it is unnecessary to clarify the definition because § 671.39(d)(3) establishes that an equivalent protection for lone workers must be "approved by the SSOA." In accordance with an SSOA's oversight responsibilities, FTA expects the SSOA to exercise judgment and authority in the

review and approval of the RTA's RWP program elements. In the event the SSOA does not agree with the RTA's proposed equivalent protection in lieu of foul time for lone workers, the SSOA must notify the RTA expeditiously so that the RTA may propose revisions or an alternate equivalent protection that both parties agree is adequate.

5. FLAG PERSON

Comments: One RTA and one industry association recommended that FTA revise the proposed definition of "flag person" by changing "designated by the RTA" to "designated by the Roadway Worker in Charge." Both commenters noted this would further clarify that the roadway worker in charge is the authority for safety while overseeing an active work zone and is typically the one to designate a qualified transit worker as a flag person. The industry association commenter added that a designated flag person should be able to perform work done by other crew members and not be restricted to solely flagging. Otherwise, RTAs will need additional personnel on every work crew, which is overly burdensome and inefficient.

FTA Response: In response to these comments, FTA has revised the definition of "flag person" to provide additional flexibility for the designation of a flag person across the diverse operating characteristics of rail fixed guideway public transportation systems and notes that the revised definition supports the designation of a flag person by the roadway worker in charge. FTA disagrees that a flag person should be able to perform other work while flagging. FTA believes it is necessary for the flag person to be engaged solely in performing the flagging function to ensure the on-track safety of the roadway work group. Even minor tasks risk diverting a flagger's attention, which increases the risk that they may err in their flagging duties. Flaggers also must be prepared to respond immediately to novel hazards or quickly changing situations and should not be engaged in any tasks that may divert their focus or delay their reaction time. In previous safety incidences, it is clear that undefined roles have resulted in communication breakdowns, with very serious consequences.

In accordance with § 671.31(a)(4) a roadway worker in charge serves in the function of maintaining on-track safety for members of the roadway group. FTA notes that, in the function of maintaining on-track safety, a roadway worker in change may perform flagging duties in some situations. When a roadway worker in charge performs flagging duties, they cannot perform other duties. If a roadway worker in charge performing flagging duties needs to respond to a work crew issue, prior to responding, the roadway worker in charge must suspend flagging activity by stopping work, designating another flag person, or taking other action. While a roadway worker in charge position carries considerably more training experience and qualification than a flag person, FTA understands that in some situations a roadway worker in charge may carry out flagging duties as described above. In these scenarios, FTA expects that the roadway worker in charge would perform their other duties such as providing the job safety briefing prior to fouling the track and would perform the associated recordkeeping tasks prior to, and after, flagging duties are complete.

6. FOUL TIME PROTECTION

Comments: Three commenters suggested revisions to the proposed definition of "foul time protection." One SSOA commenter suggested adding "RTA designated" in front of the first instance of "roadway worker." One RTA commenter suggested adding the following: "on controlled track when that work will not disturb the track or third rail structure in a manner that would prevent movements at normal speeds" after "working limits," "qualified" in front of the first instance of "roadway worker," and "controlled" in front of "track." They also suggested replacing "will be authorized to operate" with "will operate." One vendor recommended adding "for a defined time period" after "working limits," "and issued authority" after "notified," "to occupy a specific segment of track under which" after "control center," and "or on-track equipment" after "no rail transit vehicles."

FTA Response: FTA declines to make any of the recommended changes as they are too specific given the varied complexities in the operating characteristics of the rail fixed guideway

public transportation systems this rule addresses and are not necessary for clarity of purpose in this final rule. Therefore, FTA is finalizing the definition as proposed.

7. FOULING A TRACK

Comments: FTA received comments from three RTAs regarding the proposed definition of "fouling a track." One RTA commenter asked if FTA will also define the term "proximity" as used in the definition. One RTA commenter recommended adopting the definition of "fouling a track" from 49 CFR part 214. The commenter noted that based on the proposed definitions of "fouling a track" and "track zone," the distance from the running rail considered to be "fouling the track" would increase from four feet to six feet. The commenter added that this may require protection for some inspection and maintenance activities that currently do not need it. In addition, the commenter suggested that if these two proposed definitions become the standard, passengers would be fouling the track while standing behind the tactile warning strip. One RTA commenter recommended that FTA incorporate a standard distance for "fouling a track," such as four feet from the nearest running rail or require RTAs to establish a set distance based on their fleets.

FTA Response: In response to comments, FTA has revised the definition of "fouling a track" in the final rule by adding "typically within four feet of the outside rail on both sides of any track" and has removed the last sentence of the proposed definition for clarity. The distance and language are adopted from the recommendations of the commenters and are consistent with FRA requirements in 49 CFR 214, which considers an individual or item of equipment to be fouling the track if "within four feet" of the rail. However, FTA opted to use the term "typically," as FTA intends for RTAs to have flexibility to define greater distances, as needed. FTA has removed any distance language from the definition of "track zone," and instead has included distance-related language in the definition of "fouling a track" to further parallel the definitional approach used by the FRA and recommended by the commenters.

8. INDIVIDUAL RAIL TRANSIT VEHICLE DETECTION

Comments: One RTA and one SSOA commented on the proposed definition of "individual rail transit vehicle detection." The RTA commenter noted that including lone worker provisions in the definition contradicts the proposed requirement regarding redundant protection. The SSOA commenter suggested rewording the proposed definition for clarity by adding "information on" before "approaching rail transit vehicles," removing "and leaving the track," and changing "in ample time" to "within ample time."

FTA Response: FTA intends for this definition to describe the practice of relying on an individual to detect approaching vehicles or equipment and does not believe it conflicts with the requirements for redundant protections. FTA declines to revise the definition as suggested because it does not believe that the suggested revisions would make the definition clearer. Since individual rail transit vehicle detection is a commonly understood term in the industry, FTA has opted to adopt the FRA definition of this term and is finalizing the definition as proposed.

9. JOB SAFETY BRIEFING

Comments: FTA received comments from several commenters, including the NTSB, one RTA, one SSOA, and two vendors, regarding the proposed definition of "job safety briefing." The NTSB expressed concern that the definition allows virtual job safety briefings without providing limitations for when RTAs can employ them and urged FTA to indicate when RTAs are permitted to conduct virtual job safety briefings. A vendor recommended adding for emphasis, "including the on-track safety being provided" after "the protections to eliminate or protect against those hazards." One SSOA commenter suggested rewording the definition to, "Job safety briefing means a meeting conducted by the RTA designated Roadway Worker in Charge that addresses the requirements of this part." The commenter noted that, if the regulation refers to the "requirements of this part" at the end of the definition, it is unnecessary to include some of the requirements within the definition. The commenter added that the definition also creates confusion by outlining only some of the requirements when all the requirements are important. Further, the commenter suggested that FTA clarify in the regulation where and when

a job safety briefing should be conducted rather than in the definition. One vendor commenter suggested that FTA clarify in the definition that a job safety briefing is conducted prior to commencing work or fouling the track because the information conveyed in a briefing is critical to safely fouling a track.

FTA also received a comment from an RTA regarding the use of "job safety briefing" compared with "roadway job safety briefing."

FTA Response: While FTA understands the concern regarding virtual job safety briefings, the final rule permits virtual job safety briefings to account for situations where a roadway worker in charge is not physically located with a crew or lone worker. This may include situations where a lone worker calls in to receive a job safety briefing or where a work crew may be spread out over a larger working limit. FTA believes this flexibility is necessary for the unique operating environments of the RTAs covered by this rule and will help ensure that job safety briefings are provided. FTA leaves it to the RTAs to determine when a virtual briefing is permissible, and each RTA may establish its own limitations as necessary. FTA declines to adopt suggested revisions to the definition because FTA believes that the language as it is written is inclusive of all topics relating to the protections that may be necessary for on-track safety, and emphasis is not needed. FTA declines to remove the words "requirements of this part" as it makes it clear that the definition of "job safety briefing" is inclusive of all requirements specified elsewhere in the rule. The requirements of a job safety briefing and its use are included throughout the rule and not every aspect of these requirements can be captured within the definition. Details on the particular circumstances or events that may require a roadway worker in charge to provide the job safety briefing are included in the relevant sections of the rule, including § 671.31(b)(1), which describes when the roadway worker in charge must provide a job safety briefing. FTA also declines to revise the term "job safety briefing" to "roadway job safety briefing" because FTA intends to cover all individuals responsible for on-track safety or who are required to access the track zone to perform work and does not believe the suggested addition helps provide clarity.

10. LONE WORKER

Comments: One RTA asked whether rail supervisors perform activities that fall into the lone worker category, and if so, should rail supervisors also be qualified as lone workers. This RTA commenter also requested clarification regarding the definition of "Lone Worker" and its implications related to brief track access (under 1 minute in duration).

FTA Response: If a rail supervisor is performing duties that fit the "lone worker" definition of "an individual roadway worker who is not afforded on-track safety by another roadway worker, who is not a member of a roadway work group, and who is not engaged in a common task with another roadway worker," then the rail supervisor is a "lone worker" and must have the appropriate qualifications. The provisions in § 671.35 apply to lone workers as a subclassification of roadway workers, whose duties involve inspection, construction, maintenance, repairs, or providing on-track safety, such as flag persons and watchpersons, on or near the roadway or right-of-way or with the potential of fouling track. Transit workers who are not roadway workers and who must momentarily access the roadway in the performance of work are covered under the RWP program under § 671.23(b). Individual transit workers may only foul the track in the performance of work once they have received the appropriate permissions and redundant protections, such as foul time, that have been established as specified in the RWP manual. However, individual transit workers fouling the track momentarily in the performance of work are not roadway workers or lone workers and, therefore, are not subject to § 671.35 provisions.

11. MAXIMUM AUTHORIZED SPEED

Comments: FTA received two comments on the proposed definition of "maximum authorized speed." One RTA proposed that FTA change the definition to "the highest speed permitted for the movement of trains permanently established by timetable/special instructions." One vendor requested FTA clarify whether an operating rule requiring speed reduction when

personnel are trackside would be considered the "maximum authorized speed" per this definition.

FTA Response: FTA agrees that the maximum authorized speed includes the highest speed permitted on the rail transit system and therefore a definitional change is not necessary. This speed could be determined by the RTA's design or engineering; it could be enforced by the train control system; or it could be specified in procedures, operating requirements, and timetables. FTA is finalizing the definition as proposed to ensure the highest or maximum speed permitted on the system is used, wherever and however it may be specified, when calculating ample time. In response to the vendor, FTA confirms that the maximum authorized speed applies to the highest speed permitted for the movement of rail transit vehicles on the system, or part of the system, but does not extend to a general operating rule requiring speed reduction when personnel are trackside, unless that speed reduction was required for the entire system, or part of the system, not just when workers are encountered.

12. MINOR TASKS

Comments: FTA received comments about the proposed definition of "minor tasks" from one SSOA, one industry association, and one vendor. The SSOA commenter noted that FTA should clarify in the definition whether it intends to allow the use of individual rail transit vehicle detection for minor tasks. The comment from the industry association recommended that FTA change the definition to make clear that if a roadway worker performing a task with a tool can visually assess their surroundings every five seconds, the task remains a minor task under this regulation. The vendor also asked FTA to clarify the definition of "tool" because certain necessary inspection devices, such as a tape measure or track gauge, could be considered tools. The vendor recommended that minor tasks could include, but need not be limited to, visually inspecting, examining, or patrolling on a track. These tasks do not use tools and allow workers to hear and visually assess their surroundings regularly. The vendor recommended that "can hear" be added to the "minor task" definition because hearing is critical to receiving immediate notice

of train movement. Further, the vendor recommended that a minor task should be defined based on a safety risk assessment of the task, which is necessary to determine whether a worker performing the task can assess their surroundings every five seconds.

FTA Response: FTA does not believe that it is necessary to provide greater clarity regarding the use of individual rail transit vehicle detection while conducting minor tasks within the definition because, as stated in § 671.21, this rule prohibits the use of individual rail transit vehicle detection as the only form of protection in the track zone. FTA confirms that as defined, a "minor task" is one that does not include the use of tools, which would include items such as a track gauge as suggested by the commenter. However, § 671.35 allows for lone workers to perform minor tasks *or* routine inspections. Routine inspections do allow for the use of common inspection devices, such as tape measures or rail gauges, that do not impact a worker's ability to assess their surroundings at least every five seconds. Additionally, FTA agrees with the vendor's recommendation to revise the definition to specify that minor tasks should not prevent a transit worker from being able to assess their surroundings through what they hear. Therefore, in response to this comment, FTA has revised the definition of "minor tasks" to include "hear and" before "visually assess" to incorporate this aspect of awareness. FTA disagrees with the vendor's recommendation to define a minor task based on a safety risk assessment of the task. The range of tasks that may fall within this description are numerous. Performing a safety risk assessment on each potential situation would be, at times, onerous. Agencies are encouraged to conduct safety risk assessments whenever they deem them necessary, but FTA declines to require RTAs to adopt this approach across the board for determining what constitutes a minor task in order to reduce the burden of implementing these new requirements.

13. NEAR-MISS

Comments: One SSOA, two RTAs, and one vendor submitted comments regarding the proposed definition of "near-miss." A vendor suggested FTA adopt a definition more specific to this rule, such as that provided by APTA in its "Roadway Worker Near-Miss Reporting

Requirements" standard. The SSOA commenter stated the definition is ambiguous and needs clarity and suggested that FTA consider using a definition more in line with the OSHA definition. The SSOA stated that additional clarity in the definition would help an RTA more effectively report near-misses and limit under- or over-reporting events due to doubt about the definition and how to apply it and also would help SSOAs administer and enforce the regulation, minimize disputes between SSOAs and RTAs, and facilitate consistent application across the States. One RTA noted that the proposed definition of "near-miss" is somewhat generic and provides too little detail. The commenter recommended that FTA adopt the National Safety Council (NSC) definition, "an unplanned event that doesn't result in injury or death but could have." One RTA commented that the definition is highly subjective, and RTAs will apply it inconsistently because a transit worker's interpretation of a near-miss may not necessarily align with the agency's interpretation. The commenter asked FTA to consider providing guidance to help RTAs navigate potential discrepancies.

FTA Response: FTA appreciates the comments recommending that FTA add more detail and specificity to the definition or adopt one of the alternative suggested definitions; however, FTA declines to make any changes in order to maintain consistency with the definition of "near-miss" used in 49 CFR part 673. FTA believes this consistency is necessary as near-miss information will be relevant to an agency's SMS, as required under part 673 of this chapter. FTA recognizes that the definition of near-miss is not lengthy; this definition is intended to allow RTAs to use their own discretion and judgment to determine when an avoided safety event was narrowly missed and thus constitutes a near-miss. FTA also acknowledges that what constitutes a near-miss for one agency may be different for another, due to system configurations and other factors. FTA confirms the agency's intent to provide technical assistance and guidance on the final rule, including how to identify near-miss situations. FTA recognizes the inherent challenges in defining a term such as "near-miss," which is intended to include events with outcomes that did not occur. Necessarily, such terms will rely on some level of subjectivity or interpretation,

and FTA encourages RTAs to work closely with frontline staff to educate personnel on near-misses and the procedures associated with the RTA's transit worker safety reporting program required in 49 CFR part 673.

14. ON-TRACK SAFETY

Comments: FTA received comments from one SSOA, one RTA, and one vendor regarding the proposed definition of "on-track safety." The SSOA commenter suggested that FTA revise the proposed definition by removing the words "a state of" before the word "freedom" to provide clarity. The RTA commenter recommended FTA adopt APTA's definition of "on-track safety" from the "Roadway Worker Program Requirements" standard. The vendor commented that limiting the definition solely to vehicle-based hazards may exclude other significant hazards, such as electrical or switch movement. The commenter requested that FTA clarify whether "operating and safety rules that govern track occupancy" are intended to cover these other types of hazards.

FTA Response: FTA intends for "on-track safety" to encompass all hazards a worker may encounter while working on the track roadway, including electrical and switch movement, as applicable to the RTA's operating environment. In response to the comments, FTA has updated the definition of on-track safety to include "other on-track hazards" for clarity. FTA declines to revise the definition further or adopt the APTA definition because FTA believes the definition in the final rule is sufficiently clear, and notes that it is consistent with FRA's definition of "on-track safety."

15. PLACE OF SAFETY

Comments: Three RTAs, one industry association, and one vendor submitted comments on the proposed definition of "place of safety." An RTA recommended FTA adopt APTA's definition of "place of safety" from the "Roadway Worker Program Requirements" standard. Another RTA commenter suggested FTA define "place of safety" as a "location within the roadway but outside the dynamic envelope of rail vehicles, to include at least four feet from the

nearest running rail." The commenter added that the distance FTA defines in "fouling a track" should be used in the "place of safety" definition. One RTA commenter and an industry association commenter recommended that FTA revise the definition by removing "outside the track zone." The commenters suggested that this change would better suit RTAs with median street-running alignments that will find it impossible to identify a "place of safety" that is "outside the track zone" such as segments of rail alignment that are flanked by traffic lanes on both sides of the tracks. The vendor commenter agreed with the proposed definition of "place of safety;" however, they pointed out that the proposed definition of "track zone" currently suggests that "places of safety" within six feet of the track may be within the track zone.

FTA Response: FTA is finalizing the proposed definition without change. Due to the many varied configurations of rail transit systems, FTA believes that the definition balances the need to ensure safe egress for workers with the need to ensure that terminology can apply to a variety of different systems.

FTA does wish to clarify that "place of safety" includes cut-outs because these are areas of refuge safe from train passage. As for the definition of "place of safety" referencing the condition of being safely "outside of the track zone," several commenters suggested modifications to the term "track zone" for clarity. FTA considers a "place of safety" as being outside of the track zone and therefore ensuring workers are safe from train vehicles and other rail hazards directly related to rail operations. With regard to other hazards, like nearby passing traffic, FTA expects RTAs to effectively protect workers from these external but real hazards near to and potentially impacting the track right-of-way and associated work when identifying places of safety. FTA has revised the definition of "track zone" (see Section II.D.26) by removing "typically an area within six feet of the outside rail on both sides of any track," and adding proximity language to the definition of "fouling a track" to better align with FRA's definitional approach and to provide flexibility to RTAs (see Section II.D.7).

16. RAIL TRANSIT VEHICLE

Comments: One SSOA commenter noted apparent inconsistency throughout the proposed rule's definitions regarding FTA's use of the terms "rail transit vehicle" or "equipment" and noted that sometimes both terms are used in a definition and sometimes not. The commenter noted that FTA did not define "rail transit equipment" and asked if the equipment used by an RTA contractor is included in the meaning of the term "equipment."

FTA Response: Definitions that reference rail transit vehicles in the context of ensuring workers have the necessary time and sight distance to be sufficiently clear of moving vehicles do not include the term "equipment." These definitions are the following: "ample time," "foul time protection," "maximum authorized speed," and "minor tasks." On-track equipment other than rolling stock, such as machinery or tools, may still pose safety risks and are referenced in other definitions throughout this section as relevant. As stated in the definition, "rail transit vehicle" includes "any rolling stock used on a rail fixed guideway public transportation system." This includes all vehicles used by contractors as well as by the RTA employees.

17. RAIL TRANSIT VEHICLE APPROACH WARNING

Comments: One RTA commented on the proposed definition of "rail transit vehicle approach warning" and suggested FTA use the term "train" rather than "rail transit vehicle."

FTA Response: FTA declines to adopt this change out of consideration for and to encompass the various terms and equipment used in the rail transit industry including light rail vehicles, streetcars, inclined plane cars, cable cars, and others.

18. REDUNDANT PROTECTION

Comments: One RTA and one vendor submitted comments regarding the definition of "redundant protection." The RTA commenter asked FTA to clarify what constitutes "procedural" protection. The commenter expressed that the proposed definition allows too much room for subjectivity, leading to inconsistent application and conflicts between RTAs and SSOAs. Further, the commenter noted that although the proposed requirement at § 671.39(d) includes a list of types of redundant protections, most of which appear to be procedural, the term inherently

encompasses much more than the list suggests. The vendor commenter recommended that FTA reword the definition of "redundant protection" if this type of protection must encompass all roadway workers. The commenter suggested FTA replace in the definition "individual rail transit vehicle detection" with "the minimum levels of protection specified in this subpart."

FTA Response: FTA will provide more information on "procedural" protections in the future. The list of "redundant protections" in the rule at § 671.39 is not meant to be exhaustive or limiting, but rather serve as a list of common examples. The rule allows flexibility for RTAs to design programs with effective redundant protections that work for their operations and environments, thus a degree of subjectivity is intended within this definition. FTA declines to amend the definition as the current definition makes clear that redundant protections are intended to ensure the safety of roadway workers. FTA also believes it is necessary to reference the limitations on individual rail transit vehicle detection within this definition to ensure RTAs, who commonly use this practice, understand the requirements for building out additional protections in relation to that practice.

19. ROADWAY

Comments: FTA received comments from one SSOA regarding the proposed definition of "roadway." The SSOA commenter asked if the term includes maintenance facilities as they are "support infrastructure" for the movement of rail transit vehicles.

FTA Response: FTA does not intend for the term "roadway" in this rule to apply to maintenance structures, but it does apply to all track outside of those structures.

20. ROADWAY MAINTENANCE MACHINE

Comments: One SSOA and one RTA commented on the proposed definition of "roadway maintenance machine." The SSOA commenter suggested FTA change the term from "roadway maintenance machine" to "roadway machine" if, per the definition, this equipment is used for other activities beyond maintenance. The RTA commenter recommended that FTA revise the

definition of roadway maintenance machine by adding "powered by any means of energy rather than hand power" after "device" and changing "rail transit track" to "railroad track."

FTA Response: FTA disagrees that the definition of "roadway maintenance machine" needs revision. "Roadway maintenance machine" encompasses vehicles that support maintenance broadly, to include repair, construction, or inspection, as listed in the definition. A roadway maintenance machine encompasses a broad spectrum of machinery, from a hi-rail inspection vehicle to track vacuum equipment, which may be owned by the RTA or by contractors authorized to work on the roadway. Further, FTA does not find it necessary to exclude machinery by power mode for this definition. The roadway maintenance machine is used in this rule in relation to the RWP training and qualification program and job safety briefings, and in both contexts the term could potentially apply to hand-powered machinery. FTA will also keep the term "rail transit track" in the definition for clarity between rail transit track and other track.

21. ROADWAY WORKER

Comments: Three RTAs submitted comments regarding the proposed definition of "roadway worker." One RTA commenter asked FTA to define "construction" and how work in construction areas interacts with these proposed rules in pre-revenue and revenue service areas, because a construction area can be a very different environment than revenue service. The commenter recommended FTA exclude construction areas from the rule, as OSHA and other Federal guidelines already govern construction safety and argued that including construction contractors as roadway workers would unnecessarily burden RTAs. In support of this argument, the RTA commenter recommended that FTA add "in revenue service segments" to the end of the roadway worker definition to exclude workers in a non-service area. The commenter also suggested that FTA adopt APTA's definition from its "Roadway Worker Program Requirements" standard. Another RTA commented that the definition of roadway worker should be limited to anyone doing work (inspection, maintenance, or construction) in the track zone or

providing protection for roadway workers in the track zone. One RTA argued that FTA should not use "transit workers" in the definition as there are alternate means of protection in place for those who do not meet the definition of a roadway worker. The commenter suggested the following revised definition for roadway worker: "An employee of a railroad or a contractor to a railroad whose duties include inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or maintenance machinery on or near track or with the potential of fouling a track, and watchperson/lookout."

FTA Response: FTA declines to remove transit workers whose duties include construction from the definition of "roadway worker." FTA's proposed definition aligns with the FRA definition of roadway worker and the comprehensive protection it provides. This means a "roadway worker" includes an individual working in roadway construction in pre-revenue environments, and each RTA will need to ensure RWP during pre-revenue and revenue phases. FTA believes this is necessary as pre-revenue work may involve unique risks, including but not limited to, working alongside non-revenue service equipment or working adjacent to RTA infrastructure. For pre-revenue phases, RTAs should implement the RWP program and worker protections in a manner that is appropriate to address the specific risks of that working environment.

FTA considered adopting APTA's definition of roadway worker from its "Roadway Worker Program Requirements" standard; however, FTA declined to do so because it is narrower. FTA's definition is intentionally broader than APTA's roadway worker definition, and all workers encompassed under APTA's definition will also fall under FTA's definition, including contractors. Likewise, FTA declines to further limit the definition of roadway worker to either eliminate the phrase "transit worker" or adjust the enumerated duties of a roadway worker. The definition of roadway worker in this rule was designed to protect any worker who may be exposed to hazards on or near the tracks while in the performance of work. FTA

designed this definition to encompass a wide range of potential job duties, and to ensure consistency across agencies. FTA has further clarified the relationship in this rule between the term transit worker and the term roadway worker in response to the comments on § 671.1. FTA is finalizing the definition of roadway worker as proposed.

22. ROADWAY WORKER IN CHARGE

Comments: FTA received comments regarding the proposed definition of "roadway worker in charge" from one SSOA, two RTAs, and one industry association. The SSOA commenter suggested that FTA add "protection and designated in this role by the RTA" to the end of the definition. One RTA commenter recommended FTA add "and may perform work that is part of the work crew's responsibilities" to the end of the definition, arguing this revision would clarify that a roadway worker in charge may perform duties such as overseeing their work crew. Another RTA commenter suggested the following definition: "A qualified employee who is responsible for establishing on-track safety for roadway work crews." An industry association commenter recommended adding "and may perform work that is part of the work crew's responsibilities, including flagging for trains" to the end of the definition as it would clarify that the roadway worker in charge can flag trains, making a dedicated flagger unnecessary, especially for RTAs that require a flagger and a dedicated watchperson.

FTA Response: FTA declines to incorporate suggestions to amend the definition because § 671.31 sufficiently addresses the RTA's role in designating the roadway worker in charge. Similarly, § 671.31(a)(4) requires a roadway worker in charge to serve in the role of maintaining on-track safety for all members of the roadway work group and perform no other unrelated job function while designated for duty; therefore, the recommendation to add "and may perform work that is part of the work crew's responsibilities" would be inconsistent with FTA's intent. The roadway worker in charge may only perform responsibilities related to maintaining on-track safety. This may include safety roles, such as flagging, though FTA declines to add "flagging for trains" to the definition of roadway worker in charge, as this responsibility would be ancillary

and determined on a case-by-case basis. FTA also declines to add "safety for roadway work crews" to the end of this definition. FTA does not think it necessary to caveat that on-track safety be established for work crews only, as on-track safety in some instances has wider implications for people such as transit operators or pedestrians.

23. ROADWAY WORKER PROTECTION

Comments: One RTA commenter argued that the proposed definition of "roadway worker protection" should refer to the protection from hazards associated with moving rail vehicles and not be so broad by mentioning "safety events." The commenter added that RWP should only pertain to roadway workers, not transit workers. Further, the commenter noted that the definition specifies that RWP protects workers on the roadway, which they argued is vague and could be interpreted to mean that RWP is always required whenever a transit worker is on the roadway.

FTA Response: As recommended by the NTSB, FTA intends for RWP to address more safety events than just hazards associated with moving rail vehicles. FTA intends for the roadway worker protections established by this rule to protect all transit workers while they perform approved duties on the track roadway; therefore, FTA declines to amend the definition to only cover roadway workers. It is FTA's intent that safety protections established in this rule will provide comprehensive safety coverage for workers on the roadway, irrespective of job titles.

24. STATE SAFETY OVERSIGHT AGENCY

Comments: One SSOA commented that the proposed definition of "State Safety Oversight Agency (SSOA)" does not include the statutory reference to 49 U.S.C. 5329(k) that was included in the definition of "State Safety Oversight Agency (SSOA)" that was proposed in the NPRM for 49 CFR part 673 (PTASP regulation).

FTA Response: FTA has revised the definition of "State Safety Oversight Agency" in the final rule to include the statutory reference to 49 U.S.C. 5329(k).

25. TRACK ACCESS GUIDE

Comments: Two RTAs commented on the proposed definition of "track access guide." One commenter recommended that FTA change the term from "track access" to "physical characteristics," as many RTAs use "track access" in reference to their track allocation process. One commenter noted the definition is excessively broad, particularly the requirement to describe the physical characteristics of track areas with loud noise or potential environmental conditions.

FTA Response: Because FTA allows RTAs the flexibility to use their existing terms as long as the definitions do not conflict with the definitions in this final rule, FTA declines to change the term "track access guide" as suggested. FTA believes a broad definition is necessary to account for a wide range of systems and ensure inclusivity. FTA also believes this broad definition is balanced by the minimum requirements of the track access guide, which are clearly enumerated in § 671.13(d)(1-7). RTAs may design their track access guides to address the components in this definition, and the requirements of § 671.13, to a degree of detail that is appropriate based on their respective systems.

26. TRACK ZONE

Comments: FTA received comments from multiple commenters, including the NTSB, five RTAs, and two vendors, regarding the proposed definition of "track zone." The NTSB expressed concern that, within the definition, the track zone is identified by transit workers rather than the RTAs and encouraged FTA to update its definition of track zone to state that RTAs identify the track zone, not transit workers. NTSB noted in their comment that an NTSB investigation determined that the probable cause of a significant safety event was the failure of a transit worker to stay clear of the approaching train, either because the worker was not aware of its presence or because they lacked a physical reference by which to identify a safe area outside the train's dynamic envelope. The NTSB commented that RTAs should identify the track zone because transit workers may lack a physical reference to identify where a person or equipment

could be struck by the widest equipment that could occupy the track. One RTA commenter recommended that FTA review the definition to better account for tight working conditions in subways and on elevated environments and suggested FTA remove the following from the track zone definition: "typically is an area within six feet of the outside rail on both sides of any track." One RTA commenter questioned the practicality of the proposed definition and recommended FTA change the definition to follow the established APTA standard of track zone in "Roadway Worker Program Requirements." The commenter also recommended FTA change the term from "track zone" to "foul zone" for consistency, as it is more in keeping with "fouling a track." One RTA commenter noted the definition for track zone is defined separately from fouling a track, but that they appear very similar. The commenter asked if there is a significant difference between these two definitions. Another RTA commenter indicated that the six feet referenced in the proposed track zone definition would not work for the RTA's system, especially in tunnels and on tight rights-of-way. In addition, since the track zone definition is synonymous with "fouling the track," the commenter recommended FTA use the term "foul zone" or "fouling zone" instead of "track zone." One RTA commenter proposed that FTA remove the term "track zone," because including the term could result in confusion about where protections are required. One vendor noted that many current places of safety, including niches, walkways, and bench walls, might be within the track zone as proposed to be defined by FTA and recommended that FTA remove the following from the track zone definition: "typically is an area within six feet of the outside rail on both sides of any track." Another vendor commenter recommended FTA consider establishing a clear minimum threshold by making the track zone a minimum of six feet from the edge of the outside rail.

FTA Response: FTA agrees with the NTSB's comment that the RTA should identify the track zone rather than the transit workers and has amended the definition in this final rule to replace "transit worker" with "the RTA." Ensuring the RTA identifies the track zone will provide needed consistency and allow the RTA to better assess and manage risks in the track

zone. FTA also agrees with commenters that the phrase "typically is an area within six feet of the outside rail on both sides of any track" should be removed. FTA notes that it has added proximity language to the definition of "fouling a track" (see section II.D.7) and reiterates that this rule is intended to consider the needs of various operating systems and track configurations. FTA disagrees with adopting the APTA standard and disagrees that the term should be changed to "foul zone." FTA declines these changes as they would conflict with the changes just discussed. FTA notes that the track zone is the "location" of where the action of fouling a track occurs. FTA disagrees that including the term "track zone" on the list of definitions in the final rule might result in confusion about where protections are required because the final rule requires protections within track zones. FTA has defined this in § 671.39(c), which requires RTAs to identify redundant protections for roadway workers performing work on the roadway and "within track zones." FTA also declines to establish a clear threshold of "six feet from the edge of the outside rail" due to the need for flexibility, as mentioned above, to account for systems such as those operating on streets with mixed traffic.

27. TRANSIT WORKER

Comments: One SSOA, one RTA, and one vendor submitted comments on the proposed definition of "transit worker." The SSOA commenter asked if the definition includes an RTA's police force. The RTA commented that the definition of "transit worker" does not align with the definition in 49 CFR part 673.5. In addition, the RTA commenter recommended that FTA remove SSOA personnel from throughout the provisions of part 671 and have rail transit stakeholders refer to the appropriate sections of part 674 or an SSO program standard, as appropriate. Further, the RTA commented that in part 671, subpart D (§§ 671.31 through 671.41), the term "roadway worker" takes precedence over "transit worker" or other terms that were previously defined. The commenter added that it is unclear to what extent transit workers must comply with these RWP program elements, even though the preceding sections seem to intentionally describe this larger population beyond those personnel working within the track

zone. The vendor recommended FTA include language for third parties (such as emergency personnel) in the transit worker definition or a separate one to support § 671.21(b)(3), which proposes to require each RTA to establish requirements for on-track safety, "including protections for emergency personnel who must access the roadway or the track zone."

FTA Response: FTA confirms that an RTA's police force personnel are transit workers if they are "employees" or "contractors" working on behalf of the RTA as described in the definition. FTA confirms that it explicitly includes SSOA personnel and contractors in the definition of "transit worker" in part 671 to ensure that transit worker-related provisions apply to SSOA personnel conducting inspections or performing other activities that require track access. FTA refers readers to section II.D.21 of this preamble for more discussion about the terms "transit worker" and "roadway worker" as they pertain to the requirements established in this rule. FTA declines to include "emergency" in the personnel in the definition of transit worker because emergency personnel would not meet the definition of "transit worker" if they are not an employees, contractors, or volunteers working on behalf of the RTA or SSOA.

28. TRANSIT WORKER SAFETY REPORTING PROGRAM

Comments: One SSOA commenter asked FTA for a definition of "senior management" in the context of the "transit worker safety reporting program" proposed definition.

FTA Response: FTA declines to establish a formal definition for this term as RTAs may have varied levels of authority and leadership depending on size, and it is the responsibility of the individual agency to understand and determine which members of leadership should be involved.

29. WATCHPERSON

Comments: Two vendors commented on the proposed definition of "watchperson." One vendor requested that FTA clarify whether "sole duty" in the definition means the roadway worker in charge and watchperson are separate roles carried out by separate workers. The other vendor noted that sufficient "reaction time" or, as the definition describes it, "plus time to clear,"

has often been debated among RWP training professionals and Federal inspectors. The commenter recommended that FTA reword the definition of watchperson for consistency with other definitions. This commenter also recommended that FTA add language such as, "Watchpersons shall consider roadway worker reaction time to ensure full ample time is provided." The commenter noted this restructuring would refer agencies, trainers, and employees to the "ample time" definition, which includes the language they proposed striking from the definition of "watchperson" and would emphasize the importance of the reaction time component that the watchperson is responsible for assessing.

FTA Response: This final rule provides that the roadway worker in charge must "serve only the function of maintaining on-track safety for all members of the roadway work group and perform no other unrelated job function while designated for duty." The final rule allows a roadway worker in charge to serve in the role of watchperson because this role falls within the function of maintaining on-track safety.

FTA does not believe that the definition requires further clarification on response time because "plus time to clear" is sufficient to ensure ample time is given to the transit workers in such a scenario.

30. WORKING LIMITS

Comments: One RTA commented on the proposed definition of "working limits." The commenter suggested that FTA add how working limits may be defined.

FTA Response: FTA declines to make this revision as the definition is intended to encompass RTAs of varying sizes and complexities and adding more specific detail would reduce the flexibility and scope of applicability.

31. WORK ZONE

Comments: One vendor commented on the proposed definition of "work zone" and recommended that FTA incorporate "or adjacent to" into the definition after "within." The commenter noted there had been numerous occasions where work zones adjacent to the track did

or did not have sufficient on-track safety afforded, and the work activity unintentionally fouled the track zone. The commenter asked if this situation would meet the intent of the "work zone" definition.

FTA Response: FTA agrees that areas adjacent to the track zone have the potential to affect the track zone. FTA declines to amend the definition as suggested because the definition contemplates these areas already. The final rule uses the term "work zone" to refer to the immediate area of a track zone, which means it is the area where workers are performing work and therefore could be struck by a rail transit vehicle or equipment. FTA expects information on adjacent tracks and multiple roadway worker groups working in adjacent areas to be included in job safety briefings, including safety information about any adjacent track and identification of the roadway maintenance machines or on-track equipment that may foul adjacent tracks.

32. RECOMMENDED ADDITIONS

Comments: FTA received comments from one SSOA and three RTAs recommending that FTA define additional terms in part 671. The SSOA commenter recommended FTA clearly define the terms "resources," "qualified personnel," and "complexity" to fully eliminate subjectivity because SSOAs are evaluated by these regulations, and FTA should clearly define expectations. One RTA commenter recommended FTA include a definition for "adjacent track" in § 671.5 because it is defined in § 671.33(b)(7). One RTA recommended FTA add a definition for "contractor" and adopt the definition from APTA's "Roadway Worker Program Requirements" standard. Another RTA commenter suggested that FTA define "unsafe acts" and "unsafe conditions" to support employee education on the requirements for safety reporting in §§ 671.21(a)(6) and 671.23(e).

FTA Response: FTA declines to establish formal definitions of the terms "resources," "qualified personnel," and "complexity" because these terms are not used in this final rule. However, "qualified" is defined in § 671.5 in relation to a roadway worker or transit worker's training, proficiency, and authorization status. FTA appreciates the RTA commenter that

recommended defining "adjacent track" in § 671.5 but does not believe it is necessary to add this to the definition section of the rule as it is only referred to in one section of the rule (§ 671.33(b)(7)) and is sufficiently clear in that context. FTA does not believe it is necessary to define commonly understood terms such as "contractor." Similarly, FTA declines to formally define the terms "unsafe acts" and "unsafe conditions" as they are also commonly understood and intended to be flexible in this rule. By not defining these terms, FTA allows for adaptability in different scenarios and environments and ensures workers do not feel constrained in their ability to report potential hazards.

E. Section 671.11 – RWP Program

Comments: FTA received comments related to the requirements for an RWP program in § 671.11. One SSOA commenter urged FTA to require relevant RTAs to include electrical safety plans within their RWP program to protect workers from electrocution.

An RTA commenter asked for specificity on the types of "subsequent updates" of the RWP manual that must be submitted to the SSOA for review and approval as required by § 671.11(c).

A vendor recommended that all RWP program elements and procedures align with an RTA's operating procedures, and that RTA operating procedures must facilitate on-track safety implementation.

FTA Response: FTA appreciates the reminder of the electrical risk and safety concerns around many transit systems and has kept the rule language broad to account for varying types of systems and hazards. FTA recommends that RTAs incorporate electrical safety practices within their RWP programs as applicable.

With regard to the inquiry on approval of "subsequent updates" to the RWP manual, FTA considers those revisions or updates that result in any RWP policy changes as necessitating SSOA review and approval. Minor, non-substantive updates are not required by the rule to be

approved by the SSOA. FTA expects SSOAs and RTAs to identify any necessary thresholds and practices to execute RWP manual revisions and approvals.

FTA acknowledges the need for RWP programs to align with RTA operating procedures and encourages agencies to tailor RWP programs to synchronize with existing operating procedures accounting for agency size, operating environments, infrastructure, service delivery, and more.

F. Section 671.13 – RWP Manual

1. REQUIREMENTS

Comments: FTA received comments from multiple RTAs, two industry associations, and one vendor related to the requirement at § 671.13 to establish a single manual documenting the RWP Program elements, including responsibilities, processes and procedures, and the required training, qualification, and supervision for transit workers.

One industry association commenter expressed concern about RTAs having to create an RWP manual instead of using their existing rulebook and standard operating procedures (SOPs) for employees working on or near the track. The commenter urged FTA to provide flexibility for agencies to incorporate the requirements from the RWP manual into their rulebooks, SOPs, or other agency documents as long as they cover all the § 671.13 requirements. One RTA asserted that FTA should not require the RWP manual to be a stand-alone document but instead be integrated into existing rulebooks and recommended FTA remove the requirement of a separate document. The commenter suggested that a separate manual would increase the burden on employees who must maintain the operating rulebook, RWP manual, and a track access guide while performing duties. The commenter added that a separate manual could create version control issues where RWP manuals might be updated in conflict with operating rules and noted that version control is easier with a single operating rulebook. The commenter claimed this integration would streamline documentation, reduce redundancy, and better ensure compliance. One RTA commenter noted its system has both third rail-powered (heavy rail) lines and

catenary-powered streetcar (light rail) lines and it intends to create separate RWP manuals, each satisfying the RWP program requirements, for each of its rail transit modes.

One industry association commenter suggested that the RWP manual should address distractions related to personal communication devices, which are a major factor contributing to roadway worker safety events. The commenter recommended that §§ 671.13 and 671.23 could specifically identify "compliance with State, local, and agency rules and guidelines regarding worker distractions and prohibited devices/items."

One RTA commenter recommended that FTA clarify the meaning of "by labor category or type of work performed" in terms of defining the training, qualification, and supervision required for accessing the track zone that must be documented in the RWP manual.

One RTA requested that FTA clarify how the "processes and procedures, including any use of roadway workers to provide adequate on-track safety, for all transit workers who may access the track zone in the performance of their work" affect transit workers such as an operator entering the roadway to troubleshoot a train, or a customer service representative accessing the right-of-way to retrieve a personal item. Another RTA requested flexibility to maintain RWP processes and procedures outside the RWP manual, similar to the flexibility proposed for the track access guide. The commenter noted that if those processes and procedures are included in the RWP manual, employees' printed manuals may become outdated and no longer be reliable sources soon after issuance. Further, the commenter noted it is impossible to include the details of all track access and safety processes and procedures in the RWP manual while maintaining a reasonably sized document that employees can carry with them and easily navigate. The commenter argued that maintaining procedures separately would allow the manual to be more "evergreen" because its information will hold true even if the RTA makes minor procedure changes.

One vendor commenter asked FTA for guidance on processes and procedures to provide on-track safety for "safety and oversight personnel," especially in emergencies, that could be

included in the RWP manual. One RTA commenter noted that the requirement to include in the RWP manual "procedures for SSOA personnel to access the roadway" seem out of place. The commenter recommended that if procedures for an SSOA to enter RTA property need to be referenced in the manual, the SSOA and the RTA should work together to develop a process by which the SSOA will engage the RTA to ensure proper protection when entering the RTA's track zone. One RTA commented that information on protecting safety and oversight personnel from moving rail vehicles should be in a separate section and not included in the RWP manual section specific to "roadway workers."

FTA Response: While FTA understands that RTAs may have existing rulebooks and SOPs in place that address RWP, FTA believes it is critical that RTAs establish and maintain a single, authoritative document so that it is clear to all parties where all the RWP information is housed and can be found. FTA believes that a singular document is also more conducive to annual reviews, and better facilitates SSOA and FTA oversight. FTA declines to remove the requirement for a separate manual but confirms that employees are not required under this rule to carry the RWP manual on their person. The rule only requires the RTA to distribute the RWP manual to all transit workers who access the roadway. FTA agrees with the commenter that suggested a single operating rulebook is preferable for version control and to reduce redundancy, which is why FTA is finalizing the requirement for a separate, dedicated manual. To reduce redundancy, FTA encourages RTAs to reference the RWP manual in existing rulebooks or operating procedures where appropriate or incorporate these existing documents into its RWP manual. In response to the comment that an RTA intends to create separate manuals for its heavy and light rail lines, FTA reiterates the requirement that RTAs establish one RWP manual as the single authoritative source of RWP program information for all rail modes operated by the RTA. However, the RTA could clearly differentiate in the manual the sections that are relevant to workers, based on the mode of operation.

While FTA agrees that electronic personal communication devices can cause distractions, FTA believes that electronic devices do have a purpose in the field at times. Therefore, FTA declines to revise the rule to specifically address distractions related to personal communication devices but notes that RTAs may establish additional rules that are consistent with this regulation.

FTA confirms that the intent of including the training, qualification, and supervision required for transit workers by labor category or type of work performed is to encourage RTAs to consider the different job roles, tasks, or functions for different classifications of workers or groupings of workers when addressing this requirement. Each labor category or worker classification may have distinct requirements based on the nature of the work they perform, which might require distinct training or supervision. As such, defining the necessary training, qualification, and supervision by labor category or type of work performed ensures that each group is appropriately trained and certified to access the roadway and supervised as necessary.

The final rule requires that the RWP manual document processes and procedures for all transit workers who must access the track to perform their duties, which would include an operator entering the roadway to troubleshoot a train, or a customer service representative accessing the right-of-way to retrieve a personal item. For these instances of momentary track fouling, the final rule states that a transit worker may only foul the track once they have received appropriate permissions and redundant protections have been established as specified in the RWP manual. In response to the commenter that requested flexibility to maintain RWP processes and procedures outside the RWP manual, FTA reiterates the requirement that RTAs must establish one RWP manual as a single authoritative source of RWP program information. FTA believes maintaining one document ensures consistency and accountability for the workforce and strengthens the dependability of training and oversight measures. FTA also believes this requirement will encourage more efficient manual review and update processes pursuant to § 671.13(e). FTA has drawn the distinction for the track access guide to be incorporated by

reference as track access guides for some agencies may be especially lengthy and/or may require more frequent updates than the updates to RTA policies and procedures. Because § 671.13 requires RTAs to update their RWP manuals as necessary and as soon as practicable upon any change to the system that conflicts with any element of the document, FTA is not concerned that including the processes in the RWP manual will result in outdated manuals. FTA notes that the final rule does not establish a requirement that RTAs must distribute a physical copy of the manual to all transit workers who access the roadway, thus eliminating the concern that the manuals may be too large to carry. The final rule offers RTAs flexibility to select the format for manual distribution, which could include electronically, as long as transit workers have easy access to an up-to-date version.

FTA will consider the request for FTA guidance on processes and procedures to provide on-track safety for safety and oversight personnel, especially in emergencies, for future guidance and technical assistance. FTA disagrees with the commenter that procedures for SSOA personnel to access the roadway are out of place in the RWP manual because the final rule establishes requirements to ensure protections apply to all transit workers that access the roadway to perform work, including SSOA personnel conducting inspections or performing other oversight activities. FTA encourages the RTA and SSOA to work together, when appropriate, to establish procedures for SSOA personnel to access the roadway. The SSOA and RTA will also have the opportunity to formally agree on RWP procedures via the SSOA's approval of the RWP manual under § 671.25. FTA disagrees that information on protecting safety and oversight personnel from moving rail vehicles should not be included in the RWP manual. The RWP manual is intended to document processes and procedures for all transit workers who may access the track zone in the performance of work, including SSOA personnel.

2. TRACK ACCESS GUIDE

Comments: One SSOA, seven RTAs, two industry associations, and two vendors submitted comments regarding the proposed requirement at § 671.13(d) that the RWP manual

must include or incorporate by reference a track access guide to support on-track safety. An RTA commenter agreed that having this information easily accessible and maintained in one document would assist with its safety-promotion efforts.

The SSOA commenter recommended that FTA consider requiring the track access guide be part of the RWP manual and not be incorporated by reference, given the guide's integral nature with the RWP manual. One industry association commenter noted that while the association supports written RWP procedure requirements, FTA's requirement for both an RWP manual and a track access guide is very prescriptive and the requirement for a track access guide for numerous employees on thousands of miles of track would be extremely burdensome. Further, the commenter added that it would be nearly impossible for employees to carry the guide daily. One RTA commenter noted that RTA right-of-way training and familiarization gives roadway employees all the tools they need to understand right-of-way limitations and exceptions and suggested additional guides may become confusing and detrimental to track access and could hinder the roadway worker. One RTA commenter asked if all updates to the track access guide would also be subject to SSOA review and approval. One RTA commenter asked if the RTA could use its current track access guide to meet the requirement at § 671.13(d).

Several RTAs and two industry associations commented on the locations that FTA proposed must be included in the track access guide. One RTA recommended FTA strike the requirements from the track access guide regarding identifying locations with specific conditions since many of the locations and conditions are variable.

One RTA commenter provided their assessment that the focus of the locations only applies to work conducted under train approach warning, as other forms of RWP restrict rail vehicle movement. Two commenters asked FTA to clarify whether the track access guide requires a physical map or whether a detailed written description of system locations could meet the requirement. One industry association commenter noted the requirements at § 671.13(d)(1) could be problematic for some agencies because their systems may not have many "clearance"

zones along the track, especially in enclosed and elevated portions of subway systems while other systems such as streetcar will have clearance zones all along the track. One RTA commenter recommended that FTA include "changes in track grade" as locations required to be included in the track access guide.

Multiple RTAs, one SSOA, and two vendors commented on the requirement to include noise and environmental conditions in the track access guide. One RTA noted that these conditions constantly change within the RTA's system and cannot be pre-determined. The commenter added that these site-by-site locational conditions should be addressed through a site-specific job safety briefing during each shift. Another commenter suggested FTA remove "environmental conditions" from the track access guide because listing all potential environmental conditions that would require additional consideration will be very difficult.

An SSOA and an RTA similarly asserted that the requirement to identify locations of reduced visibility due to weather conditions is unfeasible. The commenters added that identifying specific areas where weather may be a concern would be difficult, as weather conditions affecting visibility can change frequently and occur at any outdoor location on RTA property. The RTA commenter recommended that FTA modify this requirement to instead "identify additional procedures or precautions that RTAs must take when weather conditions reduce visibility" rather than identify locations subject to reduced visibility due to weather conditions. One vendor requested that FTA clarify whether "reduced rail transit vehicle operator visibility due to precipitation or other weather conditions" is intended to cover any outdoor track generally or to call out specific areas of higher risk.

One RTA commenter noted that the requirement to identify "locations subject to increased rail vehicle or on-track equipment braking requirements" (§ 671.13(d)(2)) is only relevant to rail vehicle operators and not to roadway workers. The commenter recommended that RTAs incorporate this location information into a timetable or other documentation for rail vehicle operators. This RTA also suggested FTA remove the requirements from the track access

guide regarding identifying locations with limited visibility, noise, and other environmental conditions for RTAs that may have this information integrated into their timetable. One vendor commented on the requirement to identify "locations with limited or no visibility due to obstructions or topography." The commenter suggested that track access guides should identify locations with "permanent obstructions" and include general notes regarding temporary obstructions in the RWP manual. The commenter noted temporary obstructions are potentially caused by train movement on adjacent tracks.

One RTA commenter asked FTA to define "portals with a restricted view." One vendor recommended FTA incorporate other locations that require hazard analysis to support safe access and adequate on-track safety. Two RTAs recommended that rather than including the environmental or weather conditions in the track access guide, the roadway worker in charge should respond to environmental conditions with appropriate additional safety procedures and discuss these conditions during job safety briefings.

FTA Response: FTA disagrees with requiring the track access guide to be part of the RWP manual because FTA believes that offering flexibility for RTAs to choose to maintain this track access guide separately from their RWP manual will allow frequent updates as the condition of the track system changes, which may be more frequent than changes to the RWP policies and procedures. FTA defers to RTAs on the design of the track access guide and expects that the level of detail for track access guides will correlate with the complexity of the transit system. The final rule does not require RTAs to distribute a physical copy of the track access guide to all transit workers who access the roadway, nor does it require transit workers to carry it on their person. The final rule offers RTAs flexibility to select the format of the track access guide, which may include an electronic format, to distribute the track access guide as long as transit workers have easy access to an up-to-date version. FTA believes that right-of-way training and familiarization can be bolstered with the development of a track access guide. FTA does not believe that the addition of a track access guide will promote confusion, as the track

access guide is based on a physical survey of the track geometry and condition of the transit system and is intended to provide workers a tangible reference point of the RTA's track system. RTAs are encouraged to provide additional information to help workers identify which sections of the track access guide are relevant to their roles and how the guide applies to their specific job duties.

The final rule requires that the RWP manual include or incorporate by reference a track access guide and the SSOA must review and approve the RWP manual and any subsequent updates. As such, the SSOA must also review and approve updates to the track access guide.

FTA confirms that creating a new track access guide is unnecessary as long as the existing guide meets all the requirements of § 671.13.

FTA acknowledges that the requirement for the content of the track access guide is prescriptive but affirms that a track access guide is an important component of the RWP program to ensure awareness, coordination, and compliance among workers. FTA reviewed the comments regarding the specific locations that must be included in the track access guide and is finalizing the requirement as proposed. FTA believes that it is necessary to include all the areas listed in the rule because of the known safety risk posed by the enumerated locations and conditions. The track access guide is meant to inform workers of these areas of heightened risk and better allow for RTAs and workers to control for potential hazards. RTAs may opt to include additional environmental hazards in their track access guides, as needed. FTA disagrees that the focus of identified locations is only applicable to work that is being conducted under train approach warning and believes that identifying locations that may need additional consideration for establishing on-track safety is important and useful when accessing the roadway in the performance of all types of work. However, FTA agrees that the information is particularly useful under train approach warning.

FTA is deferring to RTAs to determine the best way to structure the guide, and the final rule does not require a physical map. FTA emphasizes that the location of close clearance points is an important detail, particularly in enclosed systems.

FTA reiterates that the final rule establishes minimum standards as a baseline for rail transit RWP and expects that RTAs will establish their track access guides based on the unique environments and characteristics of their systems. FTA disagrees with the commenter that recommended FTA include "changes in track grades" as one of the locations required to be included in the track access guide, as it is unnecessary because this condition would fall under the umbrella of the requirement at § 671.13(d)(2) to include "locations subject to increased rail vehicle or on-track equipment braking requirements."

FTA agrees that noise and environmental conditions may routinely change within an RTA's system and cannot be pre-determined, and FTA agrees with the commenter that job safety briefings should include site-specific hazards and conditions related to the work to be performed and the protections to eliminate or protect against those hazards. RTAs are not required to list "all" environmental conditions, but rather those significant enough to require due consideration in establishing on-track safety. This may require the RTAs to conduct additional assessment, but will allow for better planning, preparedness, and risk mitigation in the long term. For that reason, FTA also declines to adopt the suggestion that FTA remove the requirements from the track access guide regarding identifying locations with limited visibility, noise, and other environmental conditions for RTAs that may have this information integrated into their timetable. FTA agrees that weather conditions are variable, and the final rule requires the track access guide to document locations of high risk that certain weather conditions may cause. For example, an RTA may be aware of track switches that frequently become covered by snow, which would affect the ability of a transit worker to see the switches, or of areas that are regularly covered by fog. Therefore, FTA declines to modify the requirement because FTA feels this information is useful and important to include.

FTA confirms that the requirement for RTAs to identify "locations with limited or no visibility due to obstructions or topography" (§ 671.13(d)(1)) within the track access guide encompasses permanent obstructions. RTAs may opt to address temporary obstructions through various approaches, and FTA notes that job safety briefings provide an opportunity for RTAs to provide information on day-to-day conditions on the roadway or track zone.

FTA declines to define "portals with restricted views" because the term in the final rule is intended as a general phrase to direct RTAs to identify specific locations on the railway where views may be partially obstructed upon entering or exiting the location.

FTA declines to add other locations that require hazard analysis to support safe access and adequate on-track safety to the minimum required locations in a track access guide, as FTA believes the current list covers the locations that pose the greatest risk for most RTAs. However, FTA notes that the rule offers RTAs flexibility in identifying locations of high risk that require additional consideration for establishing on-track safety, and RTAs should include additional locations as appropriate to their systems.

FTA disagrees that the roadway worker in charge should respond to environmental and weather conditions with appropriate additional safety procedures and discuss these conditions during the job safety briefing rather than require the RTA to include the conditions in the track access guide. As mentioned previously, the rule does not require RTAs to use current weather reports but instead requires RTAs to document in the guide locations of high risk that certain weather and environmental conditions may cause. However, FTA agrees that the roadway worker in charge should address current weather and environmental conditions in the job safety briefing.

3. REVIEW AND UPDATE

Comments: FTA received comments from six RTAs, two industry associations, and one vendor regarding the proposed RWP manual review and update requirements at §§ 671.13(e) and (f). One RTA commenter suggested the proposed timeframe of reviewing and updating the

manual every two years is tight, particularly for small systems, and could lead to hasty review practices. The commenter recommended that FTA consider changing the timeframe to three years to align with the SSO Triennial Audit process. One RTA commenter asked FTA to clarify whether a continuous review cycle meets the review requirement.

One RTA and two industry associations recommended that FTA clarify the review and update requirement by revising it as follows: "The RTA must review its RWP manual and, if necessary, update it." The RTA commenter and one industry association commenter added that incorporating the phrase "if necessary" will guide RTAs in determining that, in some instances, significant changes may not be necessary. All three commenters suggested that FTA establish guidance similar to 49 CFR part 673, whereby an RTA certifies that no updates were required following a review.

One RTA recommended that each update to the RWP manual also address lessons learned from safety events, hazards, etc. The commenter asked whether addendums to the manual and track access guide count as forms of acceptable updates or if a manual reprint is required to satisfy the requirement to update as soon as practicable. One RTA commenter requested FTA permit bulletin notices as a temporary update to the manual rather than a complete reissue every time a change is identified within the two-year review period. Additionally, the vendor commented that changes to operating procedures could be incorporated by reference into the RWP manual, and RTAs could issue bulletins announcing operating rule changes. This would reduce the need to reprint RWP manuals and to conduct retraining on the manual. Another RTA commenter noted the requirement to update the RWP manual to reflect "information provided by the SSOA and FTA" and requested clarification from FTA regarding what constitutes "information." In addition, the commenter asked FTA to clarify the grounds on which the SSOA or FTA can require an RTA to include this "information" in its RWP manual.

FTA Response: FTA disagrees that the requirement to review and update the RWP manual every two years could lead to hasty review practices. FTA asserts that the two-year

timeframe ensures that the RWP manual reflects current RTA conditions, policies and procedures, and lessons learned. Requiring the review no less than every two years allows RTAs sufficient time to review and update the manual, but also provides flexibility for RTAs who find it prudent to update the manual more regularly. FTA thinks two years is an appropriate period of time to review and consider new information and, therefore, will not result in hasty review practices. In response to the commenter that requested FTA clarify whether a continuous review cycle meets the review requirement, FTA notes that the rule establishes a minimum requirement for RTA review and update at least every two years. Continuous reviews could meet this requirement so long as they are comprehensive and the entire manual is verifiably reviewed at least every two years. Updates to the RWP manual must be submitted by the RTA to its SSOA for review and approval, as described in section § 671.25.

FTA declines to add a qualifier to the regulation that the RWP manual must only be updated if necessary, as was suggested by commenters. FTA believes that as drafted, RTAs are only required to update the manual if a review determines it is necessary. FTA recommends that RTAs document their review process and findings, which may conclude that no changes are needed. This documentation ensures RTA compliance with the requirement and provides a record that the review was carried out as mandated and notes that review findings indicated no changes were required.

FTA is not revising the regulation to specify that updates to the RWP manual include lessons learned from safety events and hazards, because FTA feels the existing regulatory text encompasses this expectation. FTA expects lessons learned in implementing the RWP program would include lessons learned from safety events, the results of RWP compliance monitoring, actions the RTA has taken to address reports of unsafe acts and conditions and near-misses, and the results of the agency's monitoring of redundant protection effectiveness. FTA is not requiring a specific format for the RWP manual update and intends for the final rule to provide flexibility

for RTAs to determine the format of RWP manual updates as well as the format for distribution to workers.

In response to the commenter that requested FTA permit bulletin notices as a temporary update to the manual rather than a complete reissue every time a change is identified within the two-year review period, FTA notes that the final rule requires the RTA must update its RWP manual and track access guide as necessary and as soon as practicable upon any change to the system which conflicts with any element of either document. The manual document itself must be updated and redistributed to all transit workers who access the roadway, but the updated document can be provided in manner that is practical for the RTA (electronically, in paper, etc.)

The requirement to review and update the RWP manual to reflect "information provided by the SSOA and FTA" is consistent with the SRM requirements of the PTASP regulation for RTAs to include data and information provided by an oversight authority as a source of hazard identification and to include guidance provided by an oversight authority as a source for safety risk mitigation. In this context, "information provided by the SSOA and FTA" may include, but is not limited to suggestions for improvement, industry best practices, relevant State and Federal regulatory updates, and information related to investigations or audit findings. SSOAs are required to approve the RWP manual and subsequent updates and are authorized to deny approval if information is omitted that the SSOA determines is necessary, consistent with the SSOA's general oversight authority.

4. DISTRIBUTION

Comments: Five RTAs, one industry association, and two vendors submitted comments regarding the proposed RWP manual distribution and redistribution requirement at § 671.13(g). Multiple commenters asked FTA to specify the required format for distributing the RWP manual and track access guide and asked if electronic/digital distributions are permissible or if hard copies must be distributed. A commenter asked if "distribute" means allowing easy access to the manual or if it requires a physical copy. Two commenters suggested that, similarly to FRA, the

roadway worker in charge should carry a manual or have easy access to a manual and serve as the responsible party for responding to challenges or concerns that arise.

One RTA commenter alternatively suggested that it is more effective for departments to distribute procedures, rather than the entire manual, because the workers get only the RWP information related to their jobs. The commenter noted that this arrangement is less confusing for workers, particularly for contractor employees whose tenure at an RTA is brief and limited to a single location or a few locations. The RTA commenter agreed, however, that a single document would simplify SSOA review and approval.

One RTA commenter requested that FTA clarify whether RTAs also must redistribute the track access guide as part of any RWP manual update. One vendor recommended that FTA require RTAs to destroy or "confiscate" old copies when issuing new RWP manual versions because of the importance of version control. In addition, the commenter recommended that RTAs retrain or brief transit workers on substantial updates that fundamentally change an element of the RWP program before transit or roadway workers enter the track zone after a change. One RTA recommended that FTA change the wording of the requirement that the manual be distributed "to all transit workers who access the roadway" to "all transit workers who must enter a track zone to perform work." The commenter argued this rewording would better align with the phrases used elsewhere in the rule. One industry association and an RTA noted concern about the practicality of requiring the manual to be distributed to "all transit workers who access the roadway" as this could be a large group and that distributing hard copies to all transit workers, including employees, contractors, and SSOA personnel, would come at a high cost and be an excessive administrative burden.

FTA Response: The final rule does not require RTAs to distribute physical copies of the manual and track access guide to all transit workers who access the roadway in the performance of their work. The final rule offers RTAs flexibility to select the distribution format, which could include electronic dissemination, as long as transit workers have access to up-to-date versions.

This flexibility also is intended to ease the potential administrative and cost burden one commenter raised as a concern.

FTA agrees that access to the RWP manual at a worksite is useful for the roadway worker in charge as a reference to address good faith safety challenges. However, FTA is not adopting the suggestion to require the roadway worker in charge carry the manual. FTA acknowledges that RWP manuals will vary in size and content detail, and requiring the roadway worker in charge to keep the manual on their person may be impractical in certain circumstances. FTA defers to RTAs to decide if and when it is appropriate to require the roadway worker in charge or transit workers to keep a full or partial copy of the manual on hand. FTA reiterates that the rule requires RTAs to establish and maintain a separate, dedicated manual documenting its RWP program and to distribute the manual to all transit workers who access the roadway in the performance of their work. However, RTAs can highlight for workers which portions of the manual are relevant to their duties.

FTA confirms that an RTA would only be required to redistribute the track access guide if it is revised. FTA declines to establish a requirement for RTAs to destroy old manuals and is deferring to RTAs on their document control practices, so long as they are consistent with the recordkeeping requirements of this part. FTA is not incorporating into the final rule the suggestion that RTAs retrain or brief transit workers on substantial updates that fundamentally change an element of the RWP program before transit or roadway workers enter the track zone after a change. FTA believes that the requirement for RTAs to redistribute the RWP manual after each revision and the requirements for refresher training in this rule are sufficient to ensure transit workers are aware of the changes but reiterates that RTAs may establish additional procedures that are consistent with this regulation.

FTA intends for the RWP manual to be broadly distributed to all transit workers who access the roadway in the performance of their work. Broad distribution of the RWP manual promotes a safety culture at RTAs wherein all transit workers are aware of the hazards of their

job duties and work environment, are aware of the processes and procedures to mitigate those hazards and are accountable for compliance with those processes and procedures.

G. Section 671.21 – Rail Transit Agency

FTA received comments on the various proposed responsibilities of RTAs.

1. PROCEDURES TO PROVIDE AMPLE TIME

Comments: One SSOA commented on the requirement for RTAs to establish procedures to provide ample time and determine the appropriate sight distance based on maximum authorized track speeds and suggested that a better way to establish the appropriate sight distance for determining ample time would be to require the track access maps to have the maximum allowable speeds printed on maps for entire system.

FTA Response: This rule requires RTAs to create and maintain track access guides to support on-track safety. FTA encourages agencies, as appropriate, to include allowable speeds within the track access guide or on related visual materials. However, due to significant variances in RTAs subject to this rule, FTA declines to require RTAs to include authorized speeds within the track access guide or other printed maps.

2. PROCEDURES REGARDING INDIVIDUAL RAIL TRANSIT VEHICLE DETECTION

Comments: FTA received comments on the requirement that RTAs establish procedures to ensure that individual rail transit vehicle detection is never used as the only form of protection in the track zone at § 671.21(a)(2) from one SSOA, multiple RTAs, and one vendor. The SSOA commenter asked FTA to clarify whether it intends to allow individual rail transit vehicle detection, asserting that FTA's definition of "minor task" muddies the issue.

A vendor asked if FTA intends to make individual rail transit vehicle detection the minimum form of on-track safety. If so, the commenter indicated that the definition of "individual rail transit vehicle detection" implies that only lone workers may use this form of on-track safety. The vendor also recommended that FTA reword § 671.21(a)(2) to read: "Ensure that

individual rail transit vehicle detection is always accompanied by a form of redundant protection in the track zone."

One RTA commenter asked FTA to identify additional forms of protection that would satisfy the redundant protection requirement. Another RTA requested that FTA clarify what it envisions as additional forms of protection beyond individual rail transit vehicle detection for two-person work crews and lone workers. One vendor recommended that FTA specify in the rule the required forms of on-track safety beyond individual rail transit vehicle detection.

One RTA commenter agreed that most situations of fouling the roadway call for a higher form of protection than individual rail transit vehicle detection alone, but argued that in limited specific cases, such as a worker traveling a short distance (e.g., 100 feet) from one place of safety to another, employing a secondary form of protection in addition to individual train detection is impractical and unnecessary. The commenter suggested that FTA refrain from universally applying the requirement for supplemental protection while using individual train detection and instead reserve the right for an RTA to require supplemental protection as it deems necessary based on the environment, specific conditions, and cases of use. Another RTA commenter suggested that prohibiting the use of rail transit vehicle detection as the only form of protection may require agencies to modify their procedures for accessing the track for short periods of one minute or less, such as an operator getting out of the rail vehicle to remove debris from the track. The commenter asked that FTA consider the implications of this requirement on existing procedures governing short periods of track access and recommended that FTA leave the decision to determine secondary protections up to the RTAs, as called for in APTA's standard.

One RTA commented that prohibiting the use of individual rail transit vehicle detection as the only form of protection is more applicable to systems that do not operate as line of sight, low speed, and in mixed traffic where pedestrians are common. This commenter noted that some RTA tasks, such as litter pick up, leaf blowing, and cutting grass, are typically performed

without a flagger or other means of redundant protection but with other measures, including calling the operations control center and requiring operators to pass at walking speed.

One RTA noted that prohibiting the use of individual rail transit vehicle detection as the only form of protection will now require a two-man crew to perform work currently done by a lone worker. The commenter added that FTA did not address this issue in the regulation. Another RTA commenter stated that this requirement contradicts FTA's definition and requirements for lone workers.

FTA Response: This final rule prohibits the use of individual rail transit vehicle detection as a sole form of protection for all workers on the roadway, including those performing minor tasks. FTA confirms that RTAs can use individual rail transit vehicle detection as long as there is another form of protection in place. The rule sets requirements for RTAs to conduct a safety risk assessment to identify and establish redundant protections for each category of work that workers perform on the roadway or track, even those workers conducting minor tasks. FTA confirms that this rule does not identify a minimum form of on-track safety, but rather establishes a requirement for redundant protection that ensures no transit worker is allowed to use individual rail transit vehicle protection as their sole protection on the roadway. FTA declines to adopt the recommendation to reword § 671.21(a)(2) to emphasize that individual rail transit vehicle detection is always accompanied by a form of redundant protection because FTA believes the existing phrasing clearly expresses the requirement that RTAs cannot use individual rail transit vehicle detection as the only method of on-track safety. FTA is not prescribing the kinds of redundant protections that an RTA must have in place. Instead, RTAs must conduct a safety risk assessment to identify and establish redundant protections based on their unique operating characteristics and capabilities and SSOAs may also identify redundant protections for RTAs. A non-exhaustive list of potential redundant protections is also enumerated in § 671.39(d).

FTA disagrees that employing a secondary form of protection in addition to individual train detection is impractical and unnecessary in limited specific cases. FTA risk assessments and NTSB investigations reveal that fatalities and injuries have occurred in recent years when work groups and individuals relied on rail transit vehicle detection for on-track safety. This prohibition is responsive to the NTSB recommendations to require redundant protections for roadway workers and to eliminate the use of individual rail vehicle detection. FTA appreciates that prohibiting the use of rail transit vehicle detection as the only form of protection may require agencies to modify their procedures for accessing the track for short periods, and FTA recognizes the burden this may place on agencies. Due to the high-risk nature of roadway work, and the demonstrable inadequacies of individual rail transit vehicle detection as a sole source of on-track safety, FTA believes it is necessary to require redundant protections for transit workers who foul a track even for short periods of time.

FTA acknowledges that line-of-sight, low-speed rail transit systems experience different risks than other RTAs. Prohibiting the use of individual rail transit vehicle detection as a sole form of protection is still necessary to address these differing risks. For example, in mixed traffic environments transit workers must account for noise or sight obstructions, pedestrian activity, or other vehicles – all of which may serve as a critical distraction to an individual worker. However, FTA understands RTAs have varying operating and environmental characteristics that may require different redundant protections which is why the final rule requires RTAs to use their safety risk assessment process to identify and establish the redundant protections that best suit their operating environments and the work performed by transit workers on the roadway.

FTA acknowledges that some tasks, such as litter pick up, leaf blowing, and cutting grass, are typically performed without a flagger or other means of redundant protection. However, reliance on rail transit vehicle detection, with no redundant protection, does not sufficiently account for unforeseen circumstances or predictable human error. FTA disagrees with the commenter that prohibiting the use of individual rail transit vehicle detection as the only form of

protection will now require a two-man crew to perform work currently done by a lone worker. FTA notes that redundant protections that RTAs may identify may include procedures, such as foul time and advance warning systems, or physical protections to stop trains in advance of workers, such as derailers and shunts, which do not require a second person. FTA disagrees that the requirement to ensure individual rail transit vehicle detection is never used as the only form of protection in the track zone contradicts FTA's definition and requirements for lone workers. The provisions regarding lone workers at § 671.35 emphasize that a lone worker may not use individual rail transit vehicle detection as the only form of on-track safety. Further, the rule requires RTAs to establish redundant protections for each category of worker, including lone workers. FTA's intent is to ensure that lone workers can perform appropriate tasks while maintaining a high level of safety through redundant protections.

3. PROCEDURES RELATED TO JOB SAFETY BRIEFINGS

Comments: One vendor and one RTA commented on the requirement that RTAs establish procedures related to job safety briefings at § 671.21(a)(3) and (4). The vendor recommended that FTA revise the requirement for when job safety briefings must be provided. Specifically, the commenter recommended that job safety briefings be required for all transit workers who must or have the potential to enter the track zone, which the commenter argued would be consistent with FTA's proposed definition of roadway worker. The RTA suggested using the term "safety stand down" to refer to job safety briefings that are required after a rule violation is observed. This RTA also asked if this job safety briefing would occur after specific violations or all rule violations.

FTA Response: The final rule requires that RTAs establish procedures to provide a job safety briefing to transit workers whose job entails entering a track zone. FTA declines to revise § 671.21(a)(3) because FTA believes the language is sufficiently clear and identifies the individuals subject to the job briefing requirement. FTA expects the RTA to ensure that, as soon

as it becomes clear that a transit worker who may potentially enter the track zone must enter track zone, the worker is provided with a job safety briefing.

FTA notes that RTAs may use their own term for job safety briefings as long as the briefings meet the requirements of this rule. FTA confirms that § 671.21(a)(4) intends that RTAs must conduct a job safety briefing after any observed rule violation, not just specific ones.

4. PROCEDURES FOR GOOD FAITH SAFETY CHALLENGE

Comments: Labor organizations and one RTA commented on § 671.21(a)(5) and the requirement for RTAs to establish procedures to provide transit workers with the right to challenge and refuse in good faith any assignment. One labor organization welcomed and supported the NPRM provisions that would require an RTA to provide transit workers with a mechanism to exercise the right to refuse a work assignment presenting "on-track safety concerns." However, one labor organization noted that while FTA requires the RTA to have procedures to resolve these challenges "promptly and equitably," FTA did not define "equity" in this context. The labor organization commented that without a definition of "equity," management will be disinclined to use a process that gives equal weight to the worker's views – which is what the commenter urges "equity" must mean in the context of the proposed rule. Multiple labor organizations recommended that FTA define the process for resolving good faith safety challenges, suggesting the process could include negotiations with pre-determined representatives or with mediation or arbitration. The commenters argued that FTA should not give management space to plead vagueness regarding "equity" or to skirt FTA's intended meaning of the term, and that FTA must be clear in the final rule about what "equity" requires in the context of good-faith work refusals.

One RTA expressed concern about the requirement for procedures that allow workers to "refuse" work, which they alleged would go against good safety policy and potentially against collective bargaining unit agreements. The RTA recommended keeping the good-faith challenge

language but removing the "refuse" language, noting that the RTA already has a good-faith challenge process that works when used properly.

FTA Response: FTA's provision for good faith safety challenge is consistent with APTA standard for RWP, and reflective of best practices within the transit industry. FTA declines to further prescribe a process for resolving good faith safety challenges, as FTA notes that an RTA's size, staffing, and system type may impact how they approach the good faith safety challenge process. FTA declines to define "equitably," as FTA uses "equitably" in this context in its commonly understood meaning.

FTA also notes the rule's provisions, per § 671.25(c)(2)(i)(C), requiring the SSOA to conduct annual audits to assess the effectiveness of the RTA's implementation of its RWP program, including review of "all documentation of instances where a transit worker(s) challenged and refused in good faith any assignment based on on-track safety concerns and documentation of the resolution for any such instance during the period covered by the audit." If during this audit the SSOA determines that good faith safety challenges are not resolved equitably, the SSOA must issue findings and require corrective action.

FTA acknowledges the concern regarding the requirement for procedures that allow workers to "refuse" work. However, FTA believes the right to refusal is integral to the good faith safety challenge to prioritize worker safety, promptly resolve hazards, and emphasize the preeminence of safety in a rail transit environment. FTA is not requiring that RTAs revise their existing process, as long as the process meets the minimum requirements specified in this rule.

5. PROCEDURES TO REQUIRE REPORTING OF UNSAFE EVENTS

Comments: One RTA and one labor organization submitted comments regarding the requirement for RTAs to establish procedures to require the reporting of unsafe acts, unsafe conditions, and near-misses on the roadway in § 671.21(a)(6). The RTA commented that the new mandatory reporting requirements for transit workers in § 671.21(a)(6) and § 671.23(e) are a significant expansion of the employee safety reporting program and would require significantly

more resources to manage on an ongoing basis given the broad nature of the new reporting categories. The commenter also noted concern about overburdening the Safety Committee established under the PTASP regulation with what would be a large increase in the volume of information reported through this program.

The labor organization suggested that confidentiality be emphasized for reporting near-misses, noting that participation would be more widespread and the accounts more accurate. The organization stated that near-miss data collection is most useful when plentiful and unvarnished, thus ensuring and emphasizing confidentiality in this reporting process will benefit all involved parties.

FTA Response: FTA notes that while the requirement in this rule for procedures for transit workers to report unsafe acts and conditions seems to represent an expansion of the employee reporting program, an RTA's Transit Worker Safety Reporting Program, established under part 673, applies to all workers and should already capture transit worker safety reports related to work performed on the roadway. This final rule emphasizes the importance of an RTA's safety reporting program in capturing safety-critical information related to RWP, but it is FTA's expectation that much of this information is being captured by RTAs via existing practice. FTA acknowledges that, where this is not the case, managing additional reporting will pose a burden for agencies. FTA believes these extra requirements are critical to ensuring safety and empowering workers to voice concerns, particularly because unsafe conditions and practices persist throughout the transit industry. FTA has accounted for the added cost of these reporting changes in the final rule economic analysis under "Near-Miss Reporting Program and Records" estimates.

FTA agrees that confidential reporting has many benefits that promote safety culture and encourage employee reporting and FTA encourages the practice of confidential reporting whenever appropriate and feasible. However, FTA is preserving the flexibility for RTAs to establish the transit worker safety reporting processes that are most effective for their operating

realities. For some agencies, competing considerations such as expediency of reporting, staff size, and the need for additional information may require identified reporters. FTA confirms that acceptable methods of reporting near-miss information include both confidential and nonconfidential reporting. Further, FTA encourages RTAs to consider providing ways for transit workers to anonymously report safety concerns and to consider participating in third-party confidential close-call reporting programs.

6. PROCEDURES TO ENSURE TRANSIT WORKERS UNDERSTAND RWP PROGRAM

Comments: One RTA submitted a comment addressing the requirement that RTAs establish procedures to ensure all transit workers who must enter a track zone to perform work understand, are qualified in, and comply with the RWP program at § 671.21(a)(7). This RTA asserted that all transit workers should not be required to comply with the RWP program, as this program is designed for roadway workers. The commenter added that alternate methods of protection should be in place to protect workers of other crafts, i.e., blue signal/flag protection for mechanical employees.

FTA Response: FTA disagrees that the RWP program is designed only for roadway workers and that not all transit workers should be required to comply with the program, though FTA acknowledges that transit and roadway workers may have other requirements in place to ensure their safety, such as blue/signal flag protection for vehicle mechanics and technicians. FTA intends for the provisions in this rule to provide protection for all transit workers as they access the track in the performance of their work. FTA recognizes that work may take place on the track, in vehicle maintenance shops, in rail yards, or elsewhere that requires additional protections beyond those addressed by this final rule.

7. REQUIREMENTS FOR ON-TRACK SAFETY

Comments: Multiple RTAs, one industry association, one individual, and one vendor commented on the provision that RTAs establish requirements for on-track equipment at

§ 671.21(b)(1). One RTA noted that the term "labor category" is used throughout the rule but is not defined anywhere and requested that FTA clarify the term since labor classifications and organizational structures vary by agency. Another RTA requested clarification on the requirement for credentials "by labor category." The individual commented on behalf of railroad and transit workers that wear religiously mandated articles of faith such as Amish wide brimmed hats, Sikh dastaar or turban, and Jewish kippahs. The individual requested that FTA and FRA develop a policy or guidelines for rail workers who wear articles of faith that may be incompatible with personal protective equipment, such as hard hats. The vendor suggested that FTA not list examples of personal protective equipment at § 671.21(b)(1) as the intent is not to specify minimum personal protective equipment requirements.

Multiple RTAs and one industry association submitted comments on the credentials requirement at § 671.21(b)(2). One RTA asked FTA to explain the purpose of requiring RTAs to establish requirements for visibly displaying credentials, stating that if the roadway worker has their credentials somewhere on their person, then that should be sufficient. Two RTAs inquired if the FTA was proposing that these credentials must displayed in a certain way, or whether the intention of this section is to require credentials always be visible.

One RTA suggested that the requirement for RTA employees to display RWP qualification credentials is likely to result in confusion, noting that the rule appears to propose that different credentials would be required for each RWP position (worker, flag person, watchperson, roadway worker in charge). As an example, the commenter noted that an employee displaying a roadway worker in charge qualification might be performing watchperson duties. The RTA recommended that RTAs be free to select any effective method of identifying employees' qualifications.

One RTA and one industry association suggested revising § 671.21(b)(2) to remove reference to how the credentials of an RWP program are displayed. The commenters argued that credentialing requirements should be left at the discretion of the RTAs and the approving SSOA.

One RTA asked if an electronic solution, such as the roadway worker in charge electronically scanning ID badges during the job safety briefing, would meet the requirement to display credentials at § 671.21(b)(2). The RTA also expressed concern that, if credentials must be displayed at all times while on the roadway, it could create a safety hazard for RTAs that use lanyard type badges.

An RTA stated that the "roadway" definition, as it relates to required displayed credentials in § 671.21(b)(2), is problematic for RTAs with tracks that share city right-of-way with automobiles and intersection crosswalks with pedestrians and suggested considering specifying "work and work zones" rather than "roadway."

Two RTAs commented on the requirement for on-track safety protections for emergency response personnel at § 671.21(b)(3). One RTA explained that their agency stops service and movement of trains to ensure emergency personnel have a safe environment to do their job. The commenter noted that training of emergency personnel will be unnecessary because the danger of train movement will be halted during their response within the right-of-way. The other RTA commented that the RWP program is not the appropriate place for this requirement and that access to the roadway outside of the protection of a roadway worker in charge should be provided for in the RTA's emergency response plan.

One RTA commenter and one industry association commenter requested that FTA consider adding provisions that persons who are not trained on or qualified in the RWP program can be escorted in a track zone by RWP-qualified personnel, a practice currently existing in California. The commenters added that the need for this may occur due to unique track configurations, systems design, or shared access areas with other non-RTA entities.

FTA Response: FTA declines to define the term "labor category" because labor categories and types of work performed can be defined in several ways and will vary by agency due to the diverse operating characteristics of RTAs. FTA defers to RTAs to identify the labor categories and different job functions that are relevant for their unique systems. FTA expects

RTAs to establish minimum requirements, based on the type of work performed, for the equipment, training, qualification, supervision, and credentials required for transit workers to access the roadway and address those requirements accordingly. Regarding the requirement for credentials "by labor category," FTA intends that workers will display a physical indication of their qualification to access the roadway or the track zone. FTA defers to RTAs to determine the specific labor categories to be displayed.

FTA expects that RTA policies regarding personal protective equipment will consider religious articles that may be worn by transit workers. FTA encourages RTAs to develop personal protective equipment policies that adequately protect transit workers while being appropriately flexible.

FTA declines to remove the list of examples of personal protective equipment from the regulations because examples in this case help illustrate or show the characteristics of personal protective equipment. FTA notes these examples are non-exhaustive and only intended to clarify personal protective equipment.

FTA disagrees with the suggestion to revise § 671.21(b)(2) to remove any reference to displaying RWP program credentials. A physical indication of an individual's qualification to access the roadway or the track zone helps ensure that roadway workers have the proper training and are aware of the safety risks and the protections to reduce those risks. Displaying credentials also clarifies workers roles, and ensures workers are following the appropriate protocols for those roles. This requirement is reflective of industry best practices. FTA confirms that the final rule requires credentials be visible at all times, not just during the job safety briefing; however, this requirement does not specify that they be displayed in a certain way. Examples include credentials displayed in see-through card holders on safety vests, rubber identification bracelets, badges, and bands. FTA defers to RTAs to determine the form of credentialing, as long as it can be visible. FTA clarifies the rule does not specify the content or the form of the credentials and defers to RTAs to establish the appropriate credentials for their systems. As mentioned

previously, this requirement is reflective of industry best practices and a physical indication of an individual's qualification to access the roadway or the track zone helps ensure that only roadway workers who have the proper training and are aware of the safety risk and the protections to reduce that risk access the roadway. In response to the commenter's concern that lanyard-type badges could create a safety hazard, FTA is not prescribing the forms of credentialing and defers to RTAs to identify the form while keeping safety at the forefront. Similarly, because FTA is not requiring specific credentials, FTA has not accounted for additional expenses in the Benefits and Costs section.

Under § 671.21(b)(2), RTAs must establish requirements for credentials for transit workers who enter the roadway or track zone. FTA maintains that the language "roadway or track zone" within this provision allows for flexibility for systems with shared rights-of-way in determining when credentials must be displayed. FTA also does not believe "work zone" would be sufficient in this context, as roadway workers in the track zone but outside of the work zone still should be verifiably credentialed for reasons including ensuring proper authorization, communication, and emergency response protocols.

FTA notes that the rule does not require RTAs to provide RWP training to emergency personnel; rather, RTAs must establish procedures to protect emergency personnel who must access the roadway or the track zone to perform their job. FTA believes it is necessary to address emergency personnel in this part to make clear that RTAs are required to provide protections for emergency response personnel who must access the roadway or track zone, and that workers are aware of this requirement. FTA also notes that § 671.21(b)(3) requires an RTA to establish requirements for protections for emergency response personnel who must access the roadway or the track but does not prohibit an RTA from documenting these protections and procedures in the RTA's emergency response plan. In response to the RTA and industry association commenters who requested the addition of provisions to allow persons who are not trained on or qualified in the RWP program to be escorted in a track zone by RWP-qualified personnel, FTA is amending

the regulation to address escorting non-transit workers when necessary, to support individuals that are not RWP certified and do not fall into the categories of roadway worker, transit worker, or emergency personnel.

H. Section 671.23 – Transit Worker

Comments: Five RTAs, one SSOA, and one vendor commented on the role of transit workers in the RWP program detailed in § 671.23. One RTA asked what the impact would be if a transit worker did not follow the requirements of the RTA's RWP program. The RTA asked FTA to clarify the intersection between this requirement and existing labor contracts and discipline processes and what FTA's intent is in including this requirement. Further, they recommended allowing the discipline processes outlined per standard RTA processes and/or labor agreements to stand and suggested that FTA add a line to the regulation that clearly states, "Do not get involved in discussions regarding discipline. That is a labor-management issue."

One RTA expressed concern with the practicality of the requirement in § 671.23(b) that a transit worker may only foul the track once they have received appropriate permissions, and redundant protections have been established as specified in the RWP manual. The commenter noted that in streetcar systems, transit workers foul the track every day whether on or off duty, simply by being pedestrians or motorists. Another RTA noted that the scope of this requirement is too broad by including all transit workers in a rulemaking focused on roadway workers. The commenter added that the requirement to obtain RWP for common activities, such as fouling a track to immediately cross from one place of safety to another when views are not obstructed creates an undue burden on control center personnel. One SSOA suggested using "fouling a track" rather than "fouling the track" in this subsection to mirror the definition in § 671.5.

Commenting on § 671.23(c), "Acknowledgement of protections providing on-track safety," one RTA asked if having the transit worker sign the bottom of the job safety briefing would be an acceptable form of written acknowledgement. Another RTA asked if this acknowledgement would be a secondary document beyond what is provided in a train order or

special instruction during RWP work. One SSOA asked if the acknowledgement of on-track procedures in writing was intended to be part of the job safety briefing requirement and if it must be a formal signature. A vendor recommended requiring that it be the transit worker's responsibility to obtain a safety briefing prior to accessing the track zone. The vendor emphasized the importance that transit workers understand that it is their responsibility to receive the safety briefing from the roadway worker in charge and not sign off on the briefing until they fully comprehend the on-track safety being afforded.

For the authority to refuse to foul the track identified in § 671.23(d), one RTA commented that the determination that an assignment is unsafe is a subjective view that requires no basis in fact and so should be removed as a reason for a transit worker to refuse to foul a track.

FTA Response: If transit workers do not comply with the requirements of the RTA's RWP program, the RTA must determine the reason for this failure. Because policies and regulations regarding labor practices will vary among RTAs and from State to State, FTA declines to stipulate what discipline processes an agency should or should not include as part of its RWP program. Similarly, FTA declines to add the FRA language recommended by the commenter to the regulation and notes that RTAs should ensure that they comply with both the RWP program and their existing labor contracts.

Regarding the concern with the practicality of the requirement that a transit worker may only foul the track once they have received appropriate permissions and redundant protections have been established, FTA's intent is to restrict workers from unauthorized track access and/or fouling the track unnecessarily. FTA understands that in streetcar systems, people, including pedestrians, motorists, or off-duty transit workers, may regularly foul the track. However, FTA reiterates that the regulation applies to transit workers who access any rail fixed guideway public transportation systems in the performance of work and does not set provisions for crossing the

track as a pedestrian or motorist, but rather focuses on fouling the track in the performance of work under the protection of the RWP program.

FTA understands the concern that obtaining RWP for common activities, such as fouling a track to immediately cross from one place of safety to another, may be burdensome. However, FTA has determined that hazards exist for many categories of transit employees who work on or in close proximity to the right-of-way, regardless of the circumstances. For roadway workers, this rule includes provisions at § 671.39(d)(3) for equivalent protections approved by the SSOA for lone workers, providing flexibility for these situations. For transit workers who are not roadway workers and who must momentarily access the roadway, agencies have flexibility to establish appropriate permissions and redundant protections in accordance with § 671.23(b).

FTA declines to revise "fouling the track" to "fouling a track" to mirror the definition language (§ 671.5) as it does not affect the meaning of the requirement as used in this section.

FTA confirms that signing the bottom of the job safety briefing would be an acceptable form of written acknowledgement and notes that the language of § 671.23(c) is intended to provide RTAs flexibility in the method of written acknowledgement they can provide. Written acknowledgement may be in the form of a formal signature or other method of written affirmation. FTA reiterates that transit workers must provide acknowledgement in writing but may do so in the method that best suits their purposes, including having the written acknowledgement be a secondary document. It is important to note that whatever method of written acknowledgement the RTA chooses to use must comply with the provisions established in the recordkeeping section of the rule (§ 671.51).

FTA confirms that the acknowledgement of on-track procedures does not need to be part of the job safety briefing but reiterates that transit workers are required to provide written acknowledgement of their understanding of the on-track safety protections. While FTA agrees on the importance of the transit workers having a thorough understanding of the safety briefing, FTA declines to amend the regulation to make it the transit worker's responsibility to obtain a

safety briefing prior to accessing the track zone. FTA requires that each roadway worker acknowledge that they have received the job safety briefing. FTA does not believe additional requirements are necessary to ensure the transit worker's awareness and acknowledgement.

FTA appreciates the concern that it is too subjective for a roadway worker to determine what is "unsafe." However, FTA disagrees with the recommendation for removing this from the rule. The intent of § 671.23(d) is to permit the transit worker to use their own judgement and discretion when determining if an assignment related to this rule is unsafe. FTA believes frontline workers are often in the best position to recognize and understand the potential risks of an assignment and, therefore, must have the authority to raise those concerns without restrictions.

I. Section 671.25 – State Safety Oversight Agency

1. RWP PROGRAM OVERSIGHT (§ 671.25(b))

Comments: FTA received multiple comments with respect to SSOA oversight for the RWP program. One individual stressed the importance of SSOA employees being knowledgeable of and qualified in the RTA's RWP program in order to effectively review and audit the RTA's RWP program.

One SSOA questioned what is meant by the provision, "The SSOA must update its program standard to explain the role of the SSOA in overseeing an RTA's execution of its RWP program." The commenter noted that it is not clear what updates would be required, and that these requirements should also be included in 49 CFR part 674.

FTA Response: FTA agrees that SSOA employees should be knowledgeable of the RWP program in order to effectively oversee its implementation. The recently published 49 CFR part 672, as part of the technical training plan, requires SSOAs to receive ongoing technical training in RWP program requirements specific to each RTA for which safety audits and examinations are conducted. The final rule also contains provisions that apply to SSOAs to ensure their engagement in the RWP program. For example, the term "transit worker" defined in § 671.5 includes any employee, contractor, or volunteer working on behalf of the RTA or SSOA. Per

§ 671.23, all transit workers, including SSOA employees, contractors, and volunteers, must follow the relevant requirements of the RTA's RWP program by position and labor category. Also, § 671.41(a)(1) requires that an RTA's RWP training program must address SSOA employees, contractors, and volunteers who have job duties that require them to foul the track.

FTA requires SSOAs to incorporate RWP program oversight requirements and responsibilities in the SSOA's SSO program standard. Because the SSO program standard documents the SSOA processes and procedures that the SSOA uses to provide oversight through the SSO program, the SSO program standard updates include the SSOA processes used to comply with the oversight requirements of this final rule and fulfill SSOA responsibilities at § 671.25. Additional practices and procedures may be adopted to supplement the program oversight requirements and responsibilities in the SSO program standard, but the SSO program standard must explain the role of the SSOA in overseeing the RTA's execution of its RWP program per § 671.25(b). While 49 CFR part 674 contains the majority of the requirements related to SSOAs, FTA believes it is clearer to contain all RWP requirements in this one regulation.

2. RWP MANUAL REVIEW AND APPROVAL (§ 671.25(a))

Comments: Multiple RTAs, multiple SSOAs, one industry association, and one vendor commented on the requirements for SSOA review and approval of the RWP program elements and manual. One RTA noted that it is appropriate for SSOAs to review and provide feedback on RWP programs but commented that SSOA approval of the RWP program is inappropriate because the SSOA is not the subject matter expert on RWP and does not continuously interact with frontline workers. The commenter also stated that the RTA, not the SSOA, is in the best position to develop, manage, and oversee their RWP program. The SSOA has existing oversight authority of the RTA's rail system, and requiring SSOA approval of the RWP program would serve to only impose extra burdens on an RTA without providing any meaningful benefits.

One RTA asserted their opinion that SSOAs' review and approval of the RWP manual is redundant with the ASP approval because their RWP program currently exists within the ASP. With respect to updates in particular, one RTA requested clarification on what type of manual updates are expected to be reviewed by the SSOA, for example, minor formatting changes or content updates only. Similarly, an RTA raised concerns about whether any change made to an underlying SOP would need to go to the SSOA for approval prior to being signed, and if so, who would manage the process. The RTA stated that the requirement for SSOAs to approve the RWP manual is burdensome for RTAs as it's an additional compliance requirement. The RTA recommended that FTA consider providing additional resources to RTAs to meet these requirements.

Multiple SSOAs expressed concerns with the timeframes for initial RWP program approval and submission to FTA as established in § 671.25(a), noting specifically that it may not allow for enough time for the revisions required by the SSOAs. One SSOA commented that requiring SSOA approval within 90 days emphasizes timeliness over a full and detailed review of the program elements. One SSOA recommended that FTA require SSOAs to include in their program standard a process to review and approve the RWP program. Another SSOA proposed that FTA revise the rule text to state that initial approval of the RWP program must be completed within "90 calendar days from receipt, or 60 calendar days from resubmission after SSOA comment." One SSOA recommended that FTA follow a similar format for SSOA review as in the PTASP rule — setting a deadline for the commencement of each RTA's RWP program, after which the SSOA would perform oversight at their discretion and within the context of their programs.

With respect to § 671.25(a)(2) and the requirement to submit all approved RWP program elements for each RTA in its jurisdiction, and any subsequent updates, to FTA within 30 calendar days of approving them, two SSOAs and one industry association recommended submission of the RWP program through the State Safety Oversight Reporting tool (SSOR). The

two SSOAs suggested that the RWP program submission be added to the annual reporting process or follow a similar process and timeframe for other reports that are submitted to FTA by SSOAs, such as PTASP approval and triennial audit reports. One SSOA questioned FTA's role in validating the RWP program if it had already been approved by the SSOA. A vendor inquired about FTA's intention regarding making the SSOA responsible for the submission following SSOA approval rather than requiring the RTA to submit the approved program to FTA.

One SSOA questioned if the submissions are for individual RWP program elements or collectively for all RWP program elements in the State. An RTA asked if the SSOA must submit to FTA only newly established RWP programs or whether they must submit RWP program elements for existing programs.

It was also suggested by an industry association that FTA remove the 90- and 30-day timeframes altogether because these timeframes may cause confusion and conflict with existing submission practices between the SSOA and their RTAs.

FTA Response: FTA disagrees with the RTA comment stating that the SSOA's approval of the RWP program is inappropriate. As described in § 674.5, "a State that has a rail fixed guideway public transportation system within the State has primary responsibility for overseeing the safety of that rail fixed guideway public transportation system." Therefore, this final rule is consistent with the SSOA's existing responsibility to oversee RTAs. As part of this oversight, FTA believes it is necessary for SSOAs to review and approve the RWP program and manual regularly, and from the outset. This ensures sufficient procedures are in place before concerns arise and allows SSOAs to confirm that the RWP program and manual are compliant with the requirements of this rule. Requiring full review and approval promotes accountability and thoroughness for SSOAs and creates a framework for consistency. SSOA staff and contractors should achieve the training and qualifications necessary, per 49 CFR part 672, to perform this responsibility.

To avoid redundancy, SSOAs may review and approve an RTA's ASP, and conduct the annual RWP program audit simultaneously. If the SSOA elects to conduct their annual RWP program audit alongside their annual review of the ASP or integrate the review of the RWP program into its triennial review of the ASP, the review must meet the RWP program audit requirements specified at § 671.25(c).

FTA considers those revisions or updates that result in any RWP policy changes as necessitating SSOA review and approval. Changes that do not impact content or procedures, for instance, formatting changes or grammatical corrections, do not require review by the SSOA. FTA expects SSOAs and RTAs to determine the appropriate thresholds and practices for SSOA review of manual updates. Because the SSOA-RTA oversight framework has been in place for many years, FTA believes that SSOAs and RTAs will already have practices in place to share, review, and approve safety procedures. As such, the SSOA's review and approval of the RWP manual should comport with the existing collaborative processes among the agencies. Regarding potential changes to an underlying SOP, FTA confirms that any revisions or updates that result in RWP policy changes and changes to the RWP manual must be reviewed by the SSOA. FTA believes that requiring SSOA approval in these circumstances is necessary to ensure safety concerns are brought to the forefront and addressed properly, with the appropriate level of coordination and feedback. While this may present some additional burden, FTA anticipates policy changes will be made only as necessary to promote consistency and ensure updates are meaningful and well considered. FTA will consider developing and sharing technical assistance resources to support this practice to help minimize the burden of this requirement for either agency.

Due to the safety-critical nature of the RWP program, FTA expects SSOAs to complete a comprehensive and detailed review of all RWP program elements. However, in response to comments FTA has removed the 90-day timeframe for SSOA approval so as to not unnecessarily limit an SSOA's review. FTA considered the commenter's suggestion to add an additional 60-

day window after the proposed 90-day timeframe to provide additional time for SSOAs to re-evaluate RWP programs in an instance where they do not approve an RTA's first submission. FTA believes that removing the time period for an SSOA's initial review of the RTA's RWP program provides flexibility to both the RTA and the SSOA to establish a review process that works best in their situation, rather than prescribing the review time period. FTA expects that SSOAs and RTAs will coordinate throughout the development of the RTA's RWP program to ensure 1) an effective RWP program to support roadway worker safety, and 2) the SSOA and RTA can meet required deadlines. FTA also believes that the one-year deadline in § 671.1(d) to establish an RWP program allows time for the RTA to develop its RWP program and for comprehensive review, feedback, and coordination between the SSOA and RTA. FTA notes that the RTA's RWP program development, as well as the SSOA's review and approval of the RWP program, must be a priority for both agencies and the one-year timeframe for establishment of the RWP program ensures the SSOA initial review of the RWP program is completed in a timely manner. As noted above, due to the existing relationships, FTA expects that the SSOA and RTA will coordinate on program elements throughout the RWP program development process. FTA believes that establishing a cadence for SSOA review and approval of RTA RWP programs is not dissimilar from the existing PTASP review structure which requires SSOA review of ASPs following an update.

FTA plans to review these RWP programs as a critical element of monitoring activities to assess that safety standards are met across the industry and both the RTA and SSOA are enforcing RWP programs in accordance with Federal requirements. FTA declines to accept the commenters' suggestion to remove this submission requirement and instead require SSOAs to include the RWP program in their subsequent SSO annual report via the existing SSOR, because this could delay FTA's receipt and review of these important materials. FTA confirms that it is the responsibility of the SSOA, not FTA, to approve the RWP program, but submission of the

SSOA-approved RTA RWP program provides FTA with an opportunity to confirm requirements have been followed and offer feedback or technical assistance where necessary.

With respect to SSOAs that oversee multiple RTAs, FTA expects the SSOAs to submit the RTA RWP programs individually as they are approved, as opposed to waiting for the development and approval of all RWP programs within the State and then submitting them all together. Submitting the programs as they are approved will allow for a more measured and manageable accounting of RWP program status by FTA as it monitors industry-wide rule application. FTA confirms that submission requirements apply to all RWP programs, both newly established and existing. FTA expects a submission for each RTA's RWP program once approved by the SSOA. FTA disagrees that the 30-day deadline for SSOAs to submit approved programs to FTA is confusing and declines to change this requirement. These requirements are enumerated in the rule text at § 671.25(a)(1) and (2), within the section that is expressly directed to SSOAs.

3. ANNUAL RWP PROGRAM AUDIT (§ 671.25(c))

FTA received comments from multiple RTAs, SSOAs, and industry associations and one vendor regarding the proposed rule's requirement for an annual audit of the RWP program to be conducted by the SSOA, as specified in § 671.25(c).

a. General

Comments: One RTA stated that the SSOA annual audit of the RTA's compliance with its RWP program is unnecessary because the RWP program is reviewed during the annual SSOA review of updates to the ASP. Further, this commenter expressed their concern that the annual SSO RWP program audit may delay the RTA from moving forward with the RWP manual and the required training that is crucial for day-to-day maintenance work and contractor work at the RTA.

Several commenters requested clarification on terms. An SSOA asked about the definition of "audit." A vendor asked for guidance on what constitutes a "representative sample"

where FTA requires the annual audit of the RWP program to include a review of "a representative sample of written job safety briefing confirmations..."

FTA Response: FTA disagrees with the commenter that suggested the annual RWP program audit is unnecessary because the PTASP rule already requires an annual ASP review. FTA believes that a separate RWP program audit is necessary because the RWP program is a specific piece of the RTA's ASP, and FTA expects that the RWP audit will consist of a more in-depth and specialized review of the RTA's RWP program compared with the review of the RTA's ASP. SSOAs may audit the RWP program and review or audit the ASP simultaneously where prudent, so long as the audit requirements at § 671.25(c) and § 673.13(a) are met.

FTA believes that suggestions that the RWP program audit will delay RWP manual updates and required training are unconvincing. The annual audit is intended to assess the RTA's compliance with its RWP program, which includes ensuring that trainings and guidance are being offered and updated as needed and should not result in a delay of either.

In general, an audit focused on safety is an independent examination to evaluate and/or verify conformity with the effectiveness of established safety practices and procedures. The term "representative sample" as used in this rule describes a subset grouping determined to accurately represent a larger grouping. Each SSOA is to determine what serves as a "representative sample" when conducting oversight and auditing activities on the RTAs within their respective jurisdictions.

b. Annual Audit Requirement

Comments: One SSOA asked how FTA determined that audits are needed annually and if FTA had performed a safety risk assessment to determine the frequency for RWP annual audits.

Several commenters noted that an annual audit of the RWP program is burdensome for RTAs already audited by their SSOAs. The commenters cited challenges with meeting this requirement as it is in addition to the other annual safety audits and reviews required by part 674, and the resulting need for more resources at both the RTAs and SSOAs and could dilute the

substance of the audit. Of these commenters, one suggested that the audits be biennial instead of annual, while another suggested using sample-based audit techniques in place of auditing all program elements. Two industry associations suggested eliminating the annual audit requirement from the rule altogether.

FTA received several comments regarding how the RWP program audit would interface with the SSOA triennial audit schedule. These commenters asserted that the addition of an annual RWP program audit is duplicative of, and should be incorporated into, the SSOA triennial audit requirement established at § 674.31. One of these commenters suggested that, if FTA is seeking to confirm the RWP program implementation through the audit process, the regulation could require the SSOA to audit the RWP program after the first year of implementation then incorporate subsequent audits into the SSOA triennial audit process with ongoing monitoring conducted by the RTA's Safety Assurance monitoring activities.

FTA Response: FTA appreciates the inquiry into the decision-making process for annual SSOA audits of the RTA's RWP program implementation. While FTA did not conduct a formal safety risk assessment specifically to determine this frequency, FTA's decision is based on the critical nature of RWP programs and the need for regular evaluation to ensure their effectiveness. FTA's RWP rule allows procedural protections that rely on compliance with rules and do not always require the placement of physical barriers between workers and rail transit vehicles. FTA recognizes that ensuring the effectiveness of procedural protections is critical to their success in protecting workers. Annual SSOA audits provide a consistent and independent mechanism to verify that procedural protections are being properly implemented and are achieving their intended safety outcomes.

Additionally, the annual audit frequency will ensure that the SSOA is involved and actively informed regarding the RTA's RWP program performance, and that the RTA is responsive to addressing deficiencies to elevate roadway worker safety through corrective action plans or other recommendations from the SSOA's audit. This final rule's requirement for annual

RWP audits serves to confirm that RWP programs are working as intended and protections are functioning to keep roadway workers and rail transit vehicle operations safe.

FTA agrees that the addition of an annual RWP program audit at each RTA an SSOA oversees will require more time and attention from both the SSOA and the RTAs. The agencies will need to set priorities effectively to ensure part 671 requirements are met, including the annual audit requirements. FTA appreciates the suggestion to move annual audits to biennial audits, or once every two years. However, given the allowance for the use of procedural protections under this final rule, which require an increased level of vigilance to ensure they function compared with physical protections, FTA is finalizing the requirement for an annual audit to address the need for strong procedural oversight. FTA also believes that the pattern of safety incidents and concerns reported at RTAs in recent years necessitates early detection of issues and timely implementation of corrective actions, which an annual audit may provide. FTA notes that sample-based auditing is a pragmatic approach to examining large amounts of information, records, activities, and more. This final rule does not prohibit SSOAs from using responsible, sample-based auditing practices to address the requirements of § 671.25. Each SSOA will determine which of its personnel, and potentially contractor staff, will perform the RWP audit.

FTA declines to remove the audit requirement completely given the importance of the RWP audit outlined above.

FTA also appreciates the comments received related to the relationship between the annual RWP audit and the SSOA triennial audit schedule. Due to the safety risk inherent with roadway work, FTA maintains the need for an annual RWP program audit and does not believe a triennial audit schedule would provide sufficient oversight. The means by which the SSOA schedules and administers the RWP program audit in concert with triennial audit responsibilities will be left to the SSOA to determine. Regarding the suggestion that FTA require annual SSOA RWP audits at the outset and then move to a triennial audit system later, FTA reiterates that the

risks involved with roadway work, and the ever-changing nature of roadway hazards, warrant more frequent auditing. FTA disagrees that this audit is duplicative of the triennial audit because RWP program requirements and elements will be new for many RTAs. SSOAs that have been auditing RWP programs at their RTAs will need to ensure the audit encompasses all the requirements outlined in § 671.25(c). However, the SSOA may integrate the review of the RWP program into its triennial review of the RTA, as long as the triennial review covers the elements as described in the RWP rule.

c. Audit Report

Comments: FTA received comments from multiple SSOAs, RTAs, and industry associations about the proposed rule's requirement for a report documenting the results of the annual audit of the RWP program, as specified in § 671.25(c)(2). One SSOA and one industry association stated that having the SSOA determine the effectiveness of an RWP program, as required in § 671.25(c)(2)(i), is beyond an SSOA's scope. These commenters asserted that SSOAs currently only oversee compliance with requirements, and the requirement to analyze the effectiveness of an RTA's RWP program would lead to a change in role for the SSOA and require more SSOA resources, training, and regulatory change to establish this authority. FTA received comments on the RWP program elements that must be reviewed by the SSOA as part of the RWP program audit and included in the audit report. One SSOA and one RTA requested that FTA define "RWP-related event" to avoid inconsistencies, and the RTA recommended requiring an audit of "all RWP manual violations" instead.

One RTA noted an inconsistency between § 671.25(c)(2)(i)(E) and (F). Further, one SSOA asserted that reviewing "all training and qualifications records for transit workers who must enter the track zone to perform work," outlined in § 671.25(c)(2)(i)(E), is overly burdensome and inefficient. The SSOA recommended that the language be updated to "require the RTA to certify to the SSOA that the training and qualification records are current for all

transit workers who must enter a track zone to perform work," then the SSOA can perform oversight through certification audits and inspections.

Related to the audit report findings and recommendations, one SSOA recommended that the audit report should issue findings of noncompliance rather than corrective action plans as mentioned in § 671.25(c)(2)(iii). One RTA requested clarification on "recommendations for improvements" language related to the SSOA's RWP program audit report, including whether an SSOA would be expected to issue recommendations if the RTA is otherwise compliant with requirements, whether SSOA program standards need to account for these recommendations, and whether RTAs would be compelled to implement them. Two SSOAs noted that the SSOA's ability to provide recommendations raises liability concerns as this presents the SSOA with a decision-making type of role instead of an oversight role. One SSOA discouraged the inclusion of recommendations in the audit reports stating that the "SSOA shouldn't be making recommendations but rather be providing data and information for hazard identification." This SSOA argued that RTAs would view recommendations from the SSOA as a mandate, which goes against the SMS framework and is inconsistent with § 673.25(b)(2).

Two comments, one from an RTA and one from an industry association, recommended that FTA include a requirement for the SSOA to issue the RWP audit report within 90 calendar days following the audit completion in order to ensure SSOA administrative backlogs do not delay audit reports.

Lastly, an RTA and an industry association both suggested revising the language in § 671.25(c)(3) to include the requirement that a formalized process be established to record any comments provided by the RTA on the RWP audit report and have the comments be available for FTA review. Commenters argued that this revised language would ensure that the RTAs can comment on any findings and recommendations during the SSOA audits and enshrine the comments in the record.

FTA Response: FTA disagrees that effectiveness determinations are beyond the scope of SSOA oversight. FTA notes that this is consistent with other FTA regulatory requirements for SSOAs established in both part 673 and 674 (for example, see § 674.31).

In response to the comments related to RWP audit elements, FTA does not see the need to define the term "RWP-related event" nor replace this term with "all RWP manual violations." FTA believes that, in some circumstances, safety events may occur that are not resulting from manual violations, or which the existing RWP manual failed to account for, which need to be reviewed. FTA clarifies that "RWP-related event" is intended as a broad term to provide SSOAs with flexibility to review a range of events that may occur in the RWP program as part of the annual audit, including safety events and near-misses; specific incidents or groups of incidents involving deficiencies in RWP program implementation or compliance, as may be related to § 671.25(c)(2)(i)(G); as well as any other unusual occurrences or conditions related to RWP program implementation.

FTA acknowledges the comment on inconsistent audit methodologies between § 671.25(c)(2)(i)(E) and (F) where the former requires the review of "all training and qualifications records" and the latter requires a "representative sample of written job safety briefings." FTA agrees that reviewing "all training and qualifications records" may not be attainable, especially for larger RTAs. Therefore, in the final rule FTA is striking the word "all" from § 671.25(c)(2)(i)(E), which will allow the SSOA the flexibility to either review all or a sampling of training and qualifications records while performing their audit activities.

FTA disagrees, however, with a more specific comment that argued that an SSOA's audit of RTA training and qualification records would be duplicative of existing RTA work and recommended rewording the language to "require the RTA to certify to the SSOA that training and qualifications records are current for all transit workers who must enter the track zone to perform work." FTA declines to eliminate the requirement at § 671.25(c)(2)(i)(E) for SSOAs to review training and qualification records for transit workers who must enter a track zone to

perform work and replace it with an RTA self-certification process, as FTA believes SSOAs should exercise oversight to ensure compliance with the training and qualification requirements.

In response to comments regarding the SSOA's RWP audit findings and their documentation in an audit report issued by the SSOA, FTA reiterates that this practice is consistent with the triennial audit requirements of § 674.31, which requires that the SSOA "shall issue a report with findings and recommendations" arising from the triennial audit. FTA confirms that this practice is established in current SSOA authorities, does not counter an RTA's SMS practices, and does not conflict with decision-making for the RTA. FTA believes that the issuance of recommendations is often a requisite part of the audit process but confirms that SSOAs may opt to provide data and hazard identification documentation if that information would provide the RTA with sufficient direction for improvement. Regarding the "recommendations for improvement," FTA defers to an SSOA on when to issue recommendations for improvement if an RTA is otherwise compliant with requirements. The SSOA's program standard must identify processes and procedures that govern the activities of the SSOA, and the processes and procedures an RTA must have in place to comply with the standard, but it does not need to detail all recommendations provided by the SSOA to the RTA. When providing recommendations, the SSOA must be clear about whether the proposed changes are necessary to ensure compliance with this part and ensure SSOA approval, or whether the proposed changes are suggested best practices for program improvement, which the RTA can exercise discretion in implementing. FTA also notes that it is within existing SSOA authority to issue or require corrective action plans to RTAs where necessary.

FTA appreciates the comment suggesting FTA establish a 90-day timeframe for the issuance of the SSOA's RWP audit report following the audit's completion. However, this final rule maintains the flexibility afforded SSOAs to determine a timeframe most suitable for them and the RTAs they are auditing. As always, FTA encourages SSOAs to complete reports within a reasonable timeframe to avoid administrative backlogs. Likewise, FTA believes a less

prescriptive requirement on the process for RTAs to provide comments on the SSOA's RWP audit report is best to allow SSOAs and associated RTAs to establish a process and timeframe that works for both agencies. FTA encourages SSOAs and RTAs to maintain a record of these comments to ensure that the perspectives of both agencies are properly captured and can be referenced in the future as necessary, but FTA does not require submission for review.

d. Separate Audit Requirement

Comments: FTA received comments responsive to the preamble language which stated that FTA expects SSOAs to conduct these RWP program audits independently from any analogous RTA audit. One RTA sought clarity on what additional information an audit is intended to provide, and who the inspector conducting the audit would be. Another RTA commenter suggested that if FTA determines the need for a separate RWP program audit, it should allow the SSOA and RTA to determine their own audit requirements.

FTA Response: Due to the safety risk inherent with roadway work, FTA maintains the need for an SSOA to conduct an independent annual RWP program audit rather than relying on the RTA's own audit findings. However, how the SSOA schedules and administers the RWP program audit in concert with other audit responsibilities will be left to the SSOA to determine. The audit is expected to cover the RTA's compliance with its SSOA-approved RWP program by analyzing program effectiveness through typical audit activities such as record reviews, examination of RWP event trends, application of practices such as job safety briefings and good faith safety challenges, observation of training and review of training records, and more. Section 671.25(c) defines FTA's expectations for SSOA annual RWP program audits, which include elements that are critical for review. Additional decisions regarding the processes and procedures related to the audit that are not outlined in this rule are left to the determination of the SSOA and RTA.

J. Section 671.31 – Roadway Worker in Charge Requirements

1. ON-TRACK SAFETY AND SUPERVISION

Comments: FTA received comments from RTAs, industry associations, and vendors regarding the proposed provisions in § 671.31(a). One industry association stated that the proposal that the roadway worker in charge perform only one function is unreasonable, citing industry-wide workforce shortages and noting that prohibiting a roadway worker in charge from performing ancillary duties while also serving as the roadway worker in charge is too prescriptive. An RTA requested that FTA clarify what activities fall under the function of "maintaining on-track safety," noting that if the roadway worker in charge is prohibited from performing other duties, it would be burdensome. An industry association commenter recommended revising the language in § 671.31(a)(4) to allow the roadway worker in charge to perform work that is part of the scope of the work crew.

One RTA remarked that the language of § 671.31(a) does not clarify whether the RTA has the option of designating a roadway worker in charge from the contracted group or whether the roadway worker in charge must be an RTA employee. One vendor recommended that FTA revise § 671.31(a) to require an RTA to designate a roadway worker in charge for each roadway work group whose duties require "the potential to foul a track," which the commenter noted is consistent with the definition of "roadway worker."

Another vendor remarked that, in certain circumstances, it seems infeasible for the sole roadway worker in charge to oversee a large group of employees across a wide work zone and suggested that the roadway worker in charge be allowed to designate equally qualified individuals to oversee work crews within a larger work zone. An RTA suggested that FTA clarify that when a roadway worker in charge may be responsible for working limits that include multiple work groups, each individual work group should have an employee in charge who coordinates that work group's tasks and movements with the roadway worker in charge. The commenter noted that revised language would serve to ensure that a single, ultimate authority is in control of the work limit, eliminating any confusion or miscommunication between multiple roadway workers in charge in a single working limit. An RTA and an industry association also

recommended that RTAs could, at their discretion, designate “secondary” roadway workers in charge, or similar a designation, for each crew working within a shared working limit, as long as the RTA identifies a single roadway worker in charge for the entire working limit and defines the secondary position relevant to the control hierarchy over the work limit. The commenters provided revised language that they asserted would serve to ensure that a single, ultimate authority is in control of the work limit, eliminating any confusion or miscommunication between multiple roadway workers in charge in a single working limit.

One RTA stated that the proposed rule does not align with FTA's definition of and requirements for a “lone worker” and recommended that FTA consider including a reference to § 671.35 within § 671.31 to reinforce that the individual transit worker is also serving as the roadway worker in charge.

One vendor recommended emphasizing that the roadway worker in charge is responsible for “establishing” the on-track safety for all members of the roadway group.

FTA Response: FTA confirms that the final rule intentionally limits roadway worker in charge activities because the focus of this position must be on the responsibility of maintaining on-track safety for all members of the roadway work group. In response to the request that FTA clarify which activities fall under the function of “maintaining on-track safety,” FTA has identified that activities such as flagging, work zone setup, and administrative tasks fall under that umbrella. FTA declines to revise the rule to allow the roadway worker in charge to perform work that is part of the scope of the work crew that goes beyond maintaining on-track safety. FTA believes this limit is necessary to ensure the undivided attention and singularity of purpose of the roadway worker in charge.

The final rule does not prescribe the employment status of the roadway worker in charge, and the roadway worker in charge can be a contractor or an employee of the RTA as long as the worker is qualified under the RTA's training and qualification program. In response to the commenter that recommended FTA revise § 671.31(a) to address the roadway work group’s

"potential to foul a track" to maintain consistency with the definition of roadway worker, FTA believes it is unnecessary to change the rule as recommended, because RTAs assign duties to roadway workers, which determines which workers will foul a track or have the potential of fouling a track. FTA agrees with the commenters that argued that for multiple roadway work groups within common working limits, the roadway worker in charge be allowed to designate equally qualified individuals to help oversee work crews. This final rule adds language at § 671.31(a)(5) that clarifies when a single roadway worker in charge is designated over multiple work groups within a working limit, each work group should be accompanied by an employee qualified to the level of a roadway worker in charge who shall be responsible for direct communication with the roadway worker in charge.

FTA disagrees with the suggestion to include a reference to § 671.35 within § 671.31 to reinforce that a lone worker is also serving as the roadway worker in charge. In this section, a lone worker is not acting as a roadway worker in charge because there is no roadway work group to oversee. Rather, the lone worker is required to be qualified as a roadway worker in charge, in reference to training and qualification standards, under § 671.41. This qualification is necessary to ensure a lone worker has the requisite expertise and safety knowledge to foul the track alone.

FTA appreciates the commenter that recommended FTA emphasize that the roadway worker in charge is responsible for "establishing" the on-track safety for all members of the roadway group but believes this intention is sufficiently captured in § 671.31(a)(3), which broadly states the roadway worker in charge is "responsible for the on-track safety for all members of the roadway work group."

2. COMMUNICATION

Comments: FTA received comments from two RTAs, one vendor, and two industry associations regarding the proposed provisions in § 671.31(b) that the RTA must ensure that the roadway worker in charge provides a job safety briefing to all roadway workers before any member of a roadway work group fouls a track. One RTA commenter noted that they support the

proposed requirements for the roadway worker in charge to provide a job safety briefing before accessing the roadway; however, they asserted that the proposed requirement for the roadway worker in charge to deliver a new briefing whenever a violation of on-track safety procedures is observed is overly broad and, as written, could disrupt work productivity without adding value or increasing work crew safety. The RTA also noted that there are instances in which a minor and isolated infraction involving a single worker is simply resolved and does not put the work crew at risk and, therefore, should not necessitate a full crew stand-down and rebriefing. The RTA suggested narrowing the scope of this requirement to specify only violations that may compromise the work crew's on-track safety and/or focusing the rebriefing on addressing the violation versus reiterating the full job briefing already provided. An RTA and an industry association suggested adding "or reported" in front of "violation" to better capture reports of violations of on-track safety procedures from a broad range of sources, including the public.

One RTA and one industry association suggested revising the language in § 671.31(b)(2) to clarify the meaning of "in advance" as it relates to notification of changes to on-track safety, as well as to more clearly indicate the party responsible for making immediate warning to leave the roadway in the event of an emergency.

One vendor suggested that FTA add clarification on how a sole roadway worker in charge can oversee a large outage when face-to-face interaction is not possible and went on to recommend that FTA allow the roadway worker in charge to designate an equally qualified individual to give the required job safety briefing prior to the roadway workers fouling the track.

FTA Response: FTA disagrees that the requirement for the roadway worker in charge to deliver a new briefing whenever a violation of on-track safety procedures is observed is overly broad and could be disruptive to work productivity. FTA believes this is necessary to address even minor or isolated infractions, to ensure workers are committed to following established safety procedures, and to ensure infractions are not repeated. Further, this job safety briefing requirement largely reflects industry practices that identify as a best practice updated job safety

briefings to immediately respond to observed violations of on-track safety procedures. FTA confirms this rebriefing need not be a full recitation of the original safety briefing but should address the violation and ensure all are aware of the correct procedures. FTA declines to add "or reported" in front of "violation" to capture reports of violations of on-track safety procedures from a broad range of sources, including the public. FTA believes the language as currently drafted is sufficient to ensure that any violations of on-track safety that are observed by others in the work crew are addressed. FTA agrees that anyone in the work group or any other source, such as the public, who observes violations should report them. Further, FTA reiterates that RTAs may establish additional rules that are consistent with this regulation.

In response to the commenters that suggested revising the language in § 671.31(b)(2) for clarity, FTA has updated the section to read: "In the event of an emergency, the roadway worker in charge must warn each roadway worker to immediately leave the roadway and not return until on-track safety is re-established, and a job safety briefing is completed." FTA notes that these changes do not alter the intent of the requirement but provide clarification regarding emergency notification and the roadway worker in charge's corresponding responsibilities.

In some circumstances, it may be necessary to provide a safety briefing remotely. It is within the discretion of the RTA to determine when remote options can take the place of face-to-face interaction. FTA declines to make the recommended change to allow the roadway worker in charge to designate an equally qualified individual to provide the job safety briefing. FTA maintains that it is important for the roadway worker in charge to perform this duty to promote accountability, reinforce their authority, and ensure consistency.

K. Section 671.33 – Job Safety Briefing Policies

1. GENERAL

Comments: FTA received multiple general comments on § 671.33 language. One RTA asked for clarification on FTA's expectation, as described in the preamble, that a job safety briefing would include a discussion of the nature and characteristics of the work, including any

relevant information for multiple roadway worker groups working in adjacent areas. Specifically, the RTA requested clarification on whether FTA meant for adjacent areas to refer to work areas within each other's working limits or rather any work areas next to each other on the roadway.

Two RTAs commented on the requirement to brief individuals "every time the roadway worker fouls the track." The commenters asserted this requirement is unsustainable in situations such as street-running environments and in situations when a worker wants to take a short break that requires them to leave the track. A vendor suggested that any roadway worker within close proximity to the track zone with the potential to foul the track also be provided with a job safety briefing, noting this is the practice used by their organization when a worker is within 10 feet of the track. Another vendor also commented on the virtual job safety briefing provision, asking FTA to elaborate on it for remote workers. The vendor noted that in-person job safety briefings conducted at the job site are more effective for identifying hazards and understanding the protections afforded and noted that equipment used by a remote worker can potentially cause hazards or necessitate a different form of protection for individuals within the track zone. The vendor also noted that safety briefings should be conducted in a language the workers receiving the briefing are fluent in. In the event of a language barrier between the roadway worker in charge and the workers, a translator should be established.

FTA Response: In the phrase "multiple roadway worker groups working in adjacent areas" the term "adjacent areas" means groups working in areas next to each other on the track roadway. The job safety briefing should include procedures and processes for interaction for work groups that are operating in shared space or in proximity where work tasks may impact the safety of other nearby persons. With respect to the language that requires a job safety briefing for roadway workers "prior to fouling the track, every time the roadway worker fouls the track," RTAs are expected to adopt safety measures deemed appropriate for their operating services and environments. While the rule defines "fouling a track" and "track zone," the rule and these definitions are intentionally flexible to account for varying track environments and safety

protocols. For street-running systems, FTA notes that job safety briefings can address the fact that transit workers may be fouling the track continually throughout the course of a working shift, and the job safety briefings may be provided accordingly. Regarding the suggestion that FTA require any workers within close proximity to the track zone to receive a job safety briefing, FTA encourages this practice where feasible but declines to adopt this as a requirement across the board due to the significant differences in track and systems design among RTAs.

FTA agrees that in-person job safety briefings are the most effective way to ensure clear communications are exchanged about key information to keep workers safe. FTA also appreciates that there may be circumstances where lone workers or work groups are working remotely on a job site or responding to an emergency situation, and a virtual briefing may be appropriate. FTA considered NTSB recommendations, FRA standards, and OSHA guidance when determining whether to allow virtual job safety briefings. The rule is purposely flexible in this regard, and RTAs may establish practices for remote job safety briefings that suit their track environment and roadway work practices so long as they are compliant with this requirement.

FTA also agrees with the commenter who noted that job safety briefings should be conducted in a language that is fully understood by each worker receiving the briefing. The final rule is clear that it is the responsibility of the RTA to ensure that clear and constructive job safety briefings are provided to all employees accessing the track zone to perform work. Similarly, it is the responsibility of the roadway worker in charge to confirm that each worker understands the job safety briefing and the responsibility of the worker receiving the briefing to confirm in writing that they received and understood the briefing in its entirety.

2. ELEMENTS

Comments: One RTA, one individual, and two vendors provided comments on the job safety briefing elements identified in § 671.33(b). A vendor recommended adding additional required elements to the job safety briefings requirement, such as information regarding the electrification of the track and emergency contact details. A different vendor advocated for

resequencing the elements in § 671.33(b) by placing (10) and (11) directly after (5) to guide the flow of the job safety briefing and develop standard forms. Further, the vendor suggested FTA require that the job safety briefing include a review of the applicable track segment in the track access guide. An RTA commented on the reference to FRA's guidance on hazard identification as part of the job safety briefing. The RTA argued that RTAs should not be held to FRA standards and instead FTA should consider developing and implementing its own guidance relative to hazard identification for rail transit environments.

An individual commenter recommended that the job safety briefing also address adjacent hazards to the track.

FTA Response: FTA agrees that the reference to FRA guidance on hazard identification is misleading and has updated § 671.33(b)(3) to read, "The hazards involved in performing the work. For RTAs with electrified systems, this discussion must include the status of power and hazards explicitly related to the electrified system." FTA intends to provide additional technical assistance in relation to this rule to guide RTAs on hazard identification in rail transit environments. With consideration to comments, the sequencing of the elements will remain the same as in the proposed rule, as FTA believes the current sequencing is clear. However, job safety briefings and forms may address these topics in any order that is logical and appropriate. FTA also declines to require the job safety briefings to include a review of the relevant portion of the track access guide, as this may not be necessary for all scenarios where workers will foul a track. FTA does encourage the use of the track access guide in job safety briefings whenever applicable to support on-track safety and notes that all workers must have access to the track access guide.

FTA considers track electrification as a "hazard involved in performing the work" (§ 671.33(b)(3)). However, in response to comments, FTA has updated the final rule text for elements of the job safety briefing to expressly include: the status of any electrified system and mitigations in place to prevent electrocution (§ 671.33(b)(3)); emergency contact information for

the roadway worker in charge (§ 671.33(b)(8)); and general emergency response information (§ 671.33(b)(4)).

Regarding adjacent tracks, FTA expects job safety briefings to review hazards adjacent to the tracks, as well as within the track segment, performed through § 671.33(b)(4) and (5) requirements.

3. CONFIRMATION AND WRITTEN ACKNOWLEDGEMENT

Comments: FTA received multiple comments on the requirement for confirmation and written acknowledgement of the job safety briefing at § 671.33(c). Two RTAs and an industry association suggested revising § 671.33(c)(1), the requirement for the roadway worker in charge to confirm that each roadway worker understands the on-track safety procedures and instructions, to ensure that roadway workers attest for their individual understanding of the briefing rather than roadway workers in charge on their behalf.

There were three suggested revisions for the requirement in § 671.33(c)(2) that each roadway worker acknowledges the job safety briefing and the requirement to use the required personal protective equipment in writing. A vendor suggested FTA amend the text to put a little more emphasis on the roadway worker to positively convey they understood the briefing. An RTA and an industry association both recommended a revision to § 671.33(c)(2), which they suggested would certify the transit workers' compliance with all briefing requirements, rather than only directly stating personal protective equipment. One vendor commented that FTA should emphasize that transit workers are also responsible for confirming, in writing, that they not only have received a briefing but that they understand the briefing.

An individual commenter recommended that it should be clearly stated that job safety briefing acknowledgements are recognized through written signature. In contrast, an industry association commented that requiring written confirmation by each roadway worker in acknowledgement of the job safety briefing is unduly burdensome. The commenter recommended FTA require job safety briefings before all shifts but remove the requirement for

signed acknowledgements. An RTA also noted that, especially for roving work crews, obtaining confirmation and written acknowledgement of the job safety briefing after any change in the scope of work is overly prescriptive and difficult or impossible for some RTAs to implement. One RTA asked if job briefings outlined in § 671.21 must be documented and commented that, if so, this would be highly restrictive since documenting spoken job briefings that outline processes already in place would be cumbersome for most agencies.

FTA Response: FTA agrees with commenters who raised concerns with a roadway worker in charge attesting to the roadway workers' understanding of the job safety briefing. In response to these comments, FTA is revising the final rule in § 671.33(c) to state, "The roadway worker in charge confirms in writing that they have received written acknowledgement of the job safety briefing from each roadway worker."

FTA agrees that the suggested revisions to the rule language in § 671.33(c)(2) will help clarify requirements for roadway workers to individually acknowledge the job safety briefings. Both § 671.33(c)(2) and § 671.33(c)(3) state that roadway workers are to acknowledge, in writing, receipt and understanding of the job safety briefing, and this will be retained in the rule. However, for further clarity, FTA will update the language in § 671.33(c)(2) from "Each roadway worker acknowledges the briefing and the requirement to use the required personal protective equipment in writing" to "Each roadway worker acknowledges in writing the briefing and the requirement to use the required personal protective equipment."

FTA understands the challenges faced with ensuring roving work crews are briefed after any change in the scope of work and the requirement for written confirmation following these briefings. FTA believes this nature of work for roving work crews makes it even more vital that workers are verifiably briefed when the scope of work changes. The intent of this provision is to ensure that all workers receive safety briefings when necessary, and these briefings can be confirmed. FTA also believes that while this may pose an additional burden, agencies are free to conduct these briefings in a way that is most conducive to their working environments. FTA also

notes that written acknowledgements of safety briefings is already a common industry practice, which RTAs have managed to implement without notable complication.

It is not expected that the job safety briefing be transcribed to written records. However, documentation that these briefings occurred must be kept on record, as required by the final rule. This type of documentation is often recorded using a form that captures the high-level information of the roadway work and safety measures by covering topics such as (examples only) job tasking, date, time, track location, on-track and adjacent hazards, weather conditions, track access period, work zone, protections in place, roadway worker in charge responsible, roadway workers on-site, track equipment involved, and more.

4. FOLLOW-UP BRIEFINGS

Comments: One RTA and one vendor commented on the requirement for follow-up briefings as established in § 671.33(d). The RTA stressed that the requirement for a follow-up briefing if a "violation of on-track safety is observed" is unclear since the term is not defined. The RTA argued that this term may be inconsistently interpreted among personnel and agencies. The vendor suggested follow-up briefings be conducted in consideration with changing weather conditions, as weather conditions may change the type and severity of risks.

FTA Response: FTA disagrees with including a specific definition for "violation of on-track safety" in this rule. Violations will be directly related to the various RWP programs and procedures developed by each agency and are to be communicated during the job safety briefing. It will be up to the RTAs to determine, clearly communicate, and respond to violations of on-track safety. Violations may not be "consistent" from agency to agency depending on the specifics of agency policies, but in general, RTAs should consider any deviations from the procedures set forth in the RWP manual or the job safety briefings to be violations of on-track safety.

FTA agrees that changes to weather conditions may present new hazards and, therefore, require a follow-up briefing. In response to this comment and to address the potential for

changing conditions, such as weather, FTA has revised the language in § 671.33(d) to require a follow-up briefing in the event on-track safety conditions change and made a corresponding change to §671.31(b)(1).

L. Section 671.35 – Lone Worker

1. GENERAL

Comments: FTA received comments from RTAs related to FTA's general approach for the protection of lone workers in the proposed rule. One RTA agreed that FTA's proposal that lone workers may not use individual rail transit vehicle detection as the only form of on-track safety is responsive to NTSB recommendations but noted that FTA's approach to protection for lone workers deviates from FRA's procedures, as specified in 49 CFR 214.337, On-Track Safety Procedures for Lone Workers, which allows the use of individual train detection to establish on-track safety as specified in the on-track safety program of the railroad.

The RTA also stated that an employee working under "foul time" is not considered a "lone worker," and added that the term and usage of "lone worker" in this rule is confusing "as FTA is utilizing FRA terminology but changing the requirements around the procedures." Another RTA commenter suggested FTA reference APTA's "Roadway Worker Program Requirements" standard which distinguishes performing "work" from "momentarily fouling a track."

FTA Response: FTA's analysis of safety events shows that individual rail transit vehicle detection has consistently failed to protect transit workers from collisions with rail transit vehicles dating back to 2008 when it was the only form of on-track safety. Safety recommendations from the NTSB, resulting from in-depth investigations into major RTA safety events, also emphasize the ineffectiveness of this as the only form of protection for transit workers. Therefore, FTA is finalizing, as proposed, the prohibition that no single transit worker, whatever their position or labor category, including lone workers, may be allowed on the roadway with individual rail transit vehicle detection as their sole protection. FTA finds that the

rail transit environment, with its frequent train movements in multiple directions on multiple tracks, and its numerous electrical and fall hazards, creates an enhanced safety risk for all categories of transit workers that necessitates additional protections in rail transit RWP programs that may not be necessary for other railroad operations. FTA does not agree with the commenter that using the term “lone worker” in this rule is confusing. FTA’s use of the term “lone worker” in this section means an individual roadway worker on the roadway alone who is not part of a roadway work group but who, at a minimum, is on the roadway with foul time or an SSOA-approved equivalent protection. FTA acknowledges this definition differs from FRA’s definition of “lone worker,” but believes that the distinction is necessary given the differences between rail transit systems and other rail systems.

FTA appreciates the commenter that suggested FTA reference APTA’s “Roadway Worker Program Requirements” standard, which distinguishes between individual transit workers momentarily fouling the track and lone workers performing work on the roadway, such as inspections or minor tasks. This important distinction is also included in FTA's requirements. Provisions in § 671.35 apply to lone workers as a sub-classification of roadway workers, whose duties involve inspection, construction, maintenance, repairs, or providing on-track safety such as flag persons and watchpersons on or near the roadway or right-of-way or with the potential of fouling track. Transit workers, who are not roadway workers, and who must momentarily access the roadway, are also protected under the RWP program under § 671.23(b). Individual transit workers may only foul the track once they have received appropriate permissions and redundant protections, such as foul time, have been established as specified in the RWP manual. However, individual transit workers fouling the track momentarily are not considered roadway workers or lone workers and, therefore, are not subject to § 671.35 provisions.

2. ON-TRACK SAFETY AND SUPERVISION

FTA received multiple comments related to FTA's proposed requirements for the on-track safety and supervision of lone workers in § 671.35(a).

a. Lone Worker Must Be Qualified as a Roadway Worker in Charge

Comments: One RTA commented that a requirement for all lone workers to be qualified as a roadway worker in charge may be excessive for tasks such as debris removal. Another RTA commenter also expressed confusion about the requirement that the lone worker be qualified as a roadway worker in charge. This RTA also expressed concern regarding an apparent contradiction between § 671.31(a)(4) provisions ─ which specify that a roadway worker in charge can only perform the function of maintaining on-track safety and perform no unrelated job function ─ and the provisions in § 671.35(a)(2), which allow a lone worker, qualified as a roadway worker in charge, to perform routine inspection and minor tasks, unrelated to on-track safety.

Another RTA asked if the requirement for a lone worker to be qualified as a roadway worker in charge requires RTAs to establish a training program certification specifically for lone workers.

FTA Response: As mentioned previously, transit workers who are not roadway workers and who must momentarily access the roadway to clear debris are protected under § 671.23(b) as transit workers, not § 671.35, as lone workers. FTA appreciates that there may be confusion about the interface between the requirements that the lone worker be qualified as a roadway worker in charge, that a roadway worker in charge can only perform the function of maintaining on-track safety and perform no unrelated job function, and that a lone worker, qualified as a roadway worker in charge, can perform routine inspection and minor tasks unrelated to on-track safety. The roadway worker in charge qualification for lone workers is primarily a training and certification requirement. FTA believes that it is crucial for a lone worker who routinely performs tasks alone on the roadway to maintain the roadway worker in charge qualification for safety reasons. The intent is to ensure that lone workers possess a comprehensive understanding of on-track safety procedures and responsibilities, equivalent to that of a roadway worker in charge. This level of knowledge is critical for their safety when working independently. FTA disagrees that there is a contradiction between § 671.31(a)(4) and § 671.35(a)(2), because these

provisions apply to different scenarios. The restrictions in § 671.31(a)(4) apply to an active roadway worker in charge overseeing a work group, while § 671.35(a)(2) applies to lone workers who, while trained and qualified as roadway workers in charge, are not actively performing that role.

The regulation requires RTAs to establish a specific training program for lone workers. Lone workers should undergo the same roadway worker in charge training and certification process as those who will actively perform roadway worker in charge duties. This ensures a consistent, high level of safety knowledge across all workers who may find themselves working independently on or near tracks. However, RTAs may choose to develop dedicated training for lone workers beyond the minimum requirements specified by FTA.

b. Lone Workers May Perform Limited Duties (§ 671.35(a)(2))

Comments: One RTA asked FTA to explain the difference between a lone worker conducting inspections or performing work versus a situation where a lone worker needs to momentarily access the track for less than one minute. As an example, the RTA noted that removal of debris is a common lone worker task in most RTAs with street-running portions of their alignment and asked if a train operator authorized to leave their train to remove a piece a debris from the tracks would be considered a lone worker for the purposes of FTA's proposed rule. Another RTA asked FTA to reconsider § 671.35(a)(2) provisions that specify that a lone worker "may not use power tools." This RTA explained that gas blowers, lawn mowers, and compressors are commonly used by roadway workers performing as lone workers at their agency. This RTA commenter further commented that the use of power tools by an otherwise qualified and approved lone worker should be left up to the RTA to evaluate in its risk assessment(s) of roadway conditions and/or of risk-based redundant protections pursuant to § 671.39 and should not be dictated by FTA. This commenter further noted that this section does not appear to consider the unique operating characteristics of a street-running streetcar or light

rail system, which is wholly or partially responsible for routine grounds maintenance with gas-powered lawn maintenance tools.

An industry association commented a concern about the restriction on the types of duties a lone worker may perform while on duty because many of its members currently have programs in place that allow workers to conduct common tasks alone. The same industry association commented that very large and smaller RTAs have expressed that FTA's proposals will disrupt operations as these RTAs do not have the resources, manpower, or time to send out multiple workers for tasks that can be performed safely by one worker at a time. The commenter argued that this requirement would further strain already limited resources to the brink of materially impacting an RTA's ability to provide daily transit services. This industry association also noted that its "Roadway Worker Program Requirements" standard provides the flexibility to allow lone workers to conduct common tasks, abiding by agency standards.

One vendor recommended that lone worker duties include visual inspection, patrol, examination, or minor tasks and further requested clarity as to whether lone workers may use any tools, as they are disallowed under the definition of minor task.

One RTA commented that the proposed section § 671.35(a)(2), which allows a lone worker to only access locations defined in the track access guide as "appropriate," does not consider the dynamic nature of an RTA's system. This RTA argued that a location that may not be typically noisy or have reduced visibility could change on a day-to-day basis due to construction, environmental conditions, or other factors and, therefore, the RTA suggested removing this provision.

FTA Response: A train operator who momentarily must leave their vehicle to remove debris is a transit worker, not a roadway worker or a lone worker, because their duties do not involve inspection, construction, maintenance, repairs, or providing on-track safety. Under this final rule, other transit workers, such as train operators, may momentarily access the track to perform tasks such as debris removal or to throw a switch, so long as they comply with the

provisions in § 671.23(b). Given that these transit workers, who are not roadway workers or lone workers, may rarely access the track, FTA expects RTA safety risk assessments and SSOA approvals to mitigate additional safety risk as appropriate.

FTA appreciates the challenges faced by transit systems that to date may not have developed and implemented robust RWP requirements for lone workers. Similarly, FTA understands that the new requirements may impact street-running systems differently than others with a dedicated right-of-way. The final rule prohibits lone workers from using power tools as they may impact noise levels and the worker's ability to maintain situational awareness, hear, and visually assess their surroundings at least every five seconds for approaching rail transit vehicles. FTA appreciates the industry association commenter's concerns with restricting lone worker duties and the potential strain on RTA resources, particularly regarding the performance of routine maintenance or common tasks, as allowed in the APTA "Roadway Worker Program Requirements" standard. FTA declines to expand the types of tasks that lone workers may perform because FTA agrees with the NTSB that the rail transit industry's safety performance indicates that lone workers cannot safely perform a broader range of tasks than currently defined in FTA's requirements.

Lone workers may perform minor tasks and may also perform routine inspections and move from one location to another. Specific tasks to be performed by a lone worker, that qualify as minor tasks, will depend on the situation and the RTA's RWP program but may include activities such as inspections, measurements, taking pictures, observing train movements, establishing on-track safety, and emergency response.

FTA understands that additional information beyond the track access guide may be needed to determine if a location is safe for lone workers. FTA acknowledges that work conditions can change due to various factors and that these changes may not be reflected in either the track access guide or the initial job safety briefing. As part of the RWP program, therefore, FTA expects RTAs to encourage all workers, including lone workers, to assess their work

environment before and during their tasks. If conditions change significantly, all transit workers, including lone workers, are empowered to initiate a good faith safety challenge when they deem it necessary.

c. Lone Workers Require Redundant Protections

Comments: One RTA commented on § 671.35(a)(2) and § 671.35(a)(3), stating that these two provisions appear to be contradictory, and requested clarity. One RTA commented that redundant protections are unnecessary for lone workers in some instances because RTA provisions identified for these workers usually limit their time in the active right-of-way, and workers complete the work within that time.

One RTA recommended removing "lone workers" from "Required RWP Program Elements" as this denotes the ability to use individual rail transit vehicle detection, which is inconsistent with FRA requirements for lone workers. The RTA asked FTA for additional clarification to explain the reasoning behind allowing lone workers when lone workers may not use individual train detection as the only form of on-track safety.

Finally, one RTA commenter recommended revising the text in § 671.35(a)(3) to use affirmative language for simplicity and to mirror other parts of the rule.

FTA Response: FTA notes that the provisions in § 671.35(a)(2) and § 671.35(a)(3) are not contradictory but complementary. While § 671.35(a)(2) outlines the types of tasks a lone worker may perform, § 671.35(a)(3) specifies the safety measures required to perform the tasks, notably the prohibition of the use of individual rail transit vehicle detection as the sole protection. FTA's intent is to ensure that lone workers can perform appropriate tasks while maintaining a high level of safety through redundant protections. FTA believes that redundant protections are crucial regardless of the duration of exposure and that even brief periods on or near tracks can pose significant risks. Redundant protections provide an additional layer of safety that is essential in dynamic and potentially hazardous environments such as the track zone. FTA disagrees with the recommendation to remove "lone workers" from "Required RWP Program Elements" and

declines to remove the term from the rule. While FTA understands the comparison to FRA requirements, FTA's approach aims to ensure redundant protections for individual roadway workers who are not afforded on-track safety by another roadway worker and who FTA considers to be "lone workers." FTA does not agree that the use of individual rail transit vehicle detection should be the sole defining characteristic of the term "lone worker." On the use of alternate forms of RWP for lone workers in existing RTA systems, FTA commends RTAs that already utilize redundant forms of protection for lone workers, such as foul time, and agrees that these protections can be effectively integrated into rail transit operations.

FTA disagrees with the vendor's suggestion to revise § 671.35(a)(3) to use affirmative language because FTA believes the existing phrasing clearly expresses the prohibition on the use of individual rail transit vehicle detection as the only form of on-track safety.

3. COMMUNICATION

Comments: FTA received comments from one vendor and multiple RTAs regarding proposed requirements for lone workers to communicate with supervisors and receive and document job safety briefings prior to fouling the track in § 671.35(b).

One vendor expressed their expectation that the lone worker protocol would include a welfare check-in procedure reflective of the task duration (e.g., a one-hour activity would have a 20- to 30-minute check-in window), as well as a procedure to confirm the lone worker is clear of the tracks and a missed check-in would trigger an escalation or appropriate response.

An RTA provided comments related to how RTAs and lone workers may manage the job safety briefing requirements. First, the RTA asked FTA to consider if it is feasible to require lone workers to acknowledge job safety briefings in writing. To resolve potential issues, this commenter recommended allowing the controller in the Control Center to provide the briefing for the lone worker via an all-call over the radio, rather than a written job safety briefing. This RTA asked FTA to clarify what difference, if any, exists in the job safety briefing requirement for lone workers momentarily fouling the track and those conducting longer lasting work. This

RTA noted that this approach is allowed in APTA's RWP standard and sought clarification if this approach would, in fact, meet the intention of FTA's proposed requirement. They also commented that it may be more appropriate to request foul time on some systems rather than require a lone worker job safety briefing for momentary track access.

Another RTA expressed their concern that this requirement would become a "check the box exercise" and provide no value in establishing on-track safety for the employee. This commenter recommended that FTA clarify how it intends for lone workers to "acknowledge and document the job safety briefing in writing," as described in § 671.35(b). This commenter also questioned the objective of a roadway worker acknowledging their own briefing to themself.

FTA Response: FTA appreciates the vendor commenter who suggested using welfare check-in procedures reflective of task duration to protect lone workers. While FTA does not include this practice as a minimum requirement in its RWP rule, FTA encourages RTAs to implement robust safety protocols for lone workers, which could include regular check-ins.

FTA is finalizing as proposed the requirement for lone workers to acknowledge and document the job safety briefing in writing. Because FTA understands that in some cases this may be logistically challenging, FTA is allowing RTAs the flexibility to determine how they will document the written acknowledgement. For example, RTAs may use forms, notebooks, logs, or other tools for lone workers to document their acknowledgment. Further, regarding the difference in briefing requirements for momentary track fouling versus longer work, FTA intends for the job safety briefing to be proportional to the task's complexity and duration. Finally, FTA agrees that, like APTA's RWP program requirements, job safety briefings for lone workers may be provided from the Control Center over the radio. However, these briefings must be communicated directly to the lone worker and must meet the requirements of § 671.33(b), including a discussion of their planned work activities and the procedures that they intend to use to establish on-track safety and must be acknowledged in writing by the lone worker.

In response to the commenter concerned that the requirement for a lone worker to receive and acknowledge a job safety briefing may become a "check the box exercise" with no value, FTA disagrees. The intent of this requirement is to ensure that lone workers have current, relevant safety information before entering the track. The purpose of the job safety briefing acknowledgment is to ensure that the worker has thoroughly considered all safety aspects of their task before accessing the track. The goal is meaningful communication that enhances safety.

M. Section 671.37 – Good Faith Safety Challenge

Comments: FTA received comments from multiple labor organizations, multiple RTAs, and a vendor regarding § 671.27. The labor organizations expressed support for the regulation without advocating for specific changes. One noted that a basic principle of occupational health and safety law is for a worker to have the right to withdraw their labor if they have a reasonable belief of imminent danger to life or health. One of these commenters provided an example of the existing processes used by a local union and the RTA to resolve safety challenges efficiently.

One RTA recommended that the entire work party remain clear of the track until a concern is resolved, stating that the way the rule is currently written makes it appear that only the roadway worker who voiced the concern should remain clear of the tracks. One vendor commented that the existing provision seems to allow a challenge only prior to work commencing and recommended including provisions for a safety work stoppage if work is already underway.

FTA Response: FTA agrees that the entire roadway work group must remain clear of the track zone— not just the worker that made the good faith safety challenge. FTA has revised the rule to clarify that the roadway work group must remain clear of the roadway or track zone until the challenge and refusal is resolved.

In response to the comment that recommends including provisions for a safety work stoppage if work is already underway, FTA notes that the final rule requires the RTA to

document its procedures for the good faith safety challenge element of the RWP program. FTA expects RTAs to address safely stopping work within these procedures.

N. Section 671.39 – Risk-Based Redundant Protections

1. GENERAL

Comments: Multiple RTAs, one industry association, one labor organization, and multiple vendors supplied general comments for the requirements presented in § 671.39 for redundant protections. Of the three RTA commenters, two asked for clarification on types of acceptable RWP-redundant protection measures with one of those suggesting that FTA provide guidance for the rail transit industry to ensure consistent implementation and compliance with FTA expectations. The third RTA asked if FTA intends to define "redundant protection." The industry association recommended the revision of language in § 671.39(a) to affirmatively state the RTA's responsibility for establishing redundant protections. A vendor recommended that FTA set forth minimum levels of protection similar to those in 49 CFR 214 subpart C, such as exclusive track occupancy, foul time, train coordination, inaccessible track, train approach warning, or definite train location.

Multiple vendors recommended that FTA and RTAs explore the ability of technology to protect workers and promoted the use of their technologies as redundant RWP protections for roadway workers.

The labor organization noted that redundancies should be leveraged to ensure roadway worker safety, including ongoing communication with dispatchers, shunts, blue flags, signage, and locked derails to indicate occupied tracks. The labor organization emphasized that labor representatives must have input in identifying necessary redundancies and protocols. The commenter praised proposed RTA requirements on safety risk assessments but urged FTA to use this rulemaking as a "starting point" to establish more prescriptive standards in the future.

FTA Response: Section 671.39(d) includes a non-exhaustive list of redundant protections that RTAs and SSOAs may use. Through safety risk assessments, RTAs may identify other

redundant protections suitable to their specific circumstances. FTA has defined redundant protection in the definition section of the rule at § 671.5, which states that redundant protections may be procedural, physical, or both. FTA will consider this topic for future guidance and technical assistance.

FTA agrees with the industry association commenter that recommended a revision to § 671.39(a)(2) to be consistent with § 671.39(a)(1) to state affirmatively the RTA's responsibility for establishing redundant protections. FTA is revising the regulatory text to clarify FTA's intent that it is the RTA's responsibility to establish redundant protections to ensure on-track safety for multiple roadway work groups within a common work area.

FTA appreciates the commenter that recommended FTA set forth minimum levels of protection similar to FRA to ensure redundant protections encompass all roadway workers. While FTA has identified the need for protection beyond individual vehicle detection, FTA declines to prescribe the specific redundant protections required and instead has opted to offer RTAs flexibility to determine the protections that best fit their needs by assessing safety risk and establishing mitigations in the form of redundant protections for each category of work performed by roadway workers on the rail transit system.

FTA agrees with the labor organization's statement that redundancies should be leveraged to ensure roadway worker safety and that labor representatives must have input in identifying necessary redundancies and protocols to keep roadway workers safe. FTA encourages the joint labor-management Safety Committee, as part of its statutory responsibilities, to identify RWP-related safety deficiencies and identify and recommend risk-based mitigations or strategies to address RWP hazards identified in the agency's safety risk assessment.

2. SAFETY RISK ASSESSMENT

Comments: Multiple RTAs and one vendor commented on the requirement for RTAs to conduct a safety risk assessment to determine redundant protections in § 671.39(b). One RTA

acknowledged that the rule allows for flexibility in identifying redundant protections suitable for specific circumstances but commented that the variety of roadway worker activities would make it "difficult to establish a one-size-fits-all approach" to redundant protections. Another RTA asked if this requirement necessitates a stand-alone safety risk assessment document and if this requirement applied to an RTA with an existing RWP program in place.

One RTA comment focused on the frequency of safety risk assessments established in § 671.39(b)(3), stating that conducting these activities at least every two years would be challenging for small and mid-size RTAs to implement due to the complexity and technical nature of such an assessment. The RTA recommended that the frequency of this assessment should be driven by the RTA's SRM and management of change processes in § 673.27(c).

FTA received comments on the ability of the SSOA to identify and require alternate redundant RWP protections for an RTA in § 671.39(b)(4). A vendor recommended striking the word "require" from this section, suggesting that the SSOA should only require redundant protections if established by regulation or a corrective action plan, highlighting their awareness of past tensions when SSOAs have required program elements that are not achievable when evaluated by the RTA, while an RTA noted that SSOA program standards require roadway workers to comply with RTA procedures. Similarly, one RTA alleged that § 671.39(b)(4) is a stark departure from the existing RTA/SSOA relationship under part 674 and that decisions on RWP protections should be left with the RTA, not the SSOA.

FTA Response: FTA agrees that the variety of roadway worker activities would make it "difficult to establish a one-size-fits-all approach" to redundant protections which is why this final rule offers RTAs flexibility, not a one-size-fits-all approach, to determine the protections that best fit their needs by assessing safety risk and establishing mitigations in the form of redundant protections for each category of work performed by roadway workers on the rail transit system.

An RTA's existing safety risk assessment process is specified in the ASP required by the PTASP regulation at § 673.25(c). RTAs will use this process to assess safety risk and identify mitigations including redundant protections. This final rule does not require a separate document so long as the risk assessment identifies the specific safety risk mitigations or strategies necessary to address RWP risks and otherwise complies with the requirements of this rule. RTAs may use existing RWP programs and safety risk assessments as long as they meet all the requirements of this final rule, including the requirement to employ safety risk assessment processes to determine redundant protections.

FTA intends for RTAs to use the review and update requirement to ensure that the safety risk assessment reflects current conditions, lessons learned from safety events, actions the RTA has taken to address reports of unsafe acts and conditions and near-misses, and the results of the agency's monitoring of redundant protection effectiveness. As the commenter noted, RTAs are expected to have processes for regular safety risk assessments, as well as management of change and continuous improvement activities through their ASPs, pursuant to part 673. FTA believes requiring the safety risk assessment to be reviewed and updated every two years is reasonable and necessary to account for new information, including reports of unsafe acts and conditions and near-misses. Safety information can change greatly in a two-year span and should be reassessed to ensure agencies are not relying on outdated information. FTA notes that review findings may indicate no changes are required.

FTA declines to amend the regulation to remove the authority of the SSOA to require alternative redundant protections. FTA notes that this requirement is reflective of the SSOA's primary safety oversight responsibility for RTAs and is intended to allow for varying solutions based on the RTA's unique operating characteristics and capabilities in case the redundant protections identified by an RTA's safety risk assessment prove ineffective or inappropriate. Whenever possible, FTA encourages SSOAs and RTAs to work together to identify suitable redundant protections. Regarding current SSOA program standards, FTA reminds the commenter

that this final rule requires the SSOA to update its program standard to explain the role of the SSOA in overseeing the RTA's execution of its RWP program. FTA disagrees that § 671.39(b)(4) is a stark departure from the current role of the SSOA, as identifying and requiring alternate redundant protections where needed falls within the oversight purview of the SSOA to ensure the RTA's safety program. However, FTA reiterates that RTAs have the responsibility to identify and provide redundant protections in the first instance.

3. TYPES OF REDUNDANT PROTECTIONS

Comments: Multiple RTAs, multiple vendors, and the NTSB provided comments on the types of redundant protections presented in § 671.39(d). One RTA asked if there was a minimum number of protections that needed to be established to comply with the rule, while another RTA asked whether having a dedicated flagger served as a type of redundant protection. One vendor suggested FTA clarify that the use of walkways in tunnels and on elevated structures referenced in § 671.39(d)(2)(xi) as types of redundant protections do not include walkways deemed part of a track zone.

Another vendor commented that FTA does not appear to enumerate "core" or primary protections, only risked-based redundant protections. The commenter stated many of the protections listed in § 671.39(d)(2) are types of primary protections, though some may be considered redundant protections, and referenced 49 CFR 214 subpart C for a list of primary on-track safety protections. This commenter noted that, in their experience, shunts, physical barriers, warning devices, blocks in the dispatch system, and speed restrictions are types of redundant protections.

The NTSB urged FTA to prohibit rail transit vehicle approach warning without the use of a physical redundant protection, such as positive train control, secondary warning devices, or shunting.

FTA Response: The final rule establishes that there must always be at least two protections and, beyond that, the number of protections will depend on the work environment

and the results of the RTA's safety risk assessment. FTA affirms that a dedicated flagger is considered a form of redundant protection. FTA disagrees with the commenter that suggested FTA clarify that walkways in tunnels and on elevated structures referenced as redundant protections in § 671.39(d)(2)(xi) are not deemed part of a track zone. FTA notes the final rule defines track zone in § 671.5 and believes additional restatement is unnecessary.

Section 671.39(d) identifies a non-exhaustive list of redundant protections. For clarity, FTA is revising § 671.39(d) to clarify that redundant protections may include but are not limited to the listed protections. FTA declines to identify any of these protections as "core" protections, due to the varying operating environments of transit systems. It is FTA's belief that RTAs should have options to determine which protections are most appropriate for their system and circumstance, on a case-by-case basis, based on their safety risk assessment. This final rule allows RTAs flexibility regarding protections as long as individual rail transit vehicle detection is not the sole form of protection for workers on the roadway.

In response to the NTSB urging FTA to prohibit rail transit vehicle approach warning without the use of a physical redundant protection, such as positive train control, secondary warning devices, or shunting, FTA maintains that, in some circumstances, it may be necessary for RTAs to use procedural redundant protections rather than physical. FTA encourages the use of the strongest available forms of protection and multiple forms of protection when feasible.

O. Section 671.41 – RWP Training and Qualification Program

1. GENERAL

Comments: FTA received comments from the NTSB, five RTAs, two industry associations, two vendors, one SSOA, and one individual regarding the requirement for RTAs to adopt an RWP training program in § 671.41(a). The NTSB and one individual recommended that FTA require annual refresher training instead of biennial to be consistent with FRA requirements. One industry association supported the idea of more agency-specific refresher training to address the nuances of the varied operations of transit properties.

One RTA and one industry association suggested that FTA revise the requirement to review and update the RWP training program at least every two years to allow RTAs to attest that no changes are needed. Conversely, one RTA commenter suggested FTA require an annual review of training programs. The RTA also suggested FTA mirror FRA requirements in 49 CFR part 243 related to training programs and training program components. Another RTA commenter asked whether SSOAs will be required to review RWP training program updates.

One RTA commenter asked if all RTA employees and contractors are required to complete the same level of training or if it is only intended for employees who must be RWP qualified. The commenter also recommended that FTA follow APTA standards to set different levels of training based on a position's level of responsibility. Another RTA questioned FTA's inclusion of operations control center personnel as a work category that must be addressed by the RWP training program. The commenter suggested that operations control center personnel, rail transit vehicle operators, and other transit workers should not be required to undergo full RWP training and instead should receive targeted training on their specific RWP responsibilities. The commenter added that this focused training will ensure all personnel are adequately prepared without necessitating comprehensive RWP training for roles that do not directly involve roadway work. In addition, the commenter noted that the training requirement for these workers is overly burdensome on the RTA and the workers and provides little benefit to workers who are not actively engaged daily in roadway work. The RTA commenter further noted that industry best practice calls for ensuring that personnel have the knowledge, skills, and abilities to perform their tasks, not the knowledge, skills, and abilities of those with whom they interact. However, a different RTA stated that existing SSOA program standards require all roadway workers to comply with the RTA's RWP policies and procedures in relation to RWP training and qualifications.

One industry association commenter suggested that RTAs could benefit from the time and cost savings of a practice whereby contractor workers apply a previously completed generic

but compliant RWP training with abbreviated on-track safety training to understand that particular railroad's specific safety rules and procedures.

One vendor commenter recommended that FTA require RWP training to be conducted in the languages that trainees use most fluently. The commenter added that language barriers present a significant risk to transit or roadway workers in understanding the safety briefing and the on-track safety being afforded.

One RTA commenter stated that it does not appear that the rule aligns with current training programs, which allow shadowing as a form of on-the-job training and exposure under the oversight of a qualified transit worker.

One SSOA commenter asked if there is an official means of roadway worker designation and whether a flag person must receive any required training or certification. One vendor commenter suggested that FTA consider including mentorship along with the training, qualifications, and supervision required for transit workers to access the track zone. The commenter noted that mentorship will ensure that new employees have adequate on-track experience as assessed by a senior employee mentor.

FTA Response: While FTA seeks as much consistency as possible with FRA requirements, and recognizes the benefits of more frequent refresher training, FTA also must consider the potential burdens on the rail transit industry regarding additional refresher training. FTA finds that biennial refresher training strikes an appropriate balance between safety and operational flexibility. In addition, given the other provisions in the rule to monitor implementation of the RWP program, ensure its effectiveness, and take corrective action to address deficiencies, FTA is confident that there are sufficient opportunities for an RTA to identify if it must move beyond the rule's minimum requirements to adopt more frequent refresher training to ensure effective implementation of its RWP program. FTA also notes that a biennial refresher provides time for the RWP training program to identify and address lessons learned through the results of compliance testing, near-miss reports, reports of unsafe acts or

conditions, and feedback received on the training program, per § 671.41(a)(3). FTA agrees that agency-specific training is valuable. The current rule allows RTAs to tailor their training programs to address the nuances of their specific operations while meeting the minimum requirements set forth in the regulation.

FTA agrees with the RTA and industry association that there may be instances where, after a two-year period, no changes are required to the RTA's RWP training program. However, FTA believes that a regular review of the RWP training program is essential to ensure its continued effectiveness. The rule's biennial review requirement allows RTAs to make necessary updates or confirm that the existing program remains appropriate.

FTA confirms that SSOAs have oversight responsibility for the review and approval of RWP training programs and subsequent updates. Per § 671.25, the RTA's RWP training program is included as part of its RWP manual and program elements, and the final rule requires that SSOAs review and approve the RWP manual and program elements, and any subsequent updates, for each RTA within its jurisdiction.

In terms of which positions must be trained, FTA clarifies that the rule requires RTAs to develop appropriate training for all transit workers responsible for on-track safety, by position, including roadway workers, operations control center personnel, rail transit vehicle operators, operators of on-track equipment and roadway maintenance machines, and any others with a role in providing on-track safety or fouling a track for the performance of work, including contractors. Further, in response to this commenter's question about use of APTA standards, while FTA's rule does not explicitly follow APTA standards, FTA encourages RTAs to use industry best practices to inform their training program development as appropriate.

FTA clarifies that the regulation requires that all transit workers, which by definition includes contractors working on behalf of the RTA or SSOA, with a responsibility for roadway worker safety, receive appropriate RWP training, by position, The level and content of training can be tailored to specific roles and responsibilities within the RTA's program. Training may be

focused exclusively on the RWP responsibilities of a given position, and it may also include additional RWP training regarding the responsibilities of other roles or how other RWP program elements may work. FTA agrees with the commenter that noted SSOA program standards may have additional requirements related to RWP training and qualification.

In response to the industry association suggesting time- and cost-saving options for contractor training, FTA notes that RTAs have the flexibility to recognize prior training and provide abbreviated supplemental training on agency-specific rules and procedures, as long as all required elements of the RWP training program are covered. In terms of training in workers' most fluent languages, FTA agrees that effective communication is crucial for safety. RTAs should ensure that their training programs and on-track safety briefings are conducted in a manner that all workers can understand, which may include addressing language barriers.

FTA's rule does not preclude the use of on-the-job training or shadowing as part of a comprehensive RWP training program, provided it meets the requirements outlined in the regulation. FTA recognizes the benefits of such practices and encourages them when the RTA determines them necessary and effective.

In response to the SSOA commenter asking about roadway worker designation and flag person training, FTA clarifies that RTAs are responsible for designating roadway workers and ensuring all personnel, including flag persons, receive appropriate training and qualification for their roles as part of the RWP program. FTA agrees with the commenter who indicated that mentorship can be a valuable component of a comprehensive RWP training program. While not explicitly required, RTAs are encouraged to incorporate mentorship into their training and qualification processes.

2. REQUIRED ELEMENTS AND MINIMUM CONTENTS

Comments: There were comments from one SSOA, five RTAs, and two vendors related to required RWP training program elements and content as outlined in § 671.41(b) and (c). Out of concern for logistical challenges for track access and operations, one RTA requested

clarification on what a "representative field setting" involves. They explained that an urban setting may be difficult to mirror in a safe training environment and suggested the regulation follow APTA standards regarding training levels and position responsibilities. One RTA stated that the training requirements in the rule as presented, which require practice exercises and demonstrations, are unattainable for some RTAs based on agency structure or characteristics, such as a street-running operating system and environment.

Two RTAs asked about computer-based refresher training, pointing out that the rule requires refresher training to include "demonstrations and assessments." One asked if an online format would still be permitted for RWP refresher training and if the test following the online class would satisfy this "demonstrations and assessments" requirement. One RTA communicated that they are developing a computer-based refresher training course, compliant with SSOA standards, which roadway workers will be required to complete every three years. The RTA sought clarification as to whether this type of training is acceptable or if in-person training is required.

Several commenters suggested additions to required RWP training elements and minimum contents. One vendor recommended adding pre- and post-training assessments to determine comprehension as an RWP training element. Recommendations for additional RWP minimum training elements included primary protections as well as scenario-based training with relevant examples, for example, review of near-misses, violations, and safety critical communication protocols.

An SSOA advocated that the current RWP manual be supplied to all workers governed by the RWP program as a training element. An RTA suggested this rule language mirror language in 49 CFR 243.101(d) and 243.103(a)(3) to support the inclusion of interactive and field demonstration training for the initial and refresher RWP trainings. Finally, an RTA asked if the contents proposed in § 671.41(c) are still required as part of the RWP training and program if these minimum contents are not applicable to the RTA.

FTA Response: FTA acknowledges the challenges in replicating urban settings for training. The intent of FTA's requirement that initial training include experience in a "representative field setting" is to provide practical experience in environments similar to actual work conditions. FTA believes this is attainable for RTAs, as the rule provides flexibility for how to conduct this training. For example, agencies may use simulations or controlled environments that reasonably approximate field conditions to satisfy the requirement. FTA emphasizes that training is critical to ensure workers have tangible experience to conduct potentially high-risk work. FTA has declined to adopt APTA's training standards or FRA's training requirements because FTA believes the standards outlined in the final rule are necessary to ensure sufficient RWP training. However, FTA did consider APTA standards, along with common industry practice, NTSB recommendations, and FRA standards in the development of the minimum training program elements. FTA's minimum contents for RWP training include aspects of these standards, as well as other necessary training components, including how to interpret and use the RTA's RWP manual, and how to apply the rules and procedures for redundant protections identified under § 671.37 of this rule, and the requirement that both initial and refresher training include demonstrations and assessments.

FTA recognizes the range and diversity of RTA operations, and agencies should adapt training to their specific operating environments while meeting the requirements of FTA's regulation. FTA encourages agencies with unique challenges to consult with their SSOA for guidance on implementing effective training within their constraints. Industry associations and peer RTAs also may provide useful examples and support in addressing FTA's requirements. FTA will also provide technical assistance on RWP training expectations.

The final rule permits online refresher training, provided it includes interactive training with the opportunity to ask the RWP trainer questions and raise and discuss RWP issues and demonstrations and assessments to ensure the ability to comply with RWP instructions given by transit workers performing, or responsible for, on-track safety and RWP functions. For example,

the “demonstrations and assessments” requirement can be satisfied through well-designed virtual simulations and knowledge checks overseen by RWP trainers.

FTA appreciates the suggestions for additional specific training elements. FTA has opted not to add additional specific training elements, as the current list was developed to apply to RTAs of varying sizes and complexity. While FTA has not explicitly added these recommendations to the rule text, FTA encourages agencies to consider incorporating these elements into their training programs as appropriate for their operations. This includes pre- and post-assessments to determine comprehension for an RWP training element, additional training focused on primary protections, scenario-based training, safety-critical communication protocols, and providing current RWP manuals to workers as part of RWP training. FTA notes that the final rule requires that the RWP manual be distributed to all transit workers who access the roadway and the training program address how to interpret and use the RWP manual.

The minimum contents for RWP training listed in § 671.41(c) are intended to be comprehensive; however, if certain elements are not applicable to an agency's operations, they may omit those specific items after documenting the rationale in their training program. FTA has added “as applicable” to § 671.41(c) for clarity. FTA recommends that RTAs consult with their SSOA to ensure their training program adequately covers all relevant safety aspects and encourages all agencies to work closely with their SSOAs in developing and implementing RWP training programs that meet the rule's requirements while addressing their specific operational needs and constraints.

3. TRAINING PERSONNEL QUALIFICATIONS

Comments: Three RTAs and one individual commented on the required qualifications of RWP training personnel outlined in § 671.41(e). The individual recommended that all instructors should have sufficient experience in the operating environment and have spent time on the tracks. One RTA asked for clarification on what “qualified” means for trainers, and if it may differ based on the type of trainee. Another RTA commented that the requirement of the RWP

training instructors to have an active RWP certification at the RTA does not directly translate to an instructor/facilitator's ability to provide effective training and suggested FTA adopt a definition for "designated instructor," similar to FRA. The third RTA recommended that FTA require each RTA develop their staff based on the RTAs' right-of-way, special circumstances, and anomalies.

FTA Response: FTA agrees that instructor experience is crucial and, as such, explicitly requires, per § 671.41(e), that each RTA must ensure that transit workers delivering RWP training are qualified and possess an active RWP certification at the RTA for which they are providing the training.

FTA has defined "qualified" in § 671.5 to mean "a status attained by a roadway worker or other transit worker who has successfully completed required training (including refresher training) for, has demonstrated proficiency in, and is authorized by the RTA to perform the duties of a particular position or function." Specifically for an RWP trainer, FTA expects these individuals to have the knowledge, skills, and abilities to effectively train others in the RTA's RWP program, including, in keeping with § 671.41(b), the ability to answer RWP questions from trainees, discuss RWP issues with trainees, oversee the trainee's experience in a representative field setting, and conduct demonstrations and assessments of trainees to ensure their ability to comply with RWP instructions given by transit workers performing, or responsible for, on-track safety and RWP functions.

FTA agrees with the RTA commenter that, while active RWP certification demonstrates current knowledge of the RTA's program, effective instruction requires additional skills. As specified in § 671.41(e), RTAs must consider both technical knowledge and instructional experience and ability when selecting trainers. While FTA is not adopting the FRA's "designated instructor" definition, RTAs may reference it when developing their own criteria for selecting RWP trainers, so long as the selected trainer also meets the rule's RWP qualification and experience requirements.

FTA agrees with the importance of RTA-specific training development. RTAs should tailor their training programs and instructor qualifications to address their specific right-of-way characteristics, operational circumstances, and unique challenges.

P. Section 671.43 – RWP Compliance Monitoring Program

1. GENERAL

Comments: An industry association suggested that FTA remove the requirement for an RWP compliance monitoring plan, arguing that FTA's approach is duplicative of existing RTA efforts, and FTA did not explain why more monitoring is necessary.

One vendor recommended that FTA monitor the effectiveness of RTAs' RWP programs using a similar committee process to the General Code of Operating Rules (GCOR), Northeast Operating Rules Advisory Committee (NORAC), and other railroad operating rules and recommended this process would facilitate the RTAs' ability to share knowledge and lessons learned in their RWP program development.

FTA Response: FTA disagrees that the RWP compliance monitoring program is duplicative of existing RTA efforts across the board and declines to remove it from the rule. Rather than being duplicative, the requirement for compliance monitoring is consistent with and works in concert with Safety Assurance principles for safety performance monitoring and measurement required by the PTASP regulation. The additional monitoring required by this rule is intended to ensure RWP practices are uniformly and effectively implemented and will help ensure early identification of safety issues and ensure that the safeguards that are in place are effective.

FTA declines to stand up a Federal committee to serve as a monitoring body for RWP compliance nationwide, as recommended by a commenter, because Congress has delegated direct safety oversight of RTAs to SSOAs (49 U.S.C. 5329(e)(3)(A)). If FTA identifies nationwide trends or isolated concerns regarding RWP compliance, FTA will intervene as necessary and appropriate.

2. REQUIRED ELEMENTS

Comments: FTA received comments from RTAs and the NTSB on the required elements for the RWP compliance monitoring program.

One RTA sought clarity on the requirement that the RWP compliance monitoring program includes audits. Another RTA requested that FTA clarify its expectations for the differences between inspections, observations, and audits as elements of the RWP compliance program. Another RTA commented that FTA should require RWP compliance reviews be completed by rail agencies as part of existing agency Safety Assurance and SRM processes, such as the RTA internal safety review process.

The NTSB recommended that FTA require compliance inspections to be unannounced to enable more efficient inspections.

FTA Response: Audits are a methodology used regularly by RTAs in their Safety Assurance activities to examine and verify compliance with safety procedures, practices, plans, and programs. The RTA is responsible for developing and implementing compliance-monitoring activities that work for the agency to uncover and provide information on any deficiencies in the RWP program. FTA notes that all RTAs have already established a process to assess safety performance per § 673.27(d) and may use similar practices to conduct an audit of the RWP program, including how the audit is performed and the selection of the auditor performing the audit. This type of audit can verify whether or not the RWP program has any deficiencies, continues to comply with the regulation, and is achieving its objectives. In general, audits tend to examine the functionality of a department or unit and may include tasks such as inspections and observations to support the full audit activity. Generally speaking, an inspection is the review of a specific practice or item to carefully check the quality of how the practice is carried out or the condition of the item to ensure standards are met accordingly. In general, an observation is the shadowing of work by an informed manager, supervisor, or other knowledgeable individual, to identify and promptly address unsafe acts or conditions to prevent issues, injuries, or safety

events. These types of monitoring activities may be used individually or together in the monitoring program. FTA agrees with the comment that RWP compliance monitoring executed by the RTA will fit within the constructs of the agency's SMS, particularly in Safety Assurance and SRM. Safety Assurance and compliance monitoring practices should be well-established at most RTAs; some agencies may need to add RWP compliance as an element for continued monitoring.

FTA notes that § 674.37 and 49 U.S.C. 5329(k) support an SSOA's use of unannounced inspections as part of the safety oversight of the RTAs. FTA declines to require unannounced inspections as part of the RWP compliance monitoring program to allow for discretion for RTAs to adopt a program for monitoring their compliance that accounts for available resources and operational demands. While FTA is not requiring RTAs to implement unannounced inspections as monitoring activities, FTA encourages RTAs to implement such inspections to capture true day-to-day conditions when effective and beneficial.

3. BRIEFING TO ACCOUNTABLE EXECUTIVE AND BOARD OF DIRECTORS

Comments: One RTA remarked that the requirement to provide an annual briefing to the Accountable Executive and also to the Board of Directors seems excessive and recommended that FTA allow RTAs to provide annual briefings only to the Accountable Executive. Another RTA remarked that the briefing requirements are unnecessary as this type of reporting is already incorporated into the review and update of the ASP and the delivery of internal safety reviews. The commenter went on to state that they believe the annual briefing requirement would add little value given all other types of reporting and data collection that already exist. Conversely, an SSOA supported the briefing requirement and recommended that FTA require the Chief Safety Officer and Accountable Executive provide the briefing to the Board of Directors.

FTA Response: FTA disagrees with the commenter that expressed concern that briefing the Board of Directors in addition to the Accountable Executive may be excessive or redundant. This requirement is consistent with § 673.11(a)(1), which requires that the ASP be approved by

the Board of Directors. Because the RWP program is part of the ASP, FTA believes there is value in briefing the Board of Directors, or equivalent entity, on the performance of the RWP program so that the Board of Directors is continually informed about the workers exposed to some of the highest levels of safety risk in the RTA, the effectiveness of the practices in place to protect them, and any concerning trends that may require mitigation and/or dedicated resources to make safety improvements. The Board's involvement brings the power of high-level decision-making and action, if necessary, to a discipline and work environment where safety is paramount.

The final rule does not prescribe how the briefing is conducted at each RTA, but FTA encourages RTAs to have knowledgeable and informed personnel present this information to the Board of Directors, which may include the Chief Safety Officer, the Accountable Executive, and/or other subject matter experts.

4. FREQUENCY OF REPORTS TO SSOA

Comments: Several RTAs, one SSOA, two industry associations, and one vendor submitted comments regarding the requirement for RTAs to provide monthly reports to the SSOA documenting its compliance with and sufficiency of its RWP program in § 671.43(b)(1). One SSOA recommended that FTA eliminate the requirement and suggested that, instead, RTAs should assess the RWP program compliance and sufficiency on an ongoing basis, such as monthly, and submit documentation to the SSOA on an annual basis. The SSOA recommended this approach, noting that the internal safety review process is an existing RTA compliance monitoring process that could be expanded to include an annual review of RWP rather than creating a new compliance monitoring requirement. Two industry associations and one RTA also commented on the reporting requirement, stating that the monthly reporting would be overly burdensome to both generate and review and would likely hamper the functioning of the RWP program. Similar to the SSOA's comment, these commenters recommended leveraging existing related reporting requirements for RWP compliance reports on an annual basis. These

commenters further noted that many SSO agencies and RTAs engage in quarterly reporting and that using these processes at already established reporting frequencies would be appropriate and more efficient.

One commenter stated that a one-size-fits-all regulation is burdensome for inclined plane systems and would require an unreasonable amount of reporting. Another RTA suggested that FTA consider reconciling the requirements under part 671 with part 673 and 674 and stated that the monthly reports are redundant as SSOAs will already have adequate data from rule compliance programs, including RWP compliance, due to the risk-based inspections and pre-existing data collection and sharing provisions.

One RTA and an industry association also stated that it is unclear how SSOAs are meant to use the various reports they receive from RTAs. The commenters suggested revising the language to require reports to SSOAs upon request.

One RTA requested clarification on what kind of content an RTA would be required to provide as part of the monthly reports, and another RTA requested clarity on who would be responsible for submitting the reports to the SSOA.

FTA Response: FTA appreciates the comments received on the proposed monthly RWP compliance monitoring reports to the SSOA and the various viewpoints that were presented. FTA agrees with commenters that argued monthly reporting may be too burdensome and has revised § 671.43(b)(1) as recommended by commenters to require quarterly reporting to the SSOA instead of monthly reporting. FTA believes that quarterly reporting will be sufficient to ensure SSOAs are regularly informed of RWP program performance and notes that the sharing of this quarterly report with the SSOA may be done through established communication avenues such as email, meetings, presentations, etc. as determined by the SSOA and RTA. These reports will help the SSOA identify deficiencies in the RTA's RWP program and ensure that the program complies with all requirements and is sufficient for the RTA's operating characteristics and environment.

However, FTA declines to remove the reporting requirement altogether. FTA disagrees with the commenter that asserted RWP compliance reports are redundant with activities currently in place, because FTA has not previously required RTAs to develop an RWP program nor share RWP compliance information with SSOAs. In addition, RWP compliance is not specifically spelled out in risk-based inspection requirements. This final rule establishes consistent requirements for RTAs to share RWP compliance and performance information with their SSOAs.

With respect to the request for clarification on the content of RWP compliance monitoring reports required at § 671.43(b)(1), FTA defers to the RTA and SSOA to determine the content and how they will resolve disagreement on content. FTA recommends that RTAs refer to § 671.25(c)(2)(i) as a reference and consider including the following: RWP safety events; compliance monitoring results and findings; monthly performance measures and targets; related CAPs; program or manual updates; good faith safety challenges issued; and RWP initial and refresher training conducted. FTA defers to the RTA to determine who within the agency will be responsible for submitting the quarterly reports to the SSOA.

Q. Section 671.51 – Recordkeeping

Comments: FTA received one comment from an RTA asking for clarification on whether recordkeeping practices outlined in § 671.51 included maintaining job safety briefings or job hazard assessments. An SSOA recommended that FTA consider requirements for RTA record retention in order to allow SSOAs to adequately perform consistent auditing responsibilities.

Regarding job safety briefing document retention, an SSOA recommended job safety briefing documentation be retained for a minimum of two years, while an individual noted that there is currently no requirement for how long job safety briefing documents must be kept, noting that it is essential to have job safety briefings available for investigations.

FTA Response: The final rule finalizes, as proposed, the requirement that records and documents of the RTAs' compliance with the rule's requirements must be retained for a

minimum of three years. This includes documents such as safety risk assessments, job safety briefings, and job safety briefing attestations. Retention of these records and documents will support SSOAs in performing audits and oversight activities and will serve as a library of RWP documentation for the RTA to reference as needed.

R. Benefits and Costs

Comments: Four RTAs, one industry association, and one labor organization commented on FTA's analytical approach to the benefit and cost analysis for the proposed RWP rule, addressing overall costs and impacts, the analytical option FTA selected, and the hours FTA estimated for specific activities.

An RTA expressed concern that implementing a Federal baseline RWP program could impose significant financial and operational burdens, especially on smaller agencies. This RTA noted that the costs involved in establishing and implementing redundant protections, conducting comprehensive safety risk assessments, and complying with training and equipment requirements could be substantial.

The industry association reported that many of its members find Option 1, which FTA chose for the proposed RWP rule, excessively burdensome, particularly for smaller systems. They alleged that FTA did not provide a rationale for treating all rail transit modes equally, regardless of the varying risks to workers. The association argued that instead of selecting an option balancing costs and benefits, FTA should have considered the least costly approach: incorporating the APTA RWP Standard by reference, as it represents industry consensus. They suggested that FTA could then analyze and require any additional necessary measures based on specific risks.

An industry association and an RTA challenged FTA's estimate that developing and implementing an RWP program would require 96 hours of labor. To illustrate their point, the industry association stated that the daily process of completing and acknowledging a form before each job safety briefing would alone consume thousands of labor hours annually. The RTA

asserted that developing and standing up a comprehensive RWP program would require an agency to invest several hundred man-hours. Further, the proposed requirement to revise and reissue the manual every two years would require substantial resources from multiple departments (if not additional contracted resources) on an ongoing basis and is not a one-time cost.

A labor organization commented on FTA's decision to select Option 1 over Option 3. The organization highlighted that Option 3 could potentially save one additional roadway worker life approximately every four years, and it could prevent three additional serious roadway worker injuries every two years. The labor organization also pointed out that while FTA estimated Option 3 would cost over 50% more than the chosen Option 1, it would prevent 63% more serious injuries and prevent 20% more fatalities. The RTA asserted that this comparison emphasizes the potential safety benefits of the standards-based approach despite its higher estimated cost. The commenter raised concern that the rule as proposed is not a sufficient substitute for "true RWP standards."

A small RTA commented that the proposed rule fails to recognize the significant resource limitations of smaller transit systems and the additional cost burdens recently required to implement new PTASP requirements.

Another RTA requested that FTA provide the data on which FTA's cost estimations are based so that RTAs can assess realistic cost impacts. This commenter noted that some estimates seemed unrealistic.

An RTA asserted that FTA's cost estimates do not account for downstream effects of the requirements, including to terminology, procedures and processes, roles and responsibilities, and equipment and safety devices. The RTA asserted that it would expect to need to assess and replace signage on the roadway; to assess, purchase, and develop procedures for new safety equipment; to review and update contractual language to align with new RWP requirements; to evaluate and potentially revise CBAs due to changes in affiliated employees' job responsibilities;

to complete a full review and revision of roadway access request, planning, and documentation processes and systems; and to revise forms and documentation used for job briefings and other RWP-related processes. The RTA asserted that the development of initial and recurring RWP program training would take far greater than 120 total hours to develop, commenting that one hour of training typically requires 30 or more hours of development. Further, the RTA commented that RWP trainings would have to be updated regularly, based on the requirement to update the RWP manual every two years.

An RTA commented that the potential of additional costs to RTAs of providing alternative credentials to meet the display requirement in § 671.21(b)(2) should be reflected in Table 3 of Regulatory Analyses and Notices as an initial and ongoing cost for the RTA.

A vendor commented that it appears that FTA assumed the highest possible implementation and maintenance costs for physically redundant protections and did not consider the wide range of costs (low to high) of commercially available technology solutions from multiple vendors.

FTA Response: In response to comments, FTA reviewed and revised the labor hour estimates as detailed in Section IV, "Regulatory Analyses and Notices" and summarized in this section. The updated costs and net benefits reflect the revised estimates.

For establishing an RWP program, FTA increased the initial estimated labor hours from 96 hours to 300 hours, reflecting one commenter's estimate of several hundred hours to establish a program as well as comments highlighting various administrative aspects of establishing the program. For initial development of trainings, FTA used a commenter's estimate of 30 hours of development per hour of training for roadway workers, lone roadway workers, and all employees. To account for labor costs associated with updating the RWP manual, associated trainings, and documentation every two years, FTA added an estimated annual average of 10 hours for manual updates and 20 hours for training updates. Finally, for giving written

acknowledgment, FTA added an estimated annual average of 8.7 hours per frontline employee at agencies not already known to require written acknowledgments.

Although RTAs may incur additional costs related to the purchase of equipment or other physical protection, FTA assumes that agencies largely have the necessary equipment in place to comply with current requirements, as the rule provides flexibility with regard to the implementation of physical or procedural protections. FTA did not include additional labor hours for providing alternative credentials because requiring some form of identification is common practice among RTAs. The final rule does not specify the kinds of credentials required, but rather requires only that the credentials be visible.

As described in "Baseline and Analytical Approach," FTA used occupational wage data from the Bureau of Labor Statistics as the primary data source for its cost estimates, in addition to the labor hour estimates updated with information from commenters. To reflect recent increases in labor costs, FTA updated its calculations to use May 2023 occupational wage data, the latest available as of August 2024.

Finally, FTA selected the requirements of the final rule based on multiple considerations, as described in "Regulatory Alternatives." Any estimated differences in prevented fatalities and injuries among the options analyzed should be interpreted with caution: the relative benefits of the options are sensitive to small differences in the expected number of prevented accidents, as shown in the sensitivity analysis. Although the final rule increases safety compliance costs for RTAs, FTA has taken several steps to reduce the burden while addressing roadway worker safety. The final rule provides agencies with a maximum of one year to develop an SSOA-approved RWP program.

III. Section-by-Section Analysis

Subpart A—General

671.1— PURPOSE AND APPLICABILITY

This section sets forth the applicability of the RWP regulation. The regulation applies to any RTA that receives Federal financial assistance under 49 U.S.C. chapter 53 and all SSOAs that oversee the safety of rail fixed guideway public transportation systems. The final rule does not apply to rail systems that are subject to the safety oversight of the FRA.

The final rule also applies to transit workers who access any rail fixed guideway public transportation system in the performance of their work.

Subsection (d) of § 671.1 provides that, not later than one year after the effective date of the final rule, each RTA must have established an SSOA-approved RWP program that complies with this part.

671.3— POLICY

Section 671.3(a) explains that part 671 establishes minimum safety standards for rail transit RWP. Each RTA and SSOA may prescribe additional or more stringent rules that are consistent with this part.

Section 671.3(b) explains that FTA has adopted the use of SMS as the basis for enhancing the safety of public transportation. Activities conducted to carry out this part must be integrated into the RTA's SMS, required under part 673 of this chapter.

671.5— DEFINITIONS

This section sets forth the definitions of key terms used in the regulation. Most notably, readers should refer to the definitions of "fouling a track," "individual rail transit vehicle detection," "job safety briefing," "lone worker," "minor task," "on-track safety," "rail fixed guideway public transportation system," "rail transit agency," "rail transit vehicle," "redundant protection," "roadway," "roadway worker," "roadway worker protection," "track zone," "and "transit worker."

Subpart B—RWP Program and Manual

This subpart establishes minimum requirements for the RWP program, which must be adopted and implemented by each RTA. This subpart also establishes minimum requirements for

the RWP manual. The RWP manual documents the mechanisms by which the RTA will carry out its RWP program.

671.11— RWP PROGRAM

Section 671.11(a) requires that each RTA adopt and implement an RWP program designed to improve transit worker safety and that this program must be consistent with Federal and State requirements.

Section 671.11(b) requires that the RWP program include an RWP manual, described further in § 671.13, and all the RWP program elements described in subpart D of this part.

Section 671.11(c) requires each RTA to submit its RWP manual and subsequent updates to its SSOA for review and approval, as described in § 671.25.

671.13 — RWP MANUAL

Section 671.13(a) requires each RTA to establish and maintain a separate, dedicated RWP manual. The creation of this document as a separate, dedicated manual reflects FTA's expectation that this manual will be a critical safety component of an RTA's rail program. This requirement also reflects FTA's belief that separation from other manuals or documents ensures all parties know where all RWP information can be found. FTA also believes that maintaining one document will encourage more efficient review and update processes.

Section 671.13(b) requires that the RWP manual include the terminology, abbreviations, and acronyms used by the RTA to describe its RWP program activities and requirements. This requirement reflects FTA's expectation that RTAs will continue to use, or, when necessary, create standard terminology, abbreviations, and acronyms used throughout the agency in relation to RWP.

Section 671.13(c) specifies the list of required elements that must be documented in the RWP manual. The required elements of the manual include all elements of the RWP program required in subpart D (Required RWP Program Elements) of this part and a definition of RTA and transit worker responsibilities as described in subpart C (Responsibilities) of this part. This

section requires that the RWP manual document the training, qualification, and supervision the RTA requires for transit workers to access the track zone, by labor category or type of work performed. This section requires the RWP manual to document the processes and procedures for all transit workers who may access the track zone in the performance of their work, including safety and oversight personnel. In addition, this section specifies that procedures for SSOA personnel to access the roadway must conform with the SSOA's risk-based inspection program. By requiring an RWP manual to contain certain elements, this requirement ensures that all critical elements of an RWP program are documented in one manual. FTA expects this to reduce the potential for conflicting RWP program directions and provide a single authoritative source of RWP program information.

Section 671.13(d) requires that the RWP manual include or incorporate by reference a track access guide to support on-track safety. FTA is providing flexibility for RTAs to choose to maintain this track access guide separately from their RWP manual to allow frequent updates as the condition of the track system changes. This section specifies that this guide must be based on a physical survey of the track geometry and condition of the track system.

Section 671.13(d)(1) requires that the track access guide includes locations with limited, close, or no clearance, including locations that have size or access limitations. Locations with size or access limitations may include but are not limited to alcoves, recessed spaces, or other designated places or areas of refuge or safety. FTA understands that although areas of refuge or safety should not be used in a way that limits access, such as being used to store or otherwise house tools, equipment, or materials, RTAs may use some of these areas to store or "stage" items used to repair, maintain, or inspect the roadway. This section requires including these areas in the physical survey to ensure roadway workers are aware of any such areas with access limitations.

Section 671.13(d)(2) requires that the track access guide must also identify locations with increased rail vehicle or on-track equipment braking requirements.

Sections 671.13(d)(2), (3), (4), and (5) require that the track access guide identify areas with limited visibility, including locations with reduced rail transit operator visibility due to weather conditions, curves with limited or no visibility, locations with limited or no visibility due to obstructions or topography, and all portals with restricted views.

Finally, §§ 671.13(d)(6) and (7) require that the track access guide identify locations with heavy outside noise or other environmental conditions that impact on-track safety and any other locations with access considerations.

In § 671.13(e), FTA requires the RTA to completely review and update its RWP manual at least every two years. This includes updates to reflect current conditions, lessons learned in implementing the RWP program as described in the manual, and information provided by the SSOA and FTA. This section requires that this review and update occur within the two years following the SSOA's initial approval of the RWP manual and at least every two years thereafter.

As the track access guide must be included or incorporated by reference in the RWP manual, this complete review and update will include the track access guide, regardless of whether the guide is maintained as a separate document from the RWP manual.

Further, in § 671.13(f), FTA requires RTAs to update both the RWP manual and the track access guide as soon as is practicable when a change in RTA conditions means either document does not reflect current conditions.

Section 671.13(g) requires that the RTA distribute the RWP manual to all transit workers who access the roadway and that the RTA distribute the revised manual to all transit workers who access the roadway after each revision. For RTAs that decide to maintain the track access guide separately from the RWP manual, this section requires that those RTAs distribute the track access guide to all transit workers who access the roadway and distribute the revised track access guide to all transit workers after each revision.

Subpart C—Responsibilities

This section sets forth RWP responsibilities for three distinct entities: the RTA, the transit worker, and the SSOA.

671.21— RAIL TRANSIT AGENCY

Section 671.21 specifies responsibilities for the RTA, including establishing procedures and requirements for equipment and protection.

Section 671.21(a) establishes general requirements for the RTA as described in each subsection below. Section 671.21(a)(1) requires the RTA to establish procedures to provide ample time and determine appropriate sight distance based on maximum authorized track speeds. FTA's definition for terms used in this part can be found in § 671.5. As previously noted, it is FTA's intent with this rulemaking to ensure that roadway workers receive adequate time to move sufficiently clear of moving vehicles or equipment determined not only by the amount of time needed to move physically off the tracks but also by the amount of time needed in that specific location to be sufficiently clear of moving vehicles.

FTA expects that RTAs include considerations for roadway work group size when making these determinations, to ensure ample time for all workers to be sufficiently clear of moving vehicles. For example, if the nearest place of safety is not sufficiently large to allow the entire roadway work group to be sufficiently clear of moving vehicles, the RTA must include additional time for members of the work group to access another location clear of moving vehicles.

Section 671.21(a)(2) prohibits the use of individual rail transit vehicle detection as the only form of protection in the track zone. This prohibition reflects FTA's determination that a lone worker may not be able to reliably detect approaching rail transit vehicles or equipment in ample time and, further, that the safety risk associated with the practice of individual rail transit vehicle detection as the only form of protection in the track zone is unacceptable. This prohibition is consistent and responsive to the NTSB recommendations to require redundant

protections for roadway workers and to eliminate the use of individual rail vehicle detection, which the NTSB has determined is a relatively weak form of on-track safety.

Sections 671.21(a)(3) and (4) require that the RTA establish procedures to provide job safety briefings to all transit workers who enter a track zone to perform work whenever a rule violation is observed.

Section 671.21(a)(5) requires that the RTA establish procedures to provide transit workers with the right to challenge and refuse in good faith any assignment based on on-track safety concerns and resolve such challenges and refusals promptly and equitably. This is often called a "good faith safety challenge" or "good faith challenge." The good faith safety challenge process described in § 671.37 is generally modeled on the existing FRA good faith challenge. FTA understands that many RTAs already implement a version of this procedure and that their version may encompass more than just on-track safety concerns. The final rule does not require RTAs to revise their existing procedure and process, as long as they meet the minimums specified here.

Section 671.21(a)(6) requires that the RTA establish procedures to require the reporting of unsafe acts, unsafe conditions, and near-misses on the roadway to the Transit Worker Safety Reporting Program. This creates additional safety reporting requirements for an RTA's Transit Worker Safety Reporting Program established under FTA's PTASP regulation at § 673.23(b). An RTA's Transit Worker Safety Reporting program must include mandatory reporting of three major categories of safety concerns on the roadway (unsafe acts, unsafe conditions, and near-misses). This expansion of an RTA's safety reporting program reflects the safety critical nature of information related to RWP.

Section 671.21(a)(7) requires the RTA to establish procedures to ensure that all transit workers who must enter a track zone to perform work understand, are qualified in, and comply with the RWP program. This requirement reflects industry practice and is intended to ensure that

the RWP program is sufficiently broad in application to address all transit workers who may access a track zone.

Section 671.21(a)(8) requires the RTA to establish procedures to ensure that all individuals who do not fall into the category of roadway worker or transit worker and are not RWP certified are provided with an escort prior to entering the track zone, as needed.

Section 671.21(b) requires the RTA to establish requirements for on-track safety, including equipment and protection. Section 671.21(b)(1) requires the RTA to establish requirements for equipment transit workers must have in order to access the roadway or track zone. In acknowledgement of the differences in equipment that different job functions may require, FTA specifies that the RTA must establish these equipment requirements by labor category. FTA's intent is to ensure that RTAs establish minimum basic requirements for equipment that consider which positions at their agency may require additional equipment and address those requirements accordingly.

Section 671.21(b)(2) requires the RTA to establish requirements for credentials that transit workers must obtain and display while on the roadway or in the track zone. FTA's examples include a badge, wristband, or RWP card, but RTAs may identify alternate forms of credentialing. FTA requires that the RTA must also establish a requirement for display of credentials such that they are visible when on the roadway or in the track zone. A physical indication of an individual's qualification to access the roadway or the track zone is reflective of industry best practices.

Section 671.21(b)(3) requires the RTA to establish requirements for on-track safety, including protections for emergency response personnel who must access the roadway or the track zone. This requirement supports the safety of emergency personnel who need to access the roadway or track zone in the performance of their job duties.

Section 671.21(b)(4) requires the RTA to establish protections for multiple roadway work groups within a common area in a track zone. This requirement is responsive to NTSB

recommendations and reflects FTA's expectation that these protections include, at a minimum, information such as, when multiple work groups are present, who is considered the roadway worker in charge, whether one job safety briefing is sufficient or multiple job safety briefings must occur, and how track access is granted and released.

671.23— TRANSIT WORKER

Section 671.23 establishes specific responsibilities for transit workers in part to respond to common industry observations that, when regulations apply only to the RTA, some RTAs experience difficulty ensuring compliance from the workforce. This section also establishes specific responsibilities for transit workers as a reflection of the key role the individual transit worker plays in ensuring on-track safety. This approach is consistent with FRA's requirement for individual roadway workers in 49 CFR 214.313.

Section 671.23(a) requires transit workers to follow the requirements of the RTA's RWP program as it applies to their position and labor category.

Section 671.23(b) prohibits transit workers from fouling the track until they have received appropriate permissions and redundant protections have been established as specified in the RWP manual.

Section 671.23(c) requires transit workers to understand the protections that they will use for their on-track safety while performing the specific task that requires access to the roadway or track zone. Further, transit workers must acknowledge these protections in writing before they access the roadway or track zone.

Section 671.23(d) permits a transit worker to refuse to foul the track if the worker makes a good faith determination that an assignment does not comply with the RTA's RWP program or are otherwise unsafe. This section is the companion to § 671.21(a)(5), which requires RTAs to provide transit workers the right to challenge and refuse in good faith any assignment based on on-track safety concerns.

Similarly, § 671.23(e) requires transit workers to report unsafe acts and conditions and near-misses related to the RWP program as part of the RTA's Transit Worker Safety Reporting Program. This section is the companion to § 671.21(a)(6).

671.25— STATE SAFETY OVERSIGHT AGENCY

Section 671.25 establishes responsibilities for the SSOA and requires the SSOA to fulfill these responsibilities for every RTA under their jurisdiction. SSOAs that oversee an RTA that operates in a location that places the RTA under the jurisdiction of two or more SSOAs must work cooperatively with the other SSOA(s) having jurisdiction, as required under part 674.

Section 671.25(a) requires the SSOA to review and approve the RWP manual and any subsequent updates for each RTA within their jurisdiction. This is reflective of the SSOA's primary safety oversight responsibility for RTAs.

Section 671.25(a)(1) requires the SSOA to review and initially approve RWP program elements in coordination with the RTA so that the RWP program can be established and approved within one calendar year from the effective date of the rule. It is expected that an RTA and SSOA will consult throughout the development of the RWP program, and as needed to resolve any concerns or deficiencies on an ongoing basis during this timeframe**.** This requirement reflects FTA's expectation that SSOAs complete full and detailed reviews of all program elements commensurate to the critical role the RWP program plays in ensuring transit worker safety. FTA encourages SSOAs and RTAs to collaborate early and often in the development of the initial RWP program to ensure that 1) the SSOA and RTA can meet the one-year deadline for establishment of an SSOA-approved RWP program and 2) the RWP program developed is sufficient to ensure transit worker safety.

Section 671.25(a)(2) requires the SSOA to submit all approved RWP program elements for each RTA in its jurisdiction, and any subsequent updates, to FTA within 30 calendar days of when the SSOA approves those elements. This requirement ensures FTA can validate these safety critical elements.

Section 671.25(b) requires the SSOA to update its program standard to explain the role of the SSOA in overseeing the RTA's execution of its RWP program. FTA believes that, as a key safety element of an SSOA's oversight program, the RWP program must be reflected in the SSOA's program standard. FTA encourages SSOAs and RTAs to work collaboratively on this update in conjunction with the recommended collaboration on the initial RWP program. This requirement is intended to help SSOAs leverage RTA experience and vice versa, ultimately reducing the need for a prolonged RWP program review and revision process and strengthening both the RWP program and the SSOA's RWP program oversight.

Section 671.25(c)(1) requires the SSOA to conduct an annual audit of the RTA's compliance with its RWP program. This also requires that the audit include all required RWP program elements and be conducted for each RTA the SSOA oversees. FTA expects SSOAs to conduct these audits independently from any analogous RTA internal audit or compliance process. However, to avoid redundancy, SSOAs may review and approve an RTA's ASP and conduct the annual RWP program audit simultaneously. If the SSOA elects to conduct their annual RWP program audit alongside their annual review of the ASP or integrate the review of the RWP program into its triennial review of the ASP, the review must meet the RWP program audit requirements specified at § 671.25(c). The requirement is responsive to NTSB recommendations to require SSOAs to ensure RTAs meet the safety requirements for roadway workers.

Section 671.25(c)(2) requires the SSOA to issue a report with any findings and recommendations arising from the audit. This report must include, at a minimum, 1) an analysis of the effectiveness of the RWP program; 2) recommendations for improvements, if necessary or appropriate; and 3) corrective action plan(s), if necessary or appropriate. This section requires that the RTA be given an opportunity to comment on any findings and recommendations. In including this requirement, FTA expects the SSOA to exercise judgment and incorporate changes to the findings or recommendations when presented with errors of fact or other

reasonable requests from the RTA. FTA believes these audit reports will be a valuable tool for communicating the results of the SSOA's audit in a form that supports communication of these results to the RTA and, ultimately, resolution of any findings and incorporation of any recommendations as appropriate. SSO audit reports of the RWP program must include corrective action plans if necessary or appropriate. SSOAs and RTAs must follow processes established in part 674 for requiring, developing, approving, and executing corrective action plan(s) related to the RWP program audit.

Subpart D—Required RWP Program Elements

This section sets forth minimum RWP program element requirements: roadway worker in charge, job safety briefings, requirements for lone workers, good faith safety challenges, risk-based redundant protections, an RWP training and qualification program, and an RWP compliance monitoring program.

671.31— ROADWAY WORKER IN CHARGE REQUIREMENTS

Section 671.31(a) requires that the RTA designate one roadway worker in charge for each roadway work group whose duties require fouling a track. The roadway worker in charge must be qualified under the training and qualification program specified in § 671.41 and is responsible for the on-track safety for all members of the roadway work group. The individual assigned as the roadway worker in charge must serve only the function of maintaining on-track safety for all members of their roadway work group and to perform no other unrelated job function while designated for duty. RTAs may designate a general roadway worker in charge or may designate a roadway worker in charge specifically for a particular work situation.

For multiple roadway work groups within common working limits, the final rule allows an RTA to designate a single roadway worker in charge, provided each group is accompanied by an employee qualified to the level of a roadway worker in charge who is responsible for direct communication with the roadway worker in charge.

Section 671.31(b) requires that the RTA ensure that the roadway worker in charge provides a job safety briefing to all roadway workers before any member of the roadway work group fouls a track. Additionally, this section requires that the roadway worker in charge provide an updated job safety briefing before the on-track safety procedures change during the work period, whenever on-track safety conditions change, or immediately after any observed violation of on-track safety procedures before track zone work continues.

FTA understands that emergencies may occur such that roadway workers in charge may not be able to provide updated job safety briefings of changes to on-track safety. Therefore, § 671.31(b)(2) specifies, in the event of an emergency, any roadway worker must be warned immediately to leave the roadway and must not return until on-track safety is re-established and they have been given an updated job safety briefing.

671.33— JOB SAFETY BRIEFING POLICIES

Section 671.33 establishes specific requirements for job safety briefings. This requirement is responsive to NTSB safety recommendations about establishing requirements for job safety briefings and is generally consistent with FRA requirements.

Section 671.33(a) reiterates the requirements that the RTA must ensure the roadway worker in charge provides any roadway worker who must foul a track with a job safety briefing prior to fouling the track, every time the roadway worker fouls the track.

Section 671.33(b) establishes the required minimum elements, as appropriate, of the job safety briefing that the roadway worker in charge must provide. This section includes the "as appropriate" language because not all of the elements may be relevant to each rail transit system.

FTA expects that the discussion of the nature and characteristics of the work will include any relevant information for multiple roadway worker groups working in adjacent areas. The inclusion of instructions for each on-track safety procedure to be followed and the role and responsibilities for communication for all transit workers involved in the work in job safety briefings is responsive to NTSB recommendations.

Section 671.33(b)(10) requires that the job safety briefing identify designated place(s) of safety. FTA intends that the identified designated place(s) of safety will be sufficient for the number of transit workers in the roadway work group. FTA's expectation is that, where multiple work groups occupy overlapping or adjacent work locations, the associated roadway workers in charge coordinate to ensure that their job safety briefings identify designated place(s) of safety sufficient for the combined number of transit workers in the roadway work group.

Section 671.33(c) requires that, to complete a job safety briefing, the roadway worker in charge must confirm that each roadway worker understands the on-track safety procedures and instructions and has provided the roadway worker in charge with written acknowledgement of the job safety briefing, and the roadway worker in charge verifies in writing that they have received each roadway worker's written acknowledgment of the briefing.

Section 671.33(d) requires that, if there is any change in the scope of work or roadway work group after the initial job safety briefing, if on-track safety conditions change, or if a violation of on-track safety is observed, a follow-up job safety briefing must be conducted.

671.35— LONE WORKER

Section 671.35 addresses common industry and NTSB concerns and recommendations about the practice of permitting a single person to foul the track alone. Specifically, 671.35(a) allows RTAs to authorize lone workers to perform limited duties that require fouling a track only under limited circumstances.

Section 671.35(b) requires that each lone worker must communicate with a supervisor or other designated transit worker to receive an on-track safety briefing consistent with § 671.33(b) prior to fouling the track. This briefing must include a discussion of the planned work activities and the procedures they will use to establish on-track safety. The lone worker must acknowledge and document the job safety briefing in writing.

671.37— GOOD FAITH SAFETY CHALLENGE

Section 671.37(a) requires the RTA to document the procedures that it provides to roadway workers to challenge and refuse in good faith any assignment they believe is unsafe or would violate the RTA's RWP program. Section 671.37(b) requires that this written procedure include methods or processes to ensure prompt and equitable resolution of any challenges and refusals made. Section 671.37(c) requires that the roadway worker provide a description of the safety concern regarding on-track safety and states that the roadway work group must remain clear of the roadway or track zone until the challenge and refusal is resolved. This process reflects common industry practice and provides a mechanism for transit workers, who often are the most familiar with the particular needs and hazards related to their specific job tasks, to appropriately address unsafe situations.

671.39— RISK-BASED REDUNDANT PROTECTIONS

Section 671.39(a) establishes requirements for the RTA to identify and provide redundant protections for each category of work that roadway workers perform on the roadway or track. This section also requires RTAs to establish redundant protections to ensure on-track safety for multiple roadway work groups within a common area. This requirement is responsive to NTSB recommendations for FTA to require the use of redundant protections.

Section 671.39(b) requires that the RTA use the appropriate methods and processes of its SMS established in part 673 to assess safety risk and establish mitigations in the form of redundant protections. This requirement reflects FTA's adoption of the principles of SMS as the mechanism for ensuring transit safety.

Section 671.39(b)(1) requires that this safety risk assessment be consistent with the RTA's ASP and the SSOA's program standard. This includes ensuring consistency in instances where SSOA program standards impose additional requirements on an RTA's safety risk assessment process beyond the provisions in part 673.

Section 671.39(b)(2) specifies that the RTA may supplement the safety risk assessment with engineering assessments, inputs from the Safety Assurance process established in part 673, the results of safety event investigations, and other SRM strategies and approaches.

Section 671.39(b)(3) requires that the RTA review and update the safety risk assessment at least every two years. This requirement is intended to ensure that the safety risk assessment reflects current conditions, lessons learned from safety events, actions the RTA has taken to address reports of unsafe acts and conditions and near-misses, and the results of the agency's monitoring of redundant protection effectiveness.

Section 671.39(b)(4) specifies that the SSOA may identify and require the RTA to implement alternate redundant protections based on the RTA's unique operating characteristics and capabilities.

Section 671.39(c) requires that the RTA identify redundant protections for roadway workers performing different categories of work on the roadway and within track zones. This flexibility is intended to reflect the wide range of activities conducted on the roadway and to provide the opportunity for RTAs to "right size" protections based on the safety risk associated with different categories of work. RTAs must establish and layer redundant protections commensurate with the work being performed.

Section 671.39(d)(1) specifies that redundant protections may be procedural or physical. The final rule includes definitions for each kind of protection as it is likely that RTAs will use a mix of procedural and physical redundant protections to ensure on-track safety. Allowing both physical and procedural redundant protections is responsive to RFI respondents, the majority of whom recommended that FTA allow both physical and redundant protections for workers on the roadway.

Section 671.39(d)(2) includes common examples of redundant protections. FTA is not defining an explicit set of redundant protections; rather, FTA expects that RTAs and SSOAs will use any of the redundant protections listed in this section or identify, using the agency's SRM

process, redundant protections suitable to the specific circumstance under which they will be used.

Section 671.39(d)(3) requires that redundant protections for lone workers must include, at a minimum, foul time or an equivalent protection approved by the SSOA.

671.41— RWP TRAINING AND QUALIFICATIONS

Section 671.41(a) establishes the general requirement for an RTA to adopt an RWP training program. This requirement is responsive to NTSB recommendations.

Section 671.41(a)(1) requires that the training program address all transit workers responsible for on-track safety by position.

Section 671.41(a)(2) requires that a transit worker complete the RWP training program for the relevant position before the RTA may assign that transit worker to perform the duties of a roadway worker; to oversee or supervise access to the track zone from the operations control center; or to operate vehicles, on-track equipment, and roadway maintenance machines on the rail transit system.

Section 671.41(a)(3) requires that the RWP training program address RWP hazard recognition and mitigation. This requirement is responsive to an NTSB recommendation to require initial and recurring training for roadway workers in hazard recognition and mitigation. This section also specifies that the training program must address lessons learned through the results of compliance testing, near-miss reports, reports of unsafe acts or conditions, and feedback received on the training program.

Section 671.41(a)(4) requires that the RWP training program include both initial and refresher training by position and that refresher training must occur every two years at a minimum.

Section 671.41(a)(5) requires that the RTA review and update its RWP program not less than every two years (i.e., at least once every two years). This includes incorporating lessons learned in implementing the RWP program and information provided by the SSOA and FTA.

The review and update process must include an opportunity for roadway worker involvement to ensure that potentially valuable safety information from workers executing tasks on the roadway can be collected and incorporated into the safety training program.

Section 671.41(b) establishes the required elements of the RWP training program. These elements are based on industry best practices and best practices for adult learners and require that the RWP training program include interactive training that provides the opportunity for workers to ask the RWP trainer questions and for workers and trainers to raise and discuss RWP issues.

The final rule requires initial training to include experience in a representative field setting, meaning that the initial training may not be classroom only. Both the initial and refresher training must include worker demonstrations and trainer assessments of the worker's ability to comply with RWP instructions.

Section 671.41(c) establishes minimum contents for the RWP training program. Section 671.41(d) establishes that the RWP program must include specialized minimum training and qualifications for transit workers with additional responsibilities for on-track safety. Similar to the general RWP training program, this specialized training must include demonstration and assessment of the transit worker's ability to perform these additional responsibilities. Refresher training on these additional responsibilities must occur at least every two years. This requirement reflects the critical safety role these transit workers have in establishing, supervising, and monitoring on track safety.

Section 671.41(e) requires that the RTA ensure that those transit workers providing RWP training are qualified and have active RWP certification at the RTA.

671.43— RWP COMPLIANCE MONITORING PROGRAM

Section 671.43 requires that the RTA develop and implement a program to monitor its own compliance with the requirements specified in its RWP program. This monitoring program is consistent with Safety Assurance principles and is intended to ensure consistent and effective RWP program implementation. This program must include, at a minimum, inspections,

observations, and audits consistent with the safety performance monitoring and measurement practices established in the RTA's ASP and the SSOA's program standard.

Section 671.43(b)(1) requires each RTA to provide quarterly reports to the SSOA documenting the RTA's compliance with and sufficiency of the RWP program, and § 671.43(b)(2) specifies that the RTA must provide an annual briefing to the Accountable Executive and the Board of Directors, or equivalent entity, regarding the performance of the RWP program and any identified deficiencies requiring corrective action.

Subpart E—Recordkeeping

671.51— RECORDKEEPING

This section sets forth recordkeeping requirements related to the RWP program in keeping with the recordkeeping requirements established in part 673, which requires RTAs to maintain documents related to SMS implementation and the results of SMS processes and activities.

IV. Regulatory Analyses and Notices

Executive Order 12866 ("Regulatory Planning and Review"), as supplemented by Executive Order 13563 ("Improving Regulation and Regulatory Review") and Executive Order 14094 ("Modernizing Regulatory Review"), directs Federal agencies to assess the benefits and costs of regulations, select regulatory approaches that maximize net benefits when possible, and consider economic, environmental, and distributional effects. It also directs the Office of Management and Budget (OMB) to review significant regulatory actions, including regulations with annual economic effects of $200 million or more. OMB has determined that the final rule is not significant within the meaning of Executive Order 12866 and has not reviewed it under that order.

Overview and Need for Regulation

FTA has determined that unsafe practices and conditions place rail transit workers at risk of being killed or seriously injured while performing work on the roadway. According to data

collected by FTA, roadway worker safety events have caused more transit worker fatalities than any other type of safety event. Since 1994, 52 rail transit workers have been killed and over 200 workers have experienced major injuries from roadway safety events, primarily from collisions with rail transit vehicles, falls, and electrocution. From January 1, 2008, to October 31, 2022, 22 workers have been killed and 120 workers seriously injured in roadway accidents. Currently, there are no Federal regulations or standards governing RWP for rail transit workers, despite recommendations from the NTSB and TRACS.

The final rule establishes RWP program standards for RTAs in all States. The rule establishes minimum baseline standards and requires risk-based redundant protections, defined as protections outside of the employee's individual ability to detect a train and move to a place of safety, such as shunts or derailers, for rail transit roadway workers occupying the rail roadway. The final rule requires RTAs to do the following:

1. Set minimum standards for RWP program elements, including an RWP manual and track access guide.

2. Meet requirements for on-track safety and supervision, job safety briefings, good faith safety challenges, and reporting unsafe acts and conditions and near-misses;

3. Develop and implement risk-based redundant protections for workers; and

4. Establish RWP training, qualification, and compliance-monitoring activities.

The final rule applies to RTAs in the SSO program, SSOAs, and rail transit workers who access the roadway to perform work. SSOAs oversee and enforce FTA's RWP program requirements.

Updates from the NPRM

FTA made the following changes to the regulatory impact analysis in response to comments and updates to data sources:

- Adjusted labor hour estimates for establishing an RWP program from 96 to 300 hours.

- Adjusted labor hour estimates for developing initial and recurring training for roadway workers from 160 to 270 hours. The amount reflects an estimated 30 hours to develop one hour of training.
- Added labor hour estimates of 30 hours for developing training for all workers and 240 hours for developing training for lone roadway workers. The amounts reflect an estimated 30 hours to develop one hour of training.
- Added an estimated annual average of 8.7 labor hours per roadway worker for giving written acknowledgment of safety briefings at agencies not already known to require written acknowledgment. The amount reflects an estimated 2 minutes to give written acknowledgment per briefing and one briefing per day, multiplied by 260 working days per year for full-time employees.
- Added an estimated annual average of 60 hours for near-miss reporting requirements. The average reflects FTA's expectation that RTAs capture much of this information through existing practices, as described in "Support for Regulation."
- Added an estimated annual average of 10 hours per agency to update RWP manuals and 20 hours per agency to update training materials.
- Added calculations using a discount rate of 2 percent, following guidance in the November 2023 update to OMB Circular A-4.[2]
- Updated occupational wage data from May 2020 to May 2023, the latest data available as of August 2024.
- Updated the ten-year analysis period to start in 2024 and end in 2035. To give RTAs time to implement RWP programs and procedures and to conduct initial trainings, FTA will require compliance with RWP requirements one year from publication of the rule.

[2] Office of Management and Budget (2023). "Circular No. A-4." https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf.

Baseline and Analytical Approach

To assess the effects of the final rule, FTA analyzed roadway worker injuries and fatalities outside California from January 1, 2008, to September 19, 2020 (12.7 years). The analysis excludes California because the State already established RWP safety standards for its agencies in 2016.[3] Agencies outside California reported 97 injuries and 20 fatalities, for an annual average of 7.6 injuries and 1.6 fatalities. FTA used the annual averages as a baseline rate for fatalities and injuries in the absence of the rule.

To estimate labor costs associated with meeting the requirements of the final rule, FTA used occupational wage data from the Bureau of Labor Statistics as of May 2023 for the "Urban Transit Systems" industry (North American Industry Classification System code 485100).[4] FTA used median hourly wages as a basis for the estimated labor costs, multiplied by 1.62 to account for employer benefits.[5]

To estimate benefits and costs of the final rule, FTA used a ten-year analysis period from 2024 to 2033. All listed dollar amounts are in 2023 dollars.

Benefits

Transit subject matter experts working with FTA reviewed injuries and fatalities reported in the National Transit Database (NTD) to determine if the protections required by the final rule would have prevented them. FTA then calculated the average annual number of preventable injuries and fatalities to estimate the benefits of the protections. FTA estimates that the protections would prevent an average of 2.4 injuries and 1.2 fatalities per year.

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[3] Public Utilities Commission of the State of California (2016). "General Order No. 175-A: Rules and Regulations Governing Roadway Worker Protection Provided by Rail Transit Agencies and Rail Fixed Guideway Systems." https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M159/K905/159905345.pdf.

[4] Bureau of Labor Statistics (2024). "May 2023 National Occupational Employment and Wage Estimates: United States: NAICS 485000 - Transit and Ground Passenger Transportation." https://www.bls.gov/oes/2023/may/naics3_485000.htm.

[5] Multiplier derived using Bureau of Labor Statistics data on employer costs for employee compensation in December 2022 (https://www.bls.gov/news.release/ecec.htm). Employer costs for State and local government workers averaged $57.60 an hour, with $35.69 for wages and $21.95 for benefit costs. To estimate full costs from wages, one would use a multiplier of $57.60 / $21.95, or 1.62.

One source of uncertainty for the estimate is that FTA does not have information on the RWP programs or protections that the agencies adopted voluntarily after the safety events. As a result, the analysis may overestimate the benefits (as well as the associated costs) of the final rule.

To determine the monetized values for prevented fatalities and injuries, FTA used a value of $13.2 million for a fatality, based on Department of Transportation (DOT) guidance on valuation of a statistical life,[6] and a value of $210,000 for an injury, based on values derived from the KABCO Injury Classification Scale for an injury with "Severity Unknown" and inflated to 2023 dollars.[7]

Table 1 displays undiscounted and annualized benefits of the final rule. Over the ten-year analysis period, the rule has undiscounted benefits of $161.5 million. Annualized benefits are $15.8 million at a 2 percent rate discounted to 2024, $15.7 million at a 3 percent rate, and $15.1 million at a 7 percent rate.

Table 1 – Benefits of the Final Rule (2025-2034)

Benefits	**Amount**
Undiscounted	$161,519,087
Annualized	
2% discount rate	$15,835,205
3% discount rate	$15,681,465
7% discount rate	$15,095,242

Costs

Agencies are expected to incur start-up and ongoing costs to implement the requirements of the final rule. Agencies would incur costs for standalone RWP programs, RWP training programs, redundant worker protections, and other requirements.

[6] U.S. Department of Transportation (2024). "Departmental Guidance on Valuation of a Statistical Life in Economic Analysis." https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis.
[7] U.S. Department of Transportation (2023). "Benefit Cost Analysis Guidance 2024 Update, Table A-1: Value of Reduced Fatalities, Injuries, and Crashes." https://www.transportation.gov/sites/dot.gov/files/2023-12/Benefit%20Cost%20Analysis%20Guidance%202024%20Update.pdf.

RWP Programs

RTAs would incur costs to develop and implement programs for right-of-way workers if they do not already have formal standalone programs. FTA estimates that 33 of the 55 RTAs outside California (60 percent) already have formal standalone programs, based on industry responses to FTA Safety Advisory 14-1,[8] and that 26 of the 33 RTAs already monitor the effectiveness of the programs.

For the remaining 22 RTAs (40 percent), FTA estimates that an RTA would need an average of 300 labor hours to develop and implement a formal standalone RWP program, plus 40 hours per year to monitor the program's effectiveness. The 40-hour estimate also applies to the 5 RTAs that already have programs but do not monitor their effectiveness. FTA assumes that the RWP program tasks are performed by an employee in the "First-Line Supervisor of Mechanics, Installers, and Repairers" category with a median wage rate of $63.28 per hour. The program requirements have estimated one-time costs of $612,525 and annual recurring costs of $29,234 (Table 2).

Table 2 – RWP Program Costs

Requirement	One-Time Costs	Recurring Costs
RWP program establishment	$417,631	
RWP program effectiveness monitoring		$29,234
SSOA review	$139,210	
RWP program response to SSOA comments	$55,684	
Total	**$612,525**	**$29,234**

RWP Training Programs

The final rule requires agencies to establish initial and refresher training for roadway workers, as well as training for all RTA employees and for lone workers. FTA subject matter experts estimated the resources needed for RTAs to develop and implement the training programs. FTA assumes that initial training and refresher trainings for roadway workers would

[8] Federal Transit Administration (December 2013). "FTA Safety Advisory 14–1: Right-of-Way Worker Protection." https://www.transit.dot.gov/oversight-policy-areas/safety-advisory-14-1-right-way-worker-protection-december-2013.

require 4.5 hours to complete per employee, training for all employees would require 1 hour, and training for lone workers would require 8 hours. FTA assumes that an RTA would need approximately 30 hours to develop one hour of training. RTAs that have not already developed training would need 135 hours to develop initial training, 135 hours to develop refresher training, 30 hours to develop training for all employees, and 240 hours to develop training for lone workers.

FTA estimates that 90 percent of RTAs have already developed initial training programs for roadway workers and 79 percent of RTAs have already developed refresher training for roadway workers. FTA assumes that no RTAs have already developed training for all employees or training for lone workers.

RTAs would also need to update the trainings periodically. Although the time needed would vary by agency and by year, FTA assumes that an RTA would need an average of 40 hours every two years, or an average of 20 hours every year.

The training has estimated one-time costs of $1.7 million and annual recurring costs of $5.2 million. Table 3 shows estimated costs for RWP training in the first year and subsequent years; Table 4 shows estimated costs by occupation.

Table 3 – RWP Training Program Costs

Requirement	Workers	Total Required Hours	Total Costs, Initial	Total Costs, Annual
Development of initial training	—	135 hours per RTA	$46,984	—
Development of recurring training	—	135 hours per RTA	$98,665	—
Development of lone worker training	—	240 hours per RTA	$835,263	—
Development of training for all employees	—	30 hours per RTA	$104,408	—
Training material updates	—	20 hours per RTA	—	$69,605
Initial training for roadway workers	31,974	143,882	$622,553	—

Requirement	Workers	Total Required Hours	Total Costs, Initial	Total Costs, Annual
Recurring training for roadway workers	31,974	143,882	—	$1,307,361
Training for all employees	50,132	50,132	—	$2,135,457
Training for lone workers	5,500	44,000	—	$1,690,763
Total			**$1,707,873**	**$5,203,187**

Table 4 – RWP Training Program Costs by Occupation

Occupation	Fully Loaded Wage Rate	Workers	Hours Per Worker	Total Required Hours, Initial	Total Required Hours, Annual	Total Costs, Initial	Total Costs, Annual
49-9071 Maintenance and Repair Workers, General	$38.43	13,824	4.5	6,221	13,064	$239,046	$501,997
53-4041 Subway and Streetcar Operators	$46.96	18,150	4.5	8,167	17,151	$383,507	$805,365
00-0000 All Occupations	$42.60	50,132	1	—	50,132	—	$2,135,457
49-9071 Maintenance and Repair Workers, General (Lone Workers)	$38.43	5,500	8	—	44,000	—	$1,690,763
49-1011 First-Line Supervisors of Mechanics, Installers, and Repairers	$63.28	6 (initial training); 12 (recurring training); 55 (lone worker and all employee training)	540	17,152	—	$1,085,320	$69,605
Total	**—**	**87,606**	**—**	**31,540**	**124,347**	**$1,707,873**	**$5,203,187**

Redundant Worker Protections

The major cost driver for redundant worker protections is the number of full-time equivalent (FTE) employees needed to establish worker controls and access limitations. The final rule requires agencies to conduct a risk assessment to determine the types of redundant protections to use.

The estimated number of FTEs needed to implement the protections is derived from information in California's Public Utilities Commission General Order Number 175-A. FTA assumes that the FTEs are in the "Maintenance and Repairs, General" occupational category, which has a labor rate of $38.43 per hour. FTA assumes that agencies would need a total of 80 additional FTEs (at 2,080 hours per FTE), for an annual total of 166,400 hours and $6,394,160 in recurring costs.

Additional RWP Requirements

Additional requirements in the final rule include:

- Developing an RWP manual (40 one-time hours) and making periodic updates (__ hours per year)
- Establishing rail fixed guideway public transportation system responsibilities (81.4 one-time hours; 5.3 hours per year)
- Establishing employee responsibilities (160 hours per year)
- Providing written acknowledgment of job safety briefings if they do not do so already (8.7 hours per roadway worker per year)
- Conducting a risk assessment for redundant protections (40 one-time hours)
- Maintaining employee injury and illness program records (12 hours per year)
- Establishing a near-miss reporting program (320 one-time hours; 100 hours per year) and maintaining records (16 hours per year)
- Maintaining other recordkeeping (8 hours per year)

Table 5 lists one-time and recurring costs for the additional requirements. To estimate the number of employees that would provide written acknowledgment of job safety briefings, FTA used facility maintenance worker data from the National Transit Database, adjusted for agencies

known to require written acknowledgments.[9] FTA subject matter experts identified these agencies based on direct experience with the agencies. Other agencies may require written acknowledgments as well, which would result in lower compliance costs.

Table 5 – Additional RWP Requirements

Requirement	Affected Entities	Total Required Hours, Initial	Total Required Hours, Annual	One-Time Costs	Recurring Costs
RWP manual	22 RTAs	880	220	$55,684	$13,921
Rail system responsibilities	20 RTAs	1,628	106	$103,016	$5,831
Employee responsibilities	55 RTAs	—	8,800	—	$556,842
Written acknowledgment of job safety briefings	3,329 maintenance workers	—	28,851	—	$1,108,654
Risk assessment for redundant protections	55 RTAs	2,200	—	$121,125	—
Employee injury and illness program and records	55 RTAs	—	660	—	$36,337
Near-miss reporting program and records	55 RTAs	17,600	6,380	$968,998	$351,262
Recordkeeping	55 RTAs	—	—	—	$27,842
Total	—	**22,968**	**44,357**	**$1,248,823**	**$2,100,689**

Summary of Costs

Table 6 summarizes the costs of the provisions over the ten-year analysis period. The largest cost is for the RWP training program, which has estimated costs of $54.0 million over the ten-year period.

Table 6 – Ten-Year Costs of the Final Rule, Summary (2025-2034)

Requirement	Ten-Year Cost
RWP programs	$904,868
RWP manual	$180,974
Rail system responsibilities	$161,331

[9] Agencies identified include Chicago Transit Authority, Hillsborough Transit Authority (Florida); Tren Urbano (San Juan); Metropolitan Atlanta Rapid Transit Authority; Metropolitan Transportation Authority and Port Authority Trans-Hudson Corporation (New York); Massachusetts Bay Transportation Authority (Boston); Southeastern Pennsylvania Transportation Authority (Philadelphia); TriMet (Portland); Sun Link (Tucson); and Washington Metropolitan Area Transit Authority (Washington D.C.).

Requirement	Ten-Year Cost
Employee responsibilities	$5,568,418
Job safety briefing	$11,086,540
Minimum controls and limitations	$63,941,595
RWP training	$53,739,740
Risk assessment for redundant protections	$121,125
Employee injury and illness program and records	$363,374
Near-miss reporting program and records	$4,481,618
Recordkeeping	$278,421
Total ten-year costs	**$140,828,004**

The final rule has one-time undiscounted costs of $2.6 million and annual undiscounted costs of $13.6 million. Over a ten-year period, the total undiscounted costs are $140.8 million. The annualized costs, discounted to 2024, are $13.8 million at a 2 percent rate, $13.7 million at a 3 percent rate, and $13.3 million at a 7 percent rate. Table 7 lists the estimated discounted costs for each requirement.

Table 7 – Discounted Costs (2025-2034)

Requirement	2% Discount Rate	3% Discount Rate	7% Discount Rate
RWP program	$846,191	$819,475	$726,900
RWP manual	$162,737	$154,656	$127,857
Rail system responsibilities	$150,370	$145,397	$128,256
Employee responsibilities	$4,903,803	$4,611,625	$3,655,163
Job safety briefing	$9,763,313	$9,181,596	$7,277,310
Minimum controls and limitations	$56,309,884	$52,954,833	$41,971,870
RWP training	$47,463,188	$44,701,327	$35,645,934
Risk assessment for redundant protections	$116,421	$114,172	$105,795
Employee injury and illness program and records	$320,004	$300,938	$238,522
Near-miss reporting program and records	$4,024,744	$3,822,438	$3,152,077
Recordkeeping	$245,190	$230,581	$182,758
Total costs	**$124,305,845**	**$117,050,160**	**$93,224,602**
Annualized costs	**$13,840,028**	**$13,721,849**	**$13,273,086**

Net Benefits

Table 8 shows the estimated net benefits of the final rule with discount rates of 2, 3, and 7 percent, discounted to 2024. The rule has annualized net benefits of $2.2 million at a 2 percent discount rate, $2.1 million at 3 percent, and $2.0 million at 7 percent.

Table 8 – Net Benefits

Item	2% Discount Rate	3% Discount Rate	7% Discount Rate
Benefits	$142,241,072	$133,766,075	$106,022,662
Costs	$122,746,034	$115,532,045	$91,895,133
Net benefits	$124,319,225	$117,050,160	$93,224,602
Annualized net benefits	**$17,921,846**	**$16,715,916**	**$12,798,060**

Regulatory Alternatives

FTA considered two regulatory alternatives when developing the rulemaking, with the key distinction being the degree to which the alternatives require redundant protections.

- Alternative 1: FTA would establish requirements for an RWP program but would not mandate the use of redundant protections.
- Alternative 2: Instead of requiring RTAs to perform a risk analysis to determine what types of redundant protections must be used, FTA would mandate the use of physical redundant protections to protect workers when accessing the roadway.

Table 9 shows the number of annual preventable injuries and fatalities under the final rule and regulatory alternatives. Table 10 shows the net benefits with 2, 3, and 7 percent discount rates. The estimated costs for Alternative 1 and 2 reflect the labor hour adjustments made in response to feedback from commenters and updates to data sources.

Table 9 – Annual preventable injuries and fatalities (regulatory alternatives)

Item	Final rule	Alternative 1	Alternative 2
Injuries	2.37	1.34	3.87
Fatalities	1.18	0.87	1.42

Table 10 – Net benefits (regulatory alternatives)

Regulatory Option	2% Discount Rate	3% Discount Rate	7% Discount Rate
Final Rule			
Benefits	$142,241,072	$133,766,075	$106,022,662
Costs	$124,319,225	$117,050,160	$93,224,602
Net benefits	$17,921,846	$16,715,916	$12,798,060
Annualized net benefits	$1,995,177	**$1,959,615**	**$1,822,156**
Alternative 1			
Benefits	$150,189,934	$124,983,494	$84,286,314
Costs	$67,892,841	$56,864,332	$38,969,995
Net benefits	$82,297,093	$68,119,162	$45,316,318
Annualized net benefits	**$9,161,850**	**$7,985,644**	**$6,452,024**
Alternative 2			
Benefits	$172,690,626	$162,401,387	$128,718,939
Costs	$180,571,999	$169,948,989	$135,144,586
Net benefits	-$7,881,372	-$7,547,601	-$6,425,647
Annualized net benefits	**-$877,406**	**-$884,809**	**-$914,868**

The net benefits of the final rule and regulatory alternatives primarily depend on the estimated number of fatalities they would prevent. FTA conducted a sensitivity analysis to understand how changes to the estimates would affect their net benefits. If the redundant worker protections that agencies adopt under the final rule would prevent more fatalities and injuries than estimated, then the net benefits of the final rule would increase. The protections would need to prevent an additional 1.1 fatalities (for an annual average of 2.3 fatalities) for the rule to have the same net benefits as Alternative 1 at a 2 percent discount rate. For Alternative 2, the redundant worker protections would need to prevent an additional 0.3 fatalities (for an annual average of 1.7 fatalities) for Alternative 2 to have the same net benefits as the final rule.

FTA selected the requirements of the final rule because they would prevent more roadway worker safety events than Alternative 1 while maintaining net positive benefits. Many current rail transit RWP programs have provisions that allow roadway workers onto the track to perform work without protections beyond their own ability to detect oncoming trains and clear

the tracks before their arrival. FTA's internal SRM process identified the lack of redundant protections as the most significant contributor to rail transit roadway worker safety events. Similarly, the NTSB, TRACS, and many commenters responding to FTA's RFI on Rail Transit Worker Safety also support the use of redundant protections.[10] Because no two RTAs are the same, the requirements provide RTAs the flexibility to determine the types of procedural and physical redundant protections to incorporate. The requirements also provide a clear role for SSOAs to approve RWP programs and to ensure overall program effectiveness.

Regulatory Flexibility Act

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

The final rule establishes new RWP program requirements for RTAs and SSOAs. Under the Act, public-sector organizations and local governments qualify as small entities if they serve a population of less than 50,000. No RTAs in current operation qualify as small entities because they all operate in urbanized areas with populations greater than 50,000, and SSOAs do not qualify because they are State agencies. FTA has therefore determined that the final rule does not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FTA has determined that this rule would not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule does not include a Federal mandate that may result in expenditures of $100 million or more in any one year, adjusted for inflation, by State, local, and Tribal governments in the aggregate or by the private sector. The threshold in 2023 dollars is $183 million after adjusting for inflation using the gross

[10] Federal Transit Administration (2021). "Request for Information on Transit Worker Safety." https://www.federalregister.gov/documents/2021/09/24/2021-20744/request-for-information-on-transit-worker-safety.

domestic product implicit price deflator. Additionally, the definition of "Federal mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The Federal Transit Act permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq*.) (PRA), and the White House OMB's implementing regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for a new information collection request abstracted below.

- *Type of Collection:* Operators of rail public transportation systems.
- *Respondents to Collection*: RTAs in the SSO program, SSOAs, and rail transit workers who access the roadway to perform work.
- *Type of Review*: OMB Clearance. New information collection request.

- *Summary of the Collection*: The collection of information includes: (1) Each RTA must adopt and implement an RWP program to improve transit worker safety that is consistent with Federal and State safety requirements and approved by the SSOA; they are required to review and update their program manual at least every two years; (2) Require implementation of comprehensive job safety briefings and reporting of near-misses; (3) Documenting formal training and qualification programs for all workers who access the roadway; (4) Program compliance auditing and monitoring; (5) Periodic RFI; and (6) Ensuring compliance of SSOAs responsibility to approve, oversee and enforce RWP requirements (7) submission of RWP programs and updates to FTA.
- *Frequency*: Bi-Annual, Periodic.

National Environmental Policy Act

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and believes that it will not have substantial direct effects on one or more Indian Tribes; will not impose substantial direct compliance costs on Indian Tribal governments; and will not preempt Tribal laws. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Orders 14096 and 12898 (Environmental Justice)

Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All) (Apr. 21, 2023) (which builds upon Executive Order 12898) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012)[11] require DOT agencies to achieve environmental justice (EJ) as part of their mission consistent with statutory authority by identifying, analyzing,

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

and addressing, as appropriate, disproportionate and adverse human health or environmental effects, including those related to climate change and cumulative impacts of environmental and other burdens on communities with EJ concerns. All DOT agencies seek to advance these policy goals and engage in this analysis as appropriate, in all rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities.[12]

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

Regulation Identifier Number

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

List of Subjects in 49 CFR Part 671

Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

Veronica Vanterpool,

Deputy Administrator.

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

In consideration of the foregoing, and under the authority of 49 U.S.C. 5329 and 5334, and the delegations of authority at 49 CFR part 1.91, the Federal Transit Administration hereby amends Chapter VI of Title 49, Code of Federal Regulations, by adding part 671 to read as follows:

PART 671—RAIL TRANSIT ROADWAY WORKER PROTECTION

Subpart A—General

Sec.

671.1 Purpose and Applicability.

671.3 Policy.

671.5 Definitions.

Subpart B—Roadway Worker Protection (RWP) Program and Manual

671.11 RWP Program.

671.13 RWP Manual.

Subpart C—Responsibilities

671.21 Rail Transit Agency.

671.23 Transit Worker.

671.25 State Safety Oversight Agency.

Subpart D—Required RWP Program Elements

671.31 Roadway Worker in Charge Requirements.

671.33 Job Safety Briefing Policies.

671.35 Lone Worker.

671.37 Good Faith Safety Challenge.

671.39 Risk-Based Redundant Protections.

671.41 RWP Training and Qualification Program.

671.43 RWP Compliance Monitoring Program.

Subpart E—Recordkeeping

671.51 Recordkeeping.

PART 671—RAIL TRANSIT ROADWAY WORKER PROTECTION

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

Subpart A—General

§ 671.1 Purpose and Applicability.

(a) The purpose of this part is to set forth the applicability of the rail transit Roadway Worker Protection (RWP) regulation.

(b) This part applies to rail transit agencies (RTA) that receive Federal financial assistance authorized under 49 U.S.C. chapter 53; and to State Safety Oversight Agencies (SSOA) that oversee the safety of rail fixed guideway public transportation systems. This part does not apply to rail systems that are subject to the safety oversight of the Federal Railroad Administration (FRA).

(c) This part applies to transit workers who access any rail fixed guideway public transportation systems in the performance of work.

(d) An RTA must coordinate with an SSOA to establish an SSOA-approved RWP program that meets the requirements of this part, within one calendar year from the effective date of this rule.

§ 671.3 Policy.

(a) This part establishes minimum safety standards for rail transit Roadway Worker Protection (RWP) to ensure the safe operation of public transportation systems and to prevent safety events, fatalities, and injuries to transit workers who may access the roadway in the performance of work. Each RTA and SSOA may prescribe additional or more stringent operating rules, safety rules, and other special instructions that are consistent with this part.

(b) 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. Activities conducted to carry out these RWP safety standards must be integrated into the RTA's SMS, including the Safety Risk Management (SRM) process, specified in § 673.25 of this chapter, and the Safety Assurance process, specified in § 673.27 of this chapter.

§ 671.5 Definitions.

As used in this part:

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

Ample time means the time necessary for a roadway worker to be clear of the track zone or in a place of safety 15 seconds before a rail transit vehicle moving at the maximum authorized speed on that track could arrive at the location of the roadway worker.

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

Equivalent protection means alternative designs, materials, or methods that the RTA can demonstrate to the SSOA will provide equal or greater safety for roadway workers than the means specified in this part.

Flag person means a roadway worker designated to direct or restrict the movement of rail transit vehicles or equipment past a point on a track to provide on-track safety for roadway workers, while engaged solely in performing that function.

Foul time protection is a method of establishing working limits in which a roadway worker is notified by the control center that no rail transit vehicles will be authorized to operate within a specific segment of track until the roadway worker reports clear of the track.

Fouling a track means the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving rail transit vehicle or on-track equipment, typically within four feet of the outside rail on both sides of any track.

Individual rail transit vehicle detection means a process by which a lone worker acquires on-track safety by visually detecting approaching rail transit vehicles or equipment and leaving the track in ample time.

Job safety briefing means a meeting addressing the requirements of this part that is conducted prior to commencing work by the Roadway Worker in Charge, typically at the job site, to notify roadway workers or other transit workers about the hazards related to the work to

be performed and the protections to eliminate or protect against those hazards. Alternatively, briefings can be conducted virtually for those individuals who are working remotely on the job site.

Lone worker means an individual roadway worker who is not afforded on-track safety by another roadway worker, who is not a member of a roadway work group, and who is not engaged in a common task with another roadway worker.

Maximum authorized speed means the highest speed permitted for the movement of rail transit vehicles established by the rail transit vehicle control system, service schedule, and operating rules. This speed is used when calculating ample time.

Minor tasks mean those tasks performed without the use of tools during the execution of which a roadway worker or other transit worker can hear and visually assess their surroundings at least every five (5) seconds for approaching rail transit vehicles and that can be performed without violating ample time.

Near-miss means a narrowly avoided safety event.

On-track safety means a state of freedom from the danger of being struck by a moving rail transit vehicle or other equipment, and other on-track hazards, as provided by operating and safety rules that govern track occupancy by roadway workers, other transit workers, rail transit vehicles, and on-track equipment.

Place of safety means a space an individual or individuals can safely occupy outside the track zone, sufficiently clear of any rail transit vehicle, including any on-track equipment, moving on any track.

Qualified means a status attained by a roadway worker or other transit worker who has successfully completed required training (including refresher training) for, has demonstrated proficiency in, and is authorized by the RTA to perform the duties of a particular position or function.

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

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

Rail transit vehicle means any rolling stock used on a rail fixed guideway public transportation system, including but not limited to passenger and maintenance vehicles.

Rail transit vehicle approach warning means a method of establishing on-track safety by warning roadway workers of the approach of rail transit vehicles in ample time for them to move to or remain in a place of safety in accordance with the requirements of this part.

Redundant protection means at least one additional protection beyond individual rail transit vehicle detection to ensure on-track safety for roadway workers. Redundant protections may be procedural, physical, or both.

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

Roadway maintenance machine means a device which is used on or near rail transit track for maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems. Roadway maintenance machines may have road or rail wheels or may be stationary.

Roadway worker means a transit worker whose duties involve inspection, construction, maintenance, repairs, or providing on-track safety such as flag persons and watchpersons on or near the roadway or right-of-way or with the potential of fouling track.

Roadway work group means two or more roadway workers organized to work together on a common task.

Roadway worker in charge means a roadway worker who is qualified under this part to establish on-track safety.

Roadway Worker Protection (RWP) means the polices, processes, and procedures implemented by an RTA to prevent safety events for transit workers who must access the roadway in the performance of their work.

RWP manual means the entire set of the RTA's on-track safety rules and instructions maintained together, including operating rules and other procedures concerning on-track safety protection and on-track safety measures, designed to prevent roadway workers from being struck by rail transit vehicles or other on-track equipment.

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

Sight distance means the length of roadway visible ahead for a roadway worker.

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

Track access guide means a document that describes the physical characteristics of the RTA's track system, including track areas with close or no clearance, curves with blind spots or restricted sight lines, areas with loud noise, and potential environmental conditions that require additional consideration in establishing on-track safety.

Track zone means an area identified by the RTA where a person or equipment could be struck by the widest equipment that could occupy the track.

Transit worker means any employee, contractor, or volunteer working on behalf of the RTA or SSOA.

Transit Worker Safety Reporting Program means the process required under § 673.23(b) that allows transit workers to report safety concerns, including transit worker assaults, near-

misses, and unsafe acts and conditions to senior management, provides protections for transit workers who report safety conditions to senior management, and describes transit worker behaviors that may result in disciplinary action.

Watchperson means a roadway worker qualified to provide warning to roadway workers of approaching rail transit vehicles or track equipment whose sole duty is to look out for approaching rail transit vehicles and track equipment and provide at least 15 seconds advanced warning plus time to clear based on the maximum authorized track speed for the work location to transit workers before the arrival of rail transit vehicles.

Working limits means a segment of track with explicit boundaries upon which rail transit vehicles and on-track equipment may move only as authorized by the roadway worker having control over that defined segment of track.

Work zone means the immediate area where work is being performed within the track zone.

Subpart B—Roadway Worker Protection (RWP) Program and Manual

§ 671.11 RWP program.

(a) Each RTA must adopt and implement an approved RWP program to improve transit worker safety that is consistent with Federal and State safety requirements and meets the minimum requirements of this part.

(b) The RWP program must include:

(1) An RWP manual as described in § 671.13; and

(2) All of the RWP program elements described in Subpart D of this part.

(c) Each RTA must submit its RWP manual and subsequent updates to its SSOA for review and approval as described in § 671.25.

§ 671.13 RWP manual.

(a) Each RTA must establish and maintain a separate, dedicated manual documenting its RWP program.

(b) The RWP manual must include the terminology, abbreviations, and acronyms used to describe the RWP program activities and requirements.

(c) The RWP manual must document:

(1) All elements of the RWP program in Subpart D of this part.

(2) A definition of RTA and transit worker responsibilities as described in Subpart C – Responsibilities.

(3) Training, qualification, and supervision required for transit workers to access the track zone, by labor category or type of work performed.

(4) Processes and procedures, including any use of roadway workers to provide adequate on-track safety, for all transit workers who may access the track zone in the performance of their work, including safety and oversight personnel. Procedures for SSOA personnel to access the roadway must conform with the SSOA's risk-based inspection program.

(d) The RWP manual must include or incorporate by reference a track access guide to support on-track safety. The track access guide must be based on a physical survey of the track geometry and condition of the transit system and include, at a minimum:

(1) Locations with limited, close, or no clearance, including locations (such as alcoves, recessed spaces, or other designated places or areas of refuge or safety) with size or access limitations.

(2) Locations subject to increased rail vehicle or on-track equipment braking requirements or reduced rail transit vehicle operator visibility due to precipitation or other weather conditions.

(3) Curves with no or limited visibility.

(4) Locations with limited or no visibility due to obstructions or topography.

(5) All portals with restricted views.

(6) Locations with heavy outside noise or other environmental conditions that impact on-track safety.

(7) Any other locations with access considerations.

(e) Following initial approval of the RWP manual by its SSOA, not less than every two years, the RTA must review and update its RWP manual to reflect current conditions and lessons learned in implementing the RWP program and information provided by the SSOA and FTA.

(f) The RTA must update its RWP manual and track access guide as necessary and as soon as practicable upon any change to the system that conflicts with any element of either document.

(g) The RWP manual must be distributed to all transit workers who access the roadway and redistributed after each revision.

Subpart C—Responsibilities

§ 671.21 Rail transit agency.

(a) *In General*. Each RTA must establish procedures to:

(1) Provide ample time and determine the appropriate sight distance based on maximum authorized track speeds.

(2) Ensure that individual rail transit vehicle detection is never used as the only form of protection in the track zone.

(3) Provide job safety briefings to all transit workers who must enter a track zone to perform work.

(4) Provide job safety briefings to all transit workers whenever a rule violation is observed.

(5) Provide transit workers with the right to challenge and refuse in good faith any assignment based on on-track safety concerns and resolve such challenges and refusals promptly and equitably.

(6) Require the reporting of unsafe acts, unsafe conditions, and near-misses on the roadway as part of the Transit Worker Safety Reporting Program and described in § 673.23(b) of this chapter.

(7) Ensure all transit workers who must enter a track zone to perform work understand, are qualified in, and comply with the RWP program.

(8) Provide an escort, as needed, to support individuals that are not RWP certified and do not fall into the categories of roadway worker, transit worker, or emergency personnel if they must enter a track zone.

(b) *Equipment and protections*. Each RTA must establish the requirements for on-track safety, including:

(1) Equipment that transit workers must have to access the roadway or a track zone by labor category, including personal protective equipment such as high-reflection vests, safety shoes, and hard hats.

(2) Credentials (e.g., badge, wristband, RWP card) for transit workers to enter the roadway or track zone by labor category and how to display them so they are visible.

(3) Protections for emergency response personnel who must access the roadway or the track zone.

(4) Protections for multiple roadway work groups within a common work area in a track zone.

§ 671.23 Transit worker.

(a) *RWP program*. Each transit worker must follow the requirements of the RTA's RWP program by position and labor category.

(b) *Fouling the track*. A transit worker may only foul the track once they have received appropriate permissions and redundant protections have been established as specified in the RWP manual.

(c) *Acknowledgement of protections providing on-track safety*. A transit worker must understand and acknowledge in writing the protections providing on-track safety measures for their specific task before accessing the roadway or track zone.

(d) *Refusal to foul the track.* A transit worker may refuse to foul the track if the transit worker makes a good faith determination that that they believe any assignment is unsafe or would violate the RTA's RWP program.

(e) *Reporting*. A transit worker must report unsafe acts and conditions and near-misses related to the RWP program as part of the RTA's Transit Worker Safety Reporting Program.

§ 671.25 State safety oversight agency.

(a) *Review and approve RWP program elements*. The SSOA must review and approve the RWP manual and any subsequent updates for each RTA within its jurisdiction:

(1) The SSOA must coordinate with the RTA on the initial review and approval of the RWP program elements so that the RWP program is established and approved within one calendar year from [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and

(2) The SSOA also must submit all approved RWP program elements for each RTA in its jurisdiction, and any subsequent updates, to FTA within 30 calendar days of approving them.

(b) *RWP program oversight*. The SSOA must update its program standard to explain the role of the SSOA in overseeing an RTA's execution of its RWP program.

(c) *Annual RWP program audit*. (1) The SSOA must conduct an annual audit of the RTA's compliance with its RWP program, including all required RWP program elements, for each RTA that it oversees.

(2) The SSOA must issue a report with any findings and recommendations arising from the audit, which must include, at minimum:

(i) An analysis of the effectiveness of the RWP program, including, at a minimum, a review of:

(A) All RWP-related events over the period covered by the audit;

(B) All RWP-related reports made to the Transit Worker Safety Reporting Program over the period covered by the audit;

(C) All documentation of instances where a transit worker(s) challenged and refused in good faith any assignment based on on-track safety concerns and documentation of the resolution for any such instance during the period covered by the audit;

(D) An assessment of the adequacy of the track access guide, including whether the guide reflects current track geometry and conditions;

(E) A review of training and qualification records for transit workers who must enter a track zone to perform work;

(F) A representative sample of written job safety briefing confirmations as described in § 671.33; and

(G) The compliance monitoring program described in § 671.43.

(ii) Recommendations for improvements, if necessary or appropriate.

(iii) Corrective action plan(s), if necessary or appropriate, must be developed and executed consistent with requirements established in part 674.

(3) The RTA must be given an opportunity to comment on any findings and recommendations.

Subpart D— Required RWP Program Elements

§ 671.31 Roadway worker in charge requirements.

(a) *On-track safety and supervision*. The RTA must designate one roadway worker in charge for each roadway work group whose duties require fouling a track.

(1) The roadway worker in charge must be qualified under the RTA's training and qualification program as specified in § 671.41.

(2) The roadway worker in charge may be designated generally or may be designated specifically for a particular work situation.

(3) The roadway worker in charge is responsible for the on-track safety for all members of the roadway work group.

(4) The roadway worker in charge must serve only the function of maintaining on-track safety for all members of the roadway work group and perform no other unrelated job function while designated for duty.

(5) For multiple roadway work groups within common working limits, the RTA may designate a single roadway worker in charge for the entire working limit. If a single roadway worker in charge is designated over multiple roadway work groups within a working limit, each work group must be accompanied by an employee qualified to the level of a roadway worker in charge, as specified in § 671.41, who shall be responsible for direct communication with the roadway worker in charge.

(b) *Communication*. The RTA must ensure that the roadway worker in charge provides a job safety briefing to all roadway workers before any member of a roadway work group fouls a track, following the requirements specified in § 671.33.

(1) The roadway worker in charge must provide a job safety briefing to all members of the roadway work group before any on-track safety procedures change during the work period, whenever on-track safety conditions change, or immediately following an observed violation of on-track safety procedures, before work in the track zone may continue.

(2) In the event of an emergency, the roadway worker in charge must warn each roadway worker to immediately leave the roadway and not return until on-track safety is re-established, and a job safety briefing is completed.

§ 671.33 Job safety briefing policies.

(a) *General.* The RTA must ensure the roadway worker in charge provides any roadway worker who must foul a track with a job safety briefing prior to fouling the track, every time the roadway worker fouls the track.

(b) *Elements.* The job safety briefing must include, at a minimum, the following, as appropriate:

(1) A discussion of the nature of the work to be performed and the characteristics of the work, including work plans for multiple roadway worker groups within a single work area;

(2) Working limits;

(3) The hazards involved in performing the work. For RTAs with electrified systems, this discussion must include the status of power and hazards explicitly related to the electrified system;

(4) Information on how on-track safety is to be provided for each track identified to be fouled; identification and location of key personnel, such as a watchperson and the roadway worker in charge; and information on what should be done in the event of an emergency;

(5) Instructions for each on-track safety procedure to be followed, including appropriate flags and proper flag placement;

(6) Communication roles and responsibilities for all transit workers involved in the work;

(7) Safety information about any adjacent track, defined as track next to or adjoining the track zone where on-track safety has been established, and identification of roadway maintenance machines or on-track equipment that will foul such tracks;

(8) Information on the accessibility of the roadway worker in charge, including emergency contact information, and alternative procedures in the event the roadway worker in charge is no longer accessible to members of the roadway work group;

(9) Required personal protective equipment;

(10) Designated place(s) of safety of a sufficient size to accommodate all roadway workers within the work area; and

(11) The means for determining ample time.

(c) *Confirmation and written acknowledgement*. A job safety briefing is complete only after:

(1) The roadway worker in charge confirms that each roadway worker understands the on-track safety procedures and instructions;

(2) Each roadway worker acknowledges in writing the briefing and the requirement to use the required personal protective equipment; and

(3) The roadway worker in charge confirms in writing that they have received written acknowledgement of the briefing from each worker.

(d) *Follow-up briefings*. If after the initial job safety briefing there is any change in the scope of work or roadway work group, or on-track safety conditions change, or a violation of on-track safety is observed, a follow-up job safety briefing must be conducted.

§ 671.35 Lone **worker.**

(a) *On-track safety and supervision*. The RTA may authorize lone workers to perform limited duties that require fouling a track.

(1) The lone worker must be qualified as a roadway worker in charge and lone worker under the RTA's training and qualification program as specified in § 671.41.

(2) The lone worker may perform routine inspection or minor tasks and move from one location to another. The lone worker may not use power tools and may only access locations have defined in the track access guide as appropriate for lone workers, i.e., no loud noises, no restricted clearances, etc.

(3) The lone worker may not use individual rail transit vehicle detection, where the lone worker is solely responsible for seeing approaching trains and clearing the track before the trains arrive, as the only form of on-track safety.

(b) *Communication***.** Each lone worker must communicate prior to fouling the track with a supervisor or another designated employee to receive an on-track safety job briefing consisting of the elements in § 671.33(b), including a discussion of their planned work activities and the procedures that they intend to use to establish on-track safety. The lone worker must acknowledge and document the job safety briefing in writing consistent with § 671.33(c).

§ 671.37 Good faith safety challenge.

(a) *Written procedure*. Each RTA must document its procedures that provide to every roadway worker the right to challenge and refuse in good faith any assignment they believe is unsafe or would violate the RTA's RWP program.

(b) *Prompt and equitable resolution*. The written procedure must include methods or processes to achieve prompt and equitable resolution of any challenges and refusals made.

(c) *Requirements.* The written procedure must include a requirement that the roadway worker provide a description of the safety concern regarding on-track safety and that the roadway work group must remain clear of the roadway or track zone until the challenge and refusal is resolved.

§ 671.39 Risk-based redundant protections.

(a) *General requirements.* (1) Each RTA must identify and provide redundant protections for each category of work roadway workers perform on the roadway or track.

(2) Each RTA must establish redundant protections to ensure on-track safety for multiple roadway work groups within a common work area.

(b) *Safety risk assessment to determine redundant protections.* Each RTA must assess the risk associated with transit workers accessing the roadway using the methods and processes established under § 673.25(c) of this chapter. The RTA must use the methods and processes established under § 673.25(d) of this chapter to establish redundant protections for each category of work performed by roadway workers on the rail transit system and must include lone workers.

(1) The safety risk assessment must be consistent with the RTA's Agency Safety Plan (ASP) and the SSOA's program standard.

(2) The safety risk assessment may be supplemented by engineering assessments, inputs from the safety assurance process established under § 673.27 of this chapter, the results of safety event investigations, and other SRM strategies or approaches.

(3) The RTA must review and update the safety risk assessment at least every two years to include current conditions and lessons learned from safety events, actions taken to address reports of unsafe acts and conditions, and near-misses, and results from compliance monitoring regarding the effectiveness of the redundant protections.

(4) The SSOA may also identify and require the RTA to implement alternate redundant protections based on the RTA's unique operating characteristics and capabilities.

(c) *Categories of work requiring redundant protections*. Redundant protections must be identified for roadway workers performing different categories of work on the roadway and within track zones, which may include but are not limited to categories such as:

(1) Roadway workers moving from one track zone location to another;

(2) Roadway workers performing minor tasks;

(3) Roadway workers conducting visual inspections;

(4) Roadway workers using hand tools, machines, or equipment in conducting testing of track system components or non-visual inspections;

(5) Roadway workers using hand tools, machines, or equipment in performing maintenance, construction, or repairs; and/or

(6) Lone workers accessing the roadway or track zone or performing visual inspections or minor tasks.

(d) *Types of redundant protections*. (1) Redundant protections may be procedural or physical.

(i) Procedural protections alert rail transit vehicle operators to the presence of roadway workers and use radio communications, personnel, signage, or other means to direct rail transit vehicle movement.

(ii) Physical protections physically control the movement of rail transit vehicles into or through a work zone.

(2) Redundant protections may include but are not limited to:

(i) Approaches consistent with the FRA rules governing redundant protections;

(ii) Rail transit vehicle approach warning;

(iii) Foul time;

(iv) Exclusive track occupancy, defined as a method of establishing working limits, as part of on-track safety, in which movement authority of rail transit vehicles and other equipment is withheld by the control center or restricted by flag persons and provided by a roadway worker in charge;

(v) Warning signs, flags, or lights;

(vi) Flag persons;

(vii) Lock outs from the rail transit vehicle control systems or lining and locking track switches or otherwise physically preventing entry and movement of rail transit vehicles;

(viii) Secondary warning devices and alert systems;

(ix) Shunt devices and portable trip stops to reduce the likelihood of rail transit vehicles from entering work zone with workers;

(x) Restricting work to times when propulsion power is down with verification that track is out of service, and when barriers are placed that physically prevent rail transit vehicles, including on-track equipment, from entering the work zone;

(xi) Use of walkways in tunnels and on elevated structures to reduce roadway worker time in the track zone; and

(xii) Speed restrictions.

(3) Redundant protections for lone workers must include, at a minimum, foul time or an equivalent protection approved by the SSOA.

§ 671.41 RWP training and qualification program.

(a) *General*. Each RTA must adopt an RWP training program.

(1) The RWP training program must address all transit workers responsible for on-track safety, by position, including roadway workers, operations control center personnel, rail transit

vehicle operators, operators of on-track equipment and roadway maintenance machines, and any others with a role in providing on-track safety or fouling a track for the performance of work.

(2) The RWP training program must be completed for the relevant position before an RTA may assign a transit worker to perform the duties of a roadway worker, to oversee or supervise access to the track zone from the operations control center, or to operate vehicles, on-track equipment, and roadway maintenance machines on the rail transit system.

(3) The RWP training program must address RWP hazard recognition and mitigation, and lessons learned through the results of compliance testing, near-miss reports, reports of unsafe acts or conditions, and feedback received on the training program.

(4) The RWP training program must include initial and refresher training, by position. Refresher training must occur every two years at a minimum.

(5) The RTA must review and update its RWP training program not less than every two years, to reflect lessons learned in implementing the RWP program and information provided by the SSOA and FTA. The RTA must provide an opportunity for roadway worker involvement in the RWP training program review and update process.

(b) *Required elements*. The RWP training program must include interactive training with the opportunity to ask the RWP trainer questions and raise and discuss RWP issues.

(1) Initial training must include experience in a representative field setting.

(2) Initial and refresher training must include demonstrations and assessments to ensure the ability to comply with RWP instructions given by transit workers performing, or responsible for, on-track safety and RWP functions.

(c) *Minimum contents for RWP training*. The RWP training program must address, as applicable, the following minimum contents:

(1) How to interpret and use the RTA's RWP manual;

(2) How to challenge and refuse assignments in good faith;

(3) How to report unsafe acts, unsafe conditions, and near-misses after they occur, and the mandatory duty to make such reports;

(4) Recognition of the track zone and understanding of the space around tracks within which on-track safety is required, including use of the track access guide;

(5) The functions and responsibilities of all transit workers involved in on-track safety, by position;

(6) Proper compliance with on-track safety instructions given by transit workers performing or responsible for on-track safety functions;

(7) Signals and directions given by watchpersons, and the proper procedures upon receiving a rail transit vehicle approach warning from a watchperson;

(8) The hazards associated with working on or near rail transit tracks to include traction power, if applicable;

(9) Rules and procedures for redundant protections identified under § 671.37 and how they are applied to RWP; and

(10) Requirements for safely crossing rail transit tracks in yards and on the mainline.

(d) *Specialized training and qualification for transit workers with additional responsibilities for on-track safety*. The RWP training program must include additional training for watchpersons, flag persons, lone workers, roadway workers in charge, and other transit workers with responsibilities for establishing, supervising, and monitoring on-track safety.

(1) This training must cover the content and application of the additional RWP program requirements carried out by these positions and must address the relevant physical characteristics of the RTA's system where on-track safety may be established.

(2) This training must include demonstrations and assessments to confirm the transit worker's ability to perform these additional responsibilities.

(3) Refresher training on additional responsibilities for on-track safety, by position, must occur every two years at a minimum.

(e) *Competency and qualification of training personnel*. Each RTA must ensure that transit workers providing RWP training are qualified and have active RWP certification at the RTA to provide effective RWP training, and at a minimum must consider the following:

(1) A trainer's experience and knowledge of effective training techniques in the chosen learning environment;

(2) A trainer's experience with the RTA RWP program;

(3) A trainer's knowledge of the RTA RWP rules, operations, and operating environment, including applicable operating rules; and

(4) A trainer's knowledge of the training requirements specified in this part.

§ 671.43 RWP compliance monitoring program.

(a) *General*. Each RTA must adopt a program for monitoring its compliance with the requirements specified in its RWP program.

(b) *Required elements*. The RWP compliance monitoring program must include inspections, observations, and audits, consistent with safety performance monitoring and measurement requirements in the RTA's ASP described in § 673.27(b) of this chapter and the SSOA's program standard.

(1) The RTA must provide quarterly reports to the SSOA documenting the RTA's compliance with and sufficiency of the RWP program.

(2) The RTA must provide an annual briefing to the Accountable Executive and the Board of Directors, or equivalent entity, regarding the performance of the RWP program and any identified deficiencies requiring corrective action.

Subpart E—Recordkeeping

§ 671.51 Recordkeeping.

(a) Each RTA must maintain the documents that set forth its RWP program; documents related to the implementation of the RWP program; and results from the procedures, processes, assessments, training, and activities specified in this part for the RWP program.

(b) Each RTA must maintain records of its compliance with this requirement, including records of transit worker RWP training and refresher training, for a minimum of three years after they are created.

(c) These documents must be made available upon request by the FTA or other Federal entity, or an SSOA having jurisdiction.

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