

**Bipartisan Infrastructure Law Safety Changes to the Public
Transportation Agency Safety Plan Webinar
Federal Transit Administration
Tuesday, March 1, 2022 | 3:00 PM – 3:45 PM EDT**

DeLorenzo, Joe (FTA):

Good afternoon, everyone. Thank you for joining us today for this briefing on the Bipartisan Infrastructure Law changes to the Public Transportation Agency Safety Plan, the PTASP requirements.

My name is Joe DeLorenzo. I'm the Associate Administrator for Transit Safety and Oversight and Chief Safety Officer at FTA. I really appreciate you all taking the time to spend with us this afternoon to learn more about these important changes.

Today we're going to go over all of the requirements relating to the Public Transportation Agency Safety Plan that were laid out in the Bipartisan Infrastructure Law and the Dear Colleague letter that we published a couple of weeks ago. And hopefully be able to answer as many of your questions as we possibly can.

We're going to start with some opening remarks from our Administrator Fernandez, and then turn it over to FTA's Director of System Safety, Paulina Orchard, who will be taking us through the presentation today. And today, as you can see on the slide, we will be spending a little bit of time going over the applicability of the new rule of the new requirements. And then Paulina is going to take us through each of the requirements. They are a little bit different for all agencies, and then some different requirements for some of the smaller and some of the larger agencies. And then, with as much time as we can I'll come back on the end and try and take some questions during a brief question and answer period. However, if we can't get to all of your questions at that point, we encourage you to email FTA-IIJA@dot.gov. We also will be posting some Frequently Asked Questions on the FTA BIL website very soon.

So, with that, it's my pleasure now to introduce Administrator Fernandez, who joined FTA in January 2021, and was confirmed last summer. With more than 35 years in the transportation industry, Administrator Fernandez is an experienced and inspiring leader. She comes to our agency after serving as the General Manager and CEO of the Santa Clara Valley Transportation Authority for seven years, as well as being the Chair of the American Public Transportation Association. And we are lucky to have her leading FTA. With that, I'll turn it over to Administrator Fernandez.

Fernandez, Nuria (FTA):

Thank you very much, Joe and thanks to all of you for joining us today. You know it's truly an exciting time for transit. Our industry is receiving a significant increase in funding, over 72 percent of what we saw in the FAST Act. The Bipartisan Infrastructure Law is going to make such a big difference in the lives of everyone who is served by public transportation and those who are providing that service. All of our programs are going to see an increase, and we have

four new competitive grant programs that were authorized in the legislation. So it expands several of our programs, in addition to all of the other systems that we provide to you all.

These changes are going to allow the transit agencies like yours to better plan new transit projects, improve existing service, protect the environment, and address transit deserts and ensure equitable access for all, which is something that we will continue to lift up. And importantly, the Bipartisan Infrastructure Law is going to enable the industry to improve safety by strengthening rail inspection practices, and also, by improving safety training, which will help protect workers and riders from injuries.

This webinar is part of FTA's pledge to continue our ongoing open dialogue with our stakeholders as we move forward with implementation of the Bipartisan Infrastructure Law.

Many of you have probably heard me say this but it bears repeating- safety is the number one priority for this Administration, Department of Transportation, and the Federal Transit Administration. Ensuring safety for riders, for our workers, and the public remains a critical goal for this Administration and FTA.

The pandemic has made us even more aware of the importance of public transportation, in moving people to jobs and opportunities. And it is critical that we ensure the safety of transit workers and the riders, who rely on public transit. The new law supports several tools and strategies to improve transit safety.

First, the legislation is going to boost transit funding for communities all over the country by an average of 30 percent—helping communities address maintenance backlogs and rebuild and replace infrastructure that is years past its prime. That will go far toward improving safety on our transit systems.

The Bipartisan Infrastructure Law goes even further. The legislation's safety provisions include increased engagement by frontline workers and safety planning by requiring certain transit agencies, those in the Section 5307, serving large urbanized areas, to create safety committees comprised of both managers and frontline employee representatives. Those solutions will have funding behind them too. The law requires those transit agencies to allocate at least three quarters of one percent of their annual Section 5307 federal formula funding to support safety programs.

In addition, the law calls for large urban agencies to establish risk reduction programs and advanced their use of safety performance targets, to use a more inclusive process when developing their Public Transportation Agency Safety Plan and step up safety training, including for maintenance workers.

And, finally, it requires State Safety Oversight Agencies to get more involved in risk-based rail inspections and data collection.

All of this is really aimed at reducing accidents and injuries, as well as assaults on transit workers. And we're going to cover this in more detail in the webinar today.

We're taking workers into account in other ways too. The low and no emission grant package, which we will announce soon, supports good paying jobs in transit operations and

construction. It allows for zero emission projects to receive dedicated funding for workforce development. And FTA will encourage these plans to be developed in partnership with labor.

We know transit agencies have worked throughout the COVID-19 pandemic to create safer systems for both employees and riders. And I want to applaud you all for what you have done. Many call frontline workers the heroes of this pandemic during the early days, and that is true, as far as I'm concerned, through this day.

Building on that good work FTA will work with Department of Health and Human Services to add precautionary and reactive actions regarding safety during a public health emergency to the National Public Transportation Safety Plan.

So, as we continue to implement the new legislation, I promise you that FTA is going to continue to keep the lines of communication open and act with both speed and transparency. My safety staff will continue to provide technical assistance to all of you, as well as for a lot of new programs this year and beyond. So thank you for your commitment to safety. It is the most important thing we do. Now I'm going to turn this back over to Joe DeLorenzo to continue the webinar.

DeLorenzo, Joe (FTA):

Thank you Nuria. Appreciate you taking some time with us this morning to introduce this to everybody.

So with that, we're going to go on now to our next speaker who is FTA's Director of System Safety, Paulina Orchard, who will walk us through the changes to the Public Transportation Agency Safety Plan requirements in the Bipartisan Infrastructure Law. After, Paulina's presentation we will answer some questions. Paulina over to you.

Orchard, Paulina (FTA):

Thanks Joe. As many of you are aware, FTA published a Dear Colleague letter on February 17, which outlines FTA's expectations to address these new PTASP requirements. A link to the red line version of 49 U.S.C. Section 5329(d) was provided in the Dear Colleague letter and is available on this slide as well. These slides will be available on FTA Bipartisan Infrastructure Law website tomorrow.

Please keep in mind that this presentation is intended only to provide clarity regarding these new requirements. Please refer to the statute to review the applicable requirements.

As we'll discuss, transit agencies should review their Agency Safety Plan or ASP to determine if the plan already meets these requirements, or if updates are needed to address new Bipartisan Infrastructure Law provisions.

The Bipartisan Infrastructure Law's amendments to 49 U.S.C. Section 5329(d) apply only to those stakeholders that are already required to meet PTASP requirements under the PTASP regulation at 49 CFR Part 673. In other words, the Bipartisan Infrastructure Law did not change, who is required to have an Agency Safety Plan.

As discussed in previous FTA webinars and guidance materials, PTASP applicability includes recipients and sub-recipients of 49 U.S.C. Section 5307 funds and rail transit agencies in FTA State Safety Oversight Program. These agencies are required to have an Agency Safety Plan.

It does not include recipients or sub-recipients that receive federal financial assistance only under 49 U.S.C. Section 5310, 49 U.S.C. Section 5311 or both Section 5310 and Section 5311. These recipients are not required to have an Agency Safety Plan.

Most of the new Bipartisan Infrastructure Law PTASP requirements apply based on the size of the urbanized area, or UZA, that the transit agency serves. A large UZA has a population of 200,000 or more. And a small UZA has a population of fewer than 200,000.

Transit agencies can confirm the urbanized areas they serve based on data reported to the National Transit Database or NTD. FTA publishes this data on its NTD data website. The 2020 annual database federal funding allocation file presents the latest available data. This file shows urbanized areas served and the population of those urbanized areas.

Please note, agencies considered small public transportation providers under the PTASP regulation that serve a large UZA must meet the requirements for agencies serving a large UZA.

States may be affected by new Bipartisan Infrastructure Law requirements at 49 U.S.C. Section 5329(d) as well. If the State Department of Transportation previously developed an ASP for a small public transportation provider, it is not responsible for updating the ASP for the small provider. In that case, the small public transportation provider is responsible for updating its own ASP to address Bipartisan Infrastructure Law requirements. However, State DOTs must still develop ASP for newly applicable small public transportation providers that do not opt to develop their own ASPs. These ASP must address all applicable PTASP requirements, including the new Bipartisan Infrastructure Law requirements.

As mentioned earlier, most of the new requirements are applicable based on the size of urbanized area served by the transit agency, so a small UZA versus a large UZA.

Let's dive into the specific Bipartisan Infrastructure Law Section 5329(d) requirements discussed in FTA's Dear Colleague letter. In case you'd like to read along, we'll be discussing these requirements in the order they appear in the letter.

As we walk through the new Bipartisan Infrastructure Law requirements, don't forget that your agency's Agency Safety Plan may already address all or some of the requirements. If your agency's ASP meets some, but not all of the requirements, you will need to update your ASP to be fully compliant.

First let's discuss new Bipartisan Infrastructure Law requirements that apply to all agencies required to have an Agency Safety Plan under FTA's PTASP regulation.

Per 49 U.S.C. Section 5329(d)(1)(D), all agencies that must have an ASP, whether they serve a small or large UZA, must address in their Agency Safety Plan strategies consistent with guidelines of the Centers for Disease Control and Prevention or a State health authority to minimize exposure to infectious diseases.

FTA's Dear Colleague letter specifies that in addressing this requirement, each transit agency should consider identifying mitigations or strategies related to exposure to infectious diseases through the safety risk management process described in the agency's ASP.

Next, let's discuss the new PTASP requirements for agencies serving a small urbanized area.

Per 49 U.S.C. Section 5329(d)(1)(B), each recipient serving an urbanized area with a population of fewer than 200,000 should develop the ASP in cooperation with frontline employee representatives. FTA's Dear Colleague letter states that if an agency's ASP was not developed in cooperation with frontline employee representatives, FTA expects the transit agency to update its ASP in cooperation with frontline employee representatives by December 31, 2022.

Now, let's discuss the new PTASP requirements for agencies receiving Section 5307 funds and serving a large urbanized area.

For Section 5307 recipients serving large UZAs, the Bipartisan Infrastructure Law adds 49 U.S.C. Section 5329(d)(5), which requires the transit agency to convene a safety committee through a joint labor management process. The safety committee must consist of an equal number of frontline employee representatives and management representatives.

Frontline employee representatives must be selected by a labor organization representing the plurality of the frontline workforce employed by the recipient or, if applicable, a contractor to the recipient, to the extent frontline employees are represented by labor organizations.

FTA's Dear Colleague letter states that the safety committee must be established by July 31, 2022. If the transit agency has an existing safety committee, that safety committee will be sufficient if it meets the statutory requirements.

Once established the safety committee should begin work to meet its responsibilities as soon as practicable.

As noted in the statute, the safety committee must consist of an equal number of frontline employee representatives and management representatives and be convened using a joint labor management process.

The statute requires frontline employee representatives to be selected by labor organization representing the plurality of the agencies to frontline workforce, whether employed by the agency or a contractor, to the extent the workforce is represented by a labor organization. This means that frontline employee representatives are selected by labor organization representing the largest number of the agency's frontline workers, to the extent the workforce is represented by labor organizations.

As noted in the Dear Colleague letter, agencies may choose to follow an existing collective bargaining process to establish and operate the safety committee, provided the requirements of Section 5329(d) are met. If frontline workers are not represented by labor organizations, then another mechanism for selecting frontline employee representatives will need to be used.

The Bipartisan Infrastructure Law identifies the minimum responsibilities to be performed by the safety committee. The safety committee is responsible for at a minimum: identifying and

recommending risk-based mitigation or strategies necessary to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment; and identifying mitigation strategies that may be ineffective, inappropriate or were not implemented as intended and identifying safety deficiencies for purposes of continuous improvement.

The Bipartisan Infrastructure Law also requires the safety committee to approve the Agency Safety Plan and any updates to the ASP before the board of directors or equivalent entity approves it.

FTA's Dear Colleague letter states that if a Section 5307 recipient serving a large UZA needs to update its ASP to address the new Bipartisan Infrastructure Law requirements, then FTA expects the safety committee to approve the update to an ASP by December 31, 2022.

The update to the ASP must incorporate all applicable PTASP requirements in 49 U.S.C. Section 5329(d).

To recap here's a timeline specified in FTA's Dear Colleague letter.

For recipients of Section 5307 funds serving large UZAs, the safety committee must be established by July 31, 2022. The safety committee must begin assuming its responsibilities as soon as practicable after it's established.

By no later than December 31, 2022, the safety committee must approve an ASP that is compliant with new Bipartisan Infrastructure Law requirements.

The Bipartisan Infrastructure Law also requires Section 5307 recipients serving large UZAs to develop and add to the ASP a risk reduction program or transit operations to improve safety by reducing the number and rates of accidents, injuries, and assaults on transit workers, based on data submitted to the National Transit Database.

The Bipartisan Infrastructure Law requires a risk reduction program to include a reduction of vehicular and pedestrian and accidents involving buses. This requirement includes measures to reduce visibility impairments for bus operators that contribute to accidents, including retrofits to existing buses and revenues service, and specifications for future procurements that reduce visibility impairments.

The Bipartisan Infrastructure Law requirements also specify that the risk reduction program included in the ASP must address the mitigation of assaults on transit workers. This program must include the deployment of assault mitigation infrastructure and technology on buses when a risk analysis performed by the safety committee determines that such measures would reduce assaults on transit workers and injuries to transit workers.

As noted in the statute, assault mitigation infrastructure and technology includes barriers to restrict the unwanted entry of individuals and objects into the workstations of bus operators.

The Bipartisan Infrastructure Law requires that the safety committees establish performance targets for the risk reduction program using a three year rolling average of the data submitted by the recipient to the National Transit Database.

As noted in FTA's Dear Colleague letter, performance targets for the risk reduction program are not required to be in place until FTA has updated the National Public Transportation Safety Plan.

Finally, the Bipartisan Infrastructure Law requires transit agencies receiving Section 5307 funds and serving large UZAs to update their comprehensive safety training programs to include maintenance personnel and to require de-escalation training for all covered employees, including operations, maintenance, and personnel directly responsible for safety.

FTA training resources, including the National Transit Institute's Assault Awareness and Prevention for Transit Operators course may be used to support the de-escalation training requirement.

FTA established a website devoted to Bipartisan Infrastructure Law topics, available at www.transit.dot.gov/BIL, which will post updates and new information. For any questions you may have regarding Bipartisan Infrastructure Law requirements, please contact us at FTA-IIJA@dot.gov.

DeLorenzo, Joe (FTA):

Thanks Paulina. I appreciate your comprehensive presentation. I hope everybody found that useful. We have just some time to go through just a handful of questions here that have come in. So I'm going to go ahead and just jump right into it with you Paulina if that's okay.

The first question is, will FTA include the new requirements of 5329(d) in the Fiscal Year 2022 Triennial Reviews and State Management Reviews?

Orchard, Paulina (FTA):

Yeah, thank you for your question. And the answer is no. FTA will include the new requirements for Public Transportation Agency Safety Plans in triennial reviews after the December 31, 2022 deadline.

DeLorenzo, Joe (FTA):

Okay, so any reviews that occur after the end of this year, which would be starting partway through Fiscal Year 2023 would be included, correct?

Orchard, Paulina (FTA):

Yeah.

DeLorenzo, Joe (FTA):

Okay, great. Thank you.

DeLorenzo, Joe (FTA):

Next question is, what if guidance on strategies for addressing infectious diseases from the Centers for Disease Control and Prevention and the State health authority differ? How is it, how is an agency supposed to handle that particular issue?

Orchard, Paulina (FTA):

Yeah, it's a great question. The answer is the Bipartisan Infrastructure Law specifies that your agency may follow guidance from either the CDC or the State health authority.

DeLorenzo, Joe (FTA):

Okay, so they get to choose which one, which one works best for them.

Okay, great.

The next question. How do the new Bipartisan Infrastructure Law changes affect PTASP requirements for developing safety performance targets and coordinating with States and Metropolitan Planning Organizations?

Orchard, Paulina (FTA):

I'm happy to answer this one. The answer is that the new changes do not affect existing PTASP requirements to develop safety performance targets and share those targets with States and MPOs.

The Dear Colleague letter explains that the new performance targets for risk reduction programs are not required to be in place until FTA updates the National Public Transportation Safety Plan. So transit agencies will share their risk reduction targets with States and MPOs once established.

DeLorenzo, Joe (FTA):

Okay, very good. Thank you for that one. Here's another question that we got, that came in recently. What is the definition when you were talking about the safety committees and developing the plans and, of course, with frontline employees? What is the definition of a frontline employee representative, just so that folks can have some idea of how to handle that when they're working on their plans?

Orchard, Paulina (FTA):

Yes, yeah thanks for that question. So one important thing to note, the Bipartisan Infrastructure Law does not define frontline employee representative. So that term is not defined.

DeLorenzo, Joe (FTA):

Okay, so basically though, agencies should be focusing on making sure they have the most inclusive processes they can when they're working through and developing their PTASP and their involving folks from all aspects of that organization. Is that, would that be accurate statement?

Okay, great.

Okay so we're running to the close of the time that we have for today. So I appreciate everybody's attention we have time for one final question.

DeLorenzo, Joe (FTA):

For agencies serving small urbanized areas, do frontline employee representatives have to sign or approve the Agency Safety Plan? Or is the only required that they give their input?

Orchard, Paulina (FTA):

Yeah, thanks for this question. The answer is that the Bipartisan Infrastructure Law requires that agencies serving an urbanized area with a population of fewer than 200,000 develop their Agency Safety Plan in cooperation with frontline employee representatives.

The law does not require frontline employee representatives to sign or approve the ASP. However, transit agencies may choose to include signature or approval in their cooperation approach.

DeLorenzo, Joe (FTA):

Okay, so we're given flexibility, there's flexibility there in exactly how they go forward and have that moment when frontline employees.

Orchard, Paulina (FTA):

Yeah, exactly.

DeLorenzo, Joe (FTA):

Thank you, Paulina. I appreciate your presentation and for answering the questions that came in. We hope that everyone got what they needed to out of this webinar. And these answers provide some important information about how to meet the Bipartisan Infrastructure Law's requirements relating to the PTASP.

That's going to be the end of the webinar for today. And we really appreciate everybody's time. The presentation, I saw a couple questions come in on this from folks in the chat, but the presentation will be available and the recording online later this week. So we'll have that available, you can review it or share it with other employees. So again, thank you for your attention, and if you have additional questions, please send them in to us and we'll address them as quickly as we possibly as possibly can.

Thank you again for joining the webinar.