



## **Appendix A**

**Federal Transit Administration (FTA)**

**State Safety Oversight Regulation (49 CFR Part 674)**

**Public Transportation Agency Safety Plan (49 CFR Part 673)**

**Public Transportation Safety Certification Training Program (49 CFR Part 672)**

**Public Transportation Safety Program (49 CFR Part 670)**

**FTA Safety Program Authority (49 U.S.C. Section 5329, updated by FAST Act)**

**Version: 12/22/2019**



**New Jersey Department of Transportation  
State Safety Oversight (SSO) Program Standard  
Appendix A**

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## 49 CFR Part 674

# “State Safety Oversight; Final Rule” March 16, 2016

## Subpart A – General Provisions

### § 674.1 Purpose

This part carries out the mandate of 49 U.S.C. 5329(e) for State safety oversight of rail fixed guideway public transportation systems.

### § 674.3 Applicability

This part applies to States with rail fixed guideway public transportation systems; State safety oversight agencies that oversee the safety of rail fixed guideway public transportation systems; and entities that own or operate rail fixed guideway public transportation systems with Federal financial assistance authorized under 49 U.S.C. Chapter 53.

### § 674.5 Policy

- (a) In accordance with 49 U.S.C. 5329(e), 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. A State safety oversight agency must have sufficient authority, resources, and qualified personnel to oversee the number, size, and complexity of rail fixed guideway public transportation systems that operate within a State.
- (b) FTA will make Federal financial assistance available to help an eligible State develop or carry out its State safety oversight program. Also, FTA will certify whether a State safety oversight program meets the requirements of 49 U.S.C. 5329(e) and is adequate to promote the purposes of the public transportation safety programs codified at 49 U.S.C. 5329.

### § 674.7 Definitions

As used in this part:

- **Accident** means an Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision involving a rail transit vehicle; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause. An accident must be reported in accordance with the thresholds for notification and reporting set forth in Appendix A to this part.
- **Accountable Executive** means a single, identifiable individual who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency’s Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency’s Public Transportation Agency Safety Plan, in



accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

- **Administrator** means the Federal Transit Administrator or the Administrator's designee.
- **Contractor** means an entity that performs tasks on behalf of FTA, a State Safety Oversight Agency, or a Rail Transit Agency, through contract or other agreement.
- **Corrective action plan** means a plan developed by a Rail Transit Agency that describes the actions the Rail Transit Agency will take to minimize, control, correct, or eliminate risks and hazards, and the schedule for taking those actions. Either a State Safety Oversight Agency or FTA may require a Rail Transit Agency to develop and carry out a corrective action plan.
- **Event** means an Accident, Incident or Occurrence.
- **FRA** means the Federal Railroad Administration, an agency within the United States Department of Transportation.
- **FTA** means the Federal Transit Administration, an agency within the United States Department of Transportation.
- **Hazard** means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a rail fixed guideway public transportation system; or damage to the environment.
- **Incident** means an event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a rail transit agency. An incident must be reported to FTA's National Transit Database in accordance with the thresholds for reporting set forth in Appendix A to this part. If a rail transit agency or State Safety Oversight Agency later determines that an Incident meets the definition of Accident in this section, that event must be reported to the SSOA in accordance with the thresholds for notification and reporting set forth in Appendix A to this part.
- **Investigation** means the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.
- **National Public Transportation Safety Plan** means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.
- **NTSB** means the National Transportation Safety Board, an independent Federal agency.
- **Occurrence** means an Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a rail transit agency.
- **Person** means a passenger, employee, contractor, pedestrian, trespasser, or any individual on the property of a rail fixed guideway public transportation system.
- **Public Transportation Agency Safety Plan (PTASP)** means the comprehensive agency safety plan for a transit agency, including a Rail Transit Agency, that is required by 49 U.S.C. 5329(d) and based on a Safety Management System. Until one year after the effective date of FTA's PTASP final rule, a System Safety Program Plan (SSPP) developed pursuant to 49 CFR part 659 will serve as the rail transit agency's safety plan.



- **Public Transportation Safety Certification Training Program** means either the certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems, and employees of public transportation agencies directly responsible for safety oversight, established through interim provisions in accordance with 49 U.S.C. 5329(c)(2), or the program authorized by 49 U.S.C. 5329(c)(1).
- **Rail fixed guideway public transportation system** means any fixed guideway system that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration, or any such system in engineering or construction. Rail fixed guideway public transportation systems include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.
- **Rail Transit Agency (RTA)** means any entity that provides services on a rail fixed guideway public transportation system.
- **Risk** means the composite of predicted severity and likelihood of the potential effect of a hazard.
- **Risk mitigation** means a method or methods to eliminate or reduce the effects of hazards.
- **Safety risk management** means a process within a Rail Transit Agency's Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.
- **Serious injury** means any injury which:
  - (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received;
  - (2) Results in a fracture of any bone (except simple fractures of fingers, toes, or nose);
  - (3) Causes severe hemorrhages, nerve, muscle, or tendon damage;
  - (4) Involves any internal organ; or
  - (5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.
- **State** means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.
- **State 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 the regulations set forth in this part.
- **Vehicle** means any rolling stock used on a rail fixed guideway public transportation system, including but not limited to passenger and maintenance vehicles.

**§ 674.9 Transition from previous requirements for State safety oversight**

- (a) Pursuant to section 20030(e) of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (Pub. L. 112–141; July 6, 2012) (“MAP–21”), the statute now codified at 49 U.S.C. 5330, titled “State safety oversight,” will be repealed three years after the effective date of the regulations set forth in this part.
- (b) No later than three years after the effective date of the regulations set forth in this part, the regulations now codified at part 659 of this chapter will be rescinded.
- (c) A System Safety Program Plan (SSPP) developed pursuant to 49 CFR part 659 shall serve as the rail transit agency's safety plan until one year one year after the effective date of the



Public Transportation Agency Safety Plan final rule, which will be codified in part 673 of this chapter.

## **Subpart B—Role of the State**

### **§ 674.11 State Safety Oversight Program**

Within three years of April 15, 2016, every State that has a rail fixed guideway public transportation system must have a State Safety Oversight (SSO) program that has been approved by the Administrator. FTA will audit each State's compliance at least triennially, consistent with 49 U.S.C. 5329(e)(9). At minimum, an SSO program must:

- (a) Explicitly acknowledge the State's responsibility for overseeing the safety of the rail fixed guideway public transportation systems within the State;
- (b) Demonstrate the State's ability to adopt and enforce Federal and relevant State law for safety in rail fixed guideway public transportation systems;
- (c) Establish a State safety oversight agency, by State law, in accordance with the requirements of 49 U.S.C. 5329(e) and this part;
- (d) Demonstrate that the State has determined an appropriate staffing level for the State safety oversight agency commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems in the State, and that the State has consulted with the Administrator for that purpose;
- (e) Demonstrate that the employees and other personnel of the State safety oversight agency who are responsible for the oversight of rail fixed guideway public transportation systems are qualified to perform their functions, based on appropriate training, including substantial progress toward or completion of the Public Transportation Safety Certification Training Program; and
- (f) Demonstrate that by law, the State prohibits any public transportation agency in the State from providing funds to the SSOA.

### **§ 674.13 Designation of oversight agency**

- (a) Every State that must establish a State Safety Oversight program in accordance with 49 U.S.C. 5329(e) must also establish a SSOA for the purpose of overseeing the safety of rail fixed guideway public transportation systems within that State. Further, the State must ensure that:
  - (1) The SSOA is financially and legally independent from any public transportation agency the SSOA is obliged to oversee;
  - (2) The SSOA does not directly provide public transportation services in an area with a rail fixed guideway public transportation system the SSOA is obliged to oversee;
  - (3) The SSOA does not employ any individual who is also responsible for administering a rail fixed guideway public transportation system the SSOA is obliged to oversee;
  - (4) The SSOA has authority to review, approve, oversee, and enforce the public transportation agency safety plan for a rail fixed guideway public transportation system required by 49 U.S.C. 5329(d);
  - (5) The SSOA has investigative and enforcement authority with respect to the safety of all rail fixed guideway public transportation systems within the State;



- (6) At least once every three years, the SSOA audits every rail fixed guideway public transportation system's compliance with the public transportation agency safety plan required by 49 U.S.C. 5329(d); and
  - (7) At least once a year, the SSOA reports the status of the safety of each rail fixed guideway public transportation system to the Governor, the FTA, and the board of directors, or equivalent entity, of the rail fixed guideway public transportation system.
- (b) At the request of the Governor of a State, the Administrator may waive the requirements for financial and legal independence and the prohibitions on employee conflict of interest under paragraphs (a)(1) and (3) of this section, if the rail fixed guideway public transportation systems in design, construction, or revenue operations in the State have fewer than one million combined actual and projected rail fixed guideway revenue miles per year or provide fewer than ten million combined actual and projected unlinked passenger trips per year. However:
- (1) If a State shares jurisdiction over one or more rail fixed guideway public transportation systems with another State, and has one or more rail fixed guideway public transportation systems that are not shared with another State, the revenue miles and unlinked passenger trips of the rail fixed guideway public transportation system under shared jurisdiction will not be counted in the Administrator's decision whether to issue a waiver.
  - (2) The Administrator will rescind a waiver issued under this subsection if the number of revenue miles per year or unlinked passenger trips per year increases beyond the thresholds specified in this subsection.

**§ 674.15 Designation of oversight agency for multi-state system**

In an instance of a rail fixed guideway public transportation system that operates in more than one State, all States in which that rail fixed guideway public transportation system operates must either:

- (a) Ensure that uniform safety standards and procedures in compliance with 49 U.S.C. 5329 are applied to that rail fixed guideway public transportation system, through an SSO program that has been approved by the Administrator; or
- (b) Designate a single entity that meets the requirements for an SSOA to serve as the SSOA for that rail fixed guideway public transportation system, through an SSO program that has been approved by the Administrator.

**§ 674.17 Use of Federal financial assistance**

- (a) In accordance with 49 U.S.C. 5329(e)(6), FTA will make grants of Federal financial assistance to eligible States to help the States develop and carry out their SSO programs. This Federal financial assistance may be used for reimbursement of both the operational and administrative expenses of SSO programs, consistent with the uniform administrative requirements for grants to States under 2 CFR parts 200 and 1201. The expenses eligible for reimbursement include, specifically, the expense of employee training and the expense of establishing and maintaining a SSOA in compliance with 49 U.S.C. 5329(e)(4).
- (b) The apportionments of available Federal financial assistance to eligible States will be made in accordance with a formula, established by the Administrator, following opportunity for public notice and comment. The formula will take into account fixed guideway vehicle revenue miles, fixed guideway route miles, and fixed guideway vehicle passenger miles



attributable to all rail fixed guideway systems within each eligible State not subject to the jurisdiction of the FRA.

- (c) The grants of Federal financial assistance for State safety oversight shall be subject to terms and conditions as the Administrator deems appropriate.
- (d) The Federal share of the expenses eligible for reimbursement under a grant for State safety oversight activities shall be eighty percent of the reasonable costs incurred under that grant.
- (e) The non-Federal share of the expenses eligible for reimbursement under a grant for State safety oversight activities may not be comprised of Federal funds, any funds received from a public transportation agency, or any revenues earned by a public transportation agency.

**§ 674.19 Certification of a State Safety Oversight Program**

- (a) The Administrator must determine whether a State's SSO program meets the requirements of 49 U.S.C. 5329(e). Also, the Administrator must determine whether a SSO program is adequate to promote the purposes of 49 U.S.C. 5329, including, but not limited to, the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, and the Public Transportation Agency Safety Plans.
- (b) The Administrator must issue a certification to a State whose SSO program meets the requirements of 49 U.S.C. 5329(e). The Administrator must issue a denial of certification to a State whose SSO program does not meet the requirements of 49 U.S.C. 5329(e).
- (c) In an instance in which the Administrator issues a denial of certification to a State whose SSO program does not meet the requirements of 49 U.S.C. 5329(e), the Administrator must provide a written explanation, and allow the State an opportunity to modify and resubmit its SSO program for the Administrator's approval. In the event the State is unable to modify its SSO program to merit the Administrator's issuance of a certification, the Administrator must notify the Governor of that fact, and must ask the Governor to take all possible actions to correct the deficiencies that are precluding the issuance of a certification for the SSO program. In his or her discretion, the Administrator may also impose financial penalties as authorized by 49 U.S.C. 5329(e), which may include:
  - (1) Withholding SSO grant funds from the State;
  - (2) Withholding up to five percent of the 49 U.S.C. 5307 Urbanized Area formula funds appropriated for use in the State or urbanized area in the State, until such time as the SSO program can be certified; or
  - (3) Requiring all rail fixed guideway public transportation systems governed by the SSO program to spend up to 100 percent of their Federal funding under 49 U.S.C. chapter 53 only for safety-related improvements on their systems, until such time as the SSO program can be certified.
- (d) In making a determination whether to issue a certification or a denial of certification for a SSO program, the Administrator must evaluate whether the cognizant SSOA has sufficient authority, resources, and expertise to oversee the number, size, and complexity of the rail fixed guideway public transportation systems that operate within the State, or will attain the necessary authority, resources, and expertise in accordance with a developmental plan and schedule set forth to a sufficient level of detail in the SSO program.

**§ 674.21 Withholding of Federal financial assistance for noncompliance**

- (a) In making a decision to impose financial penalties as authorized by 49 U.S.C. 5329(e), and determining the nature and amount of the financial penalties, the Administrator shall





consider the extent and circumstances of the noncompliance; the operating budgets of the SSOA and the rail fixed guideway public transportation systems that will be affected by the financial penalties; and such other matters as justice may require.

- (b) If a State fails to establish a SSO program that has been approved by the Administrator within three years of the effective date of this part, FTA will be prohibited from obligating Federal financial assistance apportioned under 49 U.S.C. 5338 to any entity in the State that is otherwise eligible to receive that Federal financial assistance, in accordance with 49 U.S.C. 5329(e)(3).

#### **§ 674.23 Confidentiality of information**

- (a) A State, an SSOA, or an RTA may withhold an investigation report prepared or adopted in accordance with these regulations from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report.
- (b) This part does not require public availability of any data, information, or procedures pertaining to the security of a rail fixed guideway public transportation system or its passenger operations.

### **Subpart C—State Safety Oversight Agencies**

#### **§ 674.25 Role of the State safety oversight agency**

- (a) An SSOA must establish minimum standards for the safety of all rail fixed guideway public transportation systems within its oversight. These minimum standards must be consistent with the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, the rules for Public Transportation Agency Safety Plans and all applicable Federal and State law.
- (b) An SSOA must review and approve the Public Transportation Agency Safety Plan for every rail fixed guideway public transportation system within its oversight. An SSOA must oversee an RTA's execution of its Public Transportation Agency Safety Plan. An SSOA must enforce the execution of a Public Transportation Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate. An SSOA must ensure that a Public Transportation Agency Safety Plan meets the requirements at 49 U.S.C. 5329(d).
- (c) An SSOA has primary responsibility for the investigation of any allegation of noncompliance with a Public Transportation Agency Safety Plan. These responsibilities do not preclude the Administrator from exercising his or her authority under 49 U.S.C. 5329(f) or 49 U.S.C. 5330.
- (d) An SSOA has primary responsibility for the investigation of an accident on a rail fixed guideway public transportation system. This responsibility does not preclude the Administrator from exercising his or her authority under 49 U.S.C. 5329(f) or 49 U.S.C. 5330.
- (e) An SSOA may enter into an agreement with a contractor for assistance in overseeing accident investigations; performing independent accident investigations; and reviewing incidents and occurrences; and for expertise the SSOA does not have within its own organization.
- (f) All personnel and contractors employed by an SSOA must comply with the requirements of the Public Transportation Safety Certification Training Program as applicable.



**§ 674.27 State safety oversight program standards**

- (a) An SSOA must adopt and distribute a written SSO program standard, consistent with the National Public Transportation Safety Plan and the rules for Public Transportation Agency Safety Plans. This SSO program standard must identify the processes and procedures that govern the activities of the SSOA. Also, the SSO program standard must identify the processes and procedures an RTA must have in place to comply with the standard. At minimum, the program standard must meet the following requirements:
- (1) *Program management.* The SSO program standard must explain the authority of the SSOA to oversee the safety of rail fixed guideway public transportation systems; the policies that govern the activities of the SSOA; the reporting requirements that govern both the SSOA and the rail fixed guideway public transportation systems; and the steps the SSOA will take to ensure open, on-going communication between the SSOA and every rail fixed guideway public transportation system within its oversight.
  - (2) *Program standard development.* The SSO program standard must explain the SSOA's process for developing, reviewing, adopting, and revising its minimum standards for safety, and distributing those standards to the rail fixed guideway public transportation systems.
  - (3) *Program policy and objectives.* The SSO program standard must set an explicit policy and objectives for safety in rail fixed guideway public transportation throughout the State.
  - (4) *Oversight of Rail Public Transportation Agency Safety Plans and Transit Agencies' internal safety reviews.* The SSO program standard must explain the role of the SSOA in overseeing an RTA's execution of its Public Transportation Agency Safety Plan and any related safety reviews of the RTA's fixed guideway public transportation system. The program standard must describe the process whereby the SSOA will receive and evaluate all material submitted under the signature of an RTA's accountable executive. Also, the program standard must establish a procedure whereby an RTA will notify the SSOA before the RTA conducts an internal review of any aspect of the safety of its rail fixed guideway public transportation system.
  - (5) *Triennial SSOA audits of Rail Public Transportation Agency Safety Plans.* The SSO program standard must explain the process the SSOA will follow and the criteria the SSOA will apply in conducting a complete audit of the RTA's compliance with its Public Transportation Agency Safety Plan at least once every three years, in accordance with 49 U.S.C. 5329. Alternatively, the SSOA and RTA may agree that the SSOA will conduct its audit on an on-going basis over the three-year timeframe. The program standard must establish a procedure the SSOA and RTA will follow to manage findings and recommendations arising from the triennial audit.
  - (6) *Accident notification.* The SSO program standard must establish requirements for an RTA to notify the SSOA of accidents on the RTA's rail fixed guideway public transportation system. These requirements must address, specifically, the time limits for notification, methods of notification, and the nature of the information the RTA must submit to the SSOA.
  - (7) *Investigations.* The SSO program standard must identify thresholds for accidents that require the RTA to conduct an investigation. Also, the program standard must address how the SSOA will oversee an RTA's internal investigation; the role of the SSOA in



supporting any investigation conducted or findings and recommendations made by the NTSB or FTA; and procedures for protecting the confidentiality of the investigation reports.

- (8) *Corrective actions.* The program standard must explain the process and criteria by which the SSOA may order an RTA to develop and carry out a Corrective Action Plan (CAP), and a procedure for the SSOA to review and approve a CAP. Also, the program standard must explain the SSOA's policy and practice for tracking and verifying an RTA's compliance with the CAP, and managing any conflicts between the SSOA and RTA relating either to the development or execution of the CAP or the findings of an investigation.
- (b) At least once a year an SSOA must submit its SSO program standard and any referenced program procedures to FTA, with an indication of any revisions made to the program standard since the last annual submittal. FTA will evaluate the SSOA's program standard as part of its continuous evaluation of the State Safety Oversight Program, and in preparing FTA's report to Congress on the certification status of that State Safety Oversight Program, in accordance with 49 U.S.C. 5329.

#### **§ 674.29 Public Transportation Agency Safety Plans: general requirements**

- (a) In determining whether to approve a Public Transportation Agency Safety Plan for a rail fixed guideway public transportation system, an SSOA must evaluate whether the Public Transportation Agency Safety Plan is consistent with the regulations implementing such Plans; is consistent with the National Public Transportation Safety Plan; and is in compliance with the program standard set by the SSOA.
- (b) In determining whether a Public Transportation Agency Safety Plan is compliant with 49 CFR part 673, an SSOA must determine, specifically, whether the Public Transportation Agency Safety Plan is approved by the RTA's board of directors or equivalent entity; sets forth a sufficiently explicit process for safety risk management, with adequate means of risk mitigation for the rail fixed guideway public transportation system; includes a process and timeline for annually reviewing and updating the safety plan; includes a comprehensive staff training program for the operations personnel directly responsible for the safety of the RTA; identifies an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the RTA; includes adequate methods to support the execution of the Public Transportation Agency Safety Plan by all employees, agents, and contractors for the rail fixed guideway public transportation system; and sufficiently addresses other requirements under the regulations at 49 CFR part 673.
- (c) In an instance in which an SSOA does not approve a Public Transportation Agency Safety Plan, the SSOA must provide a written explanation, and allow the RTA an opportunity to modify and resubmit its Public Transportation Agency Safety Plan for the SSOA's approval.

#### **§ 674.31 Triennial audits: general requirements**

At least once every three years, an SSOA must conduct a complete audit of an RTA's compliance with its Public Transportation Agency Safety Plan. Alternatively, an SSOA may conduct the audit on an on-going basis over the three-year timeframe. At the conclusion of the three-year audit cycle, the SSOA shall issue a report with findings and recommendations arising from the audit, which must include, at minimum, an analysis of the effectiveness of the Public Transportation Agency



Safety Plan, recommendations for improvements, and a corrective action plan, if necessary or appropriate. The RTA must be given an opportunity to comment on the findings and recommendations.

### **§ 674.33 Notifications of accidents**

- (a) *Two-hour notification.* In addition to the requirements for accident notification set forth in an SSO program standard, an RTA must notify both the SSOA and the FTA within two hours of any accident occurring on a rail fixed guideway public transportation system. The criteria and thresholds for accident notification and reporting are defined in a reporting manual developed for the electronic reporting system specified by FTA as required in § 674.39(b), and in appendix A.
- (b) *FRA notification.* In any instance in which an RTA must notify the FRA of an accident as defined by 49 CFR 225.5 (*i.e.*, shared use of the general railroad system trackage or corridors), the RTA must also notify the SSOA and FTA of the accident within the same time frame as required by the FRA.

### **§ 674.35 Investigations**

- (a) An SSOA must investigate or require an investigation of any accident and is ultimately responsible for the sufficiency and thoroughness of all investigations, whether conducted by the SSOA or RTA. If an SSOA requires an RTA to investigate an accident, the SSOA must conduct an independent review of the RTA's findings of causation. In any instance in which an RTA is conducting its own internal investigation of the accident or incident, the SSOA and the RTA must coordinate their investigations in accordance with the SSO program standard and any agreements in effect.
- (b) Within a reasonable time, an SSOA must issue a written report on its investigation of an accident or review of an RTA's accident investigation in accordance with the reporting requirements established by the SSOA. The report must describe the investigation activities; identify the factors that caused or contributed to the accident; and set forth a corrective action plan, as necessary or appropriate. The SSOA must formally adopt the report of an accident and transmit that report to the RTA for review and concurrence. If the RTA does not concur with an SSOA's report, the SSOA may allow the RTA to submit a written dissent from the report, which may be included in the report, at the discretion of the SSOA.
- (c) All personnel and contractors that conduct investigations on behalf of an SSOA must be trained to perform their functions in accordance with the Public Transportation Safety Certification Training Program.
- (d) The Administrator may conduct an independent investigation of any accident or an independent review of an SSOA's or an RTA's findings of causation of an accident.

### **§ 674.37 Corrective action plans**

- (a) In any instance in which an RTA must develop and carry out a CAP, the SSOA must review and approve the CAP before the RTA carries out the plan; however, an exception may be made for immediate or emergency corrective actions that must be taken to ensure immediate safety, provided that the SSOA has been given timely notification, and the SSOA provides subsequent review and approval. A CAP must describe, specifically, the actions the RTA will take to minimize, control, correct, or eliminate the risks and hazards identified by the CAP, the schedule for taking those actions, and the individuals responsible



for taking those actions. The RTA must periodically report to the SSOA on its progress in carrying out the CAP. The SSOA may monitor the RTA's progress in carrying out the CAP through unannounced, on-site inspections, or any other means the SSOA deems necessary or appropriate.

- (b) In any instance in which a safety event on the RTA's rail fixed guideway public transportation system is the subject of an investigation by the NTSB, the SSOA must evaluate whether the findings or recommendations by the NTSB require a CAP by the RTA, and if so, the SSOA must order the RTA to develop and carry out a CAP.

**§ 674.39 State Safety Oversight Agency annual reporting to FTA**

- (a) On or before March 15 of each year, an SSOA must submit the following material to FTA:
  - (1) The SSO program standard adopted in accordance with § 674.27, with an indication of any changes to the SSO program standard during the preceding twelve months;
  - (2) Evidence that each of its employees and contractors has completed the requirements of the Public Transportation Safety Certification Training Program, or, if in progress, the anticipated completion date of the training;
  - (3) A publicly available report that summarizes its oversight activities for the preceding twelve months, describes the causal factors of accidents identified through investigation, and identifies the status of corrective actions, changes to Public Transportation Agency Safety Plans, and the level of effort by the SSOA in carrying out its oversight activities;
  - (4) A summary of the triennial audits completed during the preceding twelve months, and the RTAs' progress in carrying out CAPs arising from triennial audits conducted in accordance with § 674.31;
  - (5) Evidence that the SSOA has reviewed and approved any changes to the Public Transportation Agency Safety Plans during the preceding twelve months; and
  - (6) A certification that the SSOA is in compliance with the requirements of this part.
- (b) These materials must be submitted electronically through a reporting system specified by FTA.

**§ 674.41 Conflicts of interest**

- (c) An SSOA must be financially and legally independent from any rail fixed guideway public transportation system under the oversight of the SSOA, unless the Administrator has issued a waiver of this requirement in accordance with § 674.13(b).
- (d) An SSOA may not employ any individual who provides services to a rail fixed guideway public transportation system under the oversight of the SSOA, unless the Administrator has issued a waiver of this requirement in accordance with § 674.13(b).
- (e) A contractor may not provide services to both an SSOA and a rail fixed guideway public transportation system under the oversight of that SSOA, unless the Administrator has issued a waiver of this prohibition.



## Appendix to Part 674—Notification and Reporting of Accidents, Incidents, and Occurrences

EVENT/ THRESHOLD	HUMAN FACTORS	PROPERTY DAMAGE	TYPES OF EVENTS (EXAMPLES)	ACTIONS
<b>Accident:</b> RTA to Notify SSOA and FTA within two hours	<ul style="list-style-type: none"> <li>- Fatality (occurring at the scene or within 30 days following the accident)</li> <li>- One or more persons suffering serious injury</li> </ul>	<ul style="list-style-type: none"> <li>- Property damage resulting from a collision involving a rail transit vehicle; or any derailment of a rail transit vehicle</li> </ul>	<ul style="list-style-type: none"> <li>- A collision between a rail transit vehicle and another rail transit vehicle</li> <li>- A collision at a grade crossing resulting in serious injury or fatality</li> <li>- A collision with a person resulting in serious injury or fatality</li> <li>- A collision with an object resulting in serious injury or fatality</li> <li>- A runaway train</li> <li>- Evacuation due to life safety reasons</li> <li>- A derailment (mainline or yard)</li> <li>- Fires resulting in a serious injury or fatality</li> </ul>	<ul style="list-style-type: none"> <li>- RTA to notify SSOA and FTA within 2 hours; Investigation required</li> <li>- RTA to report to FTA within 30 days via NTD</li> <li>- RTA to record for SMS Analysis</li> </ul>
<b>Incident:</b> RTA to Report to FTA (NTD) within 30 days	<ul style="list-style-type: none"> <li>- A personal injury that is not a serious injury</li> <li>- One or more injuries requiring medical transportation away from the event</li> </ul>	<ul style="list-style-type: none"> <li>- Non-collision-related damage to equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency</li> </ul>	<ul style="list-style-type: none"> <li>- Evacuation of a train into the right-of-way or onto adjacent track; or customer self-evacuation</li> <li>- Certain low-speed collisions involving a rail transit vehicle that result in a non-serious injury or property damage</li> <li>- Damage to catenary or third-rail equipment that disrupts transit operations.</li> <li>- Fires that result in a non-serious injury or property damage</li> <li>- A train stopping due to an obstruction in the tracks/“hard stops”</li> <li>- Most hazardous material spills</li> </ul>	<ul style="list-style-type: none"> <li>- RTA to report to FTA within 30 days via the NTD</li> <li>- RTA to record for SMS Analysis</li> </ul>
<b>Occurrence:</b> RTA to record data and make available for SSO and/or FTA review	<ul style="list-style-type: none"> <li>- No personal injury</li> </ul>	<ul style="list-style-type: none"> <li>- Non-collision-related damage to equipment, rolling stock, or infrastructure that does not disrupt the operations of a transit agency</li> </ul>	<ul style="list-style-type: none"> <li>- Close Calls/Near Misses</li> <li>- Safety rule violations</li> <li>- Violations of safety policies</li> <li>- Damage to catenary or third-rail equipment that do not disrupt operations</li> <li>- Vandalism or theft</li> </ul>	<ul style="list-style-type: none"> <li>- RTA will collect, track and analyze data on Occurrences to reduce the likelihood of recurrence and inform the practice of SMS</li> </ul>



**New Jersey Department of Transportation  
State Safety Oversight (SSO) Program Standard  
Appendix A**



## 49 CFR Part 673

# “Public Transportation Agency Safety Plans” July 19, 2018

### Subpart A – General

#### § 673.1 *Applicability.*

- (a) This part applies to any State, local governmental authority, and any other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. Chapter 53.
- (b) This part does not apply to an operator of a public transportation system that only receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311.

#### § 673.3 *Policy.*

The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States. FTA will follow the principles and methods of SMS in its development of rules, regulations, policies, guidance, best practices, and technical assistance administered under the authority of 49 U.S.C. 5329. This part sets standards for the Public Transportation Agency Safety Plan which will be responsive to FTA’s Public Transportation Safety Program, and reflect the specific safety objectives, standards, and priorities of each transit agency. Each Public Transportation Agency Safety Plan will incorporate SMS principles and methods tailored to the size, complexity, and scope of the public transportation system and the environment in which it operates.

#### § 673.5 *Definitions.*

As used in this part:

- ***Accident*** means an Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision of public transportation vehicles; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.
- ***Accountable Executive*** means a single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency’s Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency’s Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency’s Transit Asset Management Plan in accordance with 49 U.S.C. 5326.
- ***Administrator*** means the Federal Transit Administrator or the Administrator’s designee.
- ***Chief Safety Officer*** means an adequately trained individual who has responsibility for safety and reports directly to a transit agency’s chief executive officer, general manager, president, or equivalent officer. A Chief Safety Officer may not serve in other operational





or maintenance capacities, unless the Chief Safety Officer is employed by a transit agency that is a small public transportation provider as defined in this part, or a public transportation provider that does not operate a rail fixed guideway public transportation system.

- **Equivalent Authority** means an entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. Chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.
- **Event** means any Accident, Incident or Occurrence.
- **FTA** means the Federal Transit Administration, an operating agency within the United States Department of Transportation.
- **Hazard** means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.
- **Incident** means an event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.
- **Investigation** means the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.
- **National Public Transportation Safety Plan** means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.
- **Occurrence** means an Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a transit agency.
- **Operator of a public transportation system** means a provider of public transportation as defined under 49 U.S.C. 5302(14).
- **Performance measure** means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.
- **Performance target** means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the Federal Transit Administration (FTA).
- **Public Transportation Agency Safety Plan (PTASP)** means the comprehensive agency safety plan for a transit agency that is required by 49 U.S.C. 5329 and this part.
- **Rail fixed guideway public transportation system** means any fixed guideway system that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration, or any such system in engineering or construction. Rail fixed guideway public transportation systems include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.
- **Rail Transit Agency (RTA)** means any entity that provides services on a rail fixed guideway public transportation system.
- **Risk** means the composite of predicted severity and likelihood of the potential effect of a hazard.



- **Risk mitigation** means a method or methods to eliminate or reduce the effects of hazards.
- **Safety Assurance** means processes within a transit agency's Safety Management System that functions to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.
- **Safety Management Policy** means a transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.
- **Safety Management System (SMS)** means the formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing risks and hazards.
- **Safety Management System (SMS) Executive** means a Chief Safety Officer or an equivalent.
- **Safety performance target** means a Performance Target related to safety management activities.
- **Safety Promotion** means a combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.
- **Safety risk assessment** means the formal activity whereby a transit agency determines Safety Risk Management priorities by establishing the significance or value of its safety risks.
- **Safety Risk Management** means a process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.
- **Serious injury** means any injury which:
  - (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received;
  - (2) Results in a fracture of any bone (except simple fractures of fingers, toes, or nose);
  - (3) Causes severe hemorrhages, nerve, muscle, or tendon damage;
  - (4) Involves any internal organ; or
  - (5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.
- **Small public transportation provider** means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service and does not operate a rail fixed guideway public transportation system.
- **State** means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.
- **State of good repair** means the condition in which a capital asset is able to operate at a full level of performance.
- **State Safety Oversight Agency (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 the regulations set forth in 49 CFR Part 674.
- **Transit agency** means an operator of a public transportation system.
- **Transit Asset Management Plan** means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to



manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR Part 625.

## **Subpart B—Safety Plans**

### **§ 673.11 General requirements.**

- (a) A transit agency must, within one calendar year after July 19, 2019, establish a Public Transportation Agency Safety Plan that meets the requirements of this part and, at a minimum, consists of the following elements:
  - (1) The Public Transportation Agency Safety Plan, and subsequent updates, must be signed by the Accountable Executive and approved by the agency's Board of Directors, or an Equivalent Authority.
  - (2) The Public Transportation Agency Safety Plan must document the processes and activities related to the Safety Management System (SMS) implementation, as required under subpart C of this part.
  - (3) The Public Transportation Agency Safety Plan must include performance targets based on the safety performance measures established under the National Public Transportation Safety Plan.
  - (4) The Public Transportation Agency Safety Plan must address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and the National Public Transportation Safety Plan. Compliance with the minimum safety performance standards authorized under 49 U.S.C. 5329(b)(2)(C) is not required until standards have been established through the public notice and comment process.
  - (5) Each transit agency must establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan.
  - (6) A rail transit agency must include or incorporate by reference in its Public Transportation Agency Safety Plan an emergency preparedness and response plan or procedures that addresses, at a minimum, the assignment of employee responsibilities during an emergency; and coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area.
- (b) A transit agency may develop one Public Transportation Agency Safety Plan for all modes of service, or may develop a Public Transportation Agency Safety Plan for each mode of service not subject to safety regulation by another Federal entity.
- (c) A transit agency must maintain its Public Transportation Agency Safety Plan in accordance with the recordkeeping requirements in subpart D of this part.
- (d) A State must draft and certify a Public Transportation Agency Safety Plan on behalf of any small public transportation provider that is located in that State. A State is not required to draft a Public Transportation Agency Safety Plan for a small public transportation provider if that agency notifies the State that it will draft its own plan. In each instance, the transit agency must carry out the plan. If a State drafts and certifies a Public Transportation Agency Safety Plan on behalf of a transit agency, and the transit agency later opts to draft and certify its own Public Transportation Agency Safety Plan, then the transit agency must notify the State. The transit agency has one year from the date of the notification to draft



and certify a Public Transportation Agency Safety Plan that is compliant with this part. The Public Transportation Agency Safety Plan drafted by the State will remain in effect until the transit agency drafts its own Public Transportation Agency Safety Plan.

- (e) Any rail fixed guideway public transportation system that had a System Safety Program Plan compliant with 49 CFR Part 659 as of October 1, 2012, may keep that plan in effect until one year after July 19, 2019.
- (f) Agencies that operate passenger ferries regulated by the United States Coast Guard (USCG) or rail fixed guideway public transportation service regulated by the Federal Railroad Administration (FRA) are not required to develop agency safety plans for those modes of service.

**§ 673.13 Certification of Compliance.**

- (a) Each transit agency, or State as authorized in § 673.11(d), must certify that it has established a Public Transportation Agency Safety Plan meeting the requirements of this part one year after July 19, 2019. A State Safety Oversight Agency must review and approve a Public Transportation Agency Safety Plan developed by rail fixed guideway system, as authorized in 49 U.S.C. 5329(e) and its implementing regulations at 49 CFR Part 674.
- (b) On an annual basis, a transit agency, direct recipient, or State must certify its compliance with this part.

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

- (a) A State or transit agency must make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process.
- (b) To the maximum extent practicable, a State or transit agency must coordinate with States and Metropolitan Planning Organizations in the selection of State and MPO safety performance targets.

**Subpart C—Safety Management Systems**

**§ 673.21 General requirements.**

Each transit agency must establish and implement a Safety Management System under this part. A transit agency Safety Management System must be appropriately scaled to the size, scope and complexity of the transit agency and include the following elements:

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

**§ 673.23 Safety management policy.**

- (a) A transit agency must establish its organizational accountabilities and responsibilities and have a written statement of safety management policy that includes the agency's safety objectives.
- (b) A transit agency must establish and implement a process that allows employees to report safety conditions to senior management, protections for employees who report safety



conditions to senior management, and a description of employee behaviors that may result in disciplinary action.

- (c) The safety management policy must be communicated throughout the agency's organization.
- (d) The transit agency must establish the necessary authorities, accountabilities, and responsibilities for the management of safety amongst the following individuals within its organization, as they relate to the development and management of the transit agency's Safety Management System (SMS):
  - (1) *Accountable Executive.* The transit agency must identify an Accountable Executive. The Accountable Executive is accountable for ensuring that the agency's SMS is effectively implemented, throughout the agency's public transportation system. The Accountable Executive is accountable for ensuring action is take, as necessary, to address substandard performance in the agency's SMS. The Accountable Executive may delegate specific responsibilities, but the ultimate accountability for the transit agency's safety performance cannot be delegated and always rests with the Accountable Executive.
  - (2) *Chief Safety Officer or Safety Management System (SMS) Executive.* The Accountable Executive must designate a Chief Safety Officer or SMS Executive who has the authority and responsibility for day-to-day implementation and operation of an agency's SMS. The Chief Safety Officer or SMS Executive must hold a direct line of reporting to the Accountable Executive. A transit agency may allow the Accountable Executive to also serve as the Chief Safety Officer or SMS Executive.
  - (3) *Agency leadership and executive management.* A transit agency must identify those members of its leadership or executive management, other than an Accountable Executive, Chief Safety Officer, or SMS Executive, who have authorities or responsibilities for day-to-day implementation and operation of an agency's SMS.
  - (4) *Key staff.* A transit agency may designate key staff, groups of staff, or committees to support the Accountable Executive, Chief Safety Officer, or SMS Executive in developing, implementing, and operating the agency's SMS.

**§ 673.25 Safety risk management.**

- (a) *Safety Risk Management process.* A transit agency must develop and implement a Safety Risk Management process for all elements of its public transportation system. The Safety Risk Management process must be comprised of the following activities: Safety hazard identification, safety risk assessment, and safety risk mitigation.
- (b) *Safety hazard identification.*
  - (1) A transit agency must establish methods or processes to identify hazards and consequences of the hazards.
  - (2) A transit agency must consider, as a source for hazard identification, data and information provided by an oversight authority and the FTA.
- (c) *Safety risk assessment.*
  - (1) A transit agency must establish methods or processes to assess the safety risks associated with identified safety hazards.



- (2) A safety risk assessment includes an assessment of the likelihood and severity of the consequences of the hazards, including existing mitigations, and prioritization of the hazards based on the safety risk.
- (d) *Safety risk mitigation.* A transit agency must establish methods or processes to identify mitigations or strategies necessary as a result of the agency's safety risk assessment to reduce the likelihood and severity of the consequences.

**§ 673.27 Safety Assurance.**

- (a) *Safety assurance process.* A transit agency must develop and implement a safety assurance process, consistent with this subpart. A rail fixed guideway public transportation system, and a recipient or subrecipient of Federal financial assistance under 49 U.S.C. Chapter 53 that operates more than one hundred vehicles in peak revenue service, must include in its safety assurance process each of the requirements in paragraphs (b), (c), and (d) of this section. A small public transportation provider only must include in its safety assurance process the requirements in paragraph (b) of this section.
- (b) *Safety performance monitoring and measurement.* A transit agency must establish activities to:
  - (1) Monitor its system for compliance with, and sufficiency of, the agency's procedures for operations and maintenance
  - (2) Monitor its operations to identify any safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended
  - (3) Conduct investigations of safety events to identify causal factors
  - (4) Monitor information reported through any internal safety reporting programs.
- (c) *Management of change.*
  - (1) A transit agency must establish a process for identifying and assessing changes that may introduce new hazards or impact the transit agency's safety performance.
  - (2) If a transit agency determines that a change may impact its safety performance, then the transit agency must evaluate the proposed change through its Safety Risk Management process.
- (d) *Continuous improvement.*
  - (1) A transit agency must establish a process to assess its safety performance.
  - (2) If a transit agency identifies any deficiencies as part of its safety performance assessment, then the transit agency must develop and carry out, under the direction of the Accountable Executive, a plan to address the identified safety deficiencies.

**§ 673.29 Safety Promotion.**

- (a) *Competencies and training.* A transit agency must establish and implement a comprehensive safety training program for all agency employees and contractors directly responsible for safety in the agency's public transportation system. The training program must include refresher training, as necessary.
- (b) *Safety communication.* A transit agency must communicate safety and safety performance information throughout the agency's organization that, at a minimum, conveys information on hazards and safety risks relevant to employees' roles and responsibilities and informs employees of safety actions taken in response to reports submitted through an employee safety reporting program.



## **Subpart D—Safety Plan Documentation and Recordkeeping**

### ***§ 673.31 Safety plan documentation.***

At all times, a transit agency must maintain documents that set forth its Public Transportation Agency Safety Plan, including those related to the implementation of its Safety Management System (SMS), and results from SMS processes and activities. A transit agency must maintain documents that are included in whole, or by reference, that describe the programs, policies, and procedures that the agency uses to carry out its Public Transportation Agency Safety Plan. These documents must be made available upon request by the Federal Transit Administration or other Federal entity, or a State Safety Oversight Agency having jurisdiction. A transit agency must maintain these documents for a minimum of three years after they are created.



## 49 CFR Part 672

# “Public Transportation Safety Certification Training Program” July 19, 2018

### Subpart A – General Provisions

#### § 672.1 Purpose.

- (a) This part implements a uniform safety certification training curriculum and requirements to enhance the technical proficiency of individuals who conduct safety audits and examinations of public transportation systems operated by public transportation agencies and those who are directly responsible for safety oversight of public transportation agencies.
- (b) This part does not preempt any safety certification training requirements required by a State for public transportation agencies within its jurisdiction.

#### § 672.3 Scope and applicability.

- (a) In general, this part applies to all recipients of Federal financial assistance under 49 U.S.C. chapter 53.
- (b) The mandatory requirements of this part will apply only to State Safety Oversight Agency personnel and contractors that conduct safety audits and examinations of rail fixed guideway public transportation systems, and designated personnel and contractors who are directly responsible for the safety oversight of a recipient’s rail fixed guideway public transportation systems.
- (c) Other FTA recipients may participate voluntarily in accordance with this part.

#### § 672.5 Definitions.

As used in this part:

- **Administrator** means the Federal Transit Administrator or the Administrator’s designee.
- **Contractor** means an entity that performs tasks on behalf of FTA, a State Safety Oversight Agency, or public transportation agency through contract or other agreement.
- **Designated personnel** means: (1) Employees and contractors identified by a recipient whose job function is directly responsible for safety oversight of the public transportation system of the public transportation agency; or (2) Employees and contractors of a State Safety Oversight Agency whose job function requires them to conduct safety audits and examinations of the rail fixed guideway public transportation systems subject to the jurisdiction of the agency.
- **Directly responsible for safety oversight** means public transportation agency personnel whose primary job function includes the development, implementation and review of the agency’s safety plan, and/or the SSOA requirements for the rail fixed guideway public transportation system pursuant to 49 CFR parts 659 or 674.





- **Examination** means a process for gathering or analyzing facts or information related to the safety of a public transportation system.
- **FTA** means the Federal Transit Administration.
- **Public transportation agency** means an entity that provides public transportation service as defined in 49 U.S.C. 5302 and that has one or more modes of service not subject to the safety oversight requirements of another Federal agency.
- **Rail fixed guideway public transportation system** means any fixed guideway system as defined in § 674.7 of this chapter.
- **Recipient** means a State or local governmental authority, or any other operator of a public transportation system receiving financial assistance under 49 U.S.C. chapter 53.
- **Safety audit** means a review or analysis of safety records and related materials, including, but not limited to, those related to financial accounts.
- **State** means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.
- **State 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 the regulations set forth in 49 CFR parts 659 and 674.

### **Subpart B – Training Requirements**

#### **§ 672.11 Designated personnel who conduct safety audits and inspections.**

- (a) Each SSOA shall designate its personnel and contractors who conduct safety audits and examinations of public transportation systems, including appropriate managers and supervisors of such personnel, that must comply with the applicable training requirements of Appendix A to this part.
- (b) Designated personnel shall complete applicable training requirements of this part within three (3) years of their initial designation. Thereafter, refresher training shall be completed every two (2) years. The SSOA shall determine refresher training requirements which must include, at a minimum, one (1) hour of safety oversight training.

#### **§ 672.13 Designated personnel of public transportation agencies.**

- (a) Each recipient that operates a rail fixed guideway public transportation system shall designate its personnel and contractors who are directly responsible for safety oversight and ensure their compliance with the applicable training requirements set forth in Appendix A to this part.
- (b) Each recipient that operates a bus or other public transportation system not subject to the safety oversight of another Federal agency may designate its personnel who are directly responsible for safety oversight to participate in the applicable training requirements as set forth in Appendix A to this part.
- (c) Personnel designated under paragraph (a) of this section shall complete applicable training requirements of this part within three (3) years of their initial designation. Thereafter, refresher training shall be completed every two (2) years. The recipient shall determine refresher training requirements which must include, at a minimum, one (1) hour of safety oversight training.



**§ 672.15 Evaluation of prior certification and training.**

- (a) Designated personnel subject to this part may request that FTA evaluate safety training or certification previously obtained from another entity to determine if the training satisfies an applicable training requirement of this part.
- (b) Designated personnel must provide FTA with an official transcript or certificate of the training, a description of the curriculum and competencies obtained, and a brief statement detailing how the training or certification satisfies the applicable requirements of this part.
- (c) FTA will evaluate the submission and determine if a training requirement of this part may be waived. If a waiver is granted, designated personnel are responsible for completing all other applicable requirements of this part.

**Subpart C – Administrative Requirements**

**§ 672.21 Records.**

- (a) *General requirement.* Each recipient shall ensure that its designated personnel are enrolled in the PTSCPT. Each recipient shall ensure that designated personnel update their individual training record as he or she completes the applicable training requirements of this part.
- (b) *SSOA requirement.* Each SSOA shall retain a record of the technical training completed by its designated personnel in accordance with the technical training requirements of Appendix A to this part. Such records shall be retained by the SSOA for at least five (5) years from the date the record is created.

**§ 672.23 Availability of records.**

- (a) Except as required by law, or expressly authorized or required by this part, a recipient may not release information pertaining to designated personnel that is required by this part without the written consent of the designated personnel.
- (b) Designated personnel are entitled, upon written request to the recipient, to obtain copies of any records pertaining to his or her training required by this part. The recipient shall promptly provide the records requested by designated personnel and access shall not be contingent upon the recipient's receipt of payment for the production of such records.
- (c) A recipient shall permit access to all facilities utilized and records compiled in accordance with the requirements of this part to the Secretary of Transportation, the Federal Transit Administration, or any State agency with jurisdiction over public transportation safety oversight of the recipient.
- (d) When requested by the National Transportation Safety Board as part of an accident investigation, a recipient shall disclose information related to the training of designated personnel.

**Subpart D – Compliance and Certification Requirements**

**§ 672.31 Requirement to certify compliance.**



- (a) A recipient of FTA financial assistance described in § 672.3(b) shall annually certify compliance with this part in accordance with FTA's procedures for annual grant certification and assurances.
- (b) A certification must be authorized by the recipient's governing board or other authorizing official, and must be signed by a party specifically authorized to do so.

## Appendix A to Part 672 – Public Transportation Safety Certification Training Program

### A. Required Curriculum Over a Three-Year Period

- (1) FTA/SSOA personnel and contractor support, and public transportation agency personnel with direct responsibility for safety oversight of rail fixed guideway public transportation systems:
  - (a) One (1) hour course on SMS Awareness – e-learning delivery (all required participants)
  - (b) Two (2) hour courses on Safety Assurance – e-learning delivery (all required participants)
  - (c) Twenty (20) hours on SMS Principles for Transit (all required participants)
  - (d) Sixteen (16) hours on SMS Principles for SSO Programs (FTA/SSOA/contractor support personnel only)
  - (e) TSSP curriculum (minus Transit System Security (TSS) course) (all required participants – credit will be provided if participant has a Course Completion Certificate of previously taken TSSP courses)
    - (i) Rail System Safety (36 hours)
    - (ii) Effectively Managing Transit Emergencies (32 hours)
    - (iii) Rail Incident Investigation (36 hours)
- (2) FTA/SSOA/contractor support personnel (technical training component):
  - (a) Each SSOA shall develop a technical training plan for designated personnel and contractor support personnel who perform safety audits and examinations. The SSOA will submit its proposed technical training plan to FTA for review and evaluation as part of the SSOA certification program in accordance with 49 U.S.C. 5329(e)(7). This review and approval process will support the consultation required between FTA and SSOAs regarding the staffing and qualification of the SSOAs' employees and other designated personnel in accordance with 49 U.S.C. 5329(e)(3)(D).
  - (b) Recognizing the each rail fixed guideway public transportation has unique characteristics, each SSOA will identify the tasks related to inspections, examinations, and audits, and all activities requiring sign-off, which must be performed by the SSOA to carry out its safety oversight requirements, and identify the skills and knowledge necessary to perform each task at that system. At a minimum, the technical training plan will describe the process for receiving technical training in the following competency areas appropriate of the specific rail fixed guideway public transportation system(s) for which safety audits and examinations are conducted:
    - (i) Agency organizational structure
    - (ii) System Safety Program Plan and Security Program Plan
    - (iii) Knowledge of agency
      - (I) Territory and revenue service schedules



- (II) Current bulletins, general orders, and other associated directives that ensure safe operations
  - (III) Operations and maintenance rule books
  - (IV) Safety rules
  - (V) Standard Operating Procedures
  - (VI) Roadway Worker Protection
  - (VII) Employee Hours of Service and Fatigue Management program
  - (VIII) Employee Observation and Testing Program (Efficiency Testing)
  - (IX) Employee training and certification requirements
  - (X) Vehicle inspection and maintenance programs, schedules and records
  - (XI) Track inspection and maintenance programs, schedules, and records
  - (XII) Tunnels, bridges, and other structures inspection and maintenance programs, schedules, and records
  - (XIII) Traction power (substation, overhead catenary system, and third rail), load dispatching, inspection and maintenance programs, schedules and records
  - (XIV) Signal and train control inspection and maintenance programs, schedules and records
- (f) The SSOA will determine the length of time for the technical training based on the skill level of the designated personnel relative to the applicable rail transit agency(s). FTA will provide a template as requested to assist the SSOA with preparing and monitoring its technical training plan and will provide technical assistance as requested. Each SSOA technical training plan that is submitted to FTA for review will:
- (i) Require designated personnel to successfully:
    - (I) Complete training that covers the skills and knowledge needed to effectively perform the tasks.
    - (II) Pass a written and/or oral examination covering the skills and knowledge required for the designated personnel to effectively perform his or her tasks.
    - (III) Demonstrate hands-on capability to perform his or her tasks to the satisfaction of the appropriate SSOA supervisor or designated instructor.
  - (ii) Establish equivalencies or written and oral examinations to allow designated personnel to demonstrate that they possess the skill and qualification required to perform their tasks.
  - (iii) Require biennial refresher training to maintain technical skills and abilities which includes classroom and hands-on training, as well as testing. Observation and evaluation of actual performance of duties may be used to meet the hands-on portion of this requirement, provided that such testing is documented.
  - (iv) Require that training records be maintained to demonstrate the current qualification status of designated personnel assigned to carry out the oversight program. Records may be maintained either electronically or in writing and must be provided to FTA upon request.
  - (v) Records must include the following information concerning each designated personnel:



- (I) Name
  - (II) The title and date each training course was completed and the proficiency test score(s) where applicable
  - (III) The content of each training course successfully completed
  - (IV) A description of the designated personnel's hands-on performance applying the skills and knowledge required to perform the tasks that the employee will be responsible for performing and the factual basis supporting the determination
  - (V) The tasks the designated personnel are deemed qualified to perform
  - (VI) Provide the date that the designated personnel's status as qualified to perform the tasks expires, and the date in which biennial refresher training is due.
- (vi) Ensure the qualification of contractors performing oversight activities. SSOAs may use demonstrations, previous training and education, and written and oral examinations to determine if contractors possess the skill and qualification required to perform their tasks.
  - (vii) Periodically assess the effectiveness of the technical training. One method of validation and assessment could be through the use of efficiency tests or periodic review of employee performance.

## **B. Voluntary Curriculum**

Bus transit system personnel with direct safety oversight responsibility and State DOTs overseeing safety programs for subrecipients:

- (a) SMS Awareness – e-learning delivery
- (b) Safety Assurance – e-learning delivery
- (c) SMS Principles for Transit
- (d) Courses offered through the TSSP Certificate (Bus)
  - (i) Effectively Management Transit Emergencies
  - (ii) Transit Bus System Safety
  - (iii) Fundamentals of Bus Collision Investigation



## 49 CFR Part 670

# “Public Transportation Safety Program” August 11, 2016

### Subpart A – General Provisions

#### ***§ 670.1 Purpose and Applicability.***

This part carries out the mandate of 49 U.S.C. 5329 to improve the safety of public transportation systems. This part establishes substantive and procedural rules for FTA’s administration of the Public Transportation Safety Program. This part applies to recipients of Federal financial assistance under 49 U.S.C. chapter 53.

#### ***§ 670.3 Policy.***

The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States. FTA will follow the principles and methods of SMS in its development of rules, regulations, policies, guidance, best practices and technical assistance administered under the authority of 49 U.S.C. 5329.

#### ***§ 670.5 Definitions.***

As used in this part:

- ***Accountable Executive*** means a single, identifiable individual who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency’s Transit Asset Management Plan; and control or direction of human and capital resources needed to develop and maintain both the agency’s Public Transportation Agency Safety Plan in accordance with 49 U.S.C. 5329(d), and the agency’s Transit Asset Management Plan in accordance with 49 U.S.C. 5326.
- ***Administrator*** means the Federal Transit Administrator or his or her designee.
- ***Advisory*** means a notice that informs or warns a recipient of hazards or risks to the recipient’s public transportation system. An advisory may include recommendations for avoiding or mitigating the hazards or risks.
- ***Audit*** means a review or analysis of records and related materials, including but not limited to, those related to financial accounts.
- ***Corrective action plan*** means a plan developed by a recipient that describes the actions the recipient will take to minimize, control, correct, or eliminate risks and hazards, and the schedule for taking those actions. Either a State Safety Oversight Agency or FTA may require a recipient to develop and carry out a corrective action plan.
- ***Deputy Administrator*** means the Federal Transit Deputy Administrator or his or her designee.



- **Directive** means a written communication from FTA to a recipient that requires the recipient to take one or more specific actions to ensure the safety of the recipient’s public transportation system.
- **Examination** means a process for gathering or analyzing facts or information related to the safety of a public transportation system.
- **FTA** means the Federal Transit Administration.
- **Hazard** means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a recipient’s public transportation system; or damage to the environment.
- **Inspection** means a physical observation of equipment, facilities, rolling stock, operations, or records for the purpose of gathering or analyzing facts or information.
- **Investigation** means the process of determining the causal and contributing factors of an accident, incident or hazard for the purpose of preventing recurrence and mitigating risk.
- **National Public Transportation Safety Plan** means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.
- **Pattern or practice** means two or more findings by FTA of a recipient’s violation of the requirements of 49 U.S.C. 5329 or the regulations thereunder.
- **Recipient** means a State or local governmental authority, or any other operator of public transportation that receives financial assistance under 49 U.S.C. Chapter 53. The term “recipient” includes State Safety Oversight Agencies.
- **Record** means any writing, drawing, map, recording, diskette, DVD, CD-ROM, tape, film, photograph, or other documentary material by which information is preserved. The term “record” also includes any such documentary material stored electronically.
- **Risk** means the composite of predicted severity and likelihood of the potential effect of a hazard.
- **Safety Management System (SMS)** means a formal, top-down, organization-wide data-driven approach to managing safety risk and assuring the effectiveness of a recipient’s safety risk mitigations. SMS include systematic procedures, practices, and policies for managing risks and hazards.
- **State** means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.
- **State Safety Oversight Agency** means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations set forth in 49 CFR Part 659 or 49 CFR Part 674.
- **Testing** means an assessment of equipment, facilities, rolling stock or operations of a recipient’s public transportation system.



## Subpart B – Inspections, Investigations, Audits, Examinations and Testing

### **§ 670.11 General.**

- (a) The Administrator may conduct investigations, inspections, audits and examinations, and test the equipment, facilities, rolling stock and operations of a recipient's public transportation system.
- (b) To the extent practicable, the Administrator will provide notice to a recipient prior to initiating any activities carried out under the authorities listed in paragraph (a) of this section.
- (c) The Administrator will conduct activities carried out under this section at reasonable times and in a reasonable manner, as determined by the Administrator.
- (d) In carrying out this section, the Administrator may require the production of relevant documents and records, take evidence, issue subpoenas and depositions, and prescribe recordkeeping and reporting requirements.

### **§ 670.13 Request for confidential treatment of records.**

- (a) The Administrator may grant a recipient's request for confidential treatment of records produced under § 670.11, on the basis that the records are –
  - (1) Exempt from the mandatory disclosure requirements of the Freedom of Information Act (5 U.S.C. 552)
  - (2) Required to be held in confidence by 18 U.S.C. 1905
  - (3) Otherwise exempt from public disclosure under Federal or State laws.
- (b) A recipient must submit the record that contains the alleged confidential information with the request for confidential treatment.
- (c) A recipient's request for confidential treatment must include a statement justifying nondisclosure and provide the specific legal basis upon which the request for nondisclosure should be granted.
- (d) A recipient's justification statement must indicate whether the recipient is requesting confidentiality for the entire record, or whether non-confidential information in the record can be reasonably segregated from the confidential information. If a recipient is requesting confidentiality for only a portion of the record, the request must include a copy of the entire record and a second copy of the record where the purportedly confidential information has been redacted. The Administrator may assume there is no objection to public disclosure of the record in its entirety if the requestor does not submit a second copy of the record with the confidential information redacted at the time that the request is submitted.
- (e) A recipient must mark any record containing any information for which confidential treatment is requested as follows – “CONFIDENTIAL” or “CONTAINS CONFIDENTIAL INFORMATION” in bold letters.
- (f) The Administrator will provide notice to a recipient of his or her decision to approve or deny a request in whole or in part, no less than five (5) days prior to the public disclosure of a record by FTA. The Administrator will provide an opportunity for a recipient to respond to his or her decision prior to the public disclosure of a record.





## Subpart C – Authority

### § 670.21 General.

In addition to actions described in §§ 670.23 through 670.29, in exercising his or her authority under this part, the Administrator may –

- (a) Require more frequent oversight of a recipient by a State Safety Oversight Agency that has jurisdiction of the recipient
- (b) Impose requirements for more frequent reporting by a recipient
- (c) Order a recipient to develop and carry out a corrective action plan
- (d) Issue restrictions and prohibitions, if through testing, inspection, investigation, audit or research carried out under Chapter 53, the Administrator determines that an unsafe condition or practices, or a combination of unsafe conditions and practices, exist such that there is a substantial risk of death or personal injury.

### § 670.23 Use or withholding of funds.

- (a) *Directing the use of funds.* The Administrator may require a recipient to use Chapter 53 funds to correct safety violations identified by the Administrator or a State Safety Oversight Agency before such funds are used for any other purpose.
- (b) *Withholding of funds.* Except as provided under 49 CFR Part 674, the Administrator may withhold not more than twenty-five (25) percent of funds apportioned under 49 U.S.C. 5307 from a recipient when the Administrator has evidence that the recipient has engaged in a pattern or practice of serious safety violations, or has otherwise refused to comply with the Public Transportation Safety Program, as codified at 49 U.S.C. 5329, or any regulation or directive issued under those laws for which the Administrator exercises enforcement authority for safety.
- (c) *Notice.* The Administrator will issue a notice of violation that includes the amount the Administrator proposes to redirect or withhold at least ninety (90) days prior to the date form when the funds will be redirected or withheld. The notice will contain –
  - (1) A statement of the legal authority for its issuance
  - (2) A statement of the regulatory provisions or directives FTA believes the recipient has violated
  - (3) A statement of the remedial action sought to correct the violation
  - (4) A statement of facts supporting the proposed remedial action.
- (d) *Reply.* Within thirty (30) days of service of a notice of violation, a recipient may file a written reply with the Administrator. Upon receipt of a written request, the Administrator may extend the time for filing for good cause shown. The reply must be in writing, and signed by the recipient's Accountable Executive or equivalent entity. A written reply may include an explanation for the alleged violation, provide relevant information or materials in response to the alleged violation or in mitigation thereof, or recommend alternative means of compliance for consideration by the Administrator.
- (e) *Decision.* The Administrator will issue a written decision within thirty (30) days of his or her receipt of a recipient's reply. The Administrator shall consider a recipient's response in determining whether to dismiss the notice of violation in whole or in part. If a notice of



violation is not dismissed, the Administrator may undertake any other enforcement action he or she deems appropriate.

**§ 670.25 General directives.**

- (a) *General.* The Administrator may issue a general directive under this part that is applicable to all recipients or a subset of recipients for the following reasons –
  - (1) The Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, exists such that there is a risk of death or personal injury, or damage to property or equipment; or
  - (2) For any other purpose where the Administrator determines that the public interest requires the avoidance or mitigation of a hazard or risk.
- (b) *Effective date.* A general directive is effective upon final notice provided by the Administrator under paragraph (e) of this section.
- (c) *Notice.* The Administrator will provide notice of a general directive to recipients in the **Federal Register**. The notice will include at minimum –
  - (1) A reference to the authority under which the directive is being issued
  - (2) A statement of the purpose of the issuance of the directive, including a description of the subjects or issues involved and a statement of the remedial actions sought; and
  - (3) A statement of the time within which written comments must be received by FTA.
- (d) *Consideration of comments received.* The Administrator will consider all timely comments received. Late filed comments will be considered to the extent practicable.
- (e) *Final notice.* After consideration of timely comments received, the Administrator will publish a notice in the **Federal Register** that includes both a response to comments and a final general directive or a statement rescinding, revising, revoking or suspending the directive.

**§ 670.27 Special directives.**

- (a) *General.* The Deputy Administrator may issue a special directive under this part to one or more named recipients for the following reasons –
  - (1) The Deputy Administrator has reason to believe that a recipient is engaging in conduct, or there is evidence of a pattern or practice of a recipient's conduct, in violation of the Public Transportation Safety Program or any regulation or directive issued under those laws for which the Administrator exercises enforcement authority for safety;
  - (2) The Deputy Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices exists such that there is a substantial risk of death or personal injury, or damage to property or equipment; or
  - (3) For any other purpose where the Deputy Administrator determines that the public interest requires the avoidance or mitigation of a hazard or risk through immediate compliance.
- (b) *Effective date.* A special directive is effective upon notice provided by the Deputy Administrator under paragraph (c) of this section.



- (c) *Notice.* The Deputy Administrator will provide notice to a recipient that is subject to a special directive. The Deputy Administrator may initially provide notice through telephonic or electronic communication; however, written notice will be served by personal service or by U.S. mail following telephonic or electronic communication. Notice will include the following information, at minimum –
- (1) The name of the recipient or recipients to which the directive applies;
  - (2) A reference to the authority under which the directive is being issued; and
  - (3) A statement of the purpose of the issuance of the directive, including a description of the subjects or issues involved, a statement of facts upon which the notice is being issued, a statement of the remedial actions being sought, and the date by which such remedial actions must be taken.
- (d) *Petition for reconsideration.* Within thirty (30) days of service of a notice issued under paragraph (c) of this section, a recipient may file a petition for reconsideration with the Administrator. Unless explicitly stayed or modified by the Administrator, a special directive will remain in effect and must be observed pending review of a petition for reconsideration. Any such petition:
- (1) Must be in writing and signed by a recipient's Accountable Executive or equivalent entity;
  - (2) Must include a brief explanation of why the recipient believes the special directive should not apply to it or why compliance with the special directive is not possible, is not practicable, is unreasonable, or is not in the public interest; and
  - (3) May include relevant information regarding the factual basis upon which the special directive was issued, information in response to any alleged violation or in mitigation thereof, recommend alternative means of compliance for consideration, and any other information deemed appropriate by the recipient.
- (e) *Request for extension.* Upon written request, the Administrator may extend the time for filing a request for reconsideration for good cause shown.
- (f) *Filing a petition for reconsideration.* A petition must be submitted to the Office of the Administrator, Federal Transit Administration, using one of the following methods –
- (1) Email to FTA, sent to an email address provided in the notice of special directive;
  - (2) Facsimile to FTA at 202-366-9854; or
  - (3) Mail to FTA at: FTA, Office of the Administrator, 1200 New Jersey Ave. SE., Washington, DC 20590.
- (g) *Processing of petitions for reconsideration.*
- (1) *General.* Each petition received under this section will be reviewed and disposed of by the Administrator no later than ninety days (90) after receipt of the petition. No hearing, argument or other proceeding will be held directly on a petition before its disposition under this section.
  - (2) *Grants.* If the Administrator determines the petition contains adequate justification, he or she may grant the petition, in whole or in part.
  - (3) *Denials.* If the Administrator determines the petition does not justify modifying, rescinding or revoking the directive, in whole or in part, he or she may deny the petition.



- (4) *Notification.* The Administrator will issue notification to a recipient of his or her decision.
- (h) *Judicial review.* A recipient may seek judicial review in an appropriate United States District Court after a final action of FTA under this section, as provided in 5 U.S.C. 701-706.

**§ 670.29 Advisories.**

In any instance in which the Administrator determines there are hazards or risks to public transportation, the Administrator may issue an advisory which recommends corrective actions, inspections, conditions, limitations or other actions to avoid or mitigate any hazards or risks. The Administrator will issue notice to recipients of an advisory in the **Federal Register**.

**Subpart D – National Public Transportation Safety Plan**

**§ 670.31 Purpose and contents of the National Public Transportation Safety Plan.**

Periodically, FTA will issue a National Public Transportation Safety Plan to improve the safety of all public transportation systems that receive funding under 49 U.S.C. Chapter 53. The National Public Transportation Safety Plan will include the following –

- (a) Safety performance criteria for all modes of public transportation, established through public notice and comment;
- (b) The definition of state of good repair;
- (c) Minimum safety performance standards for vehicles in revenue operations, established through public notice and comment;
- (d) Minimum performance standards for public transportation operations established through public notice and comment;
- (e) The Public Transportation Safety Certification Training Program;
- (f) Safety advisories, directives and reports;
- (g) Best practices, technical assistance, templates and other tools;
- (h) Research, reports, data and information on hazard identification and risk management in public transportation, and guidance regarding the prevention of accidents and incidents in public transportation; and
- (i) Any other content as determined by FTA.



## Section 5329 (as updated by FAST Act)

### § 5329. Public transportation safety program

- (a) DEFINITION.—In this section, the term ‘recipient’ means a State or local governmental authority, or any other operator of a public transportation system, that receives financial assistance under this chapter.
- (b) NATIONAL PUBLIC TRANSPORTATION SAFETY PLAN.—
- (1) IN GENERAL.—The Secretary shall create and implement a national public transportation safety plan to improve the safety of all public transportation systems that receive funding under this chapter.
- (2) CONTENTS OF PLAN.—The national public transportation safety plan under paragraph (1) shall include—
- (A) safety performance criteria for all modes of public transportation;
- (B) the definition of the term ‘state of good repair’ established under section 5326(b);
- (C) minimum safety performance standards for public transportation vehicles used in revenue operations that—
- (i) do not apply to rolling stock otherwise regulated by the Secretary or any other Federal agency; and
- (ii) to the extent practicable, take into consideration—
- (I) relevant recommendations of the National Transportation Safety Board; and
- (II) recommendations of, and best practices standards developed by, the public transportation industry;
- (D) minimum safety standards to ensure the safe operation of public transportation systems that –
- (i) are not related to performance standards for public transportation vehicles developed under subparagraph (C);
- (ii) to the extent practicable, take into consideration –
- (I) relevant recommendations of the National Transportation Safety Board;
- (II) best practices standards developed by the public transportation industry;
- (III) any minimum safety standards or performance criteria being implemented across the public transportation industry;
- (IV) relevant recommendations from the report under section 3020 of the Federal Public Transportation Act of 2015; and
- (V) any additional information that the Secretary determines necessary and appropriate
- (E) a public transportation safety certification training program, as described in subsection (c).
- (c) PUBLIC TRANSPORTATION SAFETY CERTIFICATION TRAINING PROGRAM.—
- (1) IN GENERAL.—The Secretary shall establish a public transportation safety certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation



systems and employees of public transportation agencies directly responsible for safety oversight.

- (2) INTERIM PROVISIONS.—Not later than 90 days after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall establish interim provisions for the certification and training of the personnel described in paragraph (1), which shall be in effect until the effective date of the final rule issued by the Secretary to implement this subsection.
- (d) PUBLIC TRANSPORTATION AGENCY SAFETY PLAN.—
  - (1) IN GENERAL.—Effective 1 year after the effective date of a final rule issued by the Secretary to carry out this subsection, each recipient or State, as described in paragraph (3), shall certify that the recipient or State has established a comprehensive agency safety plan that includes, at a minimum—
    - (A) a requirement that the board of directors (or equivalent entity) of the recipient approve the agency safety plan and any updates to the agency safety plan;
    - (B) methods for identifying and evaluating safety risks throughout all elements of the public transportation system of the recipient;
    - (C) strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions;
    - (D) a process and timeline for conducting an annual review and update of the safety plan of the recipient;
    - (E) performance targets based on the safety performance criteria and state of good repair standards established under subparagraphs (A) and (B), respectively, of subsection (b)(2);
    - (F) assignment of an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the recipient; and
    - (G) a comprehensive staff training program for the operations personnel and personnel directly responsible for safety of the recipient that includes—
      - (i) the completion of a safety training program; and
      - (ii) continuing safety education and training.
  - (2) INTERIM AGENCY SAFETY PLAN—A system safety plan developed pursuant to part 659 of title 49, Code of Federal Regulations, as in effect on the date of enactment of the Federal Public Transportation Act of 2012, shall remain in effect until such time as this subsection takes effect.
  - (3) PUBLIC TRANSPORTATION AGENCY SAFETY PLAN DRAFTING AND CERTIFICATION.—
    - (A) SECTION 5311.—For a recipient receiving assistance under section 5311, a State safety plan may be drafted and certified by the recipient or a State.
    - (B) SECTION 5307.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a rule designating recipients of assistance under section 5307 that are small public transportation providers or systems that may have their State safety plans drafted or certified by a State.
- (e) STATE SAFETY OVERSIGHT PROGRAM.—
  - (1) APPLICABILITY—This subsection applies only to eligible States.



- (2) DEFINITION.—In this subsection, the term ‘eligible State’ means a State that has—
- (A) a rail fixed guideway public transportation system within the jurisdiction of the State that is not subject to regulation by the Federal Railroad Administration; or
  - (B) a rail fixed guideway public transportation system in the engineering or construction phase of development within the jurisdiction of the State that will not be subject to regulation by the Federal Railroad Administration.
- (3) IN GENERAL.—In order to obligate funds apportioned under section 5338 to carry out this chapter, effective 3 years after the date on which a final rule under this subsection becomes effective, an eligible State shall have in effect a State safety oversight program approved by the Secretary under which the State—
- (A) assumes responsibility for overseeing rail fixed guideway public transportation safety;
  - (B) adopts and enforces Federal and relevant State laws on rail fixed guideway public transportation safety;
  - (C) establishes a State safety oversight agency;
  - (D) determines, in consultation with the Secretary, an appropriate staffing level for the State safety oversight agency that is commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems in the eligible State;
  - (E) requires that employees and other designated personnel of the eligible State safety oversight agency who are responsible for rail fixed guideway public transportation safety oversight are qualified to perform such functions through appropriate training, including successful completion of the public transportation safety certification training program established under subsection (c); and
  - (F) prohibits any public transportation agency from providing funds to the State safety oversight agency or an entity designated by the eligible State as the State safety oversight agency under paragraph (4).
- (4) STATE SAFETY OVERSIGHT AGENCY.—
- (A) IN GENERAL.—Each State safety oversight program shall establish a State safety oversight agency that—
- (i) is financially and legally independent from any public transportation entity that the State safety oversight agency oversees;
  - (ii) does not directly provide public transportation services in an area with a rail fixed guideway public transportation system subject to the requirements of this section;
  - (iii) does not employ any individual who is also responsible for the administration of rail fixed guideway public transportation programs subject to the requirements of this section;
  - (iv) has the authority to review, approve, oversee, and enforce the implementation by the rail fixed guideway public transportation agency of the public transportation agency safety plan required under subsection (d);
  - (v) has investigative and enforcement authority with respect to the safety of rail fixed guideway public transportation systems of the eligible State;



- (vi) audits, at least once triennially, the compliance of the rail fixed guideway public transportation systems in the eligible State subject to this subsection with the public transportation agency safety plan required under subsection (d); and
  - (vii) provides, at least once annually, a status report on the safety of the rail fixed guideway public transportation systems the State safety oversight agency oversees to—
    - (I) the Federal Transit Administration;
    - (II) Governor of the eligible State; and
    - (III) the board of directors, or equivalent entity, of any rail fixed guideway public transportation system that the State safety oversight agency oversees.
- (B) WAIVER.—At the request of an eligible State, the Secretary may waive clauses (i) and (iii) of subparagraph (A) for eligible States with 1 or more rail fixed guideway systems in revenue operations, design, or construction, that—
- (i) have fewer than 1,000,000 combined actual and projected rail fixed guideway revenue miles per year; or
  - (ii) provide fewer than 10,000,000 combined actual and projected unlinked passenger trips per year.
- (5) PROGRAMS FOR MULTI-STATE RAIL FIXED GUIDEWAY PUBLIC TRANSPORTATION SYSTEMS.—An eligible State that has within the jurisdiction of the eligible State a rail fixed guideway public transportation system that operates in more than 1 eligible State shall—
- (A) jointly with all other eligible States in which the rail fixed guideway public transportation system operates, ensure uniform safety standards and enforcement procedures that shall be in compliance with this section, and establish and implement a State safety oversight program approved by the Secretary; or
  - (B) jointly with all other eligible States in which the rail fixed guideway public transportation system operates, designate an entity having characteristics consistent with the characteristics described in paragraph (3) to carry out the State safety oversight program approved by the Secretary.
- (6) GRANTS.—
- (A) IN GENERAL.—The Secretary shall make grants to eligible States to develop or carry out State safety oversight programs under this subsection. Grant funds may be used for program operational and administrative expenses, including employee training activities.
  - (B) APPORTIONMENT.—
    - (i) FORMULA.—The amount made available for State safety oversight under section 5336(h) shall be apportioned among eligible States under a formula to be established by the Secretary. Such formula shall take into account fixed guideway vehicle revenue miles, fixed guideway route miles, and fixed guideway vehicle passenger miles attributable to all rail fixed guideway systems not subject to regulation by the Federal Railroad Administration within each eligible State.
    - (ii) ADMINISTRATIVE REQUIREMENTS.—Grant funds apportioned to States under this paragraph shall be subject to uniform administrative requirements for





grants and cooperative agreements to State and local governments under part 18 of title 49, Code of Federal Regulations, and shall be subject to the requirements of this chapter as the Secretary determines appropriate.

(C) GOVERNMENT SHARE.—

- (i) IN GENERAL.—The Government share of the reasonable cost of a State safety oversight program developed or carried out using a grant under this paragraph shall be 80 percent.
- (ii) IN-KIND CONTRIBUTIONS—Any calculation of the non-Government share of a State safety oversight program shall include in-kind contributions by an eligible State.
- (iii) NON-GOVERNMENT SHARE.—The non-Government share of the cost of a State safety oversight program developed or carried out using a grant under this paragraph may not be met by—
  - (I) any Federal funds;
  - (II) any funds received from a public transportation agency; or
  - (III) any revenues earned by a public transportation agency.
- (iv) SAFETY TRAINING PROGRAM.—Recipients of funds made available to carry out sections 5307 and 5311 may use not more than 0.5 percent of their formula funds to pay not more than 80 percent of the cost of participation in the public transportation safety certification training program established under subsection (c), by an employee of a State safety oversight agency or a recipient who is directly responsible for safety oversight.

(7) CERTIFICATION PROCESS.—

- (A) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall determine whether or not each State safety oversight program meets the requirements of this subsection and the State safety oversight program is adequate to promote the purposes of this section.
- (B) ISSUANCE OF CERTIFICATIONS AND DENIALS.—The Secretary shall issue a certification to each eligible State that the Secretary determines under subparagraph (A) adequately meets the requirements of this subsection, and shall issue a denial of certification to each eligible State that the Secretary determines under subparagraph (A) does not adequately meet the requirements of this subsection.
- (C) DISAPPROVAL.—If the Secretary determines that a State safety oversight program does not meet the requirements of this subsection and denies certification, the Secretary shall transmit to the eligible State a written explanation and allow the eligible State to modify and resubmit the State safety oversight program for approval.
- (D) FAILURE TO CORRECT.—If the Secretary determines that a modification by an eligible State of the State safety oversight program is not sufficient to certify the program, the Secretary—
  - (i) shall notify the Governor of the eligible State of such denial of certification and failure to adequately modify the program, and shall request that the Governor



take all possible actions to correct deficiencies in the program to ensure the certification of the program; and

(ii) may—

- (I) withhold funds available under paragraph (6) in an amount determined by the Secretary;
- (II) withhold not more than 5 percent of the amount required to be appropriated for use in a State or urbanized area in the State under section 5307 of this title, until the State safety oversight program has been certified; or
- (III) require fixed guideway public transportation systems under such State safety oversight program to provide up to 100 percent of Federal assistance made available under this chapter only for safety-related improvements on such systems, until the State safety oversight program has been certified.

(8) FEDERAL SAFETY MANAGEMENT –

(A) In General – If the Secretary determines that a State safety oversight program is not being carried out in accordance with this section, has become inadequate to ensure the enforcement of Federal safety regulation, or is incapable of providing adequate safety oversight consistent with the prevention of substantial risk of death, or personal injury, the Secretary shall administer the State safety oversight program until the eligible State develops a State safety oversight program certified by the Secretary in accordance with this subsection.

(B) Temporary Federal Oversight – In making a determination under subparagraph (A), the Secretary shall –

- (i) Transmit to the eligible State and affected recipient or recipients, a written explanation of the determination of subsequent finding, including any intention to withhold funding under this section, the amount of funds proposed to be withheld, and if applicable, a formal notices of a withdrawal of State safety oversight program approval; and
- (ii) Require the State to submit a State safety oversight program or modification for certification by the Secretary that meets the requirements of this subsection

(C) Failure to Correct – If the Secretary determines in accordance with subparagraph (A), that a State safety oversight program or modification required pursuant to subparagraph (B)(ii), submitted by a State is not sufficient, the Secretary may –

- (i) Withhold funds available under paragraph (6) in an amount determined by the Secretary;
- (ii) Beginning 1 year after the date of the determination, withhold not more than 5 percent of the amount required to be appropriated for use in a State or an urbanized area in the State under section 5307, until the State safety oversight program or modification has been certified; and
- (iii) Use any other authorities authorized under this chapter considered necessary and appropriate.

(D) Administrative and Oversight Activities – To carry out administrative and oversight activities authorized by this paragraph, the Secretary may use grant funds



apportioned to an eligible State, under paragraph (6), to develop or carry out a State safety oversight program.

- (9) **EVALUATION OF PROGRAM AND ANNUAL REPORT.**—The Secretary shall continually evaluate the implementation of a State safety oversight program by a State safety oversight agency, and shall submit on or before July 1 of each year to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on—
- (A) the amount of funds apportioned to each eligible State; and
  - (B) the certification status of each State safety oversight program, including what steps a State program that has been denied certification must take in order to be certified.
- (10) **FEDERAL OVERSIGHT.**—The Secretary shall—
- (A) oversee the implementation of each State safety oversight program under this subsection;
  - (B) audit the operations of each State safety oversight agency at least once triennially; and
  - (C) issue rules to carry out this subsection.
- (f) **AUTHORITY OF SECRETARY.**—In carrying out this section, the Secretary may—
- (1) conduct inspections, investigations, audits, examinations, and testing of the equipment, facilities, rolling stock, and operations of the public transportation system of a recipient;
  - (2) make reports and issue directives with respect to the safety of the public transportation system of a recipient or the public transportation industry generally;
  - (3) in conjunction with an accident investigation or an investigation into a pattern or practice of conduct that negatively affects public safety, issue a subpoena to, and take the deposition of, any employee of a recipient or a State safety oversight agency, if—
    - (A) before the issuance of the subpoena, the Secretary requests a determination by the Attorney General of the United States as to whether the subpoena will interfere with an ongoing criminal investigation; and
    - (B) the Attorney General—
      - (i) determines that the subpoena will not interfere with an ongoing criminal investigation; or
      - (ii) fails to make a determination under clause (i) before the date that is 30 days after the date on which the Secretary makes a request under subparagraph (A);
  - (4) require the production of documents by, and prescribe recordkeeping and reporting requirements for, a recipient or a State safety oversight agency;
  - (5) investigate public transportation accidents and incidents and provide guidance to recipients regarding prevention of accidents and incidents;
  - (6) at reasonable times and in a reasonable manner, enter and inspect equipment, facilities, rolling stock, operations, and relevant records of the public transportation system of a recipient; and
  - (7) issue rules to carry out this section.
- (g) **ENFORCEMENT ACTIONS.**—



- (1) TYPES OF ENFORCEMENT ACTIONS.—The Secretary may take enforcement action against a recipient, that does not comply with Federal law with respect to the safety of the public transportation system, including—
  - (A) issuing directives;
  - (B) requiring more frequent oversight of the recipient by a State safety oversight agency or the Secretary;
  - (C) imposing more frequent reporting requirements;
  - (D) requiring that any Federal financial assistance provided under this chapter be spent on correcting safety deficiencies identified by the Secretary or the State safety oversight agency before such funds are spent on other projects; and
  - (E) withholding not more than 25 percent of financial assistance under section 5307.
- (2) USE OR WITHHOLDING OF FUNDS.—
  - (A) IN GENERAL.—The Secretary may require the use of funds or withhold funds in accordance with paragraph (1)(D) or (1)(E) only if the Secretary finds that a recipient is engaged in a pattern or practice of serious safety violations or has otherwise refused to comply with Federal law relating to the safety of the public transportation system.
  - (B) NOTICE.—Before withholding funds from a recipient, the Secretary shall provide to the recipient—
    - (i) written notice of a violation and the amount proposed to be withheld; and
    - (ii) a reasonable period of time within which the recipient may address the violation or propose and initiate an alternative means of compliance that the Secretary determines is acceptable.
- (h) RESTRICTIONS AND PROHIBITIONS—
  - (1) Restrictions and Prohibitions – The Secretary shall issue restrictions and prohibitions by whatever means are determined necessary and appropriate, without regard to section 5334(c), if, through testing, inspection, investigation, audit, or research carried out under this chapter, the Secretary determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, exist such that there is a substantial risk of death or personal injury.
  - (2) Notice – The notice of restriction or prohibition shall describe the condition or practice, the subsequent risk and the standards and procedures required to address the restriction or prohibition.
  - (3) Continued Authority – Nothing in this subsection shall be construed as limiting the Secretary’s authority to maintain a restriction or prohibition for as long as is necessary to ensure that the risk has been substantially addressed.
- (i) CONSULTATION BY THE SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall consult with the Secretary of Transportation before the Secretary of Homeland Security issues a rule or order that the Secretary of Transportation determines affects the safety of public transportation design, construction, or operations.
- (j) ACTIONS UNDER STATE LAW.—



- (1) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with—
  - (A) a Federal standard of care established by a regulation or order issued by the Secretary under this section; or
  - (B) its own program, rule, or standard that it created pursuant to a rule or order issued by the Secretary.
- (2) **EFFECTIVE DATE.**—This subsection shall apply to any cause of action under State law arising from an event or activity occurring on or after the date of enactment of the Federal Public Transportation Act of 2012.
- (3) **JURISDICTION.**—Nothing in this section shall be construed to create a cause of action under Federal law on behalf of an injured party or confer Federal question jurisdiction for a State law cause of action.
- (k) **NATIONAL PUBLIC TRANSPORTATION SAFETY REPORT.**—Not later than 3 years after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—
  - (1) analyzes public transportation safety trends among the States and documents the most effective safety programs implemented using grants under this section; and
  - (2) describes the effect on public transportation safety of activities carried out using grants under this section.