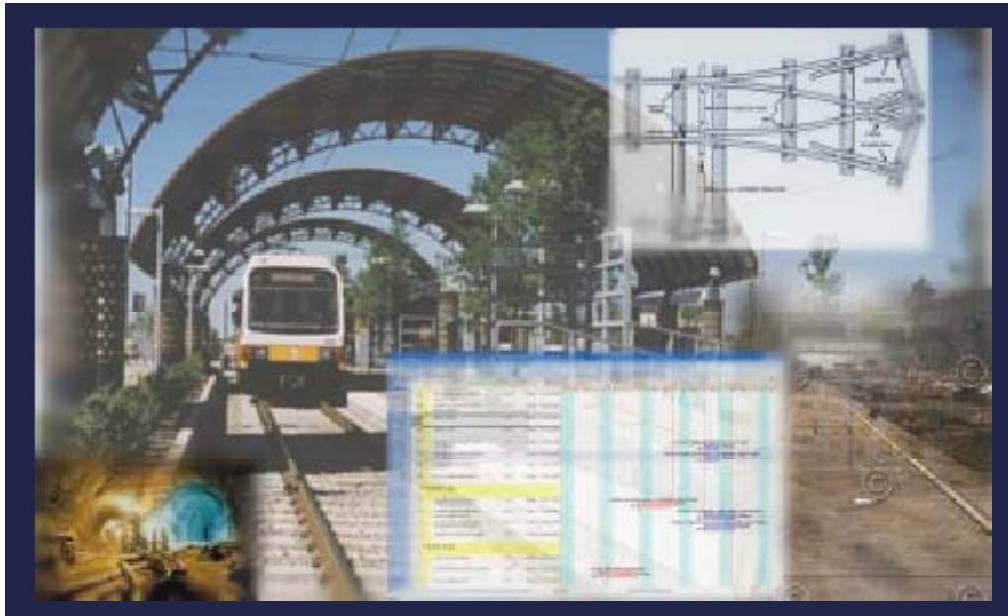




U.S. Department
of Transportation
**Federal Transit
Administration**

Implementation Guidelines for 49 CFR Part 659

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Preface

To address the changing needs of the growing State Safety and Security Oversight (SSO) community, as well as to reflect experience from almost a decade of implementing the Rule, the Federal Transit Administration (FTA) recently amended 49 CFR Part 659, *Rail Fixed Guideway Systems; State Safety Oversight*. FTA's revised Rule was published in the *Federal Register* on April 29, 2005. The revised Rule is available at:

- <http://www.gpoaccess.gov/fr/index.html> (Government Printing Office); or
- <http://www.fta.dot.gov> (click Safety and Security).

These *Implementation Guidelines for 49 CFR Part 659* have been prepared to assist states and rail transit agencies in developing compliant programs based on the revised FTA Rule. To ensure program consistency, these guidelines build on previous guidance provided to the affected SSO community in FTA's *49 CFR Part 659 Reference Guide*, released on June 22, 2005. These guidelines also incorporate practices and recommendations from the complement of technical assistance tools previously developed for the SSO program, including templates, reports, training workshops, seminars, web-based resources, and previously published documents.

As specified in § 659.39(a), each state oversight agency with a rail fixed guideway system that is in passenger operations as of April 29, 2005, or that will begin passenger operations by May 1, 2006, must make its Initial Submission to FTA by **May 1, 2006**. § 659.39(b) explains that "an initial submission must include the following: (1) oversight agency program standard and referenced procedures; and (2) certification that the System Safety Program Plan and the System Security Plan have been developed, reviewed, and approved."

To support the activities of states, oversight agencies and rail transit agencies in preparing these submissions by May 1, 2006, these guidelines provide a comprehensive, up-to-date summary of FTA's regulatory requirements, incorporating into one publication all of the guidance FTA has issued over the past several years. These guidelines explain the various elements of a compliant program and reference examples of documents, checklists, forms, and procedures that may be used by states and rail transit agencies in formulating their programs.

The attached CD-ROM and the *Resource Toolkit for State Oversight Agencies Implementing 49 CFR Part 659* provide templates that can be used by states and rail transit agencies to develop program materials that address minimum FTA requirements. The materials also provide examples of effective practices and approaches.

States and rail transit agencies developing or improving their programs can use these guidelines and supporting resources to create materials compliant with the revised Rule's requirements. States and rail transit agencies with well-established programs can use these guidelines to assess their level of compliance, validate policies and procedures, and identify areas that may require modification based on the revised Rule.

The guidelines, the supporting CD-ROM and the *Resource Toolkit for State Oversight Agencies Implementing 49 CFR Part 659* were issued in **draft form** to the community of state oversight and rail transit agencies affected by 49 CFR Part 659 in October 2005. FTA received comments on these materials through **Friday, December 2, 2005**. FTA issued these materials in draft form to expedite the release of FTA guidance to support initiatives at state oversight and rail transit agencies to modify existing materials to address the revised Rule. FTA also chose to provide the entire affected SSO community with the opportunity to make comments on these materials. Suggestions, comments, questions and other information were conveyed to FTA by the SSO community during the final review and approval of these materials.

Preparation of these *Implementation Guidelines* was greatly aided by the generous contribution of materials and advice from safety and security professionals at state oversight and rail transit agencies and industry associations. Specifically, FTA's State Safety and Security Oversight Team would like to thank:

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- Bill Grizard, American Public Transportation Association
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- Henry Hartberg, Dallas Area Rapid Transit
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IMPLEMENTATION GUIDELINES

49 CFR PART 659

Chapter 1: Introduction

Background

The Federal Transit Administration (FTA) works to achieve the highest practical level of safety and security for the public transportation industry and state and local authorities. In achieving this outcome, FTA provides an extensive program of technical assistance, including guidelines, resource CD-ROMs, a safety and security webpage, newsletters, safety studies, voluntary on-site reviews, workshops and seminars, and a suite of transit safety and security training courses, administered through the National Transit Institute (NTI) and the Transportation Safety Institute (TSI).

From its authority to condition the receipt of grant funds (49 U.S.C. § 4324(c)), FTA also exercises regulatory authority, administering programs that place safety and security requirements on transit grantees and state agencies. Failure to comply with these requirements can result in the withholding of FTA funds.

Since the mid-to-late-1990s, FTA's State Safety and Security Oversight (SSO) Program has emerged as one of the primary mechanisms through which FTA works with states and rail transit industry to ensure safety and security. The SSO Program combines elements of regulation and technical assistance.

In developing, monitoring and evaluating this program, FTA works closely with the states, the rail transit industry, the American Public Transportation Association (APTA), the National Transportation Safety Board (NTSB) and the Federal Railroad Administration (FRA). To address emerging transportation security issues, FTA has established a Memorandum of Agreement (MOA) with the Department of Homeland Security (DHS), and coordinates with DHS agencies to address DHS authority and guidance in FTA program activities. FTA reports annually on the performance of the SSO program to Congress, and also integrates SSO program activities into other FTA initiatives for safety, security, emergency preparedness, program management oversight, and grants management.

FTA's Safety and Security website is available at: www.fta.dot.gov (click on Safety and Security).

Information can be obtained on FTA's safety and security training at: <http://www.ntionline.com/> (the National Transit Institute) and at: <http://www.tsi.dot.gov/> (the Transportation Safety Institute.)

Creation of FTA's SSO Program

In response to the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which added Section 28 to the Federal Transit Act (codified at 49 U.S.C. Section 5330), FTA published a set of regulations creating the first-ever, state-managed safety and security oversight program for rail transit agencies not regulated by FRA.

This regulation was published as "Rail Fixed Guideway Systems; State Safety Oversight" on December 27, 1995 (codified at 49 CFR Part 659), subsequently referred to as the SSO Rule or Part 659. The safety requirements for Part 659 went into effect on January 1, 1997, and the security requirements went into effect one year later.

At the time of its publication, only five (5) states affected by the SSO Rule had active oversight programs in place for rail transit safety and security, and no state or rail transit agency fully met all Part 659 requirements. During the first few years of Part 659 implementation, FTA worked with states to develop compliant programs, and to ensure approved submissions documenting their activities to address Part 659 requirements for the rail transit agencies within their jurisdictions.

Beginning in the fall of 1998, FTA initiated its program, required in 49 CFR Part 659.7, for monitoring the implementation of the SSO Rule by states and rail transit agencies. To manage this program, FTA has:

- Established its SSO Audit Program, to review oversight agency implementation of 49 CFR Part 659 requirements and provide technical assistance;
- every year, hosted a three-and-a-half-day workshop for the states and rail transit agencies, addressing both safety and security topics and providing training;
- reviewed and approved submissions from oversight agencies;
- provided safety and security technical assistance in the form of guidelines, newsletters, training, presentations, and specific support as requested by an individual state oversight agency or rail transit agency;
- conducted special studies to address emerging safety and security issues;
- established working groups with state oversight agencies and rail transit agencies to address program implementation issues;
- coordinated with other FTA safety and security programs, to support the review and dissemination of materials to state oversight and rail transit agencies;
- coordinated with external agencies, such as NTSB, FRA and DHS, regarding the program; and
- prepared an annual report on the state of the program.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFTEA-LU) was passed by Congress and signed by the President in August 2005 as the successor to the Transportation Efficiency Act for the 21st Century (TEA-21), which reauthorized the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991.

It is available at <http://www.house.gov/rules/109textTEALU.htm>.

Since 2001, in response to the growing number of New Starts projects nearing revenue service, FTA has also conducted a series of readiness reviews at New Starts systems and their oversight agencies. FTA has also coordinated closely among its Office of Safety and Security, Regional Offices, and the Project Management Oversight (PMO) Program, administered by FTA's Office of Engineering, to identify and evaluate safety and security issues for New Starts projects.

Revision of 49 CFR Part 659

Since publication of the initial rule in 1995, the community affected by this program has grown from 19 states and 32 rail transit agencies to 26 states and 43 rail transit agencies. By 2009, FTA anticipates that two (2) new states and as many as seven (7) new rail transit agencies may have entered the program.

Over the last decade, the SSO program has grown from 19 states and 32 rail transit agencies to 26 states and 43 rail transit agencies.

In part to address the changing needs of this growing community, as well as to reflect experience from almost a decade of implementing the Rule, FTA recently amended 49 CFR Part 659, publishing the revised Rule in the *Federal Register* on April 29, 2005. The revised Rule adds clarifying sections, further specification concerning what the state must require to monitor safety and security of rail transit systems, and incorporates into the body of the regulation material previously incorporated by reference. FTA believes that this Rule revision will: (1) enhance program efficiency; (2) increase responsiveness to recommendations from NTSB and the results of analysis regarding emerging safety and security issues; (3) improve consistency in the collection and analysis of safety and security data; and (4) improve performance of the rail transit industry's hazard management process.

The Rule also clarifies FTA's oversight management objectives, and streamlines current reporting requirements, including the change from paper reporting to electronic reporting. Finally, the revised Rule addresses heightened concerns for rail transit security and emergency preparedness. As specified in the revised 49 CFR Part 659, the Rule's new requirements must be implemented by states and rail transit agencies beginning on **May 1, 2006**. **Appendix A** provides a copy of FTA's revised Rule.

Purpose and Scope of Implementation Guidelines

These guidelines have been prepared to assist states and rail transit agencies in developing compliant programs based on the revised FTA Rule. To ensure program consistency, these guidelines build on previous guidance provided to the affected SSO community in FTA's *49 CFR Part 659 Reference Guide*, released on June 22, 2005.

These guidelines also incorporate practices and recommendations from the complement of technical assistance tools previously developed for the SSO program, including templates, reports, training workshops, seminars, web-based resources, and previously published documents, such as FTA's:

- *Implementation Guidelines for State Safety Oversight of Rail Fixed Guideway Systems* (1996);
- *Transit Security Handbook* (1998);
- *Technical Advisory for the Notification and Investigation of Accidents and Unacceptable Hazardous Conditions* (1999);
- *Critical Incident Management Guidelines* (1999);
- *Compliance Guidelines for States with New Starts Projects* (2000);
- *Hazard Analysis Guidelines for Transit Projects* (2000);
- *Keeping Safety on Track* brochure series (2000 and 2001);
- *Safety Certification Handbook* (2002);
- *Public Transportation System Security and Emergency Preparedness Planning Guide* (2003);
- *FTA's Top 20 Security Action Items Website* (2003 and 2004); and
- *Transit Security Design Considerations* (2005).

These guidelines provide a comprehensive, up-to-date summary of the regulatory requirements, incorporating into one publication all of the guidance FTA has issued over the past several years. These guidelines explain the various elements of a compliant program and reference examples of documents, checklists, forms, and procedures that may be used by states and rail transit agencies in formulating their programs.

The attached CD-ROM and the *Resource Toolkit for State Oversight Agencies Implementing 49 CFR Part 659* provide templates that can be used by states and rail transit agencies to develop program materials that address minimum FTA requirements, as well as examples of effective practices and approaches.

States and rail transit agencies can use these guidelines and supporting resources to create programs compliant with the revised Rule's requirements. States and rail transit agencies with well-established programs can use these guidelines to assess their level of compliance, validate policies and procedures, and identify areas that may require modification based on the revised Rule.

The following required elements of an SSO program, specified in the revised 49 CFR Part 659, are discussed:

- Designating an SSO agency (§ 659.9);
- Developing a program standard and supporting procedures (§ 659.15);
- Requiring, reviewing and approving rail transit agency System Safety Program Plans (SSPPs) (§ 659.17 and § 659.19);
- Requiring, reviewing and approving rail transit agency System Security Plans (Security Plans) (§ 659.21 and § 659.23);
- Requiring an annual cycle for rail transit agencies to review SSPPs and Security Plans to determine if they should be updated (§ 659.25);
- Requiring and overseeing implementation of the rail transit agency internal safety and security audit program and requiring, reviewing and approving annual reports and certifications from rail transit agencies (§ 659.27);
- Requiring and overseeing implementation of the rail transit agency hazard management process (§ 659.31);

- Requiring and receiving notification of accidents meeting the revised Part 659 thresholds (§ 659.33);
- Conducting investigations of accidents meeting the revised Part 659 thresholds (§ 659.35);
- Conducting Three-Year safety and security reviews at rail transit agencies (§ 659.29);
- Requiring, reviewing, approving and tracking corrective action plans for findings from accident investigations and Three-Year reviews (§ 659.37); and
- Reporting to FTA (§ 659.39).

States and rail transit agencies may go beyond these requirements to incorporate additional features into their programs that are not mandated by the revised FTA Rule. Additional provisions that go beyond the regulatory requirements must be clearly represented as features included under the authority of the state and not the FTA-mandated program.

How to Use these Guidelines

The guidelines are organized by topics addressed in the revised Rule, and each topic is discussed in the general order it would be confronted in the actual formulation and implementation of an SSO Program. Corresponding reference documents, forms, and checklists are included in the *Resource Toolkit for State Oversight Agencies Implementing 49 CFR Part 659*, which accompanies these guidelines. These materials were designed to meet the minimum regulatory requirements contained in 49 CFR Part 659. The CD-ROM contains documents and resources that amplify basic information in the guidelines and provide specific details on subjects that may be ancillary to the guidelines or applicable only to certain situations or rail transit operations.

These guidelines focus on developing programs that meet FTA's minimum regulatory requirements. As such, they support the efforts of states and rail transit agencies to develop compliant and defensible programs. These guidelines do not take precedence over or alter any requirement established under FTA or DOT regulations.

Certain key words are used throughout the text to assist in differentiating between required program elements and optional suggestions for a better program. Statements in this manual that refer to regulatory requirements contain the words "shall" or "must: (e.g., "A program standard shall address the nine elements contained in § 659.15."). Program elements not explicitly required by regulations, but suggested as an integral part of successful implementation, are generally addressed using the word "should." Optional elements, or those program features that have several acceptable alternatives, are normally expressed by use of the word "may." Examples of activities that could be performed or specified by the oversight agency also use the word "may."

Key words are used throughout the guidelines to distinguish between required program elements and recommended alternatives. "Must" and "shall" refer to required minimum activities; "should" and "may" address recommendations or alternatives.

Chapter 2: Affected SSO Community

Definition of Rail Fixed Guideway System

The revised 49 CFR Part 659 applies to all states with rail fixed guideway systems operating in their jurisdictions. As specified in § 659.5, a rail fixed guideway system is defined as: “any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that:

- is not regulated by the Federal Railroad Administration; and
- is included in FTA’s calculation of fixed guideway route miles or receives funding under FTA’s formula program for urbanized areas (49 U.S.C. 5336); or
- has submitted documentation to FTA indicating its intent to be included in FTA’s calculation of fixed guideway route miles to receive funding under FTA’s formula program for urbanized areas (49 U.S.C. 5336).”

In the revised Rule, the definition of rail fixed guideway system now includes those systems built entirely without FTA capital funds, but that intend to receive formula funding for operations based on their submission of fixed guideway route miles to FTA. Examples of these systems include Houston’s METRORail System and the New Jersey Transit RiverLINE System.

FTA’s revised Rule refers to all entities that operate a rail fixed guideway system as “rail transit agencies.” Only states with rail transit agencies that meet the definition of rail fixed guideway system, as specified in § 659.5, must comply with 49 CFR Part 659 requirements.

The revised Rule uses the term “rail fixed guideway system” and the acronym RFGS to refer to the physical systems designed and operated to provide passenger service. Entities operating RFGS are referred to as “rail transit agencies.”

Table 1 provides a listing of affected states, oversight agencies and rail transit agencies, organized by FTA region. Figure 1 provides a map showing the locations of the affected states and rail transit agencies by FTA region. Figure 2 provides a map showing the seven (7) additional rail transit systems and two (2) additional states that may be joining the SSO program through 2009.

It should be noted that Table 1 and Figures 1 and 2 are based on current FTA information regarding the SSO community. In response to recent events and on-going New Starts project activity, this listing of affected states and rail transit agencies is subject to change.

Table 1: Affected SSO Community

FTA Region	State	State Oversight Agency	Rail Transit Agency	Modes of Service
1	MA	Massachusetts Department of Telecommunications and Energy	Massachusetts Bay Transportation Authority	Heavy Rail, Light Rail
2	NJ	New Jersey Department of Transportation	New Jersey Transit – Newark City Subway	Light Rail
			New Jersey Transit – Hudson-Bergen	Light Rail
			New Jersey Transit – River Line	Light Rail
			Port Authority Transit Corporation	Heavy Rail
	NY	New York Public Transportation Safety Board	New York City Transit	Heavy Rail
			Niagara Frontier Transit Authority	Light Rail
3	DC/V A/MD	Tri-State Oversight Committee	Washington Metropolitan Area Transit Authority	Heavy Rail
	MD	Maryland Department of Transportation	Maryland Transit Administration	Heavy Rail, Light Rail
	PA	Pennsylvania Department of Transportation	Southeastern Pennsylvania Transit Authority	Heavy Rail, Light Rail
			Port Authority of Allegheny County	Light Rail, Inclined Plane
			Cambria County Transit Authority	Inclined Plane
4	FL	Florida Department of Transportation	Metro-Dade Transit Authority	Heavy Rail, Automated Guideway
			Jacksonville Transportation Authority	Automated Guideway
			Hillsborough Area Regional Transit	Light Rail
	GA	Georgia Department of Transportation	Metropolitan Atlanta Rapid Transit Authority	Heavy Rail
	NC	North Carolina Department of Transportation	Charlotte Area Transit System – Trolley Line	Light Rail
	PR	Puerto Rico State Emergency and Disaster Management Agency	Tren Urbano	Heavy Rail
	TN	Tennessee Department of Transportation	Chattanooga Area Rapid Transit Authority	Inclined Plan
			Memphis Area Transit Authority	Light Rail
5	IL	Regional Transportation Authority	Chicago Transit Authority	Heavy Rail
	MI	Michigan Department of Transportation	Detroit Department of Transportation – Detroit People Mover	Automated Guideway
	MN	Minnesota Department of Public Safety/ State Patrol	Hiawatha Metro Transit	Light Rail
	OH	Ohio Department of Transportation	Greater Cleveland Regional Transit Authority	Heavy Rail, Light Rail
	WI	Wisconsin Department of Transportation	Kenosha Transit	Light Rail
6	AR	Arkansas State Highway and Transportation Department	Little Rock River Rail	Light Rail
	LA	Louisiana Department of Transportation and Development	New Orleans Regional Transit Authority	Light Rail
	TX	Texas Department of Transportation	Galveston Island Transit	Light Rail
			Dallas Area Rapid Transit	Light Rail
			Metropolitan Transit Authority of Harris County	Light Rail
7	IL	St. Clair County Transit District	Bi-State Development Agency(Saint Louis Metro)	Light Rail
	MO	Missouri Department of Transportation		
8	CO	Colorado Public Utilities Commission	Denver Regional Transit District	Light Rail
	UT	Utah Department of Transportation	Utah Transit Authority	Light Rail
9	CA	California Public Utilities Commission	Bay Area Rapid Transit	Heavy Rail
			Los Angeles County Metropolitan Transportation Authority	Heavy Rail, Light Rail
			San Francisco Municipal Railway	Light Rail, Cable Cars
			San Diego Trolley, Inc.	Light Rail
			Sacramento Regional Transit District	Light Rail
			Santa Clara Valley Transit Authority	Light Rail
10	OR	Oregon Department of Transportation	Portland Tri-Met	Light Rail
			Portland Streetcar	Light Rail
	WA	Washington State Department of Transportation	Seattle Center Monorail	Automated Guideway
			Sound Transit – Tacoma Link	Light Rail

Figure 1: SSO Community Map (2005)

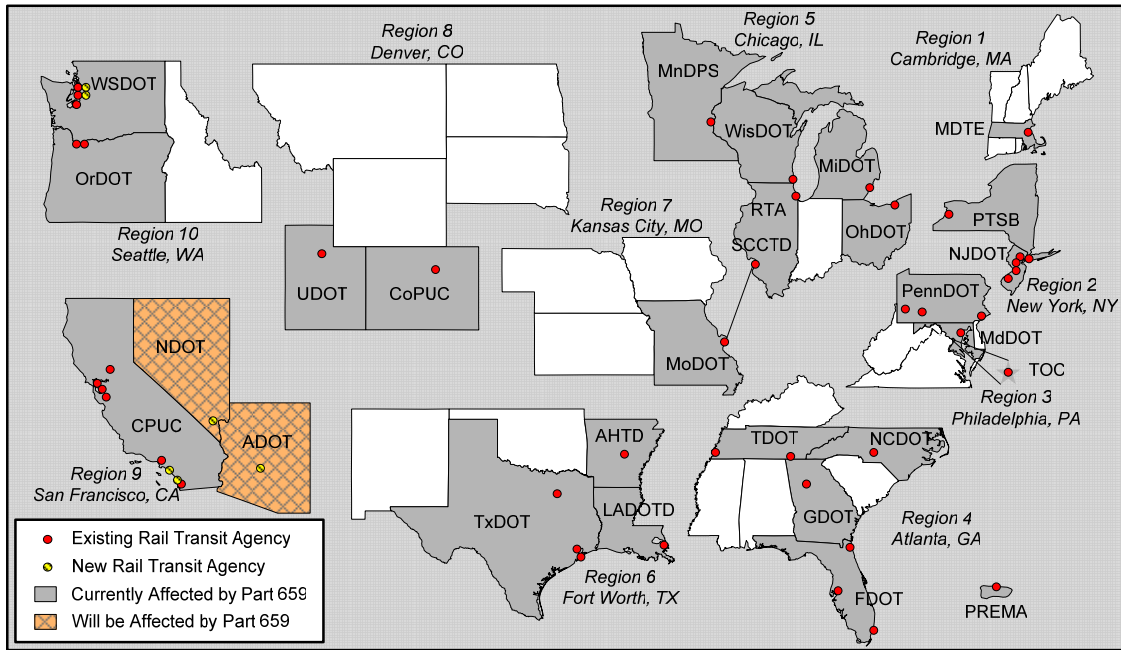
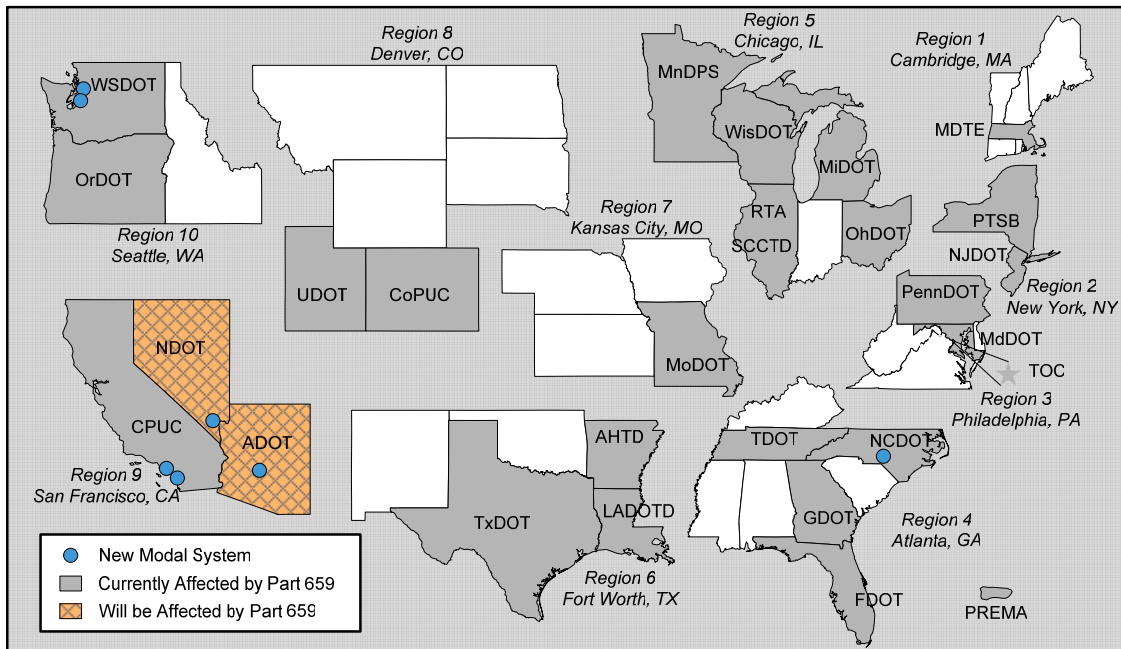


Figure 2: Potential SSO Community Additions (2006 to 2009)



Affected States

The 26 affected states have designated a range of agencies to implement 49 CFR Part 659 requirements. As shown in Table 2, the majority of oversight agencies are divisions of state departments of transportation, empowered by enabling legislation or gubernatorial executive order to implement Part 659 regulations. States have also selected public utilities commissions, boards and committees, regional transportation authorities, emergency management agencies and departments of public safety to carry out these requirements.

Table 2: State Oversight Agency Designations

OVERSIGHT AGENCY DESIGNATIONS: 2005	
AGENCIES	NUMBER
State Department of Transportation	17
State Utilities Commission or Regulator	3
Regional or County Transportation Authority	2
Multi-state Oversight Committee	1
State Transportation Safety Board	1
State Emergency Management Agency or Public Safety Agency	2
Total	26

As indicated in Table 1, 16 affected states provide oversight for a single rail transit agency within their jurisdiction. Eight (8) states have oversight responsibility for two or more rail transit agencies operating in their jurisdiction. One (1) multi-state oversight agency has been created, and there is another state with two or more rail transit agencies operating in the state, where one rail transit agency also operates in more than one state.

More than half of the affected states have designated at least one (1) full-time equivalent (FTE) to implement 49 CFR Part 659 requirements. Several states with responsibility for large transit agencies, such as California, New York, and Massachusetts, have assigned multiple personnel to manage their programs. The majority of states also use contractors to support critical oversight functions and bring specific expertise to the evaluation of rail transit agency implementation of 49 CFR Part 659 requirements.

Of the 26 states affected by 49 CFR Part 659, 16 states have a single rail transit agency within their jurisdictions, eight (8) states have two or more rail transit agencies within their jurisdictions, one (1) multi-state oversight agency has been created, and there is another state with three rail transit agencies in its jurisdiction, where one rail agency also operates in more than one state.

Affected Rail Transit Agencies

The 43 rail transit agencies affected by 49 CFR Part 659 include small and large operators, that combined, provided approximately **3 billion annual passenger trips in 2004** or roughly one-third of all trips taken on public transportation. Approximately 80 percent of all trips on rail transit are provided by six large, urban rail transit agencies, including New York City Transit (NYCT), Washington Metropolitan Area Transit Authority (WMATA), Massachusetts Bay Transportation Authority (MBTA), Chicago Transit Authority (CTA), Southeastern Pennsylvania Transportation Authority (SEPTA), and Bay Area Rapid Transit (BART). New light rail systems that initiated service within the last decade are also showing strong ridership, averaging between 15 and 25 million annual passenger trips.

Table 3 provides estimated daily ridership averages for the 43 affected rail transit agencies, based on 2004 data submitted to the National Transit Database (NTD) and initial reports from 2005. Weekend trips are figured into these daily averages, since for smaller agencies, weekend ridership may exceed weekday ridership.

Three modal categories are used to classify the rail transit agencies affected by 49 CFR Part 659 requirements:

- Heavy Rail (HR) – usually has multiple-car trains on fixed, exclusive rights of way, characterized by high speed and rapid acceleration, and often uses sophisticated signaling systems.
- Light Rail (LR) – lightweight passenger rail cars traveling singly or in two-car trains on a fixed right of way, which is typically not separated from on-street traffic for long stretches of the alignment.
- Other Rail – includes inclined planes (IP) and funiculars, automated guideways (AG), and cable cars (CC).

Almost every affected rail transit agency has a dedicated safety department or an operations supervisor who also focuses on safety issues; the vast majority of affected rail transit agencies also have dedicated security or transit police departments, or an operations or safety manager who devotes a portion of his or her time to security issues.

The rail transit industry has a strong safety record. Analysis of data from the NTD shows that rail transit agencies report less than 6 percent of all public transportation's accidents, while providing close to one-third of all public transportation passenger trips. This low ratio of accidents-to-provided service makes rail transit one of the safest modes of transportation. In most communities, automobile drivers are 50 to 60 times more likely to be in a fatal accident than rail transit users, and 200 times more likely to be in an accident in which they receive an injury than rail transit passengers.

Table 3: Rail Transit Agency Average Daily Ridership (including weekends)

RAIL TRANSIT AGENCY	MODE	AVERAGE DAILY TRIPS
Bay Area Rapid Transit District (BART)	HR	270,221
Cambria County Transit Authority (CCTA)	IP	213
Central Arkansas Transit Authority (CATA)	LR	741
Charlotte Area Transit System (CATS)	LR	391
Chattanooga Area Regional Transportation Authority (CARTA)	IP	1,189
Chicago Transit Authority (CTA)	HR	406,336
Dallas Area Rapid Transit (DART)	LR	46,655
Denver Regional Transportation District (RTD)	LR	27,475
Detroit People Mover (DPM)	AG	1,918
Galveston Island Transit (GIT)	LR	115
Greater Cleveland Regional Transit Authority (GCRTA)	LR	7,492
	HR	13,821
Hillsborough Area Regional Transit Authority (HART)	LR	1,158
Jacksonville Transportation Authority (JTA)	AG	1,828
Kenosha Transit	LR	161
Los Angeles County Metropolitan Transportation Authority (LACMTA)	LR	98,486
	HR	92,840
Metro Transit, Hiawatha	LR	15,632
Metropolitan Transit Authority of Harris County (MTA-HC)	LR	21,084
Massachusetts Bay Transportation Authority (MBTA)	LR	163,620
	HR	333,330
Memphis Area Transit Authority (MATA)	LR	3,176
Metropolitan Atlanta Rapid Transit Authority (MARTA)	HR	192,438
Maryland Transit Administration (MTA-MD)	LR	12,870
	HR	35,313
Miami-Dade Transit (MDT)	AG	23,798
	HR	43,802
New Orleans Regional Transit Authority (NORTA)	LR	20,527
Niagara Frontier Transportation Authority (NFTA)	LR	15,028
New Jersey Transit - Hudson Bergen Light Rail (HBLR)	LR	16,668
New Jersey Transit - Newark City Subway (NCS)	LR	14,388
New Jersey Transit - River Line (RL)	LR	4,998
New York City Transit (NYCT)	HR	4,954,909
Port Authority of Allegheny County (PAAC)	LR	18,658
	IP	1,916
	IP	936
Port Authority Transit Corporation (PATCO)	HR	25,068
Portland Streetcar	LR	5,315
Sacramento Regional Transit District (SRTD)	LR	33,576
Saint Louis Metro	LR	40,986
San Diego Trolley, Inc. (SDTI)SDTI	LR	78,828
San Francisco Municipal Railway (MUNI)	LR	122,803
	CC	21,145
Santa Clara Valley Transportation Authority (SCVTA)	LR	17,015
Seattle Center Monorail	AG	5,766
Sound Transit (Tacoma Link)	LR	2,176
Southeastern Pennsylvania Transportation Authority (SEPTA)	LR	49,103
	HR	238,953
Tren Urbano, San Juan	HR	19,466
Tri-County Metropolitan Transportation District of Oregon (Tri-Met)	LR	82,836
Utah Transit Authority (UTA)	LR	31,446
Washington Metropolitan Area Transit Authority (WMATA)	HR	703,742

HR=Heavy Rail; LR=Light Rail; AG=Automated Guideway; IP=Inclined Plane; CC=Cable Car

The rail transit security record is also strong. Analysis of NTD data shows that rail transit passengers are 80 to 100 times less likely to be the victim of a violent crime while riding transit than while walking, living or driving in the communities served by the rail transit system. Nationwide, less than ten homicides occur on rail transit systems each year, compared with the more than 10,000 homicides that occur in the nation's communities. Some rail transit agencies experience nuisance crimes, such as disorderly conduct and drunkenness, loitering, and trespassing, at the same level as those crimes are experienced in the streets and neighborhoods surrounding rail transit stations. However, most rail transit passengers are 10 to 20 times less likely to experience those types of events while using rail transit than while walking, living or driving in the neighborhoods near the rail transit system.

Other Rail Transit Agency Partners

Since September 11, 2001, rail transit agency safety and security departments have also become more actively involved in emergency planning at the local, regional and state level. Most rail transit agencies have revised their Emergency Operations Plans (EOPs), and implemented security awareness training for employees (many using the NTI and TSI training materials developed by FTA) and the TransitWatch program (also developed by FTA) to enhance customer awareness.

In addition, through the Department of Homeland Security, Preparedness Directorate, Office of Grants and Training (G&T), formerly the Office of State and Local Government Coordination and Preparedness (SLGCP), Office for Domestic Preparedness (ODP), eligible rail transit agencies are coordinating with their homeland security Urban Area Working Groups to develop Regional Transit Security Strategies (RTSS) and to support region-wide planning to address National Preparedness Goals focusing on the enhancement of specific response capabilities and improvements in interoperable communications. Emphasis is also being placed on rail transit activity to address DHS requirements specified in the National Response Plan, the National Incident Management System, and the National Infrastructure Protection Plan.

Authority for the Transportation Security Administration (TSA) is specified in the Aviation and Transportation Security Act of 2001, PL 107-71, 115 Stat. 597, 49 USC 40101 and the Homeland Security Act of 2002, PL 107-296, 116 Stat. 2135, 6 USCA 101.

Rail transit agencies are also coordinating with the Transportation Security Administration (TSA), which has the authority to regulate and oversee implementation of security measures for all modes of transportation in the United States, including public transportation. TSA may exercise its authority through formal rulemaking or binding directives to transportation operators.

In the wake of the March 2004 Madrid bombings, the TSA released its first Security Directive (RAILPAX-04-01) to rail transit operators on May 20, 2004. Security Directives are not subject to notice and public comment and the rail transit industry is required to immediately implement the measures contained in the directive within 72 hours of issuance. The May 20, 2004 directive contained 15 action items that included:

- designating a security coordinator for the rail transit agency to work with TSA;
- providing TSA with the latest threat and vulnerability assessment conducted on the system;
- removing trash receptacles and containers that are not bomb-resistant from passenger platforms;
- utilizing explosive detection canine teams, if available;
- performing regular inspection of rail cars and facilities for suspicious items; and
- locking access doors to the train operator's cab.

TSA prioritized this list of action items by analyzing the most relevant threat scenarios for rail transit agencies, assessing what was already in place in the rail transit industry, and considering the cost of the required activities. TSA has stated that its overall goal for transportation security is to provide consistent protection for all modes of transportation without allowing security costs to economically disadvantage one transportation mode or another.

TSA issued its first Security Directive for heavy and light rail transit agencies on May 20, 2004. The Directive contained 15 specific action items to be performed within 72 hours, including designation of a security contact for the rail transit agency.

TSA has also conducted security exercises that bring together rail transit agencies, federal and local first responders, and security experts. TSA has identified and is addressing gaps in antiterrorism training among rail transit personnel. Under the auspices of TSA, rail transit personnel have also traveled to the Federal Law Enforcement Training Center (FLETC) to receive antiterrorism training. TSA is also conducting pilot research programs in partnership with the rail transit industry. Under authority of 49 USC 40119, USDOT and TSA have jointly issued, at 49 CFR § 15 and 49 CFR § 1520 respectively, regulations for protection of sensitive security information (SSI), applicable to all modes of transportation.

Finally, pursuant to the DHS/G&T National Infrastructure Protection Plan and the DHS/TSA Transportation Security Operational Plan (TSOP), TSA has developed a Surface Transportation Security Inspector (STSI) Program, as mandated by the Fiscal Year 2005 Homeland Security appropriations bill.

The STSI program will hire, train and deploy 100 TSA rail security compliance inspectors, to be located in 19 cities. The cities were chosen for their proximity to major rail hubs, existing FRA and FTA Regional Offices, and existing TSA Aviation Operations Districts. In coordination with rail transit and passenger rail systems, the TSA inspectors will:

- conduct security system evaluations;
- share security-related best practices information;
- coordinate security threat advisories; and
- conduct inspections to ensure compliance with TSA security directives.

FRA is also a partner for some rail transit agencies. At the current time, eight (8) rail transit agencies have received waivers from FRA that allow shared track operations. These rail transit agencies share track with the general railroad system, using the track during different times of the day than freight operators or FRA passenger operators (referred to as temporal separation). Due to increased competition for track usage, this practice has emerged to address both FTA and FRA objectives to increase opportunities for improved passenger travel in metropolitan areas through expanded use of railroad lines in ways that continue to preserve the existing safety records of the affected operators and communities.

Waivers for shared track systems are governed through (1) a joint policy statement issued by FRA and FTA and (2) an FRA statement of agency policy, both issued on July 10, 2000:

- July 10, 2000 (final)—*Joint Statement of Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems*, *Federal Register*, Vol. 65, No. 132, p. 42,526, issued by the FRA and FTA.
- July 10, 2000 (final)—*Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment*, *Federal Register*, Vol. 65, No. 132, p. 42,529, issued by the FRA.

The primary issue addressed by the joint FRA-FTA policy statement is the means by which FRA and FTA propose to coordinate their safety programs with regard to rail transit systems that share track with freight railroads. Although compatible in terms of track gage, these two forms of rail service are incompatible in terms of equipment. A collision between a light rail transit vehicle with passengers aboard and heavy-duty freight or passenger equipment would likely result in catastrophe.

This joint statement is intended to: (1) explain the nature of the most important safety issues related to shared use of the general railroad system by conventional and rail transit equipment; (2) summarize the application of FRA and FTA safety rules to such shared-use operations; and (3) help rail transit authorities, railroads, and other interested parties understand how the safety programs of the two agencies will be coordinated.

FRA and FTA requirements for shared used track are specified in “Joint Statement of Policy Concerning Shared Use of General Railroad System by Conventional Railroads and Light Rail Transit Systems” published in the Federal Register on July 10, 2000.

The joint policy statement introduces the FRA waiver process to regulate exceptions when shared track will be permitted accompanied by approved safety measures to reduce risk to equivalent or better probabilities. FTA has nonvoting participation on the FRA Safety Review Board to review and recommend action on petitioner's waivers.

As part of its petition for waiver, the rail transit agency must certify that the state's safety oversight program and the FTA and FRA safety regulations are coordinated and consistent in the matter of the petition.

In carrying out the joint policy statement, FRA carefully reviews the activities of both the rail transit agency and the state oversight agency to ensure safety for passengers, employees, and others who may come into contact with the system.

State oversight agencies are not official parties to the FRA waivers petitioned for and received by the rail transit agencies. However, the state's SSO program is a critical element in ensuring that the rail transit agency addresses the requirements in the waiver. FTA too, emphasizes the importance of the SSO program in supporting the waiver process, and carefully reviews SSO programs and activities in light of waiver requirements and the joint policy statement with FRA.

In response to a legislative mandate, FRA has also issued a *Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings*, which is available at:

- <http://www.fra.dot.gov/us/content/1318>.

This final Rule, which requires that locomotive horns be sounded as a warning to highway users at public highway-rail crossings, took effect on June 24, 2005. The final Rule provides an opportunity for thousands of localities nationwide to mitigate the effects of train horn noise by establishing new "quiet zones." The Rule also details actions communities with pre-existing "whistle bans" can take to preserve the quiet which they have established while ensuring the safety of public highway-rail crossings. This Rule affects rail transit agencies as well, particularly street-running light rail with rail grade crossings. Rail transit agencies, state departments of transportation, and community owners of the rail grade crossings are working with FRA to establish "quiet zones" and to address FRA regulations.

In carrying out the joint policy statement, FRA carefully reviews the activities of both the rail transit agency and the state oversight agency to ensure safety for passengers, employees, and others who may come into contact with the system.

Chapter 3: Summary of Revised 49 CFR Part 659 Requirements

Revised Rule At-A-Glance

FTA's revised 49 CFR Part 659 contains two types of requirements:

- **Program development requirements** specify those activities that must be performed by the state, oversight agency, and rail transit agency to develop programs and materials compliant with the revised Rule. These activities must be complete by May 1, 2006, and include: the designation of the oversight agency (for New Starts systems); the preparation of the revised oversight agency "program standard and referenced procedures" (for existing oversight agencies); the revision of the rail transit agency System Safety Program Plan and System Security Plan to address the state's revised "program standard and referenced procedures;" the conveyance of formal approval from the oversight agency to the rail transit agency for these plans; and the delivery of the state oversight agency's Initial Submission to FTA.
- **Program implementation requirements** specify those activities that will be performed by the oversight agency and the rail transit agency to implement the revised Rule. Key activities include: the revised internal safety and security audit process; the new hazard management process; a revised process for accident notification and investigation; and a revised corrective action plan management process. State oversight agencies must also continue with their previously established programs for conducting three-year safety and security reviews on-site at the rail transit agencies.

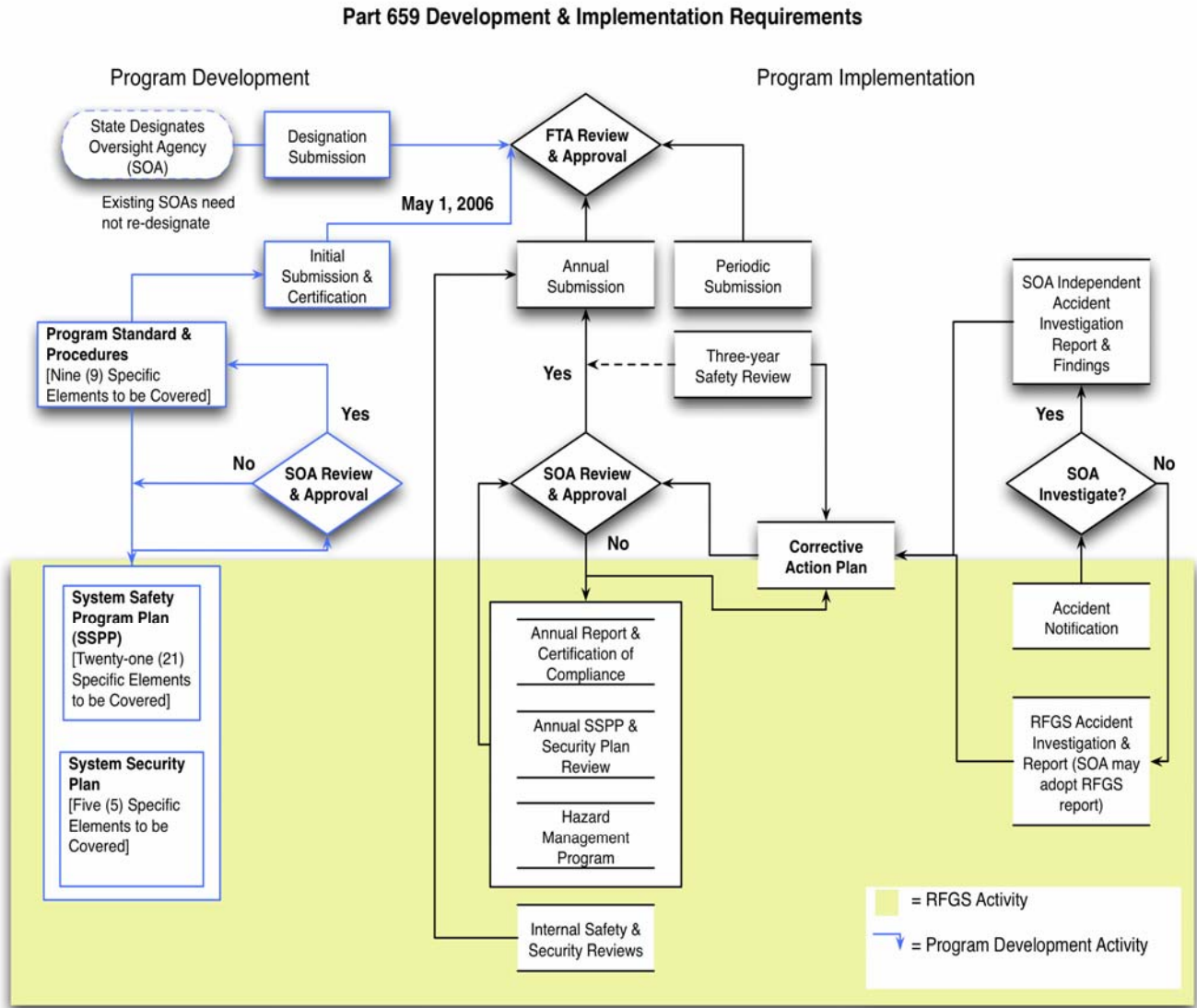
Figure 3 provides an overview of Revised 49 CFR Part 659. In addressing these requirements, FTA assigns specific responsibilities to the state, the oversight agency and the rail transit agency.

Responsibilities of the State

Under the revised Rule, the primary responsibility of the state remains designating an entity – other than the rail transit agency – to oversee the safety and security of a rail fixed guideway system. If the rail transit agency operates in more than one state, each state may designate an entity as the oversight agency or may agree to designate one agency from one state to provide oversight. In either case, this Rule requires that, in all circumstances in which a rail transit agency is operating in multiple states, the rail transit agency operating the rail fixed guideway system must be subject to only one program standard.

To comply with 49 CFR Part 659, an affected state is required to designate an oversight agency. The state may also protect accident reports and security plans and other security-related materials from public disclosure. For rail transit agencies operating in more than one state, the affected states may designate a single agency, share oversight authority among the states, or create a multi-state agency.

Figure 3: Overview of Revised 49 CFR Part 659



The state or states may also prohibit public disclosure of investigation reports. Furthermore, states are not required to make available the rail transit agency's security plan or referenced procedures. If states cannot protect rail transit agency security plans or supporting procedures from public disclosure, then the state must review these documents on-site at the rail transit agency or establish some other procedures to ensure the protection of these materials. These procedures must be documented in the rail transit agency System Security Plan.

Responsibilities of the Oversight Agency

As in the previous rule, the oversight agency is required to prepare a program standard, which is a written document developed and adopted by the oversight agency that describes the policies, objectives, responsibilities, and procedures used to provide rail transit agency safety and security oversight. However, the revised Rule no longer references the 1991 APTA *Manual for the Development of Rail Transit System Safety Program Plans* as the basis for the program standard. Instead, FTA's revised Rule specifies that the oversight agency's program standard must address, at a minimum, the nine areas identified by FTA in § 659.15.

In addressing the nine areas specified by FTA, the oversight agency must develop a program, which ensures performance of the following minimum activities:

- **System Safety Program Plan (SSPP)**

- Requiring the rail transit agency to develop a System Safety Program Plan (SSPP) that complies with the oversight agency's program standard.
- Reviewing and formally approving the rail transit agency's SSPP, including submission of completed review checklist and formal letter to the rail transit agency.
- Requiring that the rail transit agency review the SSPP annually to determine if it should be updated.
- Requiring, reviewing and approving updated SSPPs from rail transit agencies.

The oversight agency must develop a program standard to guide its oversight program. The oversight agency must also require, review and approve a System Safety Program Plan and System Security Plan from each of the rail transit agencies in its jurisdiction.

- **System Security Plan (Security Plan)**

- Requiring the rail transit agency to develop a System Security Plan (Security Plan) that complies with the oversight agency's program standard. A special review process must be developed and included in the Security Plan to ensure the protection of all rail transit agency security plans, procedures, training, and the state oversight agency's working documents from public disclosure.
- Reviewing and formally approving the rail transit agency's Security Plan, including submission of completed review checklist and formal letter to the rail transit agency.
- Requiring that the rail transit agency review the Security Plan annually to determine if it should be updated.
- Requiring, reviewing and approving updated Security Plans from rail transit agencies.

- **Rail Transit Internal Safety and Security Audit Program**

- Requiring the rail transit agency to conduct internal audits as an on-going activity for all elements of the SSPP and Security Plan over a three-year period.
- Requiring the rail transit agency to provide its schedule, procedures and checklists for conducting internal audits to the oversight agency.
- Requiring the rail transit agency to notify the oversight agency at least 30 days prior to the conduct of individual audits.
- The oversight agency is encouraged, but not required, to participate in these audits.
- Requiring, reviewing and approving an annual report, documenting the rail transit agency's activity for its internal audit process, including compliance with the schedule of its internal audit program, the activities performed during the internal audits, a listing of findings/recommendations, and the status of their implementation.
- Requiring the rail transit agency's chief executive to submit an annual certificate stating that, based on the results of the internal safety and security audits, the rail transit agency is in compliance with its SSPP and Security Plan. In the event that the chief executive cannot submit this certificate, the rail transit agency must submit to the oversight agency the steps it will take to achieve compliance. The oversight agency must review and approve this action plan.

The oversight agency must require the rail transit agency to conduct internal safety and security audits as an on-going activity for all elements of the System Safety Program Plan and System Security Plan over a three-year period.

- **Hazard Management Process**

- Requiring the rail transit agency to establish a hazard management process that is documented in the SSPP. The objective of this process is to provide an on-going state oversight role for hazard management.
- This process must address the rail transit agency's approach to hazard identification; hazard investigation, evaluation and analysis; hazard control and elimination; hazard tracking; and requirements for on-going reporting to the oversight agency relating to hazard management activities and status.
- The hazard management process must identify the mechanisms through which the rail transit agency and the oversight agency will share information regarding the identification, investigation, evaluation, resolution and tracking of hazards.

- **Accident Notification and Investigation**

- Using new thresholds, consistent with National Transit Database (NTD) *Safety and Security Major Incident Reporting Module*, to trigger notification of accidents to the oversight agency by the rail transit agency.

- Requiring rail transit agencies that share track with the general railroad system to report to the oversight agency any accidents they also report to FRA.
 - Investigating reports of accidents/incidents meeting the NTD thresholds and requiring the rail transit agency to prepare corrective action plans to minimize, control, correct, or eliminate probable cause conditions to prevent recurrence.
 - In performing this function, the oversight agency may authorize the rail transit agency to conduct investigations on its behalf (through formal authorization, in writing, combined with review and approval of rail transit agency accident investigation procedures), conduct its own independent investigation, or join an NTSB investigation.
- **On-site Three-Year Safety and Security Reviews**
 - Conducting on-site safety reviews every three years (at a minimum) to assess whether the transit agency's safety and security practices and procedures comply with its system safety program plan and/or require updating to improve effectiveness.
 - Using checklists, document reviews and interviews, and on-site observation to review, evaluate and verify SSPP and Security Plan implementation.
 - Preparing and delivering a report documenting results of the three-year review, including findings and requests for corrective action plans.
- **Corrective Action Plans**
 - Requiring the rail transit agency to develop corrective action plans to address findings from the state oversight agency's three-year review (including security), from accident investigations, and at the request of the oversight agency based on the results of the hazard management process.
 - Reviewing and approving the corrective action plans, and ensuring that the rail transit agency tracks to resolution the implementation of the corrective action plans, providing the oversight agency with periodic status updates and validation/verification of implementation.
- **Reporting to FTA**
 - Reporting annually and as periodically requested, to the FTA with respect to oversight activities, using the reporting template and electronic submission method specified by FTA.

The revised Rule requires that a uniform process be developed by the state oversight agency for managing corrective action plans from accident investigations, the hazard management process, and the state oversight agency's three-year safety and security review.

Responsibilities of the Rail Transit Agency

A rail transit agency subject to 49 CFR Part 659 must develop and implement an SSPP and Security Plan that comply with the oversight agency's program standard. These plans and any supporting or referenced procedures must be submitted to the oversight agency for review and approval, according to a schedule specified in the oversight agency's program standard. In addition, the rail transit agency's responsibilities include:

- Conducting annual reviews to determine if the SSPP and Security Plan need to be updated and coordinating updates and reviews/approvals with the oversight agency.
- Performing an internal safety and security audit process to review all elements identified in the SSPP and Security Plan over a three-year cycle.
- Developing and submitting to the oversight agency an internal audit schedule, procedures, and checklists, and notifying the oversight agency at least 30 days prior to the conduct of individual safety and security audits.
- Submitting annual reports to the oversight agency documenting activity for its internal safety and security audit process, including compliance with the schedule established for the internal audit program, the activities performed, and a listing of findings and recommendations and the status of their implementation.
- Submitting to the oversight agency a certification signed by the rail transit agency chief executive regarding the agency's compliance with its SSPP and Security Plan. In the event that the chief executive cannot submit this certificate, the rail transit agency must submit to the oversight agency the steps it will take to achieve compliance with the SSPP and/or Security Plan.
- Implementing the hazard management process specified in the SSPP and supporting on-going coordination with the oversight agency.
- Reporting any accident/incident that meets the NTD Major Incident Reporting thresholds or that must be reported to FRA.
- Conducting accident/incident investigations on behalf of the oversight agency when directed to do so.
- Preparing corrective action plans and then implementing the plans so as to minimize, control, correct, or eliminate conditions that have caused an accident/incident, findings from oversight agency three-year reviews, or at the request of the oversight agency based on the on-going hazard management process.

Responsibilities of the Federal Transit Administration

FTA must assess whether the state has complied with the Rule or has made adequate efforts to comply with the Rule. If FTA determines that the state is not in compliance or has not made adequate efforts to comply, it may withhold up to five percent of the amount apportioned for use in the state or affected urbanized areas under FTA's formula program for urbanized areas (formerly section 9). FTA carries out this monitoring function, in part, through its SSO Audit Program. Also, FTA receives and evaluates Initial Submissions, Annual Submissions, and Periodic Submissions from the oversight agencies.

Chapter 4: Designating the Oversight Agency

Overview

Each state with an existing or anticipated rail fixed guideway system regulated by Part 659 must designate an oversight agency. The state's designation of its oversight agency and submission of required information are subject to review and approval by FTA.

States, which have designated oversight agencies before May 31, 2005, and received approval from FTA, are not required to re-designate. *States that have already designated oversight agencies may skip this chapter and move on to Chapter 5: Preparing the Initial Submission.*

What is Designation?

Designation reflects the state's intent to assign responsibility for the implementation of 49 CFR Part 659 requirements to a specific agency of the state, to multiple states, or to a multi-state organization or compact. Designation is the first step in establishing the SSO agency.

As specified in the revised Rule, the state must designate an oversight agency:

- at the same time FTA executes a grant agreement for a New Starts project with a rail transit agency within the state's jurisdiction, or
- before a rail transit agency applies for funding under FTA's formula program for urbanized areas (49 U.S.C. 5336).

In monitoring the designation process, FTA's Office of Safety and Security will work with FTA's Regional Offices and FTA's PMO Program to identify New Starts projects that require designation of a state oversight agency with the execution of the Full Funding Grant Agreement (FFGA). As specified in FTA policy, funding is available from the New Starts project for all state activity required to establish the oversight agency and prepare all required submissions to FTA. FTA's Regional Offices will provide guidance on how the state may obtain this funding. To support the state's and proposed oversight agency's understanding of FTA's grant management activities, FTA's *Full-Funding Grant Agreement Guidance Circular 5200.1A* is available online at:

http://www.fta.dot.gov/16358_ENG_Printable.htm.

For those rail transit agencies being built without New Starts funds, FTA's Office of Safety and Security will coordinate with FTA's Regional Offices regarding applications for funding under FTA's formula program for urbanized areas, as well as the statewide transportation planning process supported by Metropolitan Planning Organizations (MPOs).

The SSO agency is responsible for establishing standards for rail safety and security practices and procedures to be used by the rail transit agencies within its purview. In addition, the state oversight agency must oversee the execution of these plans, policies and procedures to ensure compliance with 49 CFR Part 659.

Selecting an Oversight Agency

The first step in designating an oversight agency is to identify which state agency will assume responsibility for the program. Identification of the oversight agency should occur as early in the implementation process as possible. The recent enactment of the Safe, Accountable, Flexible, and Efficient

Transportation Equity Act - A Legacy for Users (SAFETEA-LU) recommends that, for New Starts projects, this process begin in Preliminary Engineering. The earlier the potential oversight agency is notified of its new role, the more opportunity agency personnel will have to work within the state government to ensure the appropriate authority, direction, and financial support for the oversight agency and to coordinate with the New Starts project.

SAFTEA-LU recommends that, for New Starts projects, state safety oversight begins in Preliminary Engineering.

EXAMPLE A state may consider the following factors in selecting an oversight agency:

- An agency that works with the rail transit systems and is already knowledgeable in their operations, including safety and security issues, may be the appropriate choice for the oversight agency. This agency is most likely the transit division of the state's department of transportation. States should be aware of potential conflicts of interests when a funding agency acts as an Oversight Agency. Part 659 does not prohibit such a designation. However, if such a designation is made, the funding function should be separate and independent from the oversight function.
- An agency that has responsibilities in other aspects of transportation safety may expand its duties to include rail transit safety oversight. However, the state should consider the specialized expertise required to administer a rail safety oversight program.
- An agency with regulatory responsibilities—a Department of Public Utilities, Public Utilities Commission, or other agency—may already have the authority (currently not exercised) to oversee rail transit safety and security. The state may prefer to keep such authority and responsibilities within a single agency.

A state may find that there is a legal prohibition for a state agency to oversee another public agency—such as a rail transit system. If this is the case, then the state must first reverse this prohibition before it can designate an oversight agency. For some affected states, the identification process may be relatively straightforward, as one agency clearly will have established a role in the oversight of rail transit.

For other states, the identification of the oversight agency may be more difficult, as two or more state agencies may have a shared responsibility for managing rail transit activities. FTA recommends that states designate only one agency to oversee the rail transit agencies within their jurisdiction. However, FTA has no prohibition against a single state designating more than one oversight agency for a single rail transit agency within its jurisdiction, so long as the roles and responsibilities of each agency are defined to ensure that all minimum 49 CFR Part 659 requirements are addressed. Whatever

arrangement is established, the rail transit agency must be subject to a single program standard. So each agency must adopt the same requirements for the rail transit agency.

EXAMPLE In evaluating which state agency is best suited to implement the oversight program, the state should consider the following issues:

- Does the proposed agency have sufficient legal authorities to support implementation of the oversight program?
- Are there any financial or organizational relationships between the proposed agency and the rail transit agency that may result in a conflict of interest?
- What is the previous experience and background of personnel who may be charged with developing and carrying out the oversight program? Is it sufficient to support the oversight program?
- Have resources been identified to support oversight program development, including funding from the New Starts project?
- Are resources available to support the program once the rail transit agency has gone into passenger operations and New Starts funding may no longer be used?
- Using the proposed agency, what is the time-frame for the development of the oversight agency's program and initial submission to FTA?

Ability to Protect the Confidentiality of Investigation Reports and Security Plans

EXAMPLE When determining an appropriate SSO agency, the state should also carefully consider its ability to protect the rail transit agency's accident investigation reports and security-related plans and documents from public disclosure. In the event that the state cannot protect the rail transit agency security plan, supporting procedures, and internal state working papers and materials from public disclosure, the state should consider the feasibility of alternate approaches to managing these documents, and which agency may be best suited to carry out these approaches.

Alternate approaches include: developing memorandum of agreement with rail transit agencies that make all state documents devoted to the rail transit agency's security program the property of the rail transit agency, to be destroyed by the SSO agency upon delivery. Other approaches include having a strict policy for destroying rail transit agency security documents after review, or only reviewing the documents on-site at the rail transit agency. Depending on the location of the state agency and its existing capabilities, confidentiality considerations may swing the balance in favor of one agency over another.

In the event that the state cannot protect the rail transit agency security plan, supporting procedures, and internal state working papers and materials from public disclosure, the state should consider the feasibility of alternate approaches to managing these documents, and which agency may be best suited to carry out these approaches.

What is a Designation Submission?

Once the state has identified the agency best suited to implement the SSO program, it should make a designation submission to FTA. The designation submission is made by the state to FTA **no later than 60 days** after the state has designated an oversight agency.

The designation submission specifies the state's intent to assign oversight authority to a specific agency within the state or some other organization. It also addresses the five areas specified in § 659.9(d). FTA must approve the designation submission before the state develops its oversight program.

The designation submission ensures that the state is ready to provide oversight of a rail transit agency in passenger operations and provides FTA with the opportunity to evaluate the oversight agency for technical capacity and potential conflicts of interest. The designation submission also enables the state to receive funding from the New Starts project for establishing its SSO program.

Contents of Designation Submission

As specified in § 659.9(d), the designation submission should include the following:

- The name of the oversight agency designated to implement requirements in the Rule.
- Documentation of the oversight agency's authority to provide state oversight.
- Contact information for the representative identified by the oversight agency with responsibility for oversight activities.
- A description of the organizational and financial relationship between the oversight agency and the rail transit agency.
- A schedule for the designated agency's development of its State Safety Oversight Program, including the projected date of its initial submission.

In reviewing the designation submission, FTA will assess the following elements.

- Any potential conflicts of interest are effectively resolved and the state oversight agency is able to perform unbiased oversight, devoid of internal and external influence.
- Sufficient technical capacity and resources are available to support implementation of an oversight program meeting 49 CFR Part 659's minimum requirements.

The designation submission should be made to FTA's Office of Safety, 400 Seventh Street, S.W., Washington, D.C. 20590. If appropriate, the agency making the designation should use the electronic submission program specified by FTA.

- The schedule for oversight program development and corresponding development of the rail transit agency System Safety Program Plan and Security Plan ensures that the oversight program and required rail transit agency safety and security programs will be in effect for passenger operations.
- There is an appropriate level of coordination anticipated among the FTA Region, the PMOC, the oversight agency, and the New Starts project regarding the identification and resolution of safety and security issues and the funding of the state oversight agency.

Designation Submissions for States with Rail Transit Agencies Operating in More than One State

As specified in § 659.9(e), when a rail transit agency will operate in more than one state, each affected state must designate an agency of the state, other than the rail transit agency, as the oversight agency. To fulfill this requirement, the affected states:

- May agree to designate one agency of one state, or an agency representative of all states, to implement the requirements in this part; and
- In the event multiple states share oversight responsibility for a rail fixed guideway system, the states must ensure that the rail fixed guideway system is subject to a single program standard, adopted by all affected states.

Currently there are three rail transit agencies in the SSO Program with multi-state service areas.

- For the Port Authority Transit Corporation (PATCO), the State of New Jersey assumes full oversight responsibility, even for PATCO's operations in Pennsylvania. The New Jersey Department of Transportation has established an agreement with the Pennsylvania Department of Transportation, and issued a single program standard with which PATCO must comply.
- For WMATA, a six-person, multi-state committee (Tri-State Oversight Committee or TOC) was established with representatives from the District of Columbia, Maryland and Virginia. TOC has issued a single program standard with which WMATA must comply.
- For St. Louis Metrolink, which serves Missouri and Illinois, the Missouri Department of Transportation oversees Metrolink's Missouri operations, while St. Clair County oversees Metrolink's operations in Illinois. Both oversight agencies have adopted a single program standard for the Metrolink system.

FTA's revised Rule treats multi-state jurisdictions just the same as single-state jurisdictions. If the rail transit agency will receive FTA formula assistance, the affected states must designate their oversight agency. No later than 60 days after this designation, the affected states must make their designation submission to FTA.

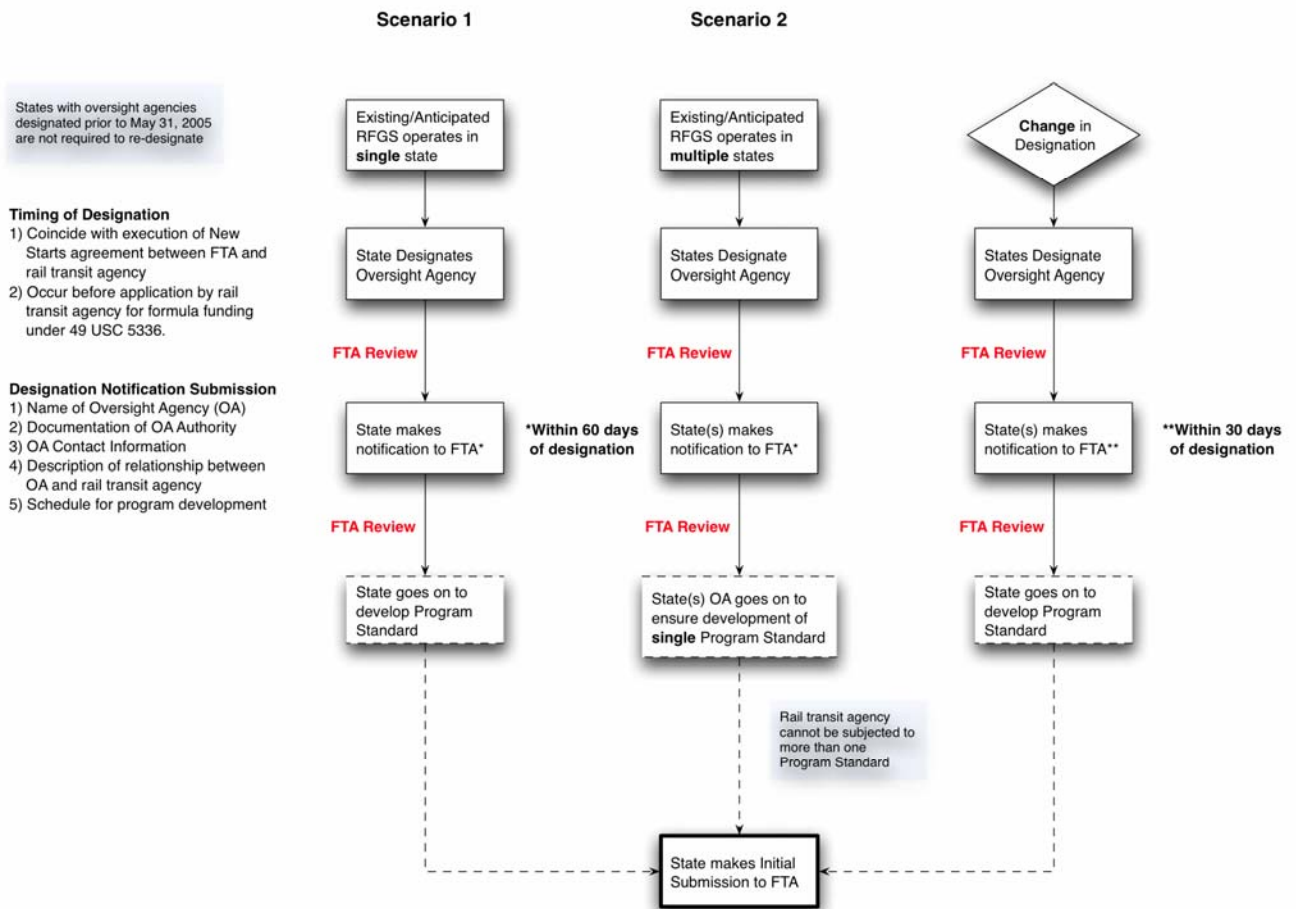
Change of Designation

If for any reason, a single state, or two or more affected states with jurisdiction for a rail transit agency, must change their designation, then the revised Rule requires that a designation submission be made to FTA within 30 days of re-designation. The designation submission used in the event of re-designation contains the same information as must be provided in other instances of designation, specified in § 659.9(d).

In addition, in the event of a change of designation, the Initial Submission for the newly designated oversight agency must be made to FTA within 30 days of its designation. The 30-day time frame required for the Initial Submission is designed to ensure that the rail transit agency affected by the re-designation is not operating without an oversight agency.

Figure 4 below provides a graphic representation of the process used to designate an oversight agency for an existing rail fixed guideway system operating in a single state (Scenario 1), in multiple states (Scenario 2), and for the change in designation.

Figure 4: Designation Submission to FTA



Chapter 5: Preparing the Initial Submission

Requirement for Initial Submission

This chapter provides guidance to state oversight agencies in developing their Initial Submissions. The Initial Submission is a critical component of the oversight program. With the Initial Submission, the state oversight agency is conveying its safety and security requirements to the rail transit agency and also describing its program to FTA. Subsequent FTA monitoring activity, including SSO program audits, will be based on the Initial Submission made by the state oversight agency.

§ 659.39(a) of the revised Rule requires “each designated oversight agency with a rail fixed guideway system that is in passenger operations as of April 29, 2005 or will begin passenger operations by May 1, 2006, [to] make its Initial Submission to FTA by May 1, 2006.” § 659.39(b) explains that “an Initial Submission must include the following: (1) oversight agency program standard and referenced procedures; and (2) certification that the System Safety Program Plan and the Security Plan have been developed, reviewed, and approved.”

In states with rail fixed guideway systems initiating passenger operations after May 1, 2006, the designated oversight agency must make its Initial Submission within the time frame specified by the state in its designation submission, but not later than at least sixty (60) days prior to initiation of passenger operations.

Resource Toolkit for State Oversight Agencies Implementing 49 CFR Part 659

To support state oversight agencies in fulfilling these requirements, FTA has developed its *Resource Toolkit for State Oversight Agencies Implementing 49 CFR Part 659*. The *Resource Toolkit* contains a sample “oversight agency program standard and referenced procedures” document that can be tailored by each affected oversight agency to develop a compliant Initial Submission.

The *Resource Toolkit* also includes sample program requirements that can be adopted by the state oversight agency to support the development of compliant System Safety Program Plans and Security Plans at rail transit agencies. A sample “certification that the system safety program plan and the system security plan have been developed, reviewed, and approved” is also provided, as well as sample checklists for use by state oversight agencies in reviewing and approving rail transit agency submissions.

State oversight agencies are encouraged to review the *Resource Toolkit* and consider its applicability to the preparation of the oversight agency’s Initial Submission. However, it should be noted that in providing these sample materials, FTA is neither mandating their use nor implying that the approach documented in the sample materials is the only

The “Resource Toolkit for State Oversight Agencies Implementing 49 CFR Part 659” can be found on the accompanying CD-ROM in Microsoft Word and Adobe format.

acceptable alternative. In evaluating Initial Submissions from state oversight agencies, FTA will focus only on the state's compliance with the rule's minimum requirements using whatever means are ultimately adopted. FTA will show no favor to agencies using either these sample materials or modified versions thereof.

What is the Program Standard?

As defined in § 659.5, the program standard is “a written document developed and adopted by the oversight agency, that describes the policies, objectives, responsibilities, and procedures used to provide rail transit agency safety and security oversight.” As specified in § 659.39 (b), the program standard must be supported by “referenced procedures,” which describe the activities identified in the program standard, and provide greater detail regarding how the oversight agency will conduct its program, including such activities as accident investigation; review and approval of rail transit agency annual reports and certifications for the internal safety and security audit process; and the conduct of the oversight agency's three-year review.

EXAMPLE State oversight agencies may take different approaches to preparing these documents. To make the Initial Submission to FTA, some oversight agencies may combine all requirements associated with the “program standard and referenced procedures” into a single document, which may be referred to as an “SSO program standards manual,” an SSO “program standard and procedures,” or the oversight agency's “program requirements.” The sample program standard provided in FTA's *Resource Toolkit* largely follows this approach.

Other oversight agencies may develop a program standard, and then maintain separate files addressing activities and documents referenced in the program standard, such as the oversight agency's authority (i.e., enabling legislation, administrative code, etc.), oversight program procedures, and other supporting materials (i.e., required forms and report templates to be completed by the rail transit agency). Either approach meets 49 CFR Part 659 requirements. FTA only requests that, whatever approach is used, the oversight agency make sure to submit both its program standard and all applicable referenced procedures to FTA with the Initial Submission.

Elements of the Program Standard

As specified in § 659.17, the Program Standard must address nine (9) areas:

(1) Program Management.

- This section shall include an explanation of the oversight agency's authority; policies, and roles and responsibilities for providing safety and security oversight of the rail transit agencies within its jurisdiction.
- This section shall also provide an overview of planned activities to ensure on-going communication with each affected rail transit agency relating to safety and security information.
- This section shall address FTA reporting requirements, including Initial, Annual and Periodic Submissions.

(2) Program Standard Development.

- This section shall include a description of the oversight agency's process for the development, review, and adoption of the program standard;
- This section shall also discuss the process used by the oversight agency to modify and/or update the program standard.
- This section shall also describe the process by which the program standard and any subsequent revisions are distributed to each affected rail transit agency.

(3) Oversight of Rail Transit Agency Internal Safety and Security Audits.

- This section shall specify the role of the oversight agency in requiring and overseeing the rail transit agency internal safety and security audit process.
- This section shall include a description of the process used by the oversight agency to receive rail transit agency checklists and procedures and approve the rail transit agency's annual reports on findings, which must be submitted under the signature of the rail transit agency's top management.
- This section must also address all other requirements specified for the internal safety and security audit process (§ 659.27).

(4) Oversight Agency Safety and Security Review.

- This section shall lay out the process and criteria to be used by the state oversight agency, at least every three years, in conducting a complete review of each affected rail transit agency's implementation of its System Safety Program Plan and Security Plan.
- This section must also include the process to be used by the affected rail transit agency and the oversight agency to manage findings and recommendations from this review. In implementing this process, the state oversight agency must reference is activities to address corrective action plans, specified in § 659.43.
- Finally, this section must include any applicable procedures that support integration of the rail transit agency's internal safety and security audit process into the state oversight agency's three-year safety and security review process. In some states, these two activities may be conducted concurrently, with the associated costs and resources for these reviews shared by the rail transit agency and the oversight agency.
- Additional requirements for this activity are included in § 659.29.

(5) Accident Notification.

- This section shall include the specific requirements for the rail transit agency to notify the oversight agency of accidents.
- This section shall also include required timeframes, methods of notification, and the information to be submitted by the rail transit agency with notification.
- Additional detail on requirements applicable to this section is included in § 659.33.

(6) Investigations.

- This section contains the oversight agency's identification of the thresholds for incidents that require an oversight agency investigation. The roles and responsibilities for conducting investigations shall include:
 - coordination with the rail transit agency investigation process;
 - the role of the oversight agency in supporting investigations and findings conducted by the NTSB;
 - review and concurrence of investigation report findings; and
 - procedures for protecting the confidentiality of investigation reports.
- In preparing this section, the state oversight agency must ensure that, if it authorizes the rail transit agency to conduct investigations on its behalf, it does so formally (in writing) and also that the oversight agency formally reviews and approves the rail transit agency's accident investigation procedures. If the state oversight agency retains the authority to conduct independent investigations, it must also adopt procedures to guide this process. The state oversight agency may adopt and use the rail transit agency's procedures, the accident investigation rail transit standard developed by APTA, FRA accident investigation procedures, or procedures developed by the agency expressly for the purpose of rail transit accident investigation.
- Additional requirements for this section are located in § 659.41.

(7) Corrective Action Plans.

- This section shall specify the criteria for the development of rail transit agency corrective action plan(s) and the process for the review and approval of these plans.
- This section shall also identify the oversight agency's policies for the verification and tracking of corrective action implementation.
- Finally, this section must specify the state oversight agency's process for managing conflicts with the rail transit agency relating to investigation findings and corrective action plan development.
- Additional requirements for this section are located in § 659.43.

(8) System Safety Program Plan.

- This section shall specify the minimum requirements to be contained in the rail transit agency's System Safety Program Plan. The required minimum contents are discussed in more detail in § 659.19.
- This section shall also specify information to be included in the affected rail transit agency's System Safety Program Plan relating to the hazard management process, including requirements for ongoing communication and coordination relating to the identification, categorization, resolution, and reporting of hazards to the oversight agency. More details on the hazard management process are contained in § 659.31.
- This section shall also describe the process and timeframe through which the oversight agency must receive, review, and approve the rail transit agency system safety program plan and require annual updates.

(9) Security Plan.

- This section shall specify the minimum requirements to be included in the rail transit agency's Security Plan. More details about the Security Plan are contained in § 659.21 and § 659.23.
- This section shall also describe the process by which the oversight agency will review and approve the rail transit agency system security program plan and require annual updates.
- Finally, this section shall identify how the state will prevent the Security Plan from public disclosure.

In FTA's *Resource Toolkit*, these nine areas are addressed in a sample program standard with the following sections:

1. Introduction and Overview
2. System Safety Program Plan Standard
3. Security Plan Standard
4. Rail Transit Agency Internal Safety and Security Audit Program
5. Hazard Management Process
6. Accident Notification, Investigation and Reporting
7. Three-Year On-site Safety and Security Review
8. Corrective Action Plans
9. Reporting to FTA

Table 4 presents a cross-walk matrix showing how each of the revised Rule's requirements are addressed in the nine sections provided in FTA's *Resource Toolkit*. The cross-walk matrix is a useful tool to ensure that all required elements are addressed in the oversight agency's program standard. As indicated in Table 4, state oversight agencies can combine discussion of their program elements to address specific Rule requirements into a single section. For example, a single section can be created for the hazard management process, even though this requirement is also specified as part of the rail transit agency SSPP. A similar approach can be taken to other Rule requirements for the internal safety and security audit process and accident notification and investigation.

EXAMPLE

Timeframe for Development

However the oversight agency chooses to approach the development of its program materials, oversight managers should keep in mind that the Initial Submission to FTA requires not only the "program standard and referenced procedures," but also signed certification that the oversight agency has received, reviewed and approved the rail transit agency's SSPP and Security Plan, and found them to be compliant with both the program standard and FTA's revised 49 CFR Part 659.

To support the efforts of states in ensuring that this activity occurs within a timeframe sufficient to meet FTA's May 1, 2006 deadline, FTA released its *49 CFR Part 659 Reference Guide* (June 22, 2005) and has prepared these guidelines and the *Resource Toolkit for State Oversight Agencies Implementing 49 CFR Part 659* (issued in DRAFT on October 9, 2005).

Table 4: Cross-Walk Matrix

49 CFR PART 659	SECTION OF SAMPLE PROGRAM STANDARD
§ 659.5 Definitions	Section 1
§ 659.11 Confidentiality of investigation reports and security plans	Section 3
§ 659.13 Overview	Section 1
§ 659.15 System safety program standard	
(a) General Requirement	Section 1
(b) Contents	
(1) Program management section	Section 1
(2) Program standard development section	Section 1
(3) Oversight of rail transit agency internal safety and security audits	Section 4
(4) Oversight agency safety and security review section	Section 7
(5) Accident notification section	Section 6
(6) Investigations section	Section 6
(7) Corrective actions section	Section 8
(8) System safety program plan section	Section 2
(9) System security plan section	Section 3
§ 659.17 System safety program plan: general requirements	Section 2
§ 659.19 System safety program plan: contents	Section 2
§ 659.21 System security plan: general requirements	Section 3
§ 659.23 System security plan: contents	Section 3
§ 659.25 Annual review of system safety program plan and system security plan	Section 2 and Section 3
§ 659.27 Internal safety and security audits	Section 4
§ 659.29 Oversight agency safety and security reviews	Section 7
§ 659.31 Hazard management process	Section 5
§ 659.33 Accident notification	Section 6
§ 659.35 Investigations	Section 6
§ 659.37 Corrective action plans	Section 8
§ 659.39 Oversight agency reporting to the Federal Transit Administration	Section 9
§ 659.41 Conflict of interest	Section 1
§ 659.43 Certification of compliance	Section 9

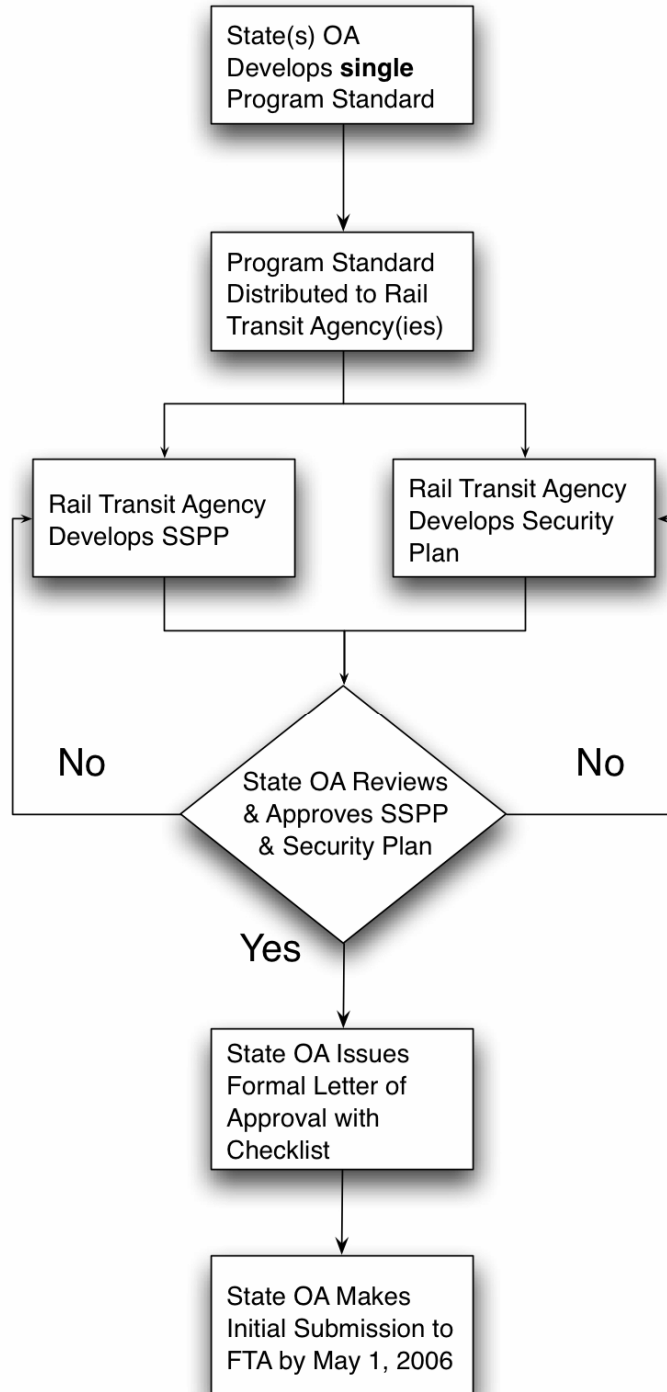
EXAMPLE To ensure that a complete Initial Submission is made to FTA by May 1, 2006, the oversight agency may wish to consider the following activities:

- The oversight agency and rail transit agency conduct a meeting, workshop or other session by the end of October 2005 to discuss the revised Rule and its implications for the oversight agency and the rail transit agency SSPP and Security Plan (if such a meeting has not already occurred).
- During the meeting, workshop or other session, the oversight agency and rail transit agency should devise an approach to meeting new Rule requirements for the hazard management process, the protection of security-related materials from public disclosure, the internal safety and security audit process, and accident notification and investigation.
- A draft of the state's "program standard and referenced procedures" is complete by early December 2005 and delivered to the rail transit agency for review and comment.
- The final "program standard and referenced procedures" is delivered to the rail transit agency by mid-January 2005.
- The rail transit agency delivers its revised System Safety Program Plan and Security Plan to the oversight agency by April 1, 2006.
- The oversight agency works with the rail transit agency to review, discuss, request any required revisions, and approve the SSPP and Security Plan by April 30, 2005.
- The oversight agency ensures that its Initial Submission will reach FTA's Office of Safety and Security by May 1, 2006.

The oversight agency may send this submission in hard copy to FTA's Office of Safety and Security at 400 Seventh Street, S.W., Washington, D.C. 20590. In addition, by March 31, 2006, FTA will provide information regarding available electronic submission options.

Figure 5 provides an overview of the key activities to be performed to prepare the oversight agency's Initial Submission.

Figure 5: Activities to Prepare Initial Submission



Chapter 6: Requiring, Reviewing and Approving the Rail Transit Agency System Safety Program Plan (SSPP)

Overview

This chapter provides guidance on how state oversight agencies can require, review and approve the rail transit agency SSPP. § 659.17 of the revised Rule specifies that the oversight agency “shall require the rail transit agency to develop and implement a written SSPP that complies with requirements in this part and the oversight agency’s program standard.” In addition, the oversight agency must “review and approve the rail transit agency SSPP.” After approval, the oversight agency shall “issue a formal letter of approval to the rail transit agency, including the checklist used to conduct the review.” § 659.19 of the revised Rule identifies the 21 elements to be included in a rail transit agency SSPP. Figure 6 provides a summary listing of these elements.

Figure 6: Required SSPP Elements

1	Policy Statement and Authority for SSPP	12	Internal Safety Audits
2	Goals and Objectives	13	Rules Compliance
3	Overview of Management Structure	14	Facilities and Equipment Inspections
4	SSPP Control and Update	15	Maintenance Audits and Inspections
5	Implementation Activities and Responsibilities	16	Training and Certification for Employees and Contractors
6	Hazard Management Process	17	Configuration Management and Control
7	System Modification	18	Compliance with Local, State and Federal Requirements
8	Safety Certification	19	Hazardous Materials Program
9	Safety Data Collection and Analysis	20	Drug and Alcohol Program
10	Accident Investigation	21	Procurement Process
11	Emergency Management Program		

Requiring the Rail Transit Agency SSPP

As explained in Chapter 5, in its program standard, the oversight agency must require the rail transit agency to develop and implement an SSPP and identify the minimum elements specified in § 659.19. These elements form the foundation of the rail transit agency’s safety program. Each program standard submitted to FTA, as part of an Initial Submission, will be carefully reviewed to ensure all 21 required SSPP elements are identified.

To support the efforts of state oversight agencies in requiring SSPPs from rail transit agencies, FTA's *Resource Toolkit* contains *Appendix E: Program Requirements for Development of a Rail Transit Agency System Safety Program Plan (SSPP)*. States are encouraged to review this Appendix and to consider its applicability for the oversight agency's efforts to require SSPPs compliant with the revised Rule.

To support the efforts of oversight agencies in requiring System Safety Program Plans in compliance with FTA's revised Rule, FTA has developed *Appendix E: Program Requirements for Development of a Rail Transit Agency System Safety Program Plan (SSPP)* in its *Resource Toolkit*. This Appendix may be referenced or adopted by oversight agencies in their program standard; it may be modified and then adopted; or the oversight agency may choose to use another approach entirely in specifying the contents of the rail transit agency System Safety Program Plan.

EXAMPLE In their program standards, oversight agencies may reference or adopt this Appendix in its entirety, or may work with the affected rail transit agencies to modify the Appendix as appropriate to reflect local conditions and rail transit agency practices.

EXAMPLE Use of this Appendix is not mandated by the revised 49 CFR Part 659. State oversight agencies may choose to use other mechanisms to specify rail transit agency SSPP requirements. Examples of these mechanisms include a listing or outline of the required SSPP elements or content, or direct reference to § 659.19 in the program standard.

Whatever approach is ultimately adopted, the SSPP developed by the rail transit agency must:

- be endorsed by top management of the rail transit agency;
- establish the safety and security goals and objectives of the rail transit agency;
- identify the safety roles and responsibilities of all rail transit agency departments/functions;
- identify the hazard management process to be managed by the rail transit agency;
- identify the internal safety audit process to be managed by the rail transit agency and overseen by the state oversight agency;
- identify the accident/incident notification, investigation and reporting procedures to be used jointly by the rail transit agency and the state oversight agency in managing accidents meeting thresholds specified by FTA's Rule;
- require communication and coordination with oversight agency in all SSO program provisions; and
- provide a schedule for the implementation and revision of the SSPP.

Table 5 provides a detailed listing of all required SSPP elements identified in § 659.19.

Table 5: Required SSPP Contents Specified in § 659.19

NO.	SSPP ELEMENT	CONTENTS
1	Policy Statement and Authority for SSPP	A policy statement signed by the agency's chief executive that endorses the safety program and describes the authority that establishes the SSPP.
2	Goals and Objectives	A clear definition of the goals and objectives for the rail transit agency safety program and stated management responsibilities to ensure that they are achieved.
3	Overview of Management Structure	An overview of the management structure of the rail transit agency, including: (i) an organization chart; (ii) a description of how the safety function is integrated into the rest of the rail transit organization; and (iii) clear identification of the lines of authority used by the rail transit agency to manage safety issues.
4	SSPP Control and Update Procedure	The process used to control changes to the SSPP, including: (i) specifying an annual assessment of whether the SSPP should be updated; and (ii) required coordination with the oversight agency, including timeframes for submission, revision and approval.
5	SSPP Implementation Activities and Responsibilities	A description of specific activities required to implement the system safety program, including: (i) tasks to be performed by rail transit agency safety function, by position and management accountability, specified in matrices and/or narrative format; and (ii) safety-related tasks to be performed by other rail transit agency departments, by position and management accountability, specified in matrices and/or narrative format.
6	Hazard Management Process	A description of the process used by the rail transit agency to implement its hazard management program, including activities for: (i) hazard identification; (ii) hazard investigation, evaluation and analysis; (iii) hazard control and elimination; (iv) hazard tracking; and (v) requirements for on-going reporting to the oversight agency regarding hazard management activities and status.
7	System Modification	A description of the process used by the rail transit agency to ensure that safety concerns are addressed in modifications to existing systems, vehicles, and equipment, which do not require formal certification but which may have safety impacts.
8	Safety Certification	A description of the safety certification process required by the rail transit agency to ensure that safety concerns and hazards are adequately addressed prior to the initiation of passenger operations for New Starts and subsequent major projects to extend, rehabilitate, or modify an existing system, or to replace vehicles and equipment.

NO.	SSPP ELEMENT	CONTENTS
9	Safety Data Collection and Analysis	A description of the process used to collect, maintain, analyze, and distribute safety data, to ensure that the safety function within the rail transit agency receives the information necessary to support implementation of the system safety program.
10	Accident/ Incident Investigations	A description of the process used by the rail transit agency to perform incident notification, investigation and reporting, including: (i) notification thresholds for internal and external organizations; (ii) investigation process and references to procedures; (iii) the process used to develop, implement and track corrective actions that address investigation findings; (iv) reporting to internal and external organizations; and (v) coordination with the oversight agency.
11	Emergency Management Program	A description of the process used to develop an approved, coordinated schedule for emergency management program activities, which include: (i) meetings with external agencies; (ii) emergency planning responsibilities and requirements; (iii) process used to evaluate emergency preparedness, such as annual emergency field exercises; (iv) after action reports and implementation of findings; (v) revision and distribution of emergency response procedures; (vi) familiarization training for public safety organizations; and (vii) employee training.
12	Internal Safety Audits	A description of the process used to ensure that planned and scheduled internal safety audits are performed to evaluate compliance with the SSPP, including: (i) identification of departments and functions subject to review; (ii) responsibility for scheduling reviews; (iii) process for conducting reviews, including the development of checklists and procedures and issuing of findings; (iv) review of reporting requirements; (v) tracking the status of implemented recommendations; and (vi) coordination with the oversight agency.
13	Rules Compliance	A description of the process used by the rail transit agency to develop, maintain, and ensure compliance with rules and procedures having a safety impact, including: (i) identification of operating and maintenance rules and procedures subject to review; (ii) techniques used to assess the implementation of operating and maintenance rules and procedures by employees, such as performance testing; (iii) techniques used to assess the effectiveness of supervision relating to the implementation of operating and maintenance rules; and (iv) process for documenting results and incorporating them into the hazard management program.

NO.	SSPP ELEMENT	CONTENTS
14	Facilities and Equipment Inspections	A description of the process used for facilities and equipment safety inspections, including: (i) identification of facilities and equipment subject to regular safety-related inspection and testing; (ii) techniques used to conduct inspections and testing; (iii) inspection schedules and procedures; and (iv) description of how results are entered into the hazard management process.
15	Maintenance Audits and Inspections	A description of the maintenance audits and inspections program including identification of the affected facilities and equipment, maintenance cycles, documentation required, and the process for integrating identified problems into the hazard management process.
16	Training and Certification Program for Employees and Contractors	A description of the training and certification program for employees and contractors, including: (i) categories of safety-related work requiring training and certification; (ii) a description of the training and certification program for employees and contractors in safety-related positions; (iii) process used to maintain and access employee and contractor training records; and (iv) process used to assess compliance with training and certification requirements.
17	Configuration Management and Control	A description of the configuration management control process, including: (i) the authority to make configuration changes, (ii) process for making changes, and (iii) assurances necessary for all involved departments to be formally notified.
18	Local, State, and Federal Requirements	A description of the safety program for employees and contractors that incorporates the applicable local, state, and federal requirements, including: (i) safety requirements that employees and contractors must follow when working on, or in close proximity to, rail transit agency controlled property; and (ii) process for ensuring the employees and contractors know and follow the requirements.
19	Hazardous Materials Program	A description of the hazardous materials program including the process used to ensure knowledge of and compliance with the program requirements.
20	Drug and Alcohol Program	A description of the drug and alcohol program and the process used to ensure knowledge of and compliance with program requirements.
21	Procurement Process	A description of the measures, controls, and assurances in place to ensure that safety principles, requirements and representatives are included in the rail transit agency procurement process.

Comparison with the 1991 APTA Manual for the Development of Rail Transit System Safety Program Plans

In the previous rule, to specify the contents of the rail transit agency SSPP, FTA referenced the 1991 *APTA Manual for the Development of Rail Transit System Security Program Plans*, published on August 20, 1991. In the revised Rule, FTA has removed this reference, largely to address concerns identified by the NTSB regarding FTA's ability to control the required minimum content of the SSPP and to revise this content in response to NTSB recommendations and findings. State oversight agencies also requested this change to address their difficulties in interpreting and enforcing a manual developed as guidance for rail transit agencies.

In the revised Rule, in place of the *APTA Manual*, FTA has specified the 21 elements presented in Table 5. Most rail transit agency SSPPs already address the majority of these elements, but probably will require revision to reflect new requirements for:

- hazard management process;
- accident notification, investigation and reporting;
- internal safety and security audits;
- emergency management;
- rules compliance; and
- safety certification.

FTA's required SSPP minimum content adds safety certification as a distinct activity from system modification. This change is designed to clarify that operating rail transit agencies must have a safety certification program in place, referenced as part of the SSPP, to address extensions, modifications and other major projects that may be undertaken.

FTA requirements for the minimum content of an SSPP have many similarities to the 1991 *APTA Manual*. However, there are also significant differences.

First, there is the obvious change in the order of elements presented. At its discretion, the oversight agency may require that the existing rail transit agency SSPP be re-written to follow these 21 elements in the order presented in

EXAMPLE

§ 659.19. For example, if the oversight agency adopts *Appendix E: Program Requirements for Development of a Rail Transit Agency System Safety Program Plan (SSPP)* in the FTA's *Resource Toolkit*, then the rail transit agency may be required to re-organize its SSPP.

Or the oversight agency may specify that revisions be made to the existing rail transit agency SSPP, which may follow the format of the *APTA Manual*, so long as the changes are documented in a cross-walk matrix or letter, indicating where in the revised SSPP each of the required 21 elements is addressed.

EXAMPLE

Another significant difference from the 1991 *APTA Manual* is that many of the elements previously addressed as part of the Internal Safety Audit Process (Checklist #9) now have their own independent sections. While implementation of some of these elements may be assured through the Internal Safety Audit Process, others may be on-going components of the rail transit agency's safety program, such as daily, weekly and

EXAMPLE monthly maintenance inspections; employee and contractor safety training programs; the rail transit agency's emergency preparedness program; rule compliance and enforcement programs; drug and alcohol testing programs; and configuration management and control. FTA's revised Rule requires that the rail transit agency SSPP provide specific information for each of these elements that may be broader in scope than general guidance provided in the 1991 *APTA Manual*.

FTA's required SSPP minimum content also adds safety certification as a distinct activity from system modification. This change is designed to clarify that operating rail transit agencies must have a safety certification program in place, referenced as part of the SSPP, to address extensions, modifications and other major projects that may be undertaken.

Finally, § 659.19 adds a new requirement for the hazard management process. This process establishes how the rail transit agency and the oversight agency will share information regarding the identification, investigation, evaluation, resolution and tracking of hazards. The objective of this process is to provide an on-going oversight role for hazard management at the rail transit agency.

To support the efforts of oversight agencies in reviewing and approving rail transit agency System Safety Program Plans, *Appendix F: State Oversight Agency SSPP Review Checklist of FTA's Resource Toolkit* provides a sample SSPP review checklist that can be adopted or modified by the oversight agency.

EXAMPLE The hazard management process must identify all mechanisms, systems and procedures in place at the rail transit agency to identify hazards. Examples include: data mining of agency control center logs and maintenance information systems; reports from operators and supervisors; customer complaints; results of formal safety analyses; results from internal safety and security audits; results from performance testing and other rules compliance activities; results from the oversight agency three-year safety review; and results from accident investigations and trend analysis of minor incidents and near-misses.

In addition, the hazard management process must describe how identified hazards are investigated, evaluated and analyzed; and how they are being controlled and eliminated, whether by design for minimum risk; use of safety devices; use of warning devices; the provision of procedures and training; or some other means.

Finally, this section must describe how identified hazards are tracked through to resolution, and must specify the rail transit agency's on-going reporting requirements for communicating this information to the oversight agency (i.e., monthly tracking logs, monthly or quarterly meetings; monthly or quarterly reports, meeting minutes, or some other method).

SSPP Review and Approval

In carrying out its oversight responsibilities, the oversight agency must receive, review, and approve in writing each rail transit agency SSPP. The oversight agency must review the SSPP using a checklist developed for the purpose and must submit a formal letter and completed checklist to the rail transit agency to document its review and approval.

To support the efforts of oversight agencies in performing this activity, *Appendix F: State Oversight Agency SSPP Review Checklist* of FTA's *Resource Toolkit* provides a sample SSPP review checklist. Use of this checklist, or a similar checklist developed by the oversight agency, will ensure that a formal review is conducted and that each required element of the SSPP has been addressed by the rail transit agency.

In performing its review and approval activities, the oversight agency is required in § 659.15(b)(8) to describe in its program standard “the process and timeframe through which the oversight agency must receive, review, and approve the rail transit agency system safety program plan.” FTA's *Resource Toolkit* provides an approach to this process that focuses, first, on receiving, reviewing and approving the initial SSPP, revised by the rail transit agency to reflect the requirements in § 659.15, in a manner which provides sufficient time to meet FTA's Initial Submission deadline of May 1, 2006.

Based on the past experience of state oversight agencies, in developing the SSPP review and approval process and corresponding timeframes, FTA suggests that the oversight agency provide at least 30 days for its activities to apply the SSPP review checklist; to follow-up with the rail transit agency regarding any questions, outstanding items, or requests for change; and to issue formal approval, in the form of a letter and the completed SSPP review checklist.

EXAMPLE

The process for requiring, receiving, reviewing and approving annual updates to the SSPP is discussed in Chapter 8 of these guidelines.

To support the efforts of rail transit agencies in revising their System Safety Program Plans, the CD-ROM attached to these guidelines contains sample sections for each of the 21 required elements. *Appendix E: Program Requirements for Development of a Rail Transit Agency System Safety Program Plan (SSPP)* of FTA's *Resource Toolkit* is also included on the CD-ROM.

Sample SSPP Sections

To support rail transit agencies in preparing SSPPs in compliance with FTA's revised Rule and the state oversight program standard, the CD-ROM attached to these guidelines contains not only an electronic copy of *Appendix E: Program Requirements for Development of a Rail Transit Agency System Safety Program Plan (SSPP)*, but also sample SSPP sections for each of the 21 elements identified in § 659.19. These samples have been created from materials submitted by rail transit agencies to support creation of these guidelines.

Chapter 7: Requiring, Reviewing and Approving the Rail Transit Agency System Security Plan

Overview

In addition to the SSPP, the oversight agency must require each rail transit agency within its jurisdiction to develop, implement, and maintain a written Security Plan that complies with the oversight agency's program standard and the revised rule's § 659.21 and § 659.23.

As specified in § 659.21, the Security Plan must be developed and maintained as a separate document and may not be part of the rail transit agency's SSPP. Based on its authority, the oversight agency may prohibit a rail transit agency from publicly disclosing the Security Plan. After approving the Security Plan, the oversight agency must issue a formal letter of approval, including the checklist used to conduct the review, to the rail transit agency.

Required Security Plan Elements

As specified in § 659.23, the rail transit agency's adopted Security Plan shall include, at a minimum, the following five elements:

- Identify the policies, goals, and objectives for the security program endorsed by the agency's chief executive.
- Document the rail transit agency's process for managing threats and vulnerabilities during operations, and for major projects, extensions, new vehicles and equipment, including integration with the safety certification process.
- Identify controls in place that address the personal security of passengers and employees.
- Document the rail transit agency's process for conducting internal security audits to evaluate compliance and measure the effectiveness of the Security Plan.
- Document the rail transit agency's process for making its Security Plan and accompanying procedures available to the oversight agency for review and approval.

Guidance for Security Plans

The oversight agency may address the requirements specified in § 659.23 by referencing FTA's *Public Transportation System Security and Emergency Preparedness Planning Guide* (January 2003), available on FTA's safety and security website at: <http://transit-safety.volpe.dot.gov>. *Appendix G: Program Requirements for Development of a Rail Transit Agency System Security and Emergency Preparedness Program Plan (SEPP)* of FTA's *Resource Toolkit*, provides detailed guidance and examples for incorporating these guidelines into the oversight agency's program standard and the rail transit agency Security Plan.

EXAMPLE States are encouraged to review this Appendix and to consider its applicability for the oversight agency's efforts to require Security Plans compliant with the revised Rule. In their program standards, oversight agencies may reference or adopt this Appendix in its entirety, or may work with the affected rail transit agencies to modify the Appendix as appropriate to reflect local conditions and rail transit agency practices.

EXAMPLE Use of this Appendix is not mandated by the revised 49 CFR Part 659. State oversight agencies may choose to use other mechanisms to specify rail transit agency Security Plan requirements. Examples of these mechanisms include direct reference to FTA's *Public Transportation System Security and Emergency Preparedness Planning Guide*, a listing or outline of the oversight agency's required Security Plan elements or content, or direct reference to § 659.23.

Appendix G: Program Requirements for Development of a Rail Transit Agency System Security and Emergency Preparedness Program Plan (SEPP) of FTA's Resource Toolkit provides detailed guidance and examples for incorporating the revised Rule's security requirements into the oversight agency's program standard and the rail transit agency Security Plan.

DHS Programs and Requirements

Appendix G also provides relevant information on programs being administered by DHS, which may affect the rail transit agency's security program. For example, the DHS, G&T Transit Security Grant Program requires each participating rail transit agency to develop and submit to G&T a Security Plan that complies with FTA's *Public Transportation System Security and Emergency Preparedness Planning Guide*.

As discussed in Chapter 2 of these guidelines, the Transit Security Grant Program also requires creation of a Regional Transit Security Strategy and development and implementation of a series of activities to support rail transit agency compliance with region-wide initiatives to address Homeland Security Presidential Directives (HSPDs) for the National Response Plan, the National Incident Management System, the National Infrastructure Protection Plan, and the National Preparedness Goal.

The focus of these activities is on the revision of region-wide emergency operations plans, the implementation of the incident command system (ICS), the development of interoperable communications, and the enhancement of regional response capabilities for events involving improvised explosive devices (IED) and chemical, biological, radiological, nuclear and explosive (CBRNE) releases.

G&T also has created a Homeland Security Exercise and Evaluation Program (HSEEP) which offers grants to support terrorism-related emergency exercises. This program is open to rail transit agencies, and places a series of requirements on grant recipients.

G&T also offers a Technical Assistance Program for Risk Assessment, which provides threat and vulnerability analysis in the rail transit environment based on the process specified in G&T's *Special Needs Jurisdiction Tool Kit*. This process follows the basic steps identified in Chapter 5 of FTA's *Public Transportation System Security and Emergency Preparedness Planning Guide* however; it is more detailed and integrates quantitative methods into the assessment. In performing this program, G&T's Technical Assistance Team works with rail transit agency personnel.

For transit agencies participating in FTA's Security Readiness Assessments, threat and vulnerability assessment methodologies may have been developed with FTA technical assistance. These methodologies should also comply with FTA's *Public Transportation System Security and Emergency Preparedness Planning Guide*.

As discussed in Chapter 2 of these guidelines, the Transportation Security Administration has regulatory authority over security in all modes of transportation, including public transportation. TSA has created the Surface Transportation Security Inspector Program, as mandated by the Fiscal Year 2005 Homeland Security appropriations bill. TSA Surface Transportation Security Inspectors may be reviewing rail transit agency security programs to: conduct security system evaluations; share security-related best practices information; coordinate security threat advisories; and conduct inspections to ensure compliance with security directives, such as TSA's security directive RAILPAX-04-01 issued May 20, 2004. TSA inspectors may also have recommendations or requirements for the rail transit agency's threat and vulnerability assessment process or the controls in place that address the personal security of passengers and employees.

Confidentiality of Security Plan and Security-Related Material

As specified in §659.11, and referenced in §659.23(e), the oversight agency must either have provisions in place for protecting security-related materials from public disclosure or develop special procedures to ensure that these materials cannot be released. The rail transit agency's Security Plan must describe the process in place to protect all security-related materials from public disclosure.

In addressing this requirement, in its program standard, the oversight agency should clearly identify its authority to protect against the public disclosure of rail transit agency security documents. In the event that the state oversight agency cannot protect these materials, discussions should be held with the rail transit agency security/police function regarding appropriate procedures.

The Department of Homeland Security, Preparedness Directorate, Office of Grants and Training (G&T) has developed several grant and technical assistance programs for rail transit agencies, including the Transit Security Grant Program (TSGP), the Technical Assistance Program for Risk Assessment, and the Homeland Security Exercise and Evaluation Program (HSEEP).

EXAMPLE These procedures may include on-site review of the Security Plan and other security-related materials and/or specially developed agreements which state that all materials submitted to the oversight agency remain the property of the rail transit agency and must be destroyed immediately after use or returned to the rail transit agency.

Issues for Consideration

In requiring, reviewing and approving the rail transit agency's Security Plan, the oversight agency may want to consider FTA's *Top 20 Security Action Items List*. This list contains measures recommended by FTA for immediate consideration and implementation by transit agencies to improve both security and emergency preparedness. The goal of this program is to ensure that the nation's public transportation systems:

- are prepared for and well-protected against attacks;
- respond rapidly and effectively to natural and human-caused threats and disasters;
- appropriately support the needs of emergency management and public safety agencies; and
- can be quickly and efficiently restored to full capability.

FTA's *Top 20 Security Action Items List* includes the following measures:

- The Security Plan includes an established written policy statement.
- The Security Plan and supporting procedures and programs are updated to reflect anti-terrorist measures and any current threat conditions.
- The Security Plan and supporting procedures and programs are part of an integrated system program, including regional coordination with other agencies, security design criteria in procurements and organizational charts for incident command and management systems.
- The Security Plan and supporting procedures and programs are signed, endorsed and approved by top management.
- The security program is assigned to a senior level manager.
- Security responsibilities are defined and delegated from management to front line employees.
- Operations and maintenance supervisors, forepersons, and managers are responsible for security issues under their control.
- A threat and vulnerability assessment resolution process is established and used.
- Security problems are identified and information is reported.
- Background investigations are conducted on all new front-line employees.
- Criteria for background investigations are established.
- Security orientation or awareness materials are provided to all front-line employees.
- Ongoing training programs on security procedures by work area are provided.
- Public awareness materials are developed and distributed on a system wide basis.
- Periodic audits of security policies and procedures are conducted.

- Tabletop and functional drills are conducted at least once every six months and full-scale exercises, coordinated with regional emergency response providers, are performed at least annually.
- Access to documents of security critical systems and facilities are controlled.
- Access to security sensitive documents is controlled.
- Background investigations are conducted of contractors or others who require access to security critical facilities, and identification badges are used for all visitors, employees and contractors to control access to key critical facilities.
- Protocols have been established to respond to the Department of Homeland Security Advisory System (HSAS) threat levels.

Additional information on these action items is available at: <http://www.fta.dot.gov> (click on Safety and Security).

Security Plan Review and Approval

In carrying out its oversight responsibilities, the oversight agency must receive, review, and approve in writing each rail transit agency Security Plan. The oversight agency must review the Security Plan using a checklist developed for the purpose and must submit a formal letter and completed checklist to the rail transit agency to document its review and approval.

To support the efforts of oversight agencies in reviewing and approving System Security Plans, FTA's Resource Toolkit contains *Appendix H: State Oversight Agency Security Plan Review Checklist*. This checklist can be adopted or modified by the oversight agency.

To support the efforts of oversight agencies in performing this activity, *Appendix H: State Oversight Agency Security Plan Review Checklist* of FTA's *Resource Toolkit* provides a sample Security Plan review checklist. Use of a checklist similar to this example will ensure that a formal review is conducted and that each required element of the Security Plan has been addressed by the rail transit agency.

EXAMPLE

In performing its review and approval activities, the oversight agency is required in § 659.15(b)(9) to describe in its program standard "the process and timeframe through which the oversight agency must receive, review, and approve the rail transit agency Security Plan." FTA's *Resource Toolkit* provides an approach to this process that focuses, first, on receiving, reviewing and approving the initial Security Plan, revised by the rail transit agency to reflect the requirements in § 659.23, in a manner which provides sufficient time to meet FTA's Initial Submission deadline of May 1, 2006. FTA recommends that the oversight agency provide at least 30 days for its activities to review and approve the Security Plan.

The process for requiring, receiving, reviewing and approving annual updates to the Security Plan is discussed in Chapter 8 of these guidelines.

Chapter 8: Requiring Annual Updates of the SSPP and Security Plan

Overview

This chapter presents the requirements identified in § 659.25 for the annual review of the rail transit agency's SSPP and Security Plan. In *Section 2 – System Safety Program Plan Standard* and *Section 3 – System Security Plan Standard* of FTA's *Resource Toolkit*, sample language is available for use by oversight agencies in complying with § 659.25 requirements.

Requiring Annual Reviews

As indicated in § 659.25 of the revised Rule, the oversight agency shall require the rail transit agency to conduct an annual review of its SSPP and Security Plan to determine if they need to be updated. The rail transit agency's annual review and subsequent submittal of its updated SSPP and/or Security Plan, as well as any affected procedures, must occur according to the time-frame and process specified by the oversight agency in its program standard.

In its program standard, the oversight agency must address two possible situations resulting from the required annual review:

- The annual review was conducted for the SSPP and/or Security Plan, and the rail transit agency determined that no update was necessary.
- The annual review was conducted for the SSPP and/or Security Plan, and the rail transit agency determined that an update was necessary, and proceeded to make the changes.

No Update Necessary

The oversight agency must establish a procedure to address the situation in which the rail transit agency SSPP and/or Security Plan does not need to be updated. For example, the oversight agency may require a letter to be submitted by the rail transit agency documenting that its annual review was performed and explaining the determination that no update was required. This letter should be submitted within the time frame specified by the oversight agency for the annual review.

EXAMPLE

The oversight agency may disagree with the rail transit agency's determination that the SSPP and/or Security Plan do not need to be updated. To address such a situation, the oversight agency may consider a mechanism for providing objections. For example, in its program standard, the oversight agency may state: "if the oversight agency wishes to object to this determination, the oversight agency will notify the rail transit agency within 30 days."

EXAMPLE

Update Required

In the event the rail transit agency performs its review and an update is required, the rail transit agency must submit its revised SSPP and/or Security Plan and any revised procedures to the oversight agency within the time frame specified by the oversight agency in its program standard. To facilitate review of the revised SSPP or Security Plan, the oversight agency may also request a matrix or letter identifying the modifications made by the rail transit agency.

EXAMPLE In establishing its time frame for the annual review and submittal of updated SSPPs and Security Plans, the oversight agency should coordinate with the rail transit agency to determine if an existing annual review cycle is in effect. If possible, the state oversight agency should incorporate this existing cycle into its requirements. If an existing cycle is not in place at the rail transit agency, then the oversight agency must specify its designated time frame in the program standard.

FTA has no preference regarding the time frame established by the oversight agency. FTA is only concerned that a reasonable time frame is provided in the program standard.

EXAMPLE In the event that the changes identified by the rail transit agency during the annual review may require additional time to be documented in the SSPP or Security Plan, the oversight agency may choose to specify a procedure for requesting extensions. If the oversight agency adopts this approach, it must formally approve all rail transit agency requests for extensions regarding SSPP and/or Security Plan modifications.

Review and Approval of Updated SSPPs, Security Plans and Supporting Procedures

EXAMPLE As required in § 659.25, the oversight agency must also specify the process and time-frame it will use to review the submitted SSPP and/or Security Plan and to approve the changes or request additional information. For example, the oversight agency may specify that it will “use its SSPP and Security Plan review checklists and complete its review within 30 calendar days of receipt of the rail transit agency submittal(s).”

In the event the rail transit agency’s Security Plan is modified, the rail transit agency must make the modified Security Plan and accompanying procedures available to the oversight agency for review, consistent with requirements specified in § 659.23(e). Depending on the procedures established by the rail transit agency, additional time might be required to schedule an on-site oversight agency review of the updated Security Plan and supporting procedures. The time frame established in the program standard should reflect this consideration.

During the review process, the oversight agency may have questions, concerns or requests for additional information or further modifications. Conflicts may arise with the rail transit agency regarding a specific section of the SSPP or the Security Plan. The oversight agency must describe how it will manage these activities in its program standard.

EXAMPLE For example, in its program standard, the oversight agency could state: “While conducting its review, the oversight agency may request additional information, clarifications or revisions from the rail transit agency. A meeting or teleconference may also be conducted to address any issues identified by oversight agency during its review of the SSPP and/or Security Plan. In the event the rail transit agency objects to a request from the oversight agency, the oversight agency and the rail transit agency shall review the objections, suggest alternatives, and agree to an appropriate course of action within 15 calendar days. The revised and updated SSPP and/or Security Plan shall be submitted to the oversight agency for review and approval within 30 calendar days after agreement on a course of action. The oversight agency shall review the revised SSPP and/or Security Plan and approve the revisions or request additional information within 30 calendar days.”

After the SSPP and Security Plan are approved, the oversight agency must issue a formal letter of approval to the rail transit agency, including a copy of the checklist used to conduct the review.

Other Potential Submittals from the Rail Transit Agency

Additional reviews of or revisions to the rail transit agency SSPP and/or Security Plan may be required outside of the annual review cycle. These reviews or revisions may be necessary to address specific issues based on changes to the oversight agency’s program standard, changes to FTA’s 49 CFR 659, audit results, on-site reviews, investigations, changing trends in incident data, or recommendations or requirements from DHS, G&T, or TSA.

EXAMPLE In its program standard, the oversight agency must address this process. For example, in its program standard, the oversight agency may state: “Upon receipt of a written notification from the oversight agency for SSPP or Security Plan modifications, the rail transit agency shall submit a revised SSPP to oversight agency within 30 calendar days. The oversight agency will review and approve the revised SSPP and/or Security Plan, providing a formal approval letter and a completed review checklist (if appropriate for the change) within 30 days of receipt of the revised rail transit agency plan.”

EXAMPLE In addition, the rail transit agency may choose to update its SSPP and/or Security Plan outside of the annual review cycle. For example, to address this situation, in its program standard, the oversight agency may state: “In the event that the rail transit agency initiates updates outside of the annual review cycle, the rail transit agency shall submit the modified SSPP and/or Security Plan, and any subsequently modified procedures, to the oversight agency for review and approval within 30 calendar days of the effective date of the change.”

Chapter 9: Implementing the Hazard Management Process

Overview

In § 659.31, FTA's revised Rule includes a new section devoted to the hazard management process. This section was created to address challenges experienced by state oversight agencies and rail transit agencies regarding the definition, classification, investigation and resolution of "unacceptable hazardous conditions" as defined in § 659.5 and § 659.39 of FTA's original rule.

With this new section, FTA's revised Rule significantly changes the requirements through which hazards are managed in the SSO program. *Section 5 -- Hazard Management Process and Appendix E: Program Requirements for Development of a Rail Transit Agency System Safety Program Plan (SSPP)* of FTA's *Resource Toolkit* provide sample language that can be used by the oversight agency and the rail transit agency to address these new requirements.

Hazard Management Process

In § 659.31, the revised Rule focuses on the creation of a hazard management process, developed and documented by the rail transit agency in its SSPP, "to identify and resolve hazards during operation, including any hazards resulting from subsequent system extensions or modifications, operational changes, or other changes within the rail transit environment." This process must be approved by the oversight agency.

In addition, the oversight agency must participate sufficiently in this process to oversee the identification, assessment, resolution and tracking of hazards by the rail transit agency. FTA encourages the rail transit agencies and their oversight agencies to work together in developing this process.

As specified in § 659.31, the hazard management process must, at a minimum:

- Define the rail transit agency's approach to hazard management and the implementation of an integrated system-wide hazard resolution process;
- Specify the sources of, and the mechanisms to support, the on-going identification of hazards;
- Define the process by which identified hazards will be evaluated and prioritized for elimination or control;
- Identify the mechanism used to track through resolution the identified hazard(s);

Section 5 -- Hazard Management Process and Appendix E: Program Requirements for Development of a Rail Transit Agency System Safety Program Plan (SSPP) of FTA's Resource Toolkit provide sample language that can be used by the oversight agency and the rail transit agency to address the revised Rule's requirements for the hazard management process.

- Define minimum thresholds for the notification and reporting of hazard(s) to oversight agencies; and
- Specify the process by which the rail transit agency will provide on-going reporting of hazard resolution activities to the oversight agency.

On-going Reporting to the Oversight Agency

There are many different approaches that the oversight agency and rail transit agency may take in addressing § 659.31. The first step may be a meeting or teleconference between oversight agency and rail transit agency representatives. During this meeting, the rail transit agency may describe its current hazard identification, assessment and resolution process, including any matrices, databases or tracking tables that are used to support it. Then the oversight agency and the rail transit agency should work together to identify any existing rail transit agency tools or reports that could be submitted to the oversight agency on a weekly, monthly or quarterly basis, to address § 659.31 requirements for on-going reporting. In Section 5 of FTA's *Resource Toolkit*, a sample tracking matrix is proposed, which is reproduced below as Figure 7.

Once the oversight agency and the rail transit agency have agreed upon a reporting mechanism and submission time frame, then they can also discuss oversight agency participation in monthly or quarterly meetings that may be conducted by the rail transit agency to review its hazard management process.

Other approaches may be developed by the rail transit agency and oversight agency to address this requirement. FTA will evaluate other proposed approaches, such as dial-in access provided to an oversight agency for a rail transit agency's hazard management information system or monthly teleconference calls, on a case-by-case basis in the Initial Submissions.

§ 659.31 requires that the rail transit agency, in its SSPP, "define minimum thresholds for the notification and reporting of hazard(s) to oversight agencies." Each rail transit agency, in its SSPP, will specify its approach to identifying and assessing hazards.

EXAMPLE

§ 659.31 also requires that the rail transit agency, in its SSPP, "define minimum thresholds for the notification and reporting of hazard(s) to oversight agencies." Each rail transit agency, in its SSPP, will specify its approach to identifying and assessing hazards. Each rail transit agency may use a variety of methodologies, including informal processes, such as reports from operations and maintenance personnel, results from rules compliance checks and employee evaluations, the mining of maintenance data, results from facilities and vehicles inspections, findings from internal safety and security audits, and daily review of the agency's unusual occurrences log, as well as more formal approaches, such as trend analysis, hazard classification and resolution using the Military Standard (Mil-Std) 882 process, hazard analyses using inductive processes (Preliminary Hazard Analysis, Failure Modes and Effects Analysis, Job Hazard Analysis, etc.) and hazard analysis using deductive processes (Fault Tree Analysis).

Whatever approach is selected by the rail transit agency, there must be some set of criteria applied for assessing identified hazards. Assessment enables the rail transit agency to evaluate the seriousness of the hazard and to prioritize its resolution.

These criteria may be the hazard probability and severity rankings used in Mil-Std 882, or a qualitative or quantitative ranking scheme devised by the rail transit agency. However the rail transit agency chooses to define its assessment process, in its SSPP, it must indicate which criteria must be met to trigger notification to the oversight agency. In describing this process, FTA encourages the rail transit agency to reflect its genuine practices, however informal or subjective they may be, rather than idealized techniques that may not actually be used in the event of a serious hazardous condition.

The oversight agency, in turn, must specify how this notification will be made and any activities that are required once notification occurs. For example, the oversight agency may require the rail transit agency to notify the oversight agency within four (4) hours of the identification of a hazard meeting the criteria specified by the rail transit agency in its SSPP. Notification may be made by fax, email or telephone. The oversight agency may also require that the rail transit agency provide initial information with notification, such as the following:

However the rail transit agency chooses to define its assessment process, in its SSPP, it must indicate which criteria must be met to trigger notification to the oversight agency.

EXAMPLE

- rail transit agency reporting the hazard;
- name/title of rail transit agency representative reporting the hazard to the oversight agency;
- method of notification;
- time of notification;
- time and date of hazard occurrence;
- location of hazard being reported;
- description of how the hazard was recognized and reported at the rail transit agency, to include (1) how was the hazard identified, (2) who reported the hazard, and (3) the date and time that the rail transit agency safety unit was notified of the hazard;
- description of the hazard and the immediate corrective action(s) taken; and
- initial evaluation of the hazard, using the criteria included in the rail transit agency's Hazard Management Process Section of the SSPP, if no action were to be taken by the rail transit agency.

In addition, the oversight agency may require that the rail transit agency conduct a full investigation of any hazard for which it is notified, following investigation procedures submitted to and approved by the oversight agency. The oversight agency may also reserve the right to conduct an independent investigation of the hazard, using procedures adopted expressly for this purpose.

EXAMPLE No later than one week after the hazard is reported, the oversight agency may request a follow-up report from the rail transit agency:

- summarizing the results of the rail transit agency's investigation, including circumstances, events and probable cause(s);
- describing additional corrective actions that were or will be completed to reduce the unsafe condition probability and/or severity, including responsibility and schedule; and
- providing a final risk assessment for the hazard, using the criteria included in the Hazard Management Process section of SSPP, after the proposed corrective action/resolution is in place.

For more complex events that may require additional investigation, the oversight agency may request periodic status updates and a copy of the final investigation report. Results from these investigations should be tracked in the logs submitted to the oversight agency and discussed during monthly or quarterly meetings.

Chapter 10: Requiring Rail Transit Agency Internal Safety and Security Audits

Overview

In § 659.15(b)(3), FTA's revised Rule specifies that the oversight agency, in its program standard, must require the rail transit agency to develop and implement an internal process for the conduct of safety and security audits. This process must be documented in the rail transit agency's SSPP and Security Plan, and reviewed and approved by the oversight agency.

Based on the results of both FTA's SSO Audit Program and some three-year reviews conducted by oversight agencies, it has become apparent that rail transit agencies are struggling in meeting the current Rule's requirements, largely through a lack of resources devoted to the internal safety and security audit process. In the revised Rule, FTA has included several new requirements aimed at increasing the priority placed on this activity by rail transit agency executive leadership.

This chapter describes these requirements. *Section 4 -- Internal Safety and Security Audit Program* and *Appendix E: Program Requirements for Development of a Rail Transit Agency System Safety Program Plan (SSPP)* of FTA's *Resource Toolkit* provide sample language that can be used by the oversight agency and the rail transit agency to address these new requirements.

Requiring the Internal Safety and Security Audit/Review Process

As required in the oversight agency's program standard and described in the SSPP and Security Plan, the rail transit agency must implement a process for the performance of on-going internal safety and security audits. This process ensures the implementation of the rail transit agency SSPP and Security Plan, and evaluates their effectiveness.

§ 659.15(b)(3) and § 659.27 of the revised Rule detail FTA's new requirements for the internal safety and security audit process. To comply with these sections, in its program standard, the oversight agency must require the rail transit agency to:

- Develop and submit to the oversight agency an internal safety and security audit schedule, which addresses all required 21 elements of the SSPP (§ 659.19) and all five (5) required elements of the Security Plan (§ 659.23), over a three-year cycle.
- Submit annual updates of this schedule to the oversight agency as part of the rail transit agency's annual report (discussed below).

Section 4 -- Internal Safety and Security Audit Program and *Appendix E: Program Requirements for Development of a Rail Transit Agency System Safety Program Plan (SSPP)* of FTA's *Resource Toolkit* provide sample language that can be used by the oversight agency and the rail transit agency to address the revised Rule's new requirements for the internal safety and security audit process.

- Develop checklists and procedures for conducting each of the 21 required SSPP audits. These materials must ensure sufficient criteria to determine if all audited elements are performing as intended.
- Develop checklists and procedures for conducting each of the five (5) required Security Plan audits. These materials must ensure sufficient criteria to determine if all audited elements are performing as intended.
- Not less than 30 days prior to the conduct of an internal safety or security audit, notify the oversight agency. Notification must be in writing and may be transmitted to the oversight agency via letter, email or fax. Notification should include the time and location of the internal audit. The oversight agency is encouraged, but not required, to participate in any internal audit of which it is notified.
- In addition, at the time of notification, checklists and procedures relevant for the audit being conducted must be submitted to oversight agency. These materials may be submitted to the oversight agency in electronic copy via email or in hard copy via mail or fax. For security audits, any special provisions established by the rail transit agency or the oversight agency to ensure the protection of these materials must be followed.
- Based on the results of each audit conducted, the rail transit agency must prepare a written report documenting recommendations and any corrective actions identified as a result of the audit. The rail transit agency may choose to share this report with the oversight agency.
- The rail transit agency must track the findings from the internal safety and security audit process. To support this activity, the rail transit agency may prepare an *Internal Safety and Security Audit Findings Log* to track through to implementation all findings, recommendations, and corrective actions developed as a result of the internal safety and security audit process. This log should be available to the oversight agency and may be referenced during activities performed in support of the Hazard Management Process.

In addition, the oversight agency must require the rail transit agency to annually submit a report documenting internal safety and security audit activities and the status of subsequent findings and corrective actions. The security part of this report must be made available for oversight agency review, consistent with § 659.23(e).

EXAMPLE

The oversight agency must specify a time frame for receiving this report and the mechanism for submission. For example, in its program standard, the oversight agency may state: "By March 1 of each year, the oversight agency requires the rail transit agency to submit an annual report that documents the internal audits conducted for the previous year, including the status of all findings, recommendations and corrective actions. This report may be submitted in electronic copy via email or in hard copy via mail or fax. For sections devoted to the results of security audits, any special provisions established by the rail transit agency or oversight agency to ensure the protection of these materials must be followed."

EXAMPLE In requiring the annual report, the oversight agency may choose to specify contents, such as the following:

- a listing of the internal safety and security audits conducted for that year;
- a discussion of where the rail transit agency is in meeting its three-year internal audit schedule, including the identification of any obstacles in meeting the schedule and any proposed mitigation measures;
- an updated schedule for the next year's audits;
- the status of all findings, recommendations and corrective actions resulting from the audits conducted that year; and
- any challenges or issues experienced by the rail transit agency safety function or security/police function in obtaining action from/compliance with these findings, recommendations and corrective actions during that year.

EXAMPLE The oversight agency must formally review and approve the annual report. In its program standard, the oversight agency must describe its process for performing this activity. For example, the oversight agency may state: "the oversight agency will review and approve the annual report within 30 days. While conducting its review, the oversight agency may request additional information, clarifications or revisions from the rail transit agency. A meeting or teleconference may also be conducted to address any issues identified by oversight agency during its review of the annual report. Any additional requirements will be conveyed to the rail transit agency by the oversight agency."

The annual report must be accompanied by a formal letter of certification signed by the rail transit agency's chief executive, indicating that the rail transit agency is in compliance with its SSPP and Security Plan.

If the rail transit agency determines that findings from its internal safety and security audits indicate that the rail transit agency is not in compliance with its SSPP or Security Plan, the chief executive must identify the activities the rail transit agency will take to achieve compliance. If these activities comprise a formal corrective action plan, then the oversight agency must review and approve this submission using the process (discussed in Chapter 13 of these guidelines). Otherwise, the oversight agency may review this plan as part of the annual report.

Chapter 11: Implementing Accident Notification and Investigation Procedures

Overview

§ 659.15(b)(5) and (6) of FTA's revised Rule require the oversight agency to document in its program standard its process for receiving notifications of accidents meeting specific thresholds and causing these accidents to be investigated. § 659.33 provides additional detail on accident notification, including a listing of the revised Rule's notification thresholds. § 659.35 specifies a set of requirements regarding the investigation of accidents for which the oversight agency is notified. This chapter discusses these requirements.

Section 6 -- Accident Notification, Investigation and Reporting and Appendix E: Program Requirements for Development of a Rail Transit Agency System Safety Program Plan (SSPP) of FTA's Resource Toolkit provide sample language that can be used by the oversight agency and the rail transit agency to address these new requirements.

Notification

§ 659.15(b)(5) and § 659.33 specify that the oversight agency must be notified within two (2) hours of any safety or security event involving a rail transit vehicle or taking place on property controlled by the rail transit agency where one or more of the following occurs:

- a fatality at the scene; or where an individual is confirmed dead within thirty (30) days of a rail transit-related incident;
- injuries requiring immediate medical attention away from the scene for two or more individuals;
- property damage to rail transit vehicles, non-rail transit vehicles, other rail transit property or facilities and non-transit property that equals or exceeds \$25,000;
- an evacuation due to life safety reasons;
- a collision at a grade crossing;
- a main-line derailment;
- a collision with an individual on a rail right of way; or
- a collision between a rail transit vehicle and a second rail transit vehicle, or a rail transit non-revenue vehicle.

These thresholds correspond to the *Major Safety and Security Incident Reporting Module* of the National Transit Database.

In addition, FTA's revised Rule requires that each rail transit agency that shares track with a general railroad system and is subject to the Federal Railroad Administration (FRA) notification requirements shall notify the oversight agency within two (2) hours of an incident for which the rail transit agency must notify the FRA.

EXAMPLE

To ensure notification, in its program standard, as specified in § 659.33(c), the oversight agency must identify the method of notification and the information to be provided by the rail transit agency with notification. For example, in fulfilling this requirement, the oversight agency may request notification to a designated point-of-contact or 24-hour operations center via telephone or fax, email, beeper or pager number. The oversight agency may also request the following information with notification:

- name and job title of person reporting and name of rail transit agency;
- event type (fatality, injuries, property damage, evacuation, collision, derailment or other);
- location, time, and date;
- fatalities;
- injuries;
- rail transit vehicle(s) involved (type, number);
- other vehicle(s) involved (type, number);
- property damage estimate;
- NTSB reportable;
- FRA reportable;
- rail transit agency primary person (i.e., Chief Investigator) conducting the investigation (name, title, phone and fax numbers, email address);
- description of the event; and
- immediately implemented and/or planned corrective actions.

In its program standard, the oversight agency may also state that “the rail transit agency should provide additional information at oversight agency’s request.” The oversight agency may also require the rail transit agency to maintain current street addresses, email addresses, and fax, telephone, cell phone, and pager numbers for oversight agency personnel.

Investigation

EXAMPLE

§ 659.35 requires the oversight agency to investigate, or cause to be investigated, at a minimum, any incident meeting the notification thresholds identified in § 659.33. In conducting these investigations, the oversight agency may:

- authorize the rail transit agency to conduct an investigation on its behalf;
- conduct its own independent investigation; or
- if the NTSB is investigating the accident, join in the investigation through NTSB’s Party System.

§ 659.35 requires the oversight agency to investigate, or cause to be investigated, at a minimum, any incident meeting the notification thresholds identified in § 659.33. In conducting these investigations, the oversight agency may: (1) authorize the rail transit agency to conduct an investigation on its behalf; (2) conduct its own independent investigation; or (3) if the NTSB is investigating the accident, join in the investigation through NTSB’s Party System.

Authorization of the Rail Transit Agency to Conduct Investigations on Behalf of the Oversight Agency

After receiving notification of the accident, if the oversight agency chooses to have the rail transit agency conduct the investigation on its behalf, it must formally authorize the rail transit agency in writing, via letter, email, or fax, to conduct the investigation, as specified in § 659.35(c).

For all investigations conducted by the rail transit agency on behalf of the oversight agency, as also required in § 659.35(c), the rail transit agency must use investigation procedures that have been approved by the oversight agency. The rail transit agency must submit these procedures to the oversight agency with its SSPP. Subsequent updates and revisions to these procedures should be submitted to oversight agency as they are completed and implemented by the rail transit agency or with the annual update of the SSPP.

These procedures should be treated as part of the SSPP. In addition, because the oversight agency is authorizing the rail transit agency to conduct investigations on its behalf using these procedures, the procedures shall also be submitted to FTA as part of the oversight agency Initial Submission. Subsequent updates to these procedures will be submitted to FTA as part of the oversight agency Annual Submission. A sample checklist for reviewing these procedures is presented in Figure 8.

In the event that authorization is conferred upon the rail transit agency to conduct the investigation, the oversight agency must be allowed to participate in the investigation process. The terms of this participation must be specified in the rail transit agency SSPP and in the rail transit agency accident investigation procedures. Any special right-of-way safety training or other training required by oversight agency personnel to participate in the rail transit agency investigation should be clearly identified.

As specified in § 659.35(d), each rail transit agency investigation conducted on behalf of the oversight agency must be documented in a final report that includes a description of investigation activities, findings, identified causal factors, and a corrective action plan.

EXAMPLE § 659.35(e) requires the oversight agency to establish a process for receiving, reviewing and adopting these reports. For example, in its program standard, the oversight agency may state: “the investigation report prepared by the rail transit agency shall be submitted to the oversight agency within 30 calendar days following completion of the investigation. Using a checklist adopted by the oversight agency, the investigation report will be reviewed. After review, the oversight agency may adopt the report as final or transmit any items of disagreement to the oversight agency. Adoption of the rail transit agency investigation report or transmittal of items of disagreement must occur in writing via letter, email or fax within 15 calendar days.”

In FTA's *Resource Toolkit, Appendix I: Checklist for Reviewing Rail Transit Agency Accident Investigation Reports and Supporting Documentation* provides a sample to support the oversight agency's review process. This checklist is based on APTA's *Standard for Rail Transit Accident/Incident Investigation* (Volume 4 - Operating Practices, APTA RT-S-OP-002-02, July 26, 2004).

Figure 8: Sample Checklist for Reviewing and Approving Rail Transit Agency Accident Investigation Procedures

Rail Transit Agency:	Date Submitted:
Investigation Procedures Title:	Reviewer(s):
Requirement	Comments
Clearly defined policies and criteria for conducting investigations (reportable, major, and minor)	SAMPLE
Identity of person(s) and departments responsible for investigations	
Description of investigative techniques utilized (e.g., one-person, standing team, ad hoc team)	
Notification procedures: <ul style="list-style-type: none"> • Internal • External 	
Description of investigative procedures utilized while performing on-site investigation: <ul style="list-style-type: none"> • Conducting interviews • Creating diagrams, taking photos • Collecting, preserving and analyzing data • Coordinating with law enforcement and other emergency responders 	
Description of investigation procedures utilized when performing off-site investigation: <ul style="list-style-type: none"> • Records reviews • Event recorders • Interviews • Testing and special studies • Data analysis 	

Requirement:	Comments:
Accident/Incident Investigation Reports: <ul style="list-style-type: none"> • Summary • Methodology • Discussion of events • Conclusions/findings • Recommendations • Corrective actions • Status reports 	<div style="font-size: 48px; color: lightblue; opacity: 0.5;">SAMPLE</div>
Are Investigation Procedures for Hazard Conditions included in this Procedure? If not, have separate Hazard Investigation Procedures been provided?	
Hazard Conditions Investigations: <ul style="list-style-type: none"> • Summary • Methodology • Discussion of events • Conclusions/findings • Recommendations • Corrective actions • Status reports 	
This Investigation Procedure is: <input type="checkbox"/> Approved <input type="checkbox"/> Not Approved	
Comments:	
Date:	Reviewed By:
Date:	Approved By:

EXAMPLE At its discretion, and as specified in its accident investigation procedures, the rail transit agency may separate the investigation report delivered to the oversight agency into two parts:

- **Part 1** would contain the description of investigation activities, investigation findings, and determination of the most probable cause and additional contributing causes;
- **Part 2** would contain recommendations to prevent recurrence, including a corrective action plan.

Whatever approach is chosen, for investigations conducted on behalf of the oversight agency, as explained in § 659.35(e)(3) of the revised Rule, the oversight agency has to review, but does not have to approve, Part 1 of the investigation report. Oversight agency approval would be required for the corrective action plan developed in Part 2. In the event that the oversight agency disagrees with items in Part 1 of the report, the oversight agency should communicate in writing to the rail transit agency the area(s) of disagreement or concern. The oversight agency should work with the rail transit agency to address these issues in the rail transit agency's accident investigation report.

In the event that agreement cannot be reached on these issues, the oversight agency must issue its own accident investigation report, which may be no more than the rail transit agency report and the oversight agency dissent. The oversight agency's approval must be obtained on the corrective action plan portion of the rail transit agency accident investigation report. Review and approval of corrective action plans is discussed in Chapter 13 of these guidelines.

EXAMPLE As specified in § 659.35(f) of the revised Rule, until the investigation is completed, the oversight agency may require that the rail transit agency prepare and submit some form of periodic or scheduled (i.e., monthly) status reports. For example, these reports may include:

- minutes of any meeting held by the rail transit agency *ad hoc* reportable event investigation committee or contractor;
- disclosure of any immediate corrective actions the rail transit agency has planned or completed;
- principal issues or items currently being evaluated; and
- overall progress and status of the investigation.

At any time during an investigation, the oversight agency may also require the rail transit agency be prepared to provide a full briefing on the known circumstances of the accident, the status of the rail transit agency or NTSB investigation, and any specific investigation activities.

To reduce the potential for conflict, FTA encourages each rail transit agency conducting an investigation on behalf of the oversight agency to submit a draft version of the accident investigation report to the oversight agency so that agreement may be obtained on the most probable cause, additional contributing causes, corrective action plan, and an implementation schedule before the report is finalized and formally issued by the rail transit agency.

As is possible within the constraints of the oversight agency's authority, reports and records of accident investigations submitted to the oversight agency by the rail transit agency, as well as all materials related to the investigation, should be treated as confidential information, and not released without concurrence by both oversight agency and the rail transit agency. § 659.11 of the revised Rule clarifies that "a state may withhold an investigation report that may have been prepared or adopted by the oversight agency from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report."

Independent Oversight Agency Investigations

As specified in § 659.35(a) and (b) of the revised Rule, the oversight agency, at its discretion, may choose to conduct an independent investigation of any accident meeting the thresholds specified in § 659.33 utilizing its own personnel or an authorized contractor. Any investigation conducted by the oversight agency or its contractor must be in accordance with procedures approved by the oversight agency.

In its program standard, the oversight agency must identify the process it will use to conduct independent investigations. In performing these investigations, oversight agency personnel or contractors may conduct field analysis, operational surveys, interviews, record checks, data analysis, and other on-site and off-site tasks which may be necessary for a comprehensive investigation.

EXAMPLE | Adopted procedures may include the rail transit agency investigation procedures, the *APTA Standard for Rail Transit Accident/Incident Investigation* (Volume 4 - Operating Practices APTA RT-S-OP-002-02 dated 7/26/04), established FRA investigation procedures, or procedures developed by the oversight agency expressly for the purpose of investigating rail transit agency accidents. The oversight agency's procedures for conducting an independent investigation must be submitted to FTA as part of the oversight agency Initial Submission.

EXAMPLE | In its program standard, the oversight agency must identify the process it will use to conduct independent investigations. For example, the oversight agency may state: "the oversight agency will inform the rail transit agency of its intention to conduct an investigation or participate in a rail transit agency investigation of a reported event no later than 7 calendar days following receipt of the rail transit agency initial report. The oversight agency will advise the rail transit agency as to the personnel who will be conducting the independent investigation, and provide a preliminary schedule as to the investigation process. All oversight agency authorized accident investigation personnel are granted authority under the state safety oversight program to conduct an investigation and evaluate records, materials, data, analysis, and other information, which is pertinent to the investigation. It is expected that the rail transit agency will provide to the oversight agency investigation team the resources and information necessary to conduct the investigation in an effective and efficient fashion."

EXAMPLE

In anticipation of a situation in which oversight agency accident investigation personnel may require information or analysis which is not readily available, or which may require additional resources from the rail transit agency, in its program standard, the oversight agency may consider clarifying its authority to request this data in a written letter, email, or fax to the rail transit agency, or during a meeting or teleconference call convened for this purpose.

In establishing its procedures for independent investigations, the oversight agency may want to consider performance of the following activities:

- Assigning a team of qualified personnel to investigate the accident (on-and off-site). The team will include individuals with technical expertise in the type of accident being investigated. For example, a vehicle expert would be included on a team conducting the investigation for an accident involving a rail vehicle mechanical failure.
- Waiting until the rail transit agency and/or other emergency response personnel have secured the accident/incident scene area before commencing its on-site accident investigation.
- Reserving the right to request that the rail transit agency hold the accident scene to the maximum extent feasible until the arrival of the oversight agency's accident investigation team.
- Assessing physical evidence of the accident scene including: damage and debris analysis; skid mark analysis; the use of measurements, diagrams and photographs, and the documentation of the environmental and physical factors of the accident scene.
- Assessing, as part of the investigation, compliance with operating rules and procedures; conducting follow-up interviews (if required); analyzing employee records and the results of post accident drug and alcohol tests; and conducting vehicle and equipment inspections.
- Documenting all information gathered from the accident/incident investigation and including it in the oversight agency accident investigation report.
- Specifying a time-frame from the completion of the on-site and off-site accident investigation requirements, when the draft accident investigation report will be prepared.
- Providing the draft accident investigation report to the rail transit agency for its review and specifying a time-frame for the delivery of comments from the rail transit agency.
- Conducting a meeting to discuss the draft report with the rail transit agency.

Technical areas of specialization represented on the oversight agency's investigation team may include: system safety, safety training, transportation management and operations, substance abuse programs, vehicles and vehicle maintenance, worker health and safety, facility safety, hazardous materials, emergency operations, track, structures, signals and communications, and transit system security.

EXAMPLE

- Revising the draft report, if necessary, and based upon the comments received from the transit agency.
- Issuing a final accident investigation report, according to a time-frame specified by the oversight agency.
- Requiring the rail transit agency to review the final accident investigation report, and within a time-frame specified by the oversight agency, either (1) provide concurrence to implement the oversight agency's proposed corrective action plan or (2) submit an alternate corrective action plan to oversight agency for approval.

NTSB Investigations

EXAMPLE

The NTSB may investigate a reportable event to achieve its primary function to promote safety in transportation. In its program standard, as specified in § 659.15(b)(6), the oversight agency must identify its role in supporting investigations and findings conducted by the NTSB, in the event NTSB decides to investigate an accident occurring within the purview of a rail transit agency for which the oversight agency is responsible. In addressing this requirement, the oversight agency may choose to support the NTSB as a member of its Party System. Or the oversight agency may choose to adopt the NTSB investigation report and findings in their entirety without participating in the investigation.

In its program standard, the oversight agency may also choose to specify that, in the event of an NTSB investigation, the rail transit agency shall be responsible for the timely briefing of the oversight agency on NTSB activities including meetings, interviews, requests for data, functional testing, examination of equipment, and the results of drug and alcohol tests. The oversight agency may also request that the rail transit agency provide the oversight agency with a copy of all written correspondence to the NTSB concerning a reportable event or investigation, and also shall provide the oversight agency with a copy of all NTSB reports and any recommendations concerning the event or its investigation, upon receipt by the rail transit agency.

In its program standard, the oversight agency may also specify that it will assist the NTSB by providing information requested about rail transit agency critical safety practices and other matters as appropriate. If the NTSB releases preliminary findings and recommendations, the oversight agency may also participate in discussions and reviews with the rail transit agency and NTSB, as appropriate. The oversight agency and the rail transit agency may meet to review NTSB findings, draft, and final reports and make a determination of whether or not the oversight agency should adopt the NTSB recommendations, and require corrective action plans from the rail transit agency.

Chapter 12: Conducting Three-Year Safety and Security Reviews

Overview

§ 659.15(b)(4) of FTA's revised Rule requires the oversight agency, in its program standard, to describe "the process and criteria to be used at least every three years in conducting a complete review of each affected rail transit agency's implementation of its SSPP and Security Plan." This section of the program standard must also include "the process to be used by the affected rail transit agency and the oversight agency to manage findings and recommendations from this review." § 659.29 of FTA's revised Rule provides additional detail on this process. § 659.29 also states that, at the discretion of the oversight agency, the on-site review may be conducted by the oversight agency in an on-going manner over the three-year timeframe.

§ 659.15(b)(4) of FTA's revised Rule requires the oversight agency, in its program standard, to describe "the process and criteria to be used at least every three years in conducting a complete review of each affected rail transit agency's implementation of its SSPP and Security Plan."

These requirements parallel the review process specified in FTA's original rule (§ 659.37). However, additional requirements are in place to support the documentation of procedures and checklists used to conduct the review and the criteria used to assess the rail transit agency's implementation of its SSPP, Security Plan, and supporting procedures. *Section 7 -- Three-Year On-site Safety and Security Review* and *Appendix J: Sample Three-Year Safety and Security Review Checklist* of FTA's *Resource Toolkit* provide sample language and resources that can be used by the oversight agency in its program standard and referenced procedures.

Oversight Agency Approach to the Three-Year Safety and Security Review

EXAMPLE In its program standard, the oversight agency must describe its approach to conducting the three-year review. In the program standard, the oversight agency may also reference specific procedures that guide this process. In preparing this section of the program standard, FTA encourages the oversight agency to review its existing documentation to identify areas where discussion of the three-year review process can be improved or formalized through procedures and checklists that will be applied by oversight personnel or authorized contractors.

In conducting the three-year review, the oversight agency may choose to designate a review team and prepare a schedule, procedures and a checklist to guide the review process. As specified in § 659.15(b)(4), criteria must be established through which the oversight agency can evaluate the rail transit agency's implementation of its SSPP, Security Plan, and supporting procedures. § 659.29 of FTA's revised Rule requires that "at the conclusion of the review cycle, the oversight agency must prepare and issue a report containing findings and recommendations resulting from that review, which, at a minimum, must include an analysis of the effectiveness of the SSPP and the Security Plan and a determination of whether either should be updated."

EXAMPLE For example, **areas of deficiency** may be identified by the oversight agency during its review that may require corrective action plans, which must be managed through the process established by the oversight agency (discussed in Chapter 13 of these guidelines). The oversight agency may also make **area of concern** findings that require rail transit agency response, but do not require the approval of the oversight agency.

To comply with § 659.39(c)(2) of FTA's revised Rule, the oversight agency may submit its completed report for the three-year safety and security review to FTA as part of its Annual Submission, or it may prepare a summary report for FTA.

Whether the oversight agency conducts its three-year safety and security review as a single on-site assessment or in an on-going manner over the three year cycle, it should consider the following four steps in developing and implementing its program:

(1) Planning the Review.

- Developing the three-year review schedule in coordination with the rail transit agency.
- Designating a three-year review team leader and team members.
- Preparing a three-year review plan that includes all elements identified in the rail transit agency SSPP, Security Plan and supporting procedures.
- Converting rail transit agency goals/objectives into performance criteria to assess the effectiveness of the SSPP, Security Plan, and supporting procedures.
- Preparing review checklists and forms, based on the rail transit agency SSPP, Security Plan, and supporting procedures.
- Identifying methods of verification appropriate to each checklist item, including interviews, document review, on-site observation, tests and measurements, and spot checks.
- Conducting a pre-review meeting with rail transit agency management to further refine the three-year review schedule and to request any additional documentation.

(2) Conducting the Review.

- Conducting an entrance meeting with rail transit agency management.
- Conducting interviews with appropriate rail transit agency personnel.
- Evaluating documents and data maintained by the rail transit agency.
- Observing the on-site operation of the rail transit agency.
- Taking measurements and conducting spot checks as appropriate.
- Where possible, recording findings directly onto review checklists or in supplemental forms, as specified by the oversight agency's procedures.
- Rating checklist items for compliance.
- Conducting a debriefing with rail transit agency management at the conclusion of the review to provide an overview of initial findings and observations.

EXAMPLE (3) Preparing the Review Report.

- Citing authority and purpose of review.
- Stating principal findings and observations.
- Evaluating the implementation of the rail transit agency SSPP and Security Plan and supporting procedures.
- Identifying areas of concern and deficiencies.
- Making recommendations to the rail transit agency to update its SSPP, Security Plan and/or supporting procedures, if necessary.
- Transmitting the draft report to the rail transit agency.
- Allowing the rail transit agency to prepare a formal response for inclusion in final report.
- Preparing the final report.

(4) Updating the Program Documents.

- Modifying the oversight agency's program standard and procedures to address systemic or procedural issues.
- Requiring the rail transit agency to revise its safety and/or security program as needed to address deficiencies.
- Reviewing and approving corrective action plans and tracking rail transit agency responses to area of concern findings.
- Reviewing/approving the rail transit agency corrective action plans and revised safety and/or security program materials.

Figures 9 and 10 provide sample checklists that can be used to guide the oversight agency's conduct of its three-year review. In these checklists:

- **No.** refers to the checklist item number.
- **Checklist Item** refers to the specific item being assessed.
- **Ranking** refers to the evaluation assigned by the oversight agency to the checklist item.
 - A ranking of “1” means that the assessed item meets requirements specified in the rail transit agency's SSPP, Security Plan, and/or supporting procedures.
 - A ranking of “2” means that the assessed item is partially compliant with the rail transit agency's SSPP, Security Plan, and/or supporting procedures, and the oversight agency should issue an area of concern.
 - A ranking of “3” means that the assessed item does not meet requirements specified in the rail transit agency's SSPP, Security Plan, and/or supporting procedures, and the oversight agency should issue a deficiency finding, which requires the rail transit agency to develop a corrective action plan. A ranking of “3” may be further clarified in a supplemental form, an example of which is provided in Appendix J of FTA's *Resource Toolkit*.
- **Comments** refer to the space provided for notes or observations. Specific verification methods assigned to checklist items can also be included in the comments section.

Figure 9: Sample Safety Three-Year Review Checklist

No.	Checklist Item	Ranking	Comments
1	SSPP Policy and Authority Statement		
2	Chief Executive approval		
3	Safety Policies established by top management are stated		
4	SSPP Description and Purpose provided		
5	System Safety and other related terms defined		
6	System description provided		
7	Clearly stated safety goals and objectives		
8	Goals and objectives are identifiable and achievable through policy and procedure implementation		
9	Specific entity develops and maintains SSPP		
10	Description of departmental safety-related responsibilities		
11	Organization charts provided showing lines of authority and responsibility related to system safety		
12	Description of SSPP control and update procedures		
13	Responsible positions or individuals for initiating, developing, and approving SSPP changes		
14	Oversight agency notification of SSPP changes		
15	Provisions and schedule for Annual Review of SSPP		
16	SSPP implementation authority assigned by department, function or position		
17	Description of Hazard Management Process		
18	Hazard identification, resolution and categorization process defined for operations, maintenance, engineering, and construction		
19	Criteria specified for determining hazards requiring notification and investigation; responsibility assigned for investigations		
20	Verify hazard notification to oversight agency		
21	Review hazard investigation procedures		
22	Review hazard investigation reports describing activities, findings, causal factors, corrective action plan, and corrective action implementation schedule		
23	Verify investigation reports submitted to oversight agency for review and approval		
24	Review safety role in system modification process		
25	Operating and Safety Department personnel included in the design review process for new equipment or system expansion		

No.	Checklist Item	Ranking	Comments
26	Assigned responsibility and authority for approval of modifications or exceptions to established design criteria for new equipment and system expansions		
27	Certification and sign-off process for verification of operational readiness of new equipment, system expansions and modifications prior to entry into passenger service		
28	Verify that hazards associated with system expansion or modification are included in the hazard management process		
29	Safety data relative to system operation is collected, maintained, distributed, analyzed		
30	Describe interdepartmental and interagency coordination for the exchange of safety related information		
31	Describe communications with oversight agency to coordinate and keep informed of significant safety issues		
32	Event, incident reporting and investigation in strict compliance with oversight agency program standard and referenced procedures		
33	Criteria specified for determining type(s) of events, incidents and hazards requiring investigation; responsibility assigned for conduct of specific investigations		
34	Investigation procedures described, including reporting of findings, conclusions, recommendations for corrective action, and follow-up to verify implementation		
35	Required reportable event investigation reports submitted to oversight agency for review and approval		
36	Investigation reports contain probably cause, contributing causes, corrective action plan, and corrective action implementation schedule		
37	Emergency Response planning, coordination, and training		
38	Emergency Response procedures prepared and used		
39	Regularly scheduled meetings with Emergency Response agencies		
40	Emergency drills and table top exercises conducted		
41	Description and schedule of Internal Safety Audit process		
42	Description of procedures for the Internal Safety Audit process to evaluate and measure effectiveness of the SSPP and implementing procedures		
43	Planning, scheduling and communicating to oversight agency the Internal Safety Audit process to ensure it is ongoing throughout a 3 year cycle		
44	Auditors are independent from those responsible for the activity being audited		
45	Safety review findings are documented in written reports, which include evaluation of the adequacy and effectiveness of the SSPP and applicable implementing procedures, needed corrected actions, needed recommendations, an implementation schedule for corrective actions and status reporting		

SAMPLE

No.	Checklist Item	Ranking	Comments
46	Annual Internal Safety Audit Report issued and submitted to oversight agency for review summarizing individual audit results for the previous calendar year, including a summary of required corrective actions and follow-up provisions to ensure timely implementation		
47	Review operations, maintenance and training rules, procedures and bulletins		
48	Assess front-line employee knowledge of and adherence to operating, maintenance, and training rules and procedures		
49	Documentation of facility, systems, equipment and vehicle inspections		
50	Criteria defined to identify safety critical facilities, equipment, and vehicle elements requiring inspection		
51	Review safety related facility, equipment and vehicle inspection forms		
52	Description of how safety related facilities, equipment, and vehicle elements are included in a regular maintenance and testing program		
53	Maintenance audits and inspections of all systems and facilities		
54	Maintenance process description, including controls over equipment manuals, shop or site specific procedures, maintenance records, and the tracking and resolution of problems identified during inspections		
55	Description of the training and certification program, including frequency of training, certification, and audits, for employees in safety related positions		
56	Identification of safety related work categories requiring training and certification		
57	Permanent training record file maintained		
58	Provision of safety requirements that contractor personnel must follow when working on or near transit agency property		
59	Configuration management control process is described, including the authority to make configuration changes and assurance of proper, formal notification to involved departments		
60	Employee safety program incorporates applicable federal, OSHA and state requirements		
61	Hazard materials program incorporates applicable local, state, and federal requirements		
62	Drug and alcohol abuse programs incorporate federal DOT requirements		
63	Safety measures and controls for procurement of hazardous material		
64	Material receiving inspection for materials and equipment to prevent the inadvertent installation of defective items		

SAMPLE

Figure 10: Sample Security Three-Year Review Checklist

No.	Checklist Item	Ranking	Comments
1	Security Plan Policy and Authority Statement		
2	Chief Executive approval		
3	Security Policies established by top management are stated		
4	Security Plan Description and Purpose provided		
5	System Security and other related terms defined		
6	System description provided		
7	Clearly stated security goals and objectives		
8	Goals and objectives are identifiable and achievable through policy and procedure implementation		
9	Specific entity develops and maintains Security Plan		
10	Description of departmental security-related responsibilities		
11	Organization charts provided showing lines of authority and responsibility related to system security		
12	Description of Security Plan control and update procedures		
13	Responsible positions or individuals for initiating, developing, and approving Security Plan changes		
14	Oversight agency notification of Security Plan changes		
15	Provisions and schedule for Annual Review of Security Plan		
16	Security Plan implementation authority assigned by department, function or position		
17	Description of Threat and Vulnerability Assessment/ Resolution Methodology		
18	Threat and Vulnerability Identification, Assessment, and Resolution Activities		
19	Threat Risk Index (Prioritization/Unacceptable Risk Index)		
20	Threats/Incidents response procedures		
21	Review security role in system modification process		
22	Security Department personnel included in the design review process for new equipment or system expansion		
23	Certification and sign-off process for verification of operational readiness of new equipment, system expansions and modifications prior to entry into passenger service		
24	Security data relative to system operation is collected, maintained, distributed or made available, and analyzed		
25	Describe interdepartmental and interagency coordination for the exchange of security related information		
26	Describe communications with oversight agency to coordinate and keep		

No.	Checklist Item	Ranking	Comments
	informed of significant security issues		
27	Security incident reporting and investigation in strict compliance with oversight agency program standard and procedures		
28	Criteria specified for determining type(s) of security incidents requiring investigation; responsibility assigned for investigations		
28	Required security incident investigation reports made available to oversight agency. Investigation reports contain description of activities, findings, identified causal factors, and a corrective action plan		
30	Description and schedule of Internal Security Review process		
31	Description of procedures for the internal security review process to evaluate and measure effectiveness of the Security Plan and implementing procedures		
32	Planning, scheduling and communicating to oversight agency the internal security review process to ensure it is ongoing throughout a 3-year cycle		
33	Auditors are independent from those responsible for the activity being audited		
34	Security review findings are documented in written reports, which include evaluation of the adequacy and effectiveness of the Security Plan and applicable implementing procedures, needed corrected actions, needed recommendations, an implementation schedule for corrective actions and status reporting		
35	Annual Internal Security Review Report made available to oversight agency for review summarizing individual audit results for the previous calendar year, including a summary of required corrective actions and follow-up provisions to ensure timely implementation		
36	Description of the training and certification program, including frequency of training, certification, and audits, for employees in security related positions		
37	Identification of security related work categories requiring training and certification		
38	Permanent training record file maintained		
39	Provision of security requirements that contractor personnel must follow when working on or near transit agency property		
40	Description of controls in place that address the personal security of passengers and employees		
41	Description of rail transit agency process for making available its Security Plan and accompanying procedures to oversight agency for review and approval		

SAMPLE

Using Review Checklists

EXAMPLE In using its three-year review checklists, whether they are adopted from these guidelines or developed directly by the oversight agency or its authorized contractor, the oversight agency may choose to focus on two activities:

- assessing the implementation of the specific checklist item; and
- evaluating its effectiveness based on the goals and objectives identified by the rail transit agency.

Verification of checklist items can occur through interviews, document reviews, data analysis, field observations, testing and measurements, spot checks and demonstrations provided by the rail transit agency. In assessing the rail transit agency's compliance with activities specified by the oversight agency in its program standard, the review team may want to verify records of rail transit agency accident notifications and investigations, as well as hazard management and corrective action plan tracking logs for comparison with rail transit agency records.

Depending on the length of time scheduled for the on-site review, the review team may choose to conduct follow-up teleconference calls to collect additional information and request records, as necessary. The review team may also request copies of FTA Drug and Alcohol Audits, FTA Triennial Reviews, and PMO Monthly and Spot Reports from the rail transit agency to support its assessment of compliance in areas previously investigated by FTA.

In addressing security issues, the oversight agency and its review team may choose to work with the rail transit agency to schedule meetings with the Regional Urban Area Security Initiative Working Group and the TSA Inspector Program to ensure awareness of issues that may affect the rail transit agency's security program.

During the review, the oversight agency and its review team may also choose to assess the controls placed on rail transit agency materials that could have an impact on security, as well as continue to evaluate ways in which the oversight agency could modify its practices to better protect rail transit agency materials. Finally, the oversight agency and its review team may also choose to address rail transit implementation of FTA's *Top 20 Security Action Items List*, as well as FTA's TransitWatch Program, and how the rail transit agency has used training available from NTI and TSI.

Chapter 13: Requiring, Reviewing, Approving and Tracking Corrective Action Plans

Overview

§ 659.15(b)(7) of FTA's revised Rule requires that, in its program standard, the oversight agency must document its "criteria for the development of corrective action plan(s) and the process for the review and approval of a corrective action plan developed by the rail transit agency." The oversight agency must also identify its "policies for the verification and tracking of corrective action plan implementation, and its process for managing conflicts with the rail transit agency relating to investigation findings and corrective action plan development." § 659.37 of FTA's revised Rule provides greater detail on these requirements.

In the event that the oversight agency and the rail transit agency dispute the need, findings, or enforcement of a corrective action plan, § 659.37(d) of FTA's revised Rule requires the oversight agency to specify its provisions for managing this conflict in its program standard.

Section 8 – Corrective Action Plans of FTA's *Resource Toolkit* provides sample language that can be used by the oversight agency in its program standard and referenced procedures.

Requiring, Reviewing and Approving Corrective Action Plans

§ 659.37 of FTA's revised Rule states that the oversight agency must, at a minimum, require the development of a corrective action plan for the following:

- Results from investigations, for accidents or reported hazards, in which identified causal and contributing factors are determined by the rail transit agency or oversight agency as requiring corrective actions; and
- Findings from safety and security reviews performed by the oversight agency.

At a minimum, each corrective action plan must identify:

- the action to be taken by the rail transit agency;
- an implementation schedule; and
- the individual or department responsible for the implementation.

As specified in § 659.37(c) of FTA's revised Rule, the corrective action plan must be submitted to the oversight agency for review and approval. In the majority of cases, the corrective action plan will be developed by the rail transit agency, based on a finding or recommendation formally issued by the oversight agency.

The oversight agency must specify in its program standard both:

- the mechanism for requesting corrective action plans from the rail transit agency; and
- the time frame during which the rail transit agency must develop and submit these plans to the oversight agency for review and approval.

In its program standard, the oversight agency must also identify the time frame during which it must review and formally approve the corrective action plan, and the mechanisms for conveying this approval to the rail transit agency. The program standard must also address those instances where the oversight agency may propose a corrective action plan for implementation by the rail transit agency.

EXAMPLE

In the event that the oversight agency and the rail transit agency dispute the need, findings, or enforcement of a corrective action plan, § 659.37(d) of FTA's revised Rule requires the oversight agency to specify its provisions for managing this conflict in its program standard. For example, the oversight agency may allow the rail transit agency 30 calendar days to submit its objections to a requested corrective action. The oversight agency may then review the submittal from the rail transit agency and issue final direction to the rail transit agency regarding the implementation of the corrective action plan.

EXAMPLE

As required in § 659.37(e) of FTA's revised Rule, the oversight agency must identify the process by which findings from an NTSB accident investigation will be evaluated to determine whether or not a corrective action plan should be developed. To address this requirement, the oversight agency may state that "in the event that the NTSB conducts an investigation, the rail transit agency and oversight agency shall review the NTSB findings and recommendations to determine whether or not a corrective action plan should be developed by the rail transit agency. If a corrective action plan is required by the NTSB for the rail transit agency, and accepted by the oversight agency, then the rail transit agency shall develop it following the process specified in the oversight agency's program standard."

Verification and Tracking of Corrective Action Plan Implementation

§ 659.37(f) of FTA's revised Rule requires that the rail transit agency must provide the oversight agency with:

- (1) Verification that the corrective action(s) has been implemented as described in the corrective action plan, or that a proposed alternate action(s) has been implemented subject to oversight agency review and approval; and
- (2) Periodic reports requested by the oversight agency, describing the status of each corrective action(s) not completely implemented, as described in the corrective action plan.

§ 659.37(g) of FTA's revised Rule specifies that the oversight agency must "monitor and track the implementation of each approved corrective action plan."

EXAMPLE | There are many approaches that can be adopted by the oversight agency in addressing these requirements. For example, the oversight agency may require the rail transit agency to develop and maintain a *Corrective Action Monitoring Log*, which identifies all corrective action plans approved by the oversight agency and presents their status. This log may be submitted monthly to the oversight agency.

As corrective action plans are closed out, the rail transit agency may submit verification that the corrective action(s) has been implemented as described in the corrective action plan or that a proposed alternative action(s) has been implemented. The oversight agency may require that this verification be submitted in writing and include photographic or other evidence. The oversight agency may also state that the rail transit agency corrective action is subject to independent oversight agency verification.

Chapter 14: Reporting to FTA

Overview

In addition to the Initial Submission, which is discussed in Chapter 5 of the guidelines, FTA requires an Annual Submission from each oversight agency. FTA also may request Periodic Submissions from oversight agencies based on a specific accident, hazard, or emerging industry condition. *Section 9 – Reporting to FTA* of FTA's *Resource Toolkit* provides sample language that can be used by the oversight agency in its program standard to address these requirements.

Annual Submissions

§ 659.39(c) of FTA's revised Rule requires that before March 15 of each year, the oversight agency must submit the following to FTA:

- A publicly available annual report summarizing its oversight activities for the preceding twelve months, including a description of the causal factors of investigated accidents, status of corrective actions, updates and modifications to rail transit agency program documentation, and the level of effort used by the oversight agency to carry out its oversight activities.
- A report documenting and tracking findings from three-year safety review activities and whether a three-year safety review has been completed since the last annual report was submitted.
- Program standard and supporting procedures that have changed during the preceding year.
- Certification that any changes or modifications to the rail transit agency system safety program plan or system security plan have been reviewed and approved by the oversight agency.

§ 659.39 of the revised Rule requires the oversight agency to make Initial, Annual, and Periodic Submissions to FTA's Office of Safety and Security, 400 Seventh Street, S.W., Washington, D.C., 20590.

With its Annual Submission, the oversight agency must also certify to the FTA that it has complied with the requirements of 49 CFR Part 659. This certification must be in the form of a letter signed by the oversight agency program manager or another representative from the oversight agency. In the revised Rule, FTA has requested that the oversight agency submit this certification electronically to FTA using a reporting system specified by FTA. The oversight agency must maintain a signed copy of each annual certification to FTA, subject to audit by FTA.

Periodic Submissions

In § 659.39(d) of FTA's revised Rule, FTA's retains the authority to request status reports of accidents/incidents, hazardous conditions, and corrective action plans or other program information from the oversight agency. The oversight agency must provide this information.

Electronic Reporting

Over the next year, FTA plans to unveil its new electronic reporting system, which will enable oversight agencies to upload Annual and Periodic Submissions directly to FTA's website. As specified in § 659.39(e) of FTA's revised Rule, when this electronic reporting system is operational, the oversight agency must ensure that all submissions to FTA are made electronically using the reporting system specified by FTA.

Appendix A: 49 CFR Part 659 (April 29, 2005)

49 CFR Part 659 “Rail Fixed Guideway Systems; State Safety Oversight; Final Rule” April 29, 2005

Subpart A – General Provisions

§ 659.1 Purpose

This part implements 49 U.S.C. 5330 by requiring a state to oversee the safety and security of rail fixed guideway systems through a designated oversight agency.

§ 659.3 Scope

This part applies to a state that has within its boundaries a rail fixed guideway system, as defined in this part.

§ 659.5 Definitions

Contractor means an entity that performs tasks required by this part on behalf of the oversight or rail transit agency. The rail transit agency may not be a contractor for the oversight agency.

Corrective action plan means a plan developed by the rail transit agency that describes the actions the rail transit agency will take to minimize, control, correct, or eliminate hazards, and the schedule for implementing for those actions.

FRA means the Federal Railroad Administration, an agency within the U.S. Department of Transportation.

FTA means the Federal Transit Administration, an agency within the U.S. Department of Transportation.

Hazard means any real or potential condition (as defined in the rail transit agency's hazard management process) that can cause injury, illness, or death; damage to or loss of a system, equipment or property; or damage to the environment.

Individual means a passenger; employee; contractor; other rail transit facility worker; pedestrian; trespasser; or any person on rail transit-controlled property.

Investigation means the process used to determine the causal and contributing factors of an accident or hazard, so that actions can be identified to prevent recurrence.

New Starts Project means any rail fixed guideway system funded under FTA's 49 U.S.C. 5309 discretionary construction program.

Oversight Agency means the entity, other than the rail transit agency, designated by the state or several states to implement this part.

Passenger means a person who is on board, boarding, or alighting from a rail transit vehicle for the purpose of travel.

Passenger operations means the period of time when any aspect of rail transit agency operations are initiated with the intent to carry passengers.

Program standard means a written document developed and adopted by the oversight agency, that describes the policies, objectives, responsibilities, and procedures used to provide rail transit agency safety and security oversight.

Rail fixed guideway system means, as determined by FTA, any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that:

- (1) Is not regulated by the Federal Railroad Administration; and
- (2) Is included in FTA's calculation of fixed guideway route miles or receives funding under FTA's formula program for urbanized areas (49 U.S.C. 5336); or
- (3) Has submitted documentation to FTA indicating its intent to be included in FTA's calculation of fixed guideway route miles to receive funding under FTA's formula program for urbanized areas (49 U.S.C. 5336).

Rail transit agency means an entity that operates a rail fixed guideway system.

Rail transit-controlled property means property that is used by the rail transit agency and may be owned, leased, or maintained by the rail transit agency.

Rail transit vehicle means the rail transit agency's rolling stock, including, but not limited to passenger and maintenance vehicles.

Safety means freedom from harm resulting from unintentional acts or circumstances.

Security means freedom from harm resulting from intentional acts or circumstances.

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.

System safety program plan means a document developed by the rail transit agency, describing its safety policies, objectives, responsibilities, and procedures.

System security plan means a document developed by the rail transit agency describing its security policies, objectives, responsibilities, and procedures.

Subpart B – Role of the State

§ 659.7 Withholding of funds for noncompliance

(a) The Administrator of the FTA may withhold up to five percent of the amount required to be distributed to any state or affected urbanized area in such state under FTA's formula program for urbanized areas, if:

- (1) The state in the previous fiscal year has not met the requirements of this part; and
- (2) The Administrator determines that the state is not making adequate efforts to comply with this part.

(b) The Administrator may agree to restore withheld formula funds, if compliance is achieved within two years (See 49 U.S.C. 5330).

§ 659.9 Designation of oversight agency

(a) *General requirement.* Each state with an existing or anticipated rail fixed guideway system regulated by this part shall designate an oversight agency consistent with the provisions of this section. For a rail fixed guideway system that will operate in only one state, the state must designate an agency of the state, other than the rail transit agency, as the oversight agency to implement the requirements in this part. The state's designation or re-designation of its oversight agency and submission of required information as specified in this section, are subject to review by FTA.

(b) *Exception.* States which have designated oversight agencies for purposes of this part before May 31, 2005 are not required to re-designate to FTA.

(c) *Timing.* The state designation of the oversight agency shall:

- (1) Coincide with the execution of any grant agreement for a New Starts project between FTA and a rail transit agency within the state's jurisdiction; or
- (2) Occur before the application by a rail transit agency for funding under FTA's formula program for urbanized areas (49 U.S.C. 5336).

(d) *Notification to FTA.* Within (60) days of designation of the oversight agency, the state must submit to FTA the following:

- (1) The name of the oversight agency designated to implement requirements in this part;
- (2) Documentation of the oversight agency's authority to provide state oversight;
- (3) Contact information for the representative identified by the designated oversight agency with responsibility for oversight activities;
- (4) A description of the organizational and financial relationship between the designated oversight agency and the rail transit agency; and

- (5) A schedule for the designated agency's development of its State Safety Oversight Program, including the projected date of its initial submission, as required in § 659.39(a).

(e) *Multiple states.* In cases of a rail fixed guideway system that will operate in more than one state, each affected state must designate an agency of the state, other than the rail transit agency, as the oversight agency to implement the requirements in this part. To fulfill this requirement, the affected states:

- (1) May agree to designate one agency of one state, or an agency representative of all states, to implement the requirements in this part; and
- (2) In the event multiple states share oversight responsibility for a rail fixed guideway system, the states must ensure that the rail fixed guideway system is subject to a single program standard, adopted by all affected states.

(f) *Change of designation.* Should a state change its designated oversight agency, it shall submit the information required under paragraph (d) of this section to FTA within (30) days of its change. In addition, the new oversight agency must submit a new initial submission, consistent with § 659.39(b), within (30) days of its designation.

§ 659.11 Confidentiality of investigation reports and security plans

(a) A state may withhold an investigation report that may have been prepared or adopted by the oversight agency from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report.

(b) This part does not require public availability of the rail transit agency's security plan and any referenced procedures.

Subpart C – Role of the State Oversight Agency

§ 659.13 Overview

The state oversight agency is responsible for establishing standards for rail safety and security practices and procedures to be used by rail transit agencies within its purview. In addition, the state oversight agency must oversee the execution of these practices and procedures, to ensure compliance with the provisions of this part. This subpart identifies and describes the various requirements for the state oversight agency.

§ 659.15 System safety program standard

(a) *General requirement.* Each state oversight agency shall develop and distribute a program standard. The program standard is a compilation of processes and procedures that governs the conduct of the oversight program at the state oversight agency level, and provides guidance to the regulated rail transit properties concerning processes and procedures they must have in place to be in compliance with the state safety oversight program. The program standard and any referenced program procedures must be submitted to FTA as part of the initial submission. Subsequent revisions and updates must be submitted to FTA as part of the oversight agency's annual submission.

(b) *Contents.* Each oversight agency shall develop a written program standard that meets the requirements specified in this part and includes, at a minimum, the areas identified in this section.

- (1) Program management section. This section shall include an explanation of the oversight agency's authority, policies, and roles and responsibilities for providing safety and security oversight of the rail transit agencies within its jurisdiction. This section shall provide an overview of planned activities to ensure on-going communication with each affected rail transit agency relating to safety and security information, as well as FTA reporting requirements, including initial, annual and periodic submissions.
- (2) Program standard development section. This section shall include a description of the oversight agency's process for the development, review, and adoption of the program standard, the modification and/or update of the program standard, and the process by which the program standard and any subsequent revisions are distributed to each affected rail transit agency.
- (3) Oversight of rail transit agency internal safety and security reviews. This section shall specify the role of the oversight agency in overseeing the rail transit agency internal safety and security review process. This includes a description of the process used by the oversight agency to receive rail transit agency checklists and procedures and approve the rail transit agency's annual reports on findings, which must be submitted under the signature of the rail transit agency's top management.
- (4) Oversight agency safety and security review section. This section shall lay out the process and criteria to be used at least every three years in conducting a complete review of each affected rail transit agency's implementation of its system safety program plan and system security plan. This section includes the process to be used by the affected rail transit agency and the oversight agency to manage findings and recommendations from this review. This also includes procedures for notifying the oversight agency before the rail transit agency conducts an internal review.
- (5) Accident notification section. This section shall include the specific requirements for the rail transit agency to notify the oversight agency of accidents. This section shall also include required timeframes, methods of notification, and the information to be submitted by the rail transit agency. Additional detail on this portion is included in §659.33 of this part.
- (6) Investigations section. This section contains the oversight agency identification of the thresholds for incidents that require an oversight agency investigation. The roles and responsibilities for conducting investigations shall include: coordination with the rail transit agency investigation process, the role of the oversight agency in supporting investigations and findings conducted by the NTSB, review and concurrence of investigation report findings, and procedures for protecting the confidentiality of investigation reports.

- (7) Corrective actions section. This section shall specify oversight agency criteria for the development of corrective action plan(s) and the process for the review and approval of a corrective action plan developed by the rail transit agency. This section shall also identify the oversight agency's policies for the verification and tracking of corrective action plan implementation, and its process for managing conflicts with the rail transit agency relating to investigation findings and corrective action plan development.
- (8) System safety program plan section. This section shall specify the minimum requirements to be contained in the rail transit agency's system safety program plan. The contents of the system safety plan are discussed in more detail in § 659.19 of this part. This section shall also specify information to be included in the affected rail transit agency's system safety program plan relating to the hazard management process, including requirements for ongoing communication and coordination relating to the identification, categorization, resolution, and reporting of hazards to the oversight agency. More details on the hazard management process are contained in § 659.31 of this part. This section shall also describe the process and timeframe through which the oversight agency must receive, review, and approve the rail transit agency system safety program plan.
- (9) System security plan section. This section shall specify the minimum requirements to be included in the rail transit agency's system security plan. More details about the system security plan are contained in §§ 659.21 through 659.23 of this part. This section shall also describe the process by which the oversight agency will review and approve the rail transit agency system security program plan. This section also shall identify how the state will prevent the system security plan from public disclosure.

§ 659.17 System safety program plan: general requirements

- (a) The oversight agency shall require the rail transit agency to develop and implement a written system safety program plan that complies with requirements in this part and the oversight agency's program standard.
- (b) The oversight agency shall review and approve the rail transit agency system safety program plan.
- (c) After approval, the oversight agency shall issue a formal letter of approval to the rail transit agency, including the checklist used to conduct the review.

§ 659.19 System safety program plan: contents

The system safety plan shall include, at a minimum:

- (a) A policy statement signed by the agency's chief executive that endorses the safety program and describes the authority that establishes the system safety program plan.
- (b) A clear definition of the goals and objectives for the safety program and stated management responsibilities to ensure they are achieved.

- (c) An overview of the management structure of the rail transit agency, including:
 - (1) An organization chart;
 - (2) A description of how the safety function is integrated into the rest of the rail transit organization; and
 - (3) Clear identification of the lines of authority used by the rail transit agency to manage safety issues.
- (d) The process used to control changes to the system safety program plan, including:
 - (1) Specifying an annual assessment of whether the system safety program plan should be updated; and
 - (2) Required coordination with the oversight agency, including timeframes for submission, revision, and approval.
- (e) A description of the specific activities required to implement the system safety program, including:
 - (1) Tasks to be performed by the rail transit safety function, by position and management accountability, specified in matrices and/or narrative format; and
 - (2) Safety-related tasks to be performed by other rail transit departments, by position and management accountability, specified in matrices and/or narrative format.
- (f) A description of the process used by the rail transit agency to implement its hazard management program, including activities for:
 - (1) Hazard identification;
 - (2) Hazard investigation, evaluation and analysis;
 - (3) Hazard control and elimination;
 - (4) Hazard tracking; and
 - (5) Requirements for on-going reporting to the oversight agency relating to hazard management activities and status.
- (g) A description of the process used by the rail transit agency to ensure that safety concerns are addressed in modifications to existing systems, vehicles, and equipment, which do not require formal safety certification but which may have safety impacts.
- (h) A description of the safety certification process required by the rail transit agency to ensure that safety concerns and hazards are adequately addressed prior to the initiation of passenger operations for New Starts and subsequent major projects to extend, rehabilitate, or modify an existing system, or to replace vehicles and equipment.
- (i) A description of the process used to collect, maintain, analyze, and distribute safety data, to ensure that the safety function within the rail transit organization receives the necessary information to support implementation of the system safety program.

(j) A description of the process used by the rail transit agency to perform accident notification, investigation and reporting, including:

- (1) Notification thresholds for internal and external organizations;
- (2) Accident investigation process and references to procedures;
- (3) The process used to develop, implement, and track corrective actions that address investigation findings;
- (4) Reporting to internal and external organizations; and
- (5) Coordination with the oversight agency.

(k) A description of the process used by the rail transit agency to develop an approved, coordinated schedule for all emergency management program activities, which include:

- (1) Meetings with external agencies;
- (2) Emergency planning responsibilities and requirements;
- (3) Process used to evaluate emergency preparedness, such as annual emergency field exercises;
- (4) After action reports and implementation of findings;
- (5) Revision and distribution of emergency response procedures;
- (6) Familiarization training for public safety organizations; and
- (7) Employee training.

(l) A description of the process used by the rail transit agency to ensure that planned and scheduled internal safety reviews are performed to evaluate compliance with the system safety program plan, including:

- (1) Identification of departments and functions subject to review;
- (2) Responsibility for scheduling audits;
- (3) Process for conducting reviews, including the development of checklists and procedures and the issuing of findings;
- (4) Review of reporting requirements;
- (5) Tracking the status of implemented recommendations; and
- (6) Coordination with the oversight agency.

(m) A description of the process used by the rail transit agency to develop, maintain, and ensure compliance with rules and procedures having a safety impact, including:

- (1) Identification of operating and maintenance rules and procedures subject to review;
- (2) Techniques used to assess the implementation of operating and maintenance rules and procedures by employees, such as performance testing;
- (3) Techniques used to assess the effectiveness of supervision relating to the implementation of operating and maintenance rules; and

- (4) Process for documenting results and incorporating them into the hazard management program.
- (n) A description of the process used for facilities and equipment safety inspections, including:
- (1) Identification of the facilities and equipment subject to regular safety-related inspection and testing;
 - (2) Techniques used to conduct inspections and testing;
 - (3) Inspection schedules and procedures; and
 - (4) Description of how results are entered into the hazard management process.
- (o) A description of the maintenance audits and inspections program, including identification of the affected facilities and equipment, maintenance cycles, documentation required, and the process for integrating identified problems into the hazard management process.
- (p) A description of the training and certification program for employees and contractors, including:
- (1) Categories of safety-related work requiring training and certification;
 - (2) A description of the training and certification program for employees and contractors in safety-related positions;
 - (3) Process used to maintain and access employee and contractor training records; and
 - (4) Process used to assess compliance with training and certification requirements.
- (q) A description of the configuration management control process, including:
- (1) The authority to make configuration changes;
 - (2) Process for making changes; and
 - (3) Assurances necessary for formally notifying all involved departments.
- (r) A description of the safety program for employees and contractors that incorporates the applicable local, state, and federal requirements, including:
- (1) Safety requirements that employees and contractors must follow when working on, or in close proximity to, rail transit agency property; and
 - (2) Processes for ensuring the employees and contractors know and follow the requirements.
- (s) A description of the hazardous materials program, including the process used to ensure knowledge of and compliance with program requirements.
- (t) A description of the drug and alcohol program and the process used to ensure knowledge of and compliance with program requirements.

(u) A description of the measures, controls, and assurances in place to ensure that safety principles, requirements and representatives are included in the rail transit agency's procurement process.

§ 659.21 System security plan: general requirements

(a) The oversight agency shall require the rail transit agency to implement a system security plan that, at a minimum, complies with requirements in this part and the oversight agency's program standard. The system security plan must be developed and maintained as a separate document and may not be part of the rail transit agency's system safety program plan.

(b) The oversight agency may prohibit a rail transit agency from publicly disclosing the system security plan.

(c) After approving the system security plan, the oversight agency shall issue a formal letter of approval, including the checklist used to conduct the review, to the rail transit agency.

§ 659.23 System security plan: contents

The system security plan must, at a minimum address the following:

(a) Identify the policies, goals, and objectives for the security program endorsed by the agency's chief executive;

(b) Document the rail transit agency's process for managing threats and vulnerabilities during operations, and for major projects, extensions, new vehicles and equipment, including integration with the safety certification process;

(c) Identify controls in place that address the personal security of passengers and employees;

(d) Document the rail transit agency's process for conducting internal security reviews to evaluate compliance and measure the effectiveness of the system security plan; and

(e) Document the rail transit agency's process for making its system security plan and accompanying procedures available to the oversight agency for review and approval.

§ 659.25 Annual review of system safety program plan and system security plan

(a) The oversight agency shall require the rail transit agency to conduct an annual review of its system safety program plan and system security plan.

(b) In the event the rail transit agency's system safety program plan is modified, the rail transit agency must submit the modified plan and any subsequently modified procedures to the oversight agency for review and approval. After the plan is approved, the oversight agency must issue a formal letter of approval to the rail transit agency.

(c) In the event the rail transit agency's system security plan is modified, the rail transit agency must make the modified system security plan and accompanying procedures available to the oversight agency for review, consistent with requirements specified in § 659.23(e) of this part. After the plan is approved, the oversight agency shall issue a formal letter of approval to the rail transit agency.

§ 659.27 Internal safety and security reviews

(a) The oversight agency shall require the rail transit agency to develop and document a process for the performance of on-going internal safety and security reviews in its system safety program plan.

(b) The internal safety and security review process must, at a minimum:

- (1) Describe the process used by the rail transit agency to determine if all identified elements of its system safety program plan and system security plan are performing as intended; and
- (2) Ensure that all elements of the system safety program plan and system security plan are reviewed in an ongoing manner and completed over a three-year cycle.

(c) The rail transit agency must notify the oversight agency at least thirty (30) days before the conduct of scheduled internal safety and security reviews.

(d) The rail transit agency shall submit to the oversight agency any checklists or procedures it will use during the safety portion of its review.

(e) The rail transit agency shall make available to the oversight agency any checklists or procedures subject to the security portion of its review, consistent with § 659.23(e).

(f) The oversight agency shall require the rail transit agency to annually submit a report documenting internal safety and security review activities and the status of subsequent findings and corrective actions. The security part of this report must be made available for oversight agency review, consistent with § 659.23(e).

(g) The annual report must be accompanied by a formal letter of certification signed by the rail transit agency's chief executive, indicating that the rail transit agency is in compliance with its system safety program plan and system security plan.

(h) If the rail transit agency determines that findings from its internal safety and security reviews indicate that the rail transit agency is not in compliance with its system safety program plan or system security plan, the chief executive must identify the activities the rail transit agency will take to achieve compliance.

(i) The oversight agency must formally review and approve the annual report.

§ 659.29 Oversight agency safety and security reviews

At least every three (3) years, beginning with the initiation of rail transit agency passenger operations, the oversight agency must conduct an on-site review of the rail transit agency's implementation of its system safety program plan and system security plan. Alternatively, the on-site review may be conducted in an on-going manner over the three year timeframe. At the conclusion of the review cycle, the oversight agency must prepare and issue a report containing findings and recommendations resulting from that review, which, at a minimum, must include an analysis of the effectiveness of the system safety program plan and the security plan and a determination of whether either should be updated.

§ 659.31 Hazard management process

(a) The oversight agency must require the rail transit agency to develop and document in its system safety program plan a process to identify and resolve hazards during its operation, including any hazards resulting from subsequent system extensions or modifications, operational changes, or other changes within the rail transit environment.

(b) The hazard management process must, at a minimum:

- (1) Define the rail transit agency's approach to hazard management and the implementation of an integrated system-wide hazard resolution process;
- (2) Specify the sources of, and the mechanisms to support, the on-going identification of hazards;
- (3) Define the process by which identified hazards will be evaluated and prioritized for elimination or control;
- (4) Identify the mechanism used to track through resolution the identified hazard(s);
- (5) Define minimum thresholds for the notification and reporting of hazard(s) to oversight agencies; and
- (6) Specify the process by which the rail transit agency will provide on-going reporting of hazard resolution activities to the oversight agency.

§ 659.33 Accident notification

(a) The oversight agency must require the rail transit agency to notify the oversight agency within two (2) hours of any incident involving a rail transit vehicle or taking place on rail transit-controlled property where one or more of the following occurs:

- (1) A fatality at the scene; or where an individual is confirmed dead within thirty (30) days of a rail transit-related incident;
- (2) Injuries requiring immediate medical attention away from the scene for two or more individuals;
- (3) Property damage to rail transit vehicles, non-rail transit vehicles, other rail transit property or facilities and non-transit property that equals or exceeds \$25,000;

- (4) An evacuation due to life safety reasons;
- (5) A collision at a grade crossing;
- (6) A main-line derailment;
- (7) A collision with an individual on a rail right of way; or
- (8) A collision between a rail transit vehicle and a second rail transit vehicle, or a rail transit non-revenue vehicle.

(b) The oversight agency shall require rail transit agencies that share track with the general railroad system and are subject to the Federal Railroad Administration notification requirements, to notify the oversight agency within two (2) hours of an incident for which the rail transit agency must also notify the Federal Railroad Administration.

(c) The oversight agency shall identify in its program standard the method of notification and the information to be provided by the rail transit agency

§ 659.35 Investigations

(a) The oversight agency must investigate, or cause to be investigated, at a minimum, any incident involving a rail transit vehicle or taking place on rail transit-controlled property meeting the notification thresholds identified in § 659.33(a).

(b) The oversight agency must use its own investigation procedures or those that have been formally adopted from the rail transit agency and that have been submitted to FTA.

(c) In the event the oversight agency authorizes the rail transit agency to conduct investigations on its behalf, it must do so formally and require the rail transit agency to use investigation procedures that have been formally approved by the oversight agency.

(d) Each investigation must be documented in a final report that includes a description of investigation activities, identified causal and contributing factors, and a corrective action plan.

(e) A final investigation report must be formally adopted by the oversight agency for each accident investigation:

- (1) If the oversight agency has conducted the investigation, it must formally transmit its final investigation report to the rail transit agency.
- (2) If the oversight agency has authorized an entity other than itself (including the rail transit agency) to conduct the accident investigation on its behalf, the oversight agency must review and formally adopt the final investigation report.
- (3) If the oversight agency does not concur with the findings of the rail transit agency investigation report, it must either:
 - (i) Conduct its own investigation according to paragraphs (b), (d) and (e)(1) of this section; or

- (ii) Formally transmit its dissent to the findings of the accident investigation, report its dissent to the rail transit agency, and negotiate with the rail transit agency until a resolution on the findings is reached.

(f) The oversight agency shall have the authority to require periodic status reports that document investigation activities and findings in a time frame determined by the oversight agency.

§ 659.37 Corrective action plans

(a) The oversight agency must, at a minimum, require the development of a corrective action plan for the following:

- (1) Results from investigations, in which identified causal and contributing factors are determined by the rail transit agency or oversight agency as requiring corrective actions; and
- (2) Findings from safety and security reviews performed by the oversight agency.

(b) Each corrective action plan should identify the action to be taken by the rail transit agency, an implementation schedule, and the individual or department responsible for the implementation.

(c) The corrective action plan must be reviewed and formally approved by the oversight agency.

(d) The oversight agency must establish a process to resolve disputes between itself and the rail transit agency resulting from the development or enforcement of a corrective action plan.

(e) The oversight agency must identify the process by which findings from an NTSB accident investigation will be evaluated to determine whether or not a corrective action plan should be developed by either the oversight agency or rail transit agency to address NTSB findings.

(f) The rail transit agency must provide the oversight agency:

- (1) Verification that the corrective action(s) has been implemented as described in the corrective action plan, or that a proposed alternate action(s) has been implemented subject to oversight agency review and approval; and
- (2) Periodic reports requested by the oversight agency, describing the status of each corrective action(s) not completely implemented, as described in the corrective action plan.

(g) The oversight agency must monitor and track the implementation of each approved corrective action plan.

§ 659.39 Oversight agency reporting to the Federal Transit Administration

(a) Initial submission. Each designated oversight agency with a rail fixed guideway system that is in passenger operations as of April 29, 2005 or will begin passenger operations by May 1, 2006, must make its initial submission to FTA by May 1, 2006. In states with rail fixed guideway systems initiating passenger operations after May 1, 2006, the designated oversight agency must make its initial submission within the time frame specified by the state in its designation submission, but not later than at least sixty (60) days prior to initiation of passenger operations. Any time a state changes its designated oversight agency to carry out the requirements identified in this part, the new oversight agency must make a new initial submission to FTA within thirty (30) days of the designation.

(b) An initial submission must include the following:

- (1) Oversight agency program standard and referenced procedures; and
- (2) Certification that the system safety program plan and the system security plan have been developed, reviewed, and approved.

(c) Annual submission. Before March 15 of each year, the oversight agency must submit the following to FTA:

- (1) A publicly available annual report summarizing its oversight activities for the preceding twelve months, including a description of the causal factors of investigated accidents, status of corrective actions, updates and modifications to rail transit agency program documentation, and the level of effort used by the oversight agency to carry out its oversight activities.
- (2) A report documenting and tracking findings from three-year safety review activities, and whether a three-year safety review has been completed since the last annual report was submitted.
- (3) Program standard and supporting procedures that have changed during the preceding year.
- (4) Certification that any changes or modifications to the rail transit agency system safety program plan or system security plan have been reviewed and approved by the oversight agency.

(d) Periodic submission. FTA retains the authority to periodically request program information.

(e) Electronic reporting. All submissions to FTA required in this part must be submitted electronically using a reporting system specified by FTA.

§ 659.41 Conflict of interest

The oversight agency shall prohibit a party or entity from providing services to both the oversight agency and rail transit agency when there is a conflict of interest, as defined by the state.

§ 659.43 Certification of compliance

- (a) Annually, the oversight agency must certify to the FTA that it has complied with the requirements of this part.
- (b) The oversight agency must submit each certification electronically to FTA using a reporting system specified by FTA.
- (c) The oversight agency must maintain a signed copy of each annual certification to FTA, subject to audit by FTA.