



49 CFR Part 674 Certification Toolkit

Version 2.0

Federal Transit Administration
Office of Transit Safety and Oversight



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Acronyms and Definitions

Accident	An Event that involves any of the following: a loss of life; a report of a serious injury to a person; a collision involving a rail transit vehicle; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.
CAP	Corrective Action Plan; a plan developed by a rail fixed guideway public transportation system that describes the actions the rail fixed guideway public transportation system will take to minimize, control, correct, or eliminate risks and hazards and the schedule for taking those actions. Either the State Safety Oversight agency or the Federal Transit Administration may require a rail fixed guideway public transportation system to develop and carry out a corrective action plan.
CFR	Code of Federal Regulations
Eligible State	An eligible State is any State of the United States that has within its jurisdiction one or more rail fixed guideway public transportation system <i>not</i> subject to Federal Railroad oversight or any such system in engineering or construction. States entering the State Safety Oversight program upon the engineering or construction of the States' first rail fixed guideway public transportation system or entering due to a reclassification of an existing rail fixed guideway public transportation system are required to create and maintain a State Safety Oversight agency as directed on a case-by-case basis by the Federal Transit Administration.
Event	An Accident, Incident, or Occurrence.
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
Hazard	Any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a rail fixed guideway public transportation system; or damage to the environment.
Incident	An Event that involves any of the following: a personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a rail fixed guideway public transportation system.
Investigation	The process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.
NTSB	National Transportation Safety Board
Occurrence	An Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a rail fixed guideway public transportation system.
Person	A passenger, employee, contractor, pedestrian, trespasser, or any individual on the property of a rail fixed guideway public transportation system.
PTASP	Public Transportation Agency Safety Plan. The comprehensive agency safety plan for a transit agency, including rail fixed guideway public transportation systems, that is required by Federal public transportation law (49 U.S.C. § 5329(d)) and based on a Safety Management System.
Public Transportation Safety Certification Training Program	The certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems, and employees of public transportation systems directly responsible for safety oversight, established through interim provisions in accordance with 49 U.S.C. § 5329(c)(2). Alternately, the program authorized by 49 U.S.C. § 5329(c)(1)).

RFGPTS	Rail fixed guideway public transportation system; any fixed guideway system that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration, or any such system in engineering or construction.
RTA	Rail transit agency; any entity that provides services on a rail fixed guideway public transportation system.
Serious injury	Any injury which: requires hospitalization for more than 48 hours, commencing within seven days from the date of injury; results in a fracture of any bone (except simple fractures of fingers, toes, or nose); causes severe hemorrhages, nerve, muscle, or tendon damage; involves any internal organ; or involves second- or third-degree burns, or any burns affecting more than five percent of the body surface.
SSO	State Safety Oversight
SSOA	State Safety Oversight Agency
State	A State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.
State Safety Oversight Agency	An agency established by a State that meets the requirements and performs the functions specified in 49 CFR Part 674.
SSPP	System Safety Program Plan
TTP	Technical Training Plan
U.S.C.	United States Code
Vehicle	Any rolling stock used on a rail fixed guideway public transportation system, including, but not limited to, passenger and maintenance vehicles.

Applicability

This Toolkit refers to requirements of the State; for the purposes of this Toolkit, "the State" or "States" refers to eligible States. An eligible State is any State of the United States that has within its jurisdiction one or more rail fixed guideway public transportation systems (RFGPTS) not subject to oversight by the Federal Railroad Administration (FRA), or any such system in engineering or construction. States entering the State Safety Oversight (SSO) program upon engineering or construction of the States' first RFGPTS or entering due to a reclassification of an existing RFGPTS are required to create and maintain an SSO agency as directed on a case-by-case basis by the Federal Transit Administration (FTA).

The 49 CFR Part 674 Certification Process

Background

The FTA established the first-ever State-managed safety and security oversight program for RFGPTS not regulated by the FRA in 1995. The FTA published requirements for this program in 49 CFR Part 659, "Rail Fixed Guideway Systems; State Safety Oversight", on December 27, 1995. The FTA worked with eligible States to develop compliant programs and, in the fall of 1998, initiated its monitoring role as required in 49 CFR § 659.7 through a formal auditing program. On April 29, 2005, FTA published a revised rule in the *Federal Register* to include further clarifications and specifications.

FTA's New SSO Rule

In 2012, Congress directed FTA to implement new authorities and statutory mandates designed to strengthen the State Safety Oversight (SSO) program. Congress identified several critical weaknesses in the existing State oversight of rail transit safety as implemented through 49 CFR Part 659, including:

- Lack of adequate and consistent safety practices across the rail transit industry;
- Lack of regulatory, oversight, and enforcement authority for State agencies;
- Limited SSO program funding, staff, training, and other resources; and
- Lack of SSO agency financial and legal independence from the rail transit agencies they oversee.

On March 16, 2016, FTA issued the 49 CFR Part 674 final rule to replace 49 CFR Part 659. This rule directs eligible States to strengthen their authority to oversee and enforce safety requirements and to prevent and mitigate accidents and incidents on the RFGPTS in their jurisdictions. This rule is available at: <https://www.transit.dot.gov/regulations-and-guidance/safety/state-safety-oversight-ss0-program>.

These program requirements represent a dramatic increase in Federal expectations for State programs and for the public transportation industry. In recognition of the additional responsibilities these requirements place upon eligible States, 49 CFR Part 674 also establishes the SSO Formula Grant program, offering first-of-its-kind Federal funding for State safety oversight activities.

Part 674 significantly changes how the Federal government and the States work together to keep RFGPTS safe. For the first time, FTA must certify each State's safety oversight program, determining whether the program meets Federal requirements.

Purpose of the FTA's 49 CFR Part 674 Certification Toolkit

The FTA's 49 CFR Part 674 Certification Toolkit provides guidance to States in managing the new SSO certification process. Each State must submit an application to FTA to initiate its official certification process. Prior to this, the FTA will provide technical assistance. Once an application is submitted, the FTA will review the application and issue:

- A certification of compliance,
- A request for additional information, or
- A denial of certification.

Using the guidance in this Toolkit, States will be able to complete their applications and demonstrate general conformance with Part 674 requirements. The FTA's Toolkit is not a minimum standard, but rather a guide for activities and requirements that clearly address FTA's SSO program requirements. States may propose other methods for meeting these requirements, however, these alternate methods must adequately address Part 674 provisions.

The FTA will issue certifications of compliance based on the SSO agency's readiness and ability to oversee the RFGPTS within its jurisdiction using the criteria set forth in Part 674 and outlined in this Toolkit. Similar to the SSO Certification Work Plans, used in the SSO Formula Grant program to lay out each State's roadmap for meeting 49 U.S.C. § 5329 requirements, State program certifications will also proceed on a case-by-case basis, recognizing the need for flexibility when dealing with a diverse set of State legislatures, chief executives, constitutional and statutory constructs, and SSO regulations. The FTA will continue to provide customized, targeted assistance to each SSO agency as appropriate.

Certification Requirements

Through the new certification process required in 49 CFR § 674.19 FTA plays a critical role in assuring the effectiveness and adequacy of the States' SSO programs to implement the FTA's requirements and to address systemic safety concerns at RFGPTS with the potential to result in death or serious injury. The FTA's SSO rule outlines the following certification elements:

- 49 CFR § 674.19(a) requires FTA to determine whether the State's SSO program meets Federal requirements and adequately ensures that the SSO agency:
 - Is financially and legally independent from any RFGPTS it oversees;
 - Does not directly provide overlapping public transportation services in an area with a RFGPTS;
 - Does not employ any individual responsible for administering a RFGPTS;
 - Has the authority to review, approve, oversee, and enforce a public transportation agency safety plan for a RFGPTS;
 - Has investigative and enforcement authority with respect to RFGPTS safety, including the authority to investigate accidents, incidents, and occurrences at the RFGPTS, and to require, approve, track, and verify implementation of corrective actions to ensure RFGPTS safety;
 - Has the authority to adopt and enforce Federal and State laws affecting RFGPTS safety;
 - Audits each RFGPTS in its jurisdiction for compliance with safety plan requirements at least every three years;
 - Reports the status of the safety of each RFGPTS to the Governor, FTA, and the RFGPTS board of directors or equivalent agency at least once a year in the interest of accountability and transparency;
 - Develops and updates a Program Standard to communicate the SSO agency's oversight authorities, activities, and requirements for each RFGPTS in the State;
 - Has sufficient staff resources and expertise to oversee the number, size, and complexity of the RFGPTS within the State; and
 - Addresses the FTA's safety certification and training requirements for all staff resources, including contractors, who conduct audits, examinations, investigations, or inspections for the SSO agency.
- 49 CFR § 674.19(b) requires FTA to issue either a certification or a denial of certification for each State's SSO program.
- 49 CFR § 674.19(c) provides that, in the event FTA issues a denial of a certification, FTA must provide the State a written explanation and an opportunity to modify its SSO program to merit the issuance of certification, and ask the Governor of the State to take all possible steps to correct the deficiencies that are precluding the issuance of a certification. The language at 49 CFR § 674.19(c) also elaborates on the FTA's authority to impose financial penalties for non-compliance.
- The language at 49 CFR § 674.19(d) states that, in deciding whether to issue a certification for a State's SSO program, FTA ultimately must evaluate "whether the SSOA has sufficient authority, resources, and expertise to oversee the number, size, and complexity of the RFGPTS that operate within the state, or will attain the necessary authority, resources, and expertise in accordance with a developmental plan and schedule set forth in a sufficient level of detail in the state's SSO program."

As required in 49 CFR Part 674, States must have their SSO programs approved by FTA by **April 15, 2019**. 49 CFR § 674.11 specifies that, "within three years of April 15, 2016, every State that has a rail fixed guideway public transportation system must have a State Safety Oversight (SSO) program that has been approved by the FTA Administrator."

The new rule authorizes FTA to take enforcement action against States with non-existent or non-compliant safety oversight programs. The language at CFR Part 675.21(b) clarifies that "If a State fails to establish a SSO program that has been approved by the Administrator within three years of the effective date of this part, FTA will be prohibited

from obligating Federal financial assistance apportioned under 49 U.S.C. § 5338 to any entity in the State that is otherwise eligible to receive that Federal financial assistance.”

The language at 49 CFR Part 674.19(c) outlines the FTA’s additional authorities to impose financial penalties for non-compliance:

1. The Administrator can withhold SSO Formula Grant program funds from the State;
2. The Administrator can withhold not more than five percent of the FTA’s Urbanized Area Formula Program (49 U.S.C. § 5307) formula funds appropriated for use in the State or urbanized area in the State, until such time as the SSO program can be certified; or
3. The Administrator can require all of the RFGPTS governed by the SSO program to spend up to 100 percent of their Federal funding under 49 U.S.C. Chapter 53 for safety-related improvements on their systems, until such time as the SSO program can be certified.

See 49 U.S.C. § 5329(e)(7)(D)(ii) 49 CFR § 674.19(c).

Federal public transportation law (49 CFR Part 670) also provides FTA non-financial authorities that may be used to oversee RFGPTS safety, including the authority to conduct inspections, investigations, audits, examinations, and testing or equipment, facilities, rolling stock, records, and a recipient’s operations; require the production of documents; issue subpoenas and depositions; prescribe record keeping and reporting requirements; issue directives; require more frequent oversight activities; require that Federal grant program funds be spent to correct safety deficiencies before funds are spent on other projects; and withhold funds from a recipient. 49 U.S.C. § 5329(f) and (g), 49 CFR Part 670.

Timeline for State Transition to 49 CFR Part 674

The FTA encourages each State to submit its certification application as early as possible. To ensure certification within the three-year deadline specified in 49 CFR Part 674.11, FTA strongly recommends that each State submit its application no later than **April 15, 2018**, providing a full year for evaluation, review, on-site verification assessments (if needed), and re-submission (if warranted).

Completing the 49 CFR Part 674 Certification Application

States must submit their completed Certification Application with a transmittal letter from the highest ranking Transportation or applicable agency Official in the State or equivalent position. The Certification Application is a fillable Adobe .pdf file that collects:

- Basic information on the agency the State designated to implement its SSO program and on the RFGPTS that will be included in the State’s program; and
- Documentation to support the State’s conformance with each particular certification element.

In the Application, each 49 CFR Part 674 certification item is identified by name, with a brief explanation of the requirement and a citation of the applicable 49 CFR Part 674 references. For each certification item, the State must submit and identify the related final document, plan, or legislation.

Due to the interconnectivity of program elements, some SSO agencies may need to reference the same documentation multiple times. The SSO agency does not need to submit duplicate documentation; the Application provides States the opportunity to identify documents that apply to multiple certification items. In these instances, the State should provide a clear, concise citation to direct the FTA’s review to the appropriate location(s) within the submitted documentation.

The Certification Toolkit and Application are organized into six basic categories of certification requirements:

- Category 1: SSO Agency Independence
- Category 2: General Program Requirements
- Category 3: Enforcement Authorities
- Category 4: Investigations and Audits
- Category 5: SSO Staffing, Training, and Qualification
- Category 6: Program Standard

49 CFR Part 674 Certification Application Review Process

The FTA will review each application as it is received and may contact the SSO agency for additional details or clarifications. Upon submission, FTA will perform an initial review of the application for completeness and to ensure all required and referenced documents are included. Depending on the nature of the missing information or documentation, incomplete applications may be sent back to the SSO agency for review and revision, or the missing items or information may be requested from the SSO agency.

After the SSO agency submits a complete application, FTA will review the application and accompanying documentation by Category. The FTA may contact the SSO agency during this time for clarifications or follow-up questions. The FTA also may conduct field visits or verification activities at the States or their RFGPTS. Once all questions and concerns are resolved, FTA will issue a formal letter of approval to the State to certify its SSO program.

In the event that FTA cannot certify the State's SSO program, FTA will issue a denial of certification. As specified in 49 CFR § 674.19(c), the denial of certification will include a written explanation regarding the specific issues, concerns, or deficiencies with the State's certification application and/or SSO program that prohibit certification. The FTA will also provide the State with an opportunity to correct its application and to resolve the issues, concerns, or deficiencies specified in the denial of certification. In addition, FTA will communicate with the Governor of the State to request his or her support in taking all possible steps to correct the items that preclude certification.

Category 1. SSO Agency Independence

a) Legal Entity

49 CFR § 674.11(c):

Establish a State safety oversight agency, by State law, in accordance with the requirements of 49 U.S.C. 5329(e) and this part.

49 CFR § 674.13(a):

Every State that must establish a State Safety Oversight program in accordance with 49 U.S.C. 5329(e) must also establish a SSOA for the purpose of overseeing the safety of rail fixed guideway public transportation systems within that State.

As specified in 49 CFR Part 674, the SSO agency officially designated by the State must be a legal entity of the State. In past communication with the States, FTA clarified that to be considered a legal entity of the State, the SSO agency must be a division, organization, agency, or agent of the State, capable of:

- Promulgating and enforcing State rules and regulations;
- Enforcing Federal rules and regulation;
- Establishing and carrying out its legal and financial obligations independent of the RFGPTS in its jurisdiction;
- Directly hiring and developing staff and contract support;
- Managing Federal and State grant programs; and
- Executing a robust and active oversight program sufficient to meet the safety oversight needs of the RFGPTS in its jurisdiction.

Most States previously demonstrated to FTA that their designated SSO agencies are legal entities of the State. Therefore, on the application checklist, States may reference the legislation, designation letter from the Governor, or other document that specifies their status as a legal entity of the State. In meeting this particular requirement, States and SSO agencies are not constrained to documentation prepared after the release of 49 CFR Part 674, and may submit documentation that pre-dates the legislation if available and applicable to demonstrate legal status.

Required Submissions

1. Program Standard and citation for language identifying the SSO agency as a legal entity of the State
2. Legislation, directive, administrative code, or other vehicle through which the State establishes its status as a legal entity and citation

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 1, Sample Memorandum of Intent
2. Program Standard Technical Assistance Guide

Category 1. SSO Agency Independence

b) Legal Independence from RFGPTS

49 CFR § 674.13(a)(1):

The SSOA is financially and legally independent from any public transportation agency the SSOA is obliged to oversee.

49 CFR § 674.41:

(a) An SSOA must be financially and legally independent from any rail fixed guideway public transportation system under the oversight of the SSOA, unless the Administrator has issued a waiver of this requirement in accordance with § 674.13(b).

As specified in 49 CFR Part 674, the SSO agency officially designated by the State must be legally independent from each RFGPTS in the State's SSO program so that the agency acts independently and without reservation in the interest of public safety. Legal independence from the RFGPTS and from departments within the State with a vested interest in the RFGPTS' financial or operational performance is critical to the SSO agency's ability to perform its safety functions free from outside control or influence and with appropriate autonomy in its day-to-day decision-making. The SSO agency must be able to act independently to resolve safety concerns without conflicting accountabilities or responsibilities for the performance, budget, or reputation of the RFGPTS so that the opinions, findings, conclusions, judgments, and recommendations made by the agency are impartial and viewed as impartial by third parties with knowledge of the relevant information, such as FTA.

As part of the Application, the State must submit documentation to demonstrate the SSO agency's legal independence from the RFGPTS in its jurisdiction. This documentation must clearly show the legal separation of the SSO agency and RFGPTS, including a clear depiction of their reporting relationships and any shared board memberships, organizational activities or responsibilities, or reporting streams.

The documentation must include disclosures of, and elimination of or mitigations for, any potential conflicts. While the goal must be to document and eliminate any instances of legal conflict of interest, FTA acknowledges that States may encounter instances where conflicts cannot be eliminated and must be mitigated instead. Appropriate mitigations may include recusals, external consultation on matters relating to a potential conflict of interest, or restructuring or reallocating responsibilities. These mitigations may require self-certification and periodic independent reviews conducted with reasonable care and professional skepticism to maintain objectivity and credibility.

Required Submissions

1. Program Standard and citation for language identifying the SSO agency as legally independent from the RFGPTS in its jurisdiction
2. Legislation, directive, administrative code, or other vehicle through which the State establishes its legal independence
3. Organization chart depicting the SSO agency's place within its State agency that:
 - a. Demonstrates the agency's independence from the RFGPTS, and
 - b. Shows the lines of reporting from the SSO agency to the highest State transportation official or equivalent position

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 2, Sample Policy for Ensuring Legal and Financial Independence
2. Program Standard Technical Assistance Guide

Category 1. SSO Agency Independence

c) Financial Independence from RFGPTS

49 CFR § 674.13(a)(1):

The SSOA is financially and legally independent from any public transportation agency the SSOA is obliged to oversee.

49 CFR § 674.41:

(a) An SSOA must be financially and legally independent from any rail fixed guideway public transportation system under the oversight of the SSOA, unless the Administrator has issued a waiver of this requirement in accordance with § 674.13(b).

As specified in 49 CFR Part 674, the SSO agency officially designated by the State must be financially independent from the RFGPTS in the State's SSO program. Financial independence means that there are no monetary dependencies or connections exist between the SSO agency and the RFGPTS. The SSO agency is not financially vested in the RFGPTS and its success, and the RFGPTS does not fund the SSO agency or direct its budget or activities in any way.

The language in 49 CFR Part 674.13(a)(1) and 49 CFR Part 674.41 reflect previous FTA and NTSB concerns regarding the ability of the SSO agency to act independently and without reservation in the interest of public safety. Financial independence from the RFGPTS and from departments within the State with a vested interest in the RFGPTS' financial or operational performances is critical to the SSO agency's ability to perform its safety functions free from outside control or influence and with appropriate autonomy in its day-to-day decision-making. The SSO agency must be able to act independently to resolve safety concerns without conflicting accountabilities or responsibilities for the performance, budget, or reputation of the RFGPTS.

The State must submit documentation to demonstrate complete financial independence from the RFGPTS in its jurisdiction. Financial independence means that:

1. The SSO agency and RFGPTS do not have monetary dependencies or connections
2. The SSO agency personnel and actions are not controlled or limited by financial resources supplied by the RFGPTS or by pressures exerted from the SSO agency's vested interest in the RFGPTS' success, or that of its projects or activities
3. The SSO agency is not financially vested in the RFGPTS and its success
4. The RFGPTS does not fund the SSO agency or direct its budget or activities in any way
5. The SSO program budget and/or resources cannot be subverted or redirected towards programs designed to fund, support, or enhance public transportation in the State

The State must submit documentation of any grants, assistance, subsidies, or other financial programs and activities awarded to the RFGPTS through the State department that houses the SSO agency as well as any funding provided to public transportation in general in the State. This documentation must clearly show the financial separation of the SSO agency and RFGPTS, including a clear depiction of their reporting relationships and funding streams. The documentation must include disclosures of and mitigations for any potential conflicts.

While the goal must be to document and eliminate any instances of financial conflict of interest, FTA acknowledges that States may encounter instances where conflicts cannot be eliminated and must be mitigated instead. Appropriate mitigations may include recusals, external consultation on matters relating to a potential conflict of interest, or restructuring or reallocating responsibilities. These mitigations may require self-certification and periodic independent reviews conducted with reasonable care and professional skepticism to maintain objectivity and credibility.

If the SSO agency or its parent agency approves the budget or capital projects for RFGPTS in the SSO program or for any public transportation agency in the State, the State must submit detailed descriptions of these activities and its mitigation strategy to prevent conflicts of interest.

Financial Independence and Civil Fines or Penalties

In order to maintain financial independence, SSO agencies that issue or will issue civil fines or penalties as an enforcement mechanism must not collect the funds from these penalties through the SSO agency. The FTA

recommends that these funds be disbursed to the State's general fund or to some other fund that is not tied to the SSO program. Agencies that issue or will issue civil fines or penalties must include documentation of the process used for collecting funds to show financial independence.

Required Submissions

1. Program Standard and citation for language identifying the SSO agency as financially independent from the RFGPTS in its jurisdiction
2. Legislation, directive, administrative code, or other vehicle through which the State establishes its financial independence
3. Organization chart depicting the SSO agency's place within the State that clearly depicts the agency's financial independence from the RFGPTS
4. Organization chart depicting the SSO agency's place within the State and its reporting relationships with other State entities, including the RFGPTS

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 1, Sample Memorandum of Intent
2. Certification Work Plan Technical Assistance Tab 2, Sample Policy for Ensuring Legal and Financial Independence
3. Program Standard Technical Assistance Guide

Category 1. SSO Agency Independence

d) *Overlap of Transportation Services*

49 CFR § 674.13(a)(2):

The SSOA does not directly provide public transportation services in an area with a rail fixed guideway public transportation system the SSOA is obliged to oversee.

As specified in 49 CFR Part 674, SSO agency officially designated by the State cannot directly provide transportation services that overlap or compete with any RFGPTS in the State's SSO program. This provision, like the 49 CFR Part 674 requirements for financial and legal independence, ensures that the SSO agency has no other considerations, obligations, or influences in carrying out its oversight program.

The FTA generally does not consider single-point interfaces, such as ferry terminals or commuter bus stations located in the RFGTPS service area, as overlapping public transportation service with the RFGPTS since these interfaces do not generally actively compete with RFGPTS for passengers or revenue.

Most SSO agencies addressed this requirement in earlier action completed as part of the SSO grant program. The SSO agencies should refer to these previous assessments and legal clarifications in responding to this item on the application checklist. Typical information submitted by the SSO agencies includes details on the transportation service provided by the State and the nature of the overlap and interface with the RFGPTS, as well as whether independent oversight is provided, such as that provided by the United States Coast Guard for ferry services.

Required Submissions

1. Evidence that the agency does not directly provide public transportation in the same area as the RFGPTS, to include, as applicable, a detailed review of any potentially competitive services provided in the same area as the RFGPTS

Available Technical Assistance:

1. Certification Work Plan Technical Assistance Tab 1, Sample Memorandum of Intent
2. Program Standard Technical Assistance Guide

Category 1. SSO Agency Independence

e) *Employment Conflict of Interest*

49 CFR § 674.13(a)(3):

The SSOA does not employ any individual who is also responsible for administering a rail fixed guideway public transportation system the SSOA is obliged to oversee.

49 CFR § 674.41(b):

An SSOA may not employ any individual who provides services to a rail fixed guideway public transportation system under the oversight of the SSOA, unless the Administrator has issued a waiver of this requirement in accordance with § 674.13(b).

The requirements in 49 CFR Part 674.13(a)(3) and 49 CFR Part 674.41(b) reflect the FTA’s determination that employees cannot appropriately carry out an SSO program if they are otherwise responsible for the administration of RFGPTS programs or activities. As noted previously, Part 674 increases the State’s oversight responsibility to RFGPTS in engineering and construction. States therefore must ensure that their conflict of interest policies and procedures are sufficient to reflect the activities undertaken in all phases of a RFGPTS project.

This requirement may only be waived if the State meets the requirements of and requests a waiver in accordance with 49 CFR § 674.13(b), which states: “At the request of the Governor of a State, the Administrator may waive the requirements for financial and legal independence and the prohibitions on employee conflict of interest ... if the [RFGPTS] in design, construction, or revenue operations in the State have fewer than one million combined actual and projected [RFGPTS] revenue miles per year or provide fewer than ten million combined actual and projected unlinked passenger trips.”

To address this certification item, some SSO agencies prepared conflict of interest, recusal, or other policies to manage potential conflicts of interest as part of the SSO Formula Grant program process. These agencies should include such documentation with their application.

Required Submissions

1. Program Standard and citation of language citing this prohibition
2. Documentation that officially cites this prohibition, including conflict of interest policy(ies)

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 1, Sample Memorandum of Intent
2. Certification Work Plan Technical Assistance Tab 2, Sample Policy for Ensuring Legal and Financial Independence
3. Program Standard Technical Assistance Guide

Category 1. SSO Agency Independence

f) Contractor Conflict of Interest

49 CFR § 674.41(c):

A contractor may not provide services to both an SSOA and a rail fixed guideway public transportation system under the oversight of that SSOA, unless the Administrator has issued a waiver of this prohibition.

The requirements in 49 CFR Part 674.13(c) reflect the FTA's determination that contractors cannot appropriately carry out their activities in support of an SSO program if they are otherwise responsible for the RFGPTS' financial or operational success. Assessments of the implementation of the FTA's SSO program since 1997 raised issues and concerns regarding the roles and responsibilities of contractors working for States and RFGPTS. States must never place contractors working on their SSO programs in positions where they are responsible for evaluating their own work or for evaluating or overseeing work performed by other divisions or units within the contractor organization. Further, States must ensure that contractors working on their SSO programs disclose work performed for other similar RFGPTS or industry associations.

The language in 49 CFR Part 674.14(c) also indicates that, in certain circumstances, FTA can waive this conflict of interest provision. For the above reasons, FTA does not anticipate waiving this requirement for the normal course of SSO program activities. However, in an unusual or emergency situation, where only one contractor is available to support both the State and the RFGPTS, depending the nature of the proposal and level of separation provided within the contractor, FTA may consider waiving this requirement on a case-by-case basis.

As noted previously, 49 CFR Part 674 increases the State's oversight responsibility to systems in engineering and construction. States therefore also must ensure that their conflict of interest policies and procedures are sufficient to reflect the activities undertaken in all phases of a RFGPTS' life cycle.

To address this certification item, some SSO agencies prepared conflict of interest, recusal, or other policies to manage potential conflicts of interest as part of the SSO Formula Grant program process. These agencies should include such documentation with their application.

Required Submissions

1. Program Standard and citation of language citing this prohibition
2. Documentation that officially cites this prohibition, including provisions used in Requests for Proposals (RFPs) or Statements of Work (SOWs)

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 1, Sample Memorandum of Intent
2. Certification Work Plan Technical Assistance Tab 2, Sample Policy for Ensuring Legal and Financial Independence
3. Program Standard Technical Assistance Guide

Category 2. General Program Requirements

a) Acknowledgement of Responsibility

49 CFR § 674.11(a):

Explicitly acknowledge the State's responsibility for overseeing the safety of the rail fixed guideway public transportation systems within the State.

The language at 49 CFR Part 674 requires each State to formally acknowledge its responsibility for overseeing RFGPTS safety in the State. This acknowledgement addresses specific language in Federal public transportation law (49 U.S.C. § 5329) to ensure the State's primary obligation to designate and support an SSO agency with sufficient authority, resources, and qualified personnel to oversee the number, size, and complexity of RFGPTS that operate within a State. This also clarifies that the State is responsible for ensuring that its SSO agency adequately oversees RFGPTS safety, identifying and addressing unsafe conditions and practices with the potential to result in death or serious injury.

To address this general requirement, States typically have formal designation letters from their Governors and/or State legislation that clearly identify the State's primary responsibility for RFGPTS safety and clarify the State's commitment to meet this responsibility through the designation and support of the SSO agency. States should submit this documentation and any other available documentation that officially recognizes the agency as the designated SSO agency.

Required Submissions

1. Program Standard and citation of language explicitly acknowledging the State's responsibility for RFGPTS safety oversight
2. Legislation, directive, administrative code, or other vehicle through which the State establishes its responsibility for overseeing all aspects of RFGPTS safety (including engineering and construction) and explicit citation

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 1, Sample Memorandum of Intent
2. Program Standard Technical Assistance Guide

Category 2. General Program Requirements

b) Funding Prohibition

49 CFR § 674.11(f):

Demonstrate that by law, the State prohibits any public transportation agency in the State from providing funds to the SSOA.

The language at 49 CFR Part 674 prohibits the RFGPTS from funding any part of the State's SSO program. As with the other 49 CFR Part 674 requirements for financial independence, the funding prohibition requirement ensures that the State appropriately enacts its authorities to ensure RFGPTS safety without concern for the SSO agency's financial position. This prohibition is included in response to previous instances where financial connections between RFGPTS and SSO agencies may have limited or influenced the effectiveness of the State's SSO program.

To address this requirement, many States elected to memorialize this prohibition through new or updated legislation, directive, or administrative code. However, several States were unable to legislate a prohibition due to restrictions on "legislating in the negative" (i.e., the inability to prohibit a practice or legal arrangement that does not or has never existed in the State). In this circumstance, FTA is prepared to accept funding prohibitions from these States in the form of an explicit prohibition included in the SSO agency's Program Standard and an annual certification of financial independence.

Required Submissions

1. Program Standard and citation for language prohibiting the RFGPTS from funding the SSO agency
2. Legislation, directive, administrative code, or other vehicle through which the State prohibits the RFGPTS from funding the SSO agency

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 1, Sample Memorandum of Intent
2. Certification Work Plan Technical Assistance Tab 2, Sample Policy for Ensuring Legal and Financial Independence
3. Program Standard Technical Assistance Guide

Category 2. General Program Requirements

c) Establishment of Minimum Standards for Safety

49 CFR § 674.25(a):

An SSOA must establish minimum standards for the safety of all rail fixed guideway public transportation systems within its oversight. These minimum standards must be consistent with the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, the rules for Public Transportation Agency Safety Plans and all applicable Federal and State law.

The language at 49 CFR Part 674 requires each SSO agency to have the authority to establish minimum safety standards for the RFGPTS in its jurisdiction. These minimum standards must be consistent with other rules and regulations issued by FTA in implementing the Public Transportation Safety Program. FTA also encourages the SSO agencies to use this authority to establish minimum standards for the RFGPTS in their jurisdictions to address specific safety concerns or risks monitored and managed in their SSO programs.

To meet this requirement, the SSO agency should submit the legislation or other documentation providing the SSO agency with the authority to implement minimum standards and copies of any minimum standards developed or proposed by the SSO agencies. The legislation or other documentation also must clarify that minimum standards established for the RFGPTS in the State's SSO program must be consistent with the FTA's Public Transportation Safety Program and all applicable Federal and State law.

Required Submissions

1. Legislation or other documentation demonstrating the SSO agency's authority to establish minimum safety standards for the RFGPTS in its jurisdiction
2. Program Standard updated to match the agency's current program requirements and citation of language regarding adoption of future FTA requirements

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 1, Sample Memorandum of Intent
2. Program Standard Technical Assistance Guide

Category 2. General Program Requirements

d) Annual Report

49 CFR § 674.13(a)(7):

At least once a year, the SSOA reports the status of the safety of each rail fixed guideway public transportation system to the Governor, the FTA, and the board of directors, or equivalent entity, of the rail fixed guideway public transportation system.

The language at 49 CFR Part 674 requires the SSO agency designated by the State to report on the status of each RFGPTS in its jurisdiction at least once a year. At a minimum, the SSO agency must report to the Governor of the State, FTA, and the board of directors of each RFGPTS or equivalent agency.

In deference to the variety of RFGPTS' operational characteristics as well as local and State administrative structures, FTA does not require a specific set of metrics or delivery mechanisms for this report, with the exception of the SSO agency's report to FTA, which must continue to follow the FTA's established annual reporting process.

The SSO agency may elect to make this safety status report to the Governor and the RFGPTS board of directors as a presentation or may elect to submit a paper report or any other method of reporting as agreed upon by the SSO agency, the Governor's office, and the RFGPTS. States also may elect to use their SSO annual report to FTA as the basis for their reports to the Governor and the RFGPTS board of directors.

Required Submissions

1. Program Standard and citation of language detailing the requirement for and contents of the annual report

Available Technical Assistance

1. Program Standard Technical Assistance Guide

Category 2. General Program Requirements***e) Multi-State System Oversight Agency Designation***

49 CFR § 674.15: Designation of oversight agency for multi-State system.

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

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

This requirement pertains only to States with multi-State RFGPTS in their jurisdiction. The FTA will coordinate directly with these States to provide guidance and request necessary documentation. All other States may disregard.

Category 3. Enforcement Authority

a) Enforcement Authorities

49 CFR § 674.13(a)(5):

The SSOA has investigative and enforcement authority with respect to the safety of all rail fixed guideway public transportation systems within the State.

The 49 CFR Part 674 creates a new regulatory role for FTA and the States to address known gaps in the SSO program and the safety performance of the rail transit industry identified through NTSB investigations, U.S. Government Accountability Office audits and reviews, USDOT Office of the Inspector General assessments, and FTA SSO program audits and safety studies.

To overcome a long-standing vulnerability in the SSO program that allows corrective action plans to remain open for long periods of time and for serious safety concerns to go potentially unaddressed, 49 CFR Part 674 requires that each State provide its SSO program and SSO agency with enforcement authority to ensure the safety of each RFGPTS in its program and the implementation of each RFGPTS Agency Safety Plan. This authority must be sufficient to enable States to compel action from the RFGPTS to address identified deficiencies.

To satisfy this certification requirement, States must demonstrate through legislation, directive, administrative code, or other means and associated Program Standard language and procedures or checklists that they have the authority and ability to enforce safety requirements at the RFGPTS, including any systems in engineering and construction. Each State must demonstrate that its designated SSO agency can effectively execute, and escalate as warranted, the authority to compel the RFGPTS to address serious deficiencies and concerns identified through investigation, audits, inspections, safety risk management programs, and any other activity in a timely manner.

Characteristics of enforcement authority typically include:

- It is formally authorized (in statute or by executive order or direction or administrative code),
- It is formally implemented (for example, enforcement actions are delivered to the RFGPTS in writing with clear deadlines and specific evidence of completion that must be demonstrated by the RFGPTS),
- It escalates in the event of RFGPTS non-compliance or non-responsiveness, and
- It provides due process provisions for the RFGPTS.

The FTA is focusing its evaluation of each State's enforcement authorities in two major areas: ensuring that the State can carry out its primary responsibility for RFGPTS safety in response to 1) an imminent threat to public safety on the RFGPTS, and 2) a lack of action or non-compliance from the RFGPTS in carrying out its System Safety Program Plan (SSPP) or Agency Safety Plan or corrective action plans approved by the State.

Imminent threats to public safety require immediate action. Authorities to address imminent safety threats may include the authority to:

- Suspend RFGPTS operations;
- Inspect and remove deficient equipment or system infrastructure from service; and/or
- Issue an injunction, directive, or emergency order requiring the RFGPTS to correct an unsafe condition prior to placing equipment or infrastructure back into passenger service.

RFGPTS non-responsiveness, or failure to implement corrective action typically occurs over time. Authorities to address a lack of action or cooperation by the RFGPTS may include the authority to:

- Withhold or redirect funds,
- Levy civil or criminal fines or penalties, and/or
- Institute a formal citation or ticketing program.

In order to maintain financial independence, SSO agencies that issue or will issue civil fines or penalties as an enforcement mechanism must not collect the funds from these penalties through the SSO agency.

To achieve certification from FTA, the State must submit an enforcement authority package that permits the SSO agency to compel action across a variety of scenarios and circumstances with reasonable and measured penalties or

incentives for timely RFGPTS action. The State's enforcement authority package may be comprised of authorities authorized under a single statute or executive order (i.e., a set of enforcement authorities to suspend operations and implement civil penalties authorized as part of the State's new legislation to meet 49 CFR Part 674, or it may include two or more authorities authorized under different statutes, programs, or executive orders (i.e., the authority to withhold funds, authorized as part of the State's existing grant program for public transportation, and the authority to suspend service, authorized in new legislation designed to meet 49 CFR Part 674 provisions).

The State's package must also include a clear escalation protocol that explains how that State would use its authority in response to on-going non-responsiveness or delays from the RFGPTS, as well as any due process or appeals provisions afforded to the RFGPTS. Finally, if not already identified in the package, the State must also include a clear explanation of the steps that the SSO agency will follow in executing or using its enforcement authority to address FTA's two major evaluation areas: 1) an imminent threat to public safety at the RFGPTS and 2) a lack of action or non-compliance from the RFGPTS in carrying out the SSPP or Agency Safety Plan or corrective action plans approved by the State.

Required Submissions

1. Legislation, directive, administrative code, or other appropriate vehicle granting the SSO agency the authority to enforce safety requirements and address safety concerns and explicit citation
2. Program Standard and citation of language added to reflect enforcement authorities

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 4, Sample Enforcement Authority
2. Program Standard Technical Assistance Guide

Category 3. Enforcement Authority***b) Adoption of Federal and State Laws*****49 CFR § 674.11(b):**

Demonstrate the State's ability to adopt and enforce Federal and relevant State law for safety in rail fixed guideway public transportation systems.

States must demonstrate through legislation, directive, administrative code, or other appropriate vehicle and associated Program Standard that they have the authority and ability to adopt and enforce Federal and State safety laws at the RFGPTS. This ability is central to implementing the full Public Transportation Safety Program and to demonstrating the State's enforcement capabilities and authority.

Required Submissions

1. Legislation, directive, administrative code, or other appropriate vehicle granting the SSO agency the authority to enforce safety laws and explicit citation
2. Program Standard and citation of language added to reflect this authority

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 4, Sample Enforcement Authority
2. Program Standard Technical Assistance Guide

Category 3. Enforcement Authority

c) Review, Approve, Oversee, and Enforce Agency Safety Plan

49 CFR § 674.13(a)(4):

The SSOA has authority to review, approve, oversee, and enforce the public transportation agency safety plan for a rail fixed guideway public transportation system required by 49 U.S.C. § 5329(d).

49 CFR § 674.25(b):

An SSOA must review and approve the Public Transportation Agency Safety Plan for every rail fixed guideway public transportation system within its oversight. An SSOA must oversee an RTA's execution of its Public Transportation Agency Safety Plan. An SSOA must enforce the execution of a Public Transportation Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate. An SSOA must ensure that a Public Transportation Agency Safety Plan meets the requirements at 49 U.S.C. § 5329(d).

49 CFR § 674.29:

(a) In determining whether to approve a Public Transportation Agency Safety Plan for a rail fixed guideway public transportation system, an SSOA must evaluate whether the Public Transportation Agency Safety Plan is consistent with the regulations implementing such Plans; is consistent with the National Public Transportation Safety Plan; and is in compliance with the program standard set by the SSOA.

(b) In determining whether a Public Transportation Agency Safety Plan is compliant with 49 CFR part 673, an SSOA must determine, specifically, whether the Public Transportation Agency Safety Plan is approved by the RTA's board of directors or equivalent entity; sets forth a sufficiently explicit process for safety risk management, with adequate means of risk mitigation for the rail fixed guideway public transportation system; includes a process and timeline for annually reviewing and updating the safety plan; includes a comprehensive staff training program for the operations personnel directly responsible for the safety of the RTA; identifies an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the RTA; includes adequate methods to support the execution of the Public Transportation Agency Safety Plan by all employees, agents, and contractors for the rail fixed guideway public transportation system; and sufficiently addresses other requirements under the regulations at 49 CFR part 673.

(c) In an instance in which an SSOA does not approve a Public Transportation Agency Safety Plan, the SSOA must provide a written explanation, and allow the RTA an opportunity to modify and resubmit its Public Transportation Agency Safety Plan for the SSOA's approval

The language at 49 CFR Part 674 maintains the existing requirement from 49 CFR Part 659 that the SSO agency review, approve, and oversee the Public Transportation Agency Safety Plan for each RFGPTS in its jurisdiction, and adds a new requirement that the SSO agency also is responsible for enforcing the RFGPTS' implementation of this plan through an order of a corrective action plan or any other means as necessary or appropriate. Ultimately, the SSO agency also must ensure that the Agency Safety Plan it reviews, approves, oversees and enforces also complies with the FTA's final rule for the Public Transportation Agency Safety Plan.

Reviewing and Approving Agency Safety Plan

The requirements for the content of the Agency Safety Plan are not included in 49 CFR Part 674. These requirements are forthcoming in separate rulemaking.

On February 5, 2016, FTA published the Public Transportation Agency Safety Plan (PTASP) Notice of Proposed Rulemaking (NPRM). Under the proposed rule, each operator of public transportation that receives Federal financial assistance under 49 U.S.C. Chapter 53 would be required to develop and implement an Agency Safety Plan based on the principles of Safety Management System (SMS). Each transit operator would be required to develop an Agency Safety Plan within one year after the effective date of a PTASP final rule (49 CFR Part 673). The PTASP final rule would replace the current requirement for a 21-point checklist or SSPP under 49 CFR Part 659.

Therefore, depending on the timing of when the State applies for certification, the State may use the plan contents specified in 49 CFR Part 659.19 or the new Public Transportation Agency Safety Plan specified in the FTA's forthcoming final rule. Whatever plan is used, FTA expects the State to meet each of the 49 CFR Part 674 requirements for review, approval, oversight, and enforcement. For States that use the 49 CFR Part 659.19 requirements as the basis of the Agency Safety Plan, FTA also expects the State to update its Program Standard and other applicable documentation.

Required Submissions

1. Legislation, directive, administrative code, or other appropriate vehicle granting the SSO agency the authority to review, approve, oversee, and enforce the Agency Safety Plan or SSPP;
2. Program Standard and citation of language added to reflect this authority, to include requirements for Agency Safety Plan review and approval, oversight and enforcement at the RFGPTS

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 4, Sample Enforcement Authority
2. Program Standard Technical Assistance Guide

Category 3. Enforcement Authority

d) Allegations of Noncompliance

49 CFR § 674.25(c):

An SSOA has primary responsibility for the investigation of any allegation of noncompliance with a Public Transportation Agency Safety Plan.

The FTA acknowledges the critical role that public and employee allegations of noncompliance play in the development and maintenance of a safe RFGPTS operating environment. The SSO agency must demonstrate that it has the authority and a clear process in place to collect information, evaluate findings, corroborate information, and require action from the RFGPTS to correct any verified allegations of noncompliance regarding implementation of the Agency Safety Plan. The FTA recommends that, in meeting this requirement, the State clarifies:

- How members of the public or RFGPTS employees or contractors can access or reach the SSO agency to file allegations of noncompliance,
- How the State will investigate allegations of noncompliance, and
- The SSO agency's proposed approach for sharing results regarding the findings of SSO agency investigations.

As discussed in the above Category of this Toolkit, for purposes of certification, a program for identifying, investigating, and correcting, as appropriate, allegations of noncompliance with Agency Safety Plan, can be developed and demonstrated for an SSPP that meets 49 CFR Part 659.19 requirements or the requirements specified in the FTA's new Agency Safety Plan final rule.

Required Submissions

1. Legislation, directive, administrative code, or other appropriate vehicle or protocol through which the State establishes its authority to and protocol for investigating allegations of noncompliance
2. Program Standard and citation of language addressing allegations of noncompliance

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 4, Sample Enforcement Authority
2. Program Standard Technical Assistance Guide

Category 3. Enforcement Authority

e) Requiring and Verifying Corrective Action

49 CFR § 674.27(a)(8):

Corrective actions. The program standard must explain the process and criteria by which the SSOA may order an RTA to develop and carry out a Corrective Action Plan (CAP), and a procedure for the SSOA to review and approve a CAP. Also, the program standard must explain the SSOA's policy and practice for tracking and verifying an RTA's compliance with the CAP, and managing any conflicts between the SSOA and RTA relating either to the development or execution of the CAP or the findings of an investigation.

49 CFR § 674.37(a):

In any instance in which an RTA must develop and carry out a CAP, the SSOA must review and approve the CAP before the RTA carries out the plan; however, an exception may be made for immediate or emergency corrective actions that must be taken to ensure immediate safety, if the SSOA has been given timely notification, and the SSOA provides subsequent review and approval. A CAP must describe, specifically, the actions the RTA will take to minimize, control, correct, or eliminate the risks and hazards identified by the CAP, the schedule for taking those actions, and the individuals responsible for taking those actions. The RTA must periodically report to the SSOA on its progress in carrying out the CAP. The SSOA may monitor the RTA's progress in carrying out the CAP through unannounced, on-site inspections, or any other means the SSOA deems necessary or appropriate.

The language at 49 CFR Part 674 requires that each SSO agency is required to exercise new authorities and capabilities in requiring and enforcing corrective action at each RFGPTS in its program to address safety concerns, findings from investigations and audits, and instances of non-compliance with the Agency Safety Plan. The FTA considers this new authority to be one of the most significant ways in which 49 CFR Part 674 enhances the program implemented under Part 659 and addresses historical weaknesses in the SSO program.

Requiring Corrective Action

New 49 Part 674 requirements expand the existing SSO program to cover safety issues and concerns identified at RFGPTS projects in engineering and construction and also authorize the SSO agency to issue corrective action for single instances of non-compliance identified with the day-to-day implementation of the RFGPTS Agency Safety Plan. The SSO agency can also require corrective action in response to a broader range of investigative and audit activities, as well as in response to an imminent threat to public safety.

New authorities also extend to the oversight and verification of each RFGPTS' implementation of corrective actions approved by the SSO agency. The RFGPTS must periodically report to the SSO agency on its progress in carrying out the CAP, and the SSO agency must identify the extent and frequency of this reporting. The SSO agency also is authorized to monitor the RFGPTS' progress in carrying out each CAP through unannounced, on-site inspections, or any other means the SSO agency deems necessary or appropriate.

To document its approach to implementing this new authority and set of requirements, the SSO agency must update its Program Standard and any associated stand-alone policies or procedures to reflect:

- The increased scope of the SSO program and its policies and procedures for developing CAPs for systems in engineering or construction;
- The increased scope of the SSO program and its policies and procedures for developing CAPs resulting from observations, reviews, inspections, and other activities designed to assess day-to-day implementation of the Agency Safety Plan at the RFGPTS;
- The increased scope of the SSO program and its policies and procedures for developing CAPs resulting from investigations into safety events and other incidents or occurrences at the RFGPTS;
- The requirement to investigate complaints or instances of noncompliance with the Agency Safety Plan and the CAPs developed as a result;
- The steps the RFGPTS may take to implement corrective action to address items that pose an immediate safety concern and the steps the SSO agency will take to provide review and approval;
- The process the SSO agency will use to track CAPs to completion, including its requirements for routine CAP updates; and

- The process to be used to monitor and verify RFGPTS' progress in carrying out the CAP through unannounced, on-site inspections, or any other means the SSO agency deems necessary or appropriate.

Verifying Corrective Action

The State also must submit its procedures for CAP implementation verification. While FTA does not dictate the specific method used for this verification, the Program Standard and associated documents must outline a clear and robust verification process that tracks and monitors the CAP to completion.

The State must submit its CAP tracking policies, procedures, and current tracking documentation. This documentation must include the steps the State takes to verify CAP implementation after the RFGPTS presents it for closure. The language at 49 CFR Part 674 authorizes the SSO agency to verify corrective implementation through unannounced, on-site inspections or any other means the SSO agency deems necessary or appropriate. The FTA encourages SSO agencies to establish procedures for conducting announced and unannounced inspections.

Managing Conflicts

The SSO agency operating under 49 CFR Part 659 managed conflicts between the SSO agency and the RFGPTS in many program areas, such as disagreements over CAP suitability, accident cause, appropriate corrective action, review findings, etc. As required under 49 CFR Part 674, SSO agencies obtained new enforcement authorities, some of which permit the State to levy fines, withhold funding, suspend operations, or remove deficient equipment from service. As such, FTA expects the SSO agency to update its Program Standard to include appropriate protocols for due process, through which an RFGPTS or individual can petition an SSO agency determination for relief. If available, the SSO agency must also submit documentation of other conflict resolution procedures, such as convening an independent board to review conflicts over CAPs or event reports.

Required Submissions

1. Legislation, directive, administrative code, or other appropriate vehicle or protocol through which the State establishes its authority to and protocol for requiring corrective action, verifying its implementation, and managing conflicts between the SSO agency and RFGPTS regarding findings or CAP implementation
2. Program Standard and procedures for CAP management
3. Current CAP tracking matrix

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 4, Sample Enforcement Authority
2. Program Standard Technical Assistance Guide

Category 4. Investigations and Audits

a) Investigative Authority

49 CFR § 674.13(a)(5):

The SSOA has investigative and enforcement authority with respect to the safety of all rail fixed guideway public transportation systems within the State.

49 CFR § 674.25(d):

An SSOA has primary responsibility for the investigation of an accident on a rail fixed guideway public transportation system.

49 CFR § 674.27(a)(7):

The SSO program standard must identify thresholds for accidents that require the RTA to conduct an investigation. Also, the program standard must address how the SSOA will oversee an RTA's internal investigation; the role of the SSOA in supporting any investigation conducted or findings and recommendations made by the NTSB or FTA; and procedures for protecting the confidentiality of the investigation reports.

As discussed in the following Categories of this Toolkit, 49 CFR Part 674 only requires SSO agencies to formally investigate "accidents" as defined in 49 CFR § 674.7. Accidents are a specific sub-set of safety events that "involve the safety of a rail transit vehicle or take place on the property of any RFGPTS in its jurisdiction" and "result in a loss of life; a report of a serious injury to a person; a collision involving a rail transit vehicle; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause."

The FTA understands that most of the State's investigative resources and activities will be focused on "accidents" that meet 49 CFR Part 674 thresholds. However, 49 CFR § 674.13(a)(5) requires the SSO agency to have "investigative authority with respect to the safety of all RFGPTS within the State." Therefore, FTA requires each SSO agency to demonstrate its clear authority to investigate any event, including an accident, incident, or occurrence, involving the safety of a rail transit vehicle or taking place on the property of any RFGPTS in its jurisdiction. While the SSO agency is not required to investigate these events, it must have the authority to do so should such an investigation be warranted or determined to be necessary by the SSO agency to ensure public safety.

Further, at its discretion, the SSO agency also may develop procedures for the RFGPTS to:

- Notify the SSO agency of specific events beyond accidents;
- Submit required preliminary information and reports on events beyond accidents; and
- Coordinate with the SSO agency should the SSO agency launch to independently investigate any event.

The SSO agency also may specify trend reporting on events, including any information the RFGPTS must supply regarding the frequency of occurrence of safety events, the consequences of these events, the contributing and probable causes, and corrective action taken by the RFGPTS to prevent recurrence.

The FTA expects SSO agencies to be aware of all reportable incidents occurring at the RFGPTS under their oversight. In addition, States may allow or require SSO agencies to request these reports directly from the RFGPTS.

Required Submissions

1. Program Standard and citation of language regarding investigative authorities
2. Legislation, directive, administrative code, or other appropriate vehicle granting the SSO agency the authority to conduct, or cause to be conducted on the State's behalf, investigations and explicit citation

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 4, Sample Enforcement Authority
2. Program Standard Technical Assistance Guide

Category 4. Investigations and Audits

b) Notification of Accidents and Other Safety Events

49 CFR § 674.27(a)(6):

The SSO program standard must establish requirements for an RTA to notify the SSOA of accidents on the RTA's rail fixed guideway public transportation system. These requirements must address, specifically, the time limits for notification, methods of notification, and the nature of the information the RTA must submit to the SSOA.

49 CFR § 674.7:

Accident means an Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision involving a rail transit vehicle; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause. An accident must be reported in accordance with the thresholds for notification and reporting set forth in Appendix A to this part.

49 CFR § 674.7:

Event means an Accident, Incident or Occurrence.

49 CFR § 674.33:

(a) Two-hour notification. In addition to the requirements for accident notification set forth in an SSO program standard, an RTA must notify both the SSOA and the FTA within two hours of any accident occurring on a rail fixed guideway public transportation system. The criteria and thresholds for accident notification and reporting are defined in a reporting manual developed for the electronic reporting system specified by FTA as required in § 674.39(b), and in appendix A of the FTA's final rule.

(b) FRA notification. In any instance in which an RTA must notify the FRA of an accident as defined by 49 CFR 225.5 (i.e., shared use of the general railroad system trackage or corridors), the RTA must also notify the SSOA and FTA of the accident within the same time frame as required by the FRA.

The SSO agency must establish notification thresholds that the RFGPTS must follow to inform the SSO agency regarding the occurrence of accidents, as defined in 49 CFR § 674.7, and any other safety events (incidents or occurrences) identified by the SSO agency. The notification thresholds must define the specific events for which the RFGPTS must notify the SSO agency, and must also include time limits for notification, methods of notification, and the nature of the information the RFGPTS must submit to the SSO agency. The notification thresholds should be included in the SSO agency's Program Standard and in any separate investigation procedures developed for the State's SSO program.

At a minimum, the notification approach established by the SSO agency must specify a two-hour notification requirement for "accidents" meeting 49 CFR Part 674.7 thresholds and must also clarify that the RFGPTS must notify both the SSO agency and FTA within two hours of any "accident" occurring at a RFGPTS in the State's SSO program. The FTA will provide additional information regarding its preferred notification methods.

In addition, for those RFGPTS with waivers approved by FRA, the RFGPTS must notify both the SSO agency and FTA when it experiences an accident as defined in 49 CFR § 225.5.

Required Submissions

1. Program Standard and citation of language regarding notification thresholds and requirements
2. Legislation, directive, administrative code, or other appropriate vehicle granting the SSO agency the authority to conduct, or cause to be conducted on the State's behalf, investigations and explicit citation

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 4, Sample Enforcement Authority
2. Program Standard Technical Assistance Guide

Category 4. Investigations and Audits

c) Right to Access RFGPTS

49 CFR § 674.25(b):

An SSOA must review and approve the Public Transportation Agency Safety Plan for every rail fixed guideway public transportation system within its oversight. An SSOA must oversee an RTA's execution of its Public Transportation Agency Safety Plan. An SSOA must enforce the execution of a Public Transportation Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate. An SSOA must ensure that a Public Transportation Agency Safety Plan meets the requirements at 49 U.S.C. 5329(d).

49 CFR § 674.35:

(a) An SSOA must investigate or require an investigation of any accident and is ultimately responsible for the sufficiency and thoroughness of all investigations, whether conducted by the SSOA or RTA. If an SSOA requires an RTA to investigate an accident, the SSOA must conduct an independent review of the RTA's findings of causation. In any instance in which an RTA is conducting its own internal investigation of the accident or incident, the SSOA and the RTA must coordinate their investigations in accordance with the SSO program standard and any agreements in effect.

(b) Within a reasonable time, an SSOA must issue a written report on its investigation of an accident or review of an RTA's accident investigation in accordance with the reporting requirements established by the SSOA. The report must describe the investigation activities; identify the factors that caused or contributed to the accident; and set forth a corrective action plan, as necessary or appropriate. The SSOA must formally adopt the report of an accident and transmit that report to the RTA for review and concurrence. If the RTA does not concur with an SSOA's report, the SSOA may allow the RTA to submit a written dissent from the report, which may be included in the report, at the discretion of the SSOA.

49 CFR § 674.37(a):

In any instance in which an RTA must develop and carry out a CAP, the SSOA must review and approve the CAP before the RTA carries out the plan; however, an exception may be made for immediate or emergency corrective actions that must be taken to ensure immediate safety, provided that the SSOA has been given timely notification, and the SSOA provides subsequent review and approval. A CAP must describe, specifically, the actions the RTA will take to minimize, control, correct, or eliminate the risks and hazards identified by the CAP, the schedule for taking those actions, and the individuals responsible for taking those actions. The RTA must periodically report to the SSOA on its progress in carrying out the CAP. The SSOA may monitor the RTA's progress in carrying out the CAP through unannounced, on-site inspections, or any other means the SSOA deems necessary or appropriate.

The FTA recognizes the importance of timely and comprehensive SSO agency access to RFGPTS property, personnel, and files. The State must ensure that it has clear authorities, policies, and procedures in place to permit the SSO agency access to critical information for investigations, audits, and verifications, as well as day-to-day oversight activities. Such access also may require SSO agency personnel to take courses or achieve certification with the RFGPTS, such as right-of-way worker protection training.

The State must demonstrate that its SSO agency maintains specific authorities to access the RFGPTS in its jurisdiction to conduct, or require to be conducted on the State's behalf, investigations into any accidents, incidents, hazards, and conditions of concern, such as the right to:

- Enter RFGPTS property to conduct announced and unannounced inspections;
- Review records and interview employees;
- Review camera footage, audio recordings, and other data downloaded from electronic devices and recorders;
- Take measurements and independently inspect equipment and facilities;
- Observe employees in the performance of work; and
- Conduct independent assessments and evaluations, including laboratory tests and modeling.

Required Submissions

1. Legislation, directive, administrative code, or other method through which the State establishes its authority to access the RFGPTS, including rail property, vehicles, records and personnel, accident scenes and other relevant locations, to conduct audits and investigations into accidents, implementation of the Agency Safety Plan, and implementation of corrective action plans
2. Program Standard and citation of language regarding SSO access to RFGPTS property, personnel, and files

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 4, Sample Enforcement Authority
2. Program Standard Technical Assistance Guide

Category 4. Investigations and Audits

d) Investigation Procedures

49 CFR § 674.35:

(a) An SSOA must investigate or require an investigation of any accident and is ultimately responsible for the sufficiency and thoroughness of all investigations, whether conducted by the SSOA or RTA. If an SSOA requires an RTA to investigate an accident, the SSOA must conduct an independent review of the RTA's findings of causation. In any instance in which an RTA is conducting its own internal investigation of the accident or incident, the SSOA and the RTA must coordinate their investigations in accordance with the SSO program standard and any agreements in effect.

(b) Within a reasonable time, an SSOA must issue a written report on its investigation of an accident or review of an RTA's accident investigation in accordance with the reporting requirements established by the SSOA. The report must describe the investigation activities; identify the factors that caused or contributed to the accident; and set forth a corrective action plan, as necessary or appropriate. The SSOA must formally adopt the report of an accident and transmit that report to the RTA for review and concurrence. If the RTA does not concur with an SSOA's report, the SSOA may allow the RTA to submit a written dissent from the report, which may be included in the report, at the discretion of the SSOA.

(c) All personnel and contractors that conduct investigations on behalf of an SSOA must be trained to perform their functions in accordance with the Public Transportation Safety Certification Training Program.

The FTA empowers States to determine their own approach to accident investigations and requires only that the SSO agency investigates or requires an investigation of any "accident" meeting the thresholds established at 49 CFR § 674.7. The SSO agency may elect to perform its own investigations, require the RFGPTS to conduct investigations on its behalf, task a contractor with conducting investigations, or a combination of these approaches.

The process for determining the investigating party must be clearly outlined in the Program Standard or other submitted document. If the SSO agency delegates responsibility for the performance of accident investigation to either the RFGPTS or a contractor, the SSO agency must also submit documentation of its process to independently review both the investigation and the investigation report, including its process for the adoption of investigation reports.

Given the responsibilities associated with formal investigations, 49 CFR Part 674 only requires the SSO agency ensure the sufficiency and thoroughness of investigations into "accidents" meeting the specific thresholds outlined in 49 CFR § 674.7. Accidents are a specific sub-set of events that result in:

- A loss of life;
- Serious injury to a person;
- A collision involving a rail transit vehicle;
- A runaway train;
- An evacuation for life safety reasons; or
- Any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.

For investigations into accidents meeting these thresholds, the SSO agency must ensure that a written report is issued in accordance with procedures established by the SSO agency, and that a corrective action or actions is/are required and implemented by the RFGPTS to address the causal and contributing factors of the accident, prevent recurrence, and mitigate risk. As specified in 49 CFR § 674.25(e), SSO agencies may enter into an agreement with a contractor for assistance in overseeing accident investigations, performing independent accident investigations, reviewing incidents and occurrences, and for expertise that the SSO agency does not have within its own organization.

For investigation into all events, the SSO agency must establish:

- The SSO agency's procedures for independent investigation and procedures for oversight of RFGPTS' internal investigations;
- The role of the SSO agency in supporting any investigation conducted by or findings and recommendations made by the NTSB or FTA; and
- Procedures for protecting the confidentiality of the investigation reports.

In establishing these procedures, FTA expects that the SSO agency will address the following:

- Options to observe RFGPTS investigation activities. The SSO agency may observe RFGPTS staff during portions of the investigation, such as on-scene response or records reviews, attend and observe all meetings of the investigation team, and review all versions of reports and briefs resulting from investigation into safety events.
- Performing a checklist-based review of all accident investigations to ensure all required elements are included in the report
- Performing an audit of accident investigations to examine: how evidence collected during the investigation is reflected in content of the final investigation report, strength of causal analysis determinations, and comprehensiveness of investigations.
- Performing an audit of the investigation process, including adherence to notification protocols, submission of draft reports, status updates, and final reports within required timeframes, and record keeping of final reports among other items.

Regardless of the investigating party, the SSO agency must issue clear guidance and expectations for accident investigation and ensure that all investigation reports appropriately identify causal or contributing factors and set forth appropriate corrective action.

Required Submissions

1. Program Standard and citation of language regarding investigation procedures
2. Investigation procedures, or any other available documentation of the SSO's approach to and requirements for investigations

Available Technical Assistance

1. Program Standard Technical Assistance Guide

Category 4. Investigations and Audits

e) Protection from Disclosure

49 CFR § 674.23:

(a) A State, an SSOA, or an RTA may withhold an investigation report prepared or adopted in accordance with these regulations from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report.

(b) This part does not require public availability of any data, information, or procedures pertaining to the security of a rail fixed guideway public transportation system or its passenger operations.

49 CFR § 674.27(a)(7):

Investigations. The SSO program standard must identify thresholds for accidents that require the RTA to conduct an investigation. Also, the program standard must address how the SSOA will oversee an RTA's internal investigation; the role of the SSOA in supporting any investigation conducted or findings and recommendations made by the NTSB or FTA; and procedures for protecting the confidentiality of the investigation reports.

The SSO program does not provide Federal legal protection for accident reports or other data. The language in 49 CFR Part 674 does, however, permit the State to enact its own statutes regarding public availability of reports, data, etc. as it sees fit.

Required Submissions

1. Program Standard and citation of procedures for protecting the confidentiality of information
2. Legislation, directive, administrative code, or other method through which the State establishes its authority to withhold data, information, or procedures regarding the RFGPTS and its operations

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 4, Sample Enforcement Authority
2. Program Standard Technical Assistance Guide

Category 4. Investigations and Audits

f) Triennial Audit

49 CFR § 674.13(a)(6):

At least once every three years, the SSOA audits every rail fixed guideway public transportation system's compliance with the public transportation agency safety plan required by 49 U.S.C. 5329(d).

49 CFR § 674.27(a)(5):

Triennial SSOA audits of Rail Public Transportation Agency Safety Plans. The SSO program standard must explain the process the SSOA will follow and the criteria the SSOA will apply in conducting a complete audit of the RTA's compliance with its Public Transportation Agency Safety Plan at least once every three years, in accordance with 49 U.S.C. 5329. Alternatively, the SSOA and RTA may agree that the SSOA will conduct its audit on an on-going basis over the three-year timeframe. The program standard must establish a procedure the SSOA and RTA will follow to manage findings and recommendations arising from the triennial audit.

49 CFR § 674.31:

Triennial audits: general requirements. At least once every three years, an SSOA must conduct a complete audit of an RTA's compliance with its Public Transportation Agency Safety Plan. Alternatively, an SSOA may conduct the audit on an on-going basis over the three-year timeframe. At the conclusion of the three-year audit cycle, the SSOA shall issue a report with findings and recommendations arising from the audit, which must include, at minimum, an analysis of the effectiveness of the Public Transportation Agency Safety Plan, recommendations for improvements, and a corrective action plan, if necessary or appropriate. The RTA must be given an opportunity to comment on the findings and recommendations.

The language at 49 CFR Part 674 requires that the SSO agency is required to conduct a complete audit of each rail transit agency's compliance with its Agency Safety Plan at least once every three years. Alternatively, an SSO agency may conduct the audit on an on-going basis over the three-year timeframe. At the conclusion of the three-year audit cycle, the SSO agency must issue a report with findings and recommendations arising from the audit, which must include, at a minimum, an analysis of the effectiveness of the Agency Safety Plan, recommendations for improvements, and a corrective action plan, if necessary or appropriate. The RFGPTS must be given an opportunity to comment on the findings and recommendations.

Under 49 CFR Part 659, SSO agencies currently perform three-year reviews of each RFGPTS in their jurisdictions. The language in 49 CFR Part 674 enhances this requirement, changing the three-year review process to a three-year audit. This new requirement significantly increases the State's responsibility for Agency Safety Plan implementation field verification and expands responsibility for assessing the Agency Safety Plan's effectiveness in ensuring RFGPTS safety.

The FTA also encourages the SSO agencies to review the International Organization for Standardization's, *ISO 19011:2011 Guidelines for Auditing Management Systems*, which provides guidance on conducting audits of management systems. In reviewing this guidance, FTA encourages States to focus the development of auditing processes on how well the RFGPTS implements each Category of the Agency Safety Plan and how well the results it achieves compare to its initial objectives.

As part of the certification application, at a minimum, the SSO agency must submit its Program Standard updated to reflect the revised three-year auditing process.

Required Submissions

1. Program Standard and citation of procedures for conducting three-year audits

Available Technical Assistance

1. *ISO 19011:2011 Guidelines for Auditing Management Systems*
Please see: http://www.iso.org/iso/catalogue_detail?csnumber=50675
2. Program Standard Technical Assistance Guide

Category 5. Staffing and Qualification of SSO Personnel and Contractors

a) SSO Program Workload Assessment

49 CFR § 674.11(d):

Demonstrate that the State has determined an appropriate staffing level for the State safety oversight agency commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems in the State, and that the State has consulted with the Administrator for that purpose.

The language in 49 CFR Part 674 requires the State to significantly strengthen its SSO program and enhance the level and qualification of the personnel resources used to oversee and enforce RFGPTS safety. In order to ensure that the SSO agency can adequately and appropriately exercise the rights and responsibilities required under 49 CFR Part 674 and implement and sustain a fully compliant program, each State must demonstrate to FTA an appropriate staffing level commensurate with the number, size, and complexity of the RFGPTS in the State.

In consultation with FTA, the State must develop and submit a formal plan for organizing and staffing its SSO program commensurate with Federal safety requirements, including 49 CFR Part 674, and the number, size, and complexity of the RFGPTS in the State's program. This plan must also include the State's requirements to ensure the qualification of the personnel designated to implement the SSO program on behalf of the eligible State, including completion of the public transportation safety certification training program.

In order to meet these requirements, FTA expects States will staff their programs with personnel, including contractors and part-time staff, skilled in accident and hazard investigation, safety data analysis, rail auditing and inspection, program administration, and, for States with systems in engineering or construction, engineering or capital projects management.

The FTA is aware that the approach to meeting the requirements under 49 CFR Part 674 will vary from State to State, and, therefore, does not mandate a specific staffing minimum or requirement. States may use the Illustrative Apportionments published in the Federal Register as part of the SSO Formula Grant program to review the FTA's expected size of the minimum annual SSO program budget by State. The FTA expects that most of this funding will go towards staff and contractor costs and to cover the costs of other State resources, such as State Participation Program Inspectors qualified through the Federal Railroad Administration or Occupational Safety and Health Administration inspectors to support specific activities or reviews.

To meet this certification requirement, each State must submit a workload assessment and formal plan that clearly outlines SSO activities and the resources necessary to complete the activities. States may receive certification prior to achieving the staffing or contracting level referenced in their assessment. The FTA recognizes that many States will "ramp up" their SSO program over the next several years, and that the agency's current needs may not require its goal resourcing level. The FTA expects States clearly indicate their plans and timelines for acquiring the additional resources to meet its full workload assessment resourcing requirements.

Required Submissions

1. SSO Program Workload assessment

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 8, Sample SSO Workload Assessment
2. Certification Work Plan Technical Assistance Tab 9, Sample Job Descriptions
3. Sample Estimated Staffing Plan

Category 5. Staffing and Qualification of SSO Personnel and Contractors

b) SSO Agency Organization and Personnel Qualifications and Experience

49 CFR § 674.5:

(a) In accordance with 49 U.S.C. 5329(e), a State that has a rail fixed guideway public transportation system within the State has primary responsibility for overseeing the safety of that rail fixed guideway public transportation system. A State safety oversight agency must have sufficient authority, resources, and qualified personnel to oversee the number, size, and complexity of rail fixed guideway public transportation systems that operate within a State.

(b) FTA will make Federal financial assistance available to help an eligible State develop or carry out its State safety oversight program. Also, FTA will certify whether a State safety oversight program meets the requirements of 49 U.S.C. 5329(e) and is adequate to promote the purposes of the public transportation safety programs codified at 49 U.S.C. 5329.

49 CFR § 674.11(e):

Demonstrate that the employees and other personnel of the State safety oversight agency who are responsible for the oversight of rail fixed guideway public transportation systems are qualified to perform their functions, based on appropriate training, including substantial progress toward or completion of the Public Transportation Safety Certification Training Program.

49 CFR § 674.25(e):

An SSOA may enter into an agreement with a contractor for assistance in overseeing accident investigations; performing independent accident investigations; and reviewing incidents and occurrences; and for expertise the SSOA does not have within its own organization.

49 CFR § 674.35(c):

All personnel and contractors that conduct investigations on behalf of an SSOA must be trained to perform their functions in accordance with the Public Transportation Safety Certification Training Program.

The FTA expects the State to staff and otherwise resource their SSO programs with personnel skilled in investigation, analysis, auditing, inspections, administration, and, as appropriate, engineering and capital projects management. The State must submit documentation sufficient to demonstrate the capability of its personnel to oversee the RFGPTS in its jurisdiction, and staffing appropriate to the size, number, and complexity of those systems.

States may utilize industry experts within other State departments, such as State Participation Program Inspectors qualified through the Federal Railroad Administration or Occupational Safety and Health Administration inspectors qualified through the State's program to support specific activities or reviews, as well as contractors, and personnel developed through State training, certification and professional development programs.

Recognizing the need for immediate assistance with the development of the rail transit safety oversight workforce, Federal public transportation law also requires FTA to move forward with developing interim provisions for training and certifying Federal and State Safety Oversight Agency personnel and their contractor support who conduct safety audits and examinations of public transportation systems, in advance of the rulemaking process. Therefore, pursuant 49 U.S.C. § 5329(c)(2), FTA issued interim provisions for the certification and training of these designated Federal, State, and other personnel who conduct safety audits and examinations.

Specifically, for SSO personnel and contractors, FTA established the Technical Training Plan (TTP). Each SSO agency must develop a technical training plan for covered personnel and contractor support personnel who perform safety audits and examinations. The SSO agency will submit its proposed technical training plan to FTA for review and evaluation as part of the SSO agency certification program. This review and approval process also supports the consultation required between FTA and SSO agencies regarding the staffing and qualification of the SSO agencies' employees and other designated personnel in accordance with 49 CFR Part 674.

The TTP acts as the template for the discussion between the State and FTA regarding the appropriate resourcing of the SSO agency and takes into account the size, number, and complexity of the RFGPTS overseen by each State. As in any business unit, employee turnover is to be expected. The FTA requires the State to upload an updated TTP to the FTA Safety website by no later than September 30 of each calendar year, and to submit a current version with its certification application.

Required Submissions

1. Technical Training Plan
2. SSO organization chart
3. SSO job position descriptions
4. Contractor Requests for Proposals or Statements of Work

Available Technical Assistance

1. Certification Work Plan Technical Assistance Tab 8, Sample SSO Workload Assessment
2. Certification Work Plan Technical Assistance Tab 9, Sample Job Descriptions
3. Staffing the 49 CFR Part 674 Agency
4. Sample Workload assessment
5. Interim Safety Certification Training Program Provisions
Please see: <https://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03842.pdf>
6. TTP Template
Please see: <https://www.transit.dot.gov/oversight-policy-areas/guide-meeting-ftas-technical-training-plan-requirements>

Category 5. Staffing and Qualification of SSO Personnel and Contractors***c) Training Program Certification*****49 CFR § 674.11(e):**

Demonstrate that the employees and other personnel of the State safety oversight agency who are responsible for the oversight of rail fixed guideway public transportation systems are qualified to perform their functions, based on appropriate training, including substantial progress toward or completion of the Public Transportation Safety Certification Training Program.

49 CFR § 659.25(f):

All personnel and contractors employed by an SSOA must comply with the requirements of the Public Transportation Safety Certification Training Program as applicable.

The SSO agency must conform with the FTA's Public Transportation Safety Certification Program and ensure that those responsible for RFGPTS oversight are qualified to perform their functions. As part of this qualifications package, the SSO agency must ensure that its personnel completed or made substantial progress towards completing the Public Transportation Safety Certification Training Program.

Required Submissions

1. Certification of the SSO agency's conformance with the FTA's Public Transportation Safety Certification Training Program
2. Completed registration and certifications uploaded to the FTA's Safety Resource and Training Website

Available Technical Assistance

1. Interim Safety Certification Training Program Provisions
Please see: <https://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03842.pdf>

Category 6. Program Standard

Updated Program Standard Meeting 49 CFR Part 674 Requirements

49 CFR § 674.27: State safety oversight program standards

(a) An SSOA must adopt and distribute a written SSO program standard, consistent with the National Public Transportation Safety Plan and the rules for Public Transportation Agency Safety Plans. This SSO program standard must identify the processes and procedures that govern the activities of the SSOA. Also, the SSO program standard must identify the processes and procedures an RTA must have in place to comply with the standard.

(1): Program management. The SSO program standard must explain the authority of the SSOA to oversee the safety of rail fixed guideway public transportation systems; the policies that govern the activities of the SSOA; the reporting requirements that govern both the SSOA and the rail fixed guideway public transportation systems; and the steps the SSOA will take to ensure open, on-going communication between the SSOA and every rail fixed guideway public transportation system within its oversight.

(2): Program standard development. The SSO program standard must explain the SSOA's process for developing, reviewing, adopting, and revising its minimum standards for safety, and distributing those standards to the rail fixed guideway public transportation systems.

(3): Program policy and objectives. The SSO program standard must set an explicit policy and objectives for safety in rail fixed guideway public transportation throughout the State.

(4): Oversight of Rail Public Transportation Agency Safety Plans and Transit Agencies' internal safety reviews. The SSO program standard must explain the role of the SSOA in overseeing an RTA's execution of its Public Transportation Agency Safety Plan and any related safety reviews of the RTA's fixed guideway public transportation system. The program standard must describe the process whereby the SSOA will receive and evaluate all material submitted under the signature of an RTA's accountable executive. Also, the program standard must establish a procedure whereby an RTA will notify the SSOA before the RTA conducts an internal review of any aspect of the safety of its rail fixed guideway public transportation system.

(5): Triennial SSOA audits of Rail Public Transportation Agency Safety Plans. The SSO program standard must explain the process the SSOA will follow and the criteria the SSOA will apply in conducting a complete audit of the RTA's compliance with its Public Transportation Agency Safety Plan at least once every three years, in accordance with 49 U.S.C. 5329. Alternatively, the SSOA and the RTA may agree that the SSOA will conduct its audit on an on-going basis over the three-year timeframe. The program standard must establish a procedure the SSOA and RTA will follow to manage findings and recommendations arising from the triennial audit.

(6): Accident notification. The SSO program standard must establish requirements for an RTA to notify the SSOA of accidents on the RTA's rail fixed guideway public transportation system. These requirements must address, specifically, the time limits for notification, methods of notification, and the nature of the information the RTA must submit to the SSOA.

(7): Investigations. The SSO program standard must identify thresholds for accidents that require the RTA to conduct an investigation. Also, the program standard must address how the SSOA will oversee an RTA's internal investigation; the role of the SSOA in supporting any investigation conducted or findings and recommendations made by the NTSB or FTA; and procedures for protecting the confidentiality of the investigation reports.

(8): Corrective Actions. The SSO program standard must explain the process and criteria by which the SSOA may order an RTA to develop and carry out a Corrective Action Plan (CAP), and a procedure for the SSOA to review and approve a CAP. Also, the program standard must explain the SSOA's policy and practice for tracking and verifying an RTA's compliance with the CAP, and managing any conflicts between the SSOA and RTA relating either to the development or execution of the CAP or the findings of an investigation.

(b) At least once a year an SSOA must submit its SSO program standard and any referenced program procedures to FTA, with an indication of any revisions made to the program standard since the last annual submittal. FTA will evaluate the SSOA's program standard as part of its continuous evaluation of the State Safety Oversight Program, and in preparing FTA's report to Congress on the certification status of that State Safety Oversight Program, in accordance with 49 U.S.C. 5329.

The FTA developed a "Program Standard Technical Assistance Guide" to provide additional guidance to the SSO agencies in revising their Program Standards. The FTA's guide is not a regulatory document but is provided to offer recommendations for States in enhancing their Program Standards to address new 49 CFR Part 674 elements.

As part of its certification application, the State must submit a Program Standard updated to meet 49 CFR Part 674 requirements.

Required Submissions

1. Program Standard updated to meet 49 CFR Part 674 requirements

Available Technical Assistance

Program Standard Technical Assistance Guide

Appendix A: 49 CFR Part 674 Application Submissions

Each Category of the 49 CFR Part 674 Application requires one or more submissions. These submissions are listed in the Certification Toolkit, and also below for reference.

Required Submissions

- Program Standard and citation of language for the appropriate Certification Application Category
- Overview of revisions made to the Program Standard to address 49 CFR Part 674 requirements
- Legislation, directive, administrative code, or other vehicle:
 - Through which the State establishes its legal independence
 - Through which the State establishes its status as a legal entity and citation
 - Through which the State establishes its financial independence
 - Through which the State prohibits the RFGPTS from funding the SSO agency
 - Through which the State establishes its responsibility for overseeing all aspects of RFGPTS safety (including engineering and construction)
 - Granting the SSO agency the authority to enforce safety requirements and address safety concerns
 - Granting the SSO agency the authority to review, approve, oversee, and enforce the PTASP or SSPP
 - Through which the State establishes its authority to and protocol for investigating allegations of noncompliance
 - Through which the State establishes its authority to and protocol for managing conflicts between the SSO agency and RFGPTS or individual
 - Granting the SSO agency the authority to conduct, or cause to be conducted on the State's behalf, investigations and explicit citation
 - Through which the State establishes its authority to access the RFGPTS, including rail property, vehicles, records and personnel, accident scenes and other relevant locations, to conduct audits and investigations into accidents, implementation of the Agency Safety Plan, and implementation of corrective action plans
 - Through which the State establishes its authority to withhold data, information, or procedures regarding the RFGPTS and its operations, if applicable
- Organization chart depicting the SSO agency's place within the State that:
 - Clearly depicts the agency's legal and financial independence from the RFGPTS, and
 - Clearly depicts the lines of reporting from the SSO agency to the highest State transportation official or equivalent position
- Organization chart depicting the SSO agency's place within the State that clearly depicts the agency's financial independence from the RFGPTS
- Evidence that the SSO agency does not directly provide public transportation in the same area as the RFGPTS, to include, as applicable, a detailed review of any potentially competitive services provided in the same area as the RFGPTS
- Documentation that officially certifies that the SSO agency does not directly provide public transportation in the same area as the RFGPTS, to include legislation, directive, administrative code, or other vehicle
- Documentation that officially cites the prohibition of employee conflicts of interest, including conflict of interest policy(ies)
- Documentation that officially cites the prohibition of contractor conflicts of interest, including conflict of interest policy(ies)
- SSO Program Workload Assessment
- Technical Training Plan
- SSO organization chart
- SSO job position descriptions
- Contractor RFPs/SOWs
- Certification of the SSO agency's conformance with the FTA's Public Transportation Safety Certification Training Program
- Completed registration and certifications uploaded to the FTA's Safety Resource and Training Website or submitted to FTA

Appendix B: 49 CFR Part 674 Frequently Asked Questions

49 CFR Part 674.1, Purpose.

Question: What is the purpose of 49 CFR Part 674?

Answer: The requirements at 49 CFR Part 674 establish an enhanced State Safety Oversight (SSO) program to improve rail fixed guideway public transportation system (RFGPTS) safety nationwide.

49 CFR Part 674.7, Definitions.

Question: Why was the term accident redefined?

Answer: The purpose of this change is to align with the nomenclature used by other transportation modes, including the Federal Aviation Administration and the National Transportation Safety Board (NTSB), and to provide clarity during data analysis to identify safety trends.

Question: Does the term accountable executive apply to the SSO agencies?

Answer: No. The accountable executive is identified as the lead of a public transit agency who is ultimately responsible for carrying out the various safety functions of the agency.

Question: What is the difference between an event and an accident, incident, or occurrence?

Answer: Accidents, incidents, and occurrences are all considered events. These unique events differ in agency action requiring two-hour notification, thirty-day reporting, and self-monitoring, respectively.

Question: Why was the term incident redefined?

Answer: The FTA is supporting the enhancement of transit safety through strong reporting and analysis of incidents to better identify and prevent accidents. Even non-serious injuries suffered by a passenger or employee are considered safety events that need to be reported by the RFGPTS to FTA.

Question: Is the term occurrence necessary?

Answer: Similar to incidents, FTA believes it is critical to define and identify what would constitute an occurrence, and tracking occurrences may help to detect and prevent accidents. Close calls, near misses, and violations of safety standards are all considered occurrences.

Question: Why is the definition for serious injury so specific?

Answer: The FTA definition of serious injury aligns with the Federal Aviation Administration and NTSB nomenclature and thresholds.

Question: How are SSO agency and RFGPTS staff expected to identify serious injuries?

Answer: The FTA expects safety personnel to exercise common sense when evaluating injuries. If a serious injury resulting from an accident becomes known at a later time, notification should be provided within two hours from the time the information was acquired.

49 CFR Part 674.9, Transition from Previous Requirements for State Safety Oversight.

Question: What is the transition time-frame from previous requirements to full implementation of 49 CFR Part 674?

Answer: Congress determined the previous requirements will be repealed three years after the effective date of the effective date of Part 674.

Question: How will the RFGPTS safety plan transition factor in to the SSO program transition?

Answer: An RFGPTS' System Safety Program Plan (SSPP) developed under 49 CFR Part 659 will remain operative until one year after the effective date of the Public Transportation Agency Safety Plan final rule. Until such time as an RFGPTS is required to have a Public Transportation Agency Safety Plan, an SSOA will continue to review and approve an RFGPTS's SSPP. In addition, once FTA issues a final rule to require Public Transportation Agency Safety Plans, a State's SSO Program must meet the requirements of Part 674 that pertain to those plans. A State that submits a complete application and has its SSO program certified prior to the publication of a final rule to require Public

Transportation Agency Safety Plans will be required to update its program standard to reflect the safety plan requirements. The safety plan must be updated to reflect 49 CFR Part 674 changes.

49 CFR Part 674.11, State Safety Oversight Program; 49 CFR Part 674.13, Designation of Oversight Agency; and 49 CFR Part 674.19, Certification of a State Safety Oversight Program.

Question: What are the SSO program minimum requirements and certification criteria?

Answer: SSO programs must be in compliance with the following requirements:

- Independence from RFGPTS
 - The SSO agency must be legally and financially independent from RFGPTS.
 - The SSO agency must not directly provide public transportation in the same area as RFGPTS.
 - The SSO agency must not employ any individual who administers RFGPTS programs.
- Enforcement authority
 - The SSO agency must assume responsibility for RFGPTS safety oversight.
 - The SSO agency must adopt and enforce Federal and relevant State safety laws.
 - The State must prohibit the RFGPTS from funding the SSO agency.
 - The State must grant the SSO agency the authority to review, approve, oversee, and enforce RFGPTS Safety Plans.
- SSO Program Implementation Activities
 - The SSO agency must have investigative and enforcement authority for all RFGPTS.
 - The SSO agency must audit RFGPTS compliance with its Safety Plan at least once triennially.
 - The SSO agency must provide annual status report on RFGPTS safety to the Governor, FTA, and the RFGPTS Board of Directors.
- Staffing and Qualification of SSO Personnel and Contractors
 - The SSO agency must determine, in consultation with FTA, an appropriate staffing level.
 - The SSO agency must designate personnel qualified through appropriate training to perform oversight functions.
 - The SSO agency must require employees and other designated personnel to complete the FTA's Public Transportation Safety Certification program.
- Grants and Waivers
 - The SSO agency must already or be ready to become an FTA grantee.
 - The SSO agency must have or be ready to make its 20 percent match independent of RFGPTS funding.
 - The SSO agency does or does not qualify for a waiver and is or is not requesting a waiver.

Question: What are the terms and intent of the following language used in 49 CFR Part 674.19: sufficient authority, appropriate staffing levels, qualified personnel, and safety related improvement?

Answer: SSO agencies must establish sufficient authority to meet all of the requirements outlined in 49 CFR Part 674 and sufficient to achieve SSO program certification. Appropriate staffing levels must be determined by the SSO agency and must ensure that the staffing level is sufficient to ensure all State requirements are met for comprehensive and compliant RFGPTS oversight. The State must establish requirements to ensure qualified personnel through the State training certification and FTA guidance and consultation. Safety related improvement will vary based on the SSO program and the RFGPTS it oversees.

Question: What specific staffing and training requirements must my State address?

Answer: The language in 49 CFR Part 674 requires the State to significantly strengthen its SSO program and enhance the level and qualification of the personnel resources used to oversee and enforce RFGPTS safety. In order to meet these requirements, FTA expects States will staff their programs with personnel skilled in accident and hazard investigation, safety data analysis, rail auditing and inspection, program administration, and, for States with systems in engineering or construction, engineering or capital projects management.

In consultation with FTA, the State must develop and submit a formal plan for organizing and staffing its SSO program commensurate with Federal safety requirements, including 49 CFR Part 674, and the number, size, and complexity of the RFGPTS in the State's program. This plan must also include the State's requirements to ensure the qualification of the personnel designated to implement the SSO program on behalf of the eligible State, including completion of the public transportation safety certification training program.

States should consider the apportionments given each year to the SSO Formula Grant program as the approximate size of the minimum annual SSO program budget FTA expects for your State.

Whatever the size of its SSO program, every State may also use their funding for contractors or to cover the costs of other State resources, such as State Participation Program Inspectors qualified through the Federal Railroad Administration or Occupational Safety and Health Administration inspectors qualified through the State program to support specific activities or reviews.

Question: How will ongoing SSO program compliance be administered?

Answer: The FTA will audit each State's compliance at least triennially.

49 CFR Part 674.17, Use of Federal Financial Assistance.

Question: What may Federal funds be used for?

Answer: The SSO agency may use Federal funds for reimbursement of operational and administrative costs including employee training.

Question: What is the Federal fund share of SSO agency expenses?

Answer: Up to 80 percent. The FTA notes that the Federal matching funds are intended to supplement, not replace existing SSO expenditures, and that States should not reduce their expenditures down to the minimum 20 percent local share, particularly if it would result in a diminution or weakening of safety oversight.

Question: What may or may not be the source of the remaining 20 percent of non-Federal funds for an SSO program?

Answer: The non-Federal funds may not be comprised of Federal funds, any funds received from a public transportation agency, or any revenues earned by a public transportation agency.

49 CFR Part 674.21, Withholding of Federal Financial Assistance for Noncompliance.

Question: Why will Federal funds be withheld from a transit agency as a result of State non-compliance?

Answer: The FTA is legislatively bound to carry out the statutory remedy prescribed by Congress as authorized in Federal public transportation law (49 U.S.C. Section 5329).

Question: Who has the authority to impose financial penalties against a State Federal?

Answer: The Administrator has the authority to impose a range of financial penalties as authorized by Congress and the cutoff of funding will be a last resort action. In addition, FTA will make every effort to provide technical assistance to a State prior to terminating funds to transit agencies within the State. Ultimately, if the Administrator determines that stopping Federal funds is the proper action, adequate notification will be made prior to any actual cessation of funding.

49 CFR 674.23, Confidentiality of information.

Question: Are States required to formally protect accident investigation reports from admission into evidence or use in civil action?

Answer: The FTA does not require States to protect accident reports, but the language of 49 CFR Part 674.23 does permit the State to enact statutes regarding the admissibility into evidence of accident investigation of reports conducted in compliance with this Part, noting that any protections must be based on State, not Federal, law and rules of evidence.

49 CFR 674.25, Role of the State Safety Oversight Agency.

Question: What is the role of the SSO Agency?

Answer: See the Category for 49 CFR Parts 674.11, 674.13, and 674.19

Question: What is the SSO agency's role in investigations?

Answer: See the Category for 49 CFR Part 674.35.

49 CFR 674.27, State Safety Program Standards.

Question: What are the minimum requirements for the SSO agency's State Safety Program Standard (Program Standard)?

Answer: The following are the minimum required elements for the SSO agency's Program Standard. In addition, FTA developed guidance providing additional information on Program Standard development including good practices identified from various SSO agencies.

- Program Management Authority, Policies, Reporting, and Coordination with RFGPTSs
- Program Standard Development and Management Process
- Oversight of RFGPTS Public Transportation Agency Safety Plans and Internal Safety Reviews
- Triennial SSO Agency Audits of RFGPTS Public Transportation Agency Safety Plans and Internal Safety Reviews
- Accident Notification
- Investigations
- Corrective Actions

Question: How often must the SSO agency's State Safety Program Standard be submitted to FTA for review?

Answer: Annually with the State's SSO Annual Report.

Question: Can an SSO agency's existing Program Standard be updated to meet the 49 CFR Part 674 requirements or is FTA requiring a completely restructured Program Standard.

Answer: The SSO agency's existing Program Standard may be updated.

Question: When FTA approves of the Program Standard, will the SSO agency be fully certified to implement 49 CFR Part 674?

Answer: No. The Program Standard is a portion of what must be examined and approved by FTA before the SSO agency is granted certification. There are other steps that must be achieved, see the Q&A Category for 49 CFR Parts 674.11, 674.13, and 674.19.

49 CFR 674.29, Public Transportation Agency Safety Plans: General Requirements.

49 CFR Part 673 does not have a final rule.

49 CFR 674.31, Triennial Audits: General Requirements.

Question: Is the State required to seek approval from the transit agency for scheduling the three-year audits?

Answer: The scheduling of the triennial audit is the responsibility of the SSO agency.

Question: Can the State conduct triennial audits in an on-going manner?

Answer: Yes. States that elect to conduct on-going audits must ensure that all elements of its audit program are conducted within three calendar years (an element conducted in June 2016 must be completed prior to June 2019, regardless of where the element falls within the entire audit cycle). Although States may issue a report regarding the individual audit element, States must issue a comprehensive report at the end of the three-year audit cycle to ensure that the State reviews RFGPTS safety holistically as well as by element.

Question: When must the Triennial Audit report be issued?

Answer: The formal and comprehensive Triennial Audit report is to be issued at the conclusion of the three-year audit cycle. However, this does not preclude an SSO agency from developing more frequent reports, particularly if the SSO agency chooses to perform ongoing audits, that are incorporated into a comprehensive Triennial Audit report.

Question: What are the minimum content requirements for the Triennial Audit report?

Answer: The triennial report must include an analysis of the effectiveness of the RFGPTS' Safety Plan, recommendations for improvements, and requirements for corrective action plans as appropriate.

49 CFR 674.33, Notifications of Accidents.

Question: Who must the RFGPTS notify of transit accidents within the two-hour threshold?

Answer: The SSO agency and FTA. The FRA is to be notified of accidents as defined by 49 CFR Part 225.5 (i.e. shared use of the general railroad system track or corridors).

Question: Is there guidance to aid RFGPTS and SSO agencies in determining what accidents meet the two-hour threshold?

Answer: Yes. An appendix to 49 CFR Part 674 lists the various event thresholds and actions to be taken. In addition, FTA developed the Rail Transit Agency Accident Notification Guide for aiding agencies in determining what events meet two-hour notification thresholds.

Question: How do SSO agencies ensure RFGPTS are providing accident notifications within the two-hour time frame?

Answer: The FTA will provide SSO agencies with reports from or electronic access to the National Transit Database to allow them to review National Transit Database accident reports on a regular basis. In addition, States may allow or require SSO agencies to request these reports directly from the RFGPTS.

49 CFR 674.35, Investigations.

Question: Who is responsible for investigations?

Answer: The SSO agencies are responsible for investigations. The SSO agencies may conduct independent investigations and/or allow the RFGPTS to conduct investigations on its behalf. If the RFGPTS conducts the investigation, the SSO agency must perform an independent review and formally adopt the investigation report.

Question: What happens if the SSO agency does not approve an RFGPTS investigation?

Answer: If the SSO agency determines that an RFGPTS investigation is inadequate, the SSO agency may conduct its own independent investigation or direct the RFGPTS to correct or improve the investigation.

Question: What other agencies may perform investigations?

Answer: The FTA or NTSB may initiate their own investigation.

Question: What is the SSO agency's approval process for RFGPTS investigations?

Answer: The SSO agency's process for approving RFGPTS investigations must be clearly detailed in the Program Standard. In general, the SSO agency must:

- *Issue a written investigation report, if conducting the investigation or review and approve the RFGPTS' investigation report in a timely manner*
- *Ensure the investigation report encompasses a description of the investigation activities, causal and contributing factors, and a corrective action plan as appropriate.*

Question: What amount of time is considered acceptable when referencing "reasonable time" for the SSO agency to issue a written investigation report or approve an RFGPTS investigation report?

Answer: The determination of what constitutes a "reasonable time" is left to the SSO agency. The intent of this language is that the SSO agency performs a thorough and comprehensive review and approval of the investigation, and supports efficient progress and completion of reports especially those investigations resulting in CAPs.

49 CFR 674.37, Corrective Action Plans.

Question: Who is responsible for Corrective Action Plans (CAPs)?

Answer: The SSO agency is responsible for ensuring that RFGPTS develop and implement appropriate CAPs. The SSO agency is expected to review and approve CAPs, with the exception CAPs requiring immediate implementation due to the criticality of the issue.

Question: *What amount of time is considered acceptable when referencing “timely notification” for emergency corrective actions?*

Answer: The determination of what constitutes a “timely manner” is left to the SSO agency, however given the emergency nature of the situation, FTA encourages SSO agencies to treat this type of notification similarly to the lines of an accident notification. The intent of this statement is to ensure the RFGPTS notifies the SSO agency quickly regarding emergency corrective actions so that the SSO agency is aware and able to prioritize its review and approval for these exceptional situations to support quick CAP implementation.

Question: *What are the minimum CAP requirements?*

Answer: At minimum, a CAP must include:

- The actions to manage the risks and hazards identified in the CAP
- Implementation schedule
- Responsible party

Question: *Can the SSO agency perform unannounced, unplanned on-site inspections for monitoring CAPs at the RFGPTS?*

Answer: The FTA supports CAP monitoring in various forms including unannounced, unplanned on-site inspections to verify the successful implementation of corrective actions. These monitoring activities must be done in concert with the RFGPTS’ own safety policies and procedures, particularly where SSO agency staff may enter potentially hazardous areas such as trackways. In such cases, monitoring activities may require coordination with the RFGPTS.

Question: *Who is responsible for CAPs related to NTSB findings and recommendations?*

Answer: The SSO agency must evaluate whether a CAP is required as a result of an NTSB finding or recommendation. If so, the entity referenced in the finding or recommendation, either the SSO agency or the RFGPTS, should be responsible for developing and carrying out the CAP. The SSO agency remains responsible for ensuring that RFGPTS are developing and implementing appropriate CAPs.

49 CFR 674.39, State Safety Oversight Agency Annual Reporting to FTA.

Question: *When are Annual Reports due?*

Answer: On or before March 15.

Question: *What are the minimum requirements for Annual Reports?*

Answer: The SSO agency is expected to provide the following documentation as part of its annual report submission:

- Adopted Program Standard including any changes made in the preceding twelve months
- A summary of its SSO agency Public Transportation Safety Certification Training Program status
- An SSO agency report encompassing SSO program activities conducted in the preceding twelve months, such as:
 - Casual factors and findings identified through accident investigations
 - Summary of changes to safety plans
 - The SSO agency resource level of effort, including staffing and contractor labor hours dedicated to the SSO program
- Summary of SSO agency triennial audit(s) completed for the preceding twelve months and progress on triennial CAPs
- SSO agency approval RFGPTS safety plan, including any changes made in the preceding twelve months
- SSO program certification of program compliance

Question: How should the SSO agency submit its Annual Report?

Answer: The Annual Report and related materials are to be submitted through a reporting system specified by FTA.

49 CFR 674.41, Conflicts of Interest.

Question: Are enough qualified personnel and consultants available for SSO agencies to prevent a conflict of interest in shared resources given the highly specialized skill set and expertise required?

Answer: The FTA is aware of the growth of large, multi-faceted consultancy firms that are capable of providing services to both SSO agencies and RFGPTS. If necessary, the Administrator may waive a consultant's conflict of interest if the SSO agency can demonstrate adequate administrative and legal separation between the contractor employed by the SSO agency and RFGPTS.

Question: How will SSO agencies be able to determine if there is a conflict of interest when hiring?

Answer: The FTA believes that the SSO agency can readily determine whether a conflict exists through the SSO agency's contracting or bidding process in which a contractor or potential employee must disclose any potential conflicts of interest.

Question: May the State hire a former RFGPTS employee?

Answer: The State may hire a former RFGPTS employee utilizing its internal established conflict of interest policy.