



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

Headquarters

1200 New Jersey Avenue, SE
Washington, DC 20590

ACTION MEMORANDUM TO THE ADMINISTRATOR

From: Joe DeLorenzo
Associate Administrator for Transit Safety and Oversight /Chief Safety
Officer
X61783

Prepared by: Loretta Bomgardner
Division Chief for Safety Review
X65896

Subject: Approval of Notice of Proposed Rulemaking: State Safety Oversight
(49 CFR Part 674)

ACTION REQUIRED

I request that you review and approve the attached Notice of Proposed Rulemaking (NPRM): State Safety Oversight (SSO) at 49 CFR Part 674.

SUMMARY

The Federal Transit Administration (FTA) is proposing new requirements for the SSO regulation. This NPRM proposes to amend the SSO regulation at 49 CFR part 674 to implement new requirements of the Bipartisan Infrastructure Law (enacted as the Infrastructure Investment and Jobs Act (IIJA)), remove outdated references, and simplify notification requirements. Once approved, the NPRM will be published in the Federal Register, and the public will have 60 days to submit comments on the rulemaking.

BACKGROUND

In 1991, Congress enacted a Federal transportation law stating that because rail transit is an inherently local activity, the States are the principal safety oversight authorities for rail transit systems. At the same time, Congress directed the FTA to create and administer a State Safety Oversight Program (SSOP). In 2012, Congress passed legislation that greatly expanded FTA safety authority and required States with rail transit systems to strengthen their own SSOPs. In 2015, Congress again passed legislation giving FTA additional safety authority, including a provision that allows FTA to withhold Urbanized Area formula funds if it determines that a State

Safety Oversight Agency (SSOA) is incapable of providing safety oversight and the State fails to establish a new, federally compliant SSOP within one year of FTA's determination. In 2016, the SSO final rule significantly strengthened an SSOA's authority to investigate accidents and oversee a rail transit agency's (RTA) implementation of its safety rule. The SSO rule also gave FTA the authority to review and approve each State's SSO program and take enforcement actions against those States with non-existent or non-compliant safety oversight programs. By April 15, 2019, each eligible State had to have an approved and certified SSO program.

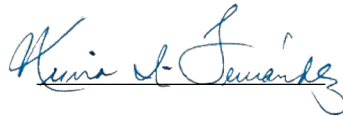
The Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act 49 U.S.C. § 5329 / IJIA § 30012, continued the SSO program and established new requirements for FTA's Public Transportation Safety Program.

RECOMMENDATION

I recommend that you approve the attached NPRM: State Safety Oversight Program for publication in the Federal Register.

The Administrator

APPROVED:



DATE:

September 21, 2023

COMMENTS:

Attachments:

1. Preamble: 49 CFR part 674: State Safety Oversight Program
2. Rule Text: 49 CFR part 674: State Safety Oversight Program

BILLING CODE 4910-57-P
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION
49 CFR PART 674
[Docket No. FTA-2023-0008]
RIN 2132-AB42
STATE SAFETY OVERSIGHT

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

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Federal Transit Administration (FTA) is proposing revisions to the State Safety Oversight (SSO) regulation to implement new requirements of the Bipartisan Infrastructure Law (enacted as the Infrastructure Investment and Jobs Act (IIJA)), remove outdated references, and simplify notification requirements.

DATES: Comments should be filed by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. FTA will consider comments received after that date to the extent practicable.

ADDRESSES: You may send comments, identified by docket number FTA-2023-0008, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for sending comments.
- Fax: (202) 493-2251
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue S.E., West Building Ground Floor, Room W12-140, Washington, D.C., 20590-0001.
- Hand Delivery / Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue S.E., Washington, D.C., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: To access the docket and read background documents or comments received, go to: <https://www.regulations.gov>. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program matters, contact Loretta Bomgardner, Office of Transit Safety and Oversight, FTA, telephone (202) 577-5896 or loretta.bomgardner@dot.gov. For legal matters, contact Richard Wong, Office of the Chief Counsel, telephone (202) 366-4011 or richard.wong@dot.gov. Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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1. Executive Summary

A. Purpose of Regulatory Action

This rule updates the existing regulations for state safety oversight of rail fixed guideway public transportation systems. In the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141, July 6, 2012), Congress directed FTA to establish a comprehensive public transportation safety program, one element of which is the State Safety Oversight (SSO) Program. (See 49 U.S.C. 5329). Section 30012 of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA), established new requirements for FTA's Public Transportation Safety Program. FTA is proposing revisions to 49 CFR part 674 to address requirements related to the BIL, remove requirements related to the initial establishment of this part, and clarify requirements of the existing part.

B. Statutory Authority

Section 5329 of Title 49, United States Code, includes several provisions that require FTA to establish a comprehensive public transportation safety program, the elements of which include a National Public Transportation Safety Plan; a training and certification program for Federal, state, and local transportation agency employees with safety responsibilities; Public Transportation Agency Safety Plans; and a strengthened State Safety Oversight Program.

C. Summary of Major Provisions

This NPRM proposes to make the following changes to strengthen the existing SSO program:

- Updating terminology to reflect current use across programs.
- Clarifying existing requirements consistent with FTA expectations.
- Removing language relating to the period of transition from 49 CFR part 659, FTA's previous SSO regulation, to 49 CFR part 674, the current SSO regulation.
- Addressing BIL requirements.

D. Benefits and Costs

The proposed rule would result in additional oversight of safety-related activities of rail transit agencies (RTAs) by state safety oversight agencies (SSOAs). The effects of the increased oversight are unknown and unquantified. The rule also would result in additional costs for SSOAs and RTAs to comply with the requirements. The requirements of the proposed rule have estimated costs of \$12.6 million (in 2022 dollars) for the first year and annual costs of \$10.7 million for later years. The largest annual costs are for SSOA oversight (\$7.9 million), which includes new risk-based inspection activities, and RTA activities (\$2.0 million), which include investigations and reporting for a larger number of safety events.

Table 1 summarizes the economic effects of the proposed rule over the first ten years of the rule from 2023—the assumed effective date of the rule—to 2033 in 2022 dollars. On an annualized basis, the rule would have costs of \$11.7 million at a 7 percent discount rate (discounted to 2023) and \$11.3 million at 3 percent.

Table 1: Summary of economic effects, 2023-2033 (\$2022, discounted to 2023)

Item	Total, 2023-2033	Annualized (7%)	Annualized (3%)
Benefits	Unquantified	-	-
Costs			
SSOA documentation of enforcement authority	\$118,140	\$16,820	\$13,850
SSOA oversight	\$80,338,058	\$8,659,910	\$8,300,458
SSOA safety event tracking	\$183,879	\$19,675	\$18,940
SSOA investigations	\$7,355,168	\$787,003	\$757,582
SSOA annual reporting to FTA	\$609,755	\$65,244	\$62,805
RTA investigations and reporting	\$20,456,560	\$2,188,852	\$2,107,026
<i>Total costs</i>	<i>\$109,061,560</i>	<i>\$11,737,504</i>	<i>11,260,660</i>
Net benefits	Unquantified	-	-

Totals may not sum due to rounding.

II. Section-by-Section Analysis

Subpart A – General Provisions

674.1 Purpose

This section explains that the purpose of these regulations is to carry out the mandate of 49 U.S.C. 5329 for States to perform oversight of rail fixed guideway public transportation systems within their jurisdictions. This represents an expansion from the purpose stated in the existing § 674.1, “this part carries out the mandate of 49 U.S.C. 5329(e).” The removal of “(e)” acknowledges the additional obligations for inspections and data collection required by SSO Agencies in section 5329(k), as amended by the BIL, and better reflects the connection among all elements of the FTA’s public transportation safety program.

674.3 Applicability

FTA is not proposing changes to this section.

674.5 Policy

This section proposes removing the term “sufficient” in paragraph (a) to eliminate subjectivity regarding the requirements for SSOA authorities. FTA is also proposing to remove the first sentence in paragraph (b), as the availability of funding is addressed in the existing language in § 674.17(a).

674.7 Definitions

This section proposes replacing the terms “accident,” “incident,” “occurrence,” and “event” with the inclusive term “safety event,” which includes events such as collisions, derailments, fires, and unintended train movements for purposes of meeting the two-hour notification requirement in § 674.33. The definition of “safety event” excludes general criminal actions but includes intentional events that result in a collision with a transit vehicle, such as an assault, homicide, or suicide.

FTA also proposes removing the definition of “serious injury.” These revisions are consistent with changes that FTA proposed in the PTASP NPRM (88 FR 25336) and are intended to simplify requirements related to safety event notifications and investigations.

This section proposes new terms and definitions for “collision,” “derailment,” “evacuation for life safety reasons,” “fatality,” “injury,” “public transportation,” “rail transit vehicle,” “revenue vehicle,” and “unintended train movement,” and the removal of the general term “vehicle” in recognition of these new definitions, which will be consistent with FTA’s NTD reporting manuals and support the notification and investigation thresholds FTA is proposing in sections 674.33 and 674.35. FTA’s proposed definition of “injury” restores the threshold under FTA’s previous part 659 regulation and is consistent with the aforementioned NTD reporting manuals. The definition of “injury” includes damage or harm to persons that requires immediate medical attention away from the scene. An individual who declines transportation away from the scene for medical attention should not be counted as an “injury” for two-hour notification purposes. This proposed definition allows for an immediate, on scene determination of injuries by the RTA without the need to await a formal diagnosis or determination from an off-site medical professional.

FTA also proposes a new definition for “disabling damage” to support the proposed notification and investigation thresholds. “Disabling damage” is limited to damage resulting from a collision that physically prevents a vehicle or train from operating under its own power. Disabling damage does not include mechanical failures or other malfunctions that may impact operations.

FTA proposes new terms and definitions for “potential consequence,” “safety committee,” “safety risk,” and “safety risk mitigation” as well as revised definitions of “Accountable Executive” and “safety risk management” for consistency with definitions proposed in the PTASP NPRM.

This section proposes revising the definition of “investigation” to reflect the replacement of the terms “accident” and “incident” with “safety event” as described above.

This section proposes new terms and definitions for “inspection” and “risk-based inspection program” to support new SSOA requirements mandated by the BIL.

This section proposes revising the definition of “Public Transportation Agency Safety Plan” to remove reference to the transition from the requirements under 49 CFR part 659, the previous State Safety Oversight regulation, to the present requirements under 49 CFR part 674. This revision is consistent with the end of the transition period, which occurred in early 2019, and FTA’s subsequent rescission of part 659 (87 FR 6783).

This section proposes revising the definition of “Public Transportation Safety Certification Training Program” to remove reference to the interim provisions for this program. This section also proposes adding a new term and definition for “designated personnel” to recognize individuals subject to the Public Transportation Safety Certification Training Program regulation (49 CFR 672).

This section proposes reordering the clauses in the definition of “rail fixed guideway public transportation system” for clarity. This change aligns with the definition that FTA proposed in the PTASP NPRM and does not reflect a change in FTA’s implementation or interpretation.

FTA proposes a minor revision to the definition of “State Safety Oversight Agency” to add a citation referencing the SSOA inspection requirement in 49 U.S.C. 5329(k), which was added by the BIL.

674.9 RESERVED

FTA proposes removing and reserving this section. Previously, this section provided requirements for the transition from 49 CFR part 659, the previous State Safety Oversight regulation, to part 674. This removal acknowledges the end of the transition period, which occurred in early 2019, and FTA’s subsequent rescission of part 659.

Subpart B—Role of the State

674.11 State Safety Oversight Program

FTA proposes eliminating the deadlines established for States’ initial compliance with the requirement, as all States must have an FTA-approved SSO program for rail transit agencies in their State to be eligible for FTA financial assistance. This initial compliance date, which was three years of April 15, 2016,” has already passed. FTA is also making a minor technical correction to the statutory citation regarding FTA triennial audits of SSO programs.

674.13 Designation of oversight agency

FTA proposes revising the statutory citation in § 674.13(a) to reflect new statutory requirements. In section 674.13(a)(5), FTA proposes including inspection authorities to the list of authorities an SSOA must have, reflecting the new requirements in 49 U.S.C. 5329(k) that SSOAs must conduct risk-based inspections of the rail fixed guideway public transportation systems that the SSOA oversees.

In § 674.13(a)(4) and (a)(6), FTA proposes a new reference to 49 CFR part 673, Public Transportation Agency Safety Plans, which did not exist when FTA published the current part 674 in 2016.

674.15 Designation of oversight agency for multi-state system

FTA is not proposing changes to this section.

674.17 Use of Federal financial assistance

FTA is proposing to delete the term “parts” as superfluous.

674.19 Certification of a State Safety Oversight Program

FTA proposes removing “(e)” from “5329(e)” in this section for the reasons mentioned above and adding language in § 674.19(d) to clarify the Administrator’s determination to issue a certification or a denial of certification for an SSO program. This does not reflect a change in FTA’s application of the statutory and regulatory criteria.

674.21 Withholding of Federal financial assistance for noncompliance

When FTA published its final rule in 2016, States with existing rail fixed guideway public transportation systems were provided a three-year transition period. Now that the transition period has expired, FTA proposes updating § 674.21(b) to adopt FTA current practice, which is to require a State to establish an SSO program and have that program approved by the FTA Administrator prior to a new rail fixed guideway public transportation system entering the engineering or construction phase of development. FTA also proposes replacing the word “apportioned” with “authorized” for accuracy.

674.23 Confidentiality of information

FTA is not proposing changes to this section.

Subpart C—State Safety Oversight Agencies

674.25 Role of the State safety oversight agency

In § 674.25, FTA proposes to add a new paragraph (c) to explicitly acknowledge an SSOA’s authority to provide safety oversight of projects in the engineering or construction phase of development. This parallels the statutory language in 49 U.S.C. 5329(e)(2)(B) and clarifies FTA’s intent that SSOAs take an active oversight role during a project’s pre-revenue phases. FTA also proposes to move from the current paragraph (b) into a new paragraph (d) the requirement that SSOAs ensure that a PTASP meets the requirements of 49 U.S.C. 5329(d) and part 673, a non-substantive change that will provide clarity and improve readability. Consequently, FTA proposes to redesignate existing paragraphs 674.24(c) through (f) as paragraphs (e) through (h).

In addition, FTA is proposing minor conforming edits in these paragraphs to reflect the proposed definitions in § 674.7 as discussed above and to remove references to 49 U.S.C. 5330, which has been repealed.

674.27 State safety oversight program standards

In § 674.27, FTA proposes a new paragraph (a)(3) to require an SSOA to develop a process to address comments from an RTA regarding an SSO program standard. This reflects industry concerns that some SSOAs do not formally respond to RTA comments. This addition requires SSOs to establish a process by which SSOAs will address RTA comments regarding the program standard. Because of the proposed addition of paragraph (a)(3), the remaining paragraphs are being renumbered.

FTA proposes expanding the renumbered § 674.27(a)(5) to include specific requirements for SSOA oversight of RTA internal safety reviews. Internal safety reviews are distinct from the

existing annual review and update requirement in 49 CFR 673.11(a)(5). Internal safety reviews monitor the actual implementation of the PTASP. However, the results of the internal safety reviews may inform the RTA's annual PTASP document review and update process. The previous 49 CFR 659.19 included explicit requirements for these internal safety reviews; however, Part 674 removed the prescriptive requirements in § 659.19 with the expectation that they would be addressed in the PTASP final rule. The PTASP final rule did not address internal safety reviews, prompting some RTAs to ask whether they were no longer required by FTA, even though SSOAs continued to require them under their State program standards. To provide clarity, the proposed language confirms the requirement that the State's program standard must define internal safety review requirements, which are addressed in § 673.27(d)(iii) of the PTASP NPRM (88 FR 25336, at 25351). The proposed language establishes minimum requirements for internal safety reviews, including the requirement that RTAs must verify the implementation of all elements of the PTASP over a three-year period, with the expectation that RTAs will be conducting internal safety reviews on an ongoing basis. Further, the RTA must notify the SSOA thirty days before it conducts an internal safety review of any aspect of the rail fixed guideway public transportation system and provide any checklists or procedures it will use during the review. Finally, the RTA must submit a report to the SSOA annually documenting the internal safety review activities and the status of subsequent findings and corrective actions.

A new § 674.27(a)(6) relating to the oversight of safety risk mitigations proposes requirements for the SSOA to define the process it will use to oversee an RTA's development, implementation, and monitoring of safety risk mitigations. The program standard must specify the frequency and format for how the SSOA will receive and review information about an RTA's safety risk mitigation status and effectiveness. Although 49 CFR part 673 established specific requirements for safety management, including the development, implementation and monitoring of safety risk mitigations, part 674 was published prior to part 673 and did not include specific oversight requirements related to safety risk mitigation. Therefore, FTA is proposing these requirements to ensure that SSOAs have a documented process to oversee the safety risk mitigation processes required of RTAs.

A new § 674.27(a)(7) regarding oversight of the safety certification training program proposes that the SSOA will review and approve RTA designations of individuals directly responsible for safety oversight and the RTA's identification of refresher training as required under the Public Safety Certification Training Program regulation (49 CFR 672). This role was not made explicit in the current part 674 and this new language clarifies FTA's expectation that SSOAs oversee RTA compliance with 49 CFR 672 requirements.

The renumbered § 674.27(a)(9) is also renamed from "Accident notification" to "Safety event notification," consistent with the discussion above in § 674.7, where FTA proposes replacing the term "accident" with the term "safety event" and proposes conforming edits in the renumbered 674.27(a)(10). FTA also proposes requiring the SSO program standard to establish requirements for RTAs to notify the SSOA and FTA of safety events to ensure that the notification requirement in § 674.33 is addressed in an RTA's PTASP, as the current paragraph omitted any reference to FTA.

In the renumbered §674.27(a)(11), FTA is inserting the term "SSO" before "program standard" for consistency with the rest of this section.

FTA proposes adding a new § 674.27(a)(12), "Inspections," to incorporate the requirement that SSOAs conduct risk-based inspections of the RTAs they oversee. On October 21, 2022, FTA issued Special Directives to each SSOA directing them to develop and implement

a risk-based inspection program as required by the BIL. The Special Directives require SSOAs to include policies and procedures for Risk-Based Inspection in their Program Standards and develop and begin implementing their Risk-Based Inspection program by October 21, 2024.

FTA proposes adding a new § 674.27(a)(13), “Vehicle Maintenance and Testing,” requiring SSOAs to amend their program standard to include a new requirement that SSOAs ensure that rail transit agencies conduct maintenance and testing procedures of braking systems, consistent with NTSB Recommendation R-17-004 (<https://data.nts.gov/carol-main-public/sr-details/R-17-004>).

Finally, a new § 674.27(a)(14), “Data Collection,” proposes specific data collection requirements for collecting data that the RTA uses when identifying hazards and assessing safety risk. This responds to industry feedback regarding the role of the SSOA in overseeing safety risk management of the RTAs under their jurisdiction.

674.29 Public Transportation Agency Safety Plans: General requirements

Section 674.29 proposes the addition of a reference to 49 U.S.C. 5329(d) and 49 CFR part 673 in paragraph (a) for clarity and the removal of paragraph (b). Because part 674 was published prior to part 673, FTA provided a list of the expected PTASP elements in paragraph (b) as an interim measure to guide SSOAs. With the publication of part 673 in 2018, the list is no longer necessary. Consistent with the removal of the current paragraph (b), FTA proposes to renumber paragraph (c) as paragraph (b).

674.31 Triennial audits: General requirements

Section 674.31 proposes to clarify that SSOAs who elect to audit an RTA’s compliance with its Public Transportation Agency Safety Plan on an ongoing basis must issue interim audit reports at least annually. This clarification does not reflect a change in FTA’s current implementation of this requirement.

674.33 Notifications of safety events

This section proposes replacing the term “accident” with “safety event.” This replacement streamlines definitions used in requirements related to event notification and investigation.

This section proposes specific notification criteria that replace the Appendix in the current part 674. This replacement text clarifies FTA’s minimum requirements for two-hour notifications to FTA and SSOAs and reflects changes to reporting thresholds suggested by SSOAs and RTAs, who found it difficult to quickly determine the scope of one’s “serious injuries” as defined in the Appendix within two hours of a safety event, specifically, injuries resulting in bone fractures, nerve or muscle damage, injuries to internal organs, or hospitalizations exceeding 48 hours. The proposed notification requirements exclude general crimes but include intentional events resulting in a collision with a transit vehicle, such as an assault, homicide, or suicide. Additionally, FTA proposes to remove paragraph (b) that requires RTAs to notify FTA and SSOAs of safety events triggering FRA’s notification requirements under 49 CFR part 225, as notification on FRA-regulated trackage is already reported to the USDOT and received by FTA via the National Response Center.

674.35 Investigations

Section 674.35 proposes replacing the term “accident” with “safety event,” and clarifying that this includes any safety event that meets one or more thresholds in § 674.33. FTA also proposes dividing the requirements in § 674.35(a) into a new § 674.35(a) and § 674.35(b) for clarity. These changes do not reflect a change in the implementation of the current requirements.

674.37 Corrective Action Plans

In § 674.37, FTA proposes a new paragraph (a) and redesignating paragraphs (a) through (c) as paragraphs (b) through (d).

The new paragraph (a) proposes language clarifying the basis for the development of a corrective action plan (CAP). The proposed language requires the development of a CAP to address investigations that determined causal or contributing factors require corrective actions, findings of non-compliance from safety reviews and inspections performed by the SSOA, or findings of non-compliance from internal safety reviews performed by the RTA. These proposals do not reflect a change in current practice.

In the renumbered § 674.37(c), FTA proposes language clarifying CAP requirements to ensure alignment with Safety Management System terminology. In the renumbered 674.37(d), FTA proposes adding “FTA” as an agency authorized to conduct investigations, reflecting FTA’s authority to investigate public transportation accidents and incidents under 49 U.S.C. 5329(f)(5), with the SSOA expected to evaluate whether the findings or recommendations by FTA or the NTSB require a CAP by the RTA.

674.39 State Safety Oversight Agency Annual Reporting to FTA

Section 674.39(a)(2) proposes clarifying language regarding “designated personnel” for consistency with the Public Transportation Safety Certification Training Program in 49 CFR 672 and does not reflect a change in purpose or intent.

Section 674.39(a)(3) proposes replacing the term “accident” with “safety event,” consistent with the explanation provided above. Section 674.39(a)(4) proposes specifying that SSOAs must submit final investigation reports as part of their annual reporting to FTA. This reporting is already required through the current reporting process and this language does not reflect a change in FTA’s practice.

Section 674.39(a)(5) proposes specifying that SSOAs must provide a summary of the internal safety reviews conducted by RTAs during the previous 12 months and RTA progress in carrying out CAPs arising from the SSOA’s oversight of RTA ASPs and any related safety reviews. This reporting is already required through the current reporting process and this language does not reflect a change in FTA’s practice.

674.41 Conflicts of Interest

FTA is not proposing changes to this section.

REMOVED Appendix to Part 674 – Notification and Reporting of Accidents, Incidents, and Occurrences

FTA proposes removing the table addressing the notification and reporting requirements for accidents, incidents, and occurrences, as FTA is proposing to address this requirement in § 674.33.

I. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Department of Transportation (DOT) Regulatory Policies and Procedures

Executive Order 12866 (“Regulatory Planning and Review”), as supplemented by Executive Order 13563 (“Improving Regulation and Regulatory Review”), directs Federal agencies to assess the benefits and costs of regulations, to select regulatory approaches that maximize net benefits when possible, and to consider economic, environmental, and distributional effects. It also directs the Office of Management and Budget (OMB) to review significant regulatory actions, including regulations with annual economic effects of \$100 million or more. OMB has determined that the proposed rule is not significant within the meaning of Executive Order 12866 and has not reviewed it under that order.

Overview

The proposed rule, which implements amendments made by the Bipartisan Infrastructure Law, would add requirements for state safety oversight agencies (SSOAs) and the rail transit agencies (RTAs) they oversee. The rule would require SSOAs to conduct risk-based inspections, oversee safety risk mitigations, and investigate a larger number of safety events than they currently investigate. The rule would also require RTAs to conduct additional accident investigations and prepare additional reports. Finally, the rule would clarify existing requirements, update terminology, and remove interim provisions that no longer apply.

Benefits

The proposed rule would lead to increased oversight of RTA safety-related activities, although the effects of the oversight are unknown and unquantified in the analysis. The rule may also benefit SSOAs and rail transit agencies by clarifying requirements and reducing costs to ensure compliance.

Costs

SSOAs and RTAs would incur economic costs to meet the new oversight and increased reporting requirements of the proposed rule. To estimate the costs of meeting the new requirements, FTA estimated the number of entities affected, the number and type of staff involved, and the time needed. The new oversight requirements would affect 31 SSOAs in operation as of March 1, 2023 (Table 2).¹

Table 2: Staff and hours needed for SSOAs to meet new oversight requirements

Requirement	Staff	Annual hours	Total hours
SSOA documentation of enforcement authority (first year only)	31 SSOA staff	40	1,240
SSOA oversight (first year)			
Establish disposition process	31 SSOA staff	80	2,480

¹ Federal Transit Administration. August 3, 2022. “State Safety Oversight Contacts.” <https://www.transit.dot.gov/regulations-and-guidance/safety/state-safety-oversight-contacts>.

Define requirements for internal safety reviews	31 SSOA staff	80	2,480
Document oversight of safety risk mitigations	31 SSOA staff	80	2,480
Document oversight of RTA training compliance	31 SSOA staff	20	620
Develop risk-based inspection programs	62 SSOA staff (2 staff per SSOA)	160	9,920
Establish thresholds for safety event notifications	31 SSOA staff	10	310
Document data collection procedures with RTAs	31 SSOA staff	20	620
SSOA oversight (annual)			
Oversee safety risk mitigations	31 SSOA staff	500	15,500
Oversee RTA training compliance	31 SSOA staff	20	620

Source: FTA analysis

Under the current thresholds for reporting safety events, RTAs had an average of 618 reportable events per year from 2017 to 2021.² Under the proposed thresholds, the number would increase to 811 reportable events per year (an increase of 193 reports) and result in additional reporting costs for SSOA and RTA employees (Table 3).

Table 3: Staff and hours needed for SSOAs and RTAs to meet reporting requirements

Requirement	Staff	Annual hours	Total hours
SSOA safety event tracking (annual)	SSOA staff; 193 reports	1	193
SSOA safety event investigations (annual)			
Prepare investigation reports	SSOA safety event investigators; 193 reports	22	4,246
Review and approve reports	SSOA safety event investigators; 193 reports	10	1,930
SSOA reporting to FTA (annual)			
Submit investigation reports	SSOA staff; 193 reports	5	320
Submit summary of internal safety reviews	SSOA staff; 193 reports	5	320
Investigation and reporting (annual)			
Conduct accident investigations	RTA safety event investigators; 193 reports	47	9,071
Prepare event investigation reports	RTA safety event investigators; 193 reports	30	5,790
Make submissions to SSOA	RTA safety event investigators; 193 reports	12	2,316

Source: FTA analysis

² Average events calculated using FTA's State Safety Oversight Reporting system.

To estimate the value of staff time spent on the requirements, FTA used occupational wage data from the Bureau of Labor Statistics as of May 2021 (Table 2).³ For general SSOA and trail transit agency staff, the closest occupational category is “General and Operations Managers” (code 11-1021) in the “Transit and Ground Passenger Transportation” industry (North American Industry Classification System code 485000). FTA used median hourly wages as a basis for the estimates, multiplied by 1.62 to account for employer benefits, for a cost estimate of \$95.27 per hour.⁴ For safety event investigators, who do not have a close analogue in the occupational wage data, FTA assumed a 25 percent wage and benefit premium for a cost estimate of \$119.09 per hour.

Table 4: Occupational categories and wages used to value staff time (\$2022)

Staff	Occupational category	Code	Median hourly wage	Wage with benefits
SSOA and RTA general staff	General and Operations Managers	11-1021	\$59.07	\$95.27
SSOA and RTA safety event investigators	N/A	-	\$73.84	\$119.09

Source: Bureau of Labor Statistics, May 2021 National Occupational Employment and Wage Estimates

The requirements of the proposed rule have estimated costs of \$12.6 million (in 2022 dollars) for the first year and annual costs of \$10.7 million for later years (Table 5). The largest annual costs are for SSOA oversight (\$7.9 million), which includes risk-based inspection activities, and RTA activities (\$2.0 million), which include investigations and reporting for a larger number of safety events.

Table 5: First-year and annual costs for proposed rule requirements (\$2022)

Requirement	First-year costs	Annual costs
SSOA documentation of enforcement authority	\$118,140	-
SSOA oversight	\$9,655,277	\$7,853,642
SSOA safety event tracking	\$18,388	\$18,388
SSOA investigations	\$735,517	\$735,517
SSOA annual reporting to FTA	\$60,975	\$60,975
RTA investigations and reporting	\$2,045,656	\$2,045,656
Total	\$12,633,954	\$10,714,179

Totals may not sum due to rounding.

Summary

Table 6 summarizes the economic effects of the proposed rule over the first ten years of the rule from 2023—the assumed effective date of the rule—to 2032 in 2022 dollars. On an annualized basis, the rule would have net costs of \$11.7 million at a 7 percent discount rate (discounted to 2023) and \$11.3 million at 3 percent.

³ Bureau of Labor Statistics. 2023. “May 2022 National Occupational Employment and Wage Estimates: United States.” https://www.bls.gov/oes/2022/may/oes_nat.htm.

⁴ Multiplier derived using Bureau of Labor Statistics data on employer costs for employee compensation in December 22 (<https://www.bls.gov/news.release/ecec.htm>). Employer costs for state and local government workers averaged \$57.60 an hour, with \$35.69 for wages and \$21.95 for benefit costs. To estimate full costs from wages, one would use a multiplier of \$57.60 / \$21.95, or 1.62.

Table 6: Summary of economic effects, 2023-2033 (\$2022, discounted to 2023)

Item	Total, 2023-2033	Annualized (7%)	Annualized (3%)
Benefits	Unquantified	-	-
Costs			
SSOA documentation of enforcement authority	\$118,140	\$16,820	\$13,850
SSOA oversight	\$80,338,058	\$8,659,910	\$8,300,458
SSOA safety event tracking	\$183,879	\$19,675	\$18,940
SSOA investigations	\$7,355,168	\$787,003	\$757,582
SSOA annual reporting to FTA	\$609,755	\$65,244	\$62,805
RTA investigations and reporting	\$20,456,560	\$2,188,852	\$2,107,026
<i>Total costs</i>	<i>\$109,061,560</i>	<i>\$11,737,504</i>	<i>\$11,260,660</i>
Net benefits	Unquantified	-	-

Totals may not sum due to rounding.

Regulatory Flexibility Act

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

The proposed rule would require state safety oversight agencies to meet additional reporting and administrative requirements. Under the Regulatory Flexibility Act, governments and other public-sector organizations qualify as small entities if they serve a population of less than 50,000. State agencies do not qualify because they serve populations greater than 50,000. FTA has therefore determined that the proposed rule would not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FTA has determined that this rule does not require a written statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) because it does not impose a Federal mandate that may result in the expenditure of \$100 million or more in any 1 year (when adjusted annually for inflation using the base year of 1995) for either State, local, and tribal governments in the aggregate, or by the private sector.

Executive Order 13132 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), and the White House Office of Management and Budget's (OMB) implementing regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for a currently approved information collection (OMB Control Number 2132-0558) that is associated with this Notice of Proposed Rulemaking. The information collection (IC) was previously approved on April 7, 2023. However, this submission includes changes in requirements applicable to the SSO program affecting various respondents.

National Environmental Policy Act

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined

that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (<https://www.transportation.gov/transportation-policy/environmental-justice/department-transportation-order-56102a>) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities (http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf).

FTA has evaluated this action under Executive Order 12898, the DOT Order, and the FTA Circular, and FTA has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

Regulation Identifier Number

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

List of Subjects in 49 CFR Part 674

- **Grant program – Transportation**
- **Mass transportation**
- **Reporting and recordkeeping requirements**
- **Safety**

Issued in Washington, DC, under authority delegated in 49 CFR 1.91.

Nuria I. Fernandez,

Administrator.

In consideration of the foregoing, and under the authority of 49 U.S.C. 5329, the Federal Transit Administration proposes to revise Chapter VI of Chapter 49, Code of Federal Regulations, part 674, to read as follows:

Title 49—Transportation

PART 674—State Safety Oversight

Subpart A—General Provisions

674.1 Purpose

674.3 Applicability

674.5 Policy

- 674.7 Definitions
- 674.9 RESERVED
- Subpart B**—Role of the State
- 674.11 State Safety Oversight Program
- 674.13 Designation of oversight agency
- 674.15 Designation of oversight agency for multi-state system
- 674.17 Use of Federal financial assistance
- 674.19 Certification of a State Safety Oversight Program
- 674.21 Withholding of Federal financial assistance for noncompliance
- 674.23 Confidentiality of information

Subpart B—State Safety Oversight Agencies

- 674.25 Role of the State safety oversight agency
- 674.27 State safety oversight program standards
- 674.29 Public Transportation Agency Safety Plans: General requirements
- 674.31 Triennial audits: General requirements
- 674.33 Safety Event Notifications
- 674.35 Investigations
- 674.37 Corrective action plans
- 674.39 State Safety Oversight Agency annual reporting to FTA
- 674.41 Conflict of interest
- 674.43 SSOA Oversight of RTA Safety Certification

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

49 CFR Part 674

Subpart A – General Provisions

- § 674.1 **Purpose.**
This part carries out the mandate of 49 U.S.C. 5329 for State safety oversight of rail fixed guideway public transportation systems.
- § 674.3 **Applicability.**
This part applies to States with rail fixed guideway public transportation systems; State safety oversight agencies that oversee the safety of rail fixed guideway public transportation systems; and entities that own or operate rail fixed guideway public transportation systems with Federal financial assistance authorized under 49 U.S.C. Chapter 53.
- § 674.5 **Policy.**
 - (a) In accordance with 49 U.S.C. 5329(e), a State that has a rail fixed guideway public transportation system within the State has primary responsibility for overseeing the safety of that rail fixed guideway public transportation system. A State safety oversight agency must have the 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 certify whether a State safety oversight program meets the requirements of 49 U.S.C. 5329(e) and is adequate to promote the purposes

of the public transportation safety programs codified at 49 U.S.C. 5329.

§ 674.7

Definitions.

As used in this part:

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

Administrator means the Federal Transit Administrator or the Administrator's designee.

Collision means any impact between a rail transit vehicle and any other vehicle, object, or any person.

Contractor means an entity that performs tasks on behalf of FTA, a State Safety Oversight Agency, or a Rail Transit Agency, through contract or other agreement.

Corrective action plan means a plan developed by a Rail Transit Agency that describes the actions the Rail Transit Agency will take to minimize, control, correct, or eliminate risks and hazards, and the schedule for taking those actions. Either a State Safety Oversight Agency or FTA may require a Rail Transit Agency to develop and carry out a corrective action plan.

Derailment for the purposes of this part means an event in which one or more wheels of a rail transit vehicle unintentionally leaves the rails.

Designated personnel means:

- (1) Employees and contractors identified by a recipient whose job functions are directly responsible for safety oversight of the public transportation system of the public transportation agency; or
- (2) Employees and contractors of a State Safety Oversight Agency whose job functions require them to conduct reviews, inspections, examinations, and other safety oversight activities of the rail fixed guideway public transportation systems subject to the jurisdiction of the agency.

Disabling Damage means damage to a rail transit vehicle resulting from a collision and preventing the vehicle from operating under its own power.

Evacuation for Life Safety Reasons means a condition that occurs when

persons depart from transit vehicles or facilities for life safety reasons, including self-evacuation. A life safety reason may include a situation such as a fire, the presence of smoke or noxious fumes, a fuel leak from any source, an electrical hazard, or other hazard to any person. An evacuation of passengers into the rail right of way (not at a platform or station) for any reason is presumed to be an evacuation for life safety reasons.

Fatality means a death confirmed within 30 days of an event. Fatalities include suicides, but do not include deaths in or on transit property that are a result of drug overdose, exposure to the elements, illness, or natural causes.

FRA means the Federal Railroad Administration, an operating administration within the United States Department of Transportation.

FTA means the Federal Transit Administration, an operating administration within the United States Department of Transportation.

Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure; or damage to the environment.

Injury means any harm to persons as a result of an event that requires immediate medical attention away from the scene. Does not include harm resulting from a drug overdose, exposure to the elements, illness, natural causes, or occupational safety events occurring in administrative buildings.

Inspection means a physical observation of equipment, facilities, rolling stock, operations, or records for the purpose of gathering or analyzing facts or information.

Investigation means the process of determining the causal and contributing factors of a safety event or hazard, for the purpose of preventing recurrence and mitigating safety risk.

National Public Transportation Safety Plan means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.

NTSB means the National Transportation Safety Board, an independent Federal agency.

Person means a passenger, employee, contractor, volunteer, official worker, pedestrian, trespasser, or any other individual on the property of a rail fixed guideway public transportation system or associated infrastructure.

Potential Consequence means the effect of a hazard.

Public transportation has the meaning found in 49 USC 5302.

Public Transportation Agency Safety Plan (PTASP) means the documented comprehensive agency safety plan for a transit agency that is required by 49 U.S.C. 5329 and 49 CFR part 673.

Public Transportation Safety Certification Training Program means the certification training program that is required by 49 U.S.C. 5329(c) and 49 CFR part 672.

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

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

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

Revenue vehicle means a rail transit vehicle used to provide revenue service for passengers. This includes providing fare free service.

Risk-based inspection program means an inspection program that uses qualitative and quantitative data analysis to inform ongoing inspection activities. Risk-based inspection programs are designed to prioritize inspections to address safety concerns and hazards associated with the highest levels of safety risk.

Safety Committee means the formal joint labor-management committee on issues related to safety that is required by 49 U.S.C. 5329 and 49 CFR part 673.

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

Safety risk means the composite of predicted severity and likelihood of a potential consequence of a hazard.

Safety Risk Management means a process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating the safety risk of their potential consequences.

Safety risk mitigation means a method or methods to eliminate or reduce the severity and/or likelihood of a potential consequence of a hazard.

State means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

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

Unintended train movement means any instance where a revenue vehicle is moving and is not under the control of a driver (whether or not the operator is physically on the vehicle at the time). This applies regardless of whether the event occurred in revenue service.

Subpart B – Role of the State

§ 674.11 State Safety Oversight Program.

Every State that has a rail fixed guideway public transportation system must have a State Safety Oversight (SSO) program that has been approved by the Administrator. FTA will audit each State's compliance at least triennially, consistent with 49 U.S.C. 5329(e)(10). At minimum, an SSO program must:

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

§ 674.13 Designation of oversight agency.

- (a) Every State that must establish a State Safety Oversight program in accordance with 49 U.S.C. 5329 must also establish a SSOA for the purpose

of overseeing the safety of rail fixed guideway public transportation systems within that State. Further, the State must ensure that:

- (1) The SSOA is financially and legally independent from any public transportation agency the SSOA is obliged to oversee;
 - (2) The SSOA does not directly provide public transportation services in an area with a rail fixed guideway public transportation system the SSOA is obliged to oversee;
 - (3) The SSOA does not employ any individual who is also responsible for administering a rail fixed guideway public transportation system the SSOA is obliged to oversee;
 - (4) The SSOA has authority to review, approve, oversee, and enforce the Public Transportation Agency Safety Plan for a rail fixed guideway public transportation system required by 49 U.S.C. 5329(d) and 49 CFR part 673;
 - (5) The SSOA has investigative, inspection, and enforcement authority with respect to the safety of all rail fixed guideway public transportation systems within the State;
 - (6) At least once every three years, the SSOA audits every rail fixed guideway public transportation system's compliance with the Public Transportation Agency Safety Plan required by 49 U.S.C. 5329(d) and 49 CFR part 673; and
 - (7) At least once a year, the SSOA reports the status of the safety of each rail fixed guideway public transportation system to the Governor, the FTA, and the board of directors, or equivalent entity, of the rail fixed guideway public transportation system.
- (b) At the request of the Governor of a State, the Administrator may waive the requirements for financial and legal independence and the prohibitions on employee conflict of interest under paragraphs (a)(1) and (3) of this section, if the rail fixed guideway public transportation systems in design, construction, or revenue operations in the State have fewer than one million combined actual and projected rail fixed guideway revenue miles per year or provide fewer than ten million combined actual and projected unlinked passenger trips per year. However:
- (1) If a State shares jurisdiction over one or more rail fixed guideway public transportation systems with another State, and has one or more rail fixed guideway public transportation systems that are not shared with another State, the revenue miles and unlinked passenger trips of the rail fixed guideway public transportation system under shared jurisdiction will not be counted in the Administrator's decision whether to issue a waiver.
 - (2) The Administrator will rescind a waiver issued under this subsection if the number of revenue miles per year or unlinked passenger trips per year increases beyond the thresholds specified in this subsection.

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

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

§ 674.17

Use of Federal financial assistance.

- (a) In accordance with 49 U.S.C. 5329(e)(6), FTA will make grants of Federal financial assistance to eligible States to help the States develop and carry out their SSO programs. This Federal financial assistance may be used for reimbursement of both the operational and administrative expenses of SSO programs, consistent with the uniform administrative requirements for grants to States under 2 CFR parts 200 and 1201. The expenses eligible for reimbursement include, specifically, the expense of employee training and the expense of establishing and maintaining a SSOA in compliance with 49 U.S.C. 5329(e)(4).
- (b) The apportionments of available Federal financial assistance to eligible States will be made in accordance with a formula, established by the Administrator, following opportunity for public notice and comment. The formula will take into account fixed guideway vehicle revenue miles, fixed guideway route miles, and fixed guideway vehicle passenger miles attributable to all rail fixed guideway systems within each eligible State not subject to the jurisdiction of the FRA.
- (c) The grants of Federal financial assistance for State safety oversight shall be subject to terms and conditions as the Administrator deems appropriate.
- (d) The Federal share of the expenses eligible for reimbursement under a grant for State safety oversight activities shall be eighty percent of the reasonable costs incurred under that grant.
- (e) The non-Federal share of the expenses eligible for reimbursement under a grant for State safety oversight activities may not be comprised of Federal funds, any funds received from a public transportation agency, or any revenues earned by a public transportation agency.

§ 674.19

Certification of a State Safety Oversight Program.

- (a) The Administrator must determine whether a State's SSO program meets the requirements of 49 U.S.C. 5329(e). Also, the Administrator must determine whether a SSO program is adequate to promote the purposes of 49 U.S.C. 5329, including, but not limited to, the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, and the Public Transportation Agency Safety Plans.

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

§ 674.21

Withholding of Federal financial assistance for noncompliance.

- (a) In making a decision to impose financial penalties as authorized by 49 U.S.C. 5329(e) and determining the nature and amount of the financial penalties, the Administrator shall consider the extent and circumstances of the noncompliance; the operating budgets of the SSOA and the rail fixed guideway public transportation systems that will be affected by the financial penalties; and such other matters as justice may require.
- (b) If a State fails to establish an SSO program that has been approved by the Administrator prior to a rail fixed guideway public transportation system entering the engineering or construction phase of development, FTA will be prohibited from obligating Federal financial assistance authorized under 49 U.S.C. 5338 to any entity in the State that is otherwise eligible to receive that Federal financial assistance, in accordance with 49 U.S.C. 5329(e)(3).

§ 674.23

Confidentiality of information.

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

Subpart C—State Safety Oversight Agencies

§ 674.25 Role of the State safety oversight agency.

- (a) An SSOA must establish minimum standards for the safety of all rail fixed guideway public transportation systems within its oversight. These minimum standards must be consistent with the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, the rules for Public Transportation Agency Safety Plans and all applicable Federal and State law.
- (b) An SSOA must review and approve the Public Transportation Agency Safety Plan for every rail fixed guideway public transportation system within its oversight. An SSOA must oversee an RTA's execution of its Public Transportation Agency Safety Plan. An SSOA must enforce the execution of a Public Transportation Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate.
- (c) An SSOA has the responsibility to provide safety oversight of an RTA's project(s) in the engineering or construction phase to verify compliance with all applicable Federal and State safety requirements.
- (d) An SSOA must ensure that a Public Transportation Agency Safety Plan meets the requirements at 49 U.S.C. 5329(d) and 49 CFR part 673.
- (e) An SSOA has primary responsibility for the investigation of any allegation of noncompliance with a Public Transportation Agency Safety Plan. These responsibilities do not preclude the Administrator from exercising their authority under 49 U.S.C. 5329(f).
- (f) An SSOA has primary responsibility for the investigation of a safety event on a rail fixed guideway public transportation system. This responsibility does not preclude the Administrator from exercising his or her authority under 49 U.S.C. 5329(f).
- (g) An SSOA may enter into an agreement with a contractor for assistance in overseeing safety event investigations and performing independent safety event investigations; and for expertise the SSOA does not have within its own organization.
- (h) All personnel and contractors employed by an SSOA must comply with the requirements of the Public Transportation Safety Certification Training Program as applicable.

§ 674.27 State safety oversight program standards.

- (a) An SSOA must adopt and distribute a written SSO program standard, consistent with the National Public Transportation Safety Plan and the rules for Public Transportation Agency Safety Plans. This SSO program standard must identify the processes and procedures that govern the activities of the SSOA. Also, the SSO program standard must identify the processes and procedures an RTA must have in place to comply with the standard. At minimum, the program standard must meet the following requirements:
- (1) *Program management.* The SSO program standard must explain the authority of the SSOA to oversee the safety of rail fixed guideway public transportation systems; the policies that govern the activities of the SSOA; the reporting requirements that govern both the SSOA and the rail fixed guideway public transportation systems; and the steps the SSOA will take to ensure open, on-going communication between the SSOA and every rail fixed guideway public transportation system within its oversight.
 - (2) *Program standard development.* The SSO program standard must explain the SSOA's process for developing, reviewing, adopting, and revising its minimum standards for safety, and distributing those standards to the rail fixed guideway public transportation systems.
 - (3) *Disposition of RTA comments.* The SSO program standard must establish a disposition process that defines how the SSOA will address any comments the RTA makes with respect to the SSO program standard.
 - (4) *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.
 - (5) *Oversight of RTA Public Transportation Agency Safety Plans and 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 SSO 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. The SSO program standard must define baseline RTA internal safety review requirements including, at a minimum, the following requirements:*
 - (A) The RTA must develop and document an ongoing internal safety review process to ensure that all elements of an RTA's Public Transportation Agency Safety Plan are performing and being implemented as intended.
 - (B) The RTA's internal safety review process must ensure that the implementation of all elements of its Public Transportation Agency Safety Plan are reviewed within a three-year period.
 - (C) The RTA must notify the SSOA at least thirty (30) days before the RTA conducts an internal safety review of any aspect of the rail

fixed guideway public transportation system and provide any checklists or procedures it will use during the review.

- (D) The RTA must submit a report to the SSOA annually documenting the internal safety review activities and the status of subsequent findings and corrective actions.
- (6) *Oversight of Safety Risk Mitigations.* The SSO program standard must explain the role of the SSOA in overseeing an RTA's development, implementation, and monitoring of safety risk mitigations related to rail fixed guideway transportation, including how the SSOA will track RTA safety risk mitigations. The SSO program standard must specify the frequency and format whereby the SSOA will receive and review information on RTA safety risk mitigation status and effectiveness.
- (7) *Oversight of RTA compliance with the Public Transportation Safety Certification Training Program.* The SSOA must review and approve the RTA's designated personnel. The SSOA must review and approve the refresher training defined by the RTA to satisfy the requirements of the *Public Transportation Safety Certification Training Program*.
- (8) *Triennial SSOA audits of RTA 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.
- (9) *Safety event notifications.* The SSO program standard must establish requirements for RTA notifications of safety events occurring on the RTA's rail fixed guideway public transportation system, including notifications to the SSOA and to FTA. SSOA safety event notification 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.
- (10) *Investigations.* The SSO program standard must identify safety events that require an RTA to conduct an investigation. Also, the program standard must address how the SSOA will oversee an RTA's own 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.
- (11) *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.

- (12) *Inspections*. The SSO program standard must include or incorporate by reference a risk-based inspection program that:
- (A) is commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems that the State safety oversight agency oversees;
 - (B) provides the SSOA with the authority and capability to enter the facilities of each rail fixed guideway public transportation system that the SSOA oversees to inspect infrastructure, equipment, records, personnel, and data, including the data that the RTA collects when identifying and evaluating safety risks; and
 - (C) include policies and procedures regarding the access of the SSOA to conduct inspections of the rail fixed guideway public transportation system, including access for inspections that occur without advance notice to the RTA.
- (13) *Vehicle Maintenance and Testing*. The SSO program standard must include the process by which the SSOA will review an RTA's rail transit vehicle maintenance program, including periodic testing of rail transit vehicle braking systems, to ensure performance, and to detect potential latent system failures.
- (14) *Data Collection*. The program standard must include policies and procedures for collecting and reviewing data that the RTA uses when identifying hazards and assessing safety risk. The frequency of collection shall be commensurate with the size and complexity of the rail fixed guideway public transportation system.
- (b) At least once a year an SSOA must submit its SSO program standard and any referenced program procedures to FTA, with an indication of any revisions made to the program standard since the last annual submittal. FTA will evaluate the SSOA's program standard as part of its continuous evaluation of the State Safety Oversight Program, and in preparing FTA's report to Congress on the certification status of that State Safety Oversight Program, in accordance with 49 U.S.C. 5329.

§ 674.29

Public Transportation Agency Safety Plans: General requirements.

- (a) In determining whether to approve a Public Transportation Agency Safety Plan for a rail fixed guideway public transportation system, an SSOA must evaluate whether the Public Transportation Agency Safety Plan is compliant with 49 U.S.C. 5329(d) and 49 CFR 673; is consistent with the National Public Transportation Safety Plan; and is in compliance with the SSO program standard set by the SSOA.
- (b) In an instance in which an SSOA does not approve a Public Transportation Agency Safety Plan, the SSOA must provide a written explanation, and allow the RTA an opportunity to modify and resubmit its Public Transportation Agency Safety Plan for the SSOA's approval.

§ 674.31 **Triennial audits: General requirements.**

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

§ 674.33 **Notifications of safety events.**

An RTA must notify FTA and the SSOA within two hours of any safety event occurring on a rail fixed guideway public transportation system that results in one or more of the following:

- a) Fatality
- b) Two or more injuries
- c) Derailment
- d) Collision resulting in one or more injuries
- e) Collision between two rail transit vehicles
- f) Collision resulting in disabling damage to a rail transit vehicle
- g) Evacuation for life safety reasons
- h) Unintended train movement.

§ 674.35 **Investigations.**

- (a) An SSOA must investigate or require an investigation of any safety event that requires notification under § 674.33.
- (b) The SSOA 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 a safety event, 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 safety event, the SSOA and the RTA must coordinate their investigations in accordance with the SSO program standard and any agreements in effect.
- (c) Within a reasonable time, an SSOA must issue a written report on its investigation of a safety event or review of an RTA's safety event 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 safety event; and set forth a corrective action plan, as necessary or appropriate. The SSOA must formally adopt the report of a safety event 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.

- (d) 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.
- (e) The Administrator may conduct an independent investigation of any safety event or an independent review of an SSOA's or an RTA's findings of causation of a safety event.

§ 674.37

Corrective action plans.

- (a) The SSOA must, at a minimum, require the development of a CAP for the following:
 - (1) Results from investigations, in which the RTA or SSOA determined that causal or contributing factors require corrective action;
 - (2) Findings of non-compliance from safety reviews and inspections performed by the SSOA; or
 - (3) Findings of non-compliance from internal safety reviews performed by the RTA.
- (b) 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.
- (c) A CAP must describe, specifically, the actions the RTA will take to correct the deficiency 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.
- (d) In any instance in which a safety event on the RTA's rail fixed guideway public transportation system is the subject of an investigation by the NTSB or FTA, the SSOA must evaluate whether the findings or recommendations by the NTSB or FTA require a CAP by the RTA, and if so, the SSOA must order the RTA to develop and carry out a CAP.

§ 674.39

State Safety Oversight Agency annual reporting to FTA.

- (a) On or before March 15 of each year, an SSOA must submit the following material to FTA:
 - (1) The SSO program standard adopted in accordance with § 674.27, with an indication of any changes to the SSO program standard during the preceding twelve months;
 - (2) Evidence that its designated personnel have completed the requirements of the Public Transportation Safety Certification

Training Program, or, if in progress, the anticipated completion date of the training;

- (3) A publicly available report that summarizes its oversight activities for the preceding twelve months, describes the causal factors of safety events identified through investigation, and identifies the status of corrective actions, changes to Public Transportation Agency Safety Plans, and the level of effort by the SSOA in carrying out its oversight activities;
 - (4) Final investigation reports for all safety events meeting one or more of the criteria specified at § 674.33.
 - (5) A summary of the internal safety reviews conducted by RTAs during the previous twelve months, and the RTA's progress in carrying out CAPs arising under § 674.37(a)(3).
 - (6) A summary of the triennial audits completed during the preceding twelve months, and the RTAs' progress in carrying out CAPs arising from triennial audits conducted in accordance with § 674.31;
 - (7) Evidence that the SSOA has reviewed and approved any changes to the Public Transportation Agency Safety Plans during the preceding twelve months; and
 - (8) A certification that the SSOA is in compliance with the requirements of this part.
- (b) These materials must be submitted electronically through a reporting system specified by FTA.

§ 674.41

Conflicts of interest.

- (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).
- (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).
- (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.