

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****49 CFR Part 674**

[Docket No. FTA-2015-0003]

RIN 2132-AB19

**State Safety Oversight****AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** This notice seeks public comment on proposed rules that would transform and strengthen State Safety Oversight (SSO) of rail fixed guideway public transportation systems. FTA will issue a final rule and response to comments following the close of the comment period. Once FTA issues a final rule, the agency will rescind its current regulations.

**DATES:** Comments must be received by April 28, 2015.

**ADDRESSES:** Please submit your comments by only one of the following methods:

- Online: Use the Federal eRulemaking portal at <http://www.regulations.gov> and follow the instructions for submitting comments.
- U.S. Mail: Send your comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: Go to Room W12-140 on the ground floor of the West Building, U.S. Department of Transportation headquarters, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday except Federal holidays.
- Telefax: Send your comments to 202-493-2251.

**Instructions:** All comments must include the docket number for this rulemaking: FTA-2015-0003. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed, stamped postcard. All comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided. Please see the Privacy Act heading under **SUPPLEMENTARY INFORMATION** below, for Privacy Act information pertinent to any submitted comments or materials, and you may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477.

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**Docket Access:** For access to background documents and comments

received in the rulemaking docket, go to [www.regulations.gov](http://www.regulations.gov) or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For program matters, Lynn Spencer, Director, FTA Office of System Safety, telephone 202-366-5112 or [Lynn.Spencer@dot.gov](mailto:Lynn.Spencer@dot.gov); For legal matters, Richard Wong, FTA Office of Chief Counsel, telephone 202-366-0675 or [Richard.Wong@dot.gov](mailto:Richard.Wong@dot.gov).

**SUPPLEMENTARY INFORMATION:****Executive Summary**

This rulemaking would replace the regulations for State Safety Oversight (SSO) of rail fixed guideway public transportation systems in place for the past twenty years, and significantly strengthen the program to prevent and mitigate accidents and incidents on those 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 (codified at 49 U.S.C. 5329), one element of which is the State Safety Oversight program. The purpose of today's NPRM is to carry out the several explicit statutory mandates to strengthen the States' oversight of the safety of their rail transit systems, and ensure that the States' regulatory agencies have the necessary enforcement authority and financial and human resources for that purpose.

In the legislative history of MAP-21, Congress took note of several critical weaknesses in the State Safety Oversight program, including:

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

*See generally*, Sen. Rpt. 111-232 (July 26, 2010).

Today's NPRM is the critical first step in meeting the MAP-21 requirements for State Safety Oversight of rail fixed guideway public transportation systems now set forth at 49 U.S.C. 5329(e). Once FTA issues a final rule for State Safety Oversight, to be codified at 49 CFR part 674, the agency will rescind the current regulations at 49 CFR part 659.

**Legal Authority**

Section 20021 of MAP-21 amended 49 U.S.C. 5329 by adding several new provisions that required 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, consisting of elements at both the state and rail transit agency level.

**Summary of Key Provisions**

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

- States would assume greater responsibility for overseeing the safety of their rail fixed guideway systems.
- FTA would review and approve each state's SSO program, including certifying whether states are meeting the statutory criteria and withholding funds from those states that do not.
- FTA would impose financial penalties on those states with non-existent or non-compliant safety oversight programs.

**Costs and Benefits**

As discussed in greater detail below, FTA conducted a task-by-task analysis to assess recurring and non-recurring costs for the proposed regulations to SSOs and rail transit agencies against the recurring costs for the current SSO regulations. Compared to current spending levels of State Safety Oversight activities, the proposed rule would require an *incremental* \$9.5 million per year on the part of SSOAs and \$13.1 million for rail transit agencies, compared to current spending levels. FTA is providing approximately \$22 million in grant funds each year to the States to off-set this NPRM's annual costs, meaning that this rulemaking is revenue neutral between the Federal government and the States. FTA also provides funding that rail transit agencies may use for these purposes, but is unable to provide an estimate of how much FTA funds will be used here. FTA conducted a breakeven analysis in order to determine what amount of the quantified benefits would need to accrue to outweigh the costs for this rulemaking and the Transit Agency Safety Plan by looking at, primarily, the safety events reported to FTA and, in a more conservative analysis, only the 5 NTSB-investigated accidents since 2004 that were related to inadequate safety oversight programs.

## Background

The Moving Ahead for Progress in the 21st Century Act (“MAP-21”; Pub. L. 112-141), authorizes a comprehensive Public Transportation Safety Program at 49 U.S.C. 5329. Four key components of the program are the National Public Transportation Safety Plan, authorized by Section 5329(b); the Public Transportation Safety Certification Training Program, authorized by Section 5329(c); the Public Transportation Agency Safety Plans, required by Section 5329(d); and the State Safety Oversight Program, authorized by Section 5329(e). FTA will issue rules to carry out all of these plans and programs under the rulemaking authority of 49 U.S.C. 5329(f)(7).

On October 3, 2013, FTA issued an Advance Notice of Proposed Rulemaking (ANPRM) for the National Public Transportation Safety Plan (“National Plan”), the Public Transportation Safety Certification Training Program (“Certification Training Program”), and the Public Transportation Agency Safety Plans (“Transit Agency Safety Plans”). 78 FR 61251-73. On April 30, 2014, FTA proposed interim provisions for a Safety Certification Training Program, as authorized by 49 U.S.C. 5329(c)(2). 79 FR 24363. In today’s **Federal Register**, FTA is issuing final interim certification safety training program provisions. FTA is now reviewing the comments on the ANPRM for the National Plan, Certification Training Program, and Transit Agency Safety Plans. In the near future, FTA expects to issue an NPRM for the National Plan, Certification Training Program, and Transit Agency Safety Plans.

Earlier, on May 13, 2013, the Federal Transit Administrator issued a *Dear Colleague* letter to the public transportation industry announcing the agency’s intention to adopt the framework and principles of Safety Management Systems (SMS) as the basis for all rulemakings and other initiatives FTA will undertake to improve the safety of public transportation. Both the *Dear Colleague* letter and a set of frequently asked questions about SMS are available on FTA’s Web site at [http://www.fta.dot.gov/tso\\_15177.html](http://www.fta.dot.gov/tso_15177.html).

This NPRM pertains only to the State Safety Oversight (SSO) Program authorized by 49 U.S.C. 5329(e). The rulemaking for the SSO Program differs from the other rulemakings under the Public Transportation Safety Program in that it will replace a set of regulations that have been in place since 1995, codified at 49 CFR part 659. The SSO regulations pertain only to a limited

portion of the public transportation industry—the recipients of Federal funds under 49 U.S.C. Chapter 53 that operate rail fixed guideway transit systems not subject to the jurisdiction of the Federal Railroad Administration (FRA), the States in which those rail systems lie, and the State Safety Oversight Agencies (SSOAs) required to oversee the safety of those rail systems. Conversely, the rulemakings for the National Plan, the Transit Agency Safety Plans, and the Safety Certification Training Program all arise under the authority of MAP-21, which took effect on October 1, 2012; these rulemakings will apply to all modes of public transportation, both rail and rubber tire; and they will apply to the manufacturers of public transportation vehicles, as well as the operators of public transportation.

To provide some context for this NPRM, the following is a brief history of FTA’s State Safety Oversight Program.

### History of State Safety Oversight

FTA’s predecessor agency, the Urban Mass Transportation Administration (UMTA), originated under the Urban Mass Transportation Act (UMT Act) of 1964—a *Great Society* initiative under the Kennedy and Johnson Administrations, designed to assist state and local governments in financing urban mass transportation systems “to be operated by public or private mass transportation companies as determined by local needs.” (Pub. L. 88-365; quoting Section 2(b)(3) of the UMT Act, 49 U.S.C. app. 1602(b)(3)). UMTA’s mission, at that time, was strictly limited to providing Federal financial assistance to develop and maintain municipal transit systems. UMTA had no regulatory authority whatsoever over any of its grant recipients. Deliberately, the Congress chose not to give UMTA any ability to establish national standards for safety in urban mass transportation. *See, e.g., Amalgamated Transit Union v. Skinner*, 894 F.2d 1362, 1364 (D.C. Cir. 1990).

Several years thereafter, following a series of troubling accidents in the rail transit industry, Congress recognized a need to provide UMTA with a limited authority to investigate accidents and hazardous conditions in urban mass transportation. Specifically, in Section 107 of the National Mass Transportation Assistance Act of 1974 (Pub. L. 93-503), Congress instructed the agency to “investigate unsafe conditions in any facility, equipment, or manner of operation financed under this Act which the Secretary believes creates a serious hazard of death or injury.” The

statute further directed UMTA to determine the nature and extent of hazardous conditions on transit systems; determine the means that might best correct or eliminate those hazardous conditions; and compel a grant recipient to submit a plan for correcting or eliminating those hazardous conditions. Eight years later, however, in the Surface Transportation Assistance Act of 1982, the Congress weakened this investigatory authority by repealing Section 107 of the National Mass Transportation Assistance Act of 1974; moving the authority to Section 22 of the UMT Act; and amending the statute to make the authority discretionary—not mandatory—striking the word “shall” and inserting the word “may.”

This very limited Federal authority for safety did not prove satisfactory, in the view of the National Transportation Safety Board (NTSB or “Board”). In August 1991, after a number of accidents in the industry—including very serious accidents on rapid rail systems in Philadelphia, Chicago, and New York City—the Board published a study titled “Oversight of Rail Rapid Transit Safety” (NTSB/SS-91/02) in which it urged all States to develop or revise safety programs to ensure comprehensive and effective oversight over rapid rail systems in their jurisdictions. The NTSB suggested that States have primary authority for oversight of rail transit safety, but it urged UMTA to evaluate the effectiveness of States’ oversight of rail transit, develop guidelines, and require States and transit operators to use their UMTA grant funds to improve the safety of rail transit systems. Also, the NTSB implored UMTA to withhold its Federal financial assistance as necessary pending corrective action by the States and transit operators.

Very shortly thereafter, in response to the NTSB recommendations, the Congress created a State Safety Oversight program for rail fixed guideway transit safety in Section 3029 of the Intermodal Surface Transportation Efficiency Act (ISTEA), enacted in December 1991 (Pub. L. 102-240). Among the many fundamental changes ISTEA made to the Federal-aid programs for highways and public transportation, ISTEA renamed UMTA as the Federal Transit Administration (FTA), and directed FTA to compel States with rail transit systems within their borders not otherwise subject to the jurisdiction of the Federal Railroad Administration (FRA) (*e.g.*, commuter rail systems, or light rail systems connecting to the “general railroad system” of the United States, as

described in 49 CFR part 209 Appendix A) to establish and carry out safety program plans for each of those rail transit systems. The statute directed that the safety program plans include, at minimum, core requirements for safety, lines of authority, levels of responsibility, and methods of documentation for those subjects. Further, Section 3029 of ISTEA vested FTA with explicit authority to withhold funding from any State that did not comply with the statutory mandates, and directed FTA to promulgate rules for that purpose. In enacting Section 3029, the Congress agreed with NTSB that the States, not FTA, should be the principal oversight authorities for rail transit within their jurisdictions, given that public transportation is an inherently local activity that, with few exceptions, did not cross state boundaries. Notably, this new authority for FTA, initially codified at Section 28 of the Federal Transit Act, later recodified at 49 U.S.C. 5330, made no provision for oversight of bus operations—perhaps because the 1991 NTSB report had focused on rail transit.

*The First Rulemaking:* To meet the ISTEA directives, FTA issued an Advance Notice of Proposed Rulemaking for State Safety Oversight on June 25, 1992, at 57 FR 28572–5, followed by a Notice of Proposed Rulemaking (NPRM) on December 9, 1993, at 58 FR 64856–69. On December 27, 1995, FTA promulgated a final rule for State Safety Oversight at 60 FR 67034–48. In short, the final rule obliged every State with a rail transit system not subject to the jurisdiction of FRA to establish an oversight agency, and obliged that oversight agency to develop a “system safety program standard” that, at a minimum, adopted the uniform guidelines for rail transit systems set by the *Manual for the Development of Rail System Safety Program Plans*, published by the American Public Transit Association (APTA). These “APTA Guidelines” were incorporated by reference into the final rule. Also, the final rule obliged the State oversight agencies to review safety audit reports from the rail systems, conduct on-site safety reviews at least once every three years, investigate accidents and “unacceptable hazardous conditions” as reported by the rail transit systems, approve “corrective action plans” submitted by the rail transit systems, make annual reports to FTA summarizing its oversight activities for the preceding twelve months, and make periodic reports to FTA summarizing accidents, hazardous conditions, and corrective

action plans. The effective date of the final rule was deferred to January 1, 1997, to give States an opportunity to enact state statutes and regulations to carry out the ISTEA mandates.

The FTA SSO rule and the APTA Guidelines were widely accepted as the baseline for State oversight of the safety of rail transit until the summer of 2001. In June and August of that year, there were two collisions of rapid rail trains on the Chicago Transit Authority (CTA) system—both investigated by the NTSB—which called into question the effectiveness of the rule and the guidelines. In its Special Investigation Report issued in September 2002 (NTSB/SIR–02/01), the Board determined the probable cause of both accidents to have been the train operators’ failure to comply with operating rules designed to prevent those types of collisions, and the failure of CTA management to exercise adequate oversight of the operational safety of its rapid rail system. Additionally, however, the Board identified several weaknesses in FTA’s SSO program, and noted, specifically, that a previous audit of CTA by APTA had not identified any deficiencies in CTA’s adherence to APTA’s “System Safety Checklist”—a procedure that used only record reviews and supplemental spot checks to gauge whether operating rules were being followed, and which provided little guidance on what rules a compliance program should entail or how those rules should be carried out. Thus, the NTSB concluded that the APTA Guidelines were not sufficiently specific for making assessments of the effectiveness of rail transit operators’ safety programs, nor were the Guidelines an effective tool for State oversight of rail transit safety. The NTSB called on APTA to revise its manual to provide explicit guidance to the industry on auditing the effectiveness of rail transit safety compliance programs, and for FTA to amend its SSO regulations at 49 CFR part 659, accordingly.

*The Second Rulemaking:* In response to the 2002 NTSB report on the CTA accidents, on March 9, 2004, FTA published an NPRM at 69 FR 11218–32 intended to strengthen the SSO regulations. Specifically, FTA proposed to remove the incorporation by reference of the APTA Guidelines from 49 CFR part 659, and in lieu thereof, establish a set of enhanced, performance-based measures for the rail transit industry, including, notably, a rule making hazard identification and resolution a performance-based procedure, as opposed to the previous

practice of allowing a rail transit operator or an SSOA to subjectively determine and address an “unacceptable hazardous condition.” FTA issued a final rule on April 29, 2005, at 70 FR 22562–83, which is the rule still in place today. In the final rule, FTA chose to include a good many of the APTA Guidelines as regulatory standards. Further, the final rule clarified the roles and responsibilities of States and their SSOAs; set a new definition of “hazard,” and requirements for hazard management plans; revised the requirements for SSOAs to conduct investigations; and fleshed out the minimum standards for system safety program plans, accident notification, and corrective action plans.

Notwithstanding the amendments to the SSO regulations in the 2005 rulemaking, the regulations were criticized for their lack of rigor, and the States’ SSO programs were criticized for lack of authority, resources, and expertise. Most notably, in July 2006, the U.S. Government Accountability Office (GAO) criticized the regulations and identified some fundamental weaknesses in SSOAs in a report titled “Rail Transit: Additional Federal Leadership Would Enhance FTA’s State Safety Oversight Program,” <http://www.gao.gov/products/GAO-06-821>. The GAO report found that the staffing levels and expertise varied greatly across the SSOAs, and that by their own admission, many of the SSOAs lacked enough qualified staff and adequate levels of training to meet their responsibilities—some of them employing as few as 0.1 or 0.2 full-time equivalent positions for dedicated rail transit safety oversight—and for many of them, the lack of funding was a serious impediment. The GAO noted that the SSO regulations provided no enforcement power to the SSOAs, and very little enforcement power to FTA, with only the option of withholding up to five percent of a rail transit system’s urbanized area formula funding if FTA were to find a State not in compliance with the SSO regulations. Additionally, the GAO report faulted FTA for having failed to set goals and performance measures for State Safety Oversight, and having failed to audit SSOAs as often as originally planned. GAO urged FTA to set both short- and long-term goals for State Safety Oversight, with measures of progress toward each of those goals. Further, the GAO recommended that FTA audit each of the SSOAs at least once every three years, and develop an appropriate training curriculum for SSOAs that would include courses on

how to conduct oversight of rail transit systems.

*Legislation Leading to Enactment of State Safety Oversight Authority in MAP-21:* Not long after the GAO's criticisms, the rail transit industry suffered a string of fatal accidents and accidents with multiple personal injuries. On November 30, 2006, a Washington Metropolitan Area Transit Authority (WMATA) Blue Line train struck and killed two employees inspecting rapid rail track in Alexandria, Virginia. On January 7, 2007, a WMATA Green Line train derailed near the Mt. Vernon station in Washington, DC, injuring 23 people and causing \$3.8 million in damage. On May 28, 2008, two Massachusetts Bay Transportation Authority (MBTA) light rail trains collided with one another on the Green Line in Newton, Massachusetts—a suburb of Boston—killing the driver of the second train, injuring eight people, and causing \$8 million in damage. On May 8, 2009, the MBTA suffered another accident on its Green Line light rail system in which one train rear-ended another in the tunnel near the Government Center station in downtown Boston; 68 people were injured, with more than \$9 million in damage. On June 22, 2009, two WMATA rapid rail trains collided with one another near the Fort Totten station on the Red Line, killing the driver of the second train and eight passengers, injuring another 52 passengers, and causing \$12 million in damage. On July 18, 2009, two Municipal Transportation Agency light rail trains collided with one another at the West Portal station in San Francisco, injuring the drivers of both trains and 46 people and causing \$4.5 million in damage. And in August and September, 2009, two WMATA maintenance employees lost their lives while working on the rapid rail system; one was struck by a maintenance vehicle on the Orange Line, the other by a train on the Blue Line.

In conducting its several investigations, the NTSB found a variety of probable causes for these accidents. Among them, equipment malfunctions; equipment in poor or marginal condition, including equipment that can pose particular risks to safety, such as signal systems; lack of vehicle crashworthiness; and employee error, such as inattentiveness, or failure to follow a rail transit system's operating procedure. In the instance of WMATA, the NTSB found the lack of a strong safety culture to be a contributing factor. Also, the NTSB found a lack of adequate oversight both by the rail transit systems' State Safety Oversight Agencies, and FTA.

In July 2009—one month after the WMATA Red Line accident near the Fort Totten station—Senators and Representatives from the Maryland and Virginia delegations introduced the National Metro Safety Act in both houses of Congress (H.R. 3338, S 1506, 111th Cong. (2009)). The bills would have required FTA to establish national minimum safety standards for transit systems, including several particular standards recommended by the NTSB pertaining to event recorders, emergency access and egress, crashworthiness of vehicles, and employee hours of service. Neither bill was reported out of committee. In December 2009, on behalf of the President, Secretary of Transportation Ray LaHood and Federal Transit Administrator Peter Rogoff formally submitted a legislative proposal to the Congress that contemplated a more comprehensive approach to safety in public transportation. In testimony before both the House Committee on Transportation and Infrastructure and the Senate Committee on Banking, Housing, and Urban Affairs, the Secretary and the Administrator presented the details of this proposal, which, ultimately, were introduced in both houses in February 2010 as the Public Transportation Safety Program Act of 2010 (H.R. 4643, S 3105, 111th Cong. (2010)). Citing the warning signs of increasing collisions, derailments, and casualties, the Secretary and the Administrator emphasized that rail transit always carries the potential for catastrophic accident and damage—notwithstanding its record of being a very safe means of travel—and that the State Safety Oversight program, as it currently exists, suffered from a number of fundamental weaknesses:

- Under the existing SSO framework, each rail transit system was free to determine its own safety practices. An SSOA would simply review those practices and report the progress of any corrective actions.
- Each SSOA had only so much regulatory, oversight, and enforcement authority as had been given by the State government. In many instances, the SSOA lacked authority to enforce any standards or compel compliance by the rail transit systems it oversaw.
- Many States viewed the SSO program as an unfunded mandate. Thus, many States devoted insufficient resources to the program, which compromised the abilities of SSOAs to recruit staff, provide adequate training to their staff, and develop their own expertise.
- In many instances, an SSOA was dependent upon financial resources

from the same entities it was obliged to oversee—the rail transit systems—thus creating a conflict of interest.

In pertinent part, the Administration's bill would have required FTA to develop uniform, national standards for rail transit safety; given FTA authority to inspect rail transit systems for compliance with those standards; established a certification program for State Safety Oversight; authorized grants of 100 percent Federal funding for SSO programs, once certified; and required the SSO programs to be financially independent from the rail transit systems. Further, the Administration's bill would have given States the option to decline participation in the SSO program, without penalty, in which instance, FTA would have been required to perform the oversight function. Also, the Administration's bill would have given FTA authority to issue civil or criminal penalties for noncompliance. *See generally, Examining the Federal Role in Overseeing the Safety of Public Transportation Systems: Hearing Before the Subcomm. on Hous., Transp. & Cmty. Dev. of the S. Comm. on Banking, Hous. & Urban Affairs, 111th Cong. 89–97 (2009).*

Both the House and Senate versions of the Administration's bill were referred to committees. In July 2010, the Senate committee on Banking, Housing, and Urban Affairs reported a bill sponsored by the chairman of the committee, Senator Dodd, titled the Public Transportation Safety Act of 2010 (S 3638, 111th Cong. (2010)), which laid the foundation for the State Safety Oversight provisions eventually enacted under MAP-21. The Senate Banking bill embraced most of the fundamental precepts of the Administration's legislative proposal, but it differed from the Administration's bill in that it did not allow a State to decline participation in the SSO program; the grants of Federal funds for an SSO program would require a 20 percent match; and States could be allowed as much as three years, after the effective date of a final rule, to develop an SSO program adequate for certification—after which, in the event of an inadequate SSO program, FTA would be authorized to withhold all Federal grant funds from all public transportation operators in that State, not just the rail transit systems. *See generally, the Senate Banking committee report accompanying the Senate bill (S. Rept. 111–232; (2010)).* The 111th Congress adjourned before the Senate could act on the Senate Banking bill, and the House did not consider any similar bill.

In the 112th Congress, the Senate Banking committee re-introduced its Public Transportation Safety Act of 2010, which became Section 20021 of the larger bill for reauthorization of surface transportation—the Moving Ahead for Progress in the 21st Century Act (S 1813, 112th Cong. (2012), “MAP-21”), shepherded by the Senate Committee on Environment and Public Works—that passed the Senate on March 14, 2012. The House bill for reauthorization of surface transportation—the American Energy and Infrastructure Jobs Act of 2012 (H.R. 7, 112th Cong. (2012))—had nothing comparable to the Senate bill insofar as State Safety Oversight of rail transit systems. Ultimately, the conferees from the House and Senate chose to adopt Section 20021 of the Senate bill, with some amendments, and the title of the Senate bill, “MAP-21,” as the title of the legislation that the president signed on July 6, 2012 (Pub. L. 112–141).

### The New Statute and Today's Proposed Rulemaking

As noted, MAP-21 authorizes a comprehensive Public Transportation Safety Program, now codified at 49 U.S.C. 5329. As part of this comprehensive program, new Section 5329(e) significantly revises the existing SSO program, creating a program that is more demanding of the States and their SSO programs, and FTA, as well, in several ways. First, with respect to the States, the statute requires them to submit their SSO programs to FTA for its approval. In order to gain this approval, the States must assume responsibility for overseeing the safety of their rail fixed guideway public transportation systems, adopt and enforce Federal and relevant State safety laws, determine appropriate staffing levels for their SSOAs, and ensure proper training and certification of their safety oversight personnel. The organization designated as an SSOA must be financially and legally independent of the rail transit systems they oversee, *i.e.*, an SSOA cannot be reimbursed for its expenses by the rail transit agencies they oversee, nor can the SSOA be the same agency that operates a rail transit agency. An SSOA may not employ any individual who is also responsible for the administration of rail fixed guideway public transportation systems that are subject to the State's oversight. An SSOA must have investigative and enforcement authority under State law, must audit at least triennially the compliance of the rail transit systems under its oversight, and provide at least annually a status report to FTA, the Governor of the State,

and the board of directors of the rail transit system. FTA is then obliged to submit an annual evaluation of the State Safety Oversight programs to the Congress.

MAP-21 also made considerable changes regarding FTA's role in the SSO program. As mentioned previously, FTA must now approve each State's SSO program. In addition, FTA must establish a grant program to help the States develop and carry out their SSO functions, and to obtain the necessary training and certification for their SSOA staff. FTA must certify whether the States are meeting the statutory requirements, deny certification to those that are not, and FTA can withhold Federal funds until an SSO program can be certified. Congress provided FTA with additional authority to conduct inspections, investigations, audits, and examinations; test the equipment, facilities, rolling stock, and operations of rail transit systems; make reports and issue directives with respect to safety; issue subpoenas and take depositions from any employee of a rail transit system who is responsible for safety; require production of documents; and issue regulations for State Safety Oversight through public notice and comment.

On February 6, 2013, the Federal Transit Administrator issued a *Dear Colleague* letter to the States and the public transportation industry, outlining the steps that each State must take to develop an SSO program and establish an SSOA in compliance with Section 5329. This letter is available on FTA's Web site at <http://www.fta.dot.gov/tso.html> On May 13, 2013, FTA published for public comment an illustrative apportionment of the SSO grant funds available to eligible States in Federal Fiscal Year 2013, at 78 FR 28014–8. On or before October 1, 2013, the Administrator notified each State, individually, of his decision whether to issue a certification for that State's SSO program, in accordance with the statutory deadline set by 49 U.S.C. 5329(e)(7). On March 10, 2014, FTA announced the final apportionment of FY 2013 and FY 2014 grant funds for SSO programs, at 79 FR 13380. On February, 9, 2015, FTA published the apportionment for FY 2015 grant funds for SSO programs, at 80 FR 7254.

Today's NPRM is a critical step in transforming and strengthening the regulatory framework for State Safety Oversight of rail fixed guideway public transportation systems. Once FTA issues a final rule for State Safety Oversight, the agency will rescind the current regulations at 49 CFR part 659. The following is a section-by-section

analysis of the proposed rule in today's rulemaking:

### Section-by-Section Analysis

#### Section 674.1 Purpose

This section explains that the purpose of these regulations is to carry out the mandate of 49 U.S.C. 5329(e) for States to perform oversight of rail fixed guideway public transportation systems within their jurisdictions. This section differs only slightly in wording from the current rule at 49 CFR 659.1.

#### Section 674.3 Applicability

This section explains that these regulations apply to States with rail fixed guideway public transportation systems, the SSOAs that oversee the safety of those systems, and entities that own or operate rail fixed guideway public transportation systems with Federal financial assistance from FTA. The first two sentences of this section are similar in wording to the current rule at 49 CFR 659.3, titled “Scope.”

#### Section 674.5 Policy

This section identifies three separate, explicit policies that underlie these regulations: First, FTA is using the principles and methods of Safety Management Systems (SMS) as the basis for these regulations and all other regulations and policies FTA will issue under the authority of 49 U.S.C. 5329. Second, the primary responsibility for overseeing the safety of rail transit systems lies with the States—and a State's SSOA must have sufficient authority and resources to oversee the number, size, and complexity of rail transit systems that operate within that State. Third, FTA is obliged to make Federal funds available to eligible States to help them develop and carry out their SSO programs—and certify whether those SSO programs are adequate to promote the purposes of the public transportation safety programs under 49 U.S.C. 5329. The current rule at 49 CFR part 659 does not include a statement of policy.

#### Section 674.7 Definitions

This section sets forth a number of definitions for terms used repeatedly throughout the State Safety Oversight program and the other safety programs authorized by 49 U.S.C. 5329. Some of these defined terms are the same as set forth in the current regulations at 49 CFR part 659, but the wording of the definitions has been changed, in today's proposed rulemaking, for sake of clarity; readers should refer, specifically, to the definitions of “contractor,” “corrective action plan,” “hazard,” “individual,” “investigation,” “passenger,” “rail fixed

guideway public transportation system” and “rail transit agency.” A few of the definitions remain the same as stated in the current regulations, or as stated in other FTA regulations; we refer, specifically, to the definitions of “Administrator,” “FRA,” “FTA,” and “State.”

There are new definitions, however, for the terms “National Public Transportation Safety Plan,” “Public Transportation Safety Certification Training Program,” “Public Transportation Agency Safety Plan,” “State Safety Oversight Agency (SSOA),” and “State Safety Oversight Program (SSOP),” all of which are strictly consistent with the use of those terms in the statutes. And there are new, common-sense definitions for the terms “Transit Agency Safety Plan,” and “vehicle.” “Transit Agency Safety Plan” is a shorthand reference to the Public Transportation Agency Safety Plan; and “vehicle” means any rolling stock used on a rail fixed guideway public transportation system, including but not limited to passenger and maintenance vehicles.

We have also included definitions for the terms “accident,” “event,” “incident,” and “occurrence.” We propose amending the definition for “accident” as it relates to injuries. In 49 CFR 659.33, the definition includes, “injuries requiring immediate medical attention away from the scene for two or more individuals.” We propose changing that to “one or more persons suffers a serious injury,” and we propose adding the NTSB definition of “serious injury” found in 49 CFR 830.2: “any injury which: (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; (2) results in a fracture of any bone (except simple fractures of fingers, toes, or nose); (3) causes severe hemorrhages, nerve, muscle, or tendon damage; (4) involves any internal organ; or (5) involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.” FTA seeks comment on this change. The term “event” is defined as any accident, incident, or occurrence. As stated in our January 28, 2015, **Federal Register** notice on updates to the National Transit Database (NTD) safety information collection, we added the term “event” in order to cover all planned and unplanned events that are required to be reported to the NTD. The purpose of the change is to provide better alignment with nomenclature used in other transportation modes, and to provide clarity during data analysis conducted to identify safety trends. An

“incident” is an event that exceeds the definition of “occurrence,” but does not meet the definition of “accident.” Examples include but are not limited to near misses, close calls, railyard derailments, non-serious injuries, and violations of safety standards. An occurrence is an event with no injuries, or where damage occurs to property or equipment but does not affect transit operations. FTA seeks comment on these definitions. In particular, FTA seeks comment on whether we should include definitions for “close call” and “near miss” in the final rule.

Additionally, there are a number of new definitions in today’s proposed rulemaking that are based on the principles and methods of Safety Management Systems (SMS). Readers should refer, specifically, to the terms “accountable executive,” “risk,” “risk control,” “safety assurance,” “Safety Management System,” “safety policy,” “safety promotion,” and “safety risk management.” In the years since the rules at 49 CFR part 659 were first issued in 1995, SMS has emerged as the best practice for enhancing safety in all modes of transportation, and the Secretary of Transportation instructed each of the Department’s operating administrations to develop rules, plans, and programs to apply SMS to their grant recipients and regulated communities. See, [http://www.fedeval.net/docs/2012Coplent\\_1.pdf](http://www.fedeval.net/docs/2012Coplent_1.pdf). In brief, SMS is a formal, top-down, organization-wide approach to managing risks and assuring the effectiveness of risk controls. An SMS establishes lines of safety accountability throughout an organization, starting at the executive management level, and provides a structure to support a sound safety culture. SMS is not a one-size-fits-all approach, however. SMS is flexible, and can be scaled to the mode, size, and complexity of any transit operator, in any environment—urban, suburban, or rural. As mentioned, both the Administrator’s May 13, 2013, *Dear Colleague* letter and a set of frequently asked questions about SMS are available on FTA’s Web site at [http://www.fta.dot.gov/tso\\_15177.html](http://www.fta.dot.gov/tso_15177.html). Also, as explained below, the Appendix to these proposed rules, titled “Safety Management Systems Framework,” will give the reader a basic understanding of SMS.

Many of the definitions for applying the principles and methods of SMS in proposed section 674.7 are very similar to those set forth in a Notice of Proposed Rulemaking and a Final Rule on SMS by FTA’s sister agency, the Federal Aviation Administration (FAA). The NPRM, issued on October 7, 2010, at 75

FR 62008, titled “Safety Management Systems for Certified Airports,” proposes to apply the principles and methods of SMS to airports that hold certificates in accordance with 14 CFR part 139. A Final Rule, issued on January 8, 2015, at 80 FR 1308, titled “Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders,” applies the principles and methods of SMS to domestic, international flag, and supplemental operations air carriers that hold certificates in accordance with 14 CFR part 121. FTA also anticipates that it will be incorporating many if not all of these same definitions for applying SMS to public transportation in its future rulemakings for the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, and the Public Transportation Agency Safety Plans.

#### *Section 674.9 Transition From Previous Requirements for State Safety Oversight*

In framing the provisions of MAP–21 for a much stronger State Safety Oversight program—and much higher expectations of the States and their SSOAs—the Congress recognized that the States and the rail transit systems they oversee would need a period of transition. Also, the Congress recognized that FTA would need time to conduct rulemakings through public notice and comment. Thus, MAP–21 Section 20030(e) provides that the previous authorization statute for State Safety Oversight, 49 U.S.C. 5330, will remain in effect for three years after FTA promulgates a final rule under the authority of the new authorization statute for State Safety Oversight, 49 U.S.C. 5329(e). Although nothing in this rulemaking precludes a State from immediately establishing an oversight agency that fully complies with MAP–21’s requirements, Congress recognized that many States would need time to enact enabling legislation during the transition from the current program to a MAP–21 compliant program, particularly in States where the legislature meets only part-time or biennially. This section in today’s proposed rulemaking recognizes that transition. (See, specifically, proposed 49 CFR 674.9(a) in today’s NPRM.) Also, this section states that the current SSO regulations at 49 CFR part 659 will be rescinded upon the effective date of a final rule under the new authorization statute, 49 U.S.C. 5329(e).

*Section 674.11 State Safety Oversight Program*

Readers should please be mindful of the differences between a State Safety Oversight Program (SSOP) and the State Safety Oversight Agency (SSOA) that carries out an SSOP. In essence, an SSOA is a State agency that is obliged to interpret, administer, and enforce the State statutes enacted by a State legislature and the State regulations and program standards developed by a Governor and his or her designees in the executive branch of State government. An SSOP is the collection of law, rules, and administrative standards that define the minimum requirements for safety of rail public transportation in the State; the financial, physical, and human resources necessary to establish and maintain the SSOA; and the system of checks and balances, within State government, that holds an SSOA accountable for its actions.

In enacting MAP-21, the Congress very carefully spelled out the different missions and functions of an SSOP and an SSOA. The missions and functions of an SSOP are specified at 49 U.S.C. 5329(e)(3). The missions and functions of an SSOA are specified at 49 U.S.C. 5329(e)(4). In today's rulemaking, proposed section 674.11 states the missions and functions of an SSOP, and proposed section 674.13 states the missions and functions of an SSOA, as directed by the statutes. Most importantly, in an SSOP, a State must do the following: A State must explicitly assume responsibility for overseeing the safety of rail transit systems within its borders. A State must adopt and enforce Federal and relevant State law for that purpose. Not only must a State establish an SSOA, but it must ensure that the SSOA has a staffing level adequate to oversee the number, size, and complexity of the rail transit systems within the State, and that the staff of the SSOA are trained and qualified to perform their jobs. Further, a State must ensure that an SSOA does not receive any financial support from the rail transit systems the SSOA is obliged to oversee.

In summary, an SSOP is the means by which a State ensures that an SSOA is sufficiently empowered by law, and supported with the resources necessary to do its job, without bias toward any rail transit system within the SSOA's oversight. Through the requirements for an SSOP, the Congress is calling on the Governors of all States with rail fixed guideway public transportation systems to create SSOAs that are agile, competent watchdogs for the safety of those rail transit systems. Moreover,

MAP-21 rectifies the previous, untenable practice in which a number of SSOAs had to rely upon subsidization from one or more of the rail transit systems they were obliged to oversee; through the SSOP, a State must now ensure that those previous conflicts of interest no longer exist.

*Section 674.13 Designation of Oversight Agency*

In MAP-21, the Congress established a set of requirements for designation of a State Safety Oversight Agency (SSOA) that are more prescriptive than those of SAFETEA-LU and the previous authorization statutes, including, notably, the requirements for financial and legal independence, audit, investigation and enforcement authority, and other safeguards against conflicts of interest between an SSOA and the rail fixed guideway public transportation systems the SSOA will oversee. This section of the NPRM simply reiterates the statutory requirements for designation and establishment of an SSOA now codified at 49 U.S.C. 5329(e)(4)(A). Also, this section of the NPRM notes the Administrator's authority to waive the requirements for financial and legal independence and the prohibitions on employee conflict of interest in the instance of a State in which the rail fixed guideway public transportation systems have fewer than one million revenue miles per year combined, or provide fewer than ten million unlinked passenger trips per year, combined. The statutory authority for a waiver is codified at 49 U.S.C. 5329(e)(4)(B).

Additionally, this section reiterates the reporting requirements for an SSOA now codified at 49 U.S.C. 5329(e)(4), including, notably, the requirements that an SSOA make annual reports on the status of the safety of the rail fixed guideway public transportation systems it oversees to both the Governor and the boards of directors of the rail transit systems.

*Section 674.15 Designation of Oversight Agency for Multi-State System*

In a few instances across the United States, there are rail fixed guideway public transportation systems that operate in more than one State. This section of the NPRM identifies the same option for State Safety Oversight of such a multi-state system as now provided by 49 U.S.C. 5329(e)(5): The States may choose either to apply uniform safety standards and procedures to the rail transit system through a State Safety Oversight Program compliant with 49 U.S.C. 5329 and approved by the Administrator, or to designate a single

entity that meets the requirements for an SSOA to serve as the SSOA for that rail transit system, through a program approved by the Administrator.

*Section 674.17 Use of Federal Financial Assistance*

This section explains that Federal financial assistance is now available to States to develop and carry out State Safety Oversight Programs (SSOPs), and may be used, specifically, for both the operational and administrative expenses of SSOPs and SSOAs and the expenses of employee training. Also, this section notes that the Federal financial assistance to a State will be allocated in accordance with a formula applicable to all eligible States; a grant of Federal funds will be subject to terms and conditions as the Administrator deems appropriate; the Federal share of eligible expenses under a grant will be eighty percent; and the non-Federal share of the expenses under a grant cannot be comprised of Federal funds, funds received from a public transportation agency, or any revenues earned by a public transportation agency.

*Section 674.19 Certification of a State Safety Oversight Program*

One of the most important provisions of the MAP-21 framework for safety is the new mandate for an FTA certification of a State Safety Oversight Program (SSOP); specifically, the mandate that the Administrator make a determination not only whether an SSOP meets the technical requirements of the statute, but whether that same SSOP "is adequate to promote the purposes" of the National Public Transportation Safety Plan and the other goals and objectives of 49 U.S.C. 5329(e)(7)(A) (emphasis added). The Congress recognizes that the weaknesses of the State Safety Oversight Agencies (SSOAs) cannot be addressed by the SSOAs, themselves. Consequently, Congress is obliging the States to either provide the current SSOAs with stronger authority and more resources to conduct the necessary oversight of rail fixed guideway public transportation systems, or to establish and nurture new organizations for that purpose. Further, Congress is obliging the FTA Administrator to determine whether each and every State has an adequate program through the mechanism of issuing or denying the issuance of a certification that the program is adequate to meet both the letter and the purposes of the law.

This section of the NPRM fleshes out the requirements and the process for certification of a State's SSOP. Specifically, proposed section 674.17(a)

states that the Administrator must determine whether an SSOP meets the requirements of the statute and 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 (referenced as the “Transit Agency Safety Plans” in this rulemaking). Proposed section 674.17(b) recites the statutory mandate that the Administrator must issue either a certification or a denial of certification for each State’s SSOP. Proposed section 674.17(c) states that in the event the Administrator issues a denial of a certification, he or she must provide the State a written explanation and an opportunity to modify its SSOP to merit the issuance of certification, and ask the Governor to take all possible steps to correct the deficiencies that are precluding the issuance of a certification.

Proposed section 674.17(c) states that in his or her discretion, the Administrator may impose financial penalties as authorized by Congress at 49 U.S.C. 5329(e)(7)(D). In brief, the statute provides the Administrator three options in imposing a financial penalty: (1) The Administrator can withhold SSO grant funds from the State; (2) The Administrator can withhold not more than 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 SSOP can be certified; or (3) The Administrator can require all of the rail fixed guideway public transportation systems governed by the SSOP to spend up to 100 percent of their Federal funding under 49 U.S.C. Chapter 53 for “safety-related improvements” on their systems, only, until such time as the SSOP can be certified. See, 49 U.S.C. 5329(e)(7)(D)(ii)(I)–(III).

Additionally, proposed section 674.17(d) states that in deciding whether to issue a certification for a State’s SSOP, the Administrator will evaluate whether the SSOA has sufficient authority, resources, and expertise to oversee the number, size, and complexity of the rail transit systems that operate within the State, or will attain the necessary authority, resources, and expertise in accordance with a developmental plan and schedule set forth in a sufficient level of detail in the State’s SSOP.

#### *Section 674.21 Withholding of Federal Financial Assistance for Noncompliance*

Proposed section 674.21(a) explains that in those instances in which the Administrator has discretion to impose financial penalties for noncompliance with the SSO requirements, in making a decision whether to do so, and determining the nature and amount of a financial penalty, the Administrator must consider the extent and circumstances of the noncompliance, the operating budgets of both the SSOA and the rail transit systems that will be affected by the penalty, and such other matters as justice may require.

There is one instance, however, in which the Administrator will be unable to exercise any discretion to mitigate a very harsh financial penalty for noncompliance with the SSO requirements. If a State fails to establish a State Safety Oversight Program approved by the Administrator within three years of the effective date of the final rule that will follow today’s NPRM, FTA will be prohibited by law from obligating any Federal financial assistance to *any* entity in that State that is otherwise eligible to receive funding through any of the FTA programs authorized by 49 U.S.C. Chapter 53. See, 49 U.S.C. 5329(e)(3). In other words: If for whatever reason, a State is unable or unwilling to come into compliance with a final rule for State Safety Oversight within three years after that final rule takes effect, all FTA grant funds for all of the public transportation agencies, designated recipients, subrecipients, and Metropolitan Planning Organizations in that State will be cut off. The statute is designed to provide every incentive to a State to develop and carry out an SSO program compliant with the regulations. Proposed section 674.21(b) reflects the congressional mandate of 49 U.S.C. 5329(e)(3).

#### *Section 674.23 Confidentiality of Information*

When FTA first promulgated a rule for State Safety Oversight, the agency recognized that rail transit systems often face litigation arising from accidents, and that the release of accident investigation reports can compromise both the defense of litigation and the abilities of rail transit systems to obtain comprehensive, confidential analyses of accidents. See, the preamble to the 1995 rule at 60 FR 67034, 67042 (Dec. 27, 1995). Thus, the current rule at 49 CFR 659.11 provides that a State “may withhold an investigation report that may have been prepared or adopted by the oversight agency from being

admitted as evidence or used in a civil action for damages. . . .” Also, the current rule makes clear that the Federal regulations at 49 CFR part 659 do not require a rail transit system to make a security plan available to the public, or any security procedures referenced in that plan. See, 49 CFR 659.11(b). Thus, as a practical matter, any questions whether to admit investigation reports into evidence for litigation are left to the courts to determine, in accordance with the relevant State law and the courts’ rules of evidence.

Today’s proposed rulemaking would clarify, and slightly expand, the current rule, by specifying that a “State, State Safety Oversight Agency, or a rail fixed guideway public transportation system may withhold an investigation report prepared or adopted in accordance with the Federal regulations for State Safety Oversight from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report.” See, proposed section 674.21(a). Also, the proposed rule would clarify, and slightly expand, the current rule, by specifying that FTA’s SSO regulations would “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.” See, proposed section 674.21(b).

#### *Section 674.25 Role of the State Safety Oversight Agency*

Ever since 1995, when FTA issued the current SSO regulations at 49 CFR part 659, the SSOA has been required to set minimum standards for the safety of all rail fixed guideway public transportation agencies within their oversight. Today’s proposed rulemaking would continue that requirement. See, proposed section 674.25(a). Under today’s NPRM, however, those minimum standards must be consistent with the National Public Transportation Safety Plan (the “National Plan”), the Public Transportation Safety Certification Training Program (the “Safety Certification Training” program), and the principles and methods of Safety Management Systems (SMS), all of which will be the subject of future rulemakings separate from today’s NPRM. What this may mean, as a practical matter, is that any number of SSOAs may have to revise and reissue their minimum standards for safety of rail fixed guideway public transportation once FTA issues final rules for the National Plan, the Safety Certification program, and the Transit Agency Safety Plan, to ensure that their minimum standards are consistent with



FTA regulations. As noted above, FTA issued an ANPRM for the National Plan, the Transit Agency Safety Plans, and the Safety Certification Training program on October 3, 2013, at 78 FR 61251–73.

Also, in today's **Federal Register** FTA is issuing final interim provisions for the Safety Certification Training program. FTA encourages all SSOAs and interested persons to participate in the rulemakings.

Proposed section 674.25(b) notes that basic principles and methods of SMS are set forth in an Appendix to the rules, titled the "Safety Management Systems (SMS) Framework."

Proposed section 674.25(c) would require an SSOA to review and approve the Transit Agency Safety Plan, oversee the execution of that plan, and enforce the execution of that plan through the order of a corrective action plan or any other means, as necessary or appropriate. Proposed sections 674.25(d) and 674.25(e) recognize that an SSOA has primary responsibility for investigating the hazards, risks, and accidents on a rail transit system, and any alleged noncompliance with a Transit Agency Safety Plan, but these responsibilities do not preclude the Federal Transit Administrator from exercising his or her independent authority to investigate hazards, risks, or accidents.

Proposed section 674.25(f) would allow an SSOA to retain the services of a contractor for assistance in investigating accidents and incidents and for expertise the SSOA does not have within its own organization. Proposed section 674.25(g) makes clear that all personnel and contractors employed by an SSOA must comply with the requirements of the Safety Certification Training program—either the interim provisions for the program or the final rule, once the final rule is issued.

#### *Section 674.27 State Safety Program Standards*

Under 49 CFR 659.15—the rule in place since 1995—the SSOAs have been required to develop a nine-part State safety program standard comprised of requirements for program management, standards development, oversight of the internal safety and security reviews by rail transit systems, the frequency of those reviews, accident notification requirements, investigation procedures, corrective actions, the 21-point "system safety program plan" for rail transit systems, and the "system security plan" for rail transit systems. The current rule sets a regimen that is reactive, highly prescriptive, and mechanistic; today's proposed rulemaking will be proactive,

emphasizing the avoidance and mitigation of hazards and risks.

Today's NPRM transforms the list-specific, mechanistic approach to State safety program standards into one based on the more flexible, effective principles and methods of SMS. The SMS approach to State safety program standards at proposed section 674.27 addresses many of the same elements as are called out in the current SSO rule; it does so, however, in ways that are more comprehensive for preventing accidents, afford more latitude to the SSOAs, and can be scaled to the number, size, and complexity of the rail fixed guideway public transportation systems within the oversight of an SSOA. First, proposed section 674.27(a) obliges an SSOA to adopt and distribute a program standard that is consistent with the National Safety Plan, SMS, and the relevant State Safety Oversight Program. Next, proposed section 674.27(a) obliges an SSOA to identify the processes and procedures that will govern its own activities. Next, proposed section 674.27(a) obliges an SSOA to identify the processes and procedures a Rail Transit Agency must have in place to comply with the SSO's program standard. Finally, proposed section 674.27(a) sets explicit but minimum, flexible standards for program management, standards development, oversight of a Rail Transit Agency's internal safety reviews, triennial audits of Transit Agency Safety Plans, accident notification, investigations, and corrective actions.

Readers should note in particular the proposed requirements for an explanation of an SSOA's authority; the steps an SSOA must take to ensure "open, on-going communication" with the rail transit systems within its oversight; the process whereby an SSOA will evaluate the material submitted under the signatures of a Rail Transit Agency's accountable executives; the procedures an SSOA and a Rail Transit Agency will follow to manage findings and recommendations arising from a triennial audit; the coordination of an SSOA investigation with a Rail Transit Agency's own internal investigation; the role of an SSOA in supporting any investigation or findings made by the NTSB; and the procedures and SSOA and a Rail Transit Agency will follow to manage any conflicts over the contents or execution of a corrective action plan. *See*, proposed subsections 674.27(a)(1)–(7).

Also, readers should please note the new FTA responsibility for reviewing the effectiveness of State safety program standards. Under proposed section 674.27(b), FTA will evaluate an SSOA's

program standard as part of its continuous evaluation of every State Safety Oversight Program (SSOP), and in preparing FTA's annual report to Congress on the certification status of every SSOP, both of which are required by 49 U.S.C. 5329(e)(8). FTA will certify each compliant SSOA within the first three years following publication of the final rule, and will monitor compliance annually thereafter.

#### *Section 674.29 Transit Agency Safety Plans: General Requirements*

One of the most significant changes in State Safety Oversight under today's proposed rulemaking is the transition from the simple review-and-approval of the "system safety program plan" for a rail fixed guideway public transportation system, now codified at 49 CFR 659.17, to the more hands-on, proactive role for an SSOA in evaluating the effectiveness of a Transit Agency Safety Plan in proposed section 674.29. To reiterate, "Transit Agency Safety Plan" is a shorthand reference to the new Public Transportation Agency Safety Plan now required of *all* operators of public transportation—not just rail transit systems—in accordance with 49 U.S.C. 5329(d). Although this is the subject of a rulemaking separate from today's proposal, Section 5329(d) sets forth seven explicit, minimum standards for a Transit Agency Safety Plan. (See, for example, the standards for identifying and evaluating safety risks, strategies to minimize exposure to hazards, performance targets, assignment of an "adequately trained safety officer" reporting directly to the chief executive, and the "comprehensive staff training program," codified at 49 U.S.C. 5329(d)(1)). Today's proposed rulemaking makes the SSOA responsible for helping ensure that the Transit Agency Safety Plan for a rail transit system—the most complex type of public transportation system—is sufficient to protect both the public and the Rail Transit Agency's employees.

Specifically, under proposed section 674.29(a), an SSOA must evaluate whether a Transit Agency Safety Plan is based on an adequate Safety Management System (SMS), is consistent with the National Safety Plan, and is in compliance with the seven minimum standards set by the statute. Under proposed section 674.29(b), an SSOA must make a number of judgments in determining whether the Transit Agency Safety Plan is based on an adequate SMS: Most notably, the judgments whether a Transit Agency Safety Plan sets forth a sufficiently explicit safety policy for the rail transit system, and whether the plan

identifies adequate means for risk control, safety assurance, and promotion of safety to support the execution of the Transit Agency Safety Plan throughout the rail fixed guideway public transportation system—by all employees and agents of the system, and its contractors. Under proposed section 674.29(c), in any instance in which an SSOA does not approve a Transit Agency Safety Plan, the SSOA must provide the Rail Transit Agency a written explanation, and the Rail Transit Agency an opportunity to modify and resubmit its plan for the SSOA's approval.

In short, under proposed section 674.29, the SSOA becomes a vigorous, diligent, “institutional check” on whether a Transit Agency Safety Plan for a rail transit system is adequate to avoid or mitigate hazards and risks to everyone who uses, manages, or maintains that system. This is a much more assertive role for an SSOA than has been the case under the regulations in place since 1995.

#### *Section 674.31 Triennial Audits: General Requirements*

Under the current regulations, an SSOA conducts an “on-site review” of the “system safety program plan” for a rail fixed guideway public transportation system at least once every three years. *See*, 49 CFR 659.29. As a practical matter, this sort of review has amounted to little more than a checklist procedure, and the superficiality of the on-site review was a specific point of criticism by the National Transportation Safety Board following the rapid and light rail accidents in 2009, referenced above.

Under today's NPRM, the three-year on-site review would be transformed into a more searching analysis of the safety of a rail transit system. Specifically, under proposed section 674.31, an SSOA will conduct a complete audit of a Rail Transit Agency's compliance with its Transit Agency Safety Plan at least once every three years, or on an on-going basis over a three-year timeframe, if the Rail Transit Agency concurs. At the conclusion of the three-year audit cycle an SSOA will issue a report with findings and recommendations that include, at minimum, an analysis of the effectiveness of the Transit Agency Safety Plan, recommendations for improvements, and a corrective action plan, if necessary or appropriate. The Rail Transit Agency must be given an opportunity to comment on the findings and recommendations arising from the audit. Optimally, an SSOA audit, *per se*, will be a more independent, effective

means of testing the value of a Transit Agency Safety Plan and the steps a Rail Transit Agency has taken to carry out that plan over a three-year cycle.

#### *Section 674.33 Accident and Incident Notification*

Proposed section 674.33 differs very little from the two-hour notification requirement for certain types of accidents in the current rule at 49 CFR 659.33, with two exceptions. The first exception is the addition of the term “Incident.” The second exception is the additional requirement that FTA be notified of an Accident or Incident together with the SSOA.

FTA is proposing to require two-hour notification for either an “Accident” or “Incident.” In proposed section 674.7, “Incident” is characterized as a near miss, close call, a violation of a safety standard that poses a hazard to a rail fixed guideway public transportation system, or equipment or property damage in an amount less than \$25,000 that effects transit operations. Experience teaches that a near miss or close call may be as much or more important for detecting hazards and mitigating risk as an accident that results in personal injury or property damage. And logically, a violation of a safety standard calls for notification, regardless whether the violation led to personal injury or property damage.

To enhance FTA's own situational awareness, a Rail Transit Agency must notify FTA of any accident or incident at the same time a Rail Transit Agency notifies the SSOA. In recent years FTA has benefitted from the electronic notification process a number of rail transit systems are using to inform multiple parties of accidents, similar to the telephonic notifications that railroads subject to 49 CFR part 225 provide to the Federal Railroad Administration via the National Response Center. Insofar as the rail fixed guideway public transportation systems already use an electronic notification system, FTA asks that it be added to their automated lists of addressees, which would require minimal effort.

#### *Section 674.35 Investigations*

In the deliberations leading to the enactment of MAP-21, the congressional authorization committees took a fresh look at whether investigation and enforcement authority for safety in rail fixed guideway public transportation should be vested in FTA or retained by the States. Ultimately, the Congress decided that FTA and the States, through their SSOAs, will have concurrent authority to investigate any

incident involving the safety of a rail transit vehicle or taking place on the property of a rail transit system, while the SSOAs retain the role of primary oversight for the safety of rail fixed guideway public transportation. *See*, 49 U.S.C. 5329(e)(4)(A)(v), 5329(f)(1). Consequently, under today's proposed rulemaking, FTA will continue to defer to the SSOAs to conduct initial inspections and investigations. Should an SSOA request FTA's assistance, however, or should the Administrator determine that an SSOA lacks the ability to conduct an investigation as necessary or appropriate, FTA may initiate an investigation.

Under the current regulations, an SSOA may request a rail transit system to conduct an investigation on behalf of the SSOA. *See*, 49 CFR 659.35(a), (c). In some instances, it may benefit a rail transit system to investigate an accident occurring on its property, but in FTA's view, that practice can trigger a conflict of interest, particularly where a rail transit system has an ability to influence an apportionment of fault and liability. Given that 49 U.S.C. 5329 now provides SSOAs with resources to conduct their own investigations, and requires professional training and certification of their employees to investigate accidents, proposed section 674.35(a) would require an SSOA to conduct an “independent investigation” of any accident or incident that a Rail Transit Agency reports to the SSOA in compliance with proposed section 674.33(a). Further, proposed section 674.35(c) would require all personnel and contractors conducting investigations for an SSOA to be trained to conduct investigations in accordance with the Safety Certification Training program. Obviously, a Rail Transit Agency would not be prohibited from conducting its own internal investigation of an accident. Rather, proposed section 674.35(a) states that in any instance in which both an SSOA and a Rail Transit Agency are conducting an investigation, they must coordinate their investigations with one another in accordance with the State safety oversight program standard required by proposed section 674.27.

Under proposed section 674.35(b), an SSOA must issue a written report on an investigation that identifies the factors that caused or contributed to the accident or incident, describes the SSOA's investigation activities, and sets forth a corrective action plan, as necessary or appropriate. The SSOA must formally adopt an investigation report and transmit that report to the Rail Transit Agency for review and concurrence. If a Rail Transit Agency

does not concur in an SSOA's investigation report, the SSOA may allow the Rail Transit Agency to submit a written dissent from the report, and the SSOA may include the Rail Transit Agency's dissent in the report, if the SSOA so chooses.

Also, readers should note that MAP-21 has vested the Federal Transit Administrator with broad authority to conduct investigations of public transportation systems—whether to ensure the continuing safety of a system, or in response to an accident or incident. See, 49 U.S.C. 5329(f)(1) (as the Secretary's designee, the Administrator “may . . . conduct inspections, investigations, audits, examinations, and testing of the equipment, facilities, rolling stock, and operations of [a] public transportation system . . .”). To facilitate the Administrator's authority to conduct investigations, he or she may make reports and issue directives, issue subpoenas, take depositions, require production of documents by either a public transportation system or an SSOA, and provide guidance to public transportation systems “regarding prevention of accidents and incidents.” See, 49 U.S.C. 5329(f)(2)–(6). The FTA Office of Safety and Oversight will carry out the Administrator's authority to conduct investigations, with assistance from staff of the ten FTA Regional Offices.

#### *Section 674.37 Corrective Action Plans*

It is most likely an SSOA will order a Rail Transit Agency to prepare and carry out a corrective action plan as the result of an investigation of an accident or hazard, an internal safety audit, or an SSOA's triennial audit of a Transit Agency Safety Plan. Although it is not possible to know what potential corrective action plans may call for, under proposed section 674.37(a), in any instance in which a Rail Transit Agency is ordered to develop and carry out a corrective action plan, the SSOA must review and approve that plan before the Rail Transit Agency carries out the plan. A corrective action plan must specify the actions a Rail Transit Agency will take to avoid or mitigate the risks and hazards that led to the plan, the schedule for taking the corrective actions, and the persons who will take the corrective actions. The Rail Transit Agency will periodically report its progress in carrying out the corrective action plan, and the SSOA may monitor the Rail Transit Agency's progress through unannounced, on-site inspections, or any other means the SSOA deems necessary or appropriate. Also, in any instance in which the

National Transportation Safety Board (NTSB) has conducted an investigation, an SSOA must evaluate whether the NTSB's findings and recommendations call for a corrective action plan by the Rail Transit Agency, and if so, the SSOA must order the Rail Transit Agency to develop and carry out a corrective action plan.

#### *Section 674.39 State Safety Oversight Agency Annual Reporting to FTA*

It is not FTA's objective to increase the reporting burdens on States, their SSOAs, or rail fixed guideway public transportation systems any more than absolutely necessary. Moreover, the current SSOA reporting requirements at 49 CFR 659.39 have worked well for the limited authority and responsibilities given to the SSOAs under the State Safety Oversight program in place for the past twenty years. As further described in the Paperwork Reduction Act section of this notice, below, the Office of Management and Budget (OMB) extended the approval for FTA to collect information from SSOAs as required by 49 U.S.C. 5330 and the rules at 49 CFR part 659.

Today's rulemaking proposes to keep the basic structure of the current 49 CFR 659.39 insofar as the data and information SSOAs must report to FTA on an annual basis, with a few additions and revisions, as follows. First, under proposed subsection 674.39(a)(2), an SSOA would be obliged to submit evidence once a year that each of its employees and contractors are in compliance with the applicable Safety Training Certification requirements. Second, under proposed subsection 674.39(a)(4), an SSOA would be obliged to submit a summary of the triennial audits completed during the preceding year, and the Rail Transit Agencies' progress in carrying out any corrective action plans arising from those audits. Third, under proposed subsection 674.39(a)(5), an SSOA would be obliged to submit evidence of its review and approval of any changes to Transit Agency Safety Plans during the preceding year.

#### *Section 674.41 Conflicts of Interest*

Proposed section 674.41(a) incorporates a fundamental change enacted by MAP-21: An SSOA must now be both financially and legally independent from any rail fixed guideway public transportation system under the oversight of the SSOA. See, 49 U.S.C. 5329(e)(4)(A)(i). The only exception to this requirement would be an instance in which the Administrator has issued a waiver based on the relatively small annual fixed guideway

revenue mileage in a State (less than one million actual and projected revenue miles, in total), or the relatively small number of unlinked passenger trips carried by all the rail transit systems in a State, on an annual basis (fewer than ten million actual and projected unlinked passenger trips, in total). See, 49 U.S.C. 5329(e)(4)(B).

Proposed section 674.41(b) would change the current rule, 49 CFR 659.41, to make it clear that an SSOA may not employ any individual who provides services to a rail fixed guideway public transportation system under the oversight of the SSOA. Also, the proposed rule would delete the reference in the current rule to state law determinations of conflict of interest. Again, however, the Administrator could issue a waiver from this requirement on the basis of the relatively small annual fixed guideway revenue mileage (less than one million miles) in a State or the relatively small number of unlinked passenger trips per year (less than 10 million unlinked trips) in a State, using the same thresholds as specified in proposed section 674.41(a).

Finally, proposed section 674.41(c) would make it clear that a contractor may not provide its services to both an SSOA and a rail transit system under the oversight of that SSOA. There is no waiver available with respect to this particular requirement.

#### *Appendix: Safety Management Systems (SMS) Framework*

For a basic understanding of SMS, readers should please consult the Appendix that immediately follows the text of the proposed rules: The document titled “Safety Management Systems (SMS) Framework.” This document describes at some length each of the four key components of a viable SMS for any transportation provider: (1) The Safety Management Policy for an organization, (2) an organization's Risk Management practices, (3) the means for Safety Assurance throughout an organization, and (4) the practices for Safety Promotion within an organization, through training, education, and communication. This document explains that SMS is both flexible and scalable to the size of an organization and its operating environment. This document addresses the role of the Accountable Executive—the leader at the top of an organization who is ultimately responsible for safety—and the roles of a chief safety officer, an executive leadership team, employees who specialize in operations, maintenance, and asset management, employees with front-line

responsibilities for safety, and an organization's board of directors. Also, this document speaks to discrete activities such as hazard identification and analysis, risk assessment and mitigation, change management, continuous improvement, and the integration of an organization's SMS with its public safety and emergency preparedness.

This Appendix is a guidance document. Unlike the final rules that will follow the public notice and comment on the proposed rules in this NPRM, this Appendix will not have the force of law. FTA is publishing the Safety Management Systems (SMS) Framework in this Appendix to provide practical advice both to the rail fixed guideway public transportation systems that will develop and integrate SMS into their operations and managerial structures, and the States and SSOAs that will oversee the rail transit systems' practice of SMS. FTA does not intend to set substantive standards for SMS through today's proposed rulemaking for State Safety Oversight. Rather, FTA intends to propose substantive standards for SMS in the upcoming Notices of Proposed Rulemaking for the National Public Transportation Safety Plan and the Transit Agency Safety Plans. Nonetheless, FTA invites readers to comment on the material set forth in this Appendix, together with your comments on the rules proposed in this NPRM. Indeed, FTA expects to revise this Appendix from time to time, in the years ahead, as the practice of SMS matures throughout the transit industry.

#### *Additional Matters of Interest in the Proposed Rules*

**Security.** Persons versed in the current State Safety Oversight program will notice that today's proposed rulemaking omits any mention of system security plans and internal security reviews for rail fixed guideway public transportation systems. In short, the 49 CFR part 659 regulations, issued in 1995, preceded the terrorist attacks of September 11, 2001, and the creation of the Transportation Security Administration (TSA), an agency of the United States Department of Homeland Security (DHS), which now has lead responsibility for the Federal Government's activities in the area of security in public transportation. This lead responsibility for TSA is set forth in the Memorandum of Agreement (MOA) between DHS and DOT executed in September 2004 and the Annex to that MOA executed by TSA and FTA in September 2005. Further, under Sections 1405 and 1512 of the Implementing Recommendations of the

9/11 Commission Act of 2007 (Pub. L. 110–53; Aug. 3, 2007) (“9/11 Commission Act”), TSA is given the authority to issue regulations that will require public transportation agencies to develop and carry out security plans. Under Section 1404 of the 9/11 Commission Act, DHS is carrying out a national strategy for public transportation security with guidelines that minimize security threats and maximize the ability of public transportation agencies to mitigate damage from terrorist attack and other major incidents. Also, TSA has issued rules that apply to rail transit systems insofar as TSA inspection authority, appointment of rail security coordinators, and reporting significant concerns to TSA. See, 49 CFR 1508.5, 1508.201, and 1508.203.

In omitting any mention of rail transit system security plans and reviews, the rules FTA is proposing for State Safety Oversight in this NPRM would not prohibit rail transit systems from continuing to improve their practices to prevent and mitigate the threats to the security of their systems. To the contrary, rail transit systems are encouraged to do so—and strictly in accordance with the rules and guidelines TSA has issued and will issue in the future. Both FTA and TSA recognize, moreover, that some of the steps a public transportation agency takes to protect public and employee safety are often one and the same as those it takes to protect its transit system from a terrorist attack; for example, the steps an agency takes as part of a threat and vulnerability assessment. FTA and TSA work to ensure that the transit industry is not confronted with inconsistent government-issued security requirements or guidance.

**Plain English.** For purposes of plain English, and compliance with the Plain Writing Act of 2010 (Pub. L. 111–274; Oct. 13, 2010), FTA has made every effort to keep the text of the rules in this NPRM short, simple, and clear. Admittedly, the current regulation at 49 CFR part 659 is lengthy, and less than a model of clarity, thus, FTA seeks to move in the opposite direction. A certain level of detail may be sacrificed in this rulemaking, but FTA would prefer to put a rule in place that is easier to understand and to work with.

**Annual Certifications of Compliance.** Readers should please note that the requirement that an SSOA annually submit a certification of its compliance with the rules, codified at 49 CFR 659.43, is being moved to proposed subsection 674.39(a)(6) with the other requirements for annual reporting.

#### **Estimated Costs and Benefits**

##### *Existing 49 CFR Part 659 Program Requirements and Activities*

As stated in the Background section above, this NPRM replaces a set of regulations that have been in place since December 27, 1995, codified at 49 CFR part 659. As such, this NPRM applies to a discrete subsection of the public transportation industry—the recipients of Federal funds under 49 U.S.C. chapter 53 that operate rail fixed guideway transit systems not subject to the jurisdiction of the Federal Railroad Administration; the States in which those rail systems lie; and the SSOAs required to oversee the safety of those rail systems.

Through the implementation of 49 CFR part 659, the States, SSOAs and rail transit agencies affected by 49 U.S.C. 5329(e) already engage in core activities that address many of this NPRM's proposed requirements. In practical terms, many of the changes required in this NPRM serve to increase the frequency and/or comprehensiveness of activities that are already performed, such as reviews, inspections, field observations, investigations, safety studies, data analysis activities, and hazard management.

##### *Costs to States of Implementing 49 CFR Part 659, CY 2011–2013*

Pursuant to 49 CFR part 659, FTA collects annual information from the SSOAs regarding the hours they expend to implement SSO requirements for the rail transit agencies in their jurisdictions. Based on this information, when totals are averaged for the last three reporting years (CY 2011–CY 2013), FTA has determined that the 28 covered SSOAs expend approximately 115,396 total hours per year implementing part 659 requirements. While these hours average out to roughly 4,120 per State per year, there is wide variation across the States in terms of the total level of effort devoted to compliance with part 659. Some States, such as California, oversee multiple rail transit systems with two or more full-time equivalents (FTEs) devoted to each system. Most States covered by part 659, however, have one (1) rail fixed guideway system and devote between .5 and 1 FTEs per year to implementing 49 CFR part 659 requirements for that system, supplemented by contractor resources for major activities, such as the Three-Year Review and accident investigation.

The table below illustrates the breakdown of activities and labor hours currently expended to implement 49 CFR part 659 by the States and SSOAs.

Using the 2013 Bureau of Labor Statistics (BLS) average wage rate of \$42.70 per hour for State and local government operations managers, this level of effort equates to an annual cost of approximately \$5 million for States and SSOAs to implement 49 CFR part 659 requirements nationwide.

The table also identifies one-time, non-recurring activities with an asterisk (\*). These activities, such as establishing standards and procedures, are performed initially to establish the SSO program standard for a State new to implementing part 659. By including these non-recurring costs, FTA's table reflects the reality that new States and

rail transit agencies are joining the SSO program each year. In fact, since January 1, 1997, when the December 27, 1995 rule implementing 49 CFR part 659 went into effect, the SSO program has grown by 40 percent, increasing from 19 SSOAs and 32 rail transit agencies to 28 SSOAs and 48 rail transit agencies.

Annual state activity to implement 49 CFR part 659 requirements	Total labor hours	Total labor costs
Develop and adopt program standard *	1,400	\$59,780.00
Develop and adopt program procedures *	1,400	59,780.00
Review and update program standard and procedures	2,912	124,342.40
Review and approve rail transit agency SSPP	3,840	163,968.00
Review and approve rail transit agency system security plan	3,840	163,968.00
Travel	5,376	229,555.20
Review and approve rail transit agency procedures	3,072	131,174.40
Review and approve SSPP modifications and updates	3,072	131,174.40
Review and approve system security plan modifications and updates	3,072	131,174.40
Perform three-year review of rail transit agency	9,216	393,523.20
Training	3,840	163,968.00
Review and approve internal safety review report	4,224	180,364.80
Review and approve internal security review report	4,224	180,364.80
Prepare three-year safety and security review report	13,440	573,888.00
Prepare accident investigation report	5,376	229,555.20
Review and approve rail transit agency accident investigation reports	6,144	262,348.80
Review, approve and track corrective action plans	15,360	655,872.00
Monitor rail transit agency adherence to hazard management process	19,200	819,840.00
Designation Submission *	30	1,281.00
Initial Submission *	2,270	96,929.00
Annual Submission	3,528	150,645.60
Periodic Submission	560	23,912.00
<b>Total including non-recurring costs</b>	<b>115,396</b>	<b>4,927,409.20</b>

\* Non-recurring cost.

*Costs to Rail Transit Agencies of Implementing 49 CFR Part 659, CY 2011–2013*

Based on information collected from the SSO agencies in annual reports and previous assessments conducted by the Government Accountability Office and the National Transportation Safety Board, FTA has also established the level of effort required to implement 49 CFR part 659 requirements for the 48 rail transit agencies covered by the regulation. Based on this data, FTA has determined that each year, rail transit agencies expend approximately 237,000 hours implementing 49 CFR part 659 requirements.

While these hours average out to approximately 5,000 per rail transit agency per year, there is variation in the

rail transit industry based on the size of rail fixed guideway systems. The nation's five (5) largest rail transit agencies each employ between 6 and 15 full-time equivalents who work exclusively on 49 CFR part 659 activities. Most of the remaining rail transit agencies devote between .5 and 2 FTEs to implement 49 CFR part 659 activities. Major activities performed by the rail transit agencies to implement 49 CFR part 659 include developing safety and security plans and procedures; conducting internal reviews and audits to assess the implementation of safety and security plans; conducting accident and incident investigations; identifying, assessing and resolving hazards and their consequences; managing safety data acquisition and analysis; coordinating with emergency response

planning; and communicating with/responding to the SSO agency through reports, meetings, teleconferences, emails, training, submittals and support for field observations and reviews.

Also using the 2013 Bureau of Labor Statistics average wage rate of \$42.70 per hour for State and local government operations managers, FTA has determined that the rail transit industry spends about \$10 million per year to implement the 49 CFR part 659 requirements nationwide. FTA's table below reflects non-recurring costs required for new rail transit agencies covered by part 659, and for existing rail transit agencies to address new extensions and capital projects, once they become operational, as averaged over the last three years.

Annual rail transit agency activity to implement 49 CFR part 659 requirements	Total labor hours	Total labor costs
Develop system safety program plan *	6,272	\$267,814.40
Review and update system safety program plan	7,550	322,385.00
Develop system security plan *	4,036	172,337.20
Review and update system security plan	6,208	265,081.60
Develop program procedures *	5,946	253,894.20
Review and update program procedures	4,142	176,863.40
Travel	4,146	177,034.20

Annual rail transit agency activity to implement 49 CFR part 659 requirements	Total labor hours	Total labor costs
Conduct internal safety and security reviews .....	15,230	650,321.00
Prepare internal safety and security review reports .....	8,160	348,432.00
Prepare annual internal safety and security review report for state oversight .....	10,708	457,231.60
Conduct accident investigations .....	30,000	1,281,000.00
Prepare accident investigation reports .....	19,168	818,473.60
Investigate unacceptable hazardous conditions .....	14,030	599,081.00
Prepare unacceptable hazardous condition reports .....	12,032	513,766.40
Implement hazard management process .....	32,312	1,379,722.40
Prepare and submit corrective action plans .....	19,090	815,143.00
Coordinate hazard management program activities with state oversight .....	23,848	1,018,309.60
Maintain safety data .....	3,570	152,439.00
Plan and conduct annual emergency preparedness drill .....	3,382	144,411.40
Prepare and submit after-action report for annual emergency drill .....	1,090	46,543.00
Maintain security data .....	3,570	152,439.00
Make submissions to state oversight agency .....	2,618	111,788.60
<b>Total including non-recurring costs .....</b>	<b>236,996</b>	<b>10,119,729.20</b>

\* Non-recurring cost.

### *Limitations of the Resources Expended by States and Rail Transit Agencies*

Based on the assessment provided in the two tables above, collectively the States, the SSOAs and the rail transit agencies expend approximately 352,000 labor hours or \$15 million to implement 49 CFR part 659 requirements each year. While this level of effort helps make the transit industry among the safest modes of surface transportation, it has not been sufficient to prevent major accidents with multiple fatalities from occurring. As discussed in the preamble to this NPRM, over the last decade, the rail transit industry remains vulnerable to catastrophic occurrences.

Since 2004, the National Transportation Safety Board (NTSB) has investigated (or preliminarily investigated) 19 major rail transit accidents, and has issued 25 safety recommendations to FTA, including six (6) Urgent Recommendations. In conducting these investigations, the NTSB found a variety of probable causes for these accidents. Among them, equipment malfunctions; equipment in poor or marginal condition, including equipment that can pose particular risks to safety, such as signal systems; lack of vehicle crashworthiness; employee fatigue and fitness for duty issues; and employee error, such as inattentiveness or failure to follow a rail transit system's operating procedure. The NTSB also identified the lack of a strong safety culture and a lack of adequate oversight both by the rail transit systems' State Safety Oversight Agencies and FTA. Deficiencies in oversight—of the kind being addressed by this rulemaking—were specifically identified as a contributing factor for five of the 19 major accidents. As a result, the NTSB has made improving the operational

safety of the rail transit industry one of its Top Ten Most Wanted Items in 2014.

FTA has also observed that while other modes of surface transportation, such as highway and commercial motor carrier, freight railroad and commercial trucking have achieved significant improvements in safety performance over the last decade, the public transportation industry's safety performance has not improved. Over the last decade, the rail transit industry actually has experienced increases in several key categories, including the number and severity of collisions, the number of worker fatalities and injuries, and the number and severity of passenger injuries. In this respect, the public transportation industry, and the nation's rail transit agencies in particular, are outliers to the overall U.S. DOT modal safety experience.

Perhaps coincidentally, FTA also notes that the current level of expenditure by the States and rail transit agencies on safety oversight activities falls considerably below one (1) percent of the roughly \$4 billion that FTA awards to rail transit agencies each year. A review of safety programs administered by other modal administrations, such as the Federal Railroad Administration (FRA), the Federal Highway Administration (FHWA), the Federal Motor Carrier Safety Administration (FMCSA), and the Federal Aviation Administration (FAA), demonstrates that at least one (1) percent of the Federal investment is typically devoted to safety oversight activities and programs in most other related modes of transportation. Other modes have determined that this level of investment in safety returns positive dividends in safety performance while also addressing tight budget margins in the transportation industry.

Combined with a lack of resources devoted to safety oversight, FTA has observed that the operating, maintenance and service environments of the nation's rail transit agencies continue to change. Rail transit ridership is at an all-time high, while rail transit equipment and infrastructure is in a deteriorated condition. The heavier service cycles required to meet rising demand in some of the nation's largest urbanized areas create challenges for aging infrastructure with potential safety implications. FTA's Transit Asset Management (TAM) NPRM, authorized at 49 U.S.C. 5326, will attempt to address some of these challenges through the institution of formal asset management programs.

In addition, this NPRM also implements an earlier decision made by the Federal Transit Administrator to adopt the framework and principles of Safety Management Systems (SMS). This decision was communicated in a May 13, 2013 Dear Colleague letter to the public transportation industry. FTA's adoption of SMS better positions the SSOAs and rail transit agencies to address the nexus between safety and state of good repair more effectively.

### *MAP-21 Requirements To Address Known Gaps in Oversight*

MAP-21 creates a new regulatory role for FTA and the States that responds to known gaps in oversight and safety performance. For example, to address noted FTA and NTSB concerns regarding conflicts of interest and the ability of SSO agencies to act independently in the interest of public safety, 49 U.S.C. 5329(e)(4)(i) specifies that each SSO agency must have financial and legal independence from each of the rail fixed guideway public

transportation systems in its jurisdiction.

To address the need for an enhanced safety regulatory program, 49 U.S.C. 5329(e)(2)(A–B) directs States to assume oversight responsibility for rail transit agencies in engineering and construction, as well as in revenue service. This requirement increases the number of States subject to the State Safety Oversight regulations from 28 to 30, and increases the number of rail transit agencies from 48 to 60 nationwide.

*MAP–21 SSO Grant Program—Costs to States*

The statutory changes to State Safety Oversight include a new grant program to assist with the costs of compliance. Federal financial assistance is now available to States to help them develop and carry out their State Safety Oversight Programs (SSOPs), and may be used, specifically, for up to eighty percent of both the operational and administrative expenses of SSOAs, including the expenses of employee training.

On March 10, 2014, FTA announced its apportionment of \$21,945,771 in funding to eligible States for their SSOPs and SSOAs for Federal Fiscal Year 2013, and \$22,293,250 for Federal Fiscal Year 2014. 46 FR 13380. In addition, on February, 9, 2015, FTA announced the apportionment of

\$14,841,808 in funding to eligible States for SSOPs and SSOAs for Federal Fiscal Year 2015 through May 31, 2015. 80 FR 7254. Thus, for purposes of cost-benefit analysis, this rulemaking is revenue neutral between the Federal government and the States, and this has been factored into the analysis.

Specifically, in determining the additional costs that would be imposed through this rulemaking, we have factored the net transfer from FTA to the States and their SSOAs. The table below compares and contrasts the specific activities performed, the labor hours and the total costs expended under the existing 49 CFR part 659 requirements (as discussed above) with FTA’s proposal for the MAP–21 program authorized at 49 U.S.C. 5329(e) and described in this NPRM. Readers should note that the 49 CFR part 659 labor hours and costs reflect 28 SSOAs and 48 rail transit agencies, while the 49 U.S.C. 5329(e) labor hours and costs reflect 30 SSOAs and 60 rail transit agencies. As discussed above, new definitions in 49 U.S.C. 5329 expand State Safety Oversight requirements to include rail transit agencies in construction and engineering phases of development.

Labor estimates for the activities in this NPRM were derived based on the hours required to complete them as reported by States already implementing the specific activities; the estimates and general discussion provided in the

Senate report to the Public Transportation Safety Act of 2010 (S. 3638, 111th Congress); and the experience of FTA’s legal, policy, grant making and safety team.

This table shows a minimum four-fold increase in the level of oversight activity performed to implement the NPRM. In particular, as part of proposed section 674.27, SSOAs would be required to establish a new set of activities unique to the oversight of SMS in the rail transit industry. The 30 SSOAs would be required to identify their “accountable executive” for the implementation of the SSO program, and determine their procedures and process for overseeing the effective functioning of each rail transit agency’s SMS, including overseeing elements such as organizational accountability, safety climate and culture, committee structures, safety performance monitoring, safety audits and reviews, safety risk management, and, perhaps most importantly, the implementation and monitoring of safety risk mitigations. Through the MAP–21 SSO grant program, this additional oversight activity will be funded at no additional cost to the States. FTA welcomes comments and observations regarding the hours reported for the part 659 requirements and the estimates presented for the proposed activities in this NPRM.

State oversight agency activity in NPRM	49 CFR part 659 labor hours	49 CFR part 659 total cost	Section 5329 labor hours	Section 5329 total cost
§ 674.11 Develop State Safety Oversight Program:				
• Explicit Acknowledgement of State Responsibility to Oversee Safety of Rail Transit Agencies in Engineering, Construction and Operations * .....	0	\$0.00	1,200	\$51,240.00
• Demonstrate Authority to Adopt and Enforce State and Federal Regulations * .....	0	0.00	1,200	51,240.00
• Demonstrate Adequate/Appropriate Staffing Level * .....	0	0.00	3,000	128,100.00
• Demonstrate Qualification and Certification of Staff * .....	0	0.00	3,000	128,100.00
• Demonstrate by Law Prohibition against Receiving Funding from Rail Transit Agency * .....	0	0.00	600	25,620.00
§ 674.13 Designation of oversight agency:				
• Legal and Financial Independence Procedures and Disclosures * ....	0	0.00	2,400	102,480.00
• Annual Updates and Legal and Financial Independence Disclosures	0	0.00	600	25,620.00
• Documentation of No Provision of Transit Service .....	0	0.00	60	2,562.00
• Documentation of No Employment for Personnel Administering Rail Transit Programs .....	0	0.00	60	2,562.00
• Establish and Document Authority to Review, Approve, Oversee, and Enforce Agency Safety Plan * .....	0	0.00	30,000	1,281,000.00
• Establish and Document Investigative and Enforcement Authority *	0	0.00	30,000	1,281,000.00
§ 674.15 Designation of oversight agency for multi-state system .....	0	0.00	3,000	128,100.00
§ 674.17 Use of Federal financial assistance				
• Identifying and Providing Appropriate Match for Grant Program * .....	0	0.00	6,000	256,200.00
• SSO Grant Management and Reporting Activities .....	0	0.00	3,000	128,100.00
§ 674.19 Certification of a State Safety Oversight Program:				
• Certification Pre-Submittal Documentation to FTA .....	0	0.00	2,400	102,480.00
• Work Plan and Quarterly Updates to FTA .....	0	0.00	3,000	128,100.00
• Initial Certification Documentation .....	2,860	122,122.00	300	12,810.00
• Final Certification Documentation .....	0	0.00	600	25,620.00
• Maintenance of Annual Certification .....	0	0.00	600	25,620.00
§ 674.21 Withholding of Federal financial assistance for noncompliance ..	0	0.00	0	0.00

State oversight agency activity in NPRM	49 CFR part 659 labor hours	49 CFR part 659 total cost	Section 5329 labor hours	Section 5329 total cost
§ 674.23 Confidentiality of information:				
• Develop and adopt procedures/regulation to withhold an investigation report from being admitted as evidence or used in a civil action * .....	0	0.00	3,000	128,100.00
§ 674.25 Role of the State safety oversight agency				
• Establish minimum standards for the safety of rail transit agencies * .....	0	0.00	30,000	1,281,000.00
• Update minimum standards as needed or required .....	0	0.00	6,000	256,200.00
• Review and approve Agency Safety Plan (§ 674.29 Transit Agency Safety Plans: general requirements) .....	3,840	163,968.00	9,600	409,920.00
• Review and Approve Supporting and Referenced Procedures .....	3,072	131,174.40	9,600	409,920.00
• Review and Approve Annual Updates to Agency Safety Plan and Supporting and/or Referenced Procedures .....	3,072	131,174.40	4,800	204,960.00
• Oversee the Rail Transit Agency's execution of its Transit Agency Safety Plan. ....	8,448	360,729.60	60,000	2,562,000.00
• Enforce the execution of a Transit Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate. ....	0	0.00	1,200	51,240.00
• Ensure that a Transit Agency Safety Plan meets the requirements for Public Transportation Agency Safety Plans at 49 U.S.C. 5329(d) and the regulations that are or may be codified at 49 CFR Part 673 .....	0	0.00	1,200	51,240.00
• Investigate any hazard or risk that threatens the safety of a Rail Transit Agency .....	19,200	819,840.00	60,000	2,562,000.00
• Investigate any allegation of noncompliance with a Transit Agency Safety Plan .....	0	0.00	0	0.00
• Exert primary responsibility to investigate each Rail Transit Agency accident .....	0	0.00	0	0.00
• Enter into agreements with contractors .....	0	0.00	6,000	256,200.00
• Comply with the requirements of the Public Transportation Agency Safety Certification Training Program .....	3,840	163,968.00	24,000	1,024,800.00
§ 674.27 State safety program standards:				
• Develop and adopt program standard * .....	1,400	59,780.00	6,000	256,200.00
• Develop and adopt program procedures * .....	1,400	59,780.00	6,000	256,200.00
• Develop and adopt Safety Management Systems oversight principles and oversight methods * .....	0	0.00	6,000	256,200.00
• Review and update program standard and procedures .....	2,912	124,342.40	600	25,620.00
§ 674.31 Triennial audits: general requirements:				
• Conduct Three Year Audit .....	9,216	393,523.20	36,000	1,537,200.00
• Document Results and Findings .....	13,440	573,888.00	12,000	512,400.00
§ 674.33 Notifications: Accidents and other incidents				
• Receive and track notification of accidents .....	0	0.00	1,000	42,700.00
• Report to FTA .....	0	0.00	1,000	42,700.00
§ 674.35 Investigations				
• Prepare Accident Investigation Report .....	5,376	229,555.20	60,000	2,562,000.00
• Review, Approve and/or Adopt Accident Investigation Reports .....	6,144	262,348.80	6,000	256,200.00
§ 674.37 Corrective action plans .....	15,360	655,872.00	18,000	768,600.00
§ 674.39 State Safety Oversight Agency annual reporting to FTA .....	3,528	150,645.60	2,400	102,480.00
§ 674.41 Conflicts of interest .....	0	0.00	600	25,620.00
Travel .....	5,376	229,555.20	1,200	51,240.00
Security .....	6,912	295,142.40	0	0.00
<b>Total State Oversight Agencies, including non-recurring costs (Year 1)</b>	<b>115,396</b>	<b>4,927,409.20</b>	<b>463,220</b>	<b>19,779,494.00</b>
<i>Total State Oversight Agencies, including only recurring costs (Future Years)</i> .....	<i>112,596</i>	<i>4,807,849.20</i>	<i>366,020</i>	<i>14,348,054.00</i>

\* Non-recurring cost.

*MAP-21 SSO Grant Program—Costs to Rail Transit Agencies*

As discussed above, this NPRM implements the framework and principles of Safety Management Systems. The costs included in the table below reflect FTA's estimation regarding the likely requirements of SMS adoption by the rail transit agencies in critical areas overseen by the SSO program, such as investigations, inspections, and reviews; safety data

acquisition and analysis; and safety performance monitoring. Notably, we have not included the costs to develop and update safety plans and procedures under today's NPRM. These costs will be included in the Public Transportation Agency Safety Plan rulemaking. Therefore, while there are non-recurring costs under part 659, there are no non-recurring costs attributable to this NPRM.

This table depicts general increases on the order of 10 to 20 percent for the

labor hours in most major activities currently performed to implement 49 CFR part 659, indicating enhanced activity in the specific area based on the more rigorous MAP-21 SSO program, as well as the requirements of additional collaboration and coordination with a significantly expanded SSO function in the State. Additional labor is provided to augment internal safety audit programs, manage corrective action plans, and implement hazard management programs. Activities



related to the review and approval of security plans have been removed for the MAP-21 program.

The most significant changes come in the “accident/incident investigation” and “maintain safety data” categories. With the enhanced role of the SSO agencies in accident and incident investigation, FTA proposes that the amount of time required for rail transit agencies to develop reports and document results will decrease. Through FTA’s adoption of SMS principles, FTA and the SSO agencies ultimately will be working to ensure that operations and maintenance data and information can be reviewed and assessed in as close to real-time as possible to identify and address potential safety issues and concerns

before they result in accidents. Safety performance monitoring will become a critical component of the SSO program.

FTA appreciates that the majority of this activity may be currently managed by other departments and personnel outside of the rail transit agency’s safety department. For example, management information systems have already been adopted by rail transit agencies to support vehicle and infrastructure maintenance, control center operations, and construction management. However, the data collected and maintained in these systems may not be routinely assessed for safety issues, concerns, hazards or potential impacts. FTA’s new MAP-21 program addresses NTSB and GAO recommendations that each rail transit agency evaluate this

data from a safety perspective in as close to real-time as possible. Thus, the agency may be overstating the costs to rail transit agencies here, but does believe that, even for those rail transit agencies that already collect and maintain much of this data, there may be some additional costs associated with assessing this data for safety purposes in real-time.

It should be noted that for the MAP-21 columns, this table includes 60 rail transit agencies, as opposed to the 48 rail transit agencies covered by the 49 CFR part 659 requirements. Even if no other changes were addressed, increasing the number of covered rail transit agencies by 25 percent would raise the total cost of the SSO program considerably.

Rail transit agency activity	49 CFR part 659 labor hours	49 CFR part 659 total cost	MAP-21 labor hours	MAP-21 total cost
Develop system safety program plan *	6,272	\$267,814.40	**0	**0
Review and update system safety program plan	7,550	322,385.00	**0	**0
Develop system security plan *	4,036	172,337.20	0	0.00
Review and update system security plan	6,208	265,081.60	0	0.00
Develop program procedures *	5,946	253,894.20	**0	**0
Review and update program procedures	4,142	176,863.40	**0	**0
Travel	4,146	177,034.20	4,800	204,960.00
Conduct internal safety and security reviews	15,230	650,321.00	30,000	1,281,000.00
Prepare internal safety and security review reports	8,160	348,432.00	14,400	614,880.00
Prepare annual internal safety and security review report for state oversight	10,708	457,231.60	21,000	896,700.00
Conduct accident investigations	30,000	1,281,000.00	24,000	1,024,800.00
Prepare accident investigation reports	19,168	818,473.60	3,000	128,100.00
Investigate unacceptable hazardous conditions	14,030	599,081.00	60,000	2,562,000.00
Prepare unacceptable hazardous condition reports	12,032	513,766.40	0	0.00
Implement hazard management process	32,312	1,379,722.40	60,000	2,562,000.00
Prepare and submit corrective action plans	19,090	815,143.00	24,000	1,024,800.00
Coordinate hazard management program activities with state oversight	23,848	1,018,309.60	30,000	1,281,000.00
Maintain safety data	3,570	152,439.00	240,000	10,248,000.00
Plan and conduct annual emergency preparedness drill	3,382	144,411.40	4,800	204,960.00
Prepare and submit after-action report for annual emergency drill	1,090	46,543.00	1,200	51,240.00
Maintain security data	3,570	152,439.00	0	0.00
Make submissions to state oversight agency	2,618	111,788.60	9,600	409,920.00
<b>Total including non-recurring costs (Year 1)</b>	<b>237,108</b>	<b>10,124,511.60</b>	<b>526,800</b>	<b>22,494,360.00</b>
<b>Total including recurring costs only (Future Years)</b>	<b>220,854</b>	<b>9,430,465.80</b>	<b>526,800</b>	<b>22,494,360.00</b>

\* Non-recurring cost.

\*\* FTA will include these costs in the upcoming Transit Agency Safety Plan rulemaking.

*Total Estimated Impact of NPRM*

Based on the tables provided above, FTA estimates that minimum implementation of this NPRM will require a total of approximately \$20 million for the 30 States to implement, and a total of roughly \$22 million for the 60 rail transit agencies to implement.

Compared to current spending levels of State Safety Oversight activities, the proposed rule would require an incremental \$9.5 million per year on the part of SSOs and \$13.1 million for rail transit agencies, compared to current

spending levels. This represents a combined increase of roughly \$23 million per year over current levels.

In terms of the actual costs to the States, FTA is providing approximately \$22 million in grant funds each year to the States to off-set this NPRM’s annual costs. This funding is treated as a transfer for the purposes of benefit-cost analysis. In addition, since the States already expend approximately \$5 million to implement 49 CFR part 659 requirements, this existing expenditure will more than cover the 20 percent local match required in FTA’s grant

program. FTA therefore finds that that the States will bear no new net costs as a result of this NPRM. With regard to costs to the rail transit agencies, FTA currently provides funding that rail transit agencies may use for these purposes, but, since there is no safety-focused grant program similar to that for SSOs and each rail transit agency receives and uses its formula funds differently, we are unable to provide an estimate of how much FTA funds will be used here. We request comment on this point and also will revisit in the Transit Agency Safety Plan NPRM.

FTA believes that a significant portion of the incremental expenses may comprise activities that are already performed—and management information systems that are already maintained—by rail transit departments other than the safety department, such as operations, maintenance and performance monitoring. For instance, FTA reviews at rail transit agencies and SSO audits confirm that all rail transit agencies use and maintain formal systems to track rules checks performed on operators; inspections and preventative/corrective maintenance activities for vehicles and infrastructure; reports regarding the occurrence and cause of events resulting in service delays lasting longer than a prescribed period of minutes; and unusual occurrences reported during revenue service. Therefore, the cost estimate calculated above may overstate the true incremental costs of the changes to the SSO program, but is used here to be conservative. FTA requests comment on this point.

Doing more to analyze and assess this information from a safety perspective is at the core of SMS, and FTA anticipates that this level of active review of operations and maintenance data will ultimately result in cost savings for many rail transit agencies, as has been the case in the aviation and trucking industries. See, e.g., Federal Aviation Administration, Final Regulatory Evaluation: Safety Management System for Domestic, Flag, and Supplemental Operations, Docket No. FAA–2009–0671. Initially, however, FTA anticipates that the rail transit agencies will be required to spend an additional \$13.1 million per year to implement this NPRM, which equates to approximately \$228,000 per rail transit agency. Larger rail transit agencies will be required to assume a larger portion of these costs, while smaller rail transit agencies likely will spend considerably less.

As the 60 rail transit agencies affected by the NPRM gain greater experience with proactive safety data analysis focused on safety problem identification and the development of mitigation strategies, as well as enhanced verification techniques to assess the effectiveness of the implementation of these strategies, FTA expects that, as in other transportation industries, the rail transit agencies will begin receiving greater efficiencies on their return in this investment, not just related to safety. However, based on the newness of SMS implementation in the rail transit industry and SSO program, FTA does not propose including these kinds of operational gains as part of the benefits from this NPRM. FTA also has

not yet had the opportunity to conduct SMS pilots in the rail transit industry which will provide even greater clarification regarding the full impacts on both the rail transit agencies and SSO program, although the agency is planning on conducting pilots to assist the industry with implementing SMS.

The safety benefits of the proposed changes are difficult to estimate quantitatively because they involve numerous small but important changes to State and agency safety practices, and because the overall rate of serious injuries on rail transit systems is already quite low. These changes to the SSO regulations address longstanding deficiencies in the current SSO structure and improve the ability of SSOs to carry out their mission of improving safety on rail fixed guideway transit systems. In addition, NTSB has advocated for many of these changes based on their investigation of rail transit accidents, their analysis of the current SSO structure, and their expertise in ensuring safe operation across all modes of transportation. FTA likewise believes that the revised SSO structure and associated activities will enhance the safety of rail fixed guideway transit systems, increasing accountability and decreasing transit-related incidents, injuries, and fatalities.

That said, although this rule would not on its own implement SMS, it does create the organizational structure needed for SMS to be successful. Thus, FTA has considered how other transportation modes that are in the process of implementing SMS or similar systematic approaches to safety have estimated the benefits of their programs in reducing incidents and adverse outcomes. For example, although no two programs are identical, the Federal Railroad Administration (FRA) in its NPRM implementing its System Safety Program (SSP) (77 FR 55372, Sept. 7, 2012) provided anecdotal evidence that the program could lead to meaningful reductions in serious crashes. Similarly, in its final rule implementing SMS for air carriers, the Federal Aviation Administration estimated that its SMS program could yield a 20% reduction in crashes. 80 FR 1308, Jan. 8, 2015. Enhancements brought about by SMS also have supported transportation and oversight agencies in mitigating the impacts of those events that do occur.

FTA has, therefore, considered what percentage of potential safety benefits this rule would need to achieve in order to “break even” with the costs (including both the transfer of funds from FTA and the costs to the SSOs and rail transit agencies themselves) based on two different estimates of the

potential benefit pool. FTA notes that this analysis is not intended to be the full analysis of the potential benefits of SMS for transit safety, which will be conducted in our subsequent safety rulemakings; rather, it is intended to provide some quantified estimate of the potential benefits of the changes to the SSO program proposed in this rule. Further, we note that this analysis may understate the potential benefits because we did not have information on some non-injury related costs associated with many incidents, particularly regarding property damage and travel delays. Also, as mentioned above, we did not include an estimate of FTA funds provided to transit agencies for these activities because, unlike with SSO funding, we did not have sufficient certainty on this funding level.

First, over the last six years, as reported by the SSO agencies in their annual reports to FTA, the rail transit industry has averaged approximately 975 safety events meeting 49 CFR part 659 accident reporting thresholds per year (*i.e.* what must be reported). In an average year, these events result in 135 fatalities (of which approximately 85 per year involve suicides and trespassers) and 645 injuries requiring hospitalization away from the scene. Using Departmental guidance regarding the valuation of fatalities and injuries,<sup>1</sup> these incidents have an economic value of \$1.865 billion per year. Rail transit incidents also entail costs related to vehicle and infrastructure damage, delays and disruptions to commuters, and emergency response costs. For example, the May 2008 collision between two light-rail vehicles in Newton, Massachusetts, caused \$8.6 million in property damage and caused significant service delays during the evening rush hour. These additional incident costs could not be comprehensively quantified due to data limitations, and FTA requests comment on additional data that may assist it in quantifying this aspect of the analysis.

As an illustrative calculation, based on the above analysis, in order for the benefits of this rule to break even with the costs to both SSOs and rail transit agencies, this rule would only need to prevent 1.21% of these accidents per year, which does not include potentially significant unquantified costs related to property damage and disruption. FTA

<sup>1</sup> Rogoff, Peter and Thomson, Kathryn. “Guidance on Treatment of the Economic Value of a Statistical Life (VSL) in U.S. Department of Transportation Analyses.” June 13, 2014. The fatality number is \$9.2 million. Hospitalized injuries are assumed to be equivalent to a “serious” injury on the Abbreviated Injury Scale (AIS–3); this value is 10.5% of the VSL, or \$966,000.

believes that this level of accident reduction will likely be attainable based on the NPRM’s proposed enhancements to the SSO program and the associated improvements in rail transit agency safety practices that lend themselves to greater awareness of risks and hazards. This figure also does not account for the \$22 million FTA provided the SSOs or the FTA formula funds provided to the rail transit agencies. If only the SSO funds were taken into account, this rule

would only need to prevent 0.007 of these accidents per year in order to break even with the increased costs directly born by the rail transit agencies. A lower break even number would exist if FTA were able to provide an estimate of the FTA funding used by the rail transit agencies for these activities.

Second, as an alternative, we performed a more narrow analysis of the potential safety benefits of the proposed regulation by reviewing the rail transit

incidents specifically identified by the NTSB as related to inadequate safety oversight programs. Of the 19 major rail transit accidents the NTSB has investigated (or preliminarily investigated) since 2004, five had probable causes that included inadequate safety oversight on the part of the rail transit agency or FTA. These incidents and the corresponding damages and costs are detailed below.

Date	Agency	Fatalities	Minor injuries	Moderate injuries	Severe injuries	Cost of property damage
2/3/2004 .....	Chicago Transit Authority (CTA) .....	0	42	0	0	\$62,000
7/11/2006 .....	Chicago Transit Authority (CTA) .....	0	125	21	6	1,004,900
6/22/2009 .....	Washington Metropolitan Area Transit Authority (WMATA).	9	38	12	2	12,000,000
1/26/2010 .....	Washington Metropolitan Area Transit Authority (WMATA).	2	0	0	0	0
7/20/2010 .....	Miami-Dade Transit (MDT) .....	0	16	0	0	406,691
Total .....	.....	11	221	33	8	13.5 million

Again using Departmental guidance regarding the valuation of fatalities and injuries,<sup>2</sup> FTA used a value of \$9.2 million per fatality. NTSB’s qualitative injury levels were converted to the Abbreviated Injury Scale and monetized as follows: Minor is assumed to be AIS–1 (\$27,000), Moderate is assumed to be AIS–2 (\$432,000), and Severe is (conservatively) assumed to be AIS–3 (\$955,000).

As such, the total quantifiable cost for the five incidents is approximately \$142.6 million (fatalities: \$101.2 million, minor injuries: \$6.0 million, moderate injuries \$14.3 million, severe injuries: \$7.6 million, property damage: \$13.5 million) or approximately \$14.3 million per year over a ten year period. The average cost per incident was \$28.5 million, plus unquantified losses from travel delays and emergency response. The most costly incident, the 2009 WMATA crash, had total costs of over \$100 million, including \$91 million in monetized injuries and \$12 million in property damage. While improved safety oversight cannot necessarily prevent all rail transit accidents, preventing even a single incident on the scale of the 2009 WMATA crash would yield societal benefits that exceed the incremental costs of compliance across multiple years of implementation, especially when considering FTA’s funding of this program. Benefits would also accrue from the prevention of multiple, less severe incidents, including those where only property damage or travel delays occur. The agency requests comment and

information on any other accidents that have been identified as being related to inadequate safety oversight programs.

In conducting a break even analysis, as in the above analysis, when considering the incremental costs to SSOs for this rule and rail transit agencies, this rule would need to prevent 1.6 of the types of accidents significant enough to be investigated by NTSB and identified as being caused by inadequate safety oversight per year in order to break even. Similarly, when FTA funding of the SSOs (but not the rail transit agencies) is taken into account, this rule would need to prevent 0.91 of these incidents in order to break even. However, we believe that including all of the costs to the rail transit agencies may overstate the costs in this illustrative analysis and is therefore a very conservative analysis. We request comment on this point.

**Rulemaking Analyses and Notices**

All comments received on or before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable. A final rule may be published at any time after close of the comment period.

**Executive Orders 13563 and 12866; U.S. DOT Regulatory Policies and Procedures**

Executive Orders 12866 and 13563 direct Federal agencies to assess all costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits—including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Also, Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. FTA is also required under 49 U.S.C. 5329(h) to “take into consideration the costs and benefits of each action the Secretary proposes to take under” section 5329.

FTA has determined this rulemaking is a nonsignificant regulatory action within the meaning of Executive Order 12866 and is nonsignificant within the meaning of the U.S. Department of Transportation’s regulatory policies and procedures. FTA has determined that this rulemaking is not economically significant. The proposals set forth in this NPRM will not result in an effect on the economy of \$100 million or more. The proposals set forth in the NPRM will not adversely affect the economy, interfere with actions taken or planned by other agencies, or generally alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), FTA has evaluated the likely effects of the proposals set forth in this NPRM on small entities, and has determined that they will not have a significant economic impact on a substantial number of small entities. The recipients of the State Safety

<sup>2</sup> *Id.*

Oversight funds are eligible States, and the entities that will carry out the oversight of rail fixed guideway public transportation—the SSOAs—are State agencies. For this reason, FTA certifies that this action will not have a significant economic effect on a substantial number of small entities.

#### **Unfunded Mandates Reform Act**

This proposed rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 109 Stat. 48). The Federal share for the grants made under 49 U.S.C. 5329(e)(6) is eighty percent. This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$143.1 million or more in any one year (2 U.S.C. 1532).

#### **Executive Order 13132 (Federalism)**

This proposed rulemaking has been analyzed in accordance with the principles and criteria established by Executive Order 13132 (Aug. 4, 1999), and FTA has determined that the proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions. Moreover, consistent with Executive Order 13132, FTA has examined the direct compliance costs of the NPRM on State and local governments and determined that the collection and analysis of the data is eligible for Federal funding as part of the State Safety Oversight program costs.

#### **Executive Order 12372 (Intergovernmental Review)**

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed rulemaking.

#### **Paperwork Reduction Act**

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*; "PRA") and the OMB regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for the Information Collection Request abstracted below. FTA acknowledges that this NPRM entails collection of information to facilitate State Safety Oversight of rail fixed guideway public transportation systems, including, specifically, annual status reporting on the safety of rail fixed guideway public transportation

systems, triennial auditing of rail transit systems' compliance with their public transportation agency safety plans, requests for FTA certification of State Safety Oversight programs, and completion of public transportation safety certification training programs—all of which are mandated by 49 U.S.C. 5329(e). Therefore, FTA is seeking comment whether the information collected will have practical utility; whether its estimation of the burden of the proposed information collection is accurate; whether the burden can be minimized through the use of automated collection techniques or other forms of information technology; and for ways in which the quality, utility, and clarity of the information can be enhanced.

Readers should note that the information collection will be specific to each State and its State Safety Oversight Agency (SSOA), to facilitate and record the SSOA's exercise of its oversight responsibilities. The paperwork burden for each State and its SSOA will be proportionate to the number of rail fixed guideway public transportation systems within that State, the type of mode of those systems (*e.g.*, rapid rail, light rail, or streetcar), and the size and complexity of those rail transit systems. Moreover, the labor-burden of the reporting requirements such as annual reporting and triennial auditing are largely borne by the SSOA staff that will be financed, in the main, by the Federal financial assistance under 49 U.S.C. 5329(e)(6).

Also, readers should note that FTA already collects information from States and SSOAs in accordance with the requirements of 49 U.S.C. 5330 and the regulations at 49 CFR part 659. Please see FTA's currently approved collection, 2132–0558, available at <http://www.reginfo.gov/public/do/PRAMain>, which describes the SSOAs' development of program standards and their review and approval of System Safety Program Plans and System Security Plans for rail fixed guideway public transportation systems; the triennial, on-site reviews that SSOAs conduct of rail transit systems; and various other reporting, such as SSOAs' review and approval of accident reports and corrective action plans, and submittal of annual reports of safety and security oversight activities and certifications of compliance with Section 5330. Most if not all of the information collection from States and SSOAs under 49 U.S.C. 5330 and 49 CFR part 659 will carry over into the new State Safety Oversight program codified at 49 U.S.C. 5329 and the

specific requirements proposed in today's rulemaking.

Heretofore, there has been no Federal financial assistance available to States and their SSOAs to defray the costs of information collection under 49 U.S.C. 5330 and the longstanding regulations at 49 CFR part 659. The costs of information collection associated with today's NPRM would be eligible for reimbursement under the SSO grants authorized by 49 U.S.C. 5329(e)(6).

*Type of Collection:* Rail Fixed Guideway Systems; State Safety Oversight.

*Type of Review:* OMB Clearance. Updated information collection request.

*Summary of the Collection:* The information collection includes annual status reporting on the safety of rail fixed guideway public transportation systems, triennial auditing of rail transit systems' compliance with their public transportation agency safety plans, requests for FTA certification of State Safety Oversight programs, and completion of public transportation safety certification training programs.

*Need for and Expected Use of the Information to be Collected:* Collection of information for this program is necessary to ensure that state oversight agencies can perform their designated safety functions. Without comprehensive safety information from rail transit agencies, State safety oversight agencies would be unable to monitor safety as directed by 49 U.S.C. 5326, and without the State safety oversight reporting requirements, FTA would be unable to determine each State's compliance with 49 U.S.C. 5326(e).

*Respondents:* Currently there are 30 States with 60 rail fixed guideway public transportation systems. Twenty-eight of these States have already established a State Safety Oversight program and an SSOA; two more have indicated their intention to do so in the near future. The PRA estimate is based on a total of 30 States deploying SSOAs and seeking Federal financial assistance under 49 U.S.C. 5329(e)(6), per year.

*Frequency:* Information will be collected at least once per year.

*Estimated Total Annual Burden Hours:* 230,130, estimated as follows: Annually, each SSOA would devote approximately 3,962 hours to information collection activities for each of the rail transit systems in the State's jurisdiction. Combined, the SSOAs would devote approximately 118,860 hours on those information collection activities that year. The local governments affected by 49 U.S.C. 5329(e) and today's proposed rulemaking, including the 60 rail fixed

guideway public transportation systems, would spend an estimated annual total of 111,300 hours on information collection activities, or approximately 1,855 hours each. Also, the States and SSOAs would spend approximately 50 hours each in the preparation of applications for Federal financial assistance for their SSO programs, for a combined estimate of 1,500 hours per year. FTA will post the supporting documentation for this collection in the docket for this NPRM.

#### **National Environmental Policy Act**

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) requires Federal agencies to analyze the potential environmental effects of their proposed actions in the form of a categorical exclusion, environmental assessment, or environmental impact statement. This proposed rulemaking is categorically excluded under FTA's environmental impact procedure at 23 CFR 771.117(c)(20), pertaining to planning and administrative activities that do not involve or lead directly to construction, such as the promulgation of rules, regulations, and directives. FTA has determined that no unusual circumstances exist in this instance, and that a categorical exclusion is appropriate for this rulemaking.

#### **Executive Order 12630 (Taking of Private Property)**

This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1998), Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### **Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations)**

Executive Order 12898 (Feb. 8, 1994) directs every Federal agency to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on minority populations and low-income populations. The USDOT environmental justice initiatives accomplish this goal by involving the potentially affected public in developing transportation projects that fit harmoniously within their communities without compromising safety or mobility. Additionally, FTA has issued a program circular addressing environmental justice in public transportation, C 4703.1, *Environmental Justice Policy Guidance for Federal Transit Administration Recipients*. This circular provides a

framework for FTA grantees as they integrate principles of environmental justice into their transit decision-making processes. The Circular includes recommendations for State Departments of Transportation, Metropolitan Planning Organizations, and public transportation systems on (1) How to fully engage environmental justice populations in the transportation decision-making process; (2) How to determine whether environmental justice populations would be subjected to disproportionately high and adverse human health or environmental effects of a public transportation project, policy, or activity; and (3) How to avoid, minimize, or mitigate these effects.

#### **Executive Order 12988 (Civil Justice Reform)**

This action meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996), Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Executive Order 13045 (Protection of Children)**

FTA has analyzed this proposed rulemaking under Executive Order 13045 (April 21, 1997), Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this proposed rule will not cause an environmental risk to health or safety that may disproportionately affect children.

#### **Executive Order 13175 (Tribal Consultation)**

FTA has analyzed this proposed rulemaking under Executive Order 13175 (Nov. 6, 2000) and finds that the action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; will not preempt tribal laws; and will not impose any new consultation requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

#### **Executive Order 13211 (Energy Effects)**

FTA has analyzed this proposed rulemaking under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that this action is not a significant energy action under the Executive Order, given that the action 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 requirement.

#### **Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

#### **Statutory/Legal Authority for This Rulemaking**

This rulemaking is issued under the authority of section 20021(a) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), which requires the Secretary of Transportation to prescribe regulations for State Safety Oversight of rail fixed guideway public transportation systems. The authority is codified at 49 U.S.C. 5329(e)(9)(C). Also, the Secretary is authorized to issue regulations to carry out the general provisions of the Public Transportation Safety Program pursuant to 49 U.S.C. 5329(f)(7).

#### **Regulation Identification Number**

A Regulation Identification 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 set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### **List of Subjects in 49 CFR Part 674**

Grant Programs—Transportation, Mass Transportation, Reporting and recordkeeping requirements, Safety.

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

**Therese McMillan,**  
*Acting Administrator.*

For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5329(e), 5329(f), and the delegations of authority at 49 CFR 1.91, FTA hereby amends Chapter VI of Title 49, Code of Federal Regulations, by adding Part 674, as set forth below:

#### **Title 49—Transportation**

#### **PART 674—STATE SAFETY OVERSIGHT**

##### **Subpart A—General Provisions**

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  - 674.33 Notifications: Accidents and incidents.
  - 674.35 Investigations.
  - 674.37 Corrective action plans.
  - 674.39 State Safety Oversight Agency annual reporting to FTA.
  - 674.41 Conflicts of interest.
- Appendix A to Part 674—Safety Management Systems Framework

#### Subpart A—General Provisions

##### § 674.1 Purpose.

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

##### § 674.3 Applicability.

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

##### § 674.5 Policy.

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

(b) In accordance with 49 U.S.C. 5329(e), a State that has a rail fixed guideway public transportation system 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.

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

##### § 674.7 Definitions.

As used in this part:

*Accident* means an Event that involves any of the following: A fatality; one or more persons suffers a serious injury; property or equipment damage equal to or greater than \$25,000; a mainline derailment, occurring at any location; an evacuation of equipment or a station to prevent injury or loss of life.

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

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

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

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

*FRA* means the Federal Railroad Administration, an agency within the United States Department of Transportation.

*FTA* means the Federal Transit Administration, an agency within the United States Department of Transportation.

*Event* means any Accident, Incident or Occurrence.

*Hazard* means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, or property of a rail fixed guideway public transportation system; or damage to the environment.

*Incident* means an Event that exceeds the definition of an Occurrence, but does not meet the requirements of an Accident. Examples include, but are not limited to: A near miss or close call, a railyard derailment, non-serious injuries, a violation of a safety standard, or equipment or property damage less than \$25,000 that affects transit operations.

*Individual* means a passenger, employee, contractor, pedestrian, trespasser, or any person on the property of a rail fixed guideway public transportation system.

*Investigation* means the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.

*National Public Transportation Safety Plan* means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53; authorized by 49 U.S.C. 5329(b).

*Occurrence* means an Event with no injuries, where damage occurs to property or equipment but does not affect transit operations.

*Passenger* means a person who is on board, boarding, or alighting from a vehicle on a rail fixed guideway public transportation system for the purpose of travel.

*Public Transportation Safety Certification Training Program* means either the certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems, and employees of public transportation agencies directly responsible for safety oversight, established through interim provisions in accordance with 49 U.S.C. 5329(c)(2), or the program authorized by 49 U.S.C. 5329(c)(1).

*Public Transportation Agency Safety Plan* means the comprehensive agency safety plan for a transit agency, including a Rail Transit Agency, that is required by 49 U.S.C. 5329(d); based on a Safety Management System. For convenience, a Public Transportation Agency Safety Plan is referred to as a "Transit Agency Safety Plan" throughout these regulations for State Safety Oversight.

*Rail fixed guideway public transportation system* means any fixed guideway system that uses rail, is

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

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

*Risk* means the composite of predicted severity and likelihood of the potential effect of a hazard.

*Risk control* means a method or methods to eliminate or reduce the effects of hazards.

*Safety assurance* means processes within a Rail Transit Agency's Safety Management System that function to ensure the performance and effectiveness of safety risk controls, and to ensure that the Rail Transit Agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

*Safety Management System (SMS)* means the formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a Rail Transit Agency's safety risk controls. SMS includes systematic procedures, practices, and policies for managing risks and hazards.

*Safety policy* means a Rail Transit Agency's documented commitment to safety, which defines the Rail Transit Agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.

*Safety promotion* means a combination of training and communication of safety information to support SMS as applied to the Rail Transit Agency's rail fixed guideway public transportation system.

*Safety risk management* means a process within a Rail Transit Agency's SMS that describes the Rail Transit Agency's practice of SMS, and its means for identifying hazards and analyzing, assessing, and controlling risk.

*Serious injury* means any injury which:

(1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received;

(2) results in a fracture of any bone (except simple fractures of fingers, toes, or nose);

(3) causes severe hemorrhages, nerve, muscle, or tendon damage;

(4) involves any internal organ; or

(5) involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

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

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

*Transit Agency Safety Plan* means the comprehensive agency safety plan for a transit agency, including a Rail Transit Agency, that is required by 49 U.S.C. 5329(d); based on a Safety Management System. See also, Public Transportation Agency Safety Plan.

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

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

(a) Pursuant to section 20030(e) of the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112-141; July 6, 2012) ("MAP-21"), the statute now codified at 49 U.S.C. 5330, titled "State safety oversight," will be repealed three years after the effective date of the regulations set forth in this part.

(b) Upon the effective date of the regulations set forth in this part, the regulations now codified at part 659 of this chapter will be rescinded.

#### **Subpart B—Role of the State**

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

Within three years of the effective date of this part, every State that has a rail fixed guideway public transportation system must have a State Safety Oversight Program (SSOP) that has been approved by the Administrator. FTA will audit each State's compliance at least triennially, consistent with 49 U.S.C. 5329(e)(9). At minimum, an SSOP 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 the successful 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 State safety oversight agency.

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

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

(1) The SSOA is financially and legally independent from any public transportation agency the SSOA is obliged to oversee;

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

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

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

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

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

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

equivalent entity, of the rail fixed guideway public transportation system.

(b) At the request of the Governor of a State, the Administrator may waive the requirements for financial and legal independence and the prohibitions on employee conflict of interest under paragraphs (a)(1) and (a)(3) of this section, if the rail fixed guideway public transportation systems in design, construction, or revenue operations in the State have fewer than one million combined actual and projected rail fixed guideway revenue miles per year or provide fewer than ten million combined actual and projected unlinked passenger trips per year. However:

(1) If a State shares jurisdiction over one or more rail fixed guideway public transportation systems with another State, and has one or more rail fixed guideway public transportation systems that are not shared with another State, the revenue miles and unlinked passenger trips of the rail fixed guideway public transportation system under shared jurisdiction will not be counted in the Administrator's decision whether to issue a waiver.

(2) The Administrator will rescind a waiver issued under this subsection if the number of revenue miles per year or unlinked passenger trips per year increases beyond the thresholds specified in this subsection.

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

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

(a) Ensure that uniform safety standards and procedures in compliance with 49 U.S.C. 5329 are applied to that rail fixed guideway public transportation system, through a State safety oversight 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 a State safety oversight 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 State Safety Oversight Programs. This Federal financial assistance may be used for reimbursement of both the operational and administrative expenses of State

Safety Oversight 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 State Safety Oversight Agency 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 Federal Railroad Administration.

(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 Safety Oversight Program meets the requirements of 49 U.S.C. 5329(e). Also, the Administrator must determine whether a State Safety Oversight 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 ("Transit Agency Safety Plans").

(b) The Administrator must issue a certification to a State whose State Safety Oversight Program meets the requirements of 49 U.S.C. 5329(e). The Administrator must issue a denial of certification to a State whose State Safety Oversight 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 State Safety Oversight 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 State Safety Oversight Program for the Administrator's approval. In the event the State is unable to modify its State Safety Oversight 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 State Safety Oversight 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 SSOP can be certified; or

(3) Requiring all of the rail fixed guideway public transportation systems governed by the SSOP to spend up to 100 percent of their Federal funding under 49 U.S.C. chapter 53 for "safety-related improvements" on their systems, only, until such time as the SSOP can be certified.)

(d) In making a determination whether to issue a certification or a denial of certification for a State Safety Oversight Program, the Administrator must evaluate whether the cognizant State Safety Oversight Agency has sufficient authority, resources, and expertise to oversee the number, size, and complexity of the rail fixed guideway public transportation systems that operate within the State, or will attain the necessary authority, resources, and expertise in accordance with a developmental plan and schedule set forth to a sufficient level of detail in the State Safety Oversight Program.

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

(a) In making a decision to impose financial penalties as authorized by 49 U.S.C. 5329(e), and determining the nature and amount of the financial penalties, the Administrator shall consider the extent and circumstances of the noncompliance; the operating budgets of the State Safety Oversight Agency and the rail fixed guideway public transportation systems that will be affected by the financial penalties; and such other matters as justice may require.



(b) If a State fails to establish a State Safety Oversight 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 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, a State Safety Oversight Agency, or a Rail Transit Agency 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) A State Safety Oversight Agency (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 principles and methods of Safety Management Systems, and all applicable Federal and State law.

(b) Basic principles and methods of Safety Management Systems are set forth in an Appendix to this part, the “Safety Management Systems (SMS) Framework.”

(c) An SSOA must review and approve the Transit Agency Safety Plan for every rail fixed guideway public transportation system within its oversight. An SSOA must oversee a Rail Transit Agency’s execution of its Transit Agency Safety Plan. An SSOA must enforce the execution of a Transit 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 Transit Agency Safety Plan meets the requirements for Public Transportation Agency Safety Plans at 49 U.S.C. 5329(d).

(d) An SSOA has primary responsibility for the investigation of any hazard or risk that threatens the

safety of a rail fixed guideway public transportation system within its oversight. An SSOA has primary responsibility for the investigation of any allegation of noncompliance with a Transit Agency Safety Plan. These responsibilities do not preclude the Administrator from exercising his or her authority under 49 U.S.C. 5329(f) or 49 U.S.C. 5330.

(e) An SSOA has primary responsibility for the investigation of an accident on a rail fixed guideway public transportation system. This responsibility does not preclude the Administrator from exercising his or her authority under 49 U.S.C. 5329(f) or 49 U.S.C. 5330.

(f) An SSOA may enter into an agreement with a contractor for assistance in investigating accidents and incidents and for expertise the SSOA does not have within its own organization.

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

**§ 674.27 State safety program standards.**

(a) A State Safety Oversight Agency (SSOA) must adopt and distribute a written State safety oversight program standard, consistent with the State Safety Oversight Program, the National Public Transportation Safety Plan, and the principles and methods of Safety Management Systems. This program standard must identify the processes and procedures that govern the activities of the SSOA. Also, this program standard must identify the processes and procedures a Rail Transit Agency must have in place to comply with the program standard. At minimum, this program standard must meet the following requirements:

(1) *Program management.* The 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 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) *Safety Management Systems.* The program standard must explain how the SSOA will apply the principles and methods of Safety Management Systems (SMS) in conducting oversight of Transit Agencies within its jurisdiction. The program standard must identify the SSOA official who serves as the functional equivalent of an accountable executive in a Rail Transit Agency, and all other officials in positions of executive leadership in the State or SSOA responsible for carrying out the State Safety Oversight Program. The program standard must set an explicit policy and objectives for safety in rail fixed guideway public transportation throughout the State. The program standard must explain the role of the SSOA in overseeing a Rail Transit Agency’s practice of risk management, safety assurance, and safety promotion, throughout the Rail Transit Agency’s organization. Basic principles and methods of SMS are set forth in an Appendix to this part, the “System Management Systems (SMS) Framework.”

(4) *Oversight of Rail Transit Agency Safety Plans and Transit Agencies’ internal safety reviews.* The program standard must explain the role of the SSOA in overseeing a Rail Transit Agency’s execution of its Transit Agency Safety Plan and any related safety reviews of the Rail Transit Agency’s rail 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 a Rail Transit Agency’s accountable executive. Also, the program standard must establish a procedure whereby a Rail Transit Agency will notify the SSOA before the Rail Transit Agency conducts an internal review of any aspect of the safety of its rail fixed guideway public transportation system.

(5) *Triennial SSOA audits of Rail Transit Agency Safety Plans.* The program standard must explain the process the SSOA will follow and the criteria the SSOA will apply in conducting a complete audit of the Rail Transit Agency’s compliance with its Transit Agency Safety Plan at least once every three years, in accordance with 49 U.S.C. 5329(d) and 49 U.S.C. 5329(e)(4)(iv). Alternatively, the SSOA and Rail Transit Agency 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 a Rail Transit Agency will follow to

manage findings and recommendations arising from the triennial audit.

(6) *Accident and incident notification.* The program standard must establish requirements for a Rail Transit Agency to notify the SSOA of accidents and incidents on the Rail Transit Agency'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 Rail Transit Agency must submit to the SSOA.

(7) *Investigations.* The program standard must identify thresholds for incidents and accidents that require a Rail Transit Agency to conduct an investigation. Also, the program standard must address how the SSOA will coordinate its investigation with a Rail Transit Agency's own internal investigation; the role of the SSOA in supporting any investigation conducted or findings and recommendations made by the National Transportation Safety Board; and procedures for protecting the confidentiality of the investigation reports.

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

(b) At least once a year an SSOA must submit its 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(e)(8).

**§ 674.29 Transit Agency Safety Plans: General requirements.**

(a) In determining whether to approve a Transit Agency Safety Plan for a rail fixed guideway public transportation system, a State Safety Oversight Agency (SSOA) must evaluate whether the Transit Agency Safety Plan is based on an adequate Safety Management System;

is consistent with the National Public Transportation Safety Plan; is in compliance with the requirements of 49 U.S.C. 5329(d), and the program standard set by the SSOA.

(b) In determining whether a Transit Agency Safety Plan is based on an adequate Safety Management System, an SSOA must determine, specifically, whether the Transit Agency Safety Plan sets forth a sufficiently explicit safety policy for the rail fixed guideway public transportation system; a sufficiently explicit process for safety risk management, with adequate means of risk control for the rail fixed guideway public transportation system; adequate means of safety assurance for the rail fixed guideway public transportation system; and adequate means of safety promotion to support the execution of the Transit Agency Safety Plan by all employees, agents, and contractors for the rail fixed guideway public transportation system.

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

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

At least once every three years, a State Safety Oversight Agency (SSOA) must conduct a complete audit of a Rail Transit Agency's compliance with its Transit Agency Safety Plan. Alternatively, an SSOA and a Rail Transit Agency may agree that the SSOA will 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 Transit Agency Safety Plan, recommendations for improvements, and a corrective action plan, if necessary or appropriate. The Rail Transit Agency must be given an opportunity to comment on the findings and recommendations.

**§ 674.33 Notifications: Accidents and Incidents.**

(a) *Two-hour notification.* In addition to the requirements for accident notification set forth in a State Safety Oversight Program standard, a Rail Transit Agency must notify both the State Safety Oversight Agency (SSOA) and the Administrator within two hours of any Accident or Incident occurring on a rail fixed guideway public

transportation system. The criteria and thresholds for Accident or Incident notification and reporting are defined in a reporting manual developed for the electronic reporting system specified by FTA as required in § 674.39(b).

(b) *FRA notification.* In any instance in which a Rail Transit Agency must notify the Federal Railroad Administration (FRA) of an Accident or Incident as defined by 49 CFR 225.5 (*i.e.*, shared use of the general railroad system trackage or corridors), the Rail Transit Agency must also notify the SSOA and the Administrator of the Accident or Incident within the same time frame as required by the FRA.

**§ 674.35 Investigations.**

(a) A State Safety Oversight Agency (SSOA) must conduct an independent investigation of any Accident or Incident that is reported to the SSOA and the Administrator in accordance with § 674.33(a). In any instance in which a Rail Transit Agency is conducting its own internal investigation of the Accident or Incident, the SSOA and the Rail Transit Agency must coordinate their investigations in accordance with the State safety oversight 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 Incident in accordance with established reporting requirements. The report must describe the investigation activities; identify the factors that caused or contributed to the Accident or Incident; and set forth a corrective action plan, as necessary or appropriate. The SSOA must formally adopt the report of an Accident or Incident and transmit that report to the Rail Transit Agency for review and concurrence. If a Rail Transit Agency does not concur with an SSOA's report, the SSOA may allow the Rail Transit Agency to submit a written dissent from the report, which may be included in the report, in the discretion of the SSOA.

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

**§ 674.37 Corrective action plans.**

(a) In any instance in which a Rail Transit Agency must develop and carry out a corrective action plan, the State Safety Oversight Agency (SSOA) must review and approve the plan before the Rail Transit Agency carries out the plan. A corrective action plan must describe, specifically, the actions the Rail Transit

Agency will take to minimize, control, correct, or eliminate the risks and hazards identified by the plan, the schedule for taking those actions, and the individuals responsible for taking those actions. The Rail Transit Agency must periodically report to the SSOA the Rail Transit Agency's progress in carrying out the corrective action plan. The SSOA may monitor the Rail Transit Agency's progress in carrying out the corrective action plan through unannounced, on-site inspections, or any other means the SSOA deems necessary or appropriate.

(b) In any instance in which a safety Event on the Rail Transit Agency's rail fixed guideway public transportation system is the subject of an investigation by the National Transportation Safety Board (NTSB), the SSOA must evaluate whether the findings or recommendations by the NTSB require a corrective action plan by the Rail Transit Agency, and if so, the SSOA must order the Rail Transit Agency to develop and carry out a corrective action plan.

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

(a) On or before March 15 of each year, a State Safety Oversight Agency (SSOA) must submit the following material to FTA:

(1) The State safety oversight program standard adopted in accordance with § 674.27, with an indication of any changes to the program standard during the preceding twelve months;

(2) Evidence that each of its employees and contractors is in compliance with the requirements of the Public Transportation Safety Certification Training Program;

(3) A publicly available report that summarizes its oversight activities for the preceding twelve months, describes the causal factors of accidents or incidents identified through investigation, and identifies the status of corrective actions, changes to Transit Agency Safety Plans, and the level of effort by the SSOA in carrying out its oversight activities;

(4) A summary of the triennial audits completed during the preceding twelve months, and the Transit Agencies' progress in carrying out corrective action plans arising from triennial audits conducted in accordance with § 674.31;

(5) Evidence that the SSOA has reviewed and approved any changes to the Transit Agency Safety Plans during the preceding twelve months; and

(6) A certification that the SSOA is in compliance with the requirements of this part.

(b) These materials must be submitted electronically through a reporting system specified by FTA.

#### **§ 674.41 Conflicts of interest.**

(a) A State Safety Oversight Agency (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.

### **Appendix A to Part 674 to Part 674— Safety Management Systems (SMS) Framework**

#### **I. Overview**

The Federal Transit Administration (FTA) is adopting the principles and methods of Safety Management Systems (SMS) as the basis for the National Public Transportation Safety Program. With a focus on organization-wide safety policy, proactive hazard management, strong safety communication between workers and management, targeted safety training, and clear accountabilities and responsibilities for critical safety activities, SMS provides an enhanced structure for addressing the safety provisions specified in the Moving Ahead for Progress in the 21st Century Act (MAP-21).

SMS is a formal, top-down, organization-wide approach to managing safety risks and assuring the effectiveness of safety risk mitigations. The specific components and sub-components of FTA's SMS framework are discussed in Section V of this Appendix.

#### **II. Background**

Building on the public transportation industry's four decades of experience with system safety, SMS supplements traditional engineering processes by integrating management systems and organizational culture into critical safety risk management and assurance functions. As a result, SMS ensures that each public transportation agency, no matter its size or service environment, has the necessary organizational structures, accountabilities, activities and tools in place to direct and control resources to optimally manage safety.

Focusing on collaboration and information sharing, SMS helps management and labor work together to control risk better, detect and correct safety problems earlier, share and analyze safety data more effectively, and measure safety performance more clearly. The ultimate goal of SMS is to ensure that

the public transportation agency has an inclusive and effective process to direct resources to optimally manage safety.

SMS establishes lines of safety accountability throughout an organization, starting at the executive management level, and provides a structure to support a sound safety culture from the front-line to the boardroom. SMS enables agencies to address organizational deficiencies that may lead to safety issues or unidentified safety risks, identify system-wide trends in safety, and manage the potential consequences of hazards before they result in incidents or accidents.

SMS is scalable to organizations of any size and flexible enough to be effective in all transit environments, from the largest urban operator to the smallest rural transit system provider. SMS also provides oversight agencies with new tools, approaches, and opportunities to align safety priorities and promote continuous improvement.

In the public transportation safety provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21), FTA, the States and the public transportation industry have been presented with a rare opportunity to implement a modern regulatory framework that will help a safe industry become even safer. Adopting SMS principles will further deepen the industry's commitment to the safety of its passengers, employees, equipment and facilities and will strengthen its core competencies in hazard identification, safety data acquisition and analysis, and internal auditing. Most significantly, SMS offers the promise of a stronger culture for employees and managers to work together to solve safety problems.

#### **III. Scalability and Flexibility**

Service providers within the public transportation industry can vary greatly based on size, complexity and operating characteristics. Transit agency management needs processes, activities and tools that scale to size, complexity and uniqueness of the transit system. SMS provides such an approach. SMS is flexible, and can be scaled to the mode, size, and complexity of any transit operator, in any environment—urban, suburban, or rural. The extent to which the transit agency's SMS processes, activities and tools are used and documented will vary from agency to agency. For a small bus operation, that SMS is going to be simple and straightforward. For a larger transit agency with hundreds or thousands of employees and multiple modes, that system is going to be more complicated.

SMS scales itself to reflect the size and complexity of the operation, but the fundamental accountability remains the same. FTA's SMS Framework establishes the accountabilities, processes and activities necessary to implement an effective SMS. However, the transit agency will determine the level of detail necessary to identify and evaluate their own unique safety risks and target their resources to manage those safety risks.

#### **IV. Executive Management Commitment**

SMS establishes lines of safety accountability throughout an organization,

particularly at the senior management level, and provides a structure to support a sound safety culture. Because SMS is a management approach, safety accountability must reside at the highest levels of management within a transit agency. In FTA's SMS Framework, this would be the *Accountable Executive*. Typically, the Accountable Executive will be the head of a transit agency, its Chief Executive Officer, President, General Manager, or Executive Director. Whatever the person's job title, the Accountable Executive plays the central role in developing and carrying out an SMS. Without the Accountable Executive's active endorsement and acceptance of accountability for the safety performance of a public transportation agency, an SMS cannot be effective. The extent to which an Accountable Executive will be involved in day-to-day SMS activities will depend both on the individual executive and the size and complexity of the organization.

SMS does not require an Accountable Executive to be an expert in safety. Rather, the Accountable Executive must understand how the SMS works in his or her organization; know the key personnel to call upon for evaluating safety information; and grasp the significant safety issues that face the organization. The Accountable Executive should use the reports and analysis performed as part of the SMS process to support the agency's decision-making. For an Accountable Executive, safety information, like financial, schedule and service information, is an integral part of how resources are allocated, budgets are set, and risks are managed.

#### V. Key Components and Functional Elements of a Safety Management System

As depicted below, FTA's SMS Framework is comprised of four key components and eleven sub-components that work together to refine, reinforce, and sustain the implementation of an SMS throughout a transit agency:

- (1) Safety Management Policy,
- (2) Safety Risk Management,
- (3) Safety Assurance, and
- (4) Safety Promotion.

The component **Safety Management Policy** provides for the foundations of a public transportation agency's system for the management of safety. This component encompasses the agency's commitment to achieve explicit safety objectives and safety performance targets, as well as the agency's compromise to provide the necessary organizational structures to accomplish them. Under this component, senior leadership and employee responsibilities for the management of safety throughout the agency are respectively and distinctly established. This component also commits senior leadership to actively engage in the oversight of the agency's safety performance, by requiring regular review of the safety management policy statement, budget, and program by a designated Accountable Executive.

The sub-components of the Safety Management Policy component are:

*Safety management policy statement*—Clearly, succinctly and unambiguously

frames the fundamentals upon which the transit agency will build and operate its SMS, documents management's commitment to the SMS, and inserts the management of safety at the same level of the topmost business processes of the transit agency.

Critical to the value of the safety management policy statement, and to the operation of the SMS overall, is the introduction of an unambiguous clause reflecting executive level support for an effective employee safety reporting program.

The safety management policy statement also documents management's commitment to continuous safety improvement, as well as to the continuous improvement of the safety management system itself.

The Accountable Executive signs the safety management policy statement, which is distributed, with visible support from executive management, throughout the transit agency.

*Safety accountabilities and responsibilities*—An explicit definition of the lines of accountability and responsibility for the management of safety within the transit agency, as well as the authorities required to deliver accountabilities and discharge responsibilities.

This sub-component provides for the identification of an Accountable Executive and the definition of the required accountabilities, responsibilities and authorities of the post holder. The Accountable Executive is ultimately accountable for the implementation and continuous operation of the transit agency's SMS, ensuring that the transit agency has allocated resources and implemented mechanisms for the efficient and effective management of safety through its SMS to an extent commensurate to its needs, possibilities and constraints.

The sub-component also provides for the appointment of a subject matter expert for the implementation and day-to-day operation of the SMS, the lines of relationship of the post holder with the Accountable Executive and the transit agency's governance structure, and the appointment of the staff necessary to support the post holder in the day-to-day operation of the SMS.

It lastly provides for the definition of accountabilities, responsibilities and authorities of executive and senior management regarding the effective and efficient operation of the SMS.

While safety management accountabilities, responsibilities and their delegation, and authorities may vary from agency to agency, they must nevertheless be defined and implemented.

*Integration with public safety and emergency management*—All transit agencies have some level of emergency plans, procedures and/or protocols that direct both internal emergency response to transit related events, and external emergency response in coordination with Local Emergency Management for community-wide emergency activities. Integration of plans, procedures and protocols through specific SMS-related activities provides a 360-degree vision of how the transit agency meets its overall safety emergency management responsibilities.

*SMS documentation and records*—SMS activities must be formally documented and available for reference throughout the organization. Therefore, a formal system of records and documentation control is an important element within the operation of SMS.

This sub-component provides for the requirements of the agency to document its overall approach to the management of system, the activities for SMS implementation and its subsequent day-to-day operation, and the activities or procedures for the management of new or revised safety requirements, regulatory or otherwise.

While the extent and complexity of the SMS documentation will be commensurate to the agency's size and complexity, SMS documentation and records must be readily available to all those with accountabilities for SMS performance or responsibilities for SMS implementation and operation.

The component Safety Risk Management provides for the activities and tools a transit agency needs in order to identify precursors of safety concerns that might present during service delivery as well as their supporting operations. This allows a transit agency to anticipate the potential negative consequences of safety concerns, by evaluating whether it has taken enough precautions to control the potential consequences of identified safety concerns.

Safety risk management is an ongoing and never-ending process. Safety risk management involves activities that allow the identification of hazards associated with the operation and maintenance of a public transportation system. Once hazards are identified, the Safety Risk Management process provides for the analysis of the potential consequences of identified hazards, for the evaluation of the safety risk of the potential consequences, and lastly for the development and implementation safety risk mitigations to address the anticipated, potential consequences of hazards.

The sub-components of Safety Risk Management component are:

*Hazard identification and analysis*—Provides for the critical first two steps in the SRM process. Under SMS, these steps help a transit agency identify and address concerns before they escalate into incidents, and provide a foundation for the evaluation activities that come next. It is important that hazard identification and analyses are supported agency-wide. Safety concerns and issues are an inevitable part of transit operations. Only after hazards are identified, can they be analyzed. Therefore, an explicit hazard identification program is critical. In this respect, a transit agency's employees are an irreplaceable asset for hazard identification.

*Safety risk evaluation and mitigation*—Safety risk evaluation provides for the evaluation of the magnitude of the potential consequence of identified hazards. The term safety risk refers to the likelihood that people could be harmed or equipment could be damaged by the potential consequences of a hazard. Therefore, safety risk is expressed and measured by the predicted probability and severity of the hazard's potential

consequences. Safety risk evaluation must include the evaluation of existing mitigations to help determine whether the potential consequences of the hazard must be further mitigated. Safety risk mitigation is an action or resource which, when applied to an evaluated safety risk, reduces the probability and/or severity of the potential consequence of a hazard. Safety risk mitigation enables a transit agency to actively “manage” safety risk in a manner that is aligned with its safety performance targets and consists of initial, ongoing and revised mitigations.

The component **Safety Assurance** ensures that chosen mitigations are appropriate and effective in addressing the evaluated safety risks, and generates confidence that the SMS contributes to the agency meeting its safety objectives and safety performance targets. This is achieved through the collection, analysis, and assessment of safety data. Safety Assurance is performed through inspections, observations, and auditing activities to support safety oversight and performance monitoring. Safety Assurance also helps a transit agency evaluate whether or not an anticipated change may impact safety.

The sub-components of the Safety Assurance component are:

*Safety performance monitoring and measurement*—An ongoing activity that ensures senior management has the data and information it needs to measure whether safety risk mitigations and safety-related activities are appropriate and effective. Safety performance monitoring does not as much involve monitoring individuals, but rather monitoring the safety performance of the organization itself.

*Management of change*—SMS places emphasis on managing change. There is a very simple reason for this. Whenever change is introduced within a public transportation

agency, there is the potential that the change may impact safety by impacting existing safety risk mitigations. Therefore, the safety assurance component of an effective SMS will evaluate the anticipated change and, if it might impact safety, ensure that it is further evaluated through the transit agency’s safety risk management process.

*Continuous improvement*—Ensures constant improvement in the functioning of the entire SMS and includes ongoing management support to continuously monitor SMS implementation. SMS evaluation is necessary to ensure that the SMS continues to meet its core safety objectives; transit agency safety performance is monitored against its safety performance targets, and identified weaknesses are immediately addressed.

The component **Safety Promotion** requires a combination of training and communication of safety information to employees to heighten the efficiency and effectiveness of the transit agency’s SMS. Safety promotion provides visibility and knowledge of executive management’s commitment to safety performance and an effective SMS throughout the transit agency. It typically includes formal and informal platforms for the communication of safety management information throughout the organization, safety management training for employees, training on employee roles and responsibilities within the SMS, and training on the mechanism for employees to report safety concerns.

Safety promotion is a critical component of an efficient and effective SMS, setting the tone for the transit agency’s safety management activities and helping to build a positive safety culture.

The two sub-components of the Safety Promotion component are:

*Safety communication*—Critical to maintaining the two-way feedback loop between front-line employees and management and establishing a safety culture that promotes the effective reporting of safety concerns or issues. Effective safety communication and SMS education will ensure that personnel are aware of the SMS and their role within it. It also ensures that safety critical information is conveyed in a timely manner, and effectively explains why particular safety actions are taken and why safety procedures are introduced or changed.

*Competencies and training*—Provides for the development, through training, of key safety management competencies essential for the effective implementation and operation of an SMS, including safety reporting competencies and safety data management competencies. Each competency should be primarily aimed at a specific employee level.

At the front-line employee level, safety management training should provide for the development of *safety reporting competencies*, i.e. employees should receive formal training on the expected contents of employee safety reporting (what to report; what not to report) and the procedures established for reporting. At the subject matter expert level (key safety management staff), formal training should develop *safety data management competencies*, i.e. how to analyze safety data, how to extract information, and how to turn safety information into safety *intelligence* for senior management decision-making. This also includes formal training to develop safety data collection, storage and retrieval competencies.

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