PROGRAM STANDARD

RAIL SAFETY AND SECURITY OVERSIGHT

OKLAHOMA DEPARTMENT OF TRANSPORTATION
STATE SAFETY OVERSIGHT PROGRAM
JANUARY 2020

The governing document for rail safety and security oversight that specifies the safety and security requirements that all rail fixed guideway public transportation systems within the State of Oklahoma must meet to comply with federal and state safety laws and rules, including 49 U.S. Code § 5329, Public Transportation Safety Program / Fixing America's Surface Transportation (FAST) Act, 49 CFR Part 674, State Safety Oversight and 49 CFR Part 673, Public Transportation Agency Safety Plan.

ODOT
Oklahoma Department of Transportation

OFFICE OF MOBILITY AND PUBLIC TRANSIT

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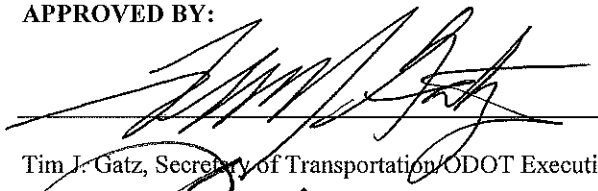
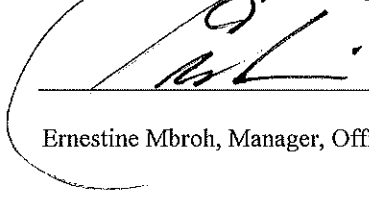
Approvals

The individuals below, submitting and signing this Program Standard for Rail Transit Safety and Security Oversight, verify that it was prepared in accordance with the requirements set forth by the Federal Transit Administration in 49 U.S. Code § 5329, Public Transportation Safety Program / Fixing America's Surface Transportation Act (FAST) Sections 3013, 3020, 3021, 3022 and the current implementation rules, 49 CFR Part 674, State Safety Oversight, Final Rule; 49 CFR Part 673, Public Transportation Agency Safety Plan; 49 CFR Part 672, Public Transportation Safety Certification Training Program; 49 CFR Part 670, National Public Transportation Safety Program; 49 CFR Part 630, National Transit Database; 49 CFR Part 625, Transit Asset Management; and the Oklahoma Statutes, Title 69, Section 4019; that they are authorized representatives of the State of Oklahoma Department of Transportation, the designated State Safety Oversight Agency; and that their signatures attest that all items and conditions contained in this Program Standard are understood, accepted, and approved.

APPROVED BY:



Tim J. Gatz, Secretary of Transportation/ODOT Executive Director — Date 01/30/20



Ernestine Mbroh, Manager, Office of Mobility and Public Transit — Date 1/30/20

Revisions

Revision #	Effective Date	Revised Section (s)	Purpose
1	January 31, 2020	All	Revised Program Standard to comply with the new requirements established by federal and state laws and rules: • 49 U.S. Code § 5329, Public Transportation Safety Program / Fixing America's Surface Transportation (FAST) Act; • 49 CFR Part 674, State Safety Oversight; • 49 CFR Part 673, Public Transportation Agency Safety Plan; • 49 CFR Part 672, Public Transportation Safety Certification Training Program; • 49 CFR Part 670, National Public Transportation Safety Program; • 49 CFR Part 630, National Transit Database; • 49 CFR Part 625, Transit Asset Management; and • Oklahoma Statutes, Title 69, Section 4019, Oklahoma State Safety Oversight Program
0	June 1, 2018	All	Original issue of Program Standard

Statement of Program and Policy Objectives

Authority

The State of Oklahoma and the Oklahoma Department of Transportation (ODOT), the State Safety Oversight Agency, are committed to achieving compliance with the statutory requirements specified in the following federal and state laws and rules:

- 49 U.S. Code § 5329, Public Transportation Safety Program / Fixing America's Surface Transportation (FAST) Act;
- 49 CFR Part 674, State Safety Oversight;
- 49 CFR Part 673, Public Transportation Agency Safety Plan;
- 49 CFR Part 672, Public Transportation Safety Certification Training Program;
- 49 CFR Part 670, National Public Transportation Safety Program;
- 49 CFR Part 630, National Transit Database;
- 49 CFR Part 625, Transit Asset Management; and
- Oklahoma Statutes, Title 69, Section 4019, Oklahoma State Safety Oversight Program

The State and ODOT have prepared this Statement of Program and Policy Objectives to outline our primary objectives in moving forward to address the explicit mandates found in 49 U.S.C. Section 5329(e), State Safety Oversight Program.

Policy

The Federal Transit Administration (FTA) has established the federal safety and security requirements for all rail fixed guideway public transportation systems in the United States including the State of Oklahoma. These regulations, directives, and other policy and guidance documents collectively represent the safety and security requirements that rail transit agencies must implement.

ODOT's policy is to establish and to manage a Program Standard for Rail Safety and Security Oversight to ensure compliance with these federal requirements by the rail transit agencies in the State of Oklahoma.

ODOT's policy is to establish a Program Standard for rail safety and security oversight as the governing document for all safety and security requirements that the rail transit agencies must meet to have a compliant system. The effective oversight of the program by ODOT will result in the identification, elimination, mitigation and control of safety and security hazards, incidents, accidents, risks, threats and vulnerabilities.

ODOT's policy is to ensure compliance to the Program Standard and the development and implementation of rail safety and security programs, plans, and procedures established by the rail transit agencies operating within the State of Oklahoma.

The effective implementation of safety and security practices by the rail transit agencies is essential to compliance with all local, state, and federal laws. As such, the oversight activities of ODOT address all phases of safety and security including design, engineering, construction, testing, operations, and maintenance of its facilities and systems.

Objectives

ODOT has established this Program Standard administered by the Office of Mobility and Public Transit with the following authorities, competencies and capabilities:

1. ODOT is financially and legally independent from any rail fixed guideway public transportation system that it oversees.
2. ODOT thoroughly reviews, identifies and discloses to the FTA in annual certifications any legal or financial connection to any RTA in ODOT's Program Standard.
3. ODOT takes measures to manage any identified legal or financial connection to the rail transit agencies in ODOT's Program Standard through disclosure of connection, elimination or mitigation of the connection, or through self-certification and periodically occurring independent reviews.
4. ODOT is committed to maintaining its legal and financial independence from the rail transit agencies in the Program Standard, so that the opinions, findings, conclusions, judgments, and recommendations made by ODOT will be impartial and viewed as impartial by objective third parties with knowledge of the relevant information, such as the FTA.
5. ODOT is able to receive Federal financial assistance, subject to uniform administrative requirements for grants and cooperative agreements to State and local governments under 49 C.F.R. Part 18, as determined applicable by the FTA, and be responsible for the non-Government share of the cost of the Program Standard that meets the requirements of 49 U.S.C. 5329 (e)(6)(C)(iii).
6. ODOT is able to allocate adequate funds for the administration of the Program Standard, including the enforcement of Federal rules or regulations or compatible State laws or regulations.
7. ODOT does not directly provide public transportation services in an area with a rail fixed guideway public transportation system subject to these requirements.
8. ODOT does not employ any individual who is also responsible for the administration of rail fixed guideway public transportation programs subject to the requirements of this section.
9. ODOT has the authority to require, review, approve, oversee, and enforce the implementation of the public transportation agency safety plan required under 49 U.S.C. 5329(d) by each rail fixed guideway public transportation agency in the State of Oklahoma, including the authority to:
    a. Require the development and maintenance of a safety and security surveillance capability at the rail fixed guideway system, to verify the implementation of the Public Transportation Agency Safety Plan (PTASP) and Security and Emergency Preparedness Plan (SEPP), to validate the effectiveness of safety and security risk controls used by the rail fixed guideway system, and to assess the rail fixed guideway system's safety, security, and emergency preparedness performance.
    b. Require ODOT access to the rail fixed guideway system surveillance capability, and that, at a minimum, this capability provides safety and security performance indicators, safety and security performance targets, and safety and security alerts, supported by follow-on assessments and investigations as warranted, tied to the agency PTASP, SEPP, relevant sub-plans procedures, and ODOT's Program Standard.
    c. Require, for all State employees and other individuals who work on the Program Standard, specific capabilities, qualifications, and certification through the FTA public transportation safety certification training program, as described in 49 U.S.C. 5329(c).
    d. Require, for personnel supporting the safety function at the rail fixed guideway system, specific resources, training, and qualifications and reporting relationships with executive leadership.
    e. Require a program of internal audits, inspections, reviews, and certification at each rail fixed guideway system within the State of Oklahoma regarding the implementation of the agency's PTASP, SEPP and relevant sub-plans procedures and the verification of corrective action implementation.
    f. Regularly address each rail fixed guideway system's chief executives and board of directors to review safety performance and the implementation and functioning of safety and security risk management and safety and security assurance processes.
    g. Certify the safety and security of the rail fixed guideway system and its components, including extensions, modifications, rehabilitations, replacements and upgrades, for passenger operations.

ODOT has obtained the investigative and enforcement authority with respect to the safety and security of rail fixed guideway public transportation systems in the State of Oklahoma including the authority to:

1. Require the notification, reporting, investigation, and resolution through corrective action of accidents, incidents, hazards, threats and conditions of concern by the rail fixed guideway public transportation agency.
2. Conduct, and require to be conducted on the State's behalf, investigations into any incidents, circumstances or concerns affecting the safety and security of the rail fixed guideway system.
3. Require creation of a hazard reporting system by each rail fixed guideway system and procedures to investigate, evaluate and resolve identified hazards and concerns.
4. At reasonable times, and in a reasonable manner, enter and inspect rail transit property, equipment, infrastructure, facilities, vehicles, operations and maintenance activities following all safety and security rules and requirements established by the rail fixed guideway system.
5. Require, review, approve, monitor and verify implementation of corrective actions plans developed to address hazards and concerns.
6. Issue emergency orders regarding the immediate resolution of serious safety and security deficiencies.

Furthermore, ODOT has authority to:

1. Protect confidential accident and hazard investigation information from public disclosure.
2. Receive and investigate complaints regarding the safety and security performance of each rail fixed guideway system in the State of Oklahoma.
3. Audit, at least once every three years, the compliance of PTASP and SEPP of the rail fixed guideway public transportation systems in the State of Oklahoma subject to Section 5329(d).
4. Provide at least once annually, a status report on the safety and security of the rail fixed guideway public transportation systems within the State of Oklahoma to the FTA, the Governor of the State of Oklahoma; and the Board of Directors or equivalent entity of any rail fixed guideway public transportation system that ODOT oversees.
5. Prepare and submit to the FTA, upon request, all reports required in connection with the Program Standard other conditions of the grant.
6. To coordinate the Program Standard with the FTA data collection and information systems established to implement 49 U.S.C. Section 5329, including having the authority to:
    a. Adopt and use the reporting standards, systems, and forms required by the FTA to record work activities performed under the Program Standard.
    b. Establish a program to ensure that accurate, complete, and timely safety and security data are collected and reported.
    c. Verify submitted data through an audit program.

Program Management

PM.0 Purpose

This section of the Program Standard introduces the legislative authority for the Oklahoma Department of Transportation (ODOT) State Safety Oversight (SSO) program to address the requirements of the federal transportation legislation, 49 U.S. Code § 5329, Public Transportation Safety Program / Fixing America's Surface Transportation Act (FAST) Sections 3013, 3020, 3021, 3022 and the current implementation rules, 49 CFR Part 674, State Safety Oversight; 49 CFR Part 673, Public Transportation Agency Safety Plan; 49 CFR Part 672, Public Transportation Safety Certification Training Program; 49 CFR Part 670, National Public Transportation Safety Program; 49 CFR Parts 625 and 630, National Transit Database / Transit Asset Management. These regulations establish minimum requirements for safety and security programs at each RTA within the state's jurisdiction.

This section also describes the roles and responsibilities of the Federal Transit Administration, State of Oklahoma, Oklahoma Department of Transportation (the designated State Safety Oversight Agency), and the rail transit agencies subject to the requirements of Section 5329 and 49 CFR Part 674.

This section provides a brief description of each program area to which ODOT provides oversight, the contact information for ODOT and the rail transit agency (RTA) which is subject to the Program Standard.

This section concludes with a listing of definitions and acronyms that are used throughout the Program Standard.

PM.1 Authority

PM.1.1 Overview of Federal Laws

Moving Ahead for Progress in the 21st Century Act (MAP-21)

On July 6, 2012, President Obama signed into law P.L. 112-141, the Moving Ahead for Progress in the 21st Century Act (MAP-21). MAP-21 provides funds and transforms the policy and programmatic framework for investments to guide the growth and development of the country's vital transportation infrastructure.

MAP-21 creates a streamlined, performance-based, and multimodal program to address the many challenges facing the U.S. transportation system. These challenges include improving safety, maintaining infrastructure condition, reducing traffic congestion, improving efficiency of the system and freight movement, protecting the environment, and reducing delays in project delivery.

MAP-21 builds on and refines many of the highway, transit, bike, and pedestrian programs and policies established in the Intermodal Surface Transportation Efficiency Act (ISTEA) which was enacted in 1991 and subsequently reauthorized by the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

SAFETEA-LU required states to oversee the safety and security of rail transit agencies as defined in Section 5330, State Safety Oversight. SAFETEA-LU, including Section 5330, expired on September 30, 2012. MAP-21, including Section 5326, Transit Asset Management and Section 5329, Public Transportation Safety Program, took effect on October 1, 2012. To that end, the remaining and affected sections of this Program Standard will be updated with further details accordingly as the implementation guidelines and rules for MAP-21 are provided to ODOT, the State Safety Oversight Agency.

The following is a list of significant highlights from MAP 21:

- **Safety.** In a historic move, FTA has been granted significant new authority to strengthen the safety of public transportation throughout the United States – its highest priority. This is the culmination of a concerted effort that began in December 2009 when Secretary LaHood formally transmitted to Congress President Obama's legislative proposal to establish and enforce minimum federal safety standards for rail transit systems. MAP-21 includes many of the new authorities included in the Administration's original proposal and also includes important safety provisions for bus-only operators. FTA looks forward to implementing the new law in consultation with the transit community and its Transit Rail Advisory Committee for Safety, which has been working since September of 2010 to help guide this effort.

- **State of Good Repair**. In his proposed budgets, the President called for record state-of-good-repair investments in the nation's transit systems, sounding the call to reinvest in and modernize our assets. MAP-21 places new emphasis on restoring and replacing aging transportation infrastructure by establishing a new needs-based formula program, with a new tier for high-intensity bus needs. The new program defines eligible recapitalization and restoration activities, with a goal of bringing all systems into a state of good repair. Under the new law, grantees will be required to establish and use an asset management system to develop capital asset inventories and condition assessments, and report on the condition of their system as a whole.

- **Formula Program Consolidation and Elimination**. MAP-21 places new emphasis on cutting red tape to improve the efficiency of grant program operations. The President's budget set the pace for this important evolution with its commitment to consolidate certain programs and eliminate others. Under MAP-21, the annual formula programs have been amended, including:

    - The new State of Good Repair Program (5337) replaces the Fixed Guideway Modernization Program and includes funding to support high-intensity bus systems.
    - The Urbanized Area (5307) and Rural (5311) programs now allow funding to be used for activities that were eligible under the Job Access and Reverse Commute program.

- **New Starts Streamlining and Core Capacity Project Eligibility**. Based on extensive feedback from project sponsors and other stakeholders, MAP-21 streamlines the New Starts process and accelerates project delivery by eliminating duplicative steps in project development and simplifying the evaluation criteria, which will enable FTA to review project proposals more quickly, without sacrificing effective project oversight. Major capital projects focused on improving or restoring the core capacity of fixed-guideway systems will be newly eligible for discretionary capital funds. Additionally, MAP-21 makes changes to the Small Starts program that will speed up the construction of Small Starts projects.

Appendix A contains excerpts of the Federal Public Transportation Act of 2012, also referred to as MAP-21.

Fixing America's Surface Transportation Act (FAST)

On December 4, 2015, President Obama signed the Fixing America's Surface Transportation (FAST) Act, reauthorizing surface transportation programs through Fiscal Year 2020. Congress

establishes the funding for FTA programs through authorizing legislation that amends Chapter 53 of Title 49 of the U.S. Code, Public Transportation.

Major features of FAST Act that apply to the State Safety Oversight Program include the following:

- Requires the establishment of Minimum Safety Standards as part of the National Safety Plan to ensure safe transit operations.
- Permits FTA to temporarily take over for an inadequate or incapable State Safety Oversight agency, and permits use of that agency's SSO grant funds during the corrective time frame.
- Grants FTA permission to issue nationwide transit safety directives.
- Grants FTA permission to issue restrictions or prohibitions on operations at unsafe transit agencies.
- Requires FTA to conduct a review of the safety standards and protocols used in public transportation systems to examine the efficacy of existing standards and protocols.
- Requires a Final Report on the findings of the review, with a comprehensive set of recommendations and further actions needed to improve the safety of the public transportation industry by establishing additional Federal minimum safety standards.
- Requires a study and report on evidentiary protection for public transportation safety program information and data.
- Requires a Notice of Proposed Rulemaking (NPRM) on transit driver safety and risk of assault.

Appendix B contains excerpts of the FAST Act relevant to the State Safety Oversight program.

PM.1.2 Overview of Federal Implementation Rules

49 CFR Part 674, State Safety Oversight

The State Safety Oversight (SSO) final rule significantly strengthens ODOT's authority as the State Safety Oversight Agency to investigate accidents and oversee the RTA's implementation of its safety rule.

The SSO rule also gives FTA the authority to review and approve each State's SSO program and take enforcement actions against those States with non-existent or non-compliant safety oversight programs.

Every State that has a rail fixed guideway public transportation system must have a State Safety Oversight Program that:

- Is financially and legally independent from any RTA it oversees
- Does not directly provide public transportation services in an area with an RTA that the SSOA oversees
- Does not employ any individual responsible for administering an RTA
- Has authority to review, approve, oversee, and enforce a safety plan for an RTA
- Has investigative and enforcement authority with respect to the safety of the RTA
- At least once every three years, audits every RTA's compliance with safety plan requirements
- At least once a year, reports the status of RTA safety to the Governor, the FTA, the board of directors, or equivalent entity.

Appendix C contains a copy of 49 CFR Part 674, State Safety Oversight, Final Rule.

49 CFR Part 673, Public Transportation Agency Safety Plan

Pursuant to 49 U.S.C. 5329(d), FTA must promulgate a rule to implement the statutory requirements for Public Transportation Agency Safety Plans. In July 2018, FTA issued the Public Transportation Agency Safety Plan, Final Rule.

Under the final rule, each operator of public transportation that receives Federal financial assistance under 49 U.S.C. Chapter 53 would be required to develop and implement a Public Transportation Agency Safety Plan (PTASP) based on the principles of Safety Management Systems (SMS). Each transit operator would be required to develop a PTASP by July 20, 2020, within one year after the effective date of the final rule.

The final rule requires each operator's plan to address the four components of SMS, at minimum:

- Safety Management Policy
- Safety Risk Management
- Safety Assurance
- Safety Promotion

Appendix D contains a copy of 49 CFR Part 673, Public Transportation Agency Safety Plan, Final Rule.

49 CFR Part 672, Public Transportation Safety Certification Training Program

On October 1, 2012, MAP-21 authorized the FTA to develop interim safety certification training provisions for: 1) FTA and State agency personnel and their contractor support who conduct safety audits and examinations of public transportation systems; and 2) public transportation agency personnel who are directly responsible for safety oversight.

In August 2018, FTA published Public Transportation Safety Certification Training Program, Final Rule, which provides revised minimum training requirements for Federal and State personnel and contractors who conduct safety audits and examinations of transit systems and for transit agency personnel and contractors who are directly responsible for safety oversight. The safety certification training provisions are designed to advance FTA's adoption of Safety Management Systems (SMS) to improve the safety of public transportation.

The training provisions consist of:

> (1) A required training program promoting SMS and ensuring technical competencies for FTA personnel and contractors who conduct safety audits and examinations and SSOA personnel and contractors who conduct safety audits and examinations of rail transit systems not subject to FRA regulation;
> (2) a required training program that includes promoting the adoption of SMS for designated rail transit systems employees who are directly responsible for safety oversight; and
> (3) a voluntary component for personnel who are directly responsible for safety oversight of non-rail transit systems (e.g., passenger ferry, bus, bus rapid transit, and community transportation providers).

The rule requires ODOT, the State Safety Oversight Agency, to develop a Technical Training Plan (TTP) and embodies robust regulations and requirements for the demonstration of these technical competencies.

Appendix E contains a copy of 49 CFR Part 672, Public Transportation Safety Certification Training Program, Final Rule.

49 CFR Part 670, National Public Transportation Safety Program

Pursuant to Section 5329, the Public Transportation Safety Program must include a National Public Transportation Safety Plan to improve the safety of all public transportation systems that receive Federal transit funds.

The purpose of the National Public Transportation Safety Plan is to guide the national effort in managing the safety risks and safety hazards within our Nation's public transportation systems. The National Safety Plan must include, at minimum, the following elements:

1. Safety performance criteria for all modes of public transportation
2. The definition of the term "state of good repair"
3. Minimum safety performance standards for public transportation vehicles used in revenue operations that are not otherwise regulated by any other Federal agency, and that take into account relevant recommendations of the NTSB and other industry best practices and standards,
4. Minimum safety standards to ensure the safe operation of public transportation systems that are not related to vehicle performance standards, and
5. A safety certification training program.

The National Safety Plan is just one component of the Public Transportation Safety Program. Each component of the National Safety Program will work together to ensure that appropriate and adequate risk surveillance, monitoring, and intervention methods and practices are utilized to minimize risks through the strategic application of available resources.

Appendix F contains a copy of 49 CFR Part 670, National Public Transportation Safety Program, Final Rule.

49 CFR Parts 625 and 630, National Transit Database / Transit Asset Management

MAP-21 required the development of rules to establish a system to monitor and manage public transportation assets to improve safety and increase reliability and performance, and to establish performance measures, and the FAST Act reaffirmed this requirement.

The purpose of the Final Rule is to help achieve and maintain a state of good repair (SGR) for the nation's public transportation assets. Transit asset management is a business model that uses transit asset condition to guide the optimal prioritization of funding.

The regulations apply to all transit providers that are recipients or subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53 and own, operate, or manage transit capital assets used in the provision of public transportation.

It is expected that all assets used in the provision of public transit will be included in the Transit Asset Management (TAM) Plan asset inventory. This includes, with the exception of equipment, assets that are owned by a third party or shared resources. The inventory must include all service vehicles, and any other owned equipment assets over $50,000 in acquisition value.

Appendix G contains a copy of 49 CFR Parts 625 and 630, National Transit Database / Transit Asset Management, Final Rule.

PM.1.3 Official Oklahoma Statutes, Title 69, Section 4019

Effective July 1, 2018, a new section of law was codified in the Oklahoma Statutes which authorized implementation of the federal Public Transportation Safety Program, 49 U.S.C § 5329. As such, ODOT may take the necessary steps to secure the full benefit of the federal program and to perform

all acts necessary to ensure the efficient and safe operation of modes and systems of transportation, which includes rail fixed guideway public transportation systems.

Appendix H includes a copy of the Oklahoma Statutes, Title 69, Roads, Bridges, and Ferries, Section 4019, Oklahoma State Safety Oversight Program.

PM.1.4 Program Standard

The purpose of the Program Standard is to provide standards, procedures, and technical direction to assist rail transit agencies in implementing the requirements of the ODOT State Safety Oversight Program. The Program Standard also specifies the safety and security information requirements for on-going communication between ODOT and the RTA, and addresses ODOT's communication with FTA, including Initial, Annual, and Periodic submissions.

As defined in **§ 674.27** of the rule, the SSOA must adopt and distribute a written Program Standard that is consistent with the National Public Transportation Safety Plan and the rules of Public Transportation Agency Safety Plans. The Program Standard must also identify the processes and procedures that govern the activities of the SSOA. Also, the Program Standard must identify the processes and procedures an RTA must have in place to comply with the Standard.

This document is the Program Standard for Rail Transit Safety and Security Oversight (Program Standard) adopted by ODOT. Refer to **Section 1** for further details.

The effective date of the Program Standard is **January 31, 2020**. This Program Standard supersedes all previous versions, including any and all guidance issued by ODOT to the affected rail transit agencies related to the provisions described herein.

PM.2 Roles and Responsibilities

PM.2.1 Responsibilities of Federal Transit Administration

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

MAP-21, Section 5329, (7), Certification Process, indicates that the FTA had to determine whether or not each State oversight program met the requirements of Section 5329 and if the State Safety Oversight program is adequate to promote the purposes of Section 5329. As such, the FTA issued an initial certification to each eligible State that the Secretary determined adequately met the requirements of Section 5329, and reserved the right to issue a denial of certification to each eligible State that the Secretary determined did not adequately meet the requirements of the section. Refer to **Section 9** for further details.

PM.2.2 Responsibilities of the State

The primary responsibility of the State of Oklahoma is designating an entity – other than the RTA – to oversee the safety and security of rail fixed guideway systems. If the RTA operates in more than one state, each state may designate an entity as the oversight agency or may agree to designate one agency from one state to provide oversight. In either case, in all circumstances in which an RTA

is operating in multiple states, the RTA operating the rail fixed guideway system must be subject to only one Program Standard.

PM.2.3 Responsibilities of the State Safety Oversight Agency

The oversight agency, the Oklahoma Department of Transportation, is required to prepare a Program Standard, which is a written document developed and adopted by the oversight agency that describes the policies, objectives, responsibilities, and procedures used to provide safety and security oversight to RTAs. The Program Standard must address, at a minimum, the fifteen (15) program areas identified by ODOT, the FTA in **§ 674.27**, and described in **Section PM.3** of this document.

PM.2.4 Responsibilities of the RTA

In the State of Oklahoma, an RTA subject to 49 CFR Part 674 and the ODOT Program Standard must develop and implement a Public Transportation Agency Safety Plan (PTASP) and Security and Emergency Preparedness Plan (SEPP). These plans and any supporting or referenced procedures must be submitted to ODOT for review and approval, according to schedules specified in this standard. In addition, the RTA's responsibilities include, but are not limited to:

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

PM.3 SSO Program Areas

The Program Standard is organized into the following sections which address the requirements identified by FTA in Section **5329** and **§ 674.27** of 49 CFR Part 674:

Program Policy and Objectives

This section of the Program Standard sets an explicit policy and objectives for safety in rail fixed guideway public transportation throughout the State of Oklahoma.

Program Management

This section of the Program Standard explains the authority of ODOT to oversee the safety of rail fixed guideway public transportation systems; the policies that govern the activities of the ODOT; the reporting requirements that govern both the ODOT and the rail fixed guideway public transportation systems; and the steps ODOT will take to ensure open, on-going communication between the ODOT and every rail fixed guideway public transportation system within its oversight.

Section 1 Program Standard

This section of the Program Standard explains the process used by ODOT for developing, reviewing, adopting, and revising its minimum standards for safety, and distributing those standards to the rail fixed guideway public transportation systems. This section also describes the annual process for ODOT submittal of the Program Standard and any referenced program procedures to FTA for review and evaluation.

Section 2 Public Transportation Agency Safety Plan

This section of the Program Standard specifies the minimum requirements to be contained in the RTA's Public Transportation Agency Safety Plan. This section will also describe the process and timeframe through which ODOT must receive, review, and approve the RTA's Public Transportation Agency Safety Plan.

Section 3 Security and Emergency Preparedness Plan

This section of the Program Standard specifies the minimum requirements to be included in the RTA's Security and Emergency Preparedness Plan. This section also describes the process by which ODOT will review and approve the RTA's Security and Emergency Preparedness Plan. This section identifies how ODOT will prevent the SEPP from public disclosure.

Section 4 Internal Audit

This section of the Program Standard explains the role of ODOT in overseeing an RTA's execution of its Public Transportation Agency Safety Plan, Security and Emergency Preparedness Plan, and any related safety or security audits of the RTA's fixed guideway public transportation system. This section includes a description of the process used by ODOT to receive the RTA's audit notification, checklists and procedures and to approve the RTA's annual reports on findings, which must be submitted under the signature of the RTA's accountable executive. This section also addresses all other requirements specified for the internal safety and security audit process.

Section 5 Hazard Management Process

This section specifies the process by which the RTA will provide on-going reporting of hazard resolution activities to ODOT. This section also specifies information to be included in the RTA's Public Transportation Agency Safety Plan relating to the hazard management process, including requirements for ongoing communication and coordination relating to the identification, categorization, resolution, and reporting of hazards to ODOT.

Section 6 Accident Notification, Investigation, and Reporting

This section of the Program Standard establishes requirements for an RTA to notify ODOT of accidents on the RTA's rail fixed guideway public transportation system. Specifically, this section defines the requirements for the time limits for notification, methods of

notification, and the nature of the information the RTA must submit to ODOT for review and approval.

In addition, this section identifies thresholds for accidents that require the RTA to conduct an investigation; how ODOT will oversee an RTA's internal investigation; and the role of ODOT in supporting any investigation conducted or findings and recommendations made by the NTSB or FTA. Lastly, this section describes the procedures used by ODOT to protect the confidentiality of the investigation reports.

Section 7 SSO Audits

This section of the Program Standard explains the process and criteria used by ODOT, every three years, in conducting a complete audit of the RTA's implementation of their Public Transportation Agency Safety Plan and Security and Emergency Preparedness Plans. This section includes the process used by the RTA and the oversight agency to manage findings and recommendations from these audits. This section also describes the process and criteria used by ODOT to conduct reviews or special assessments of issues related to system safety and system security at the RTA. Finally, this section explains how ODOT may initiate a review of a particular subject matter area in response to a given hazard, accident, or incident or trend of such events.

Section 8 Corrective Action Plans

This section of the Program Standard explains the process and criteria by which ODOT may order an RTA to develop and carry out a Corrective Action Plan (CAP), and a procedure for the ODOT to review and approve a CAP. Also, this section explains ODOT's policy and practice for tracking and verifying an RTA's compliance with the CAP, and managing any conflicts between ODOT and the RTA relating either to the development or execution of the CAP or the findings of an investigation.

Section 9 Federal Transit Administration Reporting and Certification

This section of the Program Standard addresses FTA reporting requirements for the SSO, including Initial, Annual and Periodic Submissions. This section also describes the FTA's program to determine whether or not each SSO program meets the requirements of Section 5329, Public Transportation Safety Program, and 49 CFR Part 674.

Section 10 Safety and Security Certification Plan

This section of the Program Standard addresses ODOT's requirements to ensure that a project-specific Safety and Security Certification Plan (SSCP) is developed and implemented. Each SSCP must ensure that when revenue service begins, the project is safe and secure for passengers, employees, public safety personnel, and the general public through a formal program of safety and security certification and hazard and security threat / vulnerabilities management.

Section 11 Public Transportation Safety Certification Training Program

This section of the Program Standard describes the public transportation safety certification training program developed by FTA that applies to transit grantees regardless of mode. The program is for state employees or other personnel who conduct audits as well as employees of rail transit agencies responsible for safety oversight.

Section 12 Transit Asset Management Plan

The purpose of this section is to describe ODOT's requirements to meet the Transit Asset Management System developed by FTA in accordance with the Federal Public Transportation Act of 2012 (MAP-21), Section 5326 and reaffirmed by the FAST Act. The rules require RTAs to establish a system to monitor and manage public transportation assets to improve safety and increase reliability and performance, and to establish performance measures. The rules also require RTAs that own, operate, and manage capital assets to develop asset management plans for their public transportation assets, including vehicles, facilities, equipment, and other infrastructure.

Section 13 Engineering and Construction Phase

This section of the Program Standard describes ODOT's oversight activities of the RTA during the design, construction, testing and start-up, and project turn-over phases for New Starts, Small Starts, or other federally funded grant projects subject to the state safety and security oversight program.

PM.4 ODOT Authorized Representatives

SSO Lead Project Manager

ODOT has designated **Steve Jagosh,** for the Oklahoma Department of Transportation as the SSO Lead Project Manager. The Lead Project Manager administers the state safety and security oversight program and reports to **Ernestine Mbroh**, Manager of the Office of Mobility and Public Transit, Oklahoma Department of Transportation. The Manager of the Office of Mobility and Public Transit, Oklahoma Department of Transportation reports to **Tim J. Gatz**, Secretary of Transportation / ODOT Executive Director. The Secretary of Transportation / ODOT Executive Director is authorized to dedicate personnel, technical or staff support resources to the SSO program.

The SSO Lead Project Manager is authorized to arrange meetings with the Accountable Executive, Chief Safety Officer, and Chief Operations Officer or equivalent staff or contractor positions on issues related to the RTA's compliance with Section 5329, 49 CFR Part 674 and the Program Standard. ODOT anticipates that the rail transit agency will adhere to the established lines of communication and reporting in order to ensure timely identification and resolution of program issues. The SSO Lead Project Manager serves as the official point of contact for the RTA on all matters pertaining to the State Safety Oversight Program, the Program Standard, and related federal safety rules.

ODOT requires that all communications from the RTA regarding the administration of the State Safety Oversight Program be directed first to the SSO Lead Project Manager, who will coordinate internally with the Manager, Office of Mobility and Public Transit, other ODOT executives, or its external oversight partners, such as FTA, as appropriate. In responding to the RTA, the SSO Lead Project Manager will follow the methods outlined throughout this Program Standard, including letters, review checklists, reports, logs, and other verbal and written communications, to expeditiously bring closure to programmatic issues as they arise.

Manager of the Office of Mobility and Public Transit

The Manager of the Office of Mobility and Public Transit is authorized to dedicate resources to perform safety and security oversight activities, including personnel and technical contractor support. The Manager is also authorized to require, review, approve, monitor, and verify implementation of corrective action plans.

Executive Director / Secretary of Transportation

The Executive Director / Secretary of Transportation has ultimate authority over the State Safety Oversight Program, including enforcement of the implementation of the Public Transportation Agency Safety Plan required under 49 U.S.C. 5329.

Table PM.4 ODOT Contacts

Role	Contact Information
Executive Director **Secretary of Transportation**	Tim J. Gatz Oklahoma Department of Transportation 200 NE 21st Street Oklahoma City, OK 73105 tgatz@odot.org www.ok.gov/odot/ T: 405.522.1800
Manager of Office of Mobility and Public Transit	Ernestine Mbroh Oklahoma Department of Transportation Office of Mobility and Public Transit 200 NE 21st Street Oklahoma City, OK 73105 embroh@odot.org www.ok.gov/odot/ T: 405.522.1829 M: 405.397.5889
SSO Lead Project Manager	Steve Jagosh Oklahoma Department of Transportation Office of Mobility and Public Transit 200 NE 21st Street Oklahoma City, OK 73105 sjagosh@odot.org www.ok.gov/odot/ T: 405.522.9087 M: 405.812.5957
SSO Project Manager	Jason Huff Oklahoma Department of Transportation Office of Mobility and Public Transit 200 NE 21st Street Oklahoma City, OK 73105 jhuff@odot.org T: 405.521.2531 M: 405.204.2733

The organization chart for the Oklahoma Department of Transportation is provided in **Appendix I.**

PM.5 Affected Rail Transit Agencies

Rail transit agencies affected by the ODOT program include any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway operating within the state's jurisdiction that is:

- not subject to regulation by the Federal Railroad Administration; or
- a rail fixed guideway public transportation system in the engineering or construction phase of development within the jurisdiction of the State that will not be subject to regulation by the Federal Railroad Administration.

As of the effective date of this document, the rail transit agencies subject to the provisions of the ODOT Program are listed in the table below:

Table PM.5.1 Affected Rail Transit Agencies

Agency	Address	System Description	Revenue Operations Date
OKC Streetcar	Storage and Maintenance Facility 406 SW 7th Street Oklahoma City, OK 73109	OKC Streetcar operates 7 streetcars, is 4.6 miles, runs at-grade on existing streets, and has 22 stops on the Downtown and Bricktown Loops.	December 2018

The RTA will supply and update as necessary the points-of-contact for their safety and security programs to the ODOT Lead Program Manager.

The RTA point-of-contact information is listed in the table below:

Table PM.5.2 RTA Safety and Security Contacts

Agency	Point-of-Contact	
OKC Streetcar	**Safety Primary:** Eugene Fritz EMBARK 2000 South May Ave Oklahoma City, OK, 73108 eugene.fritz@okc.gov www.embarkok.com T: (405) 297-2548 M: (405) 439-2297	**Safety Alternate:** Molly Raney EMBARK 2000 South May Ave Oklahoma City, OK, 73108 molly.raney@okc.gov www.embarkok.com T: (405) 297-1717
	Security Primary: Eugene Fritz EMBARK 2000 South May Ave Oklahoma City, OK, 73108 eugene.fritz@okc.gov www.embarkok.com T: (405) 297-2548 M: (405) 439-2297	**Security Alternate:** Wendy Perez Herzog Transit Services, Inc. 406 SW 7th Street Oklahoma City, OK, 73109 wperez@htsi.com T: (405) 297-2548 M: (405) 439-2297

PM.6 Conflict of Interest

Financial and Legal Independence

As specified in **§ 674.41(a)**, ODOT is financially and legally independent from all rail fixed guideway public transportation systems under the oversight of the Department. ODOT retains the right to request a waiver of this requirement from the FTA Administrator, when deemed appropriate.

Employees

As specified in **§ 674.41(b)**, ODOT may not employ any individual who provides services to a rail fixed guideway public transportation system under the oversight of the Department. Specifically, no individual or entity may provide services to both the ODOT and the RTA. ODOT retains the right to request a waiver of this requirement from the FTA Administrator, when deemed appropriate.

Contractors

As specified in **§ 674.41(c)**, a contractor may not provide services to both ODOT and a rail fixed guideway public transportation system under the oversight of ODOT. Specifically, a third-party contractor to ODOT or the RTA may not have a conflict of interest as defined herein. Each contractor is subject to full disclosure on all present and potential conflicts of interest in its activities or relationships prior to being awarded a contract with ODOT or the RTA.

Annual Compliance Verification Report

Annually, by **February 1** of each calendar year, the RTA will be required to submit No Conflict of Interest Verification Annual Report. Refer to **Section 4.5.3** for additional requirements for this annual report.

PM.7 Definitions and Acronyms

PM.7.1 General Definitions

Accident means an Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision involving a rail transit vehicle; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause. An accident must be reported in accordance with the thresholds for notification and reporting set forth in **Section 6.5.1** of this Program Standard.

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 Public Transportation Agency Safety Plan (PTASP), Security and Emergency Preparedness Plan (SEPP), and Transit Asset Management Plan (TAMP) and subordinate policies and procedures and practices; and control or direction the human and capital resources needed to develop and maintain the PTASP, SEPP, and TAMP, in accordance with 49 U.S.C. 5329 and 49 U.S.C. 5326.

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

AIP means Accident / Incident Investigation Plan.

APTA means American Public Transportation Association**.**

Chief Safety Officer means the person to whom the *(Accountable Executive)* has delegated day-to-day responsibility for carrying out the safety management system at the *(RTA)*, including the development and implementation of the *(PTASP)*, *(SEPP)*, *(TAMP)*, and subordinate policies and procedures and practices in accordance with 49 U.S.C. 5329 and 49 U.S.C. 5326.

Collision (non-Rail Grade Crossing) includes train to train, train to vehicle, train to object, and train to individual collisions that DO NOT OCCUR at rail grade crossings. Suicides or trespassing-related collisions not occurring at a rail grade crossing are defined as "Collision (non-Rail Grade Crossing)" with a probable cause of "suicide" or "trespasser" as applicable.

Conflict of Interest generally means a scenario when a person places him/herself in a position where any official act or action taken by them is, may be, or appears to be, influenced by considerations other than the general public interest. All employees and contractors subject to the requirements of the Program Standard occupy a position of public trust and confidence and should avoid not only actual breaches of public trust, but also even the appearance of conflicts of interest.

An organizational conflict of interest occurs where a contractor is unable, or potentially unable, to

render impartial assistance or advice to the recipient due to activities, relationships, contracts, or circumstances which may impair the contractor's objectivity; or a contractor has an unfair competitive advantage.

Consequence means an effect of a (*Hazard)*, involving injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

Contractor means an entity that performs tasks as required on behalf of the SSOA or RTA. The RTA may not be a contractor for the State Safety Oversight Agency.

Corrective Action Plan (CAP) means a plan developed by the RTA that describes the actions the RTA will take to minimize, control, correct, or eliminate risks and hazards, and the schedule for taking those actions. These plans also refer to actions taken to address deficiencies identified through internal and external audit findings or to prevent reoccurrence of the causal factors identified from *(Event)* investigations. Either ODOT or FTA may require an RTA to develop and carry out a corrective action plan.

CSSP means Construction Safety and Security Plan.

Derailment means a non-collision event in which one or more wheels of a transit vehicle unintentionally leaves the rails.

Designated Personnel means (1) Employees identified by a rail public transportation systems whose job function requires them to be directly responsible for safety oversight of the public transportation provided by the system; or (2) Employees and contractors of a *(State Safety Oversight Agency)* whose job function requires them to conduct safety audits and safety examinations of the rail public transportation systems subject to the jurisdiction of the *(State Safety Oversight Agency)*. Designated personnel may also be referred to as "covered' personnel.

Directly Responsible for Safety Oversight means the *(Designated Personnel)* or the *(RTA)* whose job function includes the development, implementation and review of the *(PTASP)*.

Disruption of Operations means an *(Event)* that requires the *(RTA)* to implement a set of control actions (e.g., cancel trips, delay trips, establish bus bridges, reverse move, single track, etc.) that reestablish the continuity in the planned flow of rail transit vehicles and operations and maintenance personnel such that all passengers can reach their intended destinations as soon as possible.

Eligible State means a State that has a rail fixed guideway public transportation system within the jurisdiction of the State that is not subject to regulation by the Federal Railroad Administration; or a rail fixed guideway public transportation system in the engineering or construction phase of development within the jurisdiction of the State that will not be subject to regulation by the Federal Railroad Administration.

Evacuation due to life safety reasons means all evacuations of rail transit controlled property for life safety events. A life safety event is one that presents an imminent danger to ALL people in or on rail transit controlled property. This includes evacuations of rail transit vehicles and rail transit property, such as stations. The evacuation may be due to the presence of smoke, fuel fumes, suspicious package, bomb threat, etc.

Event means an Accident, Incident or Occurrence.

Examination means a process for gathering or analyzing facts or information related to the safety of a public transportation system.

FAST Act means Fixing America's Surface Transportation Act

FBI means the Federal Bureau of Investigation.

Fire means uncontrolled combustion made evident by flame and / or smoke that requires suppression by equipment or personnel or removal of the fuel source or removal of oxygen.

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

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

Hazard means any real or potential condition (as defined in the RTA's hazard management process) that can cause injury, illness, or death; damage to, or loss of, the facilities, equipment, rolling stock, or infrastructure of a rail fixed guideway public transportation system; or damage to the environment. Examples of hazards include, but are not limited to, exposed energized electrical conductors or equipment that can be contacted by passengers or employees, fire or smoke conditions on rail transit-controlled property, broken traction electrification equipment, or improper door opening of a rail transit vehicle while moving.

HMP means Hazard Management Plan.

IA means Internal Audit

IAPP means Internal Audit Program Plan.

Incident means an event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of an RTA. An incident must be reported to FTA's National Transit Database in accordance with the thresholds for reporting set forth in **Section 6** of this Program Standard. If an RTA or ODOT later determines that an Incident meets the definition of Accident as specified in **§ 674.7**, that event must be reported to the ODOT in accordance with the thresholds for notification and reporting set forth in **Section 6.5.1** of this Program Standard.

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

Initial Submission means any standard, plan, procedure, or other SSOA-related document to be submitted by an RTA to ODOT for review and approval that has not been previously reviewed and approved in accordance with the requirements of the Program Standard.

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.

ISAP means Internal Safety Audit Program.

MAP-21 means Moving Ahead for Progress in the 21st Century Act.

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.

NCIV means No Conflict of Interest Verification

Near Miss / Face-Up means an undesired event (as defined in the RTA's Accident / Incident Investigation Plan) that under slightly different circumstances could have resulted in injuries to people, damage to property or the environment, and / or loss or disruption of service.

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

NPRM means notice of proposed rule-making

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

OCC means Operations Control Center.

OKC means City of Oklahoma City.

Occurrence means an Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of an RTA.

ODOT means the Oklahoma Department of Transportation.

Part I Crime means an Event that includes the following as defined by the FBI's Uniform Crime Reporting program: murder and nonnegligent homicide, rape, robbery, aggravated assault, burglary, motor vehicle theft, larceny-theft, and arson.

Part II Crime means an Event that includes, but not limited to, the following as defined by the FBI's Uniform Crime Reporting program: simple assault, stolen property, vandalism, weapons, prostitution, driving under the influence, drunkenness, disorderly conduct, vagrancy, loitering, and all other offenses not specifically listed under Part I or Part II.

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

Passenger Operations means the period of time when any aspect of the RTA operations is initiated with the intent to carry passengers.

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

PMP means Project Management Plan**.**

Program Standard means a written document developed and adopted by the State Safety Oversight Agency that describes the policies, objectives, responsibilities, and procedures used to provide safety and security oversight to RTAs.

Property Damage means physical damage to transit or non-transit property including vehicles, facilities, equipment, rolling stock, or infrastructure.

Public Transportation Agency Safety Plan (PTASP) means the documented comprehensive agency safety plan for a transit agency that is required by 49 U.S.C. 5329, 49 CFR Part 673, and at a minimum, consists of the following elements:

1. The Public Transportation Agency Safety Plan, and subsequent updates, must be signed by the Accountable Executive and approved by the agency's Board of Directors, or an entity equivalent to a Board of Directors.
2. The Public Transportation Agency Safety Plan must document the processes and activities related to Safety Management System (SMS) implementation, as required under Subpart C of this Part.
3. The Public Transportation Agency Safety Plan must include performance targets based on the safety performance criteria established under the National Public Transportation Safety Plan, and the state of good repair standards established in the regulations that implement the National Transit Asset Management System and are included in the National Public Transportation Safety Plan.
4. The Public Transportation Agency Safety Plan must address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and the National Public Transportation Safety Plan. Compliance with the minimum safety performance standards authorized under 49 U.S.C. 5329(b)(2)(C) is not required until standards have been established through the rulemaking process.
5. Each transit agency must establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan.
6. An RTA also must include in its Public Transportation Agency Safety Plan an emergency preparedness and response plan or procedures that addresses, at a minimum, the assignment of employee responsibilities during an emergency; and coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area.

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

Rail Fixed Guideway Public Transportation System (RFGPTS) 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 Grade Crossing means an intersection of roadways, railroad tracks, or dedicated transit rail tracks that run across mixed traffic situations with motor vehicles, streetcar (SC), light rail (LR), commuter rail (CR), heavy rail (HR) or pedestrian traffic; either in mixed traffic or semi-exclusive situations. The boundaries of the intersection will be defined by the municipal, county, or state jurisdiction that owns and controls the roadway.

Rail Grade Crossing Collision includes train to train, train to vehicle, train to object, and train to individual collisions that OCCUR at rail grade crossings. For mixed traffic environments, rail grade crossing collisions are defined ONLY as collisions that occur at street intersections. Suicides or trespassing-related collisions occurring at a rail grade crossing are defined as "Rail Grade Crossing Collision" with a probable cause of "suicide" or "trespasser" as applicable. The boundaries of the intersection will be defined by the municipal, county, or state jurisdiction that owns and controls the roadway.

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

Rail Transit Vehicle means the rail fixed guideway public transportation agency's rolling stock, including, but not limited to, passenger and maintenance vehicles.

Rail Transit-Controlled Property means property that is used by the RTA and may be owned, leased, or maintained by the RTA.

Right-of-way (ROW) means the area through which a rail transit vehicle travels (the vehicle's dynamic envelope).

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

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

SAFETEA-LU means the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users.

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

Safety and Security Certification means the process applied to project development to ensure that all practical steps have been taken to optimize the operational safety and security of the project during engineering, design, construction, and testing before the start of passenger operation.

Safety Assurance means processes within a transit agency's (*Safety Management System*) that function to ensure the implementation and effectiveness of safety risk mitigation, and to ensure the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

Safety Audit means a review or analysis of safety records and related materials, including, but not limited to, those related to financial accounts.

Safety Management Policy means a transit agency's documented commitment to safety which defines the transit agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety

Safety Management System (SMS) means formal, top-down, organization-wide, approach to managing risk and assuring the effectiveness of safety risk mitigations

Safety Promotion means a combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system

Safety Risk Management means a process within a RTA's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.

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

Security and Emergency Preparedness Plan (SEPP) means a document developed and adopted by the RTA describing the application of operating, technical, and management techniques and principles to the security aspects of the system throughout its life to reduce threats and vulnerabilities and describing the emergency preparedness policies and procedures for mobilizing the system and other public safety resources to assure rapid, controlled, and predictable responses to various types of transportation and community emergencies.

Serious Injury means any injury which:

(1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date

of the injury was received;
(2) Results in a fracture of any bone (except simple fractures of fingers, toes, or nose);
(3) Causes severe hemorrhages, nerve, muscle, or tendon damage;
(4) Involves any internal organ; or
(5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

Small Starts Program is a Federal Transit Administration grant program for capital costs associated with new fixed guideway systems, extensions, and bus corridor improvements. Grants must be for under $100 million in New Starts funds and total project costs must be under $300 million.

Split Switch occurs when a rail transit vehicle is executing a facing-point movement and a wheel flange forces the switch point open, and the wheel continues between the back of the switch point and the running rail (also referred to as stock rail).

SSCP means Safety and Security Certification Plan.

SSCVR means Safety and Security Certification Verification Report.

SSMP means Safety and Security Management Plan.

SSO Program Manager means the State Safety Oversight Agency representatives. For ODOT the title for this position is the SSO Lead Project Manager.

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 5329(e) and the regulations set forth in this part.

Substantial Damage means damage which adversely affects the structural strength, performance, or operating characteristics of the vehicle, facility, equipment, rolling stock, or infrastructure requiring towing, rescue, on-site maintenance, or immediate removal prior to safe operation.

Threat means any real or potential condition that can cause injury or death to passengers or employees, or damage to / loss of transit equipment, property, and / or facilities.

Trailed Switch occurs when a rail transit vehicle is executing a trailing-point movement and the wheel flange forces the switch point against the running rail (also referred to as stock rail).

Transit Asset Management Plan is a document developed and adopted by the RTA describing, at a minimum, inventory of capital assets; condition assessments of inventoried assets; a decision support tool, and a prioritization of investments. The plan also includes a description of the reporting process for condition of the system, changes in the system, performance measures and targets, and progress for meeting targets.

TTP means Technical Training Plan

Vulnerability means a characteristic of passengers, employees, vehicles, and / or facilities that increases the probability of a security breach.

PM.7.2 Transit Asset Management Definitions

Asset Category means a grouping of asset classes, including a grouping of equipment, a grouping of rolling stock, a grouping of infrastructure, and a grouping of facilities. See Appendix A of 49 CFR Part 625 / 630 for examples of asset categories, asset classes, and individual assets.

Asset Class means a subgroup of capital assets within an asset category. For example, buses, trolleys, and cutaway vans are all asset classes within the rolling stock asset category. See Appendix A of 49 CFR Part 625 / 630 for examples of asset categories, asset classes, and individual assets.

Asset Inventory means a register of capital assets, and information about those assets.

Capital Asset means a unit of rolling stock, a facility, a unit of equipment, or an element of infrastructure used for providing public transportation.

Decision Support Tool means an analytic process or methodology:

(1) To help prioritize projects to improve and maintain the state of good repair of capital assets within a public transportation system, based on available condition data and objective criteria; or
(2) To assess financial needs for asset investments over time.

Direct Recipient means an entity that receives Federal financial assistance directly from the Federal Transit Administration.

Equipment means an article of nonexpendable, tangible property having a useful life of at least one year.

Exclusive-Use Maintenance Facility means a maintenance facility that is not commercial and either owned by a transit provider or used for servicing their vehicles.

Facility means a building or structure that is used in providing public transportation.

Full level of performance means the objective standard established by FTA for determining whether a capital asset is in a state of good repair.

Group TAM Plan means a single TAM plan that is developed by a sponsor on behalf of at least one tier II provider.

Horizon Period means the fixed period of time within which an RTA will evaluate the performance of its TAM plan.

Implementation Strategy means an RTA's approach to carrying out TAM practices, including establishing a schedule, accountabilities, tasks, dependencies, and roles and responsibilities.

Infrastructure means the underlying framework or structures that support a public transportation system.

Investment Prioritization means an RTA's ranking of capital projects or programs to achieve or maintain a state of good repair. An investment prioritization is based on financial resources from all sources that a transit provider reasonably anticipates will be available over the TAM plan horizon period.

Key Asset Management activities means a list of activities that an RTA determines are critical to achieving its TAM goals.

Life-Cycle Cost means the cost of managing an asset over its whole life.

Participant means a tier II provider that participates in a group TAM plan.

Performance Measure means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets (e.g., a measure for on-time performance is the percent of trains that arrive on time, and a corresponding quantifiable indicator of performance or condition is an arithmetic difference between scheduled and actual arrival time for each train).

Performance Target means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the FTA.

Recipient means an entity that receives Federal financial assistance under 49 U.S.C. Chapter 53, either directly from FTA or as a subrecipient.

Rolling Stock means a revenue vehicle used in providing public transportation, including vehicles used for carrying passengers on fare-free services.

Service Vehicle means a unit of equipment that is used primarily either to support maintenance and repair work for a public transportation system or for delivery of materials, equipment, or tools.

Sponsor means a State, a designated recipient, or a direct recipient that develops a group TAM for at least one tier II provider.

State of Good Repair (SGR) means the condition in which a capital asset is able to operate at a full level of performance.

Subrecipient means an entity that receives Federal transit grant funds indirectly through a State or a direct recipient.

TERM Scale means the five (5) category rating system used in the Federal Transit Administration's Transit Economic Requirements Model (TERM) to describe the condition of an asset: 5.0—Excellent, 4.0—Good; 3.0— Adequate, 2.0—Marginal, and 1.0— Poor.

Tier I Provider means a recipient that owns, operates, or manages either (1) one hundred and one (101) or more vehicles in revenue service during peak regular service across all fixed route modes or in any one non-fixed route mode, or (2) rail transit.

Tier II Provider means a recipient that owns, operates, or manages (1) one hundred (100) or fewer vehicles in revenue service during peak regular service across all non-rail fixed route modes or in any one non-fixed route mode, (2) a subrecipient under the 5311 Rural Area Formula Program, (3) or any American Indian tribe.

Transit Asset Management (TAM) means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation.

Transit Asset Management (TAM) Policy means a transit provider's documented commitment to achieving and maintaining a state of good repair for all of its capital assets. The TAM policy defines the transit provider's TAM objectives and defines and assigns roles and responsibilities for meeting those objectives.

Transit Asset Management (TAM) Strategy means the approach a transit provider takes to carry out its policy for TAM, including its objectives and performance targets.

Transit Asset Management (TAM) System means a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively, throughout the life cycles of those assets.

Transit Provider means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. chapter 53 that owns, operates, or manages capital assets used in providing public transportation. For the purposes of this Program Standard, transit provider refers to the RTA.

Useful Life means either the expected life cycle of a capital asset or the acceptable period of use in service determined by FTA.

Useful Life Benchmark (ULB) means the expected life cycle or the acceptable period of use in service for a capital asset, as determined by a transit provider (RTA), or the default benchmark provided by FTA.

Section 1
Program Standard

1.0 Purpose

As defined in **§ 674.27** of the rule, a Program Standard is a written document developed and adopted by the State Safety Oversight Agency, that describes the policies, objectives, responsibilities, and procedures used to provide safety and security oversight to the RTAs.

The Program Standard is supported by "referenced procedures," which describe the activities identified in the Program Standard, and provide greater detail regarding how the State Safety Oversight Agency will conduct its program, including such activities as accident investigation; review and approval of the RTA's annual reports and certifications for the internal safety and security audit process; and the conduct of the oversight agency's three-year review.

This section of the Program Standard identifies the minimum requirements for the Program Standard to be developed, reviewed by the RTA, approved by the Federal Transit Administration, and adopted by ODOT. This section also describes the review process for the Initial, Annual, and Periodic Submissions of the Program Standard and the distribution methods for this document. This section concludes with a listing of the routine program activities necessary to implement the requirements of the Program Standard by ODOT and the RTA.

1.1 Minimum Standard Requirements

The Program Standard for the State of Oklahoma must meet the following requirements, including those specified in **§ 674.27(a)**:

Program Policy and Objectives

- Sets an explicit policy and objectives for safety in rail fixed guideway public transportation systems in the State of Oklahoma.

Program Management

- Includes an explanation of the oversight agency's authority, policies, and roles and responsibilities for providing safety and security oversight of the rail fixed guideway public transportation systems within its jurisdiction.
- Includes the policies that govern the activities of the ODOT.
- Provides an overview of planned activities to ensure on-going communication with each affected RTA relating to safety and security information.
- Addresses the reporting requirements that govern both the ODOT and the rail fixed guideway public transportation systems, including FTA reporting requirements for Initial, Annual and Periodic Submissions.
- Includes the steps ODOT will take to ensure open, on-going communication between the ODOT and every rail fixed guideway public transportation system within its oversight.

Program Standard Development

- Includes a description of the process used by ODOT for developing, reviewing, adopting, and revising its minimum standards for safety, and distributing those standards to the rail fixed guideway public transportation systems.
- Includes a description of the annual process for ODOT submittal of the Program Standard and any referenced program procedures to FTA for review and evaluation.

Public Transportation Agency Safety Plan

- Specifies the minimum requirements to be contained in the RTA's Public Transportation Agency Safety Plan.
- Specifies information to be included in the affected RTA's Public Transportation Agency Safety Plan relating to the hazard management process, including requirements for ongoing communication and coordination relating to the identification, categorization, resolution, and reporting of hazards to the oversight agency.
- Describes the process and timeframe through which ODOT must receive, review, and approve the RTA's Public Transportation Agency Safety Plan and require annual updates.

Security and Emergency Preparedness Plan

- Specifies the minimum requirements to be included in the RTA's Security and Emergency Preparedness Plan.
- Describes the process by which the oversight agency will review and approve the RTA's Security and Emergency Preparedness Plan and require annual updates.
- Identifies how the state will prevent the Security and Emergency Preparedness Plan from public disclosure.

Internal Safety and Security Audits

- Specifies the role of ODOT in overseeing an RTA's execution of its Public Transportation Agency Safety Plan, Security and Emergency Preparedness Plan, and any related safety or security audits of the RTA's fixed guideway public transportation system.
- Includes a description of the process used by ODOT to receive RTA's audit notification, checklists and procedures and approve the RTA's annual reports on findings, which must be submitted under the signature of the RTA's accountable executive.

Hazard Management Process

- Specifies the process by which the RTA will provide on-going reporting of hazard resolution activities to ODOT.
- Specifies information to be included in the RTA's Public Transportation Agency Safety Plans relating to the hazard management process, including requirements for ongoing communication and coordination relating to the identification, categorization, resolution, and reporting of hazards to ODOT.

Accident Notification, Investigation, and Reporting

- Establishes requirements for an RTA to notify ODOT of accidents on the RTA's rail fixed guideway public transportation system.
- Defines the requirements for the time limits for notification, methods of notification, and the nature of the information the RTA must submit to ODOT for review and approval.
- Identifies thresholds for accidents that require the RTA to conduct an investigation.
- Explains the roles and responsibilities for ODOT during all phases of the investigation process, including:

  - To coordinate and communicate with the RTA;
  - To review and concur with investigation final report findings and recommendations;
  - To protect the confidentiality of investigation reports.
- Explains how ODOT will oversee an RTA's internal investigation.
- Explains how ODOT will support any investigation conducted or findings and recommendations made by the RTA, NTSB or FTA.

In preparing this section, ODOT will ensure that, if it authorizes the RTA to conduct investigations on its behalf, it does so formally (in writing) and also that ODOT formally reviews and adopts the RTA's accident investigation procedures. If ODOT retains the authority to conduct independent investigations, it must also adopt procedures to guide this process. ODOT may adopt and use the RTA's procedures, the accident investigation rail transit standard developed by APTA, FRA accident investigation procedures, or procedures developed by the agency expressly for the purpose of rail transit accident investigation.

SSO Audits

- Explains the process and criteria used by ODOT, every three years, in conducting a complete audit of the RTA's implementation of their Public Transportation Agency Safety Plans and Security and Emergency Preparedness Plans.
- Includes the process to be used by the affected RTA and ODOT to manage findings and recommendations from these audits.
- Describes the process and criteria used by ODOT to conduct reviews or special assessments of issues related to system safety, system security and emergency preparedness at the RTA.
- Explains how ODOT may initiate a review of a particular subject matter area in response to a given hazard, accident, or incident or trend of such events.

Corrective Action Plans

- Explains the process and criteria by which ODOT may order an RTA to develop and carry out a Corrective Action Plan (CAP).
- Specifies the criteria for the development of RTA's CAP and the process for the review and approval of these plans.
- Explains ODOT's policy and practice for tracking and verifying an RTA's compliance with the CAP requirements.
- Specifies ODOT's process for managing any conflicts between ODOT and the RTA relating either to the development or execution of the CAP or the findings of an investigation.

Federal Transit Administration Reporting and Certification

- Addresses FTA reporting requirements for the SSO, including Initial, Annual and Periodic Submissions.
- Describes the FTA's program to determine whether or not each SSO program meets the requirements of Section 5329, Public Transportation Safety Program, and 49 CFR Part 674.

Safety and Security Certification Plan

- Addresses ODOT's requirements to ensure that a project-specific Safety and Security Certification Plan (SSCP) is developed and implemented. Each SSCP must ensure that when revenue service begins, the project is safe and secure for passengers, employees, public safety personnel, and the general public through a formal program of safety and security certification and hazard and security threat / vulnerabilities management.

Public Transportation Safety Certification Training Program

- Describes the public transportation safety certification training program developed by FTA that applies to transit grantees regardless of mode. The program is for federal and state employees or other personnel who conduct audits as well as employees of rail transit agencies responsible for safety oversight.

Transit Asset Management Plan

- Describes the Transit Asset Management System developed by FTA in accordance with the Federal Public Transportation Act of 2012 (MAP-21), Section 5326.

Engineering and Construction Phase

- Describes ODOT's oversight activities of the RTA during the design, construction, testing and start-up, and project turn-over phases for New Starts, Small Starts, or other federally funded grant projects subject to the state safety and security oversight program.

1.2 Review of Initial Submission

The purpose of FTA's Initial Submission Review Process is to determine State compliance with 49 CFR Part 674 and for FTA to provide technical assistance and recommended improvements to the SSO for its revised program documentation.

An Initial Submission must include, but is not limited to, the following:

1. ODOT's Program Standard and referenced procedures; and
2. ODOT's certification that the RTA's Public Transportation Agency Safety Plan and the Security and Emergency Preparedness Plan have been developed, reviewed, and approved by ODOT.

Table 1.2 Initial / Annual / Project-Specific Plan Submissions

Section Reference	Document	Submittal Type	ODOT	RTA	FTA
1	Program Standard	Annual Submission	Develop, Adopt, Implement	Review, Comment	Review, Approve
2	Public Transportation Agency Safety Plan	Annual Submission	Review, Approve	Develop, Adopt, Implement	Ensures SSO certifies its review and approval of plan
3	Security and Emergency Preparedness Plan	Annual Submission	Review, Approve	Develop, Adopt, Implement	Ensures SSO certifies its review and approval of plan
4	Internal Audit Program Plan	Annual Submission	Review, Approve	Develop, Adopt, Implement	Review
4	Internal Safety and Security Audit Annual Report	Annual Submission	Review, Approve	Develop, Adopt, Implement	Review
4	No Conflict of Interest Verification Annual Report	Annual Submission	Review, Approve	Develop, Adopt, Implement	Review
5	Hazard Management Plan	Annual Submission	Review, Approve	Develop, Adopt, Implement	Review
6	Accident/Incident Investigation Plan	Annual Submission	Review, Approve	Develop, Adopt, Implement	Review

Section Reference	Document	Submittal Type	ODOT	RTA	FTA
8	Corrective Action Plan Program	Annual Submission	Review, Approve	Develop, Adopt, Implement	Review
9	SSO Annual Report	Annual Submission	Prepare, Certify	Provide reportable data	Review, Approve
10	Safety and Security Certification Plan	Project Specific	Review, Approve	Develop, Adopt, Implement	Review
10	Safety and Security Certification Verification Report	Project Specific	Review	Develop, Adopt, Implement	Review
11	Technical Training Plan	Initial Submission	Develop. Adopt, Implement	Provide Requested Information	Review
12	Transit Asset Management Plan	Annual Submission	Review, Approve	Develop, Adopt, Implement	Review
13	Project Management Plan Safety and Security Management Plan Certifiable Elements / Items Lists Design Criteria and Construction Specification Conformance Checklists Preliminary Hazard Analyses Threat and Vulnerability Assessments Construction Safety and Security Plan (CSSP) System Integrated Test Plans, Procedures, Reports Training Program Plan Emergency Drills and Exercise Plans and Reports Operations and Maintenance Plans, Manuals	Project Specific	Review	Develop, Adopt, Implement	Review

1.3 Review of Annual Submission

Federal and State Legislative Review

To ensure that the Program Standard is current and compliant with public transportation safety requirements stipulated in 49 U.S.C. § 5329, the Program Standard will be reviewed upon any changes to the following federal and state legislation and corresponding implementation rules:

- 49 U.S. Code § 5329, Public Transportation Safety Program / Fixing America's Surface Transportation (FAST) Act;

- 49 CFR Part 674, State Safety Oversight;
- 49 CFR Part 673, Public Transportation Agency Safety Plan;
- 49 CFR Part 672, Public Transportation Safety Certification Training Program;
- 49 CFR Part 670, National Public Transportation Safety Program;
- 49 CFR Part 630, National Transit Database;
- 49 CFR Part 625, Transit Asset Management; and
- Oklahoma Statutes, Title 69, Section 4019, Oklahoma State Safety Oversight Program

RTA Review and Comment Process

At a minimum, the Program Standard will be reviewed on an annual schedule to determine if any revisions are necessary. The annual revision schedule may be subject to change depending on the schedule of other SSO Program activities such as FTA SSO audits, SSO On-Site Audits, and major events.

- By **October 1** of each calendar year, the annual review and identification of proposed revisions (if any) to the Program Standard will be completed by ODOT. At this time, ODOT will circulate the revised / draft Program Standard to the affected rail transit agencies for review and comment.

- By **November 1** of each calendar year, the minimum **30-day** review and comment period for the revised / draft Program Standard will be completed by the affected rail transit agencies.

  While conducting its review of the comments submitted by the affected RTAs, the ODOT Program Manager may schedule a working session with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or other information necessary to adequately resolve the comments. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

  ODOT, FTA, the affected RTA, and other reviewers will review the Program Standard following the minimum requirements described in **Section 1.1** of the Program Standard.

- By **January 31** of each calendar year, the minimum **90-day** review and update period for the revised / final Program Standard will be completed by ODOT. At this time, ODOT will adopt and distribute the final version of the Program Standard.

  If the review and update will take longer than 90 calendar days due to the complexity and/or volume of comments and required changes, or other extenuating circumstances, ODOT will notify the affected rail transit agencies in writing on or before Day 90 and provide a revised date for the completion of the annual review.

Figure 1.3 at the end of this section illustrates the Program Standard review and approval process for the annual update.

Distribution Process

As specified in **§ 674.27(b),** after every revision, final versions of the revised document will be submitted to FTA's Office of Transit Safety and Oversight as part of the SSO's Annual Submission. Final versions of this document will also be available for distribution in the manner described in **Section 1.5.**

Integrated Schedules

Table 1.3 below lists the integrated schedules for the development of ODOT's Technical Training Plan (TTP) and Program Standard and the RTA's PTASP, SEPP and Transit Asset Management Plan (TAMP).

Table 1.3 Integrated Schedules for TTP / Program Standard / PTASP / SEPP / TAMP

Program Standard Reference	Task	Responsible Agency	Start Date	Finish Date
Section 1	**Program Standard**			
	Complete annual review process for Program Standard and distribute it to affected RTAs.	ODOT	Oct 1	Jan 31
Section 2	**Public Transportation Agency Safety Plan (PTASP)**			
	Complete annual review process for PTASP and submit it to ODOT for review and approval.	RTA	*varies*	Jan 31
	Complete the process to review and approve the PTASP.	ODOT	Jan 31	May 31
Section 3	**Security and Emergency Preparedness Plan (SEPP)**			
	Complete annual review process for SEPP and submit it to ODOT for review and approval.	RTA	*varies*	Jan 31
	Complete the process to review and approve the SEPP.	ODOT	Jan 31	May 31
Section 4	**Internal Audit Program Plan (IAPP)**			
	Complete annual review process for IAPP and submit it to ODOT for review and approval.	RTA	*varies*	Jan 31
	Complete the process to review and approve the IAPP.	ODOT	Jan 31	May 31
Section 5	**Hazard Management Plan (HMP)**			
	Complete annual review process for HMP and submit it to ODOT for review and approval.	RTA	*varies*	Jan 31
	Complete the process to review and approve the HMP.	ODOT	Jan 31	May 31
Section 6	**Accident Investigation Plan (AIP)**			
	Complete annual review process for AIP and submit it to ODOT for review and approval.	RTA	*varies*	Jan 31
	Complete the process to review and approve the AIP.	ODOT	Jan 31	May 31
Section 8	**Corrective Action Plan Program (CAPP)**			
	Complete annual review process for CAPP and submit it to ODOT for review and approval.	RTA	*varies*	Jan 31
	Complete the process to review and approve the CAPP.	ODOT	Jan 31	May 31
Section 11	**Technical Training Plan (TTP)**			
	Complete annual review process for TTP and distribute Master List Of Course Materials to affected RTAs for review and update.	ODOT	June 1	Oct 1
	Submit updated TTP Master List of Course Materials, revised course materials (if applicable), and list of covered personnel at the RTA.	RTA	Oct 1	Jan 31
Section 12	**Transit Asset Management Plan (TAMP)**			
	Complete annual review process for TAMP. Notify ODOT if there are no changes requiring TAMP amendments OR submit TAMP to ODOT for review and approval if TAMP amendments are required.	RTA	*varies*	Jan 31
	Complete update of entire TAMP and submit it to ODOT for review and approval.	RTA	*varies*	Once every four (4) years
	Complete the process to review and approve the TAMP.	ODOT	Jan 31	May 31

1.4 Review of Periodic Submission

At any given time, changes may be requested to the Program Standard based on reviews or audits from internal or external sources, such as FTA, or based on policy changes, state-wide meetings, and / or organizational changes. Each request for change will be reviewed by appropriate ODOT staff in a timely manner. Proposed changes to the Program Standard will be circulated for review in draft form to the RTA, in a manner described for the annual reviews.

As with the annual reviews, final copies of the revised version of the Program Standard will be submitted to the RTA safety and security points-of-contact and the FTA as part of the SSO's Annual Submission. Final versions of the Program Standard will also be available for distribution in the manner described in **Section 1.5.**

1.5 Distribution of the Program Standard

The Program Standard is an official and controlled document that is distributed only by the ODOT Lead Program Manager to the various internal and external SSO program stakeholders affected by the program. The Program Standard may also be requested in writing by contacting the ODOT Lead Program Manager at:

Oklahoma Department of Transportation
Office of Mobility and Public Transit
200 NE 21st Street
Oklahoma City, OK 73105

In addition, copies of this document have been distributed directly to the FTA and the designated safety and security points-of-contact established by the RTA. **Appendix J,** includes a copy of the Program Standard Acknowledgement of Receipt that documents the review, understanding, and agreement to comply with the requirements of the Program Standard on behalf of the RTA.

1.6 Program Activities

This section lists the primary SSO program activities that ensure ongoing communication between ODOT and the RTA related to the safety and security program during both the pre-revenue operations phase and the revenue operations phase.

At its discretion, ODOT may increase its safety and security oversight activities in response to a given hazard, accident, incident or trend of such events as well as the outcomes and results of internal and external audits, reviews, and special assessments.

Table 1.6.1 SSO Program Activities for Revenue Operations Phase

Program Area	Plan / Document	ODOT	RTA
Program Standard	Program Standard	Prepares / Adopts	Comments within 30 days
Public Transportation Agency Safety Plan	Public Transportation Agency Safety Plan	Reviews / Approves	Submits annually
	Public Transportation Agency Safety Plan Letter of Certification	Reviews / Approves	Submits annually
Security and Emergency Preparedness Plan	Security and Emergency Preparedness Plan	Reviews / Approves	Submits annually
Internal Safety and Security Audits	Internal Audit Schedule	Reviews / Approves	Submits annually
	Internal Audit Notification	Reviews	Submits 30 days prior to audit date
	Internal Audit Procedures	Review / Approves	Submits annually, as part of PTASP or SEPP annual review process
	Internal Audit Checklists	Reviews	Submits at time of audit notification
	Internal Safety and Security Audit Findings Log	Reviews / Approves	Submits no less than monthly
	Internal Safety and Security Audit Annual Reports	Reviews / Approves by March 1	Submits annually, by February 1
	Internal Safety and Security Audit Letter of Certification	Reviews / Approves by March 1	Submits annually, by February 1
	Internal Safety and Security Audit Corrective Action Plans	Reviews / Approves	Submits no less than monthly
	No Conflict of Interest Verification Annual Report	Reviews / Approves	Submits annually, by February 1
	No Conflict of Interest Letter of Certification	Reviews / Approves	Submits annually, by February 1
Hazard Management Process	Hazard Tracking Log (Initial)	Reviews / Approves	Submits with Initial PTASP
	Hazard Tracking Log	Reviews / Approves	Submits no less than monthly
	Hazard Management Meetings	Conducts no less than quarterly	Attends no less than quarterly
	Unacceptable Hazard Notification	Reviews	Submits within 24 hours or by 5:00 p.m. the next working day
	Hazard Initial Investigation Report	Reviews	Submits within 7 calendar days

Program Area	Plan / Document	ODOT	RTA
	Hazard Status Investigation Report	Reviews	Submits monthly
	Hazard Final Investigation Report	Reviews / Approves	Submits at completion of investigation
	Hazard Corrective Action Plan	Reviews / Approves	Submits at completion of investigation
	Hazard Investigation Notification (ODOT Independent)	Notifies the RTA within 7 calendar days of receipt of Hazard Initial Investigation Report	N / A
	Hazard Investigation Draft Report (ODOT Independent)	Submits to the RTA within 30 calendar days of completion of investigation	Comments within 30 calendar days of receipt of draft report
	Hazard Investigation Final Report (ODOT Independent)	Submits to the RTA within 30 calendar days of receipt of the RTA comment	Concurrence within 30 calendar days of receipt ***or*** alternative corrective action plan
	Hazard Investigation Correction Action Plan ***or*** Alternative Corrective Action Plan	Reviews / Approves	Submits within 30 calendar days of receipt of ODOT Final Report
Event Notification, Investigation, and Reporting	Accident Incident Investigation Plan	Reviews / Approves	Submits annually
	Authorization to Conduct Event Investigation	Blanket Authorization in Program Standard for the RTA to investigate all events on behalf of ODOT	N / A
	Accident Initial ***Telephone*** Notification	Reviews	Submits within 2 hours of reportable event
	Accident Initial ***Email*** Notification	Reviews	Submits within 6 hours of reportable event
	Accident Investigation ***Preliminary*** Report	Reviews	Submits within 3 business days of reportable event
	Accident Investigation ***Status*** Report	Reviews	Submits monthly
	Accident Final Investigation ***Final*** Report	Reviews / Approves	Submits within 30 calendar days of completion of investigation
	Accident Investigation Notification (ODOT Independent)	Notifies the RTA within 7 calendar days of receipt of Accident Initial Report	N / A
	Accident Investigation Draft Report (ODOT Independent)	Submits to the RTA within 30 calendar days of completion of investigation	Comments within 30 calendar days of receipt of draft report
	Accident Investigation Final Report (ODOT Independent)	Submits to the RTA within 30 calendar days of receipt of the RTA comment	Concurrence within 30 calendar days of receipt ***or*** alternative corrective action plan
	Accident Correction	Reviews / Approves	Submits within 30

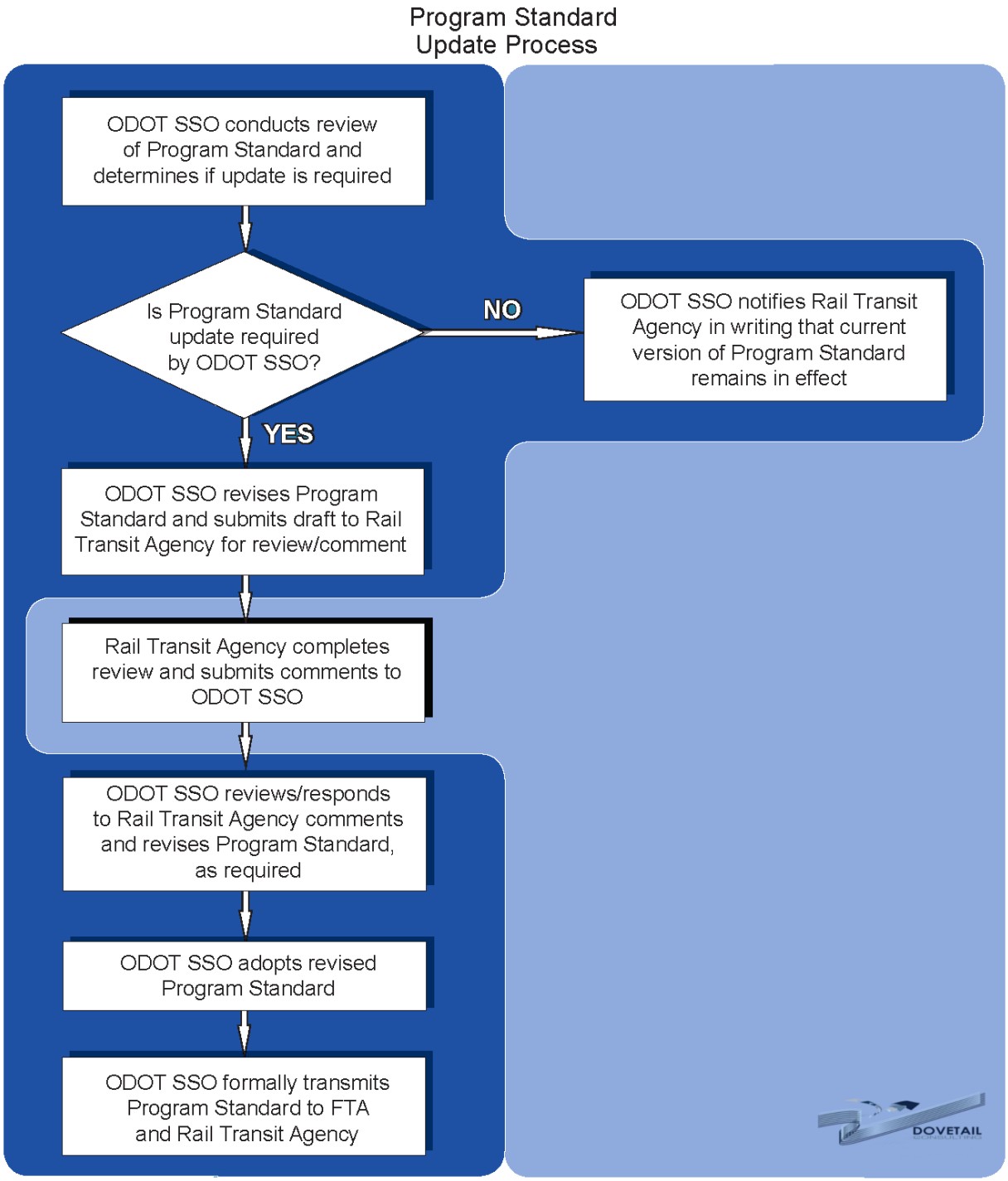
Program Area	Plan / Document	ODOT	RTA
	Action Plan ***or*** Alternative Corrective Action Plan		calendar days of receipt of ODOT Final Report
	Event Tracking Log	Reviews/Approves	Submits no less than monthly
SSO On-Site Safety Audit; SSO On-Site Security Audit	On-Site Review Notification	Notifies the RTA 60 days prior to on-site	N / A
	On-Site Review Pre-Meeting and Request for Documentation	Holds 30 days prior review	N / A
	SSO On-Site Safety Review; SSO On-Site Security Review	Conducts on ongoing basis over three-year cycle	N / A
	SSO On-Site Safety Review Draft Report; SSO On-Site Security Review Draft Report	Prepares within 90 days of conclusion of review	Comments within 30 days of receipt of draft report
	SSO On-Site Safety Review CAPs; SSO On-Site Security Review CAPs	Reviews / Approves	Submits within 30 days of receipt of draft report
	SSO On-Site Safety Review Final Report; SSO On-Site Security Review Final Report	Incorporate corrective action plans, revise and issue within 30 days of receipt of RTA response	N / A
	SSO On-Site Safety and Security Review Final Reports; FTA Annual Submission	Annually (if review occurred that calendar year)	N / A
Corrective Action Plans	Corrective Action Plan Tracking Log	Reviews / Approves	Submits no less than monthly
	RTA-Initiated CAP		
	Corrective Action Plan (Single)	Reviews / Approves / Disapproves within 15 calendar days of receipt	Submits within 30 calendar days after need is identified
	Corrective Action Plan (Single/Revised)	Reviews / Approves	Submits within 30 calendar days of disapproval
	Corrective Action Plan (Group)	Develops schedule for review within 15 days of receipt of CAPs	Develops a schedule for CAP preparation within 15 calendar days after need is identified
	ODOT-Initiated CAP		
	Corrective Action Plan (Single)	Reviews / Approves / Disapproves within 15 calendar days of receipt	Submits within 30 calendar days of ODOT notification
	Corrective Action Plan (Single/Revised)	Reviews / Approves	Submits within 30 calendar days of disapproval
	Corrective Action Plan (Group)	Develops schedule for review within 15 days of receipt of CAPs	Develops a schedule for CAP preparation within 15 calendar days of

Program Area	Plan / Document	ODOT	RTA
			ODOT notification
FTA Reporting	Annual Submission	Annually, before March 15	N / A
	Annual Certification (Electronic and Signed)	Annually, Before March 15	N / A
	Periodic Submissions of Event, Hazard, Correction Action Plans	As requested	N / A
Safety and Security Certification Program	Safety and Security Certification Plan (Project-Specific)	Reviews / Approves	Submits as defined by the Project Master Schedule
	Safety and Security Certification Verification Report (Project-Specific)	Reviews	Submits prior to initiation of project into revenue service
	Safety and Security Certification / System Modification Tracking Log	Reviews	Submits monthly
Training and Certification Program	Staff Training Plan	Reviews	Submits as defined by MAP-21
	Annual Certification of Compliance to the Training Requirements	Receives	Submits annually, by February 1
Transit Asset Management Plan	Transit Asset Management Plan	Reviews / Approves	Submits annually
Engineering and Construction Phase	Various Project Plans	Reviews / Comments, as required	Submits as defined by the Project Master Schedule

1.7 Additional Procedures

As required, ODOT may develop additional procedures beyond those identified within this Program Standard that provide details on the day-to-day roles and responsibilities of the ODOT Program Manager and other SSO personnel. As SSO administrative procedures are developed, the Program Standard will be updated to reference these procedures. These procedures may also include the identification of the delegated duties and responsibilities of contractor organizations that provide support for SSO program development, management, and implementation.

Figure 1.3 Program Standard – Review and Approval Process



Section 2
Public Transportation Agency Safety Plan

2.0 Purpose

In **§ 673.11**, FTA's PTASP rule specifies that each transit agency must establish a Public Transportation Agency Safety Plan that meets the requirements of this part and implement a Safety Management System under this part. A State Safety Oversight Agency must review and approve a Public Transportation Agency Safety Plan developed by rail fixed guideway system, as authorized in 49 U.S.C. 5329(e) and its implementing regulations at 49 CFR Part 674. In **§ 673.21,** FTA specifies that a transit agency Safety Management System must be appropriately scaled to the size, scope and complexity of the transit agency and include the following elements:

- Safety Management Policy
- Safety Risk Management
- Safety Assurance
- Safety Promotion

This section of the Program Standard identifies the minimum requirements for the PTASP to be developed, approved, adopted, and implemented by the RTA in the ODOT program prior to, and following, the start of revenue operations.

2.1 Minimum Plan Requirements

The ODOT program has adopted a minimum system safety program standard in order to comply with requirements specified by FTA in **§ 674.29, § 673.11, § 673.21**. The ODOT program encourages the RTA to exceed this standard in their revenue service operations and to further enhance safety by applying system safety principles throughout all life cycle phases of the transit system's activities.

The RTA must develop, implement, and maintain a written PTASP that complies with the PTASP Program Requirements specified in **§ 674.29, § 673.11, § 673.21, § 673.31**. SSO Program Requirements for Development of a Public Transportation Agency Safety Plan (PTASP) is provided as **Appendix K** for additional guidance on the substantive elements of the SSPP which carry over into SMS under Part 673.

PTASP Elements

The PTASP must address the following requirements of **§ 673.11 and § 673.31:**

(a) A requirement that the PTASP, and subsequent updates, must be signed by the Accountable Executive and approved by the agency's Board of Directors, or an equivalent authority;

(b) Documentation of the processes and activities related to the Safety Management System (SMS) implementation;

(c) Performance targets based on the safety performance measures established under the National Public Transportation Safety Plan;

(d) All applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and the National Public Transportation Safety Plan;

(e) A process and timeline for conducting an annual review and update of the PTASP;

(f) An emergency preparedness and response plan or procedures that addresses the assignment of employee responsibilities during an emergency; and coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area (or incorporate this plan by reference);

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

The RTA must establish and implement a Safety Management System as specified in **§ 673.21.** SMS must be appropriately scaled to the size, scope, and complexity of the transit agency and address the four components of Safety Management Policy, Safety Risk Management, Safety Assurance, and Safety Promotion as shown in **Figure 2.1** at the end of this section.

Safety Management Policy

The Safety Management System must include a Safety Management Policy according to the requirements of **§ 673.23**. A Safety Management Policy Statement is a formal document endorsed by the Accountable Executive, distributed throughout the agency, and describes executive leadership's commitment to support SMS, and includes the following characteristics:

- Is the foundation of the agency's Safety Management System
- Clearly states the agency's safety objectives.
- Sets forth the policy, procedures, and organizational structures necessary to accomplish the objectives and targets.
- Defines senior leadership and employee authorities, accountabilities, and responsibilities for management of safety throughout the organization.
- Ensures that senior leadership is actively engaged in the oversight of the agency's safety performance by requiring the regular review of the Safety Management Policy, budget, and program designated by the Accountable Executive.

According to 49 CFR Part 673, the Safety Management Policy must also include the following elements:

- Signed by the highest executive in the agency: Accountable Executive and approved by the Board of Directors.
- Clear statement about the provision of the resources for management of safety necessary for service delivery.
- Description of the process that allows employees to report safety conditions to senior management
- Description of the protections for employees who report safety conditions to senior management
- Description of employee behaviors that may result in disciplinary action
- Description of communication, with visible endorsement, throughout the agency.

Safety Risk Management

The Safety Management System must include Safety Risk Management according to the requirements of **§ 673.25.** The Safety Risk Management process must be comprised of the following elements:

- Safety Hazard Identification

  - Establish a process to identify hazards and consequences of the hazards
  - Establish a process to collect data and information from variety of sources (e.g., information systems, employee and contractor safety reporting, inspections, internal audits, accident reports, committee reviews, industry data, customer feedback, capital projects); describe the affected system and subsystems to establish the scope of the hazard (safety risk); and establish a comprehensive team of subject matter experts and/or committees for the affected system to perform the analysis.
- Safety Risk Assessment
  - Establish a process to assess the safety risks associated with identified safety hazards
  - Include assessment of the likelihood and severity of the consequences of the hazards, including existing mitigations, and prioritization of the hazards based on the safety risk
- Safety Risk Mitigation
  - Establish a process to identify mitigations or strategies necessary as a result of the agency's safety risk assessment to reduce the likelihood and severity of the consequences

Safety Assurance

The Safety Management System must include Safety Assurance according to the requirements of **§ 673.27.** The Safety Assurance process must be comprised of the following elements:

- Safety Performance Monitoring and Measurement
  - Establish a process to monitor compliance with agency's operations and maintenance procedures
  - Establish a process to monitor operations to identify any safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended
  - Establish a process to conduct investigations of safety events to identify causal factors
  - Establish a process to monitor information reported through any internal safety reporting programs
- Management of Change
  - Establish a process to identify and assess changes that may introduce new hazards or impact the transit agency's safety performance
  - Establish a process to evaluate proposed changes that may impact safety performance through the Safety Risk Management process
- Continuous Improvement
  - Establish a process to assess the agency's safety performance
  - Establish a process to develop and carry out corrective actions to address identified safety deficiencies

Safety Promotion

The Safety Management System must include Safety Promotion according to the requirements of **§ 673.29.** The Safety Promotion process must be comprised of the following elements:

- Competencies and Training
  - Establish and implement a comprehensive safety training program for all agency employees and contractors directly responsible for safety
  - Establish a refresher training program, as necessary
- Safety Communication
  - Establish a program to communicate safety and safety performance information throughout the organization that conveys, at a minimum:
    - Information on hazards and safety risks relevant to employees' roles and responsibilities
    - Informs employees of safety actions taken in response to reports submitted through an employee safety reporting program

PTASP Structure

For each SMS component, the PTASP must also include:

- General Requirements

(a) The process used to control changes to the Public Transportation Agency Safety Plan, including:
    (i) specifying an annual assessment of whether the Public Transportation Agency Safety Plan should be updated; and
    (ii) required coordination with the ODOT program, timeframes for submission, revision, and approval.
(b) A description of specific activities required to implement the system safety program, including:
    (i) tasks to be performed by rail transit safety function, by position and management accountability, in matrices and / or narrative format; and
    (ii) safety-related tasks to be performed by other rail transit departments, specified by position and management accountability, specified in matrices and / or narrative format.
(c) A description of the process used by the RTA to develop an approved, coordinated schedule for emergency management program activities, which include:
    (i) meetings with external agencies;
    (ii) emergency planning responsibilities and requirements;
    (iii) process used to evaluate emergency preparedness, such as annual emergency field exercises;
    (iv) after action reports and implementation of findings;
    (v) revision and distribution of emergency response procedures;
    (vi) familiarization training for public safety organizations; and
    (vii) employee training.

- Safety Management Policy

(d) A policy statement signed by the agency's Accountable Executive that endorses the safety program and describes the authority that establishes the Public Transportation Agency Safety Plan.
(e) A clear definition of the goals and objectives for the safety program and stated management responsibilities to ensure that they are achieved.
(f) An overview of the management structure of the RTA, including:
    (i) an organization chart;
    (ii) a description of how the safety function is integrated into the rest of the rail transit organization; and
    (iii) clear identification of the lines of authority used by the RTA to manage safety issues.

- Safety Risk Management

(g) A description of the process used by the RTA to implement its hazard management program, including activities for:
    (i) hazard identification;
    (ii) hazard investigation, evaluation, and analysis;
    (iii) hazard control and elimination;
    (iv) hazard tracking; and
    (v) requirements for on-going reporting to the ODOT Program Manager regarding hazard management activities and status.

(h) A description of the process used to collect, maintain, analyze, and distribute safety data to ensure that the safety function within the rail transit organization receives the necessary information to support implementation of the system safety program.

(i) A description of the process used by the RTA to perform accident notification, investigation, and reporting; including:
  (i) notification thresholds for internal and external organizations;
  (ii) accident investigation process and references to procedures;
  (iii) the process used to develop, implement, and track corrective actions that address investigation findings;
  (iv) reporting to internal and external organizations; and
  (v) coordination with the ODOT Program Manager.

(j) A description of the process used by the RTA to establish and implement a Transit Asset Management Plan, including:
  (i) a definition of the term 'state of good repair' that includes objective standards for measuring the condition of capital assets of recipients, including equipment, rolling stock, infrastructure, and facilities;
  (ii) a requirement that recipients and subrecipients of Federal financial assistance develop a transit asset management plan;
  (iii) a requirement that each designated recipient of Federal financial assistance report on the condition of the system of the recipient and provide a description of any change in condition since the last report;
  (iv) an analytical process or decision support tool for use by public transportation systems that:
    a. allows for the estimation of capital investment needs of such systems over time; and
    b. assists with asset investment prioritization by such systems; and
  (v) performance measures for capital assets and a requirement that a provider and a group TAM plan sponsor establish performance targets for improving the condition of capital assets

- Safety Assurance

(k) A description of the safety certification process required by the RTA to ensure that safety concerns and hazards are adequately addressed prior to the initiation of passenger operations and for New Starts and subsequent major projects to extend, rehabilitate or modify an existing system, or to replace vehicles and equipment.

(l) A description of the process used by the RTA to ensure that safety concerns are addressed in modifications to existing systems, vehicles, and equipment which do not require formal certification but which may have safety impacts.

(m) A description of the process used by the RTA to ensure that planned and scheduled internal safety reviews are performed to evaluate compliance with the Public Transportation Agency Safety Plan, including:
  (i) identification of departments and functions subject to review;
  (ii) responsibility for scheduling reviews;
  (iii) process for conducting reviews, including the development of checklists and procedures and the issuing of findings;
  (iv) review reporting requirements;
  (v) tracking the status of implemented recommendations; and
  (vi) coordination with the ODOT Program Manager.

(n) A description of the process used by the RTA to develop, maintain, and ensure compliance with rules and procedures, identified as having a safety impact, including:
  (i) identification of operating and maintenance rules and procedures subject to review;
  (ii) techniques used to assess the implementation of operating and maintenance rules and procedures by employees, such as performance testing;
  (iii) techniques used to assess the effectiveness of supervision relating to the implementation of operating and maintenance rules; and
  (iv) process for documenting results and incorporating them into the hazard management program.

(o) A description of the process used for facilities and equipment safety inspections, including:
  (i) identification of facilities and equipment subject to regular safety related-inspection and testing;
  (ii) techniques used to conduct inspections and testing;
  (iii) inspection schedules and procedures; and
  (iv) description of how results are entered into the hazard management process.

(p) A description of the maintenance audits and inspections program including identification of the affected facilities and equipment, maintenance cycles, documentation required, and the process for integrating identified problems into the hazard management process.

(q) A description of the configuration management control process, including:
  (i) the authority to make configuration changes;
  (ii) process for making changes; and
  (iii) assurances necessary for formally notifying all involved departments.

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

- Safety Promotion

(s) A description of the training and certification program for employees and contractors, including:
  (i) categories of safety-related work requiring training and certification;
  (ii) a description of the training and certification program for employees and contractors in safety-related positions;
  (iii) process used to maintain and access employee and contractor training records; and
  (iv) process utilized to assess compliance with training and certification requirements.

(t) A description of the safety program for employees and contractors that incorporates the applicable local, state, and federal requirements, including;
  (i) safety requirements that employees and contractors must follow when working on, or in close proximity to, RTA property; and
  (ii) process for ensuring the employees and contractors know and follow the requirements.

(u) A description of the hazardous materials program including the process used to ensure knowledge of and compliance with program requirements.

(v) A description of the drug and alcohol program and the process used to ensure knowledge of and compliance with program requirements.

Safety Performance Management Framework

Furthermore, in keeping with current FTA recommendations and transit industry best practices, system safety management practices that *systematically* and *proactively* identify the factors that contribute to unsafe events and prevent or minimize the likelihood of their occurrence have proven effective. Such practices call for setting safety goals and objectives, defining clear levels of accountability and responsibility for safety, establishing a proactive approach to manage risks and hazards, risk-based resource allocation, monitoring and evaluating performance toward goals, and continuous learning and improvement.

To that end, ODOT promotes the adoption of a Safety Performance Management Framework by the RTA responsible for the development and implementation of the PTASP.

Figure 2.2 at the end of this section illustrates a basic framework for modern safety performance management. The process begins, step 1, with setting clear goals and objectives for system safety and formulating the system safety policy. Next, step 2, is establishing programs for identifying and reporting hazards, and managing risks in the day-to-day activities of the rail transit system. Step 3 is developing and implementing effective strategies to eliminate hazards and control risks to an acceptable level. Performance measurement and evaluation, step 4, involves constructing performance metrics to measure progress, setting targets that reflect safety objectives, collecting reliable performance data, identifying performance gaps and trends, evaluating program effectiveness, and communicating performance results to agency stakeholders. Finally, step 5, deals with integrating performance results into the decision-making process, allocating the needed resources for closing the gaps in safety performance, and investing in proactive activities.

Delegated Contractor Duties

If the RTA delegates system safety-related roles and responsibilities to contractor organizations, then the following must also be included in the plan:

- A description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart
- A description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues
- An identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns.

Plan Format

In all cases where a description of a process is required for inclusion in the PTASP, the RTA is required to develop and implement the process in the form of a program, plan, policy or procedure in order to comply with the requirement.

Based on the requirements above, ODOT-specific requirements, and the guidance provided in **Appendix K**, a suggested outline for the minimum content for the RTA's PTASP is illustrated in **Table 2.1** below.

Table 2.1 PTASP Suggested Outline

Title Page
Table of Contents
Approvals
Revisions
GENERAL REQUIREMENTS

Table 2.1 PTASP Suggested Outline

Section 1. Plan Review and Modification
- 1.0 Overview
- 1.1 PTASP Review Schedule
- 1.2 PTASP Control and Update Procedures
- 1.3 PTASP Review and Approval by ODOT
- 1.4 PTASP Change Management

Section 2. PTASP Implementation – Tasks and Activities
- 2.0 Overview
- 2.1 System Safety Function
  - 2.1.1 Methodology Used by the System Safety Unit
- 2.2 Safety Responsibilities of Other Departments
- 2.3 Safety Task Responsibility Matrix (or Narrative Description)

Section 3. Emergency Response Planning/Coordination/Training
- 3.0 Overview
- 3.1 Responsibilities for Emergency Preparedness
- 3.2 Coordinated Schedule
- 3.3 Emergency Drills and Exercises
- 3.4 Emergency Procedures
- 3.5 Emergency Training
- 3.6 Familiarization Training

Section 4. Recordkeeping
- 4.0 Overview
- 4.1 Coordination with FTA and ODOT
- 4.2 Record Retention

SAFETY MANAGEMENT POLICY

Section 5. Policy Statement
- 5.0 Safety Management Policy
- 5.1 Safety Policy Communication
- 5.2 Employee Safety Reporting Program

Section 6. Purpose, Goals and Objectives, Safety Performance Management Framework
- 6.0 Overview and Framework
- 6.1 Purpose
- 6.2 Goals
- 6.3 Objectives

Section 7. Management Structure
- 7.0 Overview
- 7.1 System Description
  - 7.1.1 General Overview and History of Transit Agency
  - 7.1.2 Scope of Transit Services
  - 7.1.3 Physical Plant
  - 7.1.4 Operations
  - 7.1.5 Maintenance
- 7.2 Integration of Safety Function
- 7.3 Lines of Authority for Safety
  - 7.3.1 Assignment of Safety Officer
  - 7.3.2 Qualifications/Training of Safety Officer

SAFETY RISK MANAGEMENT

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- 8.0 Overview

Table 2.1 PTASP Suggested Outline

8.1 Hazard Management Process – Activities and Methodologies
- 8.1.1 Methods for Defining the System
- 8.1.2 Methods for Identifying and Evaluating Safety Risks
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8.2 Coordination with ODOT

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- 9.0 Overview
- 9.1 Data Acquisition Process
- 9.2 Access to Data

Section 10. Event Notification, Investigation and Reporting
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- 10.1 Event Reporting Criteria
- 10.2 Event Investigation Procedures
- 10.3 Internal Notification Procedure
- 10.4 External Notification Procedure
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- 10.6 Corrective Action Resulting from Accident Investigation
- 10.7 Coordination with ODOT

Section 11. Transit Asset Management Plan

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- 12.0 Overview
- 12.1 Safety and Security Certifiable Elements
- 12.2 Safety and Security Design Criteria
- 12.3 Design Criteria Conformance Checklists
- 12.4 Construction Specification Conformance
- 12.5 Additional Safety and Security Test Requirements
- 12.6 Testing and Validation in Support of Certification Program
- 12.7 System Integration Tests
- 12.8 Safety and Security “Open Items”
- 12.9 Operational Readiness Verification
- 12.10 Project Readiness; Safety and Security Certification

Section 13. Managing Safety in System Modifications
- 13.0 Overview
- 13.1 Interdepartmental Coordination
- 13.2 Safety Reviews
- 13.3 Coordination with Hazard Management Process
- 13.4 Safety-Related Testing
- 13.5 Final Acceptance
- 13.6 Coordination with Configuration Management Process

Section 14. Internal Safety Audit Process
- 14.0 Overview
- 14.1 Scope of Activities
- 14.2 Audit Process
  - 14.2.1 Integrity of Audit Process
  - 14.2.2 Cycle/Schedule
  - 14.2.3 Checklists and Procedures
  - 14.2.4 Annual Audit Report
  - 14.2.5 Audit Reporting

Table 2.1 PTASP Suggested Outline

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14.2.7 Audit Completeness

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15.1 Review of Rules and Procedures
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16.1 Facilities and Equipment Subject to Inspection
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Section 18. Configuration Management
18.0 Overview
18.1 Process for Change
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19.1 Program Responsibility
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Table 2.1	PTASP Suggested Outline
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Section 23.	Drug and Alcohol Program
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	23.1 Program Responsibility
	23.2 Drug & Alcohol Abuse Program

2.2 Review of Initial Submission

2.2.1 Board of Directors

As discussed in **Section 2.1** above, the RTA must fulfill the requirement that the board of directors (or equivalent entity) of the RTA approve its PTASP and any updates to its PTASP, following the plan approval process described in the RTA's PTASP. The PTASP subject to this requirement is inclusive of the following sub-plans:

- Internal Audit Program Plan,
- Hazard Management Plan,
- Accident / Incident Investigation Plan, and
- Corrective Action Plan Program.

2.2.2 ODOT

In carrying out its oversight responsibilities under **§ 674.29**, the ODOT Program Manager will receive, review, and approve in writing the RTA's PTASP. With the PTASP, the RTA must also submit any referenced materials, including procedures, checklists and training materials for system safety planning, internal safety audit program, hazard management process, event investigation, corrective action development, emergency management, coordination and training program, rules compliance program, and transit asset management.

To ensure compliance with FTA's initial submission requirements, the RTA must submit a PTASP, in compliance with the program requirements specified in the ODOT Standard and **Appendix K**, and all referenced procedures / materials by a date specified by the ODOT Program Manager.

An RTA with a rail fixed guideway public transportation project in the engineering or construction phase of development within the jurisdiction of the State of Oklahoma that will not be subject to regulation by the Federal Railroad Administration is subject to the requirements of this section of the Program Standard.

Pursuant to this requirement, the RTA will submit its PTASP and all referenced materials to the ODOT Program Manager **365 calendar days** before beginning passenger service operations.

The ODOT Program Manager will allocate **305** of these calendar days to:

- Review initial PTASP and materials related to Initial Submission,
- Conduct safety and security certification compliance activities (refer to **Section 13**, Engineering and Construction for applicability)
- Resolve any safety issues or deficiencies with the RTA
- Review revised PTASP and materials related to Initial Submission,
- Approve the final PTASP and materials related to Initial Submission, and
- Prepare ODOT's initial submittal of the PTASP to the FTA (which must be submitted at least **60 days** prior to initiating passenger operations).

The PTASP and supporting procedures must be submitted in electronic copy via email or secure file sharing and storage system to the ODOT Program Manager.

ODOT Review Checklist / Working Sessions

ODOT will review the submitted PTASP, using the checklist provided in **Appendix L**. Upon approval, ODOT will provide a copy of the completed checklist, which includes a written approval, to the RTA.

Pending any major deficiencies in the RTA's PTASP, the ODOT Program Manager will review and approve the initial PTASP using its review checklist, and will transmit the completed checklist, which includes a written approval, to RTA's point-of-contact within **305 calendar days** of submission.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with RTA safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

2.2.3 FTA

Sixty **(60) calendar days** prior to the passenger revenue service operations, ODOT will submit a formal letter to the FTA that certifies that the Public Transportation Agency Safety Plan complies with the requirements of the Program Standard. In addition to the letter, ODOT will submit a copy of the PTASP and ODOT Review Checklist for FTA review and approval.

FTA will review and approve the Initial Submission using its review checklist, and will transmit a formal letter of approval and the completed checklists to ODOT. In the event that the FTA does not approve the Initial Submission, additional requirements necessary to achieve compliance will be conveyed to the ODOT Program Manager by the FTA.

The ODOT Program Manager will maintain ongoing communications with the FTA Office of Transit Safety and Oversight regarding the development and implementation of the Program Standard, as required.

Table 2.2 Schedule for Initial Review of PTASP

Task	Responsible Agency	Duration	Target Date
Develop initial PTASP and materials related to Initial Submission as part of FTA New Starts process.	RTA	Project Specific	Project specific
Submit initial PTASP and materials related to Initial Submission to ODOT for review and approval.	RTA	**365** days	Prior to passenger revenue service operations.
Review and approve PTASP and materials related to Initial Submission or request additional information.	ODOT	**305** days	Prior to passenger revenue service operations.
Submit approved PTASP and materials related to Initial Submission to FTA for review and approval.	ODOT	**60** days	Prior to passenger revenue service operations

Following the process specified in **Figure 2.3** at the end of this section, ODOT will review the PTASP initial submission from the RTA.

2.3 Review of Annual Submission

Following the initiation of revenue service, the RTA will conduct an annual review of its PTASP and update it as necessary to ensure that the PTASP is current at all times.

In the event that the RTA conducts its annual PTASP review and determines that an update is not necessary for the year, it must prepare and submit by **January 1** formal correspondence notifying the ODOT point-of-contact of this determination. If ODOT wishes to object to this determination, the ODOT point-of-contact will notify the RTA within **30 calendar days.**

In the event that the RTA conducts its annual PTASP review and determines that an update is necessary for the year, the RTA will submit a revised PTASP to the ODOT Program Manager by **January 31**. As appropriate, referenced materials affected by the revision(s) must also be submitted with the PTASP.

Each revised PTASP submitted to ODOT by the RTA must include a text or tabular summary that identifies and explains proposed changes and includes a time frame for completion of the associated activities.

ODOT Review Checklist / Working Sessions

Following the process specified in **Figure 2.3**, ODOT will review the PTASP annual submission from RTA.

Within **30 calendar days** of receipt of the PTASP from the RTA, ODOT will review the plan and issue to the RTA written approval of its PTASP and the completed PTASP checklist. If ODOT determines that the PTASP is not acceptable, ODOT will provide a completed PTASP checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

If the ODOT SSO Lead Program Manager and the RTA's Chief Safety Officer are unable to resolve open items regarding the PTASP in a timely manner, the Program Manager has the authority to bring concerns to the attention of the Accountable Executive of the RTA or equivalent position.

It is ODOT's intent that the annual review and approval process for the PTASP be completed by **May 31.**

Table 2.3 Schedule for Annual Review of PTASP

Task	Responsible Agency	Duration	Target Date
If PTASP is **not** updated:			
Notifies SSO that no update is necessary.	RTA	---	Jan 1
If notified no update is necessary, accepts or objects to the RTA's determination and notifies the RTA.	ODOT	30 days	Jan 31
If PTASP is updated:			
If PTASP is updated, completes annual review for previous calendar year and submits revised PTASP to SSO.	RTA	---	Jan 31
If notified update is necessary, approves PTASP or requests additional information.	ODOT	30 days	Mar 1
Submits additional information and revises PTASP.	RTA	60 days	Apr 30
Reviews additional information and approves revised PTASP.	ODOT	30 days	May 31

2.3.1 Letter of Certification for PTASP

In accordance with § 673.13, in addition to the updated PTASP, also by January 31, ODOT requires that the RTA submit a formal letter of certification, signed by the RTA's Accountable Executive, stating that the RTA has updated its PTASP in accordance with the ODOT Program Standard and 49 CFR Parts 674, 673, 672, 670, 630, and 625. The letter should certify that the PTASP:

- Is consistent with the FTA's regulations for implementing a PTASP and the National Public Transportation Safety Plan;
- Is in compliance with ODOT's Program Standard;
- Is approved by the RTA's board of directors or equivalent entity;
- Sets forth a sufficiently explicit process for Safety Risk Management for the rail transit system;
- Includes a process and timeline for annually reviewing and updating the PTASP;
- Includes a comprehensive staff training program for the operations personnel directly responsible for the safety of the RTA;
- Identifies an adequately trained Chief Safety Officer who reports directly to the Accountable Executive of the RTA;
- Includes adequate methods to support the execution of the PTASP by all employees, agents, and contractors for the rail transit system; and
- Sufficiently addresses other requirements under the regulations at 49 CFR Part 673.

In addition, the letter of certification must include the signatures of the department head(s) responsible for implementation of the PTASP.

2.4 Review of Periodic Submission

At any given time, additional reviews of the RTA's PTASP may be required to address specific issues based on implementation and compliance to FAST Act, Section 5329, 49 CFR Part 674, and / or the ODOT Program Standard or procedures; review of the RTA's documents; or other safety related project information.

ODOT Review Checklist / Working Sessions

Upon receipt of a written notification from ODOT for PTASP modifications, the RTA will submit a revised PTASP to ODOT within **30 calendar days**. ODOT will review and approve the revised PTASP, providing a formal approval letter and a completed PTASP review checklist within **30 calendar days** of receipt of the revised RTA's PTASP. If ODOT determines that the PTASP is not acceptable, ODOT will provide a completed PTASP checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

In the event that the RTA initiates updates, the RTA will submit the modified PTASP, and any subsequently modified procedures, to ODOT for review and approval within **30 calendar days** of the effective date of the change.

Table 2.4 Schedule for Periodic Review of PTASP

Task	Responsible Agency	Duration
Notifies the RTA that PTASP update is necessary.	ODOT	---
Following ODOT notification, or at its own discretion, submits revised PTASP to ODOT.	RTA	30 days
Reviews and approves revised PTASP or determines PTASP requires re-submittal.	ODOT	30 days
Revises PTASP and re-submits to ODOT review and approval.	RTA	30 days
Reviews and approves revised PTASP.	ODOT	30 days

Figure 2.1 Safety Management Systems (SMS)

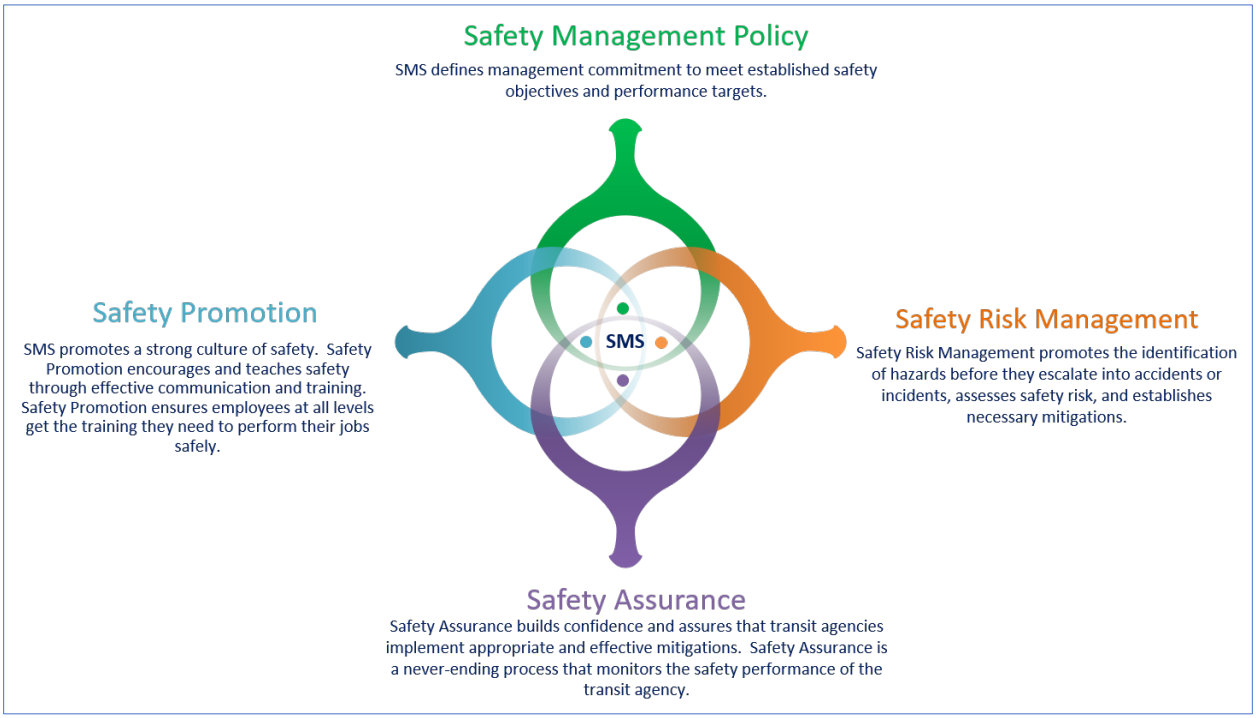
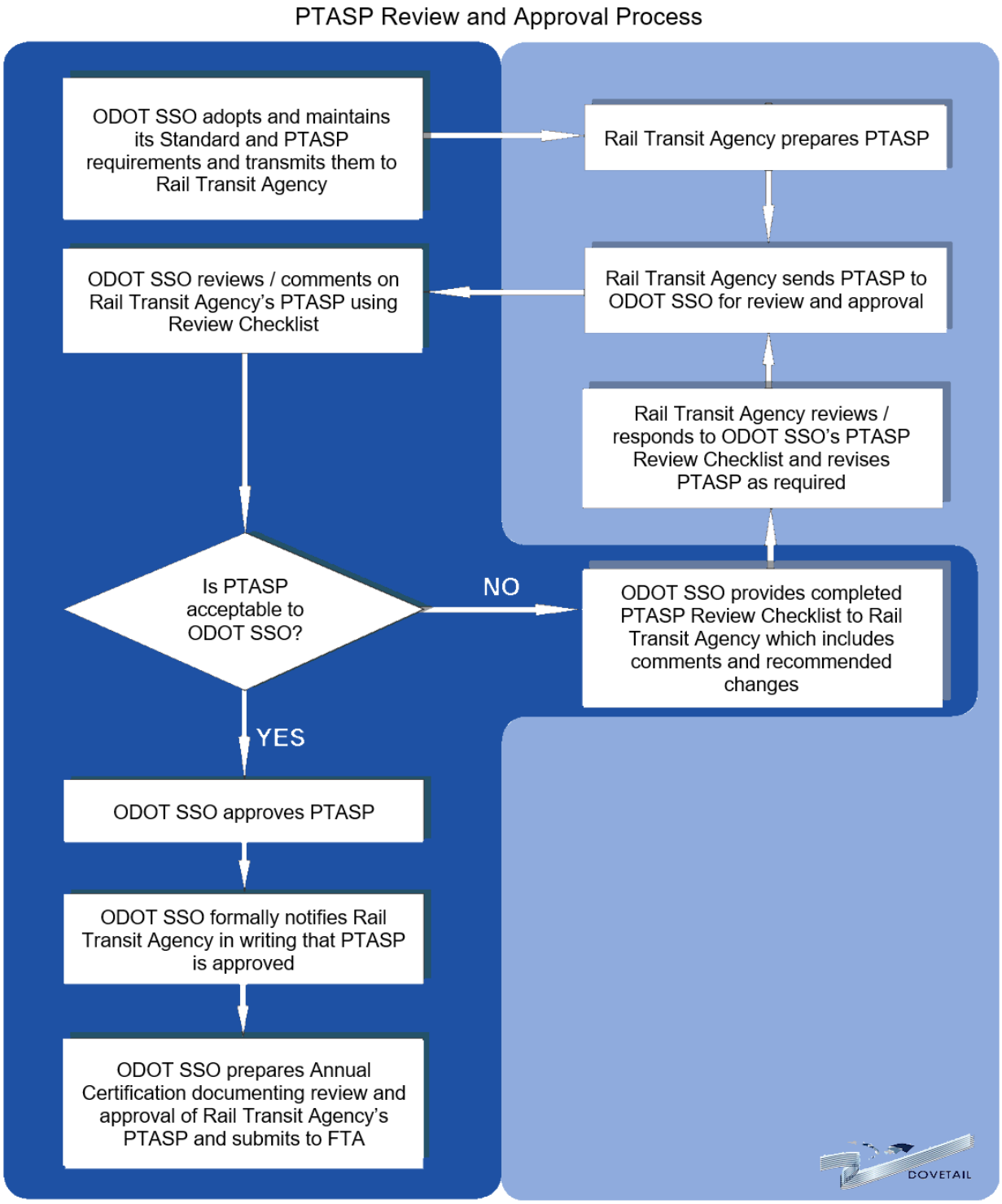


Figure 2.2 Safety Performance Management Framework

Figure 2.3 **Public Transportation Agency Safety Plan (PTASP) – Review and Approval Process**



Section 3
Security and Emergency Preparedness Plan

3.0 Purpose

This section of the Program Standard identifies the minimum requirements for the Security and Emergency Preparedness Plan (SEPP) to be developed, approved, adopted, implemented, and updated by each RTA in the ODOT program. This section also identifies how ODOT will prevent the SEPP from public disclosure by adhering to the policies and procedures for the handling of Sensitive Security Information established by the RTA.

3.1 Minimum Plan Requirements

ODOT has adopted a minimum security and emergency preparedness program standard. The RTA must develop, implement, and maintain a written SEPP that complies with the program requirements specified in **Appendix M** of this document. This section is based on FTA's System Security and Emergency Preparedness Planning Guide, issued in January 2003. The SEPP must be prepared and maintained as a separate document and may not be part of the RTA's PTASP. In addition, compliance with the FTA guide is required for rail transit agencies participating in the Department of Homeland Security Grant Program (TSGP).

At a minimum, the SEPP developed by the RTA must:

- Identify the policies, goals, and objectives for the security and emergency preparedness program endorsed by the Accountable Executive of the RTA;
- Document the RTA's process for managing threats and vulnerabilities during operations for major projects, extensions, new vehicles and equipment, including integration with safety certification process;
- Identify controls in place that address the personal security and emergency preparedness for passengers and employees;
- Document the RTA's process for conducting internal security and emergency preparedness audits to evaluate compliance and measure the effectiveness of the SEPP; and
- Document the RTA's process for making available its SEPP and accompanying procedures to ODOT for review and approval.

ODOT encourages the RTA to prepare an SEPP that outlines its program for fast, controlled, and predictable responses to the various types of emergencies that may occur within its system or nearby locations for wide distribution to external oversight, planning, management, and response agencies. The SEPP ensures the ability of the RTA to coordinate with the external response agencies without compromising sensitive security information.

In addition, ODOT anticipates that the RTA will prepare all necessary supplemental and supporting plans, policies, and procedures to support the development and implementation of the SEPP. Examples of these plans include: Continuity of Operations Plan, Emergency Operations Plan, Multi-Year Exercise and Training Program Plan, Sensitive Security Information Policy, Security Breach Policy, etc.

Safety Performance Management Framework

Additionally, ODOT will promote the adoption of a Safety Performance Management Framework by the RTA, responsible for the development and implementation of the PTASP. The framework may also be applicable to the security and emergency preparedness program. Refer to **Section 2.1** for a detailed discussion of the approach and process steps.

Delegated Contractor Duties

If the RTA delegates system security-related roles and responsibilities to contractor organizations, then the following must also be included in the plan:

- A description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart;
- A description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues; and
- An identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns.

Plan Format

In all cases where a description of a process is required for inclusion in the SEPP, the RTA is required to develop and implement the process in the form of a program, plan, policy or procedure in order to comply with the requirement.

Based on the requirements above, ODOT-specific requirements, and the guidance provided in **Appendix M**, a suggested outline for the minimum content for the RTA's SEPP is illustrated in **Table 3.1** below.

Table 3.1 Security and Emergency Preparedness Suggested Outline

Title Page

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Revisions

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3.2 Review of Initial Submission

3.2.1 ODOT

In carrying out its oversight responsibilities, the ODOT Program Manager will receive, review, and approve in writing the RTA's SEPP. With the SEPP, the RTA must also submit any referenced materials, including procedures, checklists and training materials for system security planning, internal security audit program, hazard management process, event investigation, corrective action development, emergency management, coordination and training program, rules compliance program, and transit asset management.

To ensure compliance with FTA's initial submission requirements, the RTA must submit an SEPP, in compliance with the program requirements specified in the ODOT Standard and **Appendix M**, and all referenced procedures / materials by a date specified by the ODOT Program Manager.

An RTA with a rail fixed guideway public transportation project in the engineering or construction phase of development within the jurisdiction of the State of Oklahoma that will not be subject to regulation by the Federal Railroad Administration is subject to the requirements of this section of the Program Standard.

Pursuant to this requirement, the RTA will submit its SEPP and all referenced materials to the ODOT Program Manager **365 calendar days** before beginning passenger service operations.

The ODOT Program Manager will allocate **305** of these calendar days to:

- Review initial SEPP and materials related to Initial Submission;
- Conduct safety and security certification compliance activities (refer to **Section 13**, Engineering and Construction for applicability);
- Resolve any security and emergency preparedness issues or deficiencies with the RTA;
- Review revised SEPP and materials related to Initial Submission;
- Approve the final SEPP and materials related to Initial Submission; and
- Prepare ODOT's initial submittal of the SEPP to the FTA (which must be submitted at least **60 days** prior to initiating passenger operations).

ODOT requests that all security submissions, including supporting procedures, are delivered to the ODOT point-of-contact in person, electronically with a security password, delivered via overnight mail with a signature required, or other secure methods as defined by the RTA.

ODOT Review Checklist / Working Sessions

ODOT will review the submitted SEPP, using the checklist provided in **Appendix N.** Upon approval, ODOT will provide a written letter of approval and a copy of the completed checklist to the RTA.

Pending any major deficiencies in the RTA's SEPP, the ODOT Program Manager will review and approve the initial SEPP using its review checklist, and will transmit the completed checklist, which includes a written approval, to the RTA's point-of-contact within **305 calendar days** of submission. While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the

ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

3.2.2 FTA

Sixty **(60) calendar days** prior to the passenger revenue service operations, ODOT will submit a formal letter to the FTA that certifies that the Security and Emergency Preparedness Plan complies with the requirements of the Program Standard. In addition to the letter, ODOT will submit a copy of the SEPP and ODOT Review Checklist for FTA review and approval.

FTA will review and approve the Initial Submission using its review checklist, and will transmit a formal letter of approval and the completed checklists to ODOT. In the event that the FTA does not approve the Initial Submission, additional requirements necessary to achieve compliance will be conveyed to the ODOT Program Manager by the FTA. The ODOT Program Manager will maintain ongoing communications with the FTA Office of Transit Safety and Oversight regarding the development and implementation of the Program Standard, as required.

Table 3.2 Schedule for Initial Review of SEPP

Task	Responsible Agency	Duration	Target Date
Develop initial SEPP and materials related to Initial Submission as part of FTA New Starts process.	RTA	---	Project Specific
Submit initial SEPP and materials related to Initial Submission to ODOT for review and approval.	RTA	**365** days	Prior to passenger revenue service operations.
Review and approve SEPP and materials related to Initial Submission or request additional information.	ODOT	**305** days	Prior to passenger revenue service operations.
Submit approved SEPP and materials related to Initial Submission to FTA for review and approval.	ODOT	**60** days	Prior to passenger revenue service operations

Following the process specified in **Figure 3.2** at the end of this section, ODOT will review the SEPP initial submission from the RTA.

3.3 Review of Annual Submission

Following initiation of revenue service, the RTA will conduct an annual review of its SEPP and update it as necessary to ensure that the SEPP is current at all times.

In the event that the RTA conducts its annual SEPP review and determines that an update is not necessary for the year, it must prepare and submit by **January 1** formal correspondence notifying the ODOT point-of-contact of this determination. If ODOT wishes to object to this determination, the ODOT point-of-contact will notify the RTA within **30 calendar days.**

In the event that the RTA conducts its annual SEPP review and determines that an update is necessary for the year, the RTA will submit a revised SEPP to the ODOT Program Manager by **January 31**. As appropriate, referenced materials affected by the revision(s) must also be submitted with the SEPP.

Each revised SEPP submitted to ODOT by the RTA must include a text or tabular summary that identifies and explains proposed changes and includes a time frame for completion of the associated activities.

ODOT Review Checklist / Working Sessions

Following the process specified in **Figure 3.2** at the end of this section, ODOT will review the SEPP annual submission from the RTA.

Within **30 calendar days** of receipt of the SEPP from the RTA, ODOT will review the plan and issue to the RTA written approval of its SEPP and the completed SEPP checklist. If ODOT determines that the SEPP is not acceptable, ODOT will provide a completed SEPP checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

If the ODOT SSO Lead Program Manager and the RTA's Chief Safety Officer are unable to resolve open items regarding the SEPP in a timely manner, the Program Manager has the authority to bring concerns to the attention of the Accountable Executive of the RTA or equivalent position.

It is ODOT's intent that the annual review and approval process for the SEPP be completed by **May 31.**

Table 3.3 Schedule for Annual Review of SEPP

Task	Responsible Agency	Duration	Target Date
If SEPP is not updated:			
Notifies SSO that no update is necessary.	RTA	---	Jan 1
If notified no update is necessary, accepts or objects to the RTA's determination and notify the RTA.	ODOT	30 days	Jan 31
If SEPP is updated:			
If SEPP is updated, completes annual review for previous calendar year and submits revised SEPP to SSO.	RTA	---	Jan 31
If notified update is necessary, approves SEPP or requests additional information.	ODOT	30 days	Mar 1
Submits additional information and revises SEPP.	RTA	60 days	Apr 30
Reviews additional information and approves revised SEPP.	ODOT	30 days	May 31

3.4 Review of Periodic Submission

At any given time, additional reviews of the RTA's SEPP may be required to address specific issues based on implementation and compliance to FAST Act, Section 5329, 49 CFR Part 674, and / or the ODOT Program Standard or procedures; review of the RTA's documents; or other security related project information.

Upon receipt of a written notification from ODOT for SEPP modifications, the RTA will submit a revised SEPP to ODOT within **30 calendar days**.

In the event that the RTA initiates updates, the RTA will submit the modified SEPP, and any subsequently modified procedures, to ODOT for review and approval within **30 calendar days** of the effective date of the change.

ODOT Review Checklist / Working Sessions

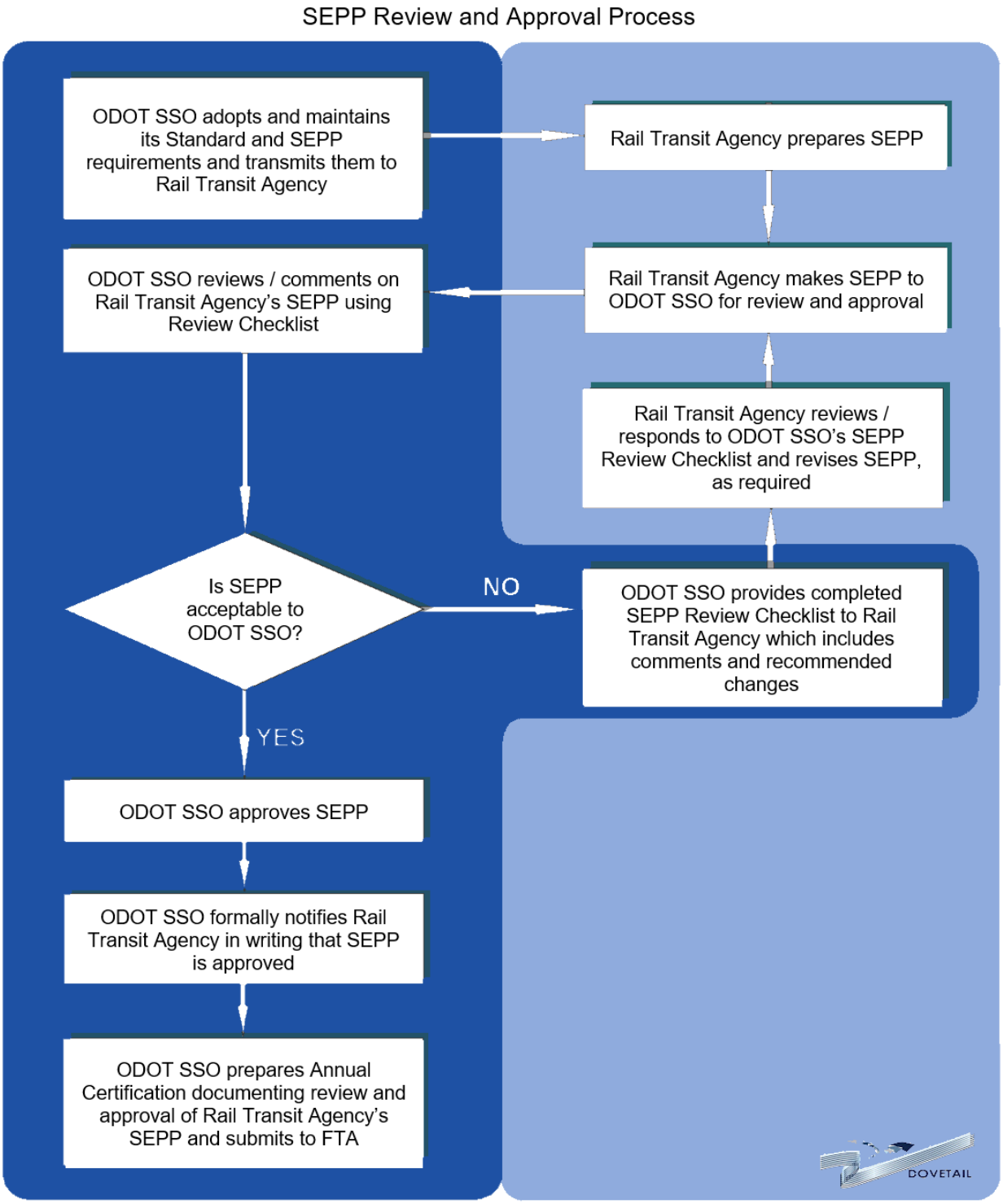
ODOT will review and approve the revised SEPP, providing a formal approval letter and a completed SEPP review checklist within **30 calendar days** of receipt of the revised the RTA's SEPP. If ODOT determines that the SEPP is not acceptable, ODOT will provide a completed SEPP checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

Table 3.4 Schedule for Periodic Review of SEPP

Task	Responsible Agency	Duration
Notifies the RTA that SEPP update is necessary.	ODOT	---
Following ODOT notification, or at its own discretion, submits revised SEPP to ODOT.	RTA	30 days
Reviews and approves revised SEPP or determines SEPP requires re-submittal.	ODOT	30 days
Revises SEPP and re-submits to ODOT review and approval.	RTA	30 days
Reviews and approves revised SEPP.	ODOT	30 days

Figure 3.2 Security and Emergency Preparedness Plan (SEPP) - Review and Approval Process



Section 4
Internal Safety and Security Audits

4.0 Purpose

In **§ 674.27(a)(4)**, FTA requires that the SSOA explain its role in overseeing an RTA's execution of any Public Transportation Agency Safety Plan related safety reviews of the RTA's fixed guideway public transportation system. The Program Standard must also establish a procedure whereby an RTA will notify the SSOA before the RTA conducts an internal review of any aspect of the safety of its rail fixed guideway public transportation system.

As discussed in **Section 2.1 and 3.1** of the Program Standard, ODOT requires the RTA to develop and implement an internal process for the conduct of safety and security audits. This process must be documented in the RTA's PTASP and SEPP and reviewed and approved by ODOT.

Required Elements

ODOT also identified the elements that must be described in the RTA's Public Transportation Agency Safety Plan (PTASP), including the internal safety audit program:

(l) A description of the process used by the RTA to ensure that planned and scheduled internal safety reviews are performed to evaluate compliance with the Public Transportation Agency Safety Plan, including
- (i) identification of departments and functions subject to review;
- (ii) responsibility for scheduling reviews;
- (iii) process for conducting reviews, including the development of checklists and procedures and the issuing of findings;
- (iv) review reporting requirements;
- (v) tracking the status of implemented recommendations, and
- (vi) coordination with the ODOT Program Manager.

Further, ODOT identified the elements that must be described in the RTA's Security and Emergency Preparedness Plan (SEPP), including the internal security audit program:

(d) Document the RTA's process for conducting internal security reviews to evaluate compliance and measure the effectiveness of the Security and Emergency Preparedness Plan.

In addition to the above, in accordance with FAST Act, Section 5329, (d) (1) Public Transportation Safety Plan, the PTASP must also include:

A. a requirement that the board of directors (or equivalent entity) of the RTA approve the PTASP and any updates to the PTASP;

B. methods for identifying and evaluating safety risks throughout all elements of the RTA;

C. strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions;

D. a process and timeline for conducting an annual review and update of the safety plan of the RTA

E. performance targets based on the safety performance criteria and state of good repair standards established under the National Public Transportation Safety Plan, (1), (A) safety performance criteria for all modes of public transportation and (1) (B) the definition of the term 'state of good repair' established under MAP-21, Section 5326(b);

F. assignment of an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the RTA; and

G. a comprehensive staff training program for the operations personnel and personnel directly responsible for safety of the RTA that includes
   (i) the completion of a safety training program; and
   (ii) continuing safety education and training.

Delegated Contractor Duties

If the RTA delegates internal audit-related roles and responsibilities to contractor organizations, then the following must also be included in the plan:

- A description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart;
- A description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues; and
- An identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns.

This section describes ODOT requirements for the internal safety and security audit program to be implemented by the RTA.

4.1 Minimum Program Requirements

As described in its PTASP and SEPP (if applicable), the RTA must implement a process for the performance of on-going internal safety and security audits to ensure the implementation of the RTA's PTASP and SEPP and to evaluate the effectiveness of these plans. To ensure compliance with FTA's 49 CFR Part **674.27(a)(4)**, the RTA must develop an Internal Audit Program Plan (IAPP) that addresses the following:

- Audit Schedule / Annual Internal Audit Summary Report
  - A description of the process to develop and submit an internal safety and security audit schedule to ODOT, which addresses all required elements of the Public Transportation Agency Safety Plan and Security and Emergency Preparedness Plan, over a three-year cycle.
  - A description of the process to provide, at a minimum, and annual internal audit annual report discussed in **Section 4.3**, that also includes annual updates of this schedule.

- Audit Procedures and Checklists
  - A description of the process to develop checklists and procedures for conducting the three-year audit cycle of the PTASP and SEPP.
  - A description of the process to ensure that these materials include sufficient criteria to determine if all audited elements are performing as intended.

- Audit Notification
  - A description of the process to notify ODOT not less than 30 calendar days prior to conduct of an internal safety or security audit.

- A description of the process to transmit the notification in writing to the ODOT point-of-contact. The notification may be transmitted via letter or email.
- A description of the required notification content. The notification must include the time and location(s) of the internal audit as well as the name of the audited department.
- A description of the process to coordinate with ODOT in the event ODOT chooses to participate in an internal audit of which it is notified.
- A description of the process to provide to ODOT, at the time of notification, the checklists and procedures relevant for the audit being conducted. These materials may be submitted to the ODOT point-of-contact in electronic copy via email.
- A description of the process established by the RTA to ensure the protection of Security-Sensitive Information (SSI) for security audits.

- Individual Internal Audit Report
  - A description of the process to prepare a written report documenting recommendations and any corrective actions identified as a result of each individual audit conducted.

- Audit Findings Log
  - A description of the process to prepare an Internal Safety and Security Audit Findings Log to track through to implementation all findings, recommendations, and corrective actions developed as a result of the internal safety and security audit process.
  - A description of the process to make this log available to ODOT and to be referenced during activities performed in support of the Hazard Management Process.

- Audit CAPs
  - A description of the requirement for submitting a formal CAP in writing to ODOT for approval within **30 calendar days** after the need for the CAP was identified as a result of the internal safety or security audit finding.
  - A description of the requirement to identify and / or discuss the source of the CAP (i.e. findings identified from the internal safety and / or security audit process).
  - A description of the requirement that the CAP identify the deficiency.
  - A description of the requirement that the CAP identify the planned activities or actions to resolve the deficiency.
  - A description of the requirement that the CAP identify the individual(s), department(s), task force(s), committee(s), operating or capital improvement program initiatives or other project sponsor(s) responsible for implementing the corrective actions.
  - A description of the requirement that the CAP identify the scheduled completion dates for implementation.
  - A description of the requirement that the audited department submit applicable supporting documentation with the CAP.
  - A description of the requirement that the audited department provide the status of all open corrective actions related to the open internal audit findings.
  - A description of the requirements for changes. A description of the requirement that, if the audited department wishes to modify an open action, the proposed alternative must be described in sufficient detail so that ODOT can determine its acceptability as a substitute for the originally approved CAP.
  - A description of the requirements for close-outs. Also, when and how the Safety Department verified implementation for the closed CAP.
  - A description of the requirement for the CAP log to include open items from internal audits.
  - A description of the requirement for submitting applicable internal audit reports with the CAP Log in writing to ODOT for approval each month.
  - A description of the requirement for the submittal of revised policies / procedures as part of the CAP Log.

- Delegated Contractor Duties
  - A description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart;
  - A description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues; and
  - An identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns.

- Review of the Initial Submission (applicable to new systems only)
  - Any referenced materials, including procedures, checklists and training materials for system safety planning, internal safety audit program, hazard management process, event investigation, corrective action development, emergency management, coordination and training program, and rules compliance program must be submitted for review, if the RTA is making its initial submission.

4.2 Review of Initial Submission

4.2.1 ODOT

In carrying out its oversight responsibilities under **§ 674.29**, the ODOT Program Manager will receive, review, and approve in writing the RTA's PTASP. With the PTASP, the RTA must also submit any referenced materials, including the Internal Audit Program Plan (IAPP).

To ensure compliance with FTA's initial submission requirements, the RTA must submit the IAPP, in compliance with the internal audit program requirements specified in the ODOT Standard and **Appendix K**, and all referenced procedures / materials by a date specified by the ODOT Program Manager.

An RTA with a rail fixed guideway public transportation project in the engineering or construction phase of development within the jurisdiction of the State of Oklahoma that will not be subject to regulation by the Federal Railroad Administration is subject to the requirements of this section of the Program Standard.

Pursuant to this requirement, the RTA will submit its IAPP and all referenced materials to the ODOT Program Manager **365 calendar days** before beginning passenger service operations for review and comment.

The ODOT Program Manager will allocate **305** of these calendar days to:

- Review and comment on the initial IAPP and materials related to Initial Submission;
- Review revised IAPP and materials related to Initial Submission;
- Accept the final IAPP and materials related to Initial Submission; and
- Prepare ODOT's initial submittal of the PTASP, including the IAPP to the FTA (which must be submitted at least **60 days** prior to initiating passenger operations).

The IAPP and supporting procedures must be submitted in electronic copy via email or secure file sharing and storage system to the ODOT Program Manager.

ODOT Review Checklist / Working Sessions

ODOT will review the submitted IAPP, using the checklist provided in **Appendix O**. Upon approval, ODOT will provide a copy of the completed checklist to the RTA.

Pending any major deficiencies in the RTA's IAPP, the ODOT Program Manager will review and approve the initial IAPP using its review checklist, and will transmit the completed checklist, which includes a written approval, to the RTA's point-of-contact within **305 calendar days** of submission.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

4.2.2 FTA

Sixty **(60) calendar days** prior to the passenger revenue service operations, ODOT will submit a formal letter to the FTA that certifies that the Public Transportation Agency Safety Plan, including the IAPP, complies with the requirements of the Program Standard.

FTA will review and approve the Initial Submission using its review checklist and will transmit a formal letter of approval and the completed checklists to ODOT. In the event that the FTA does not approve the Initial Submission, additional requirements necessary to achieve compliance will be conveyed to the ODOT Program Manager by the FTA.

The ODOT Program Manager will maintain ongoing communications with the FTA Office of Transit Safety and Oversight regarding the development and implementation of the Program Standard, as required.

Table 4.2 Schedule for Initial Review of IAPP

Task	Responsible Agency	Duration	Target Date
Develop initial IAPP and materials related to Initial Submission as part of FTA New Starts process.	RTA	---	---
Submit initial IAPP, and materials related to Initial Submission to ODOT for review and approval.	RTA	**365** days	Prior to passenger revenue service operations.
Review and approve IAPP and materials related to Initial Submission or request additional information.	ODOT	**305** days	Prior to passenger revenue service operations.
Submit approved IAPP and materials related to Initial Submission to FTA for review and approval.	ODOT	**60** days	Prior to passenger revenue service operations

The RTA may choose to develop the Internal Audit Program Plan (IAPP) in the format of a Standard Operating or Administrative Procedure.

4.3 Review of Annual Submission

Following initiation of revenue service, the RTA will conduct an annual review of its IAPP and update it as necessary to ensure that the IAPP is current at all times.

In the event that the RTA conducts its annual IAPP review and determines that an update is not necessary for the year, it must prepare and submit by **January 1** formal correspondence notifying the ODOT point-of-contact of this determination. If ODOT wishes to object to this determination, the ODOT point-of-contact will notify the RTA within **30 calendar days.**

In the event that the RTA conducts its annual IAPP review and determines that an update is necessary for the year, the RTA will submit a revised IAPP to the ODOT Program Manager by **January 31**. As appropriate, referenced materials affected by the revision(s) must also be submitted with the HMP.

Each revised IAPP submitted to ODOT by the RTA must include a text or tabular summary that identifies and explains proposed changes and includes a time frame for completion of the associated activities.

ODOT Review Checklist / Working Sessions

Following the process specified in **Figure 4.3** at the end of this section, ODOT will review the IAPP annual submission from the RTA.

Within **30 calendar days** of receipt of the IAPP from the RTA, ODOT will review the plan and issue to the RTA written approval of its IAPP and the completed IAPP checklist. If ODOT determines that the IAPP is not acceptable, ODOT will provide a completed IAPP checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

If the ODOT SSO Lead Program Manager and the RTA's Chief Safety Officer are unable to resolve open items regarding the IAPP in a timely manner, the Program Manager has the authority to bring concerns to the attention of the Accountable Executive of the RTA or equivalent position.

It is ODOT's intent that the annual review and approval process for the IAPP be completed by **May 31.**

Table 4.3 Schedule for Annual Review of IAPP

Task	Responsible Agency	Duration	Target Date
If IAPP is not updated:			
Notifies SSO that no update is necessary.	RTA	---	Jan 1
If notified no update is necessary, accepts or objects to the RTA's determination and notify the RTA.	ODOT	30 days	Jan 31
If IAPP is updated:			
If IAPP is updated, completes annual review for previous calendar year and submits revised IAPP to SSO.	RTA	---	Jan 31
If notified update is necessary, approves IAPP or requests additional information.	ODOT	30 days	Mar 1
Submits additional information and revises IAPP.	RTA	60 days	Apr 30
Reviews additional information and approves revised IAPP.	ODOT	30 days	May 31

4.4 Review of Periodic Submission

At any given time, additional reviews of the RTA's IAPP may be required to address specific issues based on implementation and compliance to FAST Act, Section 5329, 49 CFR Part 674, and / or the ODOT Program Standard or procedures; review of the RTA's documents; or other safety related project information.

Upon receipt of a written notification from ODOT for IAPP modifications, the RTA will submit a revised IAPP to ODOT within **30 calendar days**.

In the event that the RTA initiates updates, the RTA will submit the modified IAPP, and any subsequently modified procedures, to ODOT for review and approval within **30 calendar days** of the effective date of the change.

ODOT Review Checklist / Working Sessions

ODOT will review and approve the revised IAPP, providing a formal approval letter and a completed IAPP review checklist within **30 calendar days** of receipt of the revised the RTA IAPP. If ODOT determines that the IAPP is not acceptable, ODOT will provide a completed IAPP checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

Table 4.4 Schedule for Periodic Review of IAPP

Task	Responsible Agency	Duration
Notifies the RTA that IAPP update is necessary.	ODOT	---
Following ODOT notification, or at its own discretion, submits revised IAPP to ODOT.	RTA	30 days
Reviews and approves revised IAPP or determines IAPP requires re-submittal.	ODOT	30 days
Revises IAPP and re-submits to ODOT review and approval.	RTA	30 days
Reviews and approves revised IAPP.	ODOT	30 days

4.5 Annual Reports

4.5.1 Internal Safety and Security Audit Annual Report

By **February 1** of each year, ODOT requires the RTA to submit an Internal Audit (IA) annual report to the ODOT point-of-contact that documents the internal audits for the previous calendar year. This report must be submitted in electronic copy via email or secure file sharing and storage system to the ODOT Program Manager.

For sections devoted to the results of security audits, any special provisions established by the RTA or ODOT to ensure the protection of these materials must be followed. The RTA has the option of providing the internal audits of security as a standalone IA annual report.

The IA annual report must include:

- a listing of the internal safety and security audits conducted for that year;
- a discussion of the RTA's progress in meeting its three-year internal audit schedule, including the identification of any obstacles in meeting the schedule and any proposed mitigation measures;
- an updated schedule for next year's audits;
- the status of all findings, recommendations, and corrective actions resulting from the audits conducted that year; and
- any challenges or issues experienced by the RTA's system safety function or security /

police function in obtaining action from and / or compliance with these findings, recommendations and corrective actions during that year.

ODOT will review and approve the IA annual report within **30 calendar days** according to the checklist included as **Appendix P**. The RTA must also submit a copy of each individual internal safety or security audit report completed during the previous calendar year along with its annual report. While conducting its review, ODOT staff may request additional information, clarifications or revisions from the RTA's safety or security point-of-contact. A meeting or teleconference may also be conducted to address any issues identified by ODOT during its review of the IA annual report. Any additional requirements will be conveyed to the RTA by the ODOT point-of-contact.

Table 4.5.1 Schedule for Review of Internal Safety and Security Audit Annual Report

Task	Responsible Agency	Duration	Target Date
Submits Annual Audit Report that documents the internal audits for previous year to ODOT	RTA	---	Feb 1
Submits formal Letter of Certification, signed by its Accountable Executive that the RTA is in compliance with its PTASP and SEPP (if applicable)	RTA	---	Feb 1
Reviews and approves Annual Report	ODOT	30 calendar days following receipt	Mar 1

Figure 4.5.1 illustrates the review and approval process for the Internal Safety and Security Audit Annual Report submitted by the RTA to ODOT.

4.5.2 Letter of Certification for Internal Audit

In addition to the IA annual report, also by **February 1**, ODOT requires that the RTA submit a formal letter of certification for internal audit, signed by the RTA's Accountable Executive, stating that, based on the evaluation performed during the internal safety and security audit process and other evaluation methods implemented during the previous year, the RTA is in compliance with the following plans that are subject to the requirements of the Program Standard:

- Public Transportation Agency Safety Plan (PTASP)
- Security and Emergency Preparedness Plan (SEPP)
- Internal Audit Program Plan (IAPP)
- Hazard Management Plan (HMP)
- Accident / Incident Investigation Plan (AIP)
- Corrective Action Plan Program (CAPP)
- Safety and Security Certification Plans (SSCPs)
- Technical Training Plan (TTP)
- Transit Asset Management Plan (TAMP)

In addition, the letter of certification must include the signatures of the department head(s) responsible for the performance of the internal safety audits and / or internal security audits included in the IA annual report. The letter of certification must also identify the revision number and effective date for each of these RTA plans.

If the RTA determines that findings from its internal safety and security audits and other evaluation methods indicate that the RTA is not in compliance with its PTASP, SEPP, IAPP, HMP, AIP, CAPP, SSCPs, TTP, and TAMP, the Accountable Executive must then identify the activities that the RTA will take to achieve compliance. ODOT will review and approve these actions using the procedure specified in **Section 8** of this document, Corrective Action Plans.

4.5.3 No Conflict of Interest Verification Annual Report

By **February 1** of each year, ODOT requires the RTA to submit a No Conflict of Interest Verification (NCIV) annual report to the ODOT point-of-contact that documents the RTA's compliance to the conflict of interest requirements specified in **§ 674.41(a), (b), and (c)**.

The NCIV annual report may be submitted in electronic copy via email or secure file sharing and storage system.

This annual report must include:

- a listing of the contracts awarded for the previous calendar year.
- a listing of the key personnel servicing those contracts, with particular emphasis on personnel that are performing safety, security, and emergency preparedness activities on behalf of the RTA.
- a letter of certification signed by the Accountable Executive of the RTA that verifies there are no conflicts of interest in terms of legal and financial independence, employees, or third party contractors.

ODOT will review the NCIV annual report within **30 calendar days** according to the checklist included as **Appendix Q**. While conducting its review, ODOT staff may request additional information, clarifications or revisions from the RTA's safety or security point-of-contact. A meeting or teleconference may also be conducted to address any issues identified by ODOT during its review of the annual report. Any additional requirements will be conveyed to the RTA by the ODOT point-of-contact.

Figure 4.5.2 illustrates the review and approval process for the No Conflict of Interest Verification Annual Report submitted by the RTA to ODOT.

4.5.4 Letter of Certification for No Conflict of Interest

In addition to the NCIV annual report, also by **February 1**, ODOT requires that the RTA submit a formal letter of certification for no conflict of interest, signed by the RTA's Accountable Executive, stating that, the RTA has no legal dependence, financial dependence, employee, or third party contractor conflicts of interest. Specifically, the letter of certification must attest to the following:

- As specified in 674.41(a), the RTA under ODOT oversight, is legally independent from ODOT, as evidenced by the fact that the RTA is not a division, organization, agency, or agent of ODOT capable of promulgating and enforcing ODOT rules and regulations. The RTA is legally separated from ODOT with distinct reporting relationships, board memberships, and organizational activities. Appropriate recusals for shared board memberships are in effect according to the RTA's Board of Directors' By-Laws, currently in effect.
- As specified in 674.41(a), the RTA is financially independent from ODOT, as evidenced by the fact that there are no monetary dependencies or connections between ODOT and the RTA. ODOT is not financially vested in the RTA, nor does the RTA fund ODOT or direct its budget or activities in anyway.
- As specified in 674.41(b), no individual or entity provides services to both ODOT and the RTA as evidenced by the contract listing and associated procurement information included in this annual report. Appropriate policies and procedures for conflicts of interest, recusals, and ethical standards are in effect according to the RTA's code of ethics, standards of conduct, and other relevant policies.
- As specified in 674.41(c), no contractor provides services to both ODOT and the RTA. No

third party contractor has a conflict of interest. Each contractor is subject to full disclosure on all present and potential conflicts of interest in its activities or relationships prior to being awarded a contract with the RTA.

In addition, the letter of certification must include the signatures of the department head(s) responsible for the administration of legal, contracts and procurement, human resources, and financial services for the RTA.

4.6 Internal Audit Findings Tracking Log

The Internal Safety and Security Audit Program will include the Internal Audit Findings Tracking Log. ODOT requires the RTA to establish an Internal Audit Findings Tracking Log which reflects the consolidation of information in the internal audit process. The Internal Audit Findings Tracking Log must contain all audits of the rail fixed guideway system conducted by the RTA for each calendar year. The Internal Audit Findings Tracking Log may be organized by the audit number assigned by the RTA rail, audit element, the department of the RTA audited, or other suitable method of organization.

The Internal Audit Findings Tracking Log must include the required information listed in **Table 4.6**.

Table 4.6 Internal Audit Findings Tracking Log

INTERNAL AUDIT FINDINGS TRACKING LOG	
Element	**Description**
INTERNAL AUDIT SYNOPSIS	
IA: ID Number	Refers to the number assigned to the internal audit by the RTA
IA: Audit Date	Refers to the date the internal audit was conducted
IA: Audit Element	Refers to the element of the PTASP or SEPP audited
IA: Audited Department	Refers to the department subject to the internal audit
IA: Description of Audit Finding	Refers to a brief narrative summary of the audit finding – what it is, what evaluation criteria was used, what the area of concern or deficiency is, etc.
CORRECTIVE ACTION PLAN	
CAP: Source	Refers to source of the finding. For this log the response will always be: Internal Safety/Security Review
CAP: ID Number	Refers to the number assigned to the CAP by the RTA
CAP: Identified Action	Refers to the corrective action plan developed by the audited department to address the identified audit finding
CAP: SOA Approved?	Refers to a yes or no response provided by the SSOA on the approval status of the CAP
CAP: Proposed Implementation Date	Refers to the estimated date of completion of the corrective action plan
CAP: Actual Implementation Date *(closed only)*	Refers to the actual implementation date of completion of the corrective action plan
CAP: Individual Responsible for Implementation	Refers to the individual (name and title) assigned responsibility for implementation of the corrective action plan to address the identified audit finding
CAP: Department Responsible for Implementation	Refers to the department assigned responsibility for implementation of the corrective action plan to address the identified audit finding
CAP: Status	Refers to the status of the audit. Status may be designated as pending, open, in progress, or closed.

INTERNAL AUDIT FINDINGS TRACKING LOG	
Element	**Description**
INTERNAL AUDIT SYNOPSIS	
CAP: Implementation Verified *(closed only)*	Refers to a yes or no response provided by the safety department of the RTA. A yes response must be based upon the review and acceptance of evidence documenting closure of the corrective action plan.
CAP: Issues Preventing Resolution *(open only)*	Refers to a brief narrative summary of issues preventing resolution of the corrective action plan provided by the audited department or the safety department of the RTA.
CAP: Status Updates	Refers to the periodic updates provided by the audited department to implement the agreed upon corrective action plan
Other: CAP Alternative	If the RTA wishes to modify an open action, the proposed alternative must be described in sufficient detail so that ODOT can determine its acceptability as a substitute for the originally approved CAP. If there is disagreement between the RTA and ODOT regarding CAP changes, the process described in **Section 8** of the Standard will be implemented to resolve differences.
SAFETY ASSURANCE – PERFORMANCE MONITORING / MEASUREMENT	
SA: Effective, Appropriate, Implemented as Intended	Refers to a yes or no response provided by the safety department of the RTA. A yes response must be based on an assessment of the performance outcomes of the safety risk mitigation following closure of the CAP. A no response must be accompanied with a detailed explanation and a proposed alternative CAP.
SA: Safety Performance Monitoring and Measurement	Refers to a brief narrative summary of the process used by the RTA to assess safety performance such as trend analysis of relevant safety concerns, internal safety reporting programs, internal audits or other compliance assessments.

As part of the initial submission of the PTASP discussed in **Section 2** of the Program Standard, the proposed Internal Audit Findings Tracking Log must be submitted by the RTA to ODOT for review and approval.

Following the initiation of revenue service, the Internal Audit Findings Tracking Log must be submitted no less than **monthly** to the ODOT point-of-contact in electronic copy via email or secure file sharing and storage system. ODOT will review the Internal Audit Findings Tracking Log and forward any questions or requests for information to the RTA's point-of-contact.

Figure 4.3 Internal Audit Program Plan – Review and Approval Process

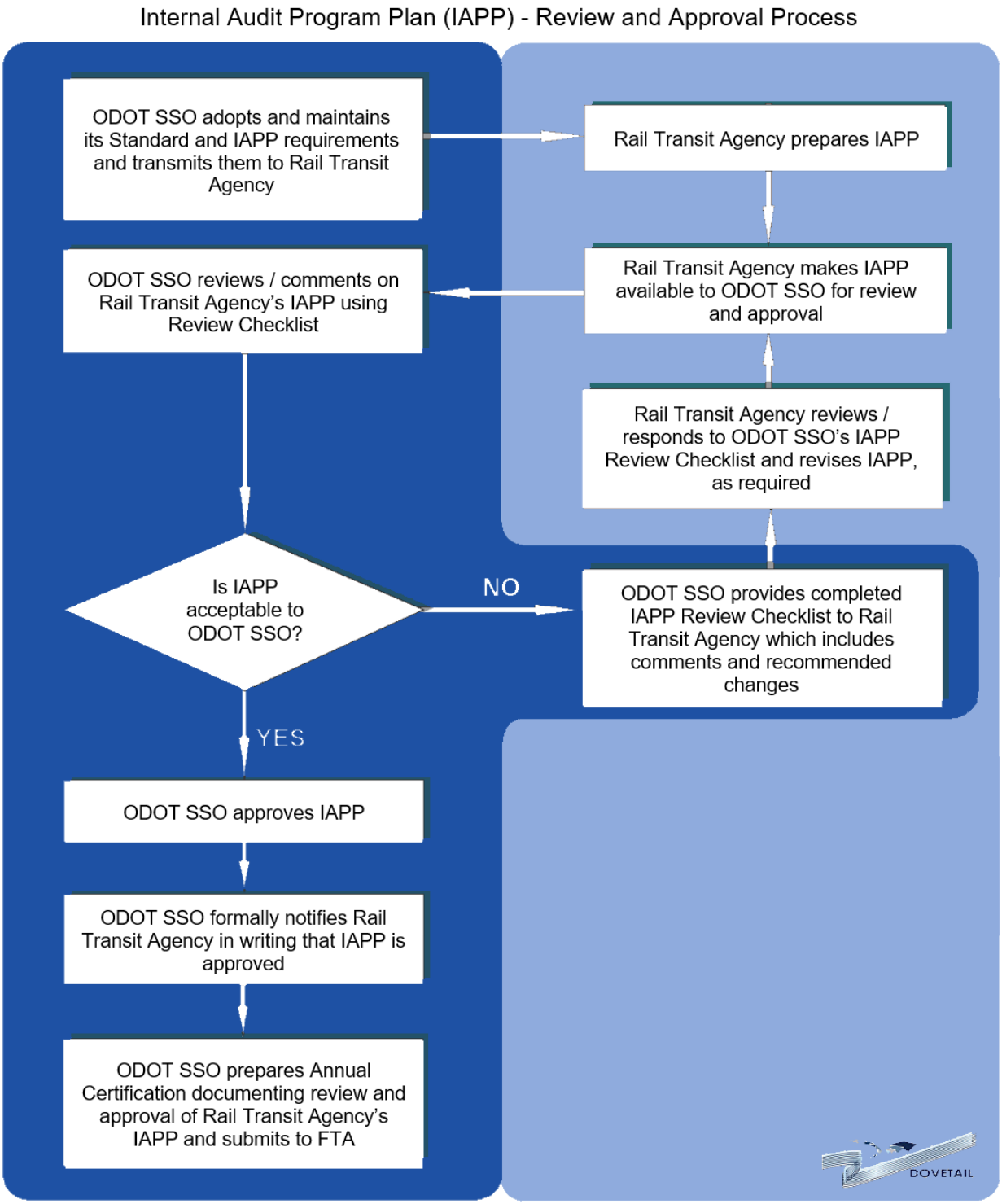


Figure 4.5.1 Internal Safety and Security Audit Annual Report – Review and Approval Process

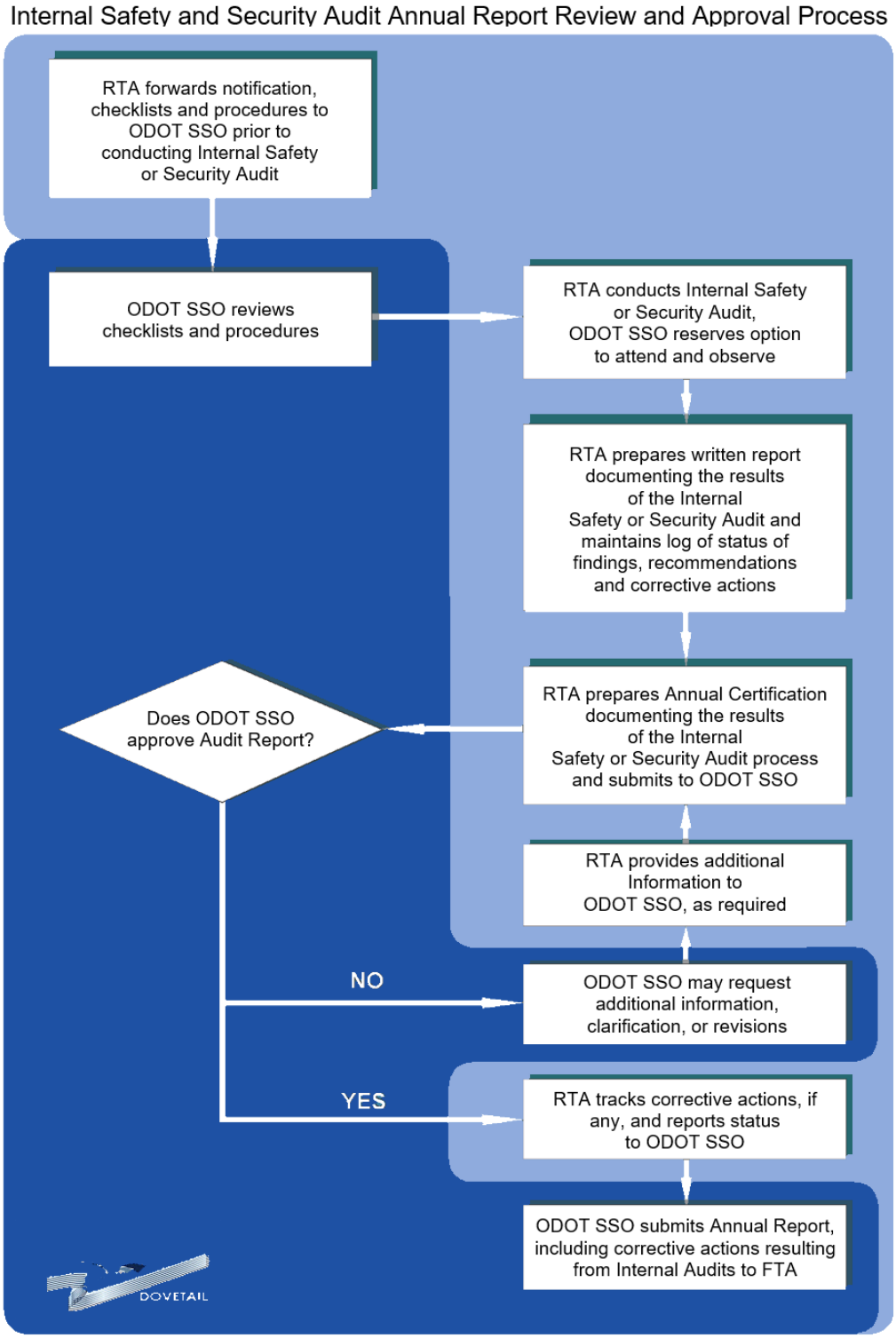
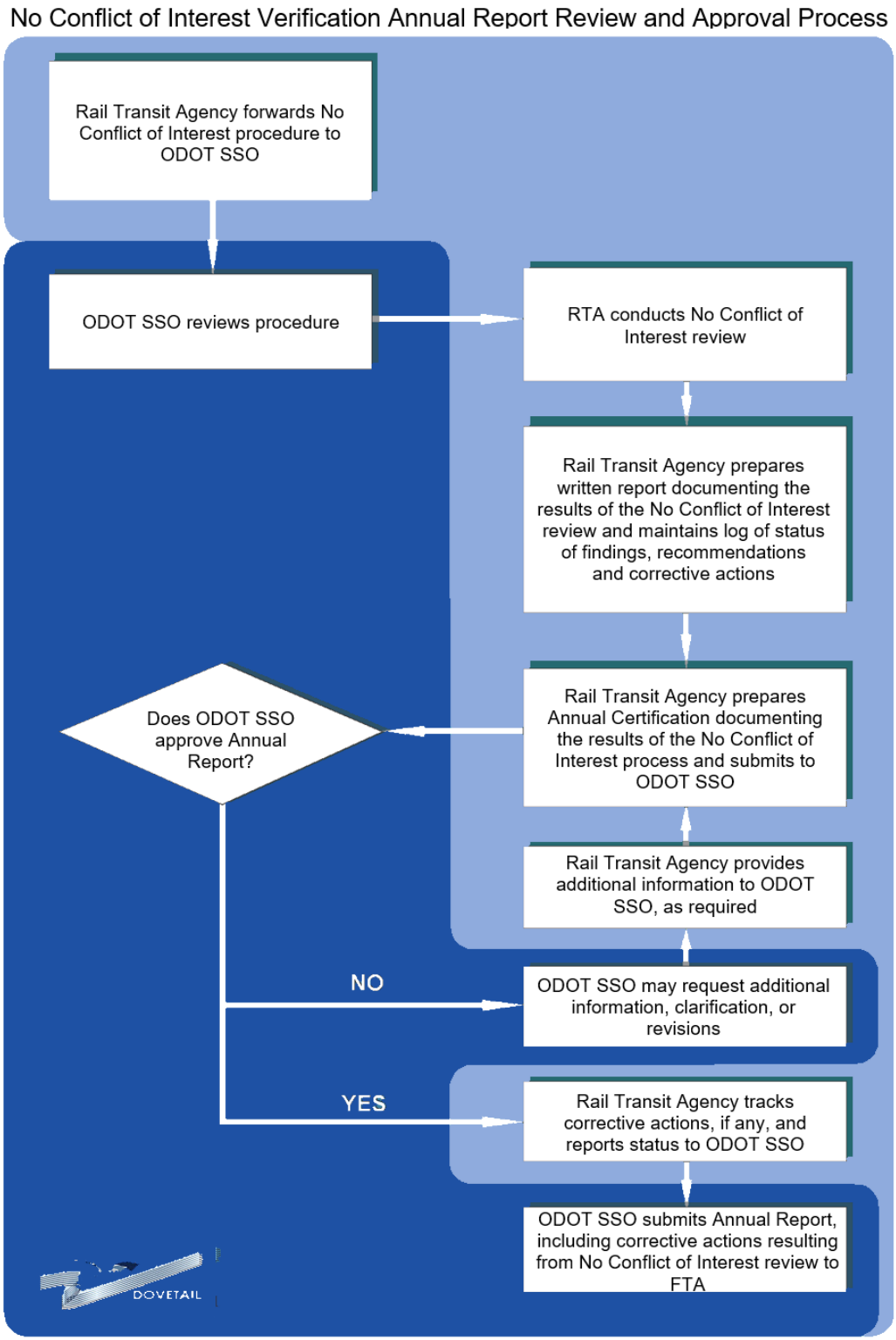


Figure 4.5.2 No Conflict of Interest Verification Annual Report - Review and Approval Process



Section 5
Hazard Management Process

5.0 Purpose

Consistent with the general requirements for public transportation agency safety plans specified in **§ 674.29**, ODOT requires the RTA to develop and implement a written Public Transportation Agency Safety Plan (PTASP), including a hazard management program:

(f) A description of the process used by the RTA to implement its hazard management program, including activities for:

(vi) hazard identification;
(vii) hazard investigation, evaluation and analysis;
(viii) hazard control and elimination;
(ix) hazard tracking; and
(x) requirements for on-going reporting to the ODOT Program Manager regarding hazard management activities and status.

ODOT's requirements focus on the creation of a hazard management process developed and documented by the RTA in its PTASP.

In addition to the above, in accordance with the **FAST Act, Section 5329, (d) (1)** Public Transportation Safety Plan, the hazard management program described in the PTASP must also include:

- methods for identifying and evaluating safety risks throughout all elements of the RTA;
- strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions;

This section of the Program Standard addresses ODOT's requirements to ensure that a hazard management process is developed that describes the RTA's process to identify, evaluate and analyze, resolve, track, and report safety hazards.

5.1 Minimum Plan Requirements

The RTA must develop, implement, and maintain a written Hazard Management Plan (HMP) that complies with the program requirements specified in this section. The hazard management process described in the HMP applies to New Starts projects; extensions or modifications to existing systems; operational or environmental changes; or from hazards discovered during reviews, audits, inspections, and investigations.

The HMP must include:

- A description of the individuals, departments, and external agencies (to include ODOT and FTA) that have roles and responsibilities for hazard identification, investigation, evaluation and analysis, resolution, tracking, and reporting.

  The RTA should include a discussion of how the RTA's safety function will receive, review, and analyze the hazard information received from other departments.

- A description of the process to define the physical and functional characteristics of the system to be analyzed. These characteristics are to be presented in terms of the major elements which make up the system: facilities, systems, equipment, procedures, people, and environment.

- A description of the process to identify hazards and determine their causes. The RTA should include a discussion of the specific methods for hazard identification such as operating experience of the existing system (if applicable), scenario development, expert opinion, formal hazard analysis techniques, design and other engineering or technical analyses.

  The RTA must provide a definition of what the RTA considers a "hazard" and the criteria / thresholds that must be met to trigger a determination that a hazard is "unacceptable."

  The RTA must also describe both continuous hazard identification methods and periodic, targeted hazard identification campaigns at the RTA.

  This approach may include a number of methodologies such as:
  - Informal processes such as reports generated by observations made by field personnel; results from vehicle and facilities maintenance audits and inspection, and daily review of the RTA unusual occurrence log; and
  - Formal processes such as findings and recommendations from internal safety and security audits; formal hazard analyses (Preliminary Hazard Analysis, Failure Mode and Effects Analysis, Operations Hazard Analysis, Fault Tree Analysis).

- At a minimum, the RTA must describe its process to perform a formal, system-wide process to identify, assess, and resolve hazards at least once every three years

- A description of the process to evaluate and assess the identified hazards in terms of the severity or consequence of the hazard and the probability of occurrence of each type of hazard. The RTA should include a discussion of the process determine the level of risk and risk acceptance criteria.

- A description of the process to resolve hazards, including the management decision-making process to assume, eliminate, or control identified hazards. The RTA should include a discussion of the process to develop and implement corrective actions to reduce the risk of a hazard to the lowest practical level.

  The RTA must also describe the implementation of an integrated, system-wide RTA hazard resolution process.

- A description of the process to track the implementation of corrective actions to resolve identified hazards, including the preparation of written checklists, and the process to provide ongoing reporting to the ODOT Program Manager regarding hazard management activities and status.

- The plan should address both the process for reporting hazards during the engineering and construction phase of the project as well as how hazards will be summarized and reported each quarter to the SSO following revenue operations. For each identified hazard, the RTA must provide a description, date identified, source, assessment results, recommendation and status. Refer to **Table 5.6.1** for potential hazards that may require notification to ODOT.

Corrective Action Plans:

- The RTA must include a discussion of the process to develop and implement corrective actions to reduce the risk of a hazard to the lowest practical level:
  - A description of the requirement for submitting a formal CAP in writing to ODOT for approval within 30 calendar days after the need for the CAP has been identified as a result of the hazard management process?

- A description of the requirement to identify and / or discuss the source of the CAP (i.e. hazard).
- A description of the requirement that the CAP identify / describe the hazard.
- A description of the requirement that the CAP identify the planned activities or actions to resolve the hazard.
- A description of the requirement that the CAP identify the individual(s), department(s), task force(s), committee(s), operating or capital improvement program initiatives or other project sponsor(s) responsible for implementing the corrective actions.
- A description of the requirement that the CAP identify the scheduled completion dates for implementation.
- A description of the requirement to submit applicable supporting documentation with the CAP.
- A description of the requirement that to provide the status of all open corrective actions related to the open hazard.
- A description of the requirements for changes. A description of the requirement that, if the responsible department wishes to modify an open action, the proposed alternative must be described in sufficient detail so that Safety Department can determine its acceptability as a substitute for the originally approved CAP.
- A description of the requirements for close-outs. Also, when and how the Safety Department verified implementation for the closed CAP.
- A description of the requirement for the CAP log to include open items from hazards.
- A description of the requirement for the submittal of revised policies / procedures as part of the CAP Log.

Plan Reviews/Updates

- A description of the process used to review, revise and approve the Hazard Management Plan and related procedures.

Delegated Contractor Duties:

- If the RTA delegates hazard management-related roles and responsibilities to contractor organizations, then the following must also be included in the plan:
  - A description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart;
  - A description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues; and
  - An identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns.

Review of the Initial Submission (applicable to new systems only):

- Any referenced materials, including procedures, checklists and training materials for system safety planning, internal safety audit program, hazard management process, event investigation, corrective action development, emergency management, coordination and training program, and rules compliance program must be submitted for review, if the RTA is making its initial submission.

In addition, ODOT requires the hazard management process address the following key elements:

- **Hazard Identification** – the identification of hazards through investigation of actual events (accidents / incidents) and through proactive processes aimed at identifying hazards before they precipitate an occurrence. Examples include hazard and incident reporting systems, surveys of operations and maintenance personnel, as well as operations and maintenance inspections and audits. Other techniques include analysis of statistical trends and review of risk factors associated with people, systems / vehicles, or the operating environment that are related to safety incidents and occurrences.

- **Risk Assessment** – once the hazards have been identified, they must undergo an assessment to determine their potential consequences. Typically, this assessment involves three considerations: 1) the likelihood of the hazard causing or triggering an unsafe event, 2) the severity of the consequence of the unsafe event if the hazard is allowed to remain, and 3) the exposure to the hazard (e.g. number of passenger-miles per day, number of vehicles per hour). The probability of the adverse consequences becomes greater with increased exposure to the unsafe conditions.

- **Risk Mitigation** – The risk mitigation process involves lowering the level of risk by reducing the severity of potential consequences, by reducing the likelihood of occurrence, and / or by reducing the exposure to the identified risk.

Figure 5.1 at the end of this section illustrates the basic hazard (or safety risk) management process.

If the RTA delegates hazard management-related roles and responsibilities to contractor organizations, then the following must also be included in the plan:

- A description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart;
- A description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues; and
- An identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns.

In all cases where a description of a process is required for inclusion in the HMP, the RTA is required to develop and implement the process or procedure in order to comply with the requirement.

Based on the requirements above, a suggested outline for the minimum content for the RTA's HMP is illustrated in **Table 5.1** below.

Table 5.1 Hazard Management Plan (HMP) Suggested Outline

Title Page		
Table of Contents		
Approvals		
Revisions		
Section 1.	Introduction	
	1.0	Overview
	1.1	Purpose
	1.2	Scope
	1.3	Authority
	1.4	Roles and Responsibilities

Table 5.1	Hazard Management Plan (HMP) Suggested Outline
	1.4.1 Internal (Safety, Other Departments) 1.4.2 External (FTA, NTSB, ODOT)
Section 2.	System Definition 2.0 Overview 2.1 Facilities / Equipment 2.3 Systems 2.3 Plans, Procedures, Other Major Elements
Section 3.	Hazard Identification Process 3.0 Overview 3.1 Internal Notification (Safety, Other Departments) 3.2 External Notification (FTA, NTSB, ODOT)
Section 4.	Hazard Assessment/Evaluation Process 4.0 Overview 4.1 Hazard Assessment Process 4.1.1 Internal Review / Approval (coordination with Safety) 4.1.2 External Review / Approval (coordination with ODOT)
Section 5.	Hazard Resolution and Management Acceptance Process 5.0 Overview 5.1 Hazard Resolution Process 5.1.1 Internal Review / Approval (coordination with Safety) 5.1.2 External Review / Approval (coordination with ODOT)
Section 6.	Hazard Tracking and Reporting Process 6.0 Overview 6.1 Hazard Log Development Process 6.2 Hazard Log Change / Update Process 6.3 Hazard Log Close-Out and Verification Process 6.4 Hazard Log Review and Approval Process (coordination with ODOT) 6.5 Sample Hazard Log
Section 7.	Hazard Management Plan Review and Modification 7.0 Overview 7.1 Hazard Management Plan Review Schedule 7.2 Hazard Management Plan Control and Update Procedures 7.3 Hazard Management Plan Review and Approval (coordination with ODOT)

The RTA may choose to develop the Hazard Management Plan in the format of a Standard Operating or Administrative Procedure.

5.2 Review of the Initial Submission

5.2.1 ODOT

In carrying out its oversight responsibilities under **§ 674.29**, the ODOT Program Manager will receive, review, and approve in writing the RTA's PTASP. With the PTASP, the RTA must also submit any referenced materials, including the Hazard Management Plan (HMP).

To ensure compliance with FTA's initial submission requirements, the RTA must submit the HMP, in compliance with the hazard management program requirements specified in the ODOT Standard and **Appendix R**, and all referenced procedures / materials by a date specified by the ODOT Program Manager.

An RTA with a rail fixed guideway public transportation project in the engineering or construction phase of development within the jurisdiction of the State of Oklahoma that will not be subject to regulation by the Federal Railroad Administration is subject to the requirements of this section of the Program Standard.

Pursuant to this requirement, the RTA will submit its HMP and all referenced materials to the ODOT Program Manager **365 calendar days** before beginning passenger service operations for review and comment.

The ODOT Program Manager will allocate **305** of these calendar days to:

- Review and comment on the initial HMP and materials related to Initial Submission;
- Review revised HMP and materials related to Initial Submission;
- Accept the final HMP and materials related to Initial Submission; and
- Prepare ODOT's initial submittal of the PTASP, including the HMP to the FTA (which must be submitted at least **60 days** prior to initiating passenger operations).

The HMP and supporting procedures must be submitted in electronic copy via email or secure file sharing and storage system to the ODOT Program Manager.

ODOT Review Checklist / Working Sessions

ODOT will review the submitted HMP, using the checklist provided in **Appendix R**. Upon approval, ODOT will provide a copy of the completed checklist to the RTA.

Pending any major comments or recommended changes in the RTA's HMP, the ODOT Program Manager will review and comment on the initial HMP using its review checklist, and will transmit the completed checklists to the RTA's point-of-contact within **305 calendar days** of submission.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

5.2.2 FTA

Sixty **(60) calendar days** prior to the passenger revenue service operations, ODOT will submit a formal letter to the FTA that certifies that the Public Transportation Agency Safety Plan, including the HMP, complies with the requirements of the Program Standard.

FTA will review and approve the Initial Submission using its review checklist, and will transmit a formal letter of approval and the completed checklists to ODOT. In the event that the FTA does not approve the Initial Submission, additional requirements necessary to achieve compliance will be conveyed to the ODOT Program Manager by the FTA.

The ODOT Program Manager will maintain ongoing communications with the FTA Office of Transit Safety and Oversight regarding the development and implementation of the Program Standard, as required.

Table 5.2 Schedule for Initial Review of HMP

Task	Responsible Agency	Duration	Target Date
Develop initial HMP and materials related to Initial Submission as part of FTA New Starts process.	RTA	---	---
Submit initial HMP, and materials related to Initial Submission to ODOT for review and approval.	RTA	**365** days	Prior to passenger revenue service operations.
Review and approve HMP and materials related to Initial Submission or request additional information.	ODOT	**305** days	Prior to passenger revenue service operations.
Submit approved HMP and materials related to Initial Submission to FTA for review and approval.	ODOT	**60** days	Prior to passenger revenue service operations

5.3 Review of Annual Submission

Following initiation of revenue service, the RTA will conduct an annual review of its HMP and update it as necessary to ensure that the HMP is current at all times.

In the event that the RTA conducts its annual HMP review and determines that an update is not necessary for the year, it must prepare and submit by **January 1** formal correspondence notifying the ODOT point-of-contact of this determination. If ODOT wishes to object to this determination, the ODOT point-of-contact will notify the RTA within **30 calendar days.**

In the event that the RTA conducts its annual HMP review and determines that an update is necessary for the year, the RTA will submit a revised HMP to the ODOT Program Manager by **January 31**. As appropriate, referenced materials affected by the revision(s) must also be submitted with the HMP.

Each revised HMP submitted to ODOT by the RTA must include a text or tabular summary that identifies and explains proposed changes and includes a time frame for completion of the associated activities.

ODOT Review Checklist / Working Sessions

Following the process specified in **Figure 5.3** at the end of this section, ODOT will review the HMP annual submission from the RTA.

Within **30 calendar days** of receipt of the HMP from the RTA, ODOT will review the plan and issue to the RTA written approval of its HMP and the completed HMP checklist. If ODOT determines that the HMP is not acceptable, ODOT will provide a completed HMP checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

If the ODOT SSO Lead Program Manager and the RTA's Chief Safety Officer are unable to resolve open items regarding the HMP in a timely manner, the Program Manager has the authority to bring concerns to the attention of the Accountable Executive of the RTA or equivalent position.

It is ODOT's intent that the annual review and approval process for the HMP be completed by **May 31.**

Table 5.3 Schedule for Annual Review of HMP

Task	Responsible Agency	Duration	Target Date
If HMP is not updated:			
Notifies SSO that no update is necessary.	RTA	---	Jan 1
If notified no update is necessary, accepts or objects to the RTA's determination and notify the RTA.	ODOT	30 days	Jan 31
If HMP is updated:			
If HMP is updated, completes annual review for previous calendar year and submits revised HMP to SSO.	RTA	---	Jan 31
If notified update is necessary, approves HMP or requests additional information.	ODOT	30 days	Mar 1
Submits additional information and revises HMP.	RTA	60 days	Apr 30
Reviews additional information and approves revised HMP.	ODOT	30 days	May 31

5.4 Review of Periodic Submission

At any given time, additional reviews of the RTA's HMP may be required to address specific issues based on implementation and compliance to FAST Act, Section 5329, 49 CFR Part 674, 49 CFR Part 673 and / or the ODOT program standard or procedures; review of the RTA documents; or other safety related project information.

Upon receipt of a written notification from ODOT for HMP modifications, the RTA will submit a revised HMP to ODOT within **30 calendar days**.

In the event that the RTA initiates updates, the RTA will submit the modified HMP, and any subsequently modified procedures, to ODOT for review and approval within **30 calendar days** of the effective date of the change.

ODOT Review Checklist / Working Sessions

ODOT will review and approve the revised HMP, providing a formal approval letter and a completed HMP review checklist within **30 calendar days** of receipt of the revised the RTA's HMP. If ODOT determines that the HMP is not acceptable, ODOT will provide a completed HMP checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

Table 5.4 Schedule for Periodic Review of HMP

Task	Responsible Agency	Duration
Notifies the RTA that HMP update is necessary.	ODOT	---
Following ODOT notification, or at its own discretion, submits revised HMP to ODOT.	RTA	30 days
Reviews and approves revised HMP or determines HMP requires re-submittal.	ODOT	30 days
Revises HMP and re-submits to ODOT review and approval.	RTA	30 days
Reviews and approves revised HMP.	ODOT	30 days

5.5 Hazard Management Process – Coordination and Access

5.5.1 Quarterly Meetings / Annual Calendar

ODOT will coordinate a proposed date and location for the quarterly meeting and a proposed agenda with the RTA. ODOT will develop and issue the agenda, making any modifications as appropriate, and schedule the quarterly meeting with the RTA. ODOT will prepare meeting minutes from each quarterly meeting, being sure to document any identified action items or required activities. At its discretion, ODOT may increase the frequency of the hazard management meetings in response to a given hazard, accident, incident or trend of such events.

To the extent possible, ODOT requires the RTA safety and security points-of-contact to identify all regularly occurring safety and security-related meetings (i.e., Quarterly Meeting, Safety Executive Committee, Safety and Security Certification Committee, System Safety Operations Committee, Fire/Life Safety and Security Committee, System Integration Testing Committee, Rail Activation Committee, Exercise Planning Team, etc.) where the attendance of the ODOT Program Manager is requested or required. The ODOT Program Manager will work together with the RTA safety and security points-of-contact to develop an annual meeting calendar and solidify the meeting dates for the following year by **December 1** of each year.

The Annual Calendar will be regularly updated and maintained between the ODOT Program Manager and the affected RTAs and distributed to the safety and security points-of-contacts in order to avoid meeting scheduling conflicts for the SSO program.

5.5.2 Management Information Systems

The purpose of management reporting is to provide the RTA with precise and sufficient documentation of the performance of the RTA system regarding safety, management, operation, maintenance, and passenger service.

Examples of the operations and maintenance reporting include performance and operation status, incidents and accidents, maintenance status, internal audits, and inspections.

ODOT recognizes that the RTA operations and maintenance functions are and will be managed through various information management systems.

As necessary, to provide timely review of potential hazards, ODOT requires the RTA to provide access to the specific the RTA management information systems that provide information, including, but not limited to, the following (where applicable):

- Infrastructure,
- Vehicles,
- Signals / Communications
- Operations Control Center,
- Passenger safety and security,
- Maintenance planning and reporting, and
- Configuration management.

Access to the RTA operations and maintenance information systems will allow ODOT the ability to monitor safety performance and hazard identification, as well as verify the development and implementation of corrective actions.

5.6 Hazard Investigations

5.6.1 Notification of Unacceptable Hazards

The RTA will notify ODOT of all potential hazards that affect the immediate safety and security of the rail transit system.

At a minimum, should the RTA determine that the **initial** risk assessment of the hazard identified is "unacceptable" using the criteria and assessment process specified in its PTASP, the RTA will notify the ODOT point-of-contact within **24 hours or by 5:00 p.m. on the next regular working day** following the determination of the unsafe condition as "unacceptable." The RTA will transmit an electronic copy via email of the appropriately completed worksheets, forms, or other materials documenting the unacceptable hazard.

ODOT requires that the RTA track and resolve all identified hazards in its hazard log including hazardous conditions, events, incidents, occurrences, and discoveries.

Table 5.6.1 Potential Hazards

In addition to hazards that are determined by the RTA to have an initial risk assessment of "unacceptable," whenever the following events occur, ODOT requires notification within 24 hours or by 5:00 p.m. on the next regular working day.

Table 5.6.1 is not intended to be inclusive of all potential hazards that may meet this notification criteria, but instead highlights known industry hazards that must be reported.

ODOT-REPORTABLE HAZARDS
Safety Examples
Workers / Passengers / Patrons / Public • Unexpected service shutdown for all, or a portion of, a rail transit system due to a safety related or hazardous condition • Discoveries of systemic or patterns of employees or contractors in safety-sensitive positions who are non-compliant with the RTA rules and procedures • Electric shock of employee, contractor, or patron • Exposed energized electrical conductors or equipment that can be contacted by passengers or employees • Incidents involving individuals working in / around the RTA right-of-way that are investigated by the RTA or its contractors • Operator incapacitated during revenue service • Passenger, patron, or public injuries sustained in revenue service areas (not covered under accident, incident, or occurrence definition)
Infrastructure / Facilities / Systems • Unsafe signal or control system failures • Broken or missing safety-critical equipment, infrastructure, or systems that could result, or have resulted in: worker, patron, or passenger injury or property damage to the RTA • Direct current ground fault with an electrical arc and other stray current / corrosion control related events • Facility or track closures due to safety-related reasons • Malfunctions or failures of safety-critical systems such as traction power, signals/switches that could result, or have resulted, in an event (meaning an accident, incident or occurrence) • Most hazardous materials spills
Rail Transit Vehicle • Rail work zone incursions by a rail transit vehicle • Broken or loose wheel or axle • Face-up of rail transit vehicles • Improper door opening (wrong side, off platform, or while moving)

ODOT-REPORTABLE HAZARDS
• Malfunctions or failures of safety critical systems (braking, electrical, propulsion)
Security Examples
Workers / Passengers / Patrons / Public • Discoveries of systemic or patterns of employees or contractors in security-sensitive positions who are non-compliant with the RTA rules and procedures
Infrastructure / Facilities / Systems • Broken or missing security-critical equipment, infrastructure, or systems that could result, or have resulted in: worker, patron, or passenger injury or property damage to the RTA • Facility or track closures due to security-related reasons • Malfunctions or failures of security-critical systems such as access control, intrusion detection or communications systems that could result, or have resulted, in an event (meaning accident, incident or occurrence)
Rail Transit Vehicle • Malfunctions or failures of security-critical systems (i.e. cameras)

As a courtesy to ODOT, the RTA will notify ODOT of any event that may attract or has attracted a significant amount of media, state, or federal agency attention.

5.6.2 Investigation of Unacceptable Hazards

RTA Investigations

The RTA or its contractor must investigate a hazard reported to ODOT as unacceptable in accordance with the provisions specified by the RTA in its PTASP and Accident / Incident Investigation procedures submitted to and approved by ODOT. The RTA will maintain a file of hazards reported to ODOT and make these files available to ODOT for review and evaluation.

- **Initial Investigation Report**

  The RTA will submit to the ODOT point-of-contact the initial report of the unacceptable hazard within **7 calendar days** of the hazard being reported to ODOT point-of-contact. The RTA must submit the report in electronic copy via email or secure file sharing and storage system.

- **Status Investigation Reports**

  The RTA will submit to the ODOT point-of-contact status reports of the unacceptable hazard investigation at least **monthly** until the investigation is completed. The RTA must transit these status reports in electronic copy via email or secure file sharing and storage system.

- **Final Investigation Report**

  Upon completing the investigation of the unacceptable hazard, the RTA will prepare and submit to the ODOT for review and approval a final report that includes a description of activities, findings, identified causal factors, and a corrective action plan (if required).

  The RTA will transmit an electronic copy of the final investigation report to ODOT point-of-contact via email. Within **30 calendar days** of receiving a report designated as final, ODOT will review the report, using the process specified in **Section 6** of this document, and in accordance with its Checklist for Reviewing RTA Event Investigation Final Reports, specified in **Appendix T** of this document.. During this 30 calendar day review period, if ODOT determines that the report is acceptable, ODOT will issue to the RTA written approval of the report. If the review will take longer than **30 calendar days** due to the complexity and/or volume of the final report and supporting documentation, or other extenuating circumstances, ODOT will notify the affected RTA in writing on or before **Day 30** and provide a revised date

for the completion of the review.

In the event that ODOT does not accept the RTA's report, ODOT will communicate in writing the area(s) of disagreement or concern. The report will not be considered final until all conditions are met and the report is approved by ODOT.

Refer to **Section 6**, Accident Notification, Investigation, and Reporting for an illustration of the Final Report review and approval process specified by ODOT.

Independent and Joint Investigations

ODOT reserves the right to conduct independent or joint investigation of any given hazard, accident, incident or trend of such events. A description of the ODOT investigation process is provided in **Section 6.6** of this document. Upon determination to conduct an independent or joint investigation, ODOT will inform the RTA in writing of its intention to conduct an independent or joint investigation of a reported hazard no later than **7 calendar days** following receipt of the RTA's initial report. ODOT will advise the RTA of the following:

- investigation processes;
- identity of individual(s) conducting or participating in the investigation; and
- tentative schedule of investigation elements.

The RTA will assist ODOT investigators by providing required information and resources necessary for conducting or participating in the investigation. ODOT or its contractor will prepare an independent investigation report or assist in the preparation of a joint investigation report that includes a description of activities, findings, identified causal factors, and a corrective action plan (if required).

The draft report will be finished within **30 calendar days** after completion of the investigation, and will be delivered to the RTA for review. The RTA will have **30 calendar days** to review the draft investigation report. ODOT will revise the report if necessary, and issue the final investigation report within **30 calendar days**. The RTA will have **30 calendar days** to prepare a corrective action plan, if required, and submit it to the ODOT point-of-contact.

5.6.3 Corrective Action Plans

If required, the RTA will develop a corrective action plan(s) to correct those elements or activities identified as deficient as a result of the investigation. In addition, ODOT may, during the course of an investigation, identify corrective action(s) to avoid or minimize the reoccurrence of the hazard or address a related, systemic problem. Procedures associated with development, submission, review, and approval of corrective action plan(s) are the subject of **Section 8** of this document. At any time during an investigation, ODOT reserves the right to request a full briefing from the RTA on the known circumstances of the investigation, including corrective action(s).

5.7 Hazard Tracking Log

The Hazard Management Plan will include the Hazard Tracking Log that will be used once the project initiates revenue service. ODOT requires the RTA to establish a Hazard Tracking Log which reflects the consolidation of information in the hazard management process. The Hazard Tracking Log must contain all hazards identified through the various methods applied by the RTA. The Hazard Tracking Log may be organized by the hazard number assigned by the RTA, or by type of hazard, the source from which it was identified, or the element of the RTA's operation affected by the hazard (i.e., facilities, vehicles, track and signal, communications / SCADA, personnel training and procedures, etc.).

Following the initiation of revenue service, the Hazard Tracking Log must be submitted no less than **monthly** to the ODOT point-of-contact in electronic copy via email or secure file sharing and storage system. ODOT will review the Hazard Tracking Log and forward any questions or requests for information to the RTA's point-of-contact.

The Hazard Tracking Log must include the following required information:

Table 5.7 Hazard Tracking Log

HAZARD TRACKING LOG	
Element	**Description**
HAZARD SYNOPSIS	
Hazard: ID Number	Refers to the number assigned to the hazard by the RTA.
Hazard Title / Description	Refers to a brief title describing the nature of the hazard
Hazard: Date Identified	Refers to the date when hazard was identified at the RTA.
Hazard: Mitigation (CAP Requirements)	Refers to the description of the corrective action required by the RTA to address the hazard and bring it to a level of risk acceptable to management.
Hazard: CAP Developed?	Refers to a yes or no response provided by the RTA.
CORRECTIVE ACTION PLAN	
CAP: Source	Refers to source of corrective action plan: 1. Event Investigation 2. Hazard Management 3. Internal Safety / Security Review 4. SSO On-Site Audit 5. Other
CAP: ID Number	Refers to the number assigned to the corrective action plan by the RTA.
CAP: Identified Action	Refers to the description of the corrective action required by the RTA to address the hazard and bring it to a level of risk acceptable to management.
CAP: SOA Approved?	Refers to a yes or no response provided by ODOT.
CAP: Proposed Implementation Date	Refers to the estimated completion date for the identified CAP
CAP: Actual Implementation Date *(closed only)*	Refers to the actual completion date for the identified CAP
CAP: Individual Responsible for Implementation	Refers to the individual (name and title) assigned responsibility for implementation of the CAP.
CAP: Department Responsible for Implementation	Refers to the department assigned responsibility for implementation of the CAP.
CAP: Status	Refers to the implementation status of the CAP, open or closed.
CAP: Implementation Verified? *(closed only)*	Refers to a yes or no response provided by the RTA that verifies that the RTA's safety department verified the implementation of the CAP.
CAP: Issues Preventing Resolution *(open only)*	Refers to issues that prevent the timely and adequate resolution to identified CAP.
Other: CAP Alternative	If the RTA wishes to modify an open action, the proposed alternative must be described in sufficient detail so that ODOT can determine its acceptability as a substitute for the originally approved CAP. If there is disagreement between the RTA and ODOT regarding CAP changes, the process described in **Section 8** of the Standard will be implemented to resolve differences.

HAZARD TRACKING LOG	
Element	**Description**
HAZARD SYNOPSIS	
Other: Hazard Risk Index - Initial	Refers to a determination of the initial hazard severity and hazard probability for the hazard, before mitigation.
Other: Hazard Risk Index - Final	Refers to a determination of the final hazard severity and hazard probability for the hazard, following mitigation.
Other: Hazard CAP Status Updates	Refers to the periodic updates provided by the responsible individual / department to implement the agreed upon CAP.
Other: Hazard CAP Alternative	If the RTA wishes to modify an open action, the proposed alternative must be described in sufficient detail so that ODOT can determine its acceptability as a substitute for the originally approved CAP. If there is disagreement between the RTA and ODOT regarding CAP changes, the process described in Section 8 of the Standard will be implemented to resolve differences.
Other: Hazard CAP Verification	Refers to the documented evidence that verifies implementation of the CAP that mitigates the identified hazard.
SAFETY ASSURANCE – PERFORMANCE MONITORING / MEASUREMENT	
SA: Effective, Appropriate, Implemented as Intended	Refers to a yes or no response provided by the safety department of the RTA. A yes response must be based on an assessment of the performance outcomes of the safety risk mitigation following closure of the CAP. A no response must be accompanied with a detailed explanation and a proposed alternative CAP.
SA: Safety Performance Monitoring and Measurement	Refers to a brief narrative summary of the process used by the RTA to assess safety performance such as trend analysis of relevant safety concerns, internal safety reporting programs, internal audits or other compliance assessments.

At its discretion, ODOT may increase the frequency of the submittal requirements for the hazard tracking log in response to a given hazard or trend of such events, or other systemic safety related issues.

As part of the initial submission of the PTASP discussed in **Section 2** of the Program Standard, the proposed Hazard Tracking Log must be submitted by the RTA to ODOT for review and approval.

ODOT will review the Hazard Tracking Log using the Corrective Action Plan (CAP) Log Review Checklist included as **Appendix V** and forward any questions or requests for information to the RTA's point-of-contact.

5.8 ODOT Reviews of the Hazard Management Process

The RTA must ensure that it has effective processes for the identification, investigation, resolution, tracking, and reporting of hazards, including hazard trending / analysis and employee reporting of hazards. The RTA should assess the implementation of its hazard management techniques in an ongoing manner and through its internal safety and security audit program.

At its discretion, ODOT may conduct an on-site monitoring exercise of the RTA to verify aspects of the safety and security program, including implementation of the hazard management program. A monitoring exercise may be structured formally as an audit, or be informal such as attending a workshop or observing a drill to gain a better understanding of the RTA's approach to an issue relevant to the oversight program. ODOT will provide advance written notice to the RTA's point-of-contact to state the purpose, extent, and

format of the monitoring exercise and to work out an appropriate schedule of activities.

At least **quarterly**, ODOT will assess the identification of hazards and the effectiveness of hazard mitigation measures during its review of the hazard tracking log and discussions with the RTA during the Quarterly Meetings.

At least once **every three years**, or on an ongoing basis during a three year cycle, ODOT will formally assess the effectiveness of the hazard management process during the SSO On-Site Safety and Security Audits.

Figure 5.1 Basic Hazard Management Process

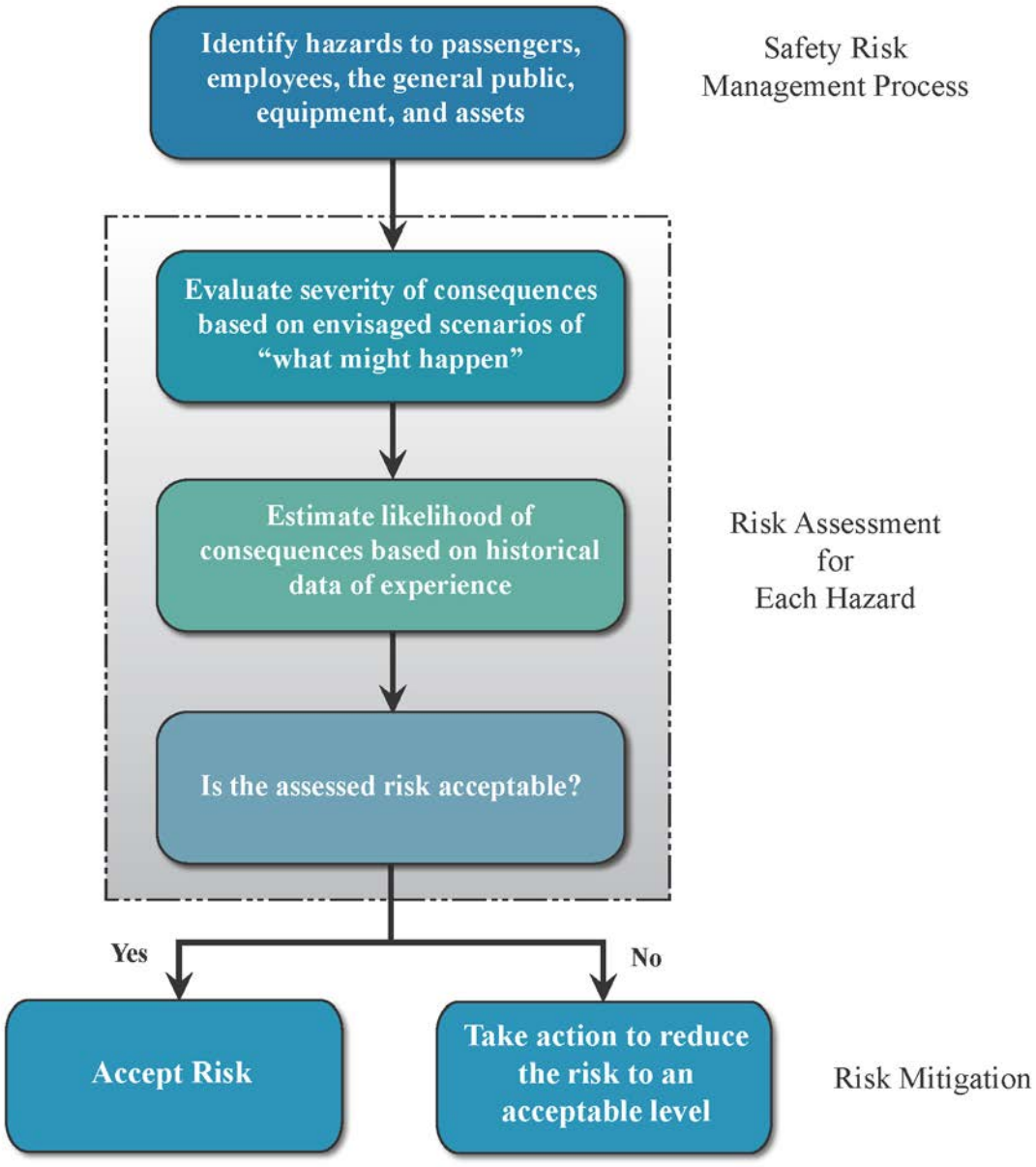
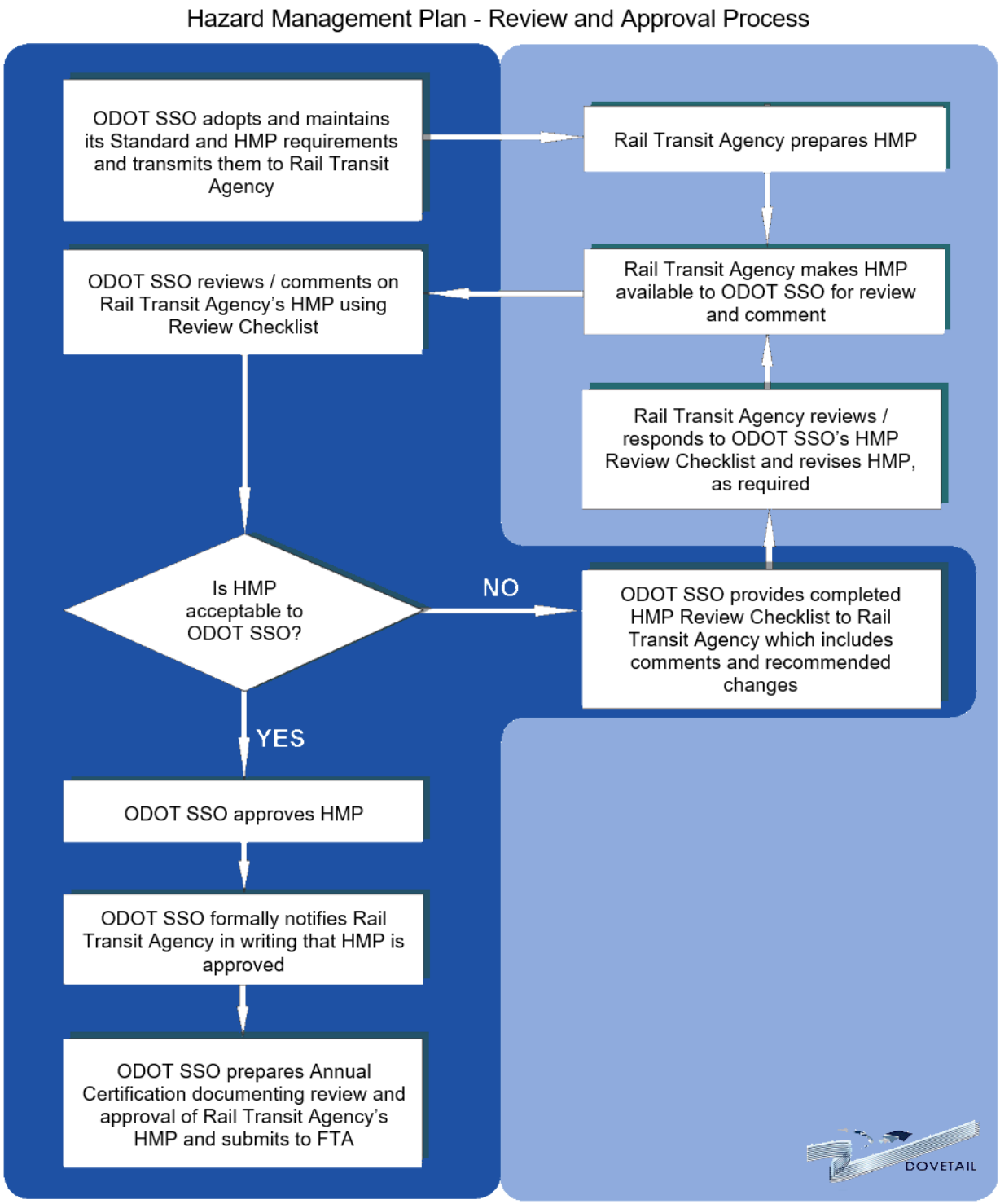


Figure 5.3 Hazard Management Plan – Review and Approval Process



Section 6
Event Notification, Investigation, and Reporting

6.0 Purpose

Consistent with the general requirements for public transportation agency safety plans specified in **§ 674.29**, ODOT requires the RTA to develop and implement a written Public Transportation Agency Safety Plan (PTASP), including accident notification, investigation, and reporting:

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

(i) notification thresholds for internal and external organizations;
(ii) accident investigation process and references to procedures;
(iii) the process used to develop, implement, and track corrective actions that address investigation findings;
(iv) reporting to internal and external organizations; and
(v) coordination with the ODOT Program Manager.

This section addresses the requirements specified for accident notification in **§ 674.33,** accident investigation and reporting specified in **§ 674.35** and **674.39**, and corrective action planning specified in **§ 674.37.**

6.1 Minimum Plan Requirements

The RTA must develop, implement, and maintain a written Accident / Incident Investigation Plan (AIP) that complies with the program requirements specified in this section. The accident notification, investigation, reporting and corrective action planning process described in the AIP applies to New Starts projects; extensions or modifications to existing systems; operational or environmental changes; or from accident-related issues discovered during reviews, audits, inspections, and investigations.

The AIP must:

- Describe the authority for developing and implementing the event / hazard investigation plan including requirements stipulated by the Oklahoma Department of Transportation and the Federal Transit Administration.

- Identify the purpose of the event / hazard investigation plan and introduce the concepts for event investigation procedures used by the RTA.

- Describe the scope, policies, criteria, and thresholds for conducting the RTA event / hazard investigations including those which are reportable, non-reportable, joint and independent.

- Identify the goals and objectives of the event / hazard investigation plan endorsed by the RTA management.

- Provide a list of acronyms and definitions of important terms used in event / hazard investigation at the RTA.

- Describe how the RTA's Accident/Incident Investigation Plan is integrated with other plans and programs maintained by the transit agency, particularly the Public Transportation Agency Safety Plan (PTASP), Security and Emergency Preparedness Plan, Internal Audit Program Plan, Hazard Management Plan (HMP), and Corrective Action Plan (CAP) Program.

- Describe the persons, departments and agencies responsible for the RTA's accident, incident, and hazardous conditions investigations.

- Describe the methods, including timing, of the internal notification process and information to be provided to the field personnel, Operations Control Center (OCC), emergency responders, and points of contact in the departments responsible for system safety and system security for accident, incidents, hazards and other emergencies impacting the RTA.

- Describe the required notifications and preliminary reporting of rail system accidents/incidents/hazards to external agencies in accordance with established regulatory requirements, including ODOT, FTA, and FRA.

- Describe the objectives, process and responsibilities of field personnel that conduct the initial response / on-site investigation for accidents, incidents, and hazards at the RTA.

- Describe the process to ensure the preservation of the incident scene until the arrival of the designated event / hazard investigators, including the safety and security response team of the RTA, ODOT (in the event of a ODOT independent or joint investigation), or NTSB (in the event of an NTSB-led investigation).

- Describe the individuals, teams, process and responsibilities of the Off Site Investigator(s) of the RTA and participating agencies for accidents, incidents, and hazards.

- Describe the requirements of the RTA's post-event / hazard investigation procedures including assessments, inspections, tests, research, analysis, briefings, and reporting.

- Describe the investigation procedures for hazards including minimum thresholds for notification to ODOT, the State Safety Oversight Agency (SSO), investigation and reporting requirements, and coordination with the SSO.

- Define an accident, event, hazard, incident, occurrence, risk, risk mitigation, safety risk management, serious injury, threat, and vulnerability.

- Define the physical boundaries of what is considered the "rail grade crossing" for the purposes of event / hazard notification, investigation, reporting, and corrective action planning. This is of particular importance for mixed-traffic reportable events. This may require that the RTA consult engineering drawings to calculate and document the specific limits of the rail grade crossing areas.

- Describe the event investigation training and procedures available to ensure that the employees responsible for conducting investigations are proficient.

- Identify the persons and departments responsible for internal and external reporting of the RTA's accident, incident, and hazard investigations.

- Describe the RTA's coordination with the ODOT for the review and approval of:
    - event investigation procedures;
    - investigation of reportable events to external agencies;
    - investigation reporting; and
    - ownership of investigation materials.

- Describe the RTA's coordination with ODOT for the review of:
  - Event site, physical evidence and photographs collected at the scene
  - Preliminary, status, and final departmental incident reports and interview statements
  - Other relevant documents, including but not limited to:
    - Design Criteria
    - Technical Specifications
    - Engineering Drawings
    - General Orders and Bulletins
    - Standard Operating Procedures
    - Standard Maintenance Standards
    - Emergency Work Orders
    - Routine Work Orders
    - Preventative Maintenance Inspections
    - Test Reports
    - SCADA Logs
    - Engineering Work Orders
    - Scopes of Work
    - Employee Work Schedules, Training Curriculums and Records
  - Audiovisual data, including vehicle and facility cameras
  - Audio data from applicable Dispatch, Operations Control and Communication Centers
  - Reconstructed and/or reenacted event

- Describe the process used to review, revise and approve the Accident / Incident Investigation Plan.

If the RTA delegates accident notification, investigation, or reporting-related roles and responsibilities to contractor organizations, then the following must also be included in the plan:

- A description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart;
- A description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues; and
- An identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns.

In all cases where a description of a process is required for inclusion in the AIP, the RTA is required to develop and implement the process or procedure in order to comply with the requirement.

Based on the requirements above, a suggested outline for the minimum content for the RTA's AIP is illustrated in **Table 6.1** below.

Table 6.1	**Accident / Incident Investigation Plan (AIP) Suggested Outline**
Title Page	
Table of Contents	
Approvals	
Revisions	
Section 1.	Introduction
Section 2.	Integration with Other Plans

Table 6.1	Accident / Incident Investigation Plan (AIP) Suggested Outline
Section 3.	Responsibilities
Section 4	Internal Notification Procedures
Section 5.	External Notification Procedures
Section 6.	On-Site Investigation
Section 7.	Off-Site Investigation
Section 8.	Post-Event Notification
Section 9.	Hazard Investigation Procedures
Section 10.	Event Investigation Training
Section 11.	Event Reporting
Section 12.	State Safety Oversight Coordination
Section 13.	Plan Review and Update Process

6.2 Review of Initial Submission

6.2.1 ODOT

In carrying out its oversight responsibilities under **§ 674.29**, the ODOT Program Manager will receive, review, approve, and adopt in writing the RTA's AIP. With the PTASP, the RTA must also submit any referenced materials, including the Accident / Incident Investigation Plan (AIP).

To ensure compliance with FTA's initial submission requirements, the RTA must submit the AIP, in compliance with the accident notification, investigation, and reporting requirements specified in the ODOT Standard and **Appendix S**, and all referenced procedures / materials by a date specified by the ODOT Program Manager.

An RTA with a rail fixed guideway public transportation project in the engineering or construction phase of development within the jurisdiction of the State of Oklahoma that will not be subject to regulation by the Federal Railroad Administration is subject to the requirements of this section of the Program Standard.

Pursuant to this requirement, the RTA will submit its AIP and all referenced materials to the ODOT Program Manager **365 calendar days** before beginning passenger service operations for review and comment.

The ODOT Program Manager will allocate **305** of these calendar days to:

- Review and comment on the initial AIP and materials related to Initial Submission;
- Review revised AIP and materials related to Initial Submission;
- Accept the final AIP and materials related to Initial Submission; and
- Prepare ODOT's initial submittal of the PTASP, including the AIP to the FTA (which must be submitted at least **60 days** prior to initiating passenger operations).

The AIP and supporting procedures must be submitted in electronic copy via email or secure file sharing and storage system to the ODOT Program Manager.

ODOT Review Checklist / Working Sessions

ODOT will review the submitted AIP, using the checklist provided in **Appendix S**. Upon approval, ODOT will provide a copy of the completed checklist to the RTA.

Pending any major comments or recommended changes in the RTA's AIP, the ODOT Program Manager will review and comment on the initial AIP using its review checklist, and will transmit the completed checklists to the RTA's point-of-contact within **305 calendar days** of submission.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

6.2.2 FTA

Sixty **(60) calendar days** prior to the passenger revenue service operations, ODOT will submit a formal letter to the FTA that certifies that the Public Transportation Agency Safety Plan, including the AIP, complies with the requirements of the Program Standard.

FTA will review and approve the Initial Submission using its review checklist, and will transmit a formal letter of approval and the completed checklists to ODOT. In the event that the FTA does not approve the Initial Submission, additional requirements necessary to achieve compliance will be conveyed to the ODOT Program Manager by the FTA.

The ODOT Program Manager will maintain ongoing communications with the FTA Office of Transit Safety and Oversight regarding the development and implementation of the Program Standard, as required.

Table 6.2 Schedule for Initial Review of AIP

Task	Responsible Agency	Duration	Target Date
Develop initial AIP and materials related to Initial Submission as part of FTA New Starts process.	RTA	---	---
Submit initial AIP and materials related to Initial Submission to ODOT for review and approval.	RTA	**365** days	Prior to passenger revenue service operations.
Review and approve AIP and materials related to Initial Submission or request additional information.	ODOT	**305** days	Prior to passenger revenue service operations.
Submit approved AIP and materials related to Initial Submission to FTA for review and approval.	ODOT	**60** days	Prior to passenger revenue service operations

Following the process specified in **Figure 6.2** at the end of this section, ODOT will review the AIP initial submission from the RTA.

6.3 Review of Annual Submission

Following initiation of revenue service, the RTA will conduct an annual review of its AIP and update it as necessary to ensure that the AIP is current at all times.

In the event that the RTA conducts its annual AIP review and determines that an update is not necessary for the year, it must prepare and submit by **January 1** formal correspondence notifying the ODOT point-of-contact of this determination. If ODOT wishes to object to this determination, the ODOT point-of-contact will notify the RTA within **30 calendar days.**

In the event that the RTA conducts its annual AIP review and determines that an update is necessary for the year, the RTA will submit a revised AIP to the ODOT Program Manager by **January 31**. As appropriate, referenced materials affected by the revision(s) must also be submitted with the AIP.

Each revised AIP submitted to ODOT by the RTA must include a text or tabular summary that identifies and explains proposed changes and includes a time frame for completion of the associated activities.

ODOT Review Checklist / Working Sessions

Following the process specified in **Figure 6.2** at the end of this section, ODOT will review the AIP annual submission from the RTA.

Within **30 calendar days** of receipt of the AIP from the RTA, ODOT will review the plan and issue to the RTA written approval of its AIP and the completed AIP checklist. If ODOT determines that the AIP is not acceptable, ODOT will provide a completed AIP checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

If the ODOT SSO Lead Program Manager and the RTA's Chief Safety Officer are unable to resolve open items regarding the AIP in a timely manner, the Program Manager has the authority to bring concerns to the attention of the Accountable Executive of the RTA or equivalent position.

It is ODOT's intent that the annual review and approval process for the AIP be completed by **May 31.**

Table 6.3 Schedule for Annual Review of AIP

Task	Responsible Agency	Duration	Target Date
If AIP is not updated:			
Notifies SSO that no update is necessary.	RTA	---	Jan 1
If notified no update is necessary, accepts or objects to the RTA's determination and notifies the RTA.	ODOT	30 days	Jan 31
If AIP is updated:			
If AIP is updated, completes annual review for previous calendar year and submits revised AIP to SSO.	RTA	---	Jan 31
If notified update is necessary, approves AIP or requests additional information.	ODOT	30 days	Mar 1
Submits additional information and revises AIP.	RTA	60 days	Apr 30
Reviews additional information and approves revised AIP.	ODOT	30 days	May 31

6.4 Review of Periodic Submission

At any given time, additional reviews of the RTA's AIP may be required to address specific issues based on implementation and compliance to FAST Act, Section 5329, 49 CFR Part 674, and / or the ODOT Program Standard or procedures; review of the RTA's documents; or other safety related project information.

Upon receipt of a written notification from ODOT for AIP modifications, the RTA will submit a revised AIP to ODOT within **30 calendar days**.

In the event that the RTA initiates updates, the RTA will submit the modified AIP, and any subsequently modified procedures, to ODOT for review and approval within **30 calendar days** of the effective date of the change.

ODOT Review Checklist / Working Sessions

ODOT will review and approve the revised AIP, providing a formal approval letter and a completed AIP review checklist within **30 calendar days** of receipt of the revised the RTA's AIP. If ODOT determines that the AIP is not acceptable, ODOT will provide a completed AIP checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

Table 6.4 Schedule for Periodic Review of AIP

Task	Responsible Agency	Duration
Notifies the RTA that AIP update is necessary.	ODOT	---
Following ODOT notification, or at its own discretion, submits revised AIP to ODOT.	RTA	30 days
Reviews and approves revised AIP or determines AIP requires re-submittal.	ODOT	30 days
Revises AIP and re-submits to ODOT review and approval.	RTA	30 days
Reviews and approves revised AIP.	ODOT	30 days

6.5 Event Notification Requirements

6.5.1 Notification Thresholds

6.5.1.1 Oklahoma Department of Transportation

During the engineering, construction, and testing phases of New Starts projects, system expansions, or system modifications, the RTA will notify ODOT of hazards and incidents as discussed in the following sections of the Program Standard:

- Table 5.6.1 ODOT Reportable Hazards
- Tables 6.5.1.1a, b, c Event Notification Thresholds

In the revenue operations phase of the transit system, the RTA will notify ODOT according to thresholds defined in **Table 6.5.1.1** as follows:

Table 6.5.1.1a Event Notification Thresholds – Accidents

ACCIDENTS
Criteria for ODOT-Reportable Accidents
A loss of life. Loss of life means a fatality at the scene or within 30 days following the accident.
A report of serious injury to a person. 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.
Property damage resulting from:* • A collision involving a rail transit vehicle or • Any derailment of a rail transit vehicle.
A collision involving a rail transit vehicle
A runaway train
An evacuation for life safety reasons
Any derailment of a rail transit vehicle, at any location, at any time, whatever the cause**
Any fire or smoke condition, at any location, at any time, whatever the cause***
Examples of Accidents
A collision between a rail transit vehicle and another rail transit vehicle
A collision at rail grade crossing resulting in serious injury or fatality

ACCIDENTS
A collision with a person resulting in serious injury or fatality
A collision with an object resulting in a serious injury or fatality
A derailment in the mainline or yard
An evacuation of a train or station for life safety reasons such as fire / smoke condition, bomb threat, or suspicious package
An RTA evacuation or passenger self-evacuation of a train on to the wayside
A criminal act such as murder and non-negligent homicide, rape, robbery, aggravated assault, burglary, motor vehicle theft, larceny-theft, and arson that results in the loss of life or serious injury
Required Actions for All Accidents
RTA to notify ODOT and FTA within **2 hours** of the event
RTA to provide NTD report to ODOT within **30 days** as supporting document with the accident investigation status report or final report.
RTA to report to FTA within **30 days** via the NTD
RTA to record in the **monthly** Accident Tracking Log for causation and trend analysis (SMS)

*FTA two-hour notification is not required for collisions / derailments involving property damage, unless the event results in "substantial damage."
**For split or trailed switches, if one or more wheels do not unintentionally leave the rails, ODOT notification is required; however, FTA two-hour notification is not required.
***FTA two-hour notification is not required for fire, smoke, or fume conditions unless the event results in an evacuation, serious injury, or fatality.

Table 6.5.1.1b Event Notification Thresholds – Incidents

INCIDENTS
Criteria for ODOT-Reportable Incidents
A personal injury that is **not** a serious injury.
One or more injuries requiring medical transportation away from the event
Non-collision related damage to equipment, rolling stock, or infrastructure that disrupts the operations of the RTA
Examples of Incidents
A hard start / stop of a rail transit vehicle that results in a passenger that requires transport away from the scene.
A criminal act that results in bruises, scrapes and scratches such as an assault on a person on a rail transit vehicle or rail station platform.
Vandalism of rail transit vehicle (e.g., broken window, offensive graffiti) that requires removal of the vehicle from revenue service.
Evacuation of a train into the ROW or onto adjacent track, including self-evacuations, for reasons other than life safety reasons
Collisions involving a rail transit vehicle not falling within the accident reporting requirements of Table 6.5.1.1a.
Required Actions for All Incidents
RTA to report to FTA within **30 days** via the NTD
RTA to record in the **monthly** Accident Tracking Log for causation and trend analysis (SMS)

Table 6.5.1.1c Event Notification Thresholds – Occurrences

OCCURRENCES
Criteria for ODOT-Reportable Occurrences
No personal injury
Non-collision related damage to equipment, rolling stock, or infrastructure that does not disrupt the operations of the RTA
Examples of Occurrences
Close calls / Near Misses
Safety policy and rule violations
Red signal overruns.
Broken crossing gate.
Vandalism of rail transit vehicle (e.g., broken window, offensive graffiti) that does not require removal of the vehicle from revenue service.
Required Actions for All Occurrences
RTA to record in the **monthly** Accident Tracking Log for causation and trend analysis (SMS)

As a courtesy to ODOT, the RTA will notify ODOT of any event that may attract or has attracted a significant amount of media, state, or federal agency attention.

6.5.1.2 Federal Transit Administration

The RTA will notify the FTA Office of Transit Safety and Oversight within two hours for events that meet the reporting thresholds specified in **Section 6.5.1.1**. Current requirements include:

Telephone Notification:

- U. S. Department of Transportation Crisis Management Center
  - (202) 366-1863

Email Notification:

- U. S. Department of Transportation Crisis Management Center
  - CMC-01@dot.gov

6.5.1.3 National Transportation Safety Board

The RTA will notify the NTSB Response Operations Center at (844) 373-9922 at the earliest practicable time following any one of the following accidents:

a. No later than **2 hours** after an accident which results in:
   - A passenger or employee fatality or serious injury to two or more crew members or passengers requiring admission to a hospital;
   - The evacuation of a passenger train; or
   - A fatality at a rail grade crossing.

b. No later than **4 hours** after an accident which does not involve any of the circumstances enumerated in paragraph a. above but which results in:
   - Damage (based on a preliminary gross estimate) of $150,000 or more for repairs, or the current replacement cost, to railroad and non-railroad property; or
   - Damage of $25,000 or more to a passenger train and railroad and non-

railroad property.

6.5.1.4 Federal Railroad Administration

Each RTA that shares track with a general railroad system and is subject to the Federal Railroad Administration (FRA) notification requirements will notify ODOT within **2 hours** of an incident for which the RTA must notify the FRA.

The RTA system is not currently subject to FRA notification requirements.

6.5.2 ODOT Notification Procedures

Initial Telephone Notification. The RTA will provide initial notification to the cell phone of the ODOT point-of-contact within **two (2) hours** of a reportable event, leaving a detailed message or text. The RTA will provide as much of the following information as possible:

- Name and job title of person reporting,
- Name of the RTA,
- Event type (fatality, injuries, property damage, evacuation, derailment or other),
- Location, date and time of event,
- Initial assessment of the extent of fatalities, injuries, and
- Preliminary estimate of property damage

Initial Email Notification. Within **six (6) hours** of a reportable event, or as soon thereafter as practicable, the RTA will provide via email to the ODOT point-of-contact, confirmations or updated information of the event and more detail including the following:

- Notification Time (ODOT, FTA, FRA, NTSB – as applicable)
- Name and job title of person reporting,
- Name of RTA,
- Event type (fatality, injuries, property damage, evacuation, derailment or other),
- Location, date and time of event,
- Fatalities,
- Injuries (number, severity),
- Rail transit vehicle(s) involved (type, number),
- Other vehicles involved (describe),
- Preliminary estimate of property damage
- Is event NTSB reportable and will NTSB investigate,
- Is event FRA reportable and will FRA investigate,
- RTA primary person (i.e., Chief Investigator) conducting the investigation (name, title, cell, office numbers, email address),
- Description of event, and
- Implemented and / or planned corrective actions
- Ongoing investigation activities

The RTA will provide additional information at the request of ODOT. The RTA will maintain a current list of contact information for all primary and alternate ODOT contact personnel, including delivery street addresses, email addresses, telephone, and cell phone numbers. The RTA will make the initial email notification using the form in **Appendix Z**.

6.6 Investigation of Reportable Events

§ 674.35 requires ODOT to investigate or require an investigation of any accident meeting the notification thresholds identified in **Section 6.5.1.2.**

§ 674.35 also states ODOT is ultimately responsible for the sufficiency and thoroughness of all investigations, whether conducted by ODOT or the RTA.

In conducting these investigations, ODOT may authorize the following investigation approaches:

- RTA may conduct an investigation on behalf of ODOT
- ODOT may conduct its own independent investigation
- ODOT may conduct a joint investigation with the RTA
- ODOT may join the investigation through the NTSB's Party System, if the NTSB is investigating the accident

In any instance in which 1) an RTA is conducting its own internal investigation, 2) ODOT is conducting an independent investigation, or 3) ODOT is conducting a joint investigation, ODOT will conduct an independent review of the findings of causation.

To perform an independent review of the findings of causation, ODOT will follow a Probable Cause Analysis or equivalent process as defined within the RTA's approved Accident / Incident Investigation Plan (or procedure):

- Ensure the review and analysis of the accident site and physical evidence collected at the scene, including photographs and measurements.
- Ensure the review of preliminary, status, and final departmental reports and interview statements.
- Ensure the review and analysis of audiovisual data, including vehicle and facility cameras.
- Ensure the review and analysis of audio data from applicable Dispatch, Operations Control, and Communications Control Centers.
- Ensure the reconstruction and reenactment of the accident, as necessary.
- Ensure the review of other relevant documents as discussed in **Section 6.1.**

6.6.1 RTA Investigations

Investigation Authorization

It is the intent of ODOT for the RTA to investigate every reportable event on behalf of the State of Oklahoma and this paragraph in the oversight program standard is the RTA's formal, written authorization to do so. ODOT's authorization for the RTA to investigate reportable hazards and incidents on behalf of ODOT is contingent upon ODOT's review and approval of the RTA's Accident / Incident Investigation Plan and procedures.

Investigation Participation

In the event that authorization is conferred upon the RTA to conduct the investigation, ODOT may participate in the investigation process. The terms of participation are specified in the RTA's PTASP and the RTA's accident investigation process. For all investigations conducted by the RTA on behalf of ODOT or by ODOT itself, ODOT and the RTA must use the investigation procedures that have been approved by ODOT and delineated in the RTA's PTASP. Investigation participants are expected not to withhold information from the Investigator In Charge (IIC) nor disclose information to parties outside the investigation, especially the media. If the state decides to participate in the investigation, ODOT's point-of-contact will notify the RTA's safety or security point-of-contact by

telephone or email, and follow up with written notice.

ODOT reserves the right to participate in any RTA investigation of a reportable event and acknowledges that the RTA has the right to request ODOT to participate in any such investigation. Such participation does not nullify or compromise ODOT's responsibility or capability to conduct an independent review of findings of causation as required by 49 CFR Part 674.35.

Investigation Procedures

The RTA must have submitted these procedures to ODOT with its PTASP. Subsequent updates and revisions to these procedures must be submitted to ODOT as they are completed and implemented by the RTA or with the annual update of the PTASP. These procedures will be treated as part of the PTASP. Subsequent updates to these procedures will be submitted to FTA as part of the ODOT Annual Submission.

Investigation Reports

ODOT requires a preliminary and a final report from the RTA for every investigation of a reportable event. In addition, for investigations that take more than **30 calendar days** to complete, ODOT requires monthly status reports. All reports may be transmitted to ODOT in electronic copy via email or secure file sharing and storage system.

- **Preliminary Report**

  Within **three (3) business days** of a reportable event, the RTA must provide another update via email to the ODOT point-of-contact of the initial findings of fact; its investigation plans; FTA, FRA or NTSB involvement in the investigation; and whether an ad hoc investigation committee will be convened.

  - Notification Time (ODOT, FTA, FRA, NTSB – as applicable)
  - Name and job title of person reporting,
  - Name of RTA,
  - Event type (fatality, injuries, property damage, evacuation, derailment or other),
  - Location, date and time of event,
  - Fatalities,
  - Injuries (number, severity),
  - Rail transit vehicle(s) involved (type, number),
  - Other vehicles involved (describe),
  - Preliminary estimate of property damage
  - Is event NTSB reportable and will NTSB investigate,
  - Is event FRA reportable and will FRA investigate,
  - RTA primary person (i.e., Chief Investigator) conducting the investigation (name, title, cell, office numbers, email address),
  - Description of event, and
  - Implemented and / or planned corrective actions
  - Ongoing investigation activities

- **Status Reports**

  Until the investigation is completed, the RTA will prepare and submit an investigation status report every **30 calendar days**. The investigation status reports at a minimum will include:

- minutes of any meeting held by an RTA's ad hoc reportable event investigation committee or contractor;
- disclosure of any immediate actions the RTA has taken, planned or completed;
- principal issues or items currently being evaluated; and
- overall progress and status of the investigation.

At its discretion, ODOT may require the RTA to prepare a summary report of ongoing investigations related to identified trends.

At any time during an investigation, the RTA will be prepared to provide a full briefing on the known circumstances of the event, status of the RTA, FTA, FRA or NTSB investigation, and investigation activities.

- **Final Report**

Each RTA investigation conducted on behalf of ODOT must be documented in a final report that includes a description of investigation activities, findings, identified causal factors, and a corrective action plan (if required). As specified in its accident investigation procedures and as recommended by ODOT, the RTA separates its final investigation report in two parts:

1) description of investigation activities, investigation findings, and determination of the most probable cause and additional contributing causes; and
2) recommendations to prevent recurrence and a corrective action plan, if required.

The RTA may utilize investigations from its safety department or from front line departments such as operations and maintenance; however, identification of findings of causation must be made and report content requirements listed in this Section must be met.

Review and Approval Process

Upon receipt of the RTA's Accident Investigation Final Report, ODOT will review in accordance with its Checklist for Reviewing RTA Event Investigation Final Reports, specified in **Appendix T** of this document. In the event that ODOT does not agree with the description of the investigation, the identification of primary and contributing causes, or the findings of the Final Report, ODOT will communicate in writing to the RTA's safety and/or security point-of-contact the area(s) of disagreement or concern. ODOT will work with the RTA to address these issues in the RTA's Final Report. In the event that agreement cannot be reached on these issues, ODOT will issue its own accident investigation report, which may be no more than the RTA's Final Report and ODOT's dissent.

ODOT will review the Final Report within **30 calendar days** of receipt. If the review will take longer than 30 calendar days, ODOT will notify the RTA in writing on or before **Day 30** and provide a revised date for the completion of the review checklist.

Documentation Sensitivity and Retention

Reports and records of accident investigations submitted to ODOT by the RTA, as well as related reports and records produced by both ODOT and the RTA, will be treated as confidential information, and will not be released without concurrence by both ODOT and the RTA.

With the exception of the RTA's Accident Investigation Final Report, all accident investigation material (e.g., audio and video files, physical evidence from the scene) that the RTA provides to

ODOT for review purposes will be considered confidential, property of the RTA property, and will be returned to the safety or security point-of-contact or will be reviewed onsite. ODOT will not maintain copies of this material.

6.6.2 ODOT Investigations

Investigations of Events

ODOT reserves the right to conduct independent investigations on its own behalf of any reportable event if the NTSB is not investigating the event.

ODOT, at its discretion, may choose to conduct an independent investigation of any accident meeting the thresholds specified in **Section 6.5** utilizing its own personnel or an authorized contractor. An investigation conducted by ODOT or its contractor must be in accordance with the ODOT-approved investigation procedures used by the RTA. All ODOT employees and contractors who conduct investigations on behalf of ODOT, must be trained and qualified to perform rail accident investigations according to training criteria established by ODOT.

ODOT will inform the RTA of its intention to conduct an independent investigation of a RTA investigation of a reported event no later than **7 calendar days** following receipt of the RTA's preliminary report. ODOT will advise the RTA as to the personnel who will be conducting the independent investigation, and provide a preliminary schedule as to the investigation process.

All ODOT authorized accident investigation personnel are granted authority under the state safety oversight program to conduct an investigation and evaluate records, materials, data, analysis, and other information which is pertinent to the investigation. It is expected that the RTA will provide the ODOT investigation team the resources and information necessary to conduct the investigation in an effective and efficient fashion.

ODOT accident investigation personnel may conduct field analysis, operational surveys, interviews, record checks, data analysis, and other on-site and off-site tasks which may be necessary for a comprehensive investigation. If ODOT accident investigation personnel require information or analysis which is not readily available, or which may require additional resources by the RTA, it will request this data in a written request to the RTA's point-of-contact via email or letter.

In conducting its investigation, ODOT will, at a minimum, perform the following activities:

- ODOT will identify an Investigator In Charge (IIC) that is supported by a team of trained and qualified personnel to investigate the accident (off- and on-site). The team will include individuals with technical expertise in the type of accident being investigated. For example, a vehicle expert would be included in a team conducting the accident investigation for an accident involving a rail vehicle mechanical failure. Technical area(s) of specialization may include, but are not limited to:

    - System Safety
    - Safety Training
    - Transportation Management and Operations
    - Substance Abuse Programs
    - Vehicles and Vehicle Maintenance
    - Worker Health and Safety, Facility Safety, and Hazardous Materials
    - Emergency Operations
    - Track, Structures, Signals, and Communications
    - Transit System Security

- ODOT on-site team will wait until the RTA and / or other emergency response personnel have secured the event scene area before commencing its on-site accident investigation. ODOT reserves the right to request that the RTA hold the accident scene to the maximum extent feasible until the arrival of an accident investigation by ODOT team members.

- The ODOT team will assess physical evidence of the accident scene including: damage and debris analysis; assessment of vehicle, equipment, and systems; and the use of measurements, diagrams, and photographs. They also will document the environmental and physical factors of the accident scene.

- As part of the event investigation ODOT will review the functionality of the safety critical hardware and software elements of the system; conduct follow-up interviews (if required); analyze employee records and the results of post-accident drug and alcohol tests; and conduct vehicle and equipment inspections.

- All information gathered from the event investigation will be documented and included in ODOT accident report.

- Within **30 calendar days** of completion of the on-site and off-site accident investigation requirements, ODOT investigation team will prepare a draft accident investigation report. If the draft report will take longer than 30 calendar days due to the volume and complexity of the investigation, ODOT will notify the RTA in writing on or before **Day 30** and provide a revised date for the completion of the draft report.

- The draft accident investigation report will be provided to the RTA for its review. Comments will be due to ODOT **30 calendar days** after the RTA's initial receipt of the draft report. If necessary, a meeting to discuss the draft report will also be held between ODOT and the RTA.

- If necessary, and based upon the comments received from the transit agency, the draft report will be revised.

- A final accident investigation report will be issued by ODOT within **30 calendar days** of the end of the comment period.

The RTA will be required to review the final ODOT accident investigation report, and within **30 calendar days** after receiving it, either:

1) provide concurrence to implement the ODOT-proposed corrective action plan (if required) or
2) submit an alternative corrective action plan to ODOT for review and approval.

Investigations of Non-compliance to the PTASP

As specified in 49 CFR Part 674.25(c), the State Safety Oversight Agency has primary responsibility for the investigation of any allegation of non-compliance with a PTASP of an RTA within its jurisdiction. As such, the scope of this type of ODOT investigation includes alleged violations of 49 U.S.C §5329, Public Transportation Safety Program (formerly MAP-21), 49 CFR Part 674, State Safety Oversight final rule, 49 CFR Part 673, Public Transportation Agency Safety Plan final rule, and any other matters that may arise under the ODOT's investigative, audit, and enforcement authority.

When initiating the investigative process for 674 Allegations of Non-Compliance, ODOT requires the RTA to make its personnel, contractors, facilities, equipment, documentation, audio and video

footage, and any other necessary evidence and information available to the investigation team for review and analysis.

To the extent applicable, ODOT will perform investigations of 674 Allegations of Non-Compliance following the procedures for investigations of events as outlined above.

6.6.3 FTA Investigations

Role of FTA

As specified in **49 CFR Part 670**, Public Transportation Safety Program, the FTA may conduct inspections, investigations, audits, examinations, and testing of the equipment, facilities, rolling stock and operations of the RTA's public transportation system.

To the extent practicable, the Administrator will provide notice to the RTA prior to initiating any activities carried out under **§ 670.11.**

The Administrator will conduct activities carried out under this section at reasonable times and in a reasonable manner, as determined by the Administrator.

In carrying out this section, the Administrator may require the production of relevant documents and records, take evidence, issue subpoenas and depositions, and prescribe recordkeeping and reporting requirements.

Role of RTA

In addition, the RTA may request confidential treatment of records subject to inspections, investigations, audits, examinations and testing from the Administrator. The Administrator may grant an RTA's request for confidential treatment of records produced under **§ 670.11.**

In the event of an FTA investigation, the RTA will take the necessary steps to ensure the preservation of the incident scene until the time of the arrival of the FTA response team.

The RTA will also be responsible for timely briefing ODOT on FTA activities including meetings, interviews, requests for data, functional testing, examination of equipment, and the results of drug and alcohol tests. The RTA will provide ODOT with a copy of all written correspondence to the FTA concerning a reportable event or investigation, and also will provide ODOT a copy of all FTA reports and any recommendations concerning the event or its investigation upon receipt. The RTA will implement corrective actions to address the FTA findings. For more detail see **Section 8**, Corrective Action Plans.

Role of ODOT

It is the intent of ODOT to review this material concurrently with the FTA and to return all material to the RTA at the conclusion of its review. ODOT will assist the FTA by providing information requested about the RTA safety critical practices and other matters as appropriate. If the FTA releases preliminary findings and recommendations, ODOT is authorized to participate in any discussions and reviews with the RTA and FTA. ODOT and the RTA will review the FTA draft report, final report, findings and recommendations.

6.6.4 FRA Investigations

Role of FRA

The FRA conducts wide-ranging regulatory oversight activities to promote safety in every area of railroad operations to reduce rail-related accidents, incidents and casualties. As part of these efforts, the FRA conducts investigations of select railroad accidents in order to determine root causation, and any contributing factors, so that parties can implement corrective actions to prevent similar incidents in the future.

FRA headquarters staff assigns investigations for railroad accidents each calendar year as well as for every railroad employee fatality. Once completed, a formal written report is produced describing the accident in detail.

FRA Accident Investigation Criteria

Railroads are required to report a vast array of incidents; however, not all meet the criteria warranting an FRA investigation. The decision to assign a railroad accident for investigation generally follows a railroad's telephonic notification directly to FRA or to the National Response Center, the primary Federal entity to which all major transportation accidents are reported.

FRA Accident Investigation Process and Applicability

Typical investigations involve FRA exchanging information with other federal, state and local entities, as appropriate. The FRA accident investigation process is applicable only to those RTAs that share track with one or more FRA-regulated railroads or RTAs that will operate on the general railroad system.

6.6.5 NTSB Investigations

Role of NTSB

The NTSB may investigate a reportable event to achieve its primary function to promote safety in transportation. In such case, the NTSB is responsible for the investigation; the determination of facts, conditions, and circumstances; the cause or probable causes; and recommendations to reduce the likelihood of recurrence. ODOT will support the NTSB as a member of its Party System.

In the event of an NTSB investigation, the RTA will take the necessary steps to ensure the preservation of the incident scene until the time of the arrival of the NTSB response team.

Role of RTA

The RTA will also be responsible for timely briefing ODOT on NTSB activities including meetings, interviews, requests for data, functional testing, examination of equipment, and the results of drug and alcohol tests. The RTA will provide ODOT with a copy of all written correspondence to the NTSB concerning a reportable event or investigation, and also will provide ODOT a copy of all NTSB reports and any recommendations concerning the event or its investigation, upon receipt by the RTA.

Role of ODOT

It is the intent of ODOT to review this material concurrently with the NTSB and to return all material to the RTA at the conclusion of its review. ODOT will assist the NTSB by providing information requested about the RTA critical practices and other matters as appropriate. If the NTSB releases preliminary findings and recommendations, ODOT is authorized to participate in

any discussions and reviews with the RTA and NTSB. ODOT and the RTA will review the NTSB findings, draft, and final reports and make a determination of whether or not to adopt the NTSB recommendations. Should the NTSB recommendations be adopted, the RTA will implement the findings. For more detail see **Section 8**, Corrective Action Plans.

Figure 6.6 at the end of this section illustrates the process for ODOT's review and approval of Accident Investigation Final Reports prepared by the RTA.

6.7 Event Tracking Log

The Accident / Incident Investigation Plan will include the Event Tracking Log that will be used once the project initiates revenue service. ODOT requires the RTA to establish an Event Tracking Log which reflects the consolidation of information in the accident investigation process. The Event Tracking Log must contain all accidents, incidents, and occurrences identified through the various methods applied by the RTA. The Event Tracking Log may be organized by the event number assigned by the RTA, or by type of event, the source from which it was identified, or the element of the RTA's operation affected by the accident (i.e., facilities, vehicles, track and signal, communications, personnel training and procedures, etc.).

The Event Tracking Log must include the following required information:

Table 6.7 Event Tracking Log

EVENT TRACKING LOG	
Element	**Description**
EVENT SYNOPSIS	
Event: ID Number	Refers to the event number assigned to the event by the RTA.
Event: Date of Event	Refers to the date the event occurred at the RTA.
Event: Time of Event	Refers to the time the incident occurred
Event: Mode	Refers to: Heavy Rail, Light Rail, Streetcar, Hybrid Rail, Monorail / Automated Guideway, Inclined Plane, Cable Car
Event: Type of Event	Refers to the category of reportable incident: 1. Collision 2. Derailment 3. Fire / Smoke Condition 4. Service Interruption 5. Other
Event: Details of Collision	If reportable incident is a collision or rail grade crossing collision, refers to details of what the transit vehicle collided with: 1. Person 2. Automobile (Road Vehicle) 3. Object 4. Transit Vehicle
Event: Location of Event	Refers to location where incident occurred: 1. Trackway 2. Revenue Facility 3. Non-Revenue Facility 4. Yard 5. Other
Event: Received Notification within 2 Hours	Refers to a yes or no response provided by the ODOT on the time event notification was received from the RTA
Event: Fatalities - Passenger	Refers to numerical entry of passenger fatalities involved in the event.

EVENT TRACKING LOG	
Element	**Description**
EVENT SYNOPSIS	
Event: Fatalities - Patron	Refers to numerical entry of patron fatalities involved in the event.
Event: Fatalities - Public	Refers to numerical entry of public fatalities involved in the event.
Event: Fatalities - Worker	Refers to numerical entry of worker fatalities involved in the event.
Event: Fatalities - Total	Refers to numerical entry of total passenger, patron, public, and worker fatalities involved in the event.
Event: Injuries - Passenger	Refers to numerical entry of passenger injuries involved in the event.
Event: Injuries - Patron	Refers to numerical entry of patron injuries involved in the event.
Event: Injuries - Public	Refers to numerical entry of public injuries involved in the event.
Event: Injuries - Worker	Refers to numerical entry of worker injuries involved in the event.
Event: Injuries - Total	Refers to numerical entry of total passenger, patron, public, and worker injuries involved in the event.
Event: Estimated Property Damage	Refers to estimated dollar value of property damage
Event: Name of Investigator	Refers to the organization conducting the investigation: 1. State 2. RFGPTS 3. State/RFGPTS Joint 4. Contractor 5. FTA 6. FRA 7. NTSB 8. Other
Event: Investigation Report Approved by SSOA?	Refers to a yes or no response provided by ODOT on the approval of the final investigation report.
Event: Probable Cause	Refers to requirements for each final investigation report to identify findings of causation and contributing factors, including following 11 categories: 1. Equipment Failure 2. Poor Maintenance 3. Operating Rule Violation / Human Factor 4. Slips and Falls 5. Imprudent Customer Actions 6. Medically Related 7. Action of Motorist 8. Pedestrian Actions 9. Trespasser 10. Suicide 11. Other
Event: Did Event Require Tow Away?	Refers to a yes or no response provided by the RTA on the tow away of a rail transit vehicle involved in the event.
Event: Description of Event	Refers to a brief narrative summary of the incident – what it is; where it is located; what elements it is comprised of element of system operation affected by the incident (i.e., facilities, vehicles, track and signal, personnel training and procedures, etc.).
Event: CAP Developed?	Refers to a yes or no response provided by the RTA to advise if corrective action plan was developed to address the findings of the final investigation report.

EVENT TRACKING LOG	
Element	**Description**
EVENT SYNOPSIS	
CORRECTIVE ACTION PLAN	
CAP: Source	Refers to source of corrective action plan: 1. Event Investigation 2. Hazard Management 3. Internal Safety / Security Review 4. SSO On-Site Audit 5. Other
CAP: ID Number	Refers to the CAP number assigned to the event by the RTA, if different from the event number.
CAP: Identified Action	Refers to the description of the corrective action, if required, by the RTA to address the finding.
CAP: SOA Approved?	Refers to a yes or no response provided by ODOT on the approval of the corrective action plan.
CAP: Proposed Implementation Date	Refers to the estimated date of completion of the corrective action plan.
CAP: Actual Implementation Date *(closed only)*	Refers to the actual date of completion of the corrective action plan.
CAP: Individual Responsible for Implementation	Refers to the individual (name and title) assigned responsibility for implementation of the CAP.
CAP: Department Responsible for Implementation	Refers to the department assigned responsibility for implementation of the CAP.
CAP: Status	Refers to the status of the CAP provided by ODOT. Status may be designated as open or closed.
CAP: Implementation Verified? *(closed only)*	Refers to a yes or no response provided by the RTA that verifies that the RTA's safety department verified the implementation of the CAP.
CAP: Issues Preventing Resolution *(open only)*	Refers to issues that prevent the timely and adequate resolution to identified CAP.
CAP: Status Updates	Refers to the periodic updates provided by the responsible individual / department to implement the agreed upon CAP.
Other: CAP Alternative	If the RTA wishes to modify an open action, the proposed alternative must be described in sufficient detail so that ODOT can determine its acceptability as a substitute for the originally approved CAP. If there is disagreement between the RTA and ODOT regarding CAP changes, the process described in **Section 8** of the Standard will be implemented to resolve differences.
Other: Time of ODOT Notification	Refers to the time of notification to ODOT by the RTA.
Other: Preliminary Report Date	Refers to the submittal date of the preliminary report to ODOT by the RTA.
Other: Status Report Date(s)	Refers to the submittal date of the status report to ODOT by the RTA.
Other: Final Report Date	Refers to the submittal date of the final report to ODOT by the RTA.
Other: ODOT Final Report Approval Date	Refers to the date of approval of the final report by ODOT.
Other: Investigation Status	Refers to the status of the investigation provided by ODOT. Status may be designated as open or closed.
SAFETY ASSURANCE – PERFORMANCE MONITORING / MEASUREMENT	
SA: Effective, Appropriate, Implemented as Intended	Refers to a yes or no response provided by the safety department of the RTA. A yes response must be based on an assessment of the performance outcomes of the safety risk mitigation following closure of the CAP. A

EVENT TRACKING LOG	
Element	**Description**
EVENT SYNOPSIS	
	no response must be accompanied with a detailed explanation and a proposed alternative CAP.
SA: Safety Performance Monitoring and Measurement	Refers to a brief narrative summary of the process used by the RTA to assess safety performance such as trend analysis of relevant safety concerns, internal safety reporting programs, internal audits or other compliance assessments.

At its discretion, ODOT may increase the frequency of the submittal requirements for the event tracking log in response to a given event or trend of such events, or other systemic safety related issues.

As part of the Initial Submission of the PTASP discussed in **Section 2** of the Program Standard, the proposed Event Tracking Log must be submitted by the RTA to ODOT for review and approval.

Following the initiation of revenue service, the Event Tracking Log must be submitted **no less than monthly** to ODOT point-of-contact in electronic copy via email or secure file sharing and storage system. ODOT will review the Event Tracking Log and forward any questions or requests for information to the RTA's point-of-contact.

Figure 6.2 Accident / Incident Investigation Plan – Review and Approval Process

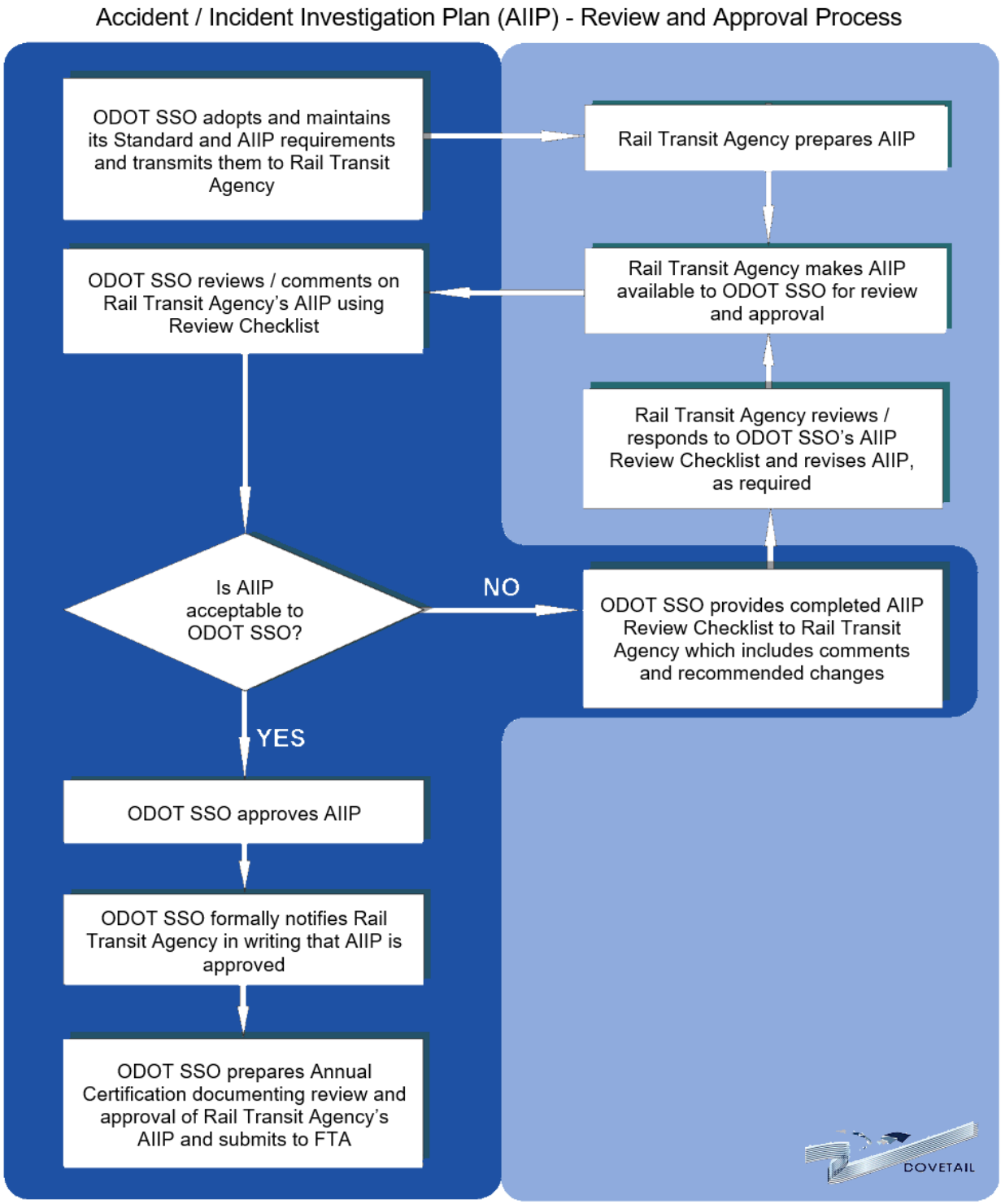
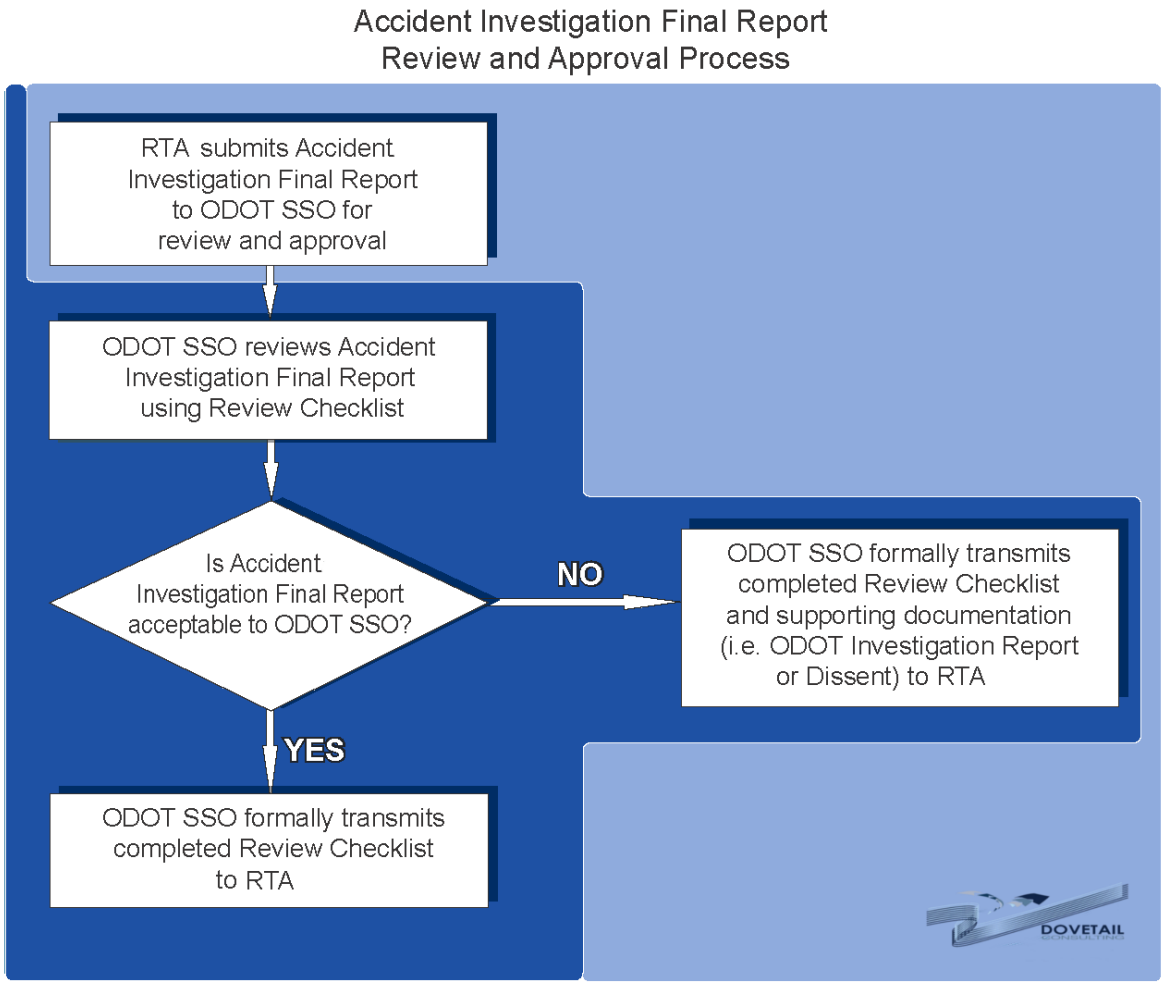


Figure 6.6 Accident Investigation Final Report – Review and Approval Process



Section 7
SSO Safety and Security Audits

7.0 Purpose

This section addresses ODOT's procedure for the conduct of Triennial Audits performed on-site at the RTA as required in **§ 674.31** of the final rule. At least once every three years, this audit will determine the extent to which the RTA is meeting the requirements of its Public Transportation Agency Safety Plan, Security and Emergency Preparedness Plan (if applicable), the effectiveness of these plans, and whether the plans and subordinate procedures should be updated.

This section also addresses other ODOT reviews and assessments for any New Starts project, system expansion, or system modification that may be undertaken by the RTA.

7.1 Minimum Program Requirements

As specified in **§ 674.31** at least every three (3) years, ODOT must conduct an on-site audit of the RTA's implementation of its PTASP and SEPP (if applicable). Alternatively, the triennial audit may be conducted on an on-going basis over the three-year timeframe. At the effective date of the Program Standard, the current three-year audit cycle is the period CY 2019 to CY 2021.

In conducting the three-year audit, ODOT will establish an audit team and prepare a schedule, procedures, and checklists to guide the audit process. Criteria will be established through which ODOT can evaluate the RTA's implementation of its PTASP and SEPP.

At the conclusion of the audit, ODOT will prepare and issue a report containing evaluation assessment results from the audit, which will analyze the effectiveness of the PTASP or SEPP and whether the plans should be updated. Recommendations for improvements and corrective actions required as a result of this audit will be managed through the process described in **Section 8** of this document.

ODOT will submit its completed report for the three-year safety and security audit to FTA as part of its Annual Submission.

Table 7.1 SSO On-Site Audit Schedule

RTA	Next Audit Date
OKC Streetcar	December 2019
OKC Streetcar	2020
OKC Streetcar	2021

7.2 On-Site Audit Process and Procedures

7.2.1 Pre-Audit Preparations

The ODOT point-of-contact will establish a schedule for conducting the audit at the RTA operating within the state's jurisdiction. This schedule will include milestones for: the development of an approach to guide the audit; notification to the RTA regarding the audit; conducting a pre-audit meeting with the RTA; conducting the audit; preparation of a draft report; delivery of the draft report to the RTA for review and comment; issuance of a final report; and the receipt, review, approval, and tracking through implementation of the RTA corrective action plans, if required.

The ODOT point-of-contact will determine whether the audit will be conducted by ODOT personnel, a contractor, or a combination of both. If a contractor is to be used, required activities to ensure that contractor services are available in time to plan for and conduct the audit will be added to the milestone schedule.

Based on the milestone schedule, the ODOT point-of-contact will assign a team of ODOT and / or contractor personnel to conduct the audit. Each team will have a designated Lead Auditor and supporting Team Members.

Once assigned, the team will begin its work by reviewing in detail the RTA's PTASP, SEPP, and referenced and supporting procedures and materials. These materials will form the basis of ODOT's audit approach. As necessary, the ODOT point-of-contact may contact the RTA's safety or security point-of-contact and request additional information, procedures, or documentation. These requests may be transmitted via email or via secure file sharing and storage system. For example, the team may request and review the RTA's standard operating procedures, bulletins, orders, instructions, and procedures; maintenance manuals and procedures for vehicles, track, and signals; design criteria and project engineering procedures for extensions or modifications; internal safety and security audit checklists and reports; the results of the hazard management process; and the status of all corrective action plans.

Utilizing these materials, the team will develop its audit approach, including:

- the safety and security requirements to be audited;
- the applicable reference documents that establish the acceptance criteria for those requirements; and
- the method of verification.

Once the audit approach is developed, ODOT will formally notify the RTA's safety and security point-of-contact of the upcoming audit, no less than **60 days** before the audit is scheduled. This notification will occur via email or via secure file sharing and storage system.

Shortly after notification, ODOT will schedule a pre-audit meeting with the RTA for clarification of any questions and concerns, and coordination of daily schedules with the RTA. During this meeting, via email or via secure file sharing and storage system, the ODOT point-of-contact will also transmit its notification and agenda to the RTA's safety and security points-of-contact. The notification and agenda will be delivered to the RTA at least **30 calendar days** prior to the start date of the audit.

Table 7.2.1 SSO On-Site Audit Report Preparation and Submittal Schedule

Task	Responsible Agency	Duration
Pre-Audit Notification • Notifies the RTA that on-site audit is scheduled	ODOT	60 days prior to audit
Pre- Audit Preparation • Holds pre-audit meeting with the RTA shortly after notification, and requests background materials and updated documents • Transmits formal notification and agenda to the RTA	ODOT	30 days prior to audit
On-Site Audit Logistics • Confirms the detailed logistics (e.g., meeting rooms, participant names and titles, etc.) in advance of the on-site audit.	RTA	7 days prior to audit

Task	Responsible Agency	Duration
Conduct On-Site Audit • Conducts the on-site audit following the agenda transmitted to the RTA	ODOT	Varies
Prepare Draft Report • Prepares and submits Draft Report to the RTA after conclusion of audit	ODOT	90 days after audit
Review Draft Report • Reviews and responds to Draft Report, and prepares any corrective action plans required by ODOT	RTA	30 days
Prepare Final Report • Responds to the RTA's comments, makes necessary revisions, and issues Final Report after conclusion of the on-site audit	ODOT	30 days
Annual FTA Submission • Transmits completed SSO On-Site Safety and Security Audit Final Report to FTA as part of its annual submission	ODOT	March 15

Figure 7.2a and **Figure 7.2b** at the end of this section illustrate the SSO On-Site Safety Audit process and SSO On-Site Security Audit process, respectively.

7.2.2 Draft and Final Reports

Audit at End of Three-Year Cycle

Following the completion of the on-site audit, the ODOT team will prepare a draft report.

This draft report will provide:

- Verification that the PTASP or SEPP are integral parts of the RTA's overall management, engineering, operating, and maintenance practices, and / or identification of deficiencies or areas requiring improvement.
- Verification that the PTASP or SEPP are reviewed, at a minimum, on an annual basis in order to ensure that they remain dynamic and viable documents, and / or identification of deficiencies or areas requiring improvement.
- Verification that the RTA regularly monitors compliance with the PTASP or SEPP through a continuous and on-going internal safety and security audit process, and / or identification of deficiencies or areas requiring improvement.
- Verification that the RTA identifies potentially serious conditions, hazards, threats and vulnerabilities and ensure that methods to eliminate, control, and mitigate them are implemented, and / or identification of deficiencies or areas requiring improvement.
- Verification that investigations are being conducted following established procedures adopted by the RTA, and / or identification of deficiencies or areas requiring improvement.
- Verification that the RTA's emergency preparedness and terrorism preparedness programs are being implemented as specified in the PTASP or SEPP, and / or identification of deficiencies or areas requiring improvement.

- Verification that specific activities and tasks identified in the PTASP or SEPP are being carried out as specified in these plans, and / or identification of deficiencies or areas requiring improvement.

The draft report will be delivered to the RTA's safety or security points-of-contact via email or via secure file sharing and storage system no more than **90 calendar days** after the conclusion of the on-site audit. ODOT will make every effort to expedite its analysis; however, if the report will take longer than 90 calendar days due to the complexity and/or volume of the final report and supporting documentation, or other extenuating circumstances, ODOT will notify the affected RTA in writing on or before **Day 90** and provide a revised date for the completion of the report.

The RTA will have a maximum of **30 calendar days** to respond to the draft report and to prepare corrective actions as requested by ODOT in the draft report to address any identified findings, recommendations or concerns. Upon receipt of the RTA's response, ODOT will make any required revisions to the draft and issue the final report.

While individual reports may vary, the basic outline used by ODOT SSO Safety and Security Audit Reports is presented in **Table 7.2.2a** and **Table 7.2.2b**. ODOT will transmit the completed SSO on-site safety and security audit reports to the FTA as part of its annual submission.

Corrective action plans submitted by the RTA to address audit findings will be reviewed, approved, and tracked through to implementation following the process specified in **Section 8** of this document.

Ongoing Audits

As specified in **§ 674.31**, if ODOT chooses to conduct the triennial audit in an ongoing basis over the three-year timeframe, ODOT will prepare and issue draft and final reports at the completion of the on-site portion of the audit in the same manner as required for audits conducted at the end of the three-year cycle.

Evaluation Criteria

For both Three-Year and Ongoing Audits, ODOT will assess each audit element according to the following evaluation criteria:

1 – Meets Criteria

Audit items that receive a Meets Criteria designation demonstrate the RTA has effective practices and is in compliance with established criteria. No Corrective Action Plan (CAP) is required.

2 – Partially Meets Criteria

Audit items that receive a Partially Meets Criteria are areas of concern. This evaluation refers to a condition whereby the RTA may technically be conducting business in compliance with applicable internal and external requirements, but there may be no appropriate written plan, policy, or procedure in place, or the existing plan, policy, or procedure is not appropriate or not in accordance with applicable requirements. Additionally, the RTA may have a resource or organizational issue preventing sufficient devotion of resources to the required activities. If an area of concern is identified, ODOT will issue an audit finding and the RTA is required to develop an appropriate CAP to update relevant plans, policies, rules, and / or procedures, or to address a particular identified resource or organizational issue.

3 – Does Not Meet Criteria

Audit items that receive a Does Not Meet Criteria are deficiencies. This evaluation refers to an instance where the RTA is operating out of compliance or out of accordance with an applicable internal or external written requirement, plan, policy, rule, standard, or procedure. Deficiencies may be safety or security-critical in nature. If a deficiency is found to exist, ODOT will issue a finding and the RTA is required to develop an appropriate CAP. Depending on the severity of the deficiency, the RTA may be required to develop immediate or emergency corrective actions.

Table 7.2.2a SSO On-Site Safety Audit Final Report Outline

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Acknowledgments

Approvals

Revisions

Introduction

1.0 Plan Review and Modification
- 1.1 Discussion of Requirement
- 1.2 On-Site Review Comments
- 1.3 Evaluation Assessment Results

2.0 PTASP Implementation – Tasks and Activities
- 2.1 Discussion of Requirement
- 2.2 On-Site Review Comments
- 2.3 Evaluation Assessment Results

3.0 Emergency Response Planning/Coordination/Training
- 3.1 Discussion of Requirement
- 3.2 On-Site Review Comments
- 3.3 Evaluation Assessment Results

4.0 Recordkeeping
- 4.1 Discussion of Requirement
- 4.2 On-Site Review Comments
- 4.3 Evaluation Assessment Results

5.0 Policy Statement
- 5.1 Discussion of Requirement
- 5.2 On-Site Review Comments
- 5.3 Evaluation Assessment Results

6.0 Purpose, Goals and Objectives, Safety Performance Management Framework
- 6.1 Discussion of Requirement
- 6.2 On-Site Review Comments
- 6.3 Evaluation Assessment Results

7.0 Management Structure
- 7.1 Discussion of Requirement
- 7.2 On-Site Review Comments
- 7.3 Evaluation Assessment Results

8.0 Hazard Management Process
- 8.1 Discussion of Requirement
- 8.2 On-Site Review Comments
- 8.3 Evaluation Assessment Results

Table 7.2.2a SSO On-Site Safety Audit Final Report Outline

9.0 Safety Data Acquisition
- 9.1 Discussion of Requirement
- 9.2 On-Site Review Comments
- 9.3 Evaluation Assessment Results

10.0 Event Notification, Investigation and Reporting
- 10.1 Discussion of Requirement
- 10.2 On-Site Review Comments
- 10.3 Evaluation Assessment Results

11.0 Transit Asset Management Plan
- 11.1 Discussion of Requirement
- 11.2 On-Site Review Comments
- 11.3 Evaluation Assessment Results

12.0 Safety Certification
- 12.1 Discussion of Requirement
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- 12.3 Evaluation Assessment Results

13.0 Managing Safety in System Modifications
- 13.1 Discussion of Requirement
- 13.2 On-Site Review Comments
- 13.3 Evaluation Assessment Results

14.0 Internal Safety Audit Process
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- 14.3 Evaluation Assessment Results

15.0 Rules Compliance/Procedures Review
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16.0 Facilities and Equipment Inspections
- 16.1 Discussion of Requirement
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17.0 Maintenance Audits / Inspections
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- 19.1 Discussion of Requirement
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20.0 Training and Certification Program
- 20.1 Discussion of Requirement
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- 20.3 Evaluation Assessment Results

Table 7.2.2a SSO On-Site Safety Audit Final Report Outline

21.0 Compliance with Local, State and Federal Requirements
- 21.1 Discussion of Requirement
- 21.2 On-Site Review Comments
- 21.3 Evaluation Assessment Results

22.0 Hazardous Materials
- 22.1 Discussion of Requirement
- 22.2 On-Site Review Comments
- 22.3 Evaluation Assessment Results

23.0 Drug and Alcohol Program
- 23.1 Discussion of Requirement
- 23.2 On-Site Review Comments
- 23.3 Evaluation Assessment Results

Appendices
- List of Participants
- List of Documents Reviewed

Table 7.2.2b SSO On-Site Security Audit Final Report

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Acknowledgments

Approvals

Revisions

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- 1.1 Discussion of Requirement
- 1.2 On-Site Review Comments
- 1.3 Evaluation Assessment Results

2.0 Purpose, Goals and Objectives
- 2.1 Discussion of Requirement
- 2.2 On-Site Review Comments
- 2.3 Evaluation Assessment Results

3.0 Management / Division of Security Responsibilities
- 3.1 Discussion of Requirement
- 3.2 On-Site Review Comments
- 3.3 Evaluation Assessment Results

4.0 Plan Review and Update Process
- 4.1 Discussion of Requirement
- 4.2 On-Site Review Comments
- 4.3 Evaluation Assessment Results

5.0 Threat and Vulnerability Identification, Assessment and Resolution
- 5.1 Discussion of Requirement
- 5.2 On-Site Review Comments
- 5.3 Evaluation Assessment Results

6.0 Security Certification

Table 7.2.2b	SSO On-Site Security Audit Final Report
	6.1 Discussion of Requirement
	6.2 On-Site Review Comments
	6.3 Evaluation Assessment Results
7.0	System Modification
	7.1 Discussion of Requirement
	7.2 On-Site Review Comments
	7.3 Evaluation Assessment Results
8.0	Security Data Acquisition and Analysis
	8.1 Discussion of Requirement
	8.2 On-Site Review Comments
	8.3 Evaluation Assessment Results
9.0	Security Incident Notification, Investigation, and Reporting
	9.1 Discussion of Requirement
	9.2 On-Site Review Comments
	9.3 Evaluation Assessment Results
10.0	Emergency Exercises and Evaluation
	10.1 Discussion of Requirement
	10.2 On-Site Review Comments
	10.3 Evaluation Assessment Results
11.0	Internal Security Audits
	11.1 Discussion of Requirement
	11.2 On-Site Review Comments
	11.3 Evaluation Assessment Results
12.0	Security Training and Procedures
	12.1 Discussion of Requirement
	12.2 On-Site Review Comments
	12.3 Evaluation Assessment Results
Appendices	
	List of Participants
	List of Documents Reviewed

7.3 Other ODOT Audits

At its discretion, ODOT may conduct audits, inspections, reviews or special assessments of issues related to system safety and system security at the RTA system. In addition to the specific readiness reviews discussed below, ODOT may initiate a review of a particular subject matter area in response to a given hazard, accident, or incident or trend of such events.

At the completion of ODOT's audits or assessments, ODOT may issue a Review Checklist or Final Report containing findings and recommendations that will be subject to the corrective action plan process described in **Section 8** of this Program Standard.

The ODOT Program Manager will maintain ongoing communications and will coordinate with the FTA regarding its audits, reviews or special assessments of issues related to system safety, system security, and emergency preparedness as required.

7.3.1 Readiness Review for New Starts Projects

ODOT may conduct an on-site readiness review of any New Starts project undertaken by the RTA. This review would likely take place following the receipt of the Initial Submissions of the safety and security plans required by the Program Standard (i.e., Public Transportation Agency Safety Plan, Security and Emergency Preparedness Plan, Internal Audit Program Plan, Hazard Management Plan, Accident / Incident Investigation Plan, Corrective Action Program Plan, and Transit Asset Management Plan), but prior to the entry of the project into passenger revenue service.

The purpose of the readiness review would be for ODOT to assess the capabilities of the RTA to implement the safety and security plans during revenue service.

The review may be conducted as part of the process to determine final approval of the RTA plans, primarily the Public Transportation Agency Safety Plan and Security and Emergency Preparedness Plan.

This assessment may be conducted formally following the procedures outlined in **Section 7.2** of this Program Standard. Alternatively, the review may be conducted less formally, such as an on-site walk through of the project with the RTA safety and security points-of-contact and other appropriate project staff. Whether a formal or informal approach, the outcome of the review will be for ODOT to verify that the RTA has submitted accurate plans and has the capacity to adequately implement said plans.

At the completion of the review, ODOT may issue one or more of the Review Checklists included in the Appendix of this Program Standard or an official Final Report containing findings and recommendations that will be subject to the corrective action plan process described in **Section 8** of this Program Standard.

7.3.2 Readiness Review for System Expansions and System Modifications

ODOT may conduct an on-site readiness review of any system expansion or system modification project undertaken by the RTA. As the RTA system matures, ODOT may also conduct readiness reviews of the following types of projects:

- Major reconstruction of any existing line
- New installation or significantly modified/redesigned systems elements
- New or significantly modified / redesigned maintenance or operating facilities
- New vehicle procurements or mid-life overhauls
- Other types of projects deemed by ODOT to have significant safety or security implications

The timing of the review will depend largely on the type and extent of system expansion or system modification. ODOT reserves the right to assess all project development phases including:

- Planning
- Preliminary Engineering
- Final Design
- Procurement
- Construction
- Operations and Maintenance Planning
- Training
- Testing
- Start-Up

This review would likely take place following the receipt of the Annual Updates of the safety and

security plans required by the Program Standard (i.e., Public Transportation Agency Safety Plan, Security and Emergency Preparedness Plan, Internal Audit Program Plan, Hazard Management Plan, Accident / Incident Investigation Plan, Corrective Action Program Plan, and Transit Asset Management Plan), but prior to the entry of the expansion or modification project into passenger revenue service.

The purpose of the readiness review would be for ODOT to assess the capabilities of the RTA to implement the safety and security plans for the entire the RTA system with the addition of the system expansion or system modification project. It is also the objective of ODOT to review and resolve any safety or security critical issues as early as possible in order to avoid or minimize the need for retroactive modifications and retrofits and not delay the project implementation schedule.

In conducting the review, ODOT will focus on the process for system modification outlined in the RTA's PTASP and/or SEPP. This process requires the RTA to ensure that safety and security concerns are addressed in modifications to existing systems, vehicles, and equipment which do not require formal certification but which may have safety and/or security impacts.

ODOT readiness reviews for these types of projects will include the following safety and security-related plans and documents:

- Project scope, schedule, and management structure
- Design criteria
- Design documents
- Construction Plan
- Configuration Management Plan
- Operating and Maintenance Plans and procedures, including emergency operating procedures
- Training programs and procedures
- Integrated test program and procedures
- System safety and security reviews / assessments
- Public Transportation Agency Safety Plan updates
- Security and Emergency Preparedness Plan updates

The review may be conducted as part of the process to determine final approval of the RTA plans, primarily the Public Transportation Agency Safety Plan and Security and Emergency Preparedness Plan.

This assessment may be conducted formally following the procedures outlined in **Section 7.2** of this Program Standard. Alternatively, the review may be conducted less formally, such as an on-site walk through of the project with the RTA safety and security points-of-contact and other appropriate project staff. Whether a formal or informal approach, the outcome of the review will be for ODOT to verify that the RTA has submitted accurate plans and has the capacity to adequately implement said plans.

At the completion of the review, ODOT may issue one or more of the Review Checklists included in the Appendix of this Program Standard or an official Final Report containing findings and recommendations that will be subject to the corrective action plan process described in **Section 8** of this Program Standard.

At the completion of the project, ODOT expects all affected safety and security plans, policies and procedures to be updated to include the system expansion or system modification. In addition, following the completion of the project, ODOT will incorporate the project into the regularly scheduled SSO On-Site Safety Audits and SSO On-Site Security Audits.

7.3.3 Reviews for Projects Subject to Safety and Security Certification

Refer to **Section 10**, Safety and Security Certification Plan and **Section 13**, Engineering and Construction.

7.4 Risk Based Inspections

Through its ongoing CAP verification activities, facilitation of on-site quarterly management meetings, conduct of safety and security audits and readiness reviews and performance of rail safety and security trend analyses; ODOT has established a series of oversight practices that comprise a risk based inspection program. This section of the Program Standard serves to summarize how ODOT efficiently uses limited inspection resources to maximize safety impact by identifying areas of higher safety risk and targeting inspections in these areas.

7.4.1 Inspection Authority

As stated in **§ 674.37**, ODOT may monitor the RTA's progress in carrying out CAPs through unannounced, on-site inspections. ODOT may conduct announced and unannounced risk based inspections of RTA's within its jurisdiction. ODOT requires the RTA to assist and cooperate with the conduct of announced and unannounced risk based inspection activities including but not limited to those established in **Section 6.6** of the Program Standard.

7.4.2 Inspection Notification

For announced inspections, ODOT will formally notify the RTA of the upcoming risk based inspection no less than **7 calendar days** before the inspection is scheduled. ODOT will assign a team of subject matter experts with expertise relevant to the system elements subject to inspection. Refer to **Section 6.6.2** for additional information on ODOT's established practices.

7.4.3 Inspection Data Sources

ODOT may require the RTA to provide data from a variety of sources for risk assessments to inform inspections. These sources include but are not limited to:

- RTA reporting to the SSOA, including details from events, CAPs, and hazards;
- RTA reporting to the National Transit Database including service, financial, asset inventory, and event data; and
- RTA data systems, including internal data such as inspection and maintenance records and logs, event investigations, and control center logs.

In addition to the information gathered by ODOT as outlined in **Table 1.6.1** such as quarterly management meetings and documentation from the SSO On-Site Audit process, ODOT may request additional information from the RTA as needed as part of the risk based inspection process.

7.4.4 Inspection Risk Assessment

ODOT may conduct announced or unannounced risk based inspections in response to the risk assessments of individual rail safety events such as accidents, incidents, occurrences, hazards, or trends of such events. ODOT may prioritize its announced or unannounced risk based inspections based on risk assessments of safety critical elements, such as equipment, rolling stock, infrastructure, and facilities. Refer to **Section 5.8** for additional information on ODOT's established practices.

7.4.5 Inspection Reporting

Upon completing an announced or unannounced risk based inspection, ODOT may issue a letter or report to the RTA to address concerns or findings found during the inspection. If the inspection is performed as part of an SSO On-Site Audit, ODOT may capture the findings in the Draft Report and / or a letter following the conclusion of the on-site portion of the audit. Refer to **Section 8.5.3** for additional information on ODOT's established practices.

Figure 7.2a SSO On-Site Safety Audit Process

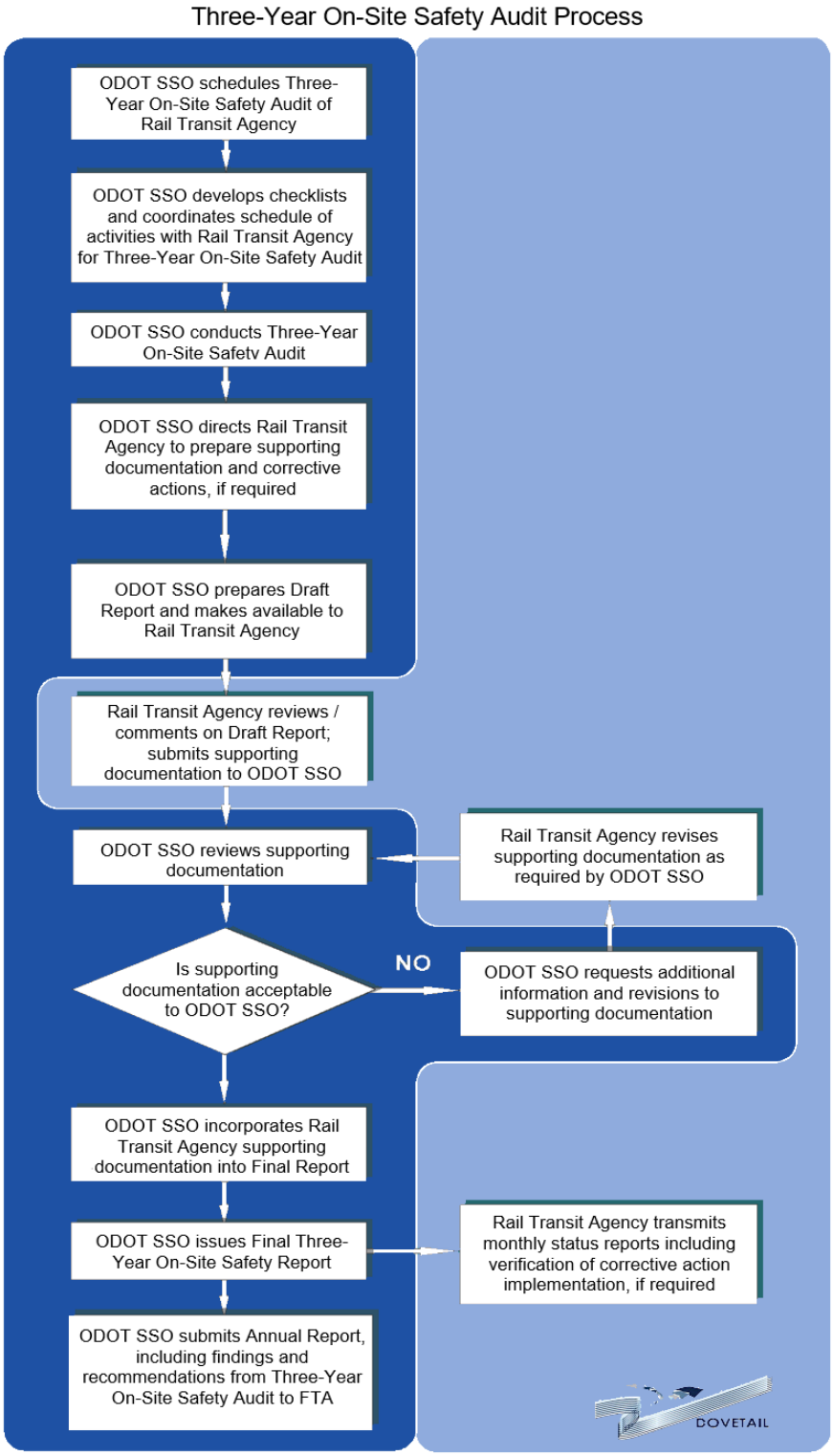
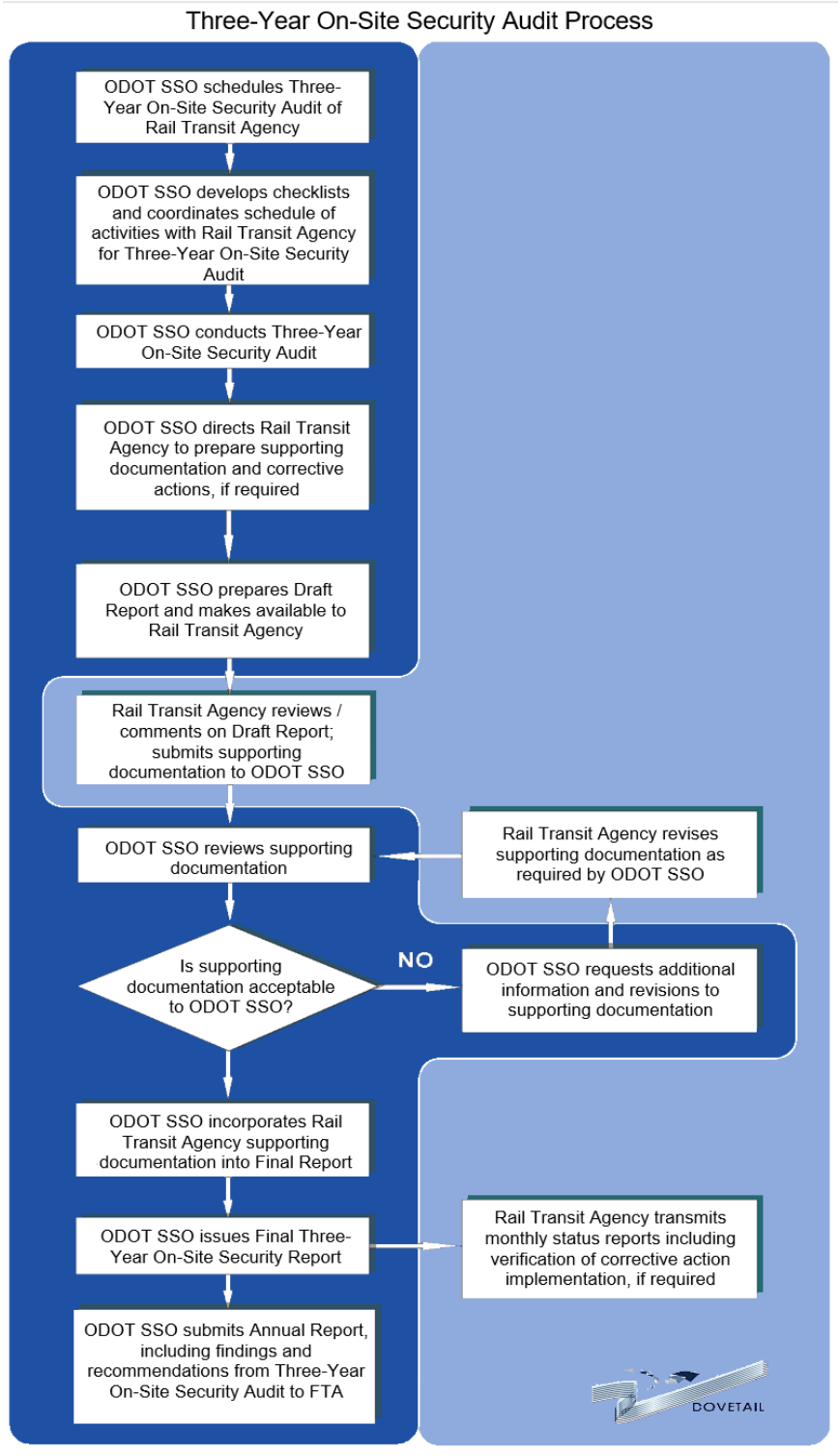


Figure 7.2b SSO On-Site Security Audit Process



Section 8
Corrective Action Plans

8.0 Purpose

As defined in **§ 674.37**, in any instance in which an RTA must develop and carry out a Corrective Action Plan (CAP), the SSOA must review and approve the CAP before the RTA carries out the plan.

This section of the Program Standard addresses ODOT's requirements to ensure that a CAP Program is developed that describes the RTA's process to develop and implement CAPs identified through event investigations, the hazard management process, audits of the RTA's implementation of its PTASP and SEPP, or recommendations specified by ODOT.

This section also addresses ODOT's requirements to ensure that CAPs describe actions the RTA will take to minimize, control, correct, or eliminate the risks and hazards identified by the CAP, the schedule for taking those actions, and the individuals responsible for taking those actions.

Lastly, this section defines the CAP reporting requirements by the RTA to ODOT on its progress in carrying out the CAP and policies for the verification and tracking of CAP implementation.

8.1 Minimum Plan Requirements

The RTA must develop, implement, and maintain a written Corrective Action Plan (CAP) Program that complies with the program requirements specified in this section.

The CAP Program must include:

- A description of the individuals, departments, and external agencies (to include ODOT, FTA, FRA and NTSB) that have roles and responsibilities for the identification of the need for a CAP, CAP development, CAP implementation, and CAP monitoring and tracking.

- A description of the events and / or ongoing program activities that trigger the development of a Corrective Action Plan (CAP), including the following minimum requirements:

    - **Internal Safety and Security Audit Program**
      CAPs will be developed when findings of non-compliance or partial compliance are identified from the RTA's internal safety and security audit final reports.

    - **Hazards**
      CAPs will be developed to correct those elements or activities identified as deficient as a result of hazard investigations. In addition, ODOT may, during the course of an investigation, identify corrective actions to avoid or minimize the reoccurrence of the unsafe condition or address a related, systemic problem.

      CAPs will also be developed to address findings and recommendations from formal hazard analyses (Preliminary Hazard Analysis, Failure Mode and Effects Analysis, Operations Hazard Analysis, Fault Tree Analysis).

- **Internal Investigations**
  CAPs will be developed when the results of the RTA's investigations identify causal or contributing factors that can be minimized, controlled, or corrected such that the identical or similar situations will not reoccur ("reactive").

- **Joint or External Investigations**
  CAPs may be developed based on the findings and recommendations included in ODOT, FTA, FRA or NTSB final accident reports, following review of the report by ODOT and the RTA.

- **SSO On-Site Safety and Security Audits**
  CAPs will be developed for deficiencies and areas of concern resulting from an ODOT SSO On-Site Safety Audit or SSO On-Site Security Audit.

- **Other**
  CAPs will be developed when FTA or ODOT's various oversight activities indicate the opportunity to intervene with an identified systemic problem or other concern / deficiency before it can manifest as a reportable event ("proactive").

- A description of what each CAP will identify, including the following minimum requirements:

  - Identified hazard or deficiency
  - Source of the hazard or deficiency
  - Unique identification number for the CAP
  - Identified Actions the RTA will take to minimize, control, correct, or eliminate the risks and hazards identified by the CAP
  - Proposed implementation date for taking those actions
  - Individuals and Departments responsible for taking those actions

  A sample Corrective Action Plan will also be submitted.

- A description of the CAP internal and external notification process, including coordination with the RTA's safety and security points-of-contact and ODOT.

- A description of the CAP internal and external review and approval process, including coordination with the RTA's safety and security points-of-contact and ODOT.

  The plan must also describe the process for the RTA to resolve disagreements with ODOT regarding corrective action plan development, approval, implementation, monitoring, or tracking.

- A description of the CAP monitoring and tracking process, including a sample Corrective Action Plan (CAP) Tracking Log.

- A description of the process to review and update the CAP Program, as required, during the engineering and construction phase of the project.

If the RTA delegates corrective action plan-related roles and responsibilities to contractor organizations, then the following must also be included in the plan:

- A description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart.

- A description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues.

- An identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns.

In all cases where a description of a process is required for inclusion in the CAP Program, the RTA is required to develop and implement the process or procedure in order to comply with the requirement.

Based on the requirements above and the corrective action plan-related guidance provided in **Appendix K**, a suggested outline for the minimum content for the RTA's CAP Program is illustrated in **Table 8.1** below.

Table 8.1 Corrective Action Plan (CAP) Program Suggested Outline

Title Page

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Approvals

Revisions

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- 1.0 Overview
- 1.1 Purpose
- 1.2 Scope
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  - 1.4.2 External (FTA, FRA, NTSB, ODOT)

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- 2.0 Overview
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Section 3. CAP Notification Process
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Section 6. CAP Program Review and Modification
- 6.0 Overview
- 6.1 CAP Program Review Schedule

Table 8.1	Corrective Action Plan (CAP) Program Suggested Outline
6.2	CAP Program Control and Update Procedures
6.3	CAP Program Review and Approval (coordination with ODOT)

8.2 Review of Initial Submission

8.2.1 ODOT

In carrying out its oversight responsibilities under **§ 674.29**, the ODOT Program Manager will receive, review, and approve in writing the RTA's PTASP. With the PTASP, the RTA must also submit any referenced materials, including the Corrective Action Plan (CAP) Program.

To ensure compliance with FTA's initial submission requirements, the RTA must submit the CAP Program, in compliance with the corrective action plan-related requirements specified in the ODOT Standard and **Appendix K,** and all referenced procedures / materials by a date specified by the ODOT Program Manager.

An RTA with a rail fixed guideway public transportation project in the engineering or construction phase of development within the jurisdiction of the State of Oklahoma that will not be subject to regulation by the Federal Railroad Administration is subject to the requirements of this section of the Program Standard.

Pursuant to this requirement, the RTA will submit its CAP Program and all referenced materials to the ODOT Program Manager **365 calendar days** before beginning passenger service operations for review and comment.

The ODOT Program Manager will allocate **305** of these calendar days to:

- Review and comment on the initial CAP Program and materials related to Initial Submission;
- Review revised CAP Program and materials related to Initial Submission;
- Accept the final CAP Program and materials related to Initial Submission; and
- Prepare ODOT's initial submittal of the PTASP, including the CAP Program to the FTA (which must be submitted at least **60 days** prior to initiating passenger operations).

The CAP Program and supporting procedures must be submitted in electronic copy via email or secure file sharing and storage system to the ODOT Program Manager.

ODOT Review Checklist / Working Sessions

ODOT will review the submitted CAP Program, using the checklist provided in **Appendix U**. Upon approval, ODOT will provide a copy of the completed checklist to the RTA.

Pending any major comments or recommended changes in the RTA's CAP Program, the ODOT Program Manager will review and comment on the initial CAP Program using its review checklist, and will transmit the completed checklists to the RTA's point-of-contact within **305 calendar days** of submission.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings

or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

8.2.2 FTA

Sixty **(60) calendar days** prior to the passenger revenue service operations, ODOT will submit a formal letter to the FTA that certifies that the Public Transportation Agency Safety Plan, including the CAP program requirements, complies with the requirements of the Program Standard.

FTA will review and approve the Initial Submission using its review checklist, and will transmit a formal letter of approval and the completed checklists to ODOT. In the event that the FTA does not approve the Initial Submission, additional requirements necessary to achieve compliance will be conveyed to the ODOT Program Manager by the FTA.

The ODOT Program Manager will maintain ongoing communications with the FTA Office of Transit Safety and Oversight regarding the development and implementation of the Program Standard, as required.

Table 8.2 Schedule for Initial Review of CAP Program

Task	Responsible Agency	Duration	Target Date
Develop initial CAP Program and materials related to Initial Submission as part of FTA New Starts process.	RTA	---	---
Submit initial CAP Program and materials related to Initial Submission to ODOT for review and approval.	RTA	**365** days	Prior to passenger revenue service operations.
Review and approve CAP Program and materials related to Initial Submission or request additional information.	ODOT	**305** days	Prior to passenger revenue service operations.
Submit approved CAP Program and materials related to Initial Submission to FTA for review and approval.	ODOT	**60** days	Prior to passenger revenue service operations

8.3 Review of Annual Submission

Following initiation of revenue service, the RTA will conduct an annual review of its CAP Program and update it as necessary to ensure that the CAP Program is current at all times.

In the event that the RTA conducts its annual CAP Program review and determines that an update is not necessary for the year, it must prepare and submit by **January 1** formal correspondence notifying the ODOT point-of-contact of this determination. If ODOT wishes to object to this determination, the ODOT point-of-contact will notify the RTA within **30 calendar days.**

In the event that the RTA conducts its annual CAP Program review and determines that an update is necessary for the year, the RTA will submit a revised CAP Program to the ODOT Program Manager by **January 31**. As appropriate, referenced materials affected by the revision(s) must also be submitted with the CAP Program.

Each revised CAP Program submitted to ODOT by the RTA must include a text or tabular summary that identifies and explains proposed changes and includes a time frame for completion of the associated activities.

ODOT Review Checklist / Working Sessions

Following the process specified in **Figure 8.3** at the end of this section, ODOT will review CAP Program submissions from the RTA.

Within **30 calendar days** of receipt of the CAP Program from the RTA, ODOT will review the plan and issue to the RTA written approval of its CAP Program and the completed CAP Program checklist. If ODOT determines that the CAP Program is not acceptable, ODOT will provide a completed CAP Program checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

If the ODOT SSO Lead Program Manager and the RTA's Chief Safety Officer are unable to resolve open items regarding the CAP Program in a timely manner, the Program Manager has the authority to bring concerns to the attention of the Accountable Executive of the RTA or equivalent position.

It is ODOT's intent that the annual review and approval process for the CAP Program be completed by **May 31.**

Table 8.3 Schedule for Annual Review of CAP Program

Task	Responsible Agency	Duration	Target Date
If CAP Program is not updated:			
Notifies SSO that no update is necessary.	RTA	---	Jan 1
If notified no update is necessary, accepts or objects to the RTA's determination and notify the RTA.	ODOT	30 days	Jan 31
If CAP Program is updated:			
If CAP Program is updated, completes annual review for previous calendar year and submits revised CAP Program to SSO.	RTA	---	Jan 31
If notified update is necessary, approves CAP Program or requests additional information.	ODOT	30 days	Mar 1
Submits additional information and revises CAP Program.	RTA	60 days	Apr 30
Reviews additional information and approves revised CAP Program.	ODOT	30 days	May 31

8.4 Review of Periodic Submission

At any given time, additional reviews of the RTA's CAP Program may be required to address specific issues based on implementation and compliance to the FAST Act, Section 5329, 49 CFR Part 674, and / or the ODOT Program Standard or procedures; review of the RTA's documents; or other safety related project information.

Upon receipt of a written notification from ODOT for CAP Program modifications, the RTA will submit a revised CAP Program to ODOT within **30 calendar days**.

In the event that the RTA initiates updates, the RTA will submit the modified CAP Program, and any subsequently modified procedures, to ODOT for review and approval within **30 calendar days** of the effective date of the change.

ODOT Review Checklist / Working Sessions

ODOT will review and approve the revised CAP Program, providing a formal approval letter and a completed CAP Program review checklist within **30 calendar days** of receipt of the revised the RTA CAP Program. If ODOT determines that the CAP Program is not acceptable, ODOT will provide a completed CAP Program checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

Table 8.4 Schedule for Periodic Review of CAP Program

Task	Responsible Agency	Duration
Notifies the RTA that CAP Program update is necessary.	ODOT	---
Following ODOT notification, or at its own discretion, submits revised CAP Program to ODOT.	RTA	30 days
Reviews and approves revised CAP Program or determines CAP Program requires re-submittal.	ODOT	30 days
Revises CAP Program and re-submits to ODOT review and approval.	RTA	30 days
Reviews and approves revised CAP Program.	ODOT	30 days

8.5 CAP Development Process

8.5.1 CAP Notification Requirements

The CAP Program will include a discussion of the notification requirements that will be implemented during revenue service operations. ODOT requires that the RTA will develop a corrective action plan with the intent of addressing the hazard or deficiency identified as a result of an accident investigation, the hazard management process, or the internal safety and security audits reviews performed by the RTA, or external reviews performed by FTA, FRA, ODOT or other parties.

The RTA will notify ODOT that a corrective action plan will be developed and the date when the corrective action plan will be submitted to ODOT within **30 calendar days** after the need for the corrective action plan has been identified by the RTA or ODOT.

Depending on the complexity of the issue requiring corrective action, and at ODOT's discretion, additional time may be granted to the RTA to prepare the corrective action plan.

Immediate / Emergency CAPs

As discussed in **§ 674.37,** an exception may be made for immediate or emergency corrective actions that must be taken to ensure immediate safety, provided that ODOT has been given timely notification, and ODOT provides subsequent review and approval.

The RTA will provide initial notification to the ODOT point-of-contact within **24 hours or by 5:00 p.m. on the next business day** following the determination of the need for immediate or emergency corrective actions taken. The RTA will provide as much of the following information as possible:

- Notification Time
- Name and job title of person reporting
- Name of RTA
- Event type (fatality, injuries, property damage, evacuation, derailment, other)
- Location, date, and time of event
- Fatalities
- Injuries (number, severity)
- Vehicles involved (type, number)
- Property damage estimate
- FTA, FRA, ODOT, NTSB reportable
- RTA primary person conducting the investigation
- Description of event
- Immediate / Emergency Actions Taken
- Ongoing investigation activities

8.5.2 RTA Initiated CAPs

The CAP Program will include a discussion of the RTA-initiated CAPs that will be implemented during revenue service operations.

Single CAP

When an individual corrective action plan is submitted to ODOT for review and approval, ODOT will notify the RTA of acceptance or rejection within **15 calendar days** of receiving the corrective action plan and will identify any additional information required. This type of corrective action plan will typically result from the RTA activities to address a specific accident, incident, or occurrence.

Group of CAPs

When a group of corrective actions and supporting documentation is submitted to ODOT for review and approval, within **15 calendar days** of receiving the documentation, ODOT will develop a schedule for the review of the CAPs and documentation, and will notify the RTA of the proposed target date for the completion of its review. Upon completion of its review, ODOT will issue a written determination of its acceptance or rejection of the corrective action plans and any additional information required. These types of corrective action plans will typically result from the RTA activities to address major internal safety and security program initiatives such as a Full Scale Emergency Drill or Exercise.

Disputed CAP

In the event that ODOT or the RTA dispute the need, findings, or enforcement of a corrective action plan, ODOT will allow the RTA **30 calendar days** to submit its case. ODOT will then issue final direction to the RTA regarding the corrective action plan.

CAP Log

The RTA will develop and maintain a Corrective Action Plan (CAP) Tracking Log, which identifies all corrective action plans approved by ODOT and presents their status. This log will be submitted

no less than monthly to the ODOT point-of-contact electronic copy via email or secure file sharing and storage system. As corrective action plans are closed out, the RTA must submit verification that the corrective action(s) has been implemented as described in the corrective action plan or that a proposed alternative action(s) has been implemented. This verification must be submitted **no less than monthly** with the CAP Log electronic copy via email or secure file sharing and storage system. In the log, the RTA must also inform ODOT concerning any alternative actions for implementing a corrective action plan.

Figure 8.5.2 at the end of this section illustrates the process for corrective action plans initiated by the RTA.

8.5.3 ODOT Initiated CAPs

The CAP Program will include a discussion of ODOT-initiated CAPs that will be implemented during revenue service operations.

Single CAP

In the course of carrying out its oversight responsibilities, if ODOT determines that a corrective action plan is required, it will so notify the RTA in writing. The notice will identify the state's concerns and direct the RTA to develop an appropriate CAP.

In response, the RTA is required to prepare a new CAP and submit it to ODOT for review and approval within **30 calendar days** (additional time may be granted at ODOT's discretion, depending upon the complexity of the concern).

The RTA is responsible for (1) proposing corrective action that is attainable and addresses ODOT's concerns, or (2) convincing ODOT that a CAP is not necessary because system safety or security is not compromised. If ODOT rescinds its decision to require a CAP, the new understanding will be documented in writing. ODOT may review its decision at any time.

Within **15 calendar days** of receiving a corrective action plan, ODOT will notify the RTA in writing of its acceptance or rejection. In the event that ODOT rejects a CAP, ODOT will state its reasons and work with the RTA to resolve differences.

Group of CAPs

If ODOT determines that a group of corrective action plans are required, it will so notify the RTA in writing. The notice will identify the state's concerns and direct the RTA to develop an appropriate set of CAPs.

In response, within **15 calendar days** of receipt of ODOT's notification, the RTA will develop a schedule for the preparation of the CAPs and supporting documentation, and will notify ODOT of the proposed target date for the submittal of the CAP responses.

When the group of corrective actions and supporting documentation is submitted to ODOT for review and approval, within **15 calendar days** of receiving the documentation, ODOT will develop a schedule for the review of the CAPs and documentation, and will notify the RTA of the proposed target date for the completion of its review. Upon completion of its review, ODOT will issue a written determination of its acceptance or rejection of the corrective action plans and any additional information required. These types of corrective action plans will typically result from the RTA activities to address major ODOT program initiatives such as a SSO On-Site Safety Audit, Safety and Security Readiness Review, or Special Assessment.

Disputed CAP

In the event that ODOT and the RTA dispute the need, findings, or enforcement of a corrective action plan, ODOT will allow the RTA **30 calendar days** to submit its case. ODOT will then issue final direction to the RTA regarding the corrective action plan.

Figure 8.5.3 at the end of this section illustrates the process for corrective action plans initiated by ODOT.

8.5.4 NTSB Findings and Recommendations

The CAP Program will include a discussion of NTSB-initiated CAPs that will be implemented during revenue service operations. NTSB findings and recommendations are transmitted directly to the affected RTA. It is the RTA's sole responsibility to interact with the NTSB regarding the RTA's formal, written response.

After the RTA has completed and transmitted its formal response to the NTSB, ODOT requires that the RTA provide a copy of the correspondence to the ODOT Program Manager. ODOT will review the NTSB findings and recommendations to determine whether or not a corrective action plan should be developed by the RTA. If a corrective action plan is required by the NTSB or ODOT, the RTA will develop it.

ODOT will follow these steps to examine each recommendation included within the NTSB written accident report:

1. Confirm or clarify, if necessary, the problem identified in (or associated with) the NTSB recommendation, in consultation with the RTA;
2. As required by **§ 674.37(b)**, in any instance in which a safety event on the RTA's rail fixed guideway public transportation system is the subject of an investigation by the NTSB, ODOT must evaluate whether the findings or recommendations by the NTSB require a CAP by the RTA, and if so, ODOT must order the RTA to develop and carry out a CAP.
3. Require the RTA to develop appropriate corrective action plans as required, and in accordance with the CAP review and approval process outline in this section;
4. Require the RTA to document the analyses performed under this subsection and submit this analyses to ODOT within an agreed upon timeframe following the receipt of the NTSB report.

ODOT will follow a similar process as described above for those NTSB recommendations applicable to ODOT.

Figure 8.5.4 at the end of this section illustrates the process for corrective action plans initiated by ODOT or the RTA in response to NTSB findings and recommendations.

8.6 CAP Review and Approval Process

8.6.1 Review and Approval Process

The CAP Program will include a discussion of the ODOT review and approval process of each CAP submitted by the RTA during revenue service operations. ODOT will notify the RTA of its approval or disapproval of a single corrective action plan within **15 calendar days** of receiving the corrective action plan. In the event that ODOT does not approve a corrective action plan, ODOT will state its reasons in writing and recommend revisions. The RTA will submit a revised corrective action plan to ODOT no later than **30 calendar days** following the disapproval.

8.6.2 CAP Issue Resolution Process

Safety and security issues of various severities necessitating the development of a CAP may arise at any stage of the rail system life cycle – from engineering, construction and testing to operations and maintenance. It is important to outline a procedure for ODOT and the RTA's staff to communicate and resolve these issues in order to reach agreement on the corrective actions necessary to ensure a safety and security rail system.

If the RTA's Chief Safety Officer, on behalf of the RTA organization, disagrees with the rationale for ODOT's disapproval of the CAP and recommended revisions, the ODOT Program Manager and the RTA's Chief Safety Officer will attempt to resolve issues associated with CAPs at their level and appropriate with the urgency and severity of the issue, and as soon as possible.

If the ODOT Program Manager and the RTA's Chief Safety Officer are unable to resolve the CAP disagreement in a timely manner, they will jointly bring the issue to the attention of the Accountable Executive of the RTA or equivalent position.

If the Accountable Executive of the RTA and the ODOT Program Manager are unable to resolve the CAP disagreement within a time period consistent with the urgency and severity of the issue, the Accountable Executive of the RTA and the ODOT Program Manager will jointly bring the issue to the attention of the ODOT, Manager, Office of Mobility and Public Transit. The ODOT Manager of the Office of Mobility and Public Transit has ultimate authority over the State Safety Oversight Program, including CAPs. It is within the agency's discretion to attempt to resolve the safety or security issues with the RTA's Accountable Executive, including bringing the issue to the attention of the RTA's Board of Directors or equivalent decision-making body.

The ODOT Program Manager will consider the issue resolved when the RTA's Chief Safety Officer submits written notice of resolution, including the agreed upon CAP developed based on the process described above.

Figure 8.6.2 at the end of this section illustrates the process to resolve issues between ODOT and the RTA associated with CAPs.

8.7 CAP Monitoring and Tracking

8.7.1 Corrective Action Plan (CAP) Log

The CAP Program will include a discussion of the process to monitor and track the development and implementation of each CAP during revenue service operations. The RTA will develop and maintain a CAP Log, which summarizes the status of all open corrective actions related to the state oversight program and all actions closed since the last submittal. The RTA will update the log with CAP implementation activities on a **no less than monthly** basis.

The Corrective Action Plan Tracking Log must include the required information on the following page.

Table 8.7.1 Corrective Action Plan (CAP) Tracking Log

CORRECTIVE ACTION PLAN (CAP) TRACKING LOG	
Element	**Description**
CAP SYNOPSIS	
CAP: Source	Refers to source of corrective action plan: 1. Full Scale Exercise After Action Reports and/or Improvement Plans 2. Readiness Reviews for News Starts Projects, System Expansions, or System Modifications 3. Reviews for Safety and Security Certification Projects 4. Special Assessments 5. Peer Reviews 6. Other
CAP: ID Number	Refers to the CAP number assigned to the event by the RTA, if different from the event number.
CAP: Identified Action	Refers to the description of the corrective action, if required, by the RTA to address the finding.
CAP: SOA Approved?	Refers to a yes or no response provided by ODOT on the approval of the corrective action plan.
CAP: Proposed Implementation Date	Refers to the estimated date of completion of the corrective action plan.
CAP: Actual Implementation Date *(closed only)*	Refers to the actual date of completion of the corrective action plan.
CAP: Individual Responsible for Implementation	Refers to the individual (name and title) assigned responsibility for implementation of the CAP.
CAP: Department Responsible for Implementation	Refers to the department assigned responsibility for implementation of the CAP.
CAP: Status	Refers to the status of the CAP provided by ODOT. Status may be designated as open or closed.
CAP: Implementation Verified? *(closed only)*	Refers to a yes or no response provided by the RTA that verifies that the RTA's safety department verified the implementation of the CAP.
CAP: Issues Preventing Resolution *(open only)*	Refers to issues that prevent the timely and adequate resolution to identified CAP.
CAP: Status Updates	Refers to the periodic updates provided by the responsible individual / department to implement the agreed upon CAP.
Other: CAP Alternative	If the RTA wishes to modify an open action, the proposed alternative must be described in sufficient detail so that ODOT can determine its acceptability as a substitute for the originally approved CAP. If there is disagreement between the RTA and ODOT regarding CAP changes, the process described in **Section 8** of the Standard will be implemented to resolve differences.
SAFETY ASSURANCE – PERFORMANCE MONITORING / MEASUREMENT	
SA: Effective, Appropriate, Implemented as Intended	Refers to a yes or no response provided by the safety department of the RTA. A yes response must be based on an assessment of the performance outcomes of the safety risk mitigation following closure of the CAP. A no response must

CORRECTIVE ACTION PLAN (CAP) TRACKING LOG	
Element	**Description**
CAP SYNOPSIS	
	be accompanied with a detailed explanation and a proposed alternative CAP.
SA: Safety Performance Monitoring and Measurement	Refers to a brief narrative summary of the process used by the RTA to assess safety performance such as trend analysis of relevant safety concerns, internal safety reporting programs, internal audits or other compliance assessments.

This log will be transmitted monthly to the ODOT Program Manager in electronic copy via email or secure file sharing and storage system. It is due within the first **15 calendar days** of the next quarter. At its discretion, ODOT may increase the frequency of the submittal requirements for the CAP log in response to a given internal or external audit finding, hazard, accident, or trend of such events, or other systemic safety related issues.

Within **15 calendar days** of receiving a monthly CAP Log, ODOT will acknowledge review and approval in writing. ODOT will review the CAP Log, using the checklist provided in **Appendix V.** Upon approval, ODOT will provide a copy of the completed checklist to the RTA.

8.7.2 Corrective Action Plan (CAP) Verification

The RTA will verify to ODOT in writing when a corrective action has been fully implemented. As required by **§ 674.37(a)**, the RTA's CAP will be subject to independent ODOT verification such as unannounced, on-site inspections, three year on-site audits, other on-site monitoring exercises, or any other means ODOT deems necessary or appropriate. In the event that ODOT conducts an unannounced inspection, ODOT will adhere to the requirements of the RTA's track access requirements and/or other relevant procedure governing access to the RTA's personnel, property, and equipment.

Due to the sensitive nature of security related information and the requirements to protect confidential and/or Sensitive Security Information (SSI), to verify the implementation of safety- or security-related CAPs, ODOT may receive briefings from the RTA's safety or security personnel or review safety and security reports on-site at the RTA as a means of verifying the implementation of such CAPs.

Figure 8.3 Corrective Action Plan (CAP) Program – Review and Approval Process

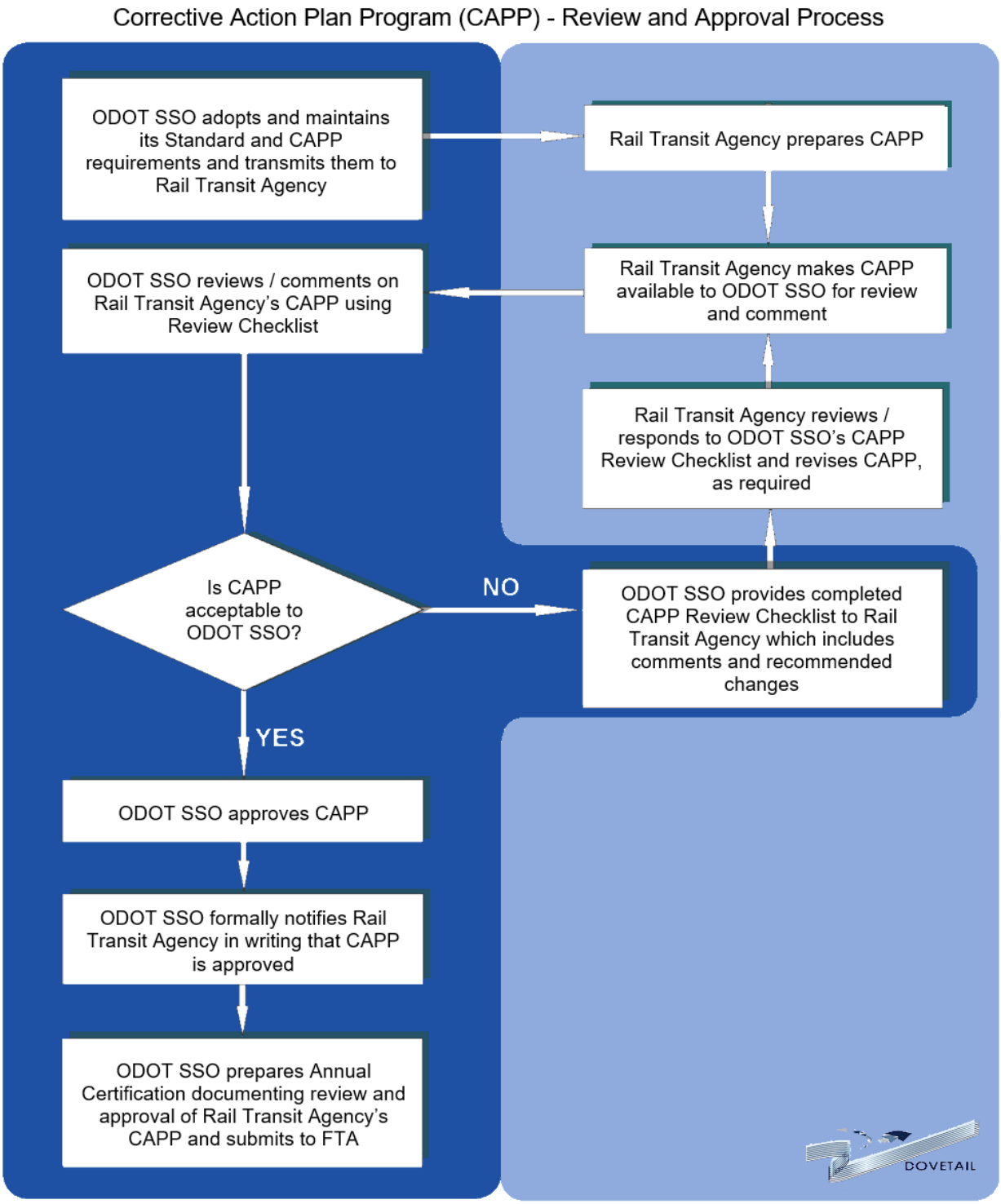


Figure 8.5.2 RTA-Initiated CAP – Review and Approval Process

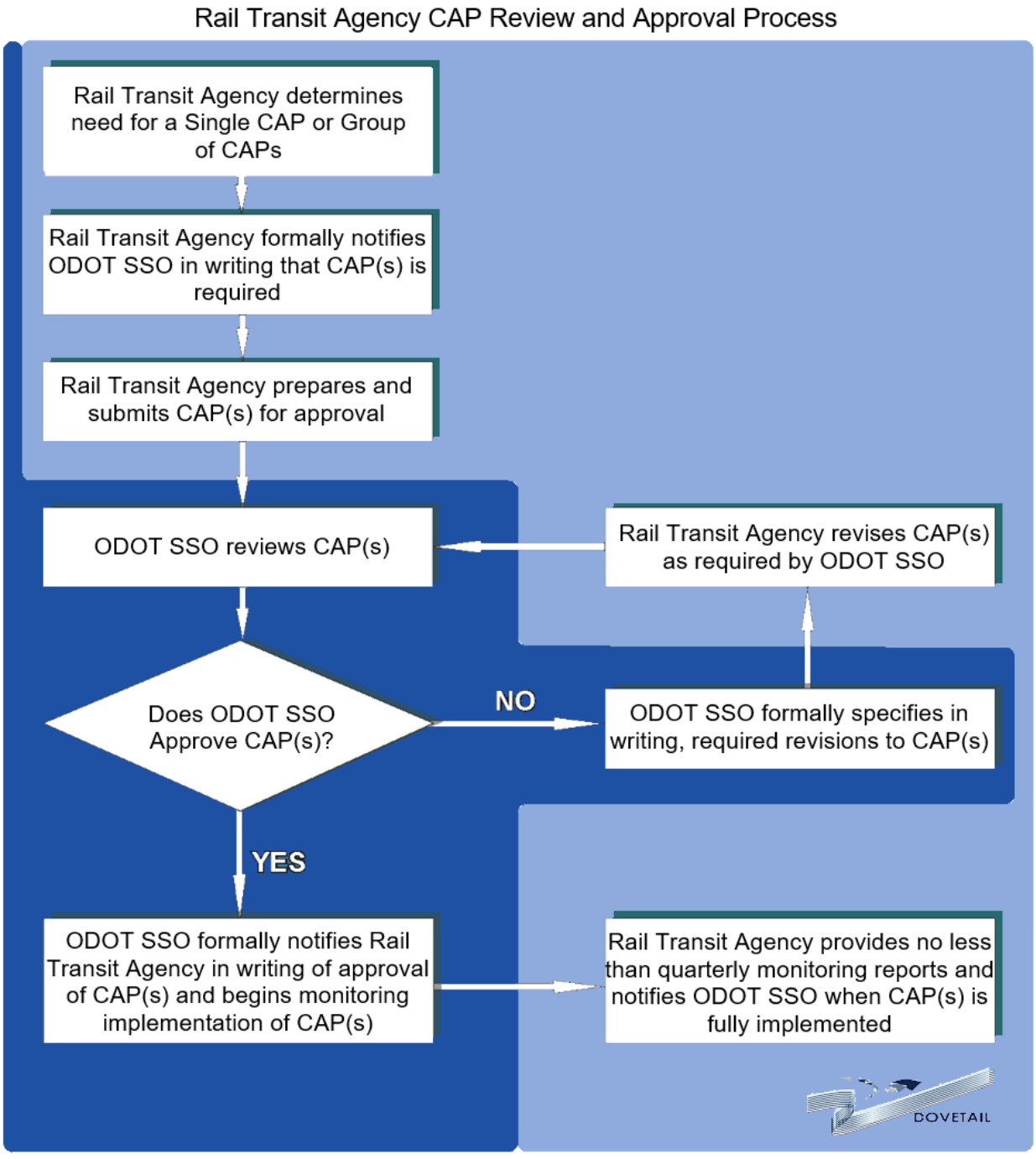


Figure 8.5.3 ODOT-Initiated CAP – Review and Approval Process

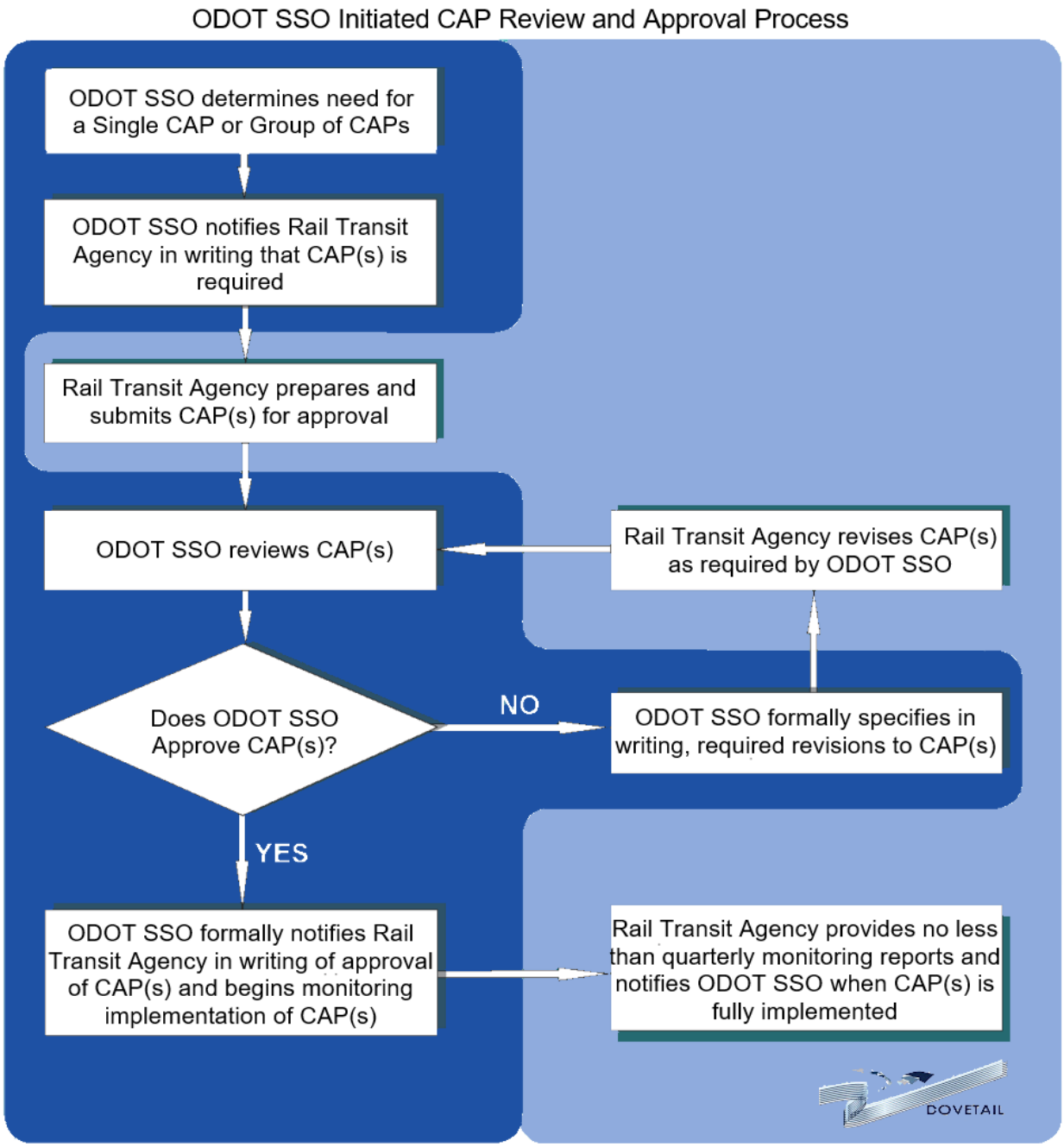


Figure 8.5.4 NTSB Findings-Initiated CAP – Review and Approval Process

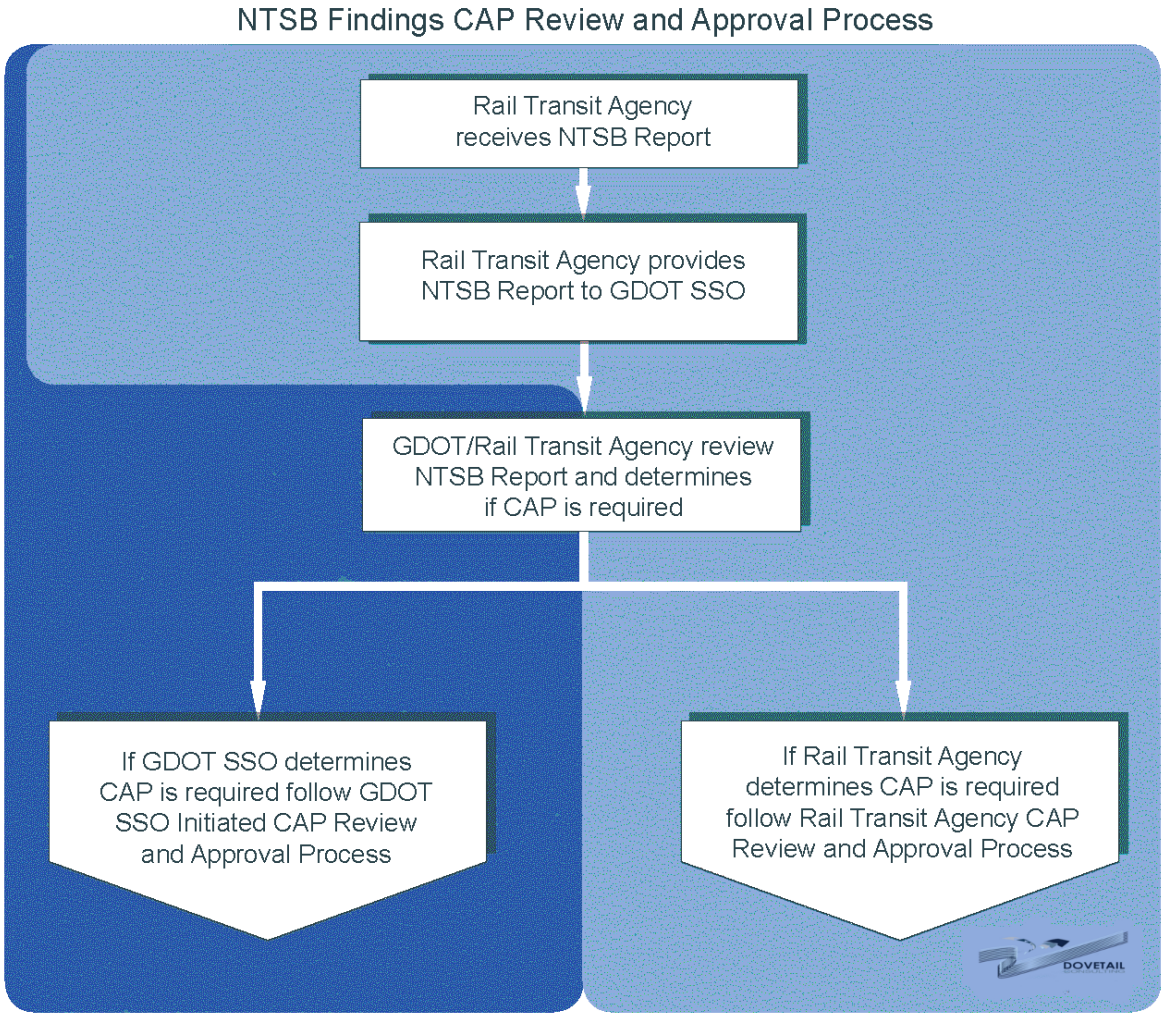
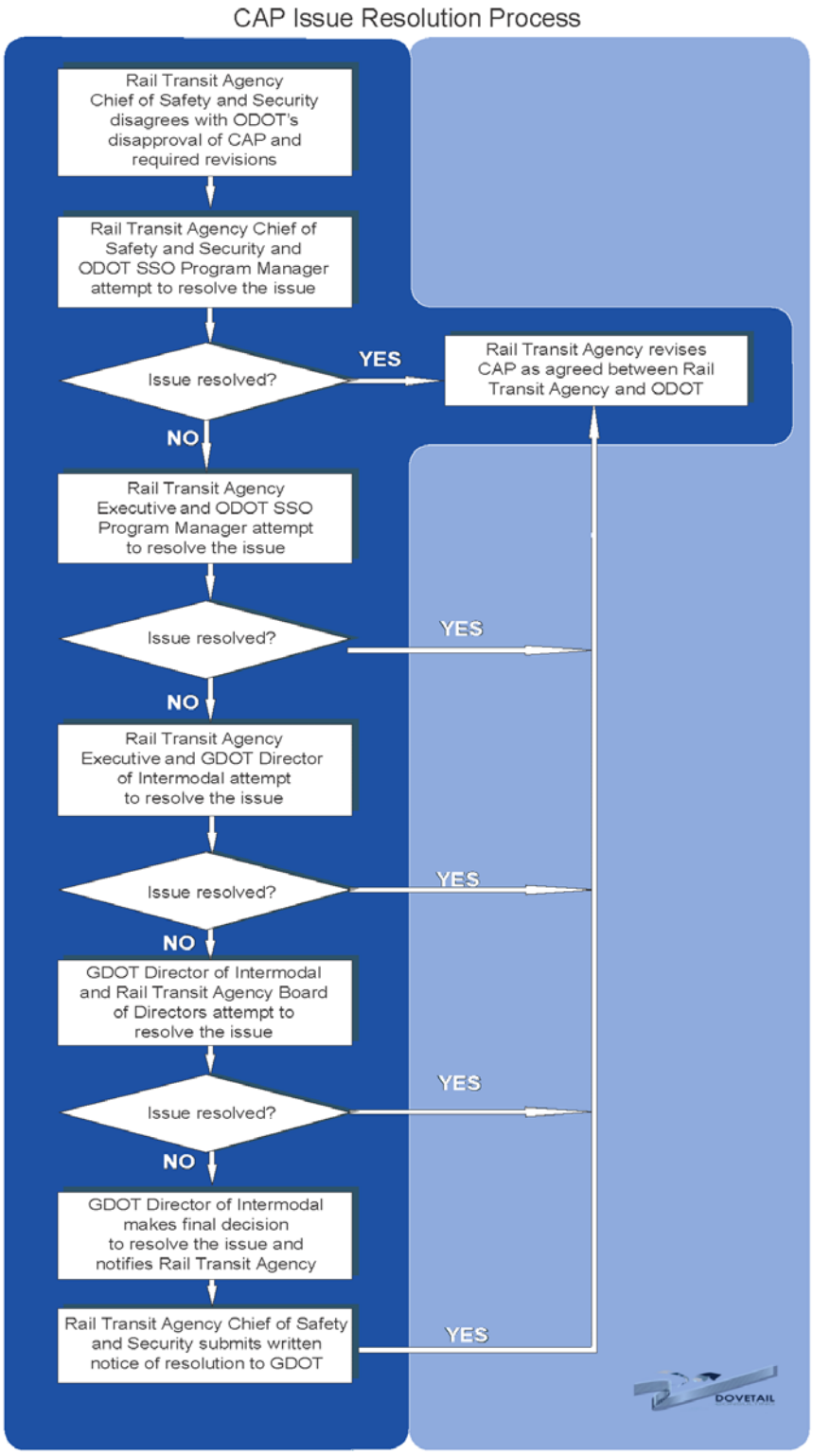


Figure 8.6.2 CAP Issue Resolution Process



Section 9
Federal Transit Administration Reporting and Certification

9.0 Purpose

This section addresses ODOT's procedure for making Initial, Annual, and Periodic submissions to FTA's Office of Transit Safety and Oversight, in compliance with **§ 674.39.**

This section also describes the FTA's program to determine whether or not each SSO program meets the requirements of the 49 CFR Part 674, State Safety Oversight Rule.

9.1 FTA Reporting Requirements

9.1.1 Initial Submission

In the event that the State of Oklahoma should ever determine that oversight authority should be transferred to another agency of the state, ODOT will work with that agency to ensure that at no point are the rail transit agencies affected by 49 CFR Part 674 left without duly authorized oversight agency. The new oversight agency will make a new initial submission to FTA within **thirty (30) days** of the designation.

Refer to **Section 1** for additional details on the Initial Submission.

9.1.2 Annual Submission

Before **March 15** of each year, ODOT will submit the following to FTA:

- Program Standard adopted in accordance with **§ 674.27**, and supporting procedures with an indication of any changes to the Program Standard during the preceding twelve months.
- Evidence that each of its employees and contractors has completed the requirements of the Public Transportation Safety Certification Training Program, or, if in progress, the anticipated completion date of the training.
- A publicly available annual report summarizing its oversight activities for the preceding twelve months, including a description of the causal factors of investigated accidents, status of corrective actions, updates and modifications to the PTASP and SEPP of the RTA, and the level of effort used by ODOT to carry out its oversight activities.
- A summary of the three-year safety audits activities and whether a three-year safety audits has been completed since the last annual report was submitted and the RTAs' progress in carrying out CAPs arising from triennial audits conducted in accordance with **§ 674.31.**
- Evidence that any changes or modifications to the RTA's PTASP or SEPP have been reviewed and approved by ODOT.

9.1.3 Annual Certification

With its Annual Submission, ODOT will certify to the FTA that it has complied with the requirements of 49 CFR 674. ODOT will submit this certification electronically to FTA using a reporting specified by FTA. ODOT will maintain a signed copy of each annual certification to FTA, subject to audit by FTA.

9.1.4 Periodic Submission

Status reports of accidents / incidents, hazards, and corrective action plans or other program information will be forwarded to the FTA upon request.

ODOT will ensure that all submissions to FTA are submitted electronically using the reporting system specified by FTA.

9.1.5 FTA SSO Audits

FTA administers a national transit safety program and program compliance oversight process to advance safe, reliable, and equitable transit service throughout the United States. FTA's Office of Transit Safety and Oversight (TSO) is responsible for policy development, hazard investigation, data collection, risk analysis, oversight programs and information sharing.

The triennial audits conducted by the FTA TSO are part of the program compliance oversight process and assists FTA in its assessment of whether a SSOA has complied with or made adequate efforts to comply with 49 CFR Part 674, the State Safety Oversight rule.

In Part 1 of the SSO audit, FTA evaluates the effectiveness of the SSO's implementation of the following requirements:

1. **Designation** - The designation of the State Safety Oversight Agency and the agency's authority to implement the requirements of 49 CFR Part 674. Specifically, 49 U.S.C. 5329 requires that each State with a rail fixed guideway transit system (rail transit system) establish a SSO agency that:
    - Is legally and financially independent of the rail transit systems the SSO agency will oversee
    - Has adequate authority to oversee those systems, including the enforcement of each rail transit system's safety plan
    - Has adequate resources to hire an appropriate staffing level to carry out these responsibilities

2. **Program Management** - The ability of the SSO to effectively implement its SSO program for the State. This includes an evaluation of the SSO's organizational structure, the level of resources dedicated by SSO to implement and administer its SSO program, training levels for SSO staff, and the SSO's mechanisms for coordinating program elements with the RTA.

3. **Program Standard Development and Compliance** - How the oversight agency addresses the requirements in **§ 674.27** to manage the Program Standard and oversee its implementation for the RTA.

4. **PTASP Review and Approval Process** - SSO's implementation of program polices for requiring, reviewing, and approving the RTA's Public Transportation Agency Safety Plan (PTASP).

5. **Oversight of Internal Safety Audits and Annual RTA Reporting** - SSO's policies to require the RTA to conduct internal safety audits, and annual assessments of its PTASP.

6. **SSO On-Site Safety and Security Audits** - SSO's performance of on-site safety and security audits to assess the RTA's implementation of its PTASP and SEPP.

7. **Oversight of Hazard Management Program** - SSO's policies to require the RTA to implement a hazard management program and the SSO's processes for tracking the resolution of identified hazards.

8. **Accident Notification and Investigation** - SSO's policies and procedures for performing and overseeing accident notifications, investigations, and investigation report development and adoption.

9. **Corrective Action Plans** - SSO's policies and procedures for requiring the development of corrective action plans (CAPs), approving CAPs, CAP tracking, and CAP implementation verification.

10. **Reporting to FTA** – SSO's policies and procedures for certifying and reporting to FTA.

In Part 2 of the SSO audit, FTA evaluates the effectiveness of the RTA's implementation of the following requirements: Safety Program Management, PTASP and Security Plan Development, Hazard Management Program, and Accident Notification and Investigation.

As a result of the SSO audit, the FTA prepares a draft and final report, and may issue findings to the SSO.

At the end of the final report, FTA provides an Audit Findings Tracking Matrix for the SSO. These matrices detail each audit finding, and ask the SSO to coordinate with the RTA to provide the actions that will be taken by each organization to address each finding, the responsible party or parties, and the proposed date of completion.

According to the timeframes specified within the matrices, ODOT will coordinate with the RTA to review the draft and final reports, to prepare responses to the Audit Findings Tracking Matrix, and to submit the matrices to FTA, as required.

Table 9.1.5 FTA Three-Year Audit Schedule of ODOT SSO Program

Programs Subject to Audit	Next Audit Date
Designation Program Management Program Standard Development PTASP Review and Approval Process Oversight of Internal Safety Audits and Annual RTA Reporting SSO On-Site Safety and Security Audits Oversight of Hazard Management Program Accident Notification and Investigation Corrective Action Plans Reporting to FTA Safety Program Management PTASP Development Security Plan Development Hazard Management Program Accident Notification and Investigation	2021

9.1.6 SSO Annual Report

As specified in **§ 674.13(a)(7),** at least once a year, ODOT must report the status of the safety of each rail fixed guideway public transportation system in the state to the Governor, the FTA, and the board of directors, or equivalent entity, of the RTA. **Annually**, ODOT will prepare a written report summarizing significant changes and updates to the following SSO program areas:

- Federal, State, and Local Legislation;
- Rail System;
- Program Standard;
- Safety and Security Plans, Procedures, and Annual Reports;
- Hazards, Accidents, Incidents, and Occurrences for the previous calendar year;
- Safety and Security Audits;
- Corrective Action Plans;
- Training;
- Transit Asset Management; and
- Major Capital Projects.

At a minimum, ODOT will distribute the report to the:

- Associate Administrator / Chief Safety Officer for the FTA Office of Transit Safety and Oversight and other applicable FTA personnel;
- Governor of the State of Oklahoma and the appropriate staff of the Office of the Governor;
- Executive Director of the Oklahoma Department of Transportation / Secretary of Transportation for Oklahoma;
- RTA Board of Directors or equivalent entity and the Executive Manager to the Board; and
- RTA Accountable Executive

For informational purposes, ODOT may distribute the SSO Annual Report to other stakeholders with a vested interest in the State Safety Oversight program.

9.2 FTA SSO Certification Program

9.2.1 Initial 674 Certification

The Certification Work Plan (CWP) provided reasonable assurance that Oklahoma's plan for FTA's SSO grant funding encompassed eligible activities that meaningfully and effectively enhance the SSO program and work toward compliance with Section 5329 provisions.

The FTA issued a certification to each eligible State that the FTA determined under this section adequately met the requirements of the FAST Act, Section 5329, and reserved the right to issue a denial of certification to each eligible State that the FTA determined under this section did not adequately meet the requirements of the FAST Act, Section 5329, and 49 CFR Part 674.

If the FTA determined that a State Safety Oversight Program did not meet the requirements of Section 5329 and denied certification, the FTA transmitted to the eligible State a written explanation and allowed the eligible State to modify and resubmit the State Safety Oversight Program for approval.

The State of Oklahoma obtained its initial 674 certification in October 2018.

9.2.2 Sustaining 674 Certification

Following initial 674 certification, if the FTA determines that a State Safety Oversight Program is not sufficient, the FTA will notify the Governor of the eligible State of such denial of certification and failure to adequately implement the program, and will request that the Governor take all possible actions to correct deficiencies in the program, and may:

- withhold funds available under the formula grant funds program in an amount determined by the FTA;
- withhold not more than 5 percent of the amount required to be appropriated for use in a State or urbanized area in the State under section 5307, until the State safety oversight program has addressed the deficiencies; or
- require fixed guideway public transportation systems under such State safety oversight program to provide up to 100 percent of Federal assistance made available only for safety-related improvements on such systems, until the State safety oversight program has addressed the deficiencies.

FTA will conduct periodic monitoring regarding ODOT's implementation of its State Safety Oversight Program to ensure the ongoing eligibility and effectiveness of its program activities.

Pursuant to the requirements of **§ 674.17**, **§ 674.19**, and **U.S.C 5329(e)**, if a State Safety Oversight Agency is unable to provide its required certification and assurances as a part of its federal grant application each fiscal year, which includes certifying that the State Safety Oversight Agency has approved the Rail Transit Agency's PTASP, the FTA may withhold obligation of federal transit funds to the State Safety Oversight program and any other public transportation system or program throughout the state until these certifications and assurances are provided.

Section 10
Safety and Security Certification Plan

10.0 Purpose

Consistent with the general requirements for public transportation agency safety plans specified in **§ 674.29**, ODOT requires the RTA to develop and implement a written Public Transportation Agency Safety Plan (PTASP). ODOT has identified the elements that must be described in the RTA's Public Transportation Agency Safety Plan (PTASP), including the safety certification process:

(h) A description of the safety certification process required by the RTA to ensure that safety concerns and hazards are adequately addressed prior to the initiation of passenger operations and for New Starts and subsequent major projects to extend, rehabilitate, or modify an existing system, or to replace vehicles and equipment.

This section of the Program Standard addresses ODOT's requirements to ensure that a Safety and Security Certification Plan (SSCP) is developed and implemented. The SSCP must ensure that when revenue service begins, the project is safe and secure for passengers, employees, public safety personnel, and the general public through a formal program of safety and security certification and hazard and security threat / vulnerabilities management.

The ODOT Program Manager will maintain ongoing communications and will coordinate with the FTA regarding any New Starts, Small Starts, or other federally funded grant projects subject to the requirements of the Program Standard, as required.

10.1 Minimum Plan Requirements

A lengthy and rigorous process is involved in planning, designing, programming, and implementing a transit capital project. New Starts Projects in the engineering and construction phase are subject to Federal Transit Administration (FTA) requirements designed to provide assurances that issues of project management, including safety and security, have been properly addressed and resolved. In accordance with these guidelines, rail transit agencies are required to prepare a Project Management Plan (PMP) and other related project documents, including a Safety and Security Management Plan (SSMP) that demonstrate that the RTA has the technical capacity and capability to implement and maintain this new project.

A critical component of the PMP and SSMP is the Safety and Security Certification Plan (SSCP). To develop this plan, ODOT requires the RTA to refer to the FTA Handbook for Transit Safety and Security Certification (November 2002) which provides guidelines and recommendations for a safety and security certification program for new systems, vehicles, facilities, extensions, or modifications.

For each New Starts project, major extension or modification to existing systems, the RTA must develop, implement, and maintain a written SSCP that complies with the program requirements specified in this section.

The SSCP will describe the process through which the transit agency activity will provide documented verification that:

- A certifiable elements list is developed
- Safety and security design criteria are developed to identify concerns appropriate for the project
- Design Criteria Conformance Checklists are developed and completed to verify compliance of the design with the safety and security criteria
- Construction Specification Conformance Checklists are developed and completed to verify that facilities and systems are constructed, manufactured or installed according to design
- Integrated tests are identified that need to be monitored for safety and security
- Training classes are provided to transit operations and maintenance staff that address safety, security, and emergency preparedness
- Operations and maintenance manuals are provided to, or developed by, transit operations and maintenance staff
- Operations and maintenance staff are trained on rules and procedures.
- Public safety personnel (i.e., fire and police) are trained to manage their activities safely in the transit environment
- Emergency drills are conducted for identified transit emergencies that may occur on the project
- Hazard and vulnerability identification and resolution are performed with tracking for resolution and / or acceptance throughout the project
- Initial Submission requirements established by FTA and ODOT are met for the following plans: Public Transportation Agency Safety Plan, Security and Emergency Preparedness Plan, Internal Audit Program Plan, Hazard Management Plan, Accident / Incident Investigation Plan, and Corrective Action Program Plan
- The "Certificate of Safety and Security" is issued to verify that the transit project is safe and secure for revenue service
- The Safety and Security Certification Verification Report is prepared, and transmitted, as appropriate to management and oversight personnel
- The transit project successfully complies with identified safety and security requirements.

If the RTA delegates safety and security certification-related roles and responsibilities to contractor organizations, then the following must also be included in the plan:

- A description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart;
- A description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues; and
- An identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns.

In all cases where a description of a process is required for inclusion in the SSCP, the RTA is required to develop and implement the process or procedure in order to comply with the requirement.

Based on the requirements above, a suggested outline for the minimum content for the RTA's SSCP is illustrated in **Table 10.1** below.

The RTA may opt to prepare a combined Safety and Security Certification Plan or prepare two distinct plans, a Safety Certification Plan and separate Security Certification Plan, provided that all minimum plan requirements are addressed as discussed in this section.

Table 10.1 Safety and Security Certification Plan (SSCP) Suggested Outline

Title Page

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Approvals

Revisions

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- Introduction
- Purpose
- Objectives
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- Responsibility
- Scope
- Certification Revisions

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  - Design Review Committee
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Section 3. Certification Process and Procedures
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- Responsibility
- Hazard Identification and Analysis
- Threat and Vulnerability Assessment
- Resolution Process
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Section 5. Certification of Conformance
- Issuance
- Exceptions

Section 6. Documentation
- Requirements
- Responsibilities

Section 7. Reporting Requirements
- Periodic Reports
- Final Certification
- Safety and Security Certification Verification Report

Table 10.1	Safety and Security Certification Plan (SSCP) Suggested Outline
Section 13.	Plan Review and Update Process

10.2 Review and Approval Process

No later than the ***Entry into Preliminary Engineering (PE) Phase for each project*** requiring formal safety and security certification, the RTA will submit a project-specific Safety and Security Certification Plan (SSCP) to ODOT for review and approval. ODOT will review the SSCP in accordance with the requirements described in **Section 10.1** of this Standard.

ODOT will acknowledge review and approval of the SSCP in writing. ODOT will review the SSCP, using the checklist provided in **Appendix W.** Upon approval, ODOT will provide a copy of the completed checklist to the RTA.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

Figure 10.2 at the end of this section illustrates the review and approval process for a project-specific SSCP.

The ODOT safety and security oversight activities during the design, construction, testing and start-up, and project turn-over phases for New Starts, Small Starts, other federally funded grant projects, or other the RTA projects subject to formal safety and security certification are fully discussed in **Section 13**, Engineering and Construction.

10.3 Safety and Security Certification Verification Report (SSCVR)

At the completion of the safety and security certification program and prior to the start of revenue service (preferably at least **30 days** prior), ODOT will require the RTA to submit a Safety and Security Certification Verification Report (SSCVR) to ODOT for review.

ODOT will respond in writing to the SSCVR, using the checklist provided in **Appendix X.**

In the event ODOT's review determines the SSCVR to be incomplete, ODOT will coordinate with FTA and the RTA to address and resolve the issues and concerns in a timely manner and to avoid impacting the project in terms of cost, implementation schedule, or other resources.

Following the initiation of the project into revenue service, ODOT may conduct follow up and monitoring exercises to verify the close out of open items identified in the SSCVR.

10.4 Safety and Security Certification and System Modification Project Tracking Log

The RTA will develop and maintain a Safety and Security Certification and System Modification Project Tracking log which identifies all capital projects that are subject to formal safety certification, formal security certification, or the system modification process for projects that have safety impacts as defined within the RTA's PTASP.

The Safety and Security Certification and System Modification Project (SSCSM) Tracking Log must include the following information:

Table 10.4 Safety and Security Certification and System Modification Project Tracking Log

SSCSM PROJECT TRACKING LOG	
Requirement	**Description**
Element	Refers to the system safety or system security element that is applicable to the project: 1. Safety Certification 2. Security Certification 3. System Modification
Capital Project ID Number	Refers to the project number assigned to the capital project by the RTA.
Capital Project Name	Refers to the name assigned to the capital project by the RTA.
Date of Entry into Preliminary Engineering	Refers to the date that a rail fixed guideway project enters the Preliminary Engineering (PE) phase.
ODOT Notification Date of Entry into PE	Refers to the date of receipt of the required written notification to ODOT from the RTA when a rail fixed guideway project has entered the Preliminary Engineering (PE) phase.
Anticipated Start Date	Refers to the month / day / year the project is scheduled to begin assigned by the RTA.
Anticipated Completion Date	Refers to the month / day / year the project is scheduled for completion assigned by the RTA.
Capital Project Type	Refers to the capital project type assigned by the RTA
Capital Budget (Total)	Refers to the total capital project budget ($ in thousands) for project which may occur over multiple fiscal years.
Operating Budget Impact (Three-Year Total)	Refers to the impact of the capital project on the operating budget ($ in thousands) over a rolling three-year period.
Federal Funding	Refers to the amount ($ in thousands) of any federal funding for the project, including but not limited to a New Starts or Small Starts grant.
Project Sponsor	Refers to the name, title, and department of the project sponsor.
Project Manager	Refers to the name, title, and department of the project manager.
Project Scope	Refers to a description of the project scope.
Location	Refers to the specific location of the project, which may be system-wide, a single location, or a set of locations.
Expected Deliverables	Refers to the expected deliverables that will be the outcome of the implementation of the project, with specific focus on the safety and/or security related deliverables.
Project Impacts/Urgency	Refers to a description of the project priority, including whether the project is safety- or security-critical and condition of the asset, and a description of the urgency of the project.
Status	Refers to the status of the safety certification or system modification tasks associated with the project. Status may be designated as open or closed.
SSCP Approval Date	Refers to the date of approval of the SSCP for the applicable project provided by ODOT.
SSCVR Approval Date	Refers to the date of approval of the SSCVR for the applicable project provided by ODOT.

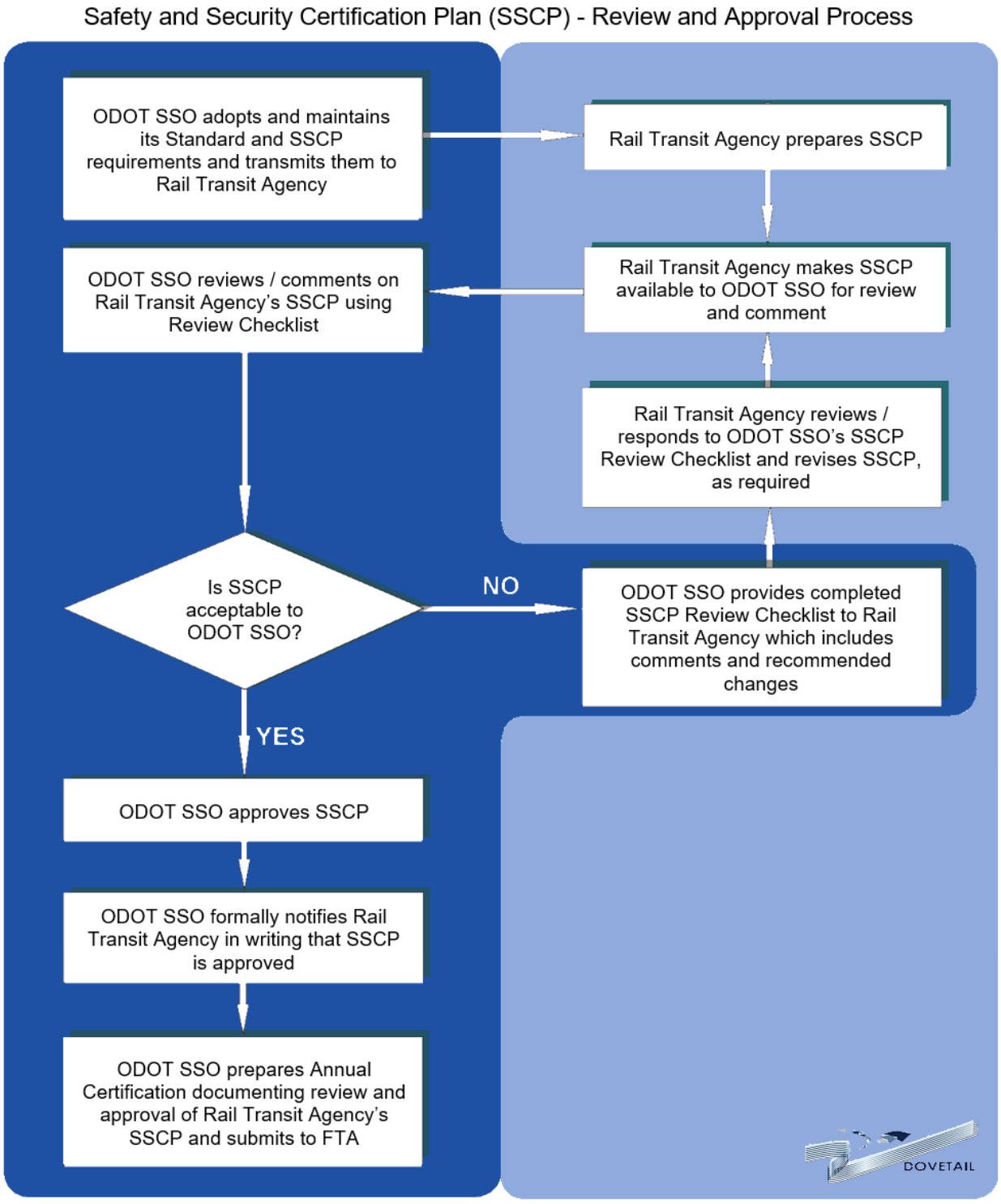
At its discretion, ODOT may increase the frequency of the submittal requirements for the SSCSM tracking log in response to a given hazard or trend of such events, or other systemic safety or security related issues associated with a project or set of projects.

As part of the initial submission of the PTASP discussed in **Section 2** of the Program Standard, the proposed SSCSM Log must be submitted by the RTA to ODOT for review and approval.

Following the initiation of revenue service, the SSCSM Tracking Log must be submitted **no less than monthly** to the ODOT point-of-contact in electronic copy via email or secure file sharing and storage system.

ODOT will review the SSCSM Tracking Log and forward any questions or requests for information to the RTA's point-of-contact.

Figure 10.2 Safety and Security Certification Plan (SSCP) – Review and Approval Process



Section 11
Public Transportation Safety Certification Training Program

11.0 Purpose

The purpose of this section is to describe the public transportation safety certification training program requirements specified by FTA in accordance with the FAST Act, Section 5329, and 49 CFR Part 672, Public Transportation Safety Certification Training Program. The program is mandatory for state employees and contractors responsible for development and implementation of the State Safety Oversight program, including the performance of safety audits and examinations, and for designated personnel of agencies that operate rail fixed guideway systems that receive federal transit funds. The purpose of the training program is to enhance the proficiency of these transit safety oversight professionals. The training provisions became effective on July 19, 2018.

As specified in **§ 672.1**, Purpose, the rule does not preempt safety certification training requirements that are or may be required by the State of Oklahoma for the public transportation agencies within its jurisdiction.

11.1 Minimum Training Requirements – Rail Transit Agency

In its rulemaking process, FTA noted that there are discrete and different skill-sets required for those who perform safety audit and examination functions compared to those who are directly responsible for safety oversight. Acknowledging this difference, FTA established a new FTA-sponsored training curriculum to enhance the technical proficiency of each category of these safety professionals. This section describes the minimum training requirements of the Rail Transit Agency category of safety professionals.

11.1.1 Identification of Designated Personnel

In accordance with **§ 672.13,** OKC Streetcar, the rail transit agency within the jurisdiction of the ODOT State Safety Oversight program, is responsible for designating the rail transit agency personnel subject to the requirements of 49 CFR Part 672. When providing the designation, the rail transit agency should include personnel with management responsibility for the PTASP. The designation should also include rail transit agency staff with primary responsibility for developing, implementing, and monitoring the PTASP, as well as personnel who implement and execute requirements of the ODOT Program Standard at the rail transit agency.

ODOT acknowledges that size and organizational framework of the rail transit agency may determine the identification of designated personnel. ODOT offers the following guidance to assist the rail transit agency with the identification of designated personnel and contractors:

Table 11.1.1 Guidance for Designated Personnel

Example SSO Program Areas	Guidance for Designated Personnel
Program Management	Who at the RTA is responsible for developing, implementing or maintaining this element of the ODOT Program Standard?
Program Standard	Who at the RTA is responsible for implementing the requirements specified for the RTA within ODOT Program Standard?
Program Policy and Objectives	Who at the RTA is responsible for developing, implementing or maintaining this element of the ODOT Program Standard?

Example SSO Program Areas	Guidance for Designated Personnel
Public Transportation Agency Safety Plan	Who at the RTA will respond to ODOT if ODOT determines the plan is non-compliant?
Internal Audits	Who at the RTA is responsible for developing and implementing the Internal Safety and Security Audit Plan? Performing internal safety and security audits? Preparing and submitting Internal Audit Annual Reports to ODOT?
ODOT Audits	Who at the RTA will participate in the SSO audit process and implement corrective actions to address the findings?
Event Notification	Who at the RTA is responsible for making appropriate notifications to FTA? ODOT?
Event Investigations	Who at the RTA will conduct internal event investigations? Who will coordinate event investigations and reporting in accordance with ODOT Program Standard?
Corrective Action Plans	Who at the RTA is responsible for developing and carrying out the CAPs required by ODOT? Who will manage an issued CAP, identifying steps to minimize, control, correct, or eliminate the risks and hazards identified by the CAP, the schedule for taking those actions, and the individuals responsible for taking those actions? Who will periodically report to the ODOT on its progress in carrying out the CAP?
Safety Management System	Who at the RTA will collect, track, and analyze data on occurrences to develop leading indicators, to prevent the likelihood of future events, and to inform the practice of SMS across the RTA?

11.1.2 Initial Training Requirements and Schedule

As specified in Appendix A to Part 672, the required curriculum over a three-year period for rail transit agency personnel and contractors is as follows:

Table 11.1.2a Required Curriculum for RTA Designated Personnel

Course Name	# of Courses	Course Type	Course Length
SMS Awareness	1	E-learning delivery	1 Hour
Safety Assurance	2	E-learning delivery	2 Hour
SMS Principles for Transit	1	Classroom	20 Hours
TSSP Curriculum:			
▪ Rail System Safety	1	Classroom	36 hours
▪ Effectively Managing Transit Emergencies	1	Classroom	32 hours
▪ Rail Incident Investigation	1	Classroom	36 hours

Table 11.1.2b Recommended Curriculum for RTA Designated Personnel

Level One (Introductory)	
Provider	**Course Name**
Transportation Safety Institute	Substance Abuse Management and Program Compliance
	Crime Prevention Through Environmental Design
	Rail Nomenclature
	Advanced Rail Incident Investigation
	Fatigue and Sleep Apnea Awareness
	Reasonable Suspicion and Post-Accident Testing Determination Seminar
National Transit Institute	All Hazards Awareness and Preparedness for Transit Employees
	Assault Awareness and Prevention for Transit Operators
	Developing a Transit Emergency Plan
	Introduction to Transit Asset Management (Tier 1 Agencies)
	Toolbox for Transit Operator Fatigue: Putting the Report into Action

Level Two (Advanced)	
Provider	**Course Name**
Transportation Safety Institute	Transit System Safety and Security Design Review
	Transit Asset Management Training: Calculating Performance Measures and Setting Targets
	Safety, Security, and Emergency Management Considerations for FTA Capital Projects
National Transit Institute	Risk Assessment for Transit Capital Projects
National Transportation Safety Board	Cognitive Interviewing for Incident Investigators
	Cognitive Interviewing for Incident Investigators – Advanced
	Investigating Human Fatigue Factors
	Incident Investigation for Orientation for Rail Professionals
Occupational Safety and Health Administration	OSHA 10 Hour General Industry
	OSHA 30 Hour General Industry

11.1.3 Refresher Training Requirements and Schedule

Requirements

The rail transit agency will determine refresher training requirements which will include, at a minimum, one (1) hour of safety oversight training addressing the competencies discussed in **Section 11.2.2, Initial Training**. The rail transit agency will include a description of the initial and refresher training that meets the requirements of 49 CFR Part 672 in its PTASP. The PTASP will be subject to review and approval by ODOT.

Schedule

As specified in **§ 672.11,** ODOT requires that designated personnel and contractors of the State Safety Oversight Agency who are required to have the technical knowledge or perform functions identified in the ODOT Technical Training Plan (TTP), complete refresher training every two (2) years.

11.2 Minimum Training Requirements – State Safety Oversight Agency

As discussed previously, FTA recognized that there are discrete and different skill-sets required for those who perform safety audit and examination functions compared to those who are directly responsible for safety oversight. For this reason, FTA established a new FTA-sponsored training curriculum to enhance the technical proficiency of each category of these safety professionals. This section describes the minimum training requirements of the State Safety Oversight Agency category of safety professionals.

11.2.1 Identification of Designated Personnel

As required by **§ 672.11,** ODOT, as the State Safety Oversight Agency, has the discretion and is responsible for the identification of designated personnel who are required to have the technical knowledge or perform functions identified in the ODOT Technical Training Plan (TTP) as well as the appropriate managers and supervisors of such personnel.

In the final rule, FTA established minimum training and certification requirements for the following designated personnel: state employees and contractors who conduct safety audits and safety examinations, including managers and supervisors of those personnel.

To comply with the rule, ODOT will establish and maintain a written list of designated personnel and contractors that are required to have the technical knowledge and/or perform functions identified in the ODOT Technical Training Plan. ODOT will update the list of state personnel within 30 days of personnel changes such as new hires, transfers, or terminations. ODOT will also update the list

of contractors providing State Safety Oversight support within 30 days of procurement actions such as the award of new contracts, or changes and extensions to existing contracts.

11.2.2 Initial Training Requirements and Schedule

Requirements

As specified in Appendix A to Part 672, the required curriculum over a three-year period for ODOT personnel and contractors is as follows:

Table 11.2.2a Required Curriculum for SSO Designated Personnel

Course Name	# of Courses	Course Type	Course Length
SMS Awareness	1	E-learning delivery	1 Hour
Safety Assurance	2	E-learning delivery	2 Hour
SMS Principles for Transit	1	Classroom	20 Hours
SMS Principles for SSO Programs	1	Classroom	16 hours
TSSP Curriculum: ▪ Rail System Safety ▪ Effectively Managing Transit Emergencies ▪ Rail Incident Investigation	 1 1 1	 Classroom Classroom Classroom	 36 hours 32 hours 36 hours
TTP Curriculum (Competencies 1-17)	1	Classroom	80 hours

Table 11.2.2b Recommended Curriculum for SSO Designated Personnel

Level One (Introductory)	
Provider	**Course Name**
Transportation Safety Institute	Substance Abuse Management and Program Compliance
	Crime Prevention Through Environmental Design
	Rail Nomenclature
	Advanced Rail Incident Investigation
	Fatigue and Sleep Apnea Awareness
	Reasonable Suspicion and Post-Accident Testing Determination Seminar
	Transit System Safety and Security Design Review
	Transit Asset Management Training: Calculating Performance Measures and Setting Targets
	Safety, Security, and Emergency Management Considerations for FTA Capital Projects
National Transit Institute	All Hazards Awareness and Preparedness for Transit Employees
	Assault Awareness and Prevention for Transit Operators
	Developing a Transit Emergency Plan
	Introduction to Transit Asset Management (Tier 1 Agencies)
	Toolbox for Transit Operator Fatigue: Putting the Report into Action
	Risk Assessment for Transit Capital Projects

Level Two (Advanced)	
Provider	**Course Name**
National Transportation Safety Board	Cognitive Interviewing for Incident Investigators
	Cognitive Interviewing for Incident Investigators – Advanced
	Investigating Human Fatigue Factors
	Incident Investigation for Orientation for Rail Professionals

As required by 49 CFR Part 672, in consultation with FTA, ODOT will develop and implement a Technical Training Plan (TTP). The TTP must describe the process for ODOT personnel and

contractors to receive technical training in the following competency areas for which safety audits and examinations are conducted:

1. Agency organizational structure
2. Public Transportation Agency Safety Plan
3. Security Program Plan
4. Territory and revenue service schedules
5. Current bulletins, general orders, and other associated directives that ensure safe operations
6. Operations and maintenance rule books
7. Safety rules
8. Standard Operating Procedures
9. Roadway Worker Protection
10. Employee Hours of Service and Fatigue Management program
11. Employee Observation and Testing Program (Efficiency Testing)
12. Employee training and certification requirements
13. Vehicle inspection and maintenance programs, schedules and records
14. Track inspection and maintenance programs, schedules and records
15. Tunnels, bridges, and other structures inspection and maintenance programs, schedules and records
16. Traction power (substation, OCS), load dispatching, inspection and maintenance programs, schedules and records
17. Signal and train control inspection and maintenance programs, schedules and records

The TTP requires designated personnel to successfully:

- Complete training that covers the skills and knowledge the designated personnel will need to effectively perform his/her tasks.
- Pass a written and/or oral examination covering the skills and knowledge required for the designated personnel to effectively perform his/her tasks.
- Demonstrate hands-on capability to perform his/her tasks to the satisfaction of the appropriate SSOA supervisor or designated instructor.
- Establish equivalencies or written and oral examinations to allow designated personnel to demonstrate that they possess the skill and qualification required to perform their tasks.
- Require biennial refresher training to maintain technical skills and abilities which includes classroom and hands on training, as well as testing.
- Require that training records be maintained to demonstrate the current qualification status of designated personnel assigned to carry out the oversight program. Records may be maintained either electronically or in writing and must be provided to FTA upon request. Records must include the following information concerning each designated personnel:
    - Name;
    - Title and date each training course was completed and the proficiency test score(s) where applicable;
    - Content of each training course successfully completed;
    - Description of the designated personnel's hands-on performance applying the skills and knowledge required to perform the tasks that the employee will be responsible for performing and the factual basis supporting the determination;
    - Tasks the designated personnel is deemed qualified to perform;
    - Date that the designated personnel's status as qualified to perform the tasks expires,
    - Date in which biennial refresher training is due.

Schedule

As specified in **§ 672.11**, ODOT requires that designated personnel and contractors of the State Safety Oversight Agency who are required to have the technical knowledge or perform functions identified in the ODOT Technical Training Plan (TTP), complete the applicable initial training requirements within (3) years of their initial designation.

11.2.3 Refresher Training Requirements and Schedule

Requirements

ODOT will determine refresher training requirements which will include, at a minimum, one (1) hour of safety oversight training addressing the competencies discussed in **Section 11.2.2, Initial Training**.

Schedule

As specified in **§ 672.11**, ODOT requires that designated personnel and contractors of the State Safety Oversight Agency who are required to have the technical knowledge or perform functions identified in the ODOT Technical Training Plan (TTP), complete refresher training every two (2) years.

11.3 Master List of Course Materials

In keeping with its responsibility to develop and implement the required training program promoting SMS and ensuring technical competencies for SSOA personnel and contractors, ODOT will develop and maintain a TTP Master List of Course Materials that details the training information and materials that are referenced throughout the safety and security policies, plans and procedures that make up the RTA governance documents specified within this Program Standard.

The purpose of the Master List is for ODOT to gather the RTA documents that are relevant to and form the basis of the TTP.

In general, the Master List will address the following broad categories of training support materials that may be requested from each RTA:

- Videos
- Images
- Agency Safety Plans and related procedures
- Reports
- Maps
- Diagrams
- Rules
- Bulletins
- Procedures
- Organization Charts
- Safety and Security Management Committee Member lists
- Training PowerPoint presentations and related materials

11.4 Review of Annual Submission

Federal and State Legislative Review

To ensure that the TTP is current and compliant with public transportation safety requirements stipulated in

49 U.S. Code § 5329, ODOT will review the TTP upon any changes to the following federal and state legislation and corresponding implementation rules related to technical training:

- 49 U.S. Code § 5329, Public Transportation Safety Program / Fixing America's Surface Transportation (FAST) Act;
- 49 CFR Part 674, State Safety Oversight;
- 49 CFR Part 673, Public Transportation Agency Safety Plan;
- 49 CFR Part 672, Public Transportation Safety Certification Training Program;
- 49 CFR Part 670, National Public Transportation Safety Program;
- 49 CFR Part 630, National Transit Database;
- 49 CFR Part 625, Transit Asset Management; and
- Oklahoma Statutes, Title 69, Section 4019, Oklahoma State Safety Oversight Program

ODOT Review and Comment Process

At a minimum, ODOT will review the TTP on an annual schedule to determine if any revisions are necessary.

- By **October 1** of each calendar year, the annual review and identification of proposed revisions (if any) to the TTP will be completed by ODOT. At the same time, ODOT will distribute the Master List of Course Materials for the TTP to affected RTAs for review and update and for receipt of revised training materials.
- By **January 31** of each calendar year, the annual review process for the PTASP and SEPP will be completed by the affected RTAs, and submitted to ODOT for review and approval. At this time, the RTAs will submit the updated TTP Master List of Course Materials, revised course materials (if applicable), and a list of TTP designated personnel at the RTA.

Integrated Schedules

Table 11.4 lists the integrated schedules for the development of ODOT's TTP and Program Standard and the RTA's PTASP and SEPP.

Table 11.4 Integrated Schedules for TTP / Program Standard / PTASP / SEPP / TAMP

Program Standard Reference	Task	Responsible Agency	Start Date	Finish Date
Section 1	**Program Standard**			
	Complete annual review process for Program Standard and distribute it to affected RTAs.	ODOT	Oct 1	Jan 31
Section 2	**Public Transportation Agency Safety Plan (PTASP)**			
	Complete annual review process for PTASP and submit it to ODOT for review and approval.	RTA	*varies*	Jan 31
	Complete the process to review and approve the PTASP.	ODOT	Jan 31	May 31
Section 3	**Security and Emergency Preparedness Plan (SEPP)**			
	Complete annual review process for SEPP and submit it to ODOT for review and approval.	RTA	*varies*	Jan 31
	Complete the process to review and approve the SEPP.	ODOT	Jan 31	May 31
Section 4	**Internal Audit Program Plan (IAPP)**			
	Complete annual review process for IAPP and submit it to ODOT for review and approval.	RTA	*varies*	Jan 31
	Complete the process to review and approve the IAPP.	ODOT	Jan 31	May 31

Program Standard Reference	Task	Responsible Agency	Start Date	Finish Date
Section 5	**Hazard Management Plan (HMP)**			
	Complete annual review process for HMP and submit it to ODOT for review and approval.	RTA	*varies*	Jan 31
	Complete the process to review and approve the HMP.	ODOT	Jan 31	May 31
Section 6	**Accident Investigation Plan (AIP)**			
	Complete annual review process for AIP and submit it to ODOT for review and approval.	RTA	*varies*	Jan 31
	Complete the process to review and approve the AIP.	ODOT	Jan 31	May 31
Section 8	**Corrective Action Plan Program (CAPP)**			
	Complete annual review process for CAPP and submit it to ODOT for review and approval.	RTA	*varies*	Jan 31
	Complete the process to review and approve the CAPP.	ODOT	Jan 31	May 31
Section 11	**Technical Training Plan (TTP)**			
	Complete annual review process for TTP and distribute Master List Of Course Materials to affected RTAs for review and update.	ODOT	June 1	Oct 1
	Submit updated TTP Master List of Course Materials, revised course materials (if applicable), and list of designated personnel at the RTA.	RTA	Oct 1	Jan 31
Section 12	**Transit Asset Management Plan (TAMP)**			
	Complete annual review process for TAMP. Notify ODOT if there are no changes requiring TAMP amendments OR submit TAMP to ODOT for review and approval if TAMP amendments are required.	RTA	*varies*	Jan 31
	Complete update of entire TAMP and submit it to ODOT for review and approval.	RTA	*varies*	Once every four (4) years
	Complete the process to review and approve the TAMP.	ODOT	Jan 31	May 31

11.5 Annual Review of Training

At any given time, ODOT may update its TTP based on reviews or audits from internal or external sources, such as FTA, or based on policy changes, state-wide meetings, and / or organizational changes. Each change will be reviewed by appropriate ODOT staff and contractors in a timely manner. Final copies of the revised TTP will be submitted to FTA as part of the SSO's Annual Submission.

11.6 Funding Requirements for Training

ODOT acknowledges that recipients of funds made available to carry out sections 5307 and 5311 may use not more than 0.5 percent of their formula funds to pay not more than 80 percent of the cost of participation in the public transportation safety certification training program established under the FAST Act, Section 5329, by an employee of a State Safety Oversight Agency or a recipient of federal transit funds.

11.7 Evaluations of Prior Training

As specified in **§ 672.15,** designated personnel subject to the public transportation safety certification training requirements may request that FTA evaluate safety training or certification previously obtained from another entity to determine if the training satisfies an applicable training requirement of 49 CFR Part 672.

Prior to submittal to FTA, the rail transit agency must first receive approval from ODOT, as the designated State Safety Oversight Agency with the responsibility for enforcement of the Program Standard and associated federal safety rules, including training.

ODOT requires the requesting rail transit agency to first submit the following to ODOT for review and evaluation:

- An official transcript or certificate of the training;
- A description of the curriculum and competencies obtained; and
- A brief statement detailing how the training or certification satisfies the applicable requirements of 49 CFR Part 672.

ODOT will coordinate with FTA to evaluate the submission and determine if a training requirement of 49 CFR Part 672 may be waived.

If a waiver is granted, designated personnel are responsible for completing all other applicable requirements of 49 CFR Part 672.

11.8 Training Registration, Enrollment, and Record Keeping

Rail Transit Agency

In accordance with **§ 672.21**, following identification, ODOT requires that affected RTAs enroll and register each designated employee and contractor in the public transportation safety certification training and maintain an updated training record for its designated personnel.

The rail transit agency is required to use the following web address from FTA for enrollment and registration:

- https://www.transit.dot.gov/regulations-andguidance/safety/safety-training

State Safety Oversight Agency

In accordance with **§ 672.21,** ODOT will also enroll and register each designated employee and contractor in the public transportation safety certification training and maintain an updated training record for its designated personnel at the web address from FTA for enrollment and registration. In addition, ODOT will retain its Technical Training Plan records for State Safety Oversight personnel and contractors for at least five (5) years from the date the record is created.

11.9 Availability of Training Records

In accordance with **§ 672.23,** ODOT prohibits the rail transit agency from releasing information pertaining to designated personnel that is required by 49 CFR Part 672 without the written consent of the designated personnel.

In addition, ODOT requires the rail transit agency to establish and adhere to procedures that allow designated personnel to make a written request to obtain copies of any records pertaining to his or her training required by 49 CFR Part 672. ODOT requires that the rail transit agency promptly provide the records requested by designated personnel. ODOT prohibits the rail transit agency from providing access to the training records on the condition that the designated personnel provide payment for the production of the training records.

ODOT further requires that the rail transit agency permit access to FTA and ODOT, as the State Safety Oversight Agency, to all facilities utilized and records compiled in accordance with the requirements of 49 CFR Part 672.

When requested by the National Transportation Safety Board as part of an accident investigation, ODOT requires the rail transit agency to disclose information related to the training of designated personnel.

11.10 Annual Certification of Compliance to Training Requirements

In accordance with **§ 672.31**, ODOT requires the rail transit agency to annually certify compliance with 49 CFR Part 672 in accordance with FTA's procedures for annual grant certification and assurances.

Annually, by **February 1** of each calendar year, ODOT requires the rail transit agency to submit the Annual Certification of Compliance to the Training Requirements. ODOT requires that the certification be authorized and signed by the rail transit agency's Accountable Executive or governing board.

Section 12
Transit Asset Management Plan

12.0 Purpose

As specified in **§ 625.1**, the purpose of this section is to describe the Transit Asset Management System to be developed by FTA in accordance with the Federal Public Transportation Act of 2012 (MAP-21), Section 5326.

MAP-21 required FTA to develop rules to establish a system to monitor and manage public transportation assets to improve safety and increase reliability and performance, and to establish performance measures, and the FAST Act reaffirmed this requirement.

49 CFR Part 625 and **630,** Transit Asset Management / National Transit Database final rule became effective July 26, 2016. As specified in **§ 625.3**, the rule requires RTAs that own, operate, and manage capital assets to develop asset management plans for their public transportation assets, including vehicles, facilities, equipment, and other infrastructure.

12.1 General Requirements

As specified in **§ 625.15**, the RTA (provider) is required to establish and implement a Transit Asset Management Plan that addresses the following minimum elements:

- a definition of the term 'state of good repair' that includes objective standards for measuring the condition of capital assets of recipients, including equipment, rolling stock, infrastructure, and facilities;
- a requirement that recipients and subrecipients of Federal financial assistance develop a transit asset management plan;
- a requirement that each designated recipient of Federal financial assistance report on the condition of the system of the recipient and provide a description of any change in condition since the last report;
- an analytical process or decision support tool for use by public transportation systems that:
  - allows for the estimation of capital investment needs of such systems over time; and
  - assists with asset investment prioritization by such systems; and
- Performance measures for capital assets and a requirement that a provider and a group TAM plan sponsor establish performance targets for improving the condition of capital assets.

As specified in **§ 625.17**, ODOT requires that an RTA adhere to the following principles for the state of good repair when implementing its Transit Asset Management Plan:

- A capital asset is in a state of good repair if it is in a condition sufficient for the asset to operate at a full level of performance. In determining whether a capital asset is in a state of good repair, an RTA must consider the state of good repair standards under subpart D of 49 CFR Part 625.
- An individual capital asset may operate at a full level of performance regardless of whether or not other capital assets within a public transportation system are in a state of good repair.
- A provider's Accountable Executive must balance transit asset management, safety, day-to-day operations, and expansion needs in approving and carrying out a TAMP and the PTASP and SEPP.

To support the development of the transit asset management system, FTA recommends the RTA to consider the following steps:

1. Collecting inventory and condition data for rolling stock and infrastructure;
2. Establishing life-cycle policy for system preservation, including maintenance, repair, rehabilitation and renewal activities, and modeling the application of the policy on physical assets; and
3. Developing alternative capital programing scenarios that use the above steps together with projections of the RTA funding to characterize predicted future conditions and maximize effectiveness of agency investments.
4. Including functionality in the asset management system for storing a complete asset inventory; recording condition and performance data for the inventory; identifying deficiencies in existing assets; providing decision support capability for predicting future conditions and needs; tracking data on work accomplishments, including maintenance actions and capital projects; and supporting monitoring and reporting.

Figure 12.1 at the end of this section illustrates a typical Asset Management Process.

12.2 Applicability

As specified in **§ 625.5**, FTA has grouped recipients into two categories:

Table 12.2 Tier Definitions

Tier 1 owns, operates, or manages:	**Tier 2** owns, operates, or manages:
one hundred and one (101) or more vehicles in revenue service during peak regular service across all fixed route modes **OR**	one hundred (100) or fewer vehicles in revenue service during peak regular service across all non-rail fixed route modes **OR**
one hundred and one (101) or more vehicles in revenue service during peak regular service in any one (1) non-fixed route mode **OR**	one hundred (100) or fewer vehicles in revenue service during peak regular service in any one (1) non-fixed route mode **OR**
rail transit	a subrecipient under the 5311 Rural Area Formula Program **OR**
	Any American Indian tribe

12.3 Minimum Plan Requirements – Tier 1

As specified in **§ 625.25**, each RTA classified as Tier 1, must develop and carry out a TAMP that includes at a minimum the following elements:

1. Inventory of Capital Assets

An inventory of the number and type of capital assets. The inventory must include all capital assets that a provider owns, except equipment with an acquisition value under $50,000 that is not a service vehicle.

An inventory also must include third-party owned or jointly procured exclusive-use maintenance facilities, passenger station facilities, administrative facilities, rolling stock, and guideway infrastructure used by a provider in the provision of public transportation.

The asset inventory must be organized at a level of detail commensurate with the level of detail in the RTA's program of capital projects.

2. Condition Assessment

A condition assessment of those inventoried assets for which an RTA has direct capital responsibility. A condition assessment must generate information in a level of detail sufficient to monitor and predict the performance of the assets and to inform the investment prioritization.

As specified in **§ 625.41**, standards for measuring the condition of capital assets, the TAMP must address the following standards:

A capital asset is in a state of good repair if it meets the following objective standards—

(a) The capital asset is able to perform its designed function;
(b) The use of the asset in its current condition does not pose an identified unacceptable safety risk; and
(c) The life-cycle investment needs of the asset have been met or recovered, including all scheduled maintenance, rehabilitation, and replacements.

3. Decision Support Tool

A description of analytical processes or decision-support tools that an RTA uses to estimate capital investment needs over time and develop its investment prioritization.

4. Inventory Prioritization

An RTA's project-based prioritization of investments, developed in accordance with **§ 625.33**.

Specifically, the TAMP must describe the processes for investment prioritization that result in the following:

(a) An investment prioritization that identifies a provider's programs and projects to improve or manage, over the TAMP horizon period, the state of good repair of capital assets for which the provider has direct capital responsibility.
(b) A ranking of projects to improve or manage the state of good repair of capital assets in order of priority and anticipated project year.
(c) A ranking of projects that is consistent with the provider's TAM policy and strategies.
(d) Due consideration given to those state of good repair projects to improve, that pose an identified unacceptable safety risk, when developing the provider's investment prioritization. In other words, the provider is expected to give greater priority to those projects that address unacceptable safety risks.
(e) Due consideration given to the estimation of funding levels from all available sources that the provider reasonably expects will be available in each fiscal year during the TAMP horizon period.
(f) Due consideration given to the requirements under **49 CFR 37.161** and **37.163** concerning maintenance of accessible features and the requirements under **49 CFR 37.43** concerning alteration of transportation facilities.

5. Transit Asset Management or State of Good Repair Policy

An RTA's transit asset management or state of good repair policy.

6. Implementation Strategy

A provider's TAMP implementation strategy.

7. List of Key Annual Activities

A description of key TAM activities that a provider intends to engage in over the TAM plan horizon period.

8. Identification of Resources

A summary or list of the resources, including personnel, that an RTA needs to develop and carry out the TAMP.

9. Evaluation Plan

An outline of how an RTA will monitor, update, and evaluate, as needed, its TAMP and related business practices, to ensure the continuous improvement of its transit asset management practices.

In addition, as specified in **§ 625.29**, the Transit Asset Management Plan must also include the following:

1. Horizon Period

The plan must describe the process to ensure the TAMP covers a horizon period of at least four years.

2. Amendments

The plan must describe the process to ensure the RTA has the capability and resources to update its TAMP at any time during the TAMP horizon period. At a minimum, the RTA should amend its TAMP whenever there is a significant change to the asset inventory, condition assessments, or investment prioritization that the RTA did not reasonably anticipate during the development of the initial TAMP.

3. Updates

The plan must describe the process that the RTA follows to update its entire TAMP at least once every four (4) years. Refer to **Section 12.7** for additional details on the TAMP annual / four-year review process.

12.4 Minimum Plan Requirements – Tier 2

As specified in **§ 625.25**, each RTA classified as Tier 2, must develop and carry out a TAMP that includes at a minimum the following elements:

1. Inventory of Capital Assets

The plan must include an inventory of the number and type of capital assets. The inventory must include all capital assets that a provider owns, except equipment with an acquisition value under $50,000 that is not a service vehicle.

An inventory also must include third-party owned or jointly procured exclusive-use maintenance facilities, passenger station facilities, administrative facilities, rolling stock, and guideway infrastructure used by a provider in the provision of public transportation.

The asset inventory must be organized at a level of detail commensurate with the level of detail in the RTA's program of capital projects.

2. Condition Assessment

The plan must include a condition assessment of those inventoried assets for which an RTA has direct capital responsibility. A condition assessment must generate information in a level of detail sufficient to monitor and predict the performance of the assets and to inform the investment prioritization.

3. Decision Support Tool

The plan must include a description of analytical processes or decision-support tools that an RTA uses to estimate capital investment needs over time and develop its investment prioritization.

4. Inventory Prioritization

The plan must include an RTA's project-based prioritization of investments, developed in accordance with **§ 625.33.**

Specifically, the TAMP must describe the processes for investment prioritization that result in the following:

(a) An investment prioritization that identifies a provider's programs and projects to improve or manage, over the TAMP horizon period, the state of good repair of capital assets for which the provider has direct capital responsibility.
(b) A ranking of projects to improve or manage the state of good repair of capital assets in order of priority and anticipated project year.
(c) A ranking of projects that is consistent with the provider's TAM policy and strategies.
(d) Due consideration given to those state of good repair projects to improve, that pose an identified unacceptable safety risk, when developing the provider's investment prioritization. In other words, the provider is expected to give greater priority to those projects that address unacceptable safety risks.
(e) Due consideration given to the estimation of funding levels from all available sources that the provider reasonably expects will be available in each fiscal year during the TAMP horizon period.
(f) Due consideration given to the requirements under **49 CFR 37.161** and **37.163** concerning maintenance of accessible features and the requirements under **49 CFR 37.43** concerning alteration of transportation facilities.

In addition, as specified in **§ 625.29**, the Transit Asset Management Plan must also include the following:

1. Horizon Period

The plan must describe the process to ensure the TAMP covers a horizon period of at least four years.

2. Amendments

The plan must describe the process to ensure the RTA has the capability and resources to update its TAMP at any time during the TAMP horizon period. At a minimum, the RTA should amend its TAMP whenever there is a significant change to the asset inventory, condition assessments, or investment prioritization that the RTA did not reasonably anticipate during the development of the initial TAMP.

3. Updates

The plan must describe the process that the RTA follows to update its entire TAMP at least once every four (4) years. Refer to **Section 12.7** for additional details on the TAMP annual / four-year review process.

In addition, as specified in **§ 625.27**, group plans for transit asset management must also adhere to the following requirements:

A Group TAMP Sponsor must:

- Develop a group TAMP for its Tier II provider subrecipients, except those 5307 Urbanized Area Formula Grant Program. The Group TAMP must include a list of those subrecipients that are participating in the plan.
- Comply with the requirements 49 CFR Part 625 for a TAMP when developing a Group TAMP.
- Coordinate the development of a Group TAMP with each participant's Accountable Executive.
- Make the completed Group TAMP available to all participants in a format that is easily accessible.

A Group TAMP Participant must:

- Participate in only one (1) Group TAMP.
- Provide written notification to a Sponsor if it chooses to opt-out of a Group TAMP. A provider that opts-out of a group TAMP must either develop its own TAMP or participate in another Sponsor's Group TAMP.
- Provide a Sponsor with any information that is necessary and relevant to the development of a Group TAMP.

12.5 Performance Measures and Targets

The FTA issued a final rule to establish performance measures based on the state of good repair standards established under Section 5326. After the date on which the FTA issued the final rule under MAP-21, Section 5326, and each fiscal year thereafter, the RTA, a recipient of Federal financial assistance under Section 5326 must establish performance targets in relation to the performance measures established by the FTA.

Performance Measures

Specifically, as required by **§ 625.43**, the RTA must establish performance measures for the following assets:

(a) ***Equipment***: (non-revenue) service vehicles. The performance measure for non-revenue, support-service and maintenance vehicles equipment is the percentage of those vehicles that have either met or exceeded their ULB.
(b) ***Rolling stock***. The performance measure for rolling stock is the percentage of revenue vehicles within a particular asset class that have either met or exceeded their ULB.
(c) ***Infrastructure***: rail fixed-guideway, track, signals, and systems. The performance measure for rail fixed- guideway, track, signals, and systems is the percentage of track segments with performance restrictions.
(d) ***Facilities***. The performance measure for facilities is the percentage of facilities within an asset class, rated below condition 3 on the TERM scale

Performance Targets

As required by **§ 625.45**, the RTA must implement a process to establish performance targets for the assets discussed above according to the follow requirements:

(a) A provider must set a performance target based on realistic expectations, and both the most recent data available and the financial resources from all sources that the provider reasonably expects will be available during the TAMP horizon period.
(b) A provider must set a timeline for target setting.
    1. Within three months after the effective date of **49 CFR Part 625**, a provider must set performance targets for the following fiscal year for each asset class included in its TAMP.
    2. At least once every fiscal year after initial targets are set, a provider must set performance targets for the following fiscal year.
(c) A provider must ensure that the provider's Accountable Executive approves each annual performance target.
(d) A Sponsor must set performance targets for group plan participants.
    1. A Sponsor must set one or more unified performance targets for each asset class reflected in the group TAMP in accordance with paragraphs (a)(2) and (b) of **§ 625.45**.
    2. To the extent practicable, a Sponsor must coordinate its unified performance targets with each participant's Accountable Executive.

(e) To the maximum extent practicable, a provider and Sponsor must coordinate with the State of Oklahoma and the Metropolitan Planning Organizations in the State of Oklahoma and Metropolitan Planning Organization performance targets.

12.6 Review of Initial Submission

12.6.1 ODOT

In carrying out its oversight responsibilities under **§ 674.29**, the ODOT Program Manager will receive, review, and approve in writing the RTA's PTASP. With the PTASP, the RTA must also submit any referenced materials, including the Transit Asset Management Plan (TAMP).

To ensure compliance with FTA's initial submission requirements, the RTA must submit the TAMP, in compliance with the transit asset management requirements specified in the ODOT Standard and **Appendix Y**, and all referenced procedures / materials by a date specified by the ODOT Program Manager.

An RTA with a rail fixed guideway public transportation project in the engineering or construction phase of development within the jurisdiction of the State of Oklahoma that will not be subject to regulation by the Federal Railroad Administration is subject to the requirements of this section of the Program Standard.

Pursuant to this requirement, the RTA will submit its TAMP and all referenced materials to the ODOT Program Manager **365 calendar days** before beginning passenger service operations for review and comment.

The ODOT Program Manager will allocate **305** of these calendar days to:

- Review and comment on the initial TAMP and materials related to Initial Submission;
- Review revised TAMP and materials related to Initial Submission;
- Accept the final TAMP and materials related to Initial Submission; and
- Prepare ODOT's initial submittal of the PTASP, including the TAMP to the FTA (which must be submitted at least **60 days** prior to initiating passenger operations).

The TAMP and supporting procedures must be submitted in electronic copy via email or secure file sharing and storage system to the ODOT Program Manager.

ODOT Review Checklist / Working Sessions

ODOT will review the submitted TAMP, using the checklist provided in **Appendix Y**. Upon approval, ODOT will provide a copy of the completed checklist to the RTA.

Pending any major comments or recommended changes in the RTA's TAMP, the ODOT Program Manager will review and comment on the initial TAMP using its review checklist, and will transmit the completed checklists to the RTA's point-of-contact within **305 calendar days** of submission.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

12.6.2 FTA

Sixty **(60) calendar days** prior to the passenger revenue service operations, ODOT will submit a formal letter to the FTA that certifies that the Transit Asset Management Plan complies with the requirements of the Program Standard.

FTA will review and approve the Initial Submission using its review checklist, and will transmit a formal letter of approval and the completed checklists to ODOT. In the event that the FTA does not approve the Initial Submission, additional requirements necessary to achieve compliance will be conveyed to the ODOT Program Manager by the FTA.

The ODOT Program Manager will maintain ongoing communications with the FTA Office of Transit Safety and Oversight regarding the development and implementation of the Program Standard, as required.

Table 12.6 Schedule for Initial Review of TAMP

Task	Responsible Agency	Duration	Target Date
Develop initial TAMP and materials related to Initial Submission as part of FTA New Starts process.	RTA	---	---
Submit initial TAMP, and materials related to Initial Submission to ODOT for review and approval.	RTA	**365** days	Prior to passenger revenue service operations.
Review and approve TAMP and materials related to Initial Submission or request additional information.	ODOT	**305** days	Prior to passenger revenue service operations.
Submit approved TAMP and materials related to Initial Submission to FTA for review and approval.	ODOT	**60** days	Prior to passenger revenue service operations

12.7 Review of Annual Submission and Four-Year Update

Annual Review

Following the initiation of revenue service, the RTA will conduct an annual review of the TAMP and update it as necessary to ensure that the TAMP is current at all times.

In the event that the RTA conducts its annual TAMP review and determines that an update is not necessary for the year, it must prepare and submit by **January 1** formal correspondence notifying the ODOT point-of-contact of this determination. If ODOT wishes to object to this determination, the ODOT point-of-contact will notify the RTA within **30 calendar days**.

In the event that the RTA conducts its annual review of the TAMP and determines that an update is necessary for the year, the RTA will submit a revised TAMP to the ODOT Program Manager by **January 31**. As appropriate, referenced materials affected by the revision(s) must also be submitted with the TAMP.

Each revised TAMP submitted to ODOT by the RTA must include a text or tabular summary that identifies and explains proposed changes and includes a time frame for completion of the associated activities.

ODOT Review Checklist / Working Sessions

Following the process specified in **Figure 12.7**, ODOT will review the TAMP annual submission from the RTA.

Within **30 calendar days** of receipt of the TAMP from the RTA, ODOT will review the plan and issue to the RTA written approval of its TAMP and the completed TAMP checklist. If ODOT determines that the TAMP is not acceptable, ODOT will provide a completed TAMP checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA safety, security, capital projects, asset management, and maintenance personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

It is ODOT's intent that the annual review and approval process for the TAMP be completed by **May 31**.

Four-Year Update

As specified in **§ 625.29**, the RTA must implement a process to update the entire TAMP at least once every four (4) years. The four-year update process will follow the same steps as required for the annual review process.

Table 12.7 Schedule for Annual Review of TAMP

Task	Responsible Agency	Duration	Target Date
If TAMP is not updated:			
Notifies SSO that no update is necessary.	RTA	---	Jan 1
If notified no update is necessary, accepts or objects to the RTA's determination and notify the RTA.	ODOT	30 days	Jan 31
If TAMP is updated:			
If CAP Program is updated, completes annual review for previous calendar year and submits revised TAMP to SSO.	RTA	---	Jan 31
If notified update is necessary, approves TAMP or requests additional information.	ODOT	30 days	Mar 1
Submits additional information and revises TAMP.	RTA	60 days	Apr 30
Reviews additional information and approves revised TAMP.	ODOT	30 days	May 31

12.8 Review of Periodic Submission

At any given time, additional reviews of the RTA's TAMP may be required to address specific issues based on implementation and compliance to the FAST Act, Section 5329, 49 CFR Part 625, and / or the ODOT Program Standard or procedures; review of the RTA's documents; or other safety related project information.

Upon receipt of a written notification from ODOT for TAMP modifications, the RTA will submit a revised TAMP to ODOT within **30 calendar days**.

In the event that the RTA initiates updates, the RTA will submit the modified TAMP, and any subsequently modified procedures, to ODOT for review and approval within **30 calendar days** of the effective date of the change.

ODOT Review Checklist / Working Sessions

ODOT will review and approve the revised TAMP, providing a formal approval letter and a completed TAMP review checklist within **30 calendar days** of receipt of the revised the RTA TAMP. If ODOT determines that the TAMP is not acceptable, ODOT will provide a completed TAMP checklist explaining the deficiencies along with a proposed schedule for re-submittal and re-review.

While conducting its review, at the discretion of the ODOT Program Manager, a working session will be scheduled with the RTA's safety and security personnel or other appropriate staff and contractors. The purpose of the working session will be to request additional information, clarifications, or revisions necessary to adequately address ODOT's comments provided in the Review Checklist and comply with the requirements of the Program Standard. Additional meetings or teleconferences may also be conducted as a follow up to any issues or concerns identified by the ODOT Program Manager resulting from the review of documentation and discussions. Any additional requirements will be conveyed by the ODOT Program Manager at the time of the review.

Table 12.8 Schedule for Periodic Review of TAMP

Task	Responsible Agency	Duration
Notifies the RTA that TAMP update is necessary.	ODOT	---
Following ODOT notification, or at its own discretion, submits revised TAMP to ODOT.	RTA	30 days
Reviews and approves revised TAMP or determines TAMP requires re-submittal.	ODOT	30 days
Revises TAMP and re-submits to ODOT review and approval.	RTA	30 days
Reviews and approves revised TAMP.	ODOT	30 days

12.9 Record Keeping

As specified in § 625.53, ODOT requires that the RTA perform the following record keeping duties to maintain the TAMP:

- At all times, the RTA must maintain records and documents that support, and set forth in full, its TAMP.
- The RTA must make its TAMP, any supporting records or documents performance targets, investment strategies, and the annual condition assessment report available to ODOT to aid in the planning process.

Figure 12.1 Asset Management Process

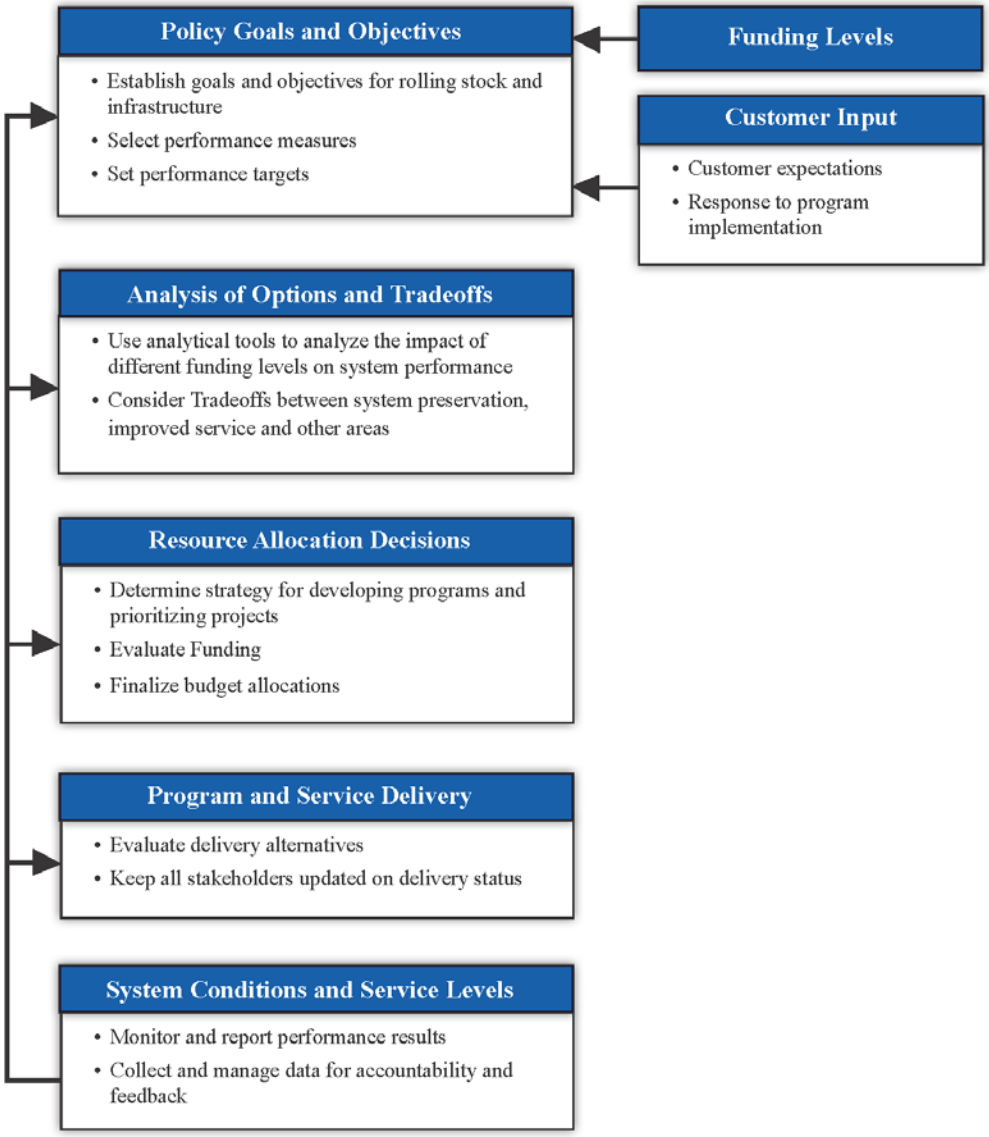
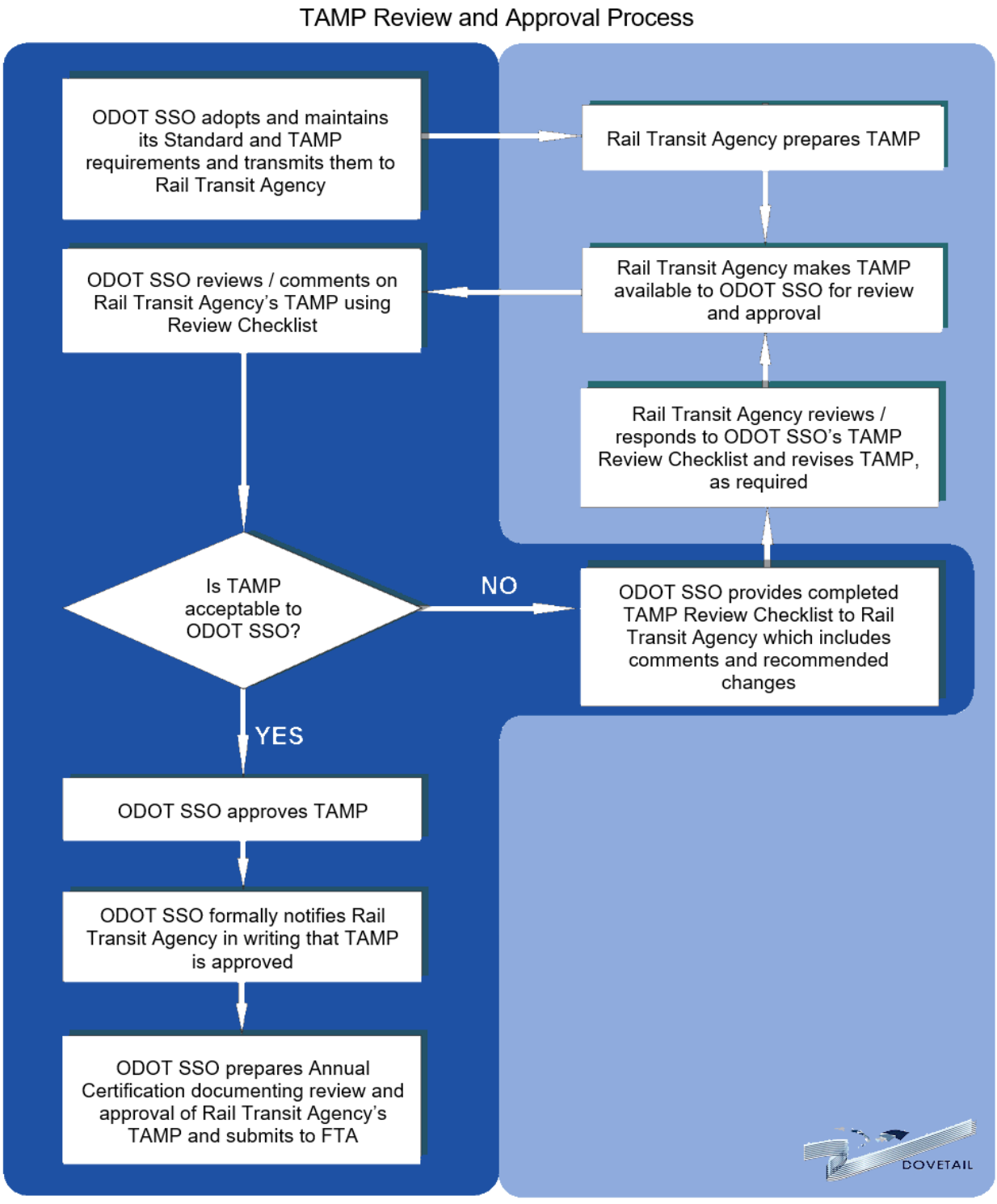


Figure 12.7 Transit Asset Management Plan – Review and Approval Process



Section 13
Engineering and Construction Phase

13.0 Purpose

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.

Given the wide range in the scope and nature of the projects that may be subject to the SSO program, this section provides a general overview of the typical oversight activities that may be undertaken by ODOT during the project's engineering and construction phases.

The purpose of this section is to describe ODOT's oversight activities of the RTA during the design, construction, testing and start-up, and project turn-over phases for New Starts, Small Starts, or other federally funded grant projects subject to the state safety and security oversight program.

Any New Starts, Small Starts, or other federally funded grant projects that have substantially completed the engineering phase or later phases (i.e. construction, testing, start-up, etc.) at the time of the adoption of this Program Standard are **NOT** subject to the requirements listed within this section. Instead, oversight for these projects will continue under the safety and security requirements promulgated by the Federal Transit Administration.

The ODOT Program Manager will maintain ongoing communications and will coordinate with the FTA regarding any New Starts, Small Starts, or other federally funded grant projects subject to the requirements of the Program Standard, as required.

13.1 Definition

The Federal Public Transportation Act of 2012 (MAP-21), Section 5329, (e)(2), defines an eligible State as one with a rail fixed guideway public transportation system within the jurisdiction of the State that is:

- not subject to regulation by the Federal Railroad Administration; or
- a rail fixed guideway public transportation system in the ***engineering or construction phase*** of development within the jurisdiction of the State that will not be subject to regulation by the Federal Railroad Administration.

13.2 Notification Requirements

ODOT requires written notification be provided to the State by the RTA when a rail fixed guideway project has ***entered the Preliminary Engineering (PE) phase.*** In response to written notification, ODOT will develop its project-specific oversight activities to meet the safety and security requirements of this Program Standard.

13.3 General Requirements

ODOT will conduct compliance reviews of the RTA's safety and security plans for New Starts, Small Starts, or other federally funded grant projects subject to state safety/security oversight. ODOT reviews will address verification of the RTA's compliance with all applicable FTA and ODOT safety and security program requirements for the design, construction, testing, and pre-revenue operations phases of the project. ODOT's

reviews will be consistent with 49 CFR Part 633, FTA Circular 5800.1, the FTA Handbook for Transit Safety and Security Certification, and other applicable requirements.

ODOT compliance reviews will include, but are not limited to the following safety and security-related plans and documents:

1. Project Management Plan (PMP)
2. Safety and Security Management Plan (SSMP)
3. Safety and Security Certification Plan (SSCP), including:
   - Certifiable Elements and Items Lists
   - Design Criteria Conformance Checklists
   - Construction Specification Conformance Checklists
   - Test Program Checklists
   - Preliminary Hazard Analyses
   - Threat and Vulnerability Assessments
4. Construction Safety and Security Plan (CSSP)
5. Supporting Documentation, including:
   - Safety and security analyses
   - Plans, engineering drawings, construction plans, calculations
   - Inspection reports
   - Test plans and procedures, and test reports
6. Safety and Security Certification Verification Reports (SSCVRs)
7. Other plans and / or procedures related to the public transportation safety program requirements under Section 5329 and 49 CFR Part 674.

In addition to the review activities discussed in this section, ODOT may attend and observe safety and security committee and working group meetings established by the RTA to carry out safety and security certification activities. ODOT may also conduct reviews or special assessments as described in **Section 7.3**, Other SSO Audits.

13.4 Minimum Safety and Security Design, Construction, Operations, and Maintenance Standards and Considerations

ODOT requires the adoption of a minimum set of standards necessary to achieve an acceptable level of safety, security, and performance for rail fixed guided transit systems operating within its jurisdiction.

ODOT also requires that the minimum requirements apply to all phases of the rail system life cycle including design, construction, operation, and maintenance. These requirements, at a minimum, must encompass the following elements:

- Operating Environment
- System Safety
- System Dependability
- Signals / Communications
- Vehicles
- Propulsion and Braking Systems
- Electrical Systems
- Stations
- Guideways
- System Security
- Emergency Preparedness
- System Integration / Testing
- Operations and Maintenance

ODOT requires that the minimum requirements apply to the fixed facilities, vehicles, systems, test requirements, training, operations and maintenance plans and procedural elements of the RTA.

ODOT requires the RTA to make the set of standards described above available to ODOT for review, upon request.

13.5 Design Criteria Conformance Phase

During the design development phase, ODOT may perform safety and security oversight of the RTA design process that verifies the project's design conformance to the latest revision of applicable federal, state, and / or local standards, codes, regulations, guidelines, and / or requirements.

To accomplish this, ODOT may attend design meetings and may review and comment on the Design Criteria Manual for each major capital project subject to safety and security certification as defined in the RTA's PTASP.

At the various stages of design development (i.e., 30%, 60%, 90%, 100%), ODOT may review the design documents (contractor design review submittals, drawings, specifications, and calculations). ODOT may review the designs to ensure that the safety and security requirements in the design criteria are included in the design of the various project facilities and systems. At a minimum, these reviews will be in accordance with 49 CFR Part 674, 49 CFR Part 673 and other related FTA design, safety, and security guidance. ODOT may also review designs that have changes or deviations from the baseline criteria. ODOT's goal will be to ensure that the RTA has considered and addressed changes that may impact project safety and security prior to these changes being incorporated into the final design.

ODOT may arrange meetings with the RTA and the FTA to resolve its safety and security comments and concerns on the design and related activities. As required, ODOT will monitor and track to closure the RTA's responses to Design-related safety and security open items.

13.6 Construction Specification Conformance Phase

During construction, ODOT may perform safety and security oversight of the RTA construction management process that verifies the project's conformance to the applicable project specifications.

To accomplish this, ODOT may conduct field observations, during construction, after work completion, and during testing by the RTA. The purpose of these field observations will be to assess the effectiveness of the RTA's safety and security certification program. ODOT will provide oversight of the RTA's construction safety and security activities that are being carried out in accordance with its Construction Safety and Security Plan (CSSP). ODOT may prepare reports detailing its observations and open items requiring resolution by the RTA.

ODOT may arrange meetings with the RTA and the FTA to resolve its safety and security comments and concerns on the construction plans and activities. As required, ODOT will monitor and track to closure the RTA's responses to Construction-related safety and security open items.

13.7 Pre-Revenue Operations and Maintenance Phase

During pre-revenue operations and maintenance phase, ODOT may perform safety and security oversight of the RTA's operations and maintenance readiness processes that verify the project's readiness to enter into revenue service.

ODOT may review the safety and security related operations and maintenance plans and documents developed by the RTA for revenue operation in accordance with the ODOT Program Standard, 49 CFR 674, and other applicable requirements and guidelines. ODOT may provide review comments to the RTA on

various plans, which may include Standard Operating Procedures (SOP), Emergency Operating Procedures (EOP), Operations and Maintenance Plan, and Right-of-Way Safety / Track Access Training.

ODOT may arrange meetings with the RTA and the FTA to resolve its safety and security comments and concerns on the operations and maintenance plans and activities. As required, ODOT will monitor and track to closure the RTA's responses to Operations and Maintenance-related safety and security open items.

13.8 Testing, Start-Up and Training Phase

During testing, start-up, and training phase, ODOT may perform safety and security oversight of the RTA's processes for testing, start-up, and training that verifies the project's readiness to enter into revenue service.

ODOT may review plans and documents developed by the RTA for the testing, pre-revenue operation, and start-up phases of the project. ODOT may provide review comments to the RTA for each individual plan and / or document, including Training and Qualification Program Plans, System Integration Test Plan (SITP) and Procedures, Start-Up and / or Pre-Revenue Operations Plan, Simulated Service Plan, Emergency Drills and Exercises Plan and Schedule, and Rail Activation Plan.

ODOT may observe the RTA's training and qualification programs. ODOT may review tabletop exercises and emergency drill plans and procedures developed by the RTA. ODOT may observe the RTA's tabletop exercises and emergency drills. ODOT may provide review comments to the RTA.

ODOT may arrange meetings with the RTA and the FTA to resolve its safety and security comments and concerns on the testing, training, and emergency preparedness activities. As required, ODOT will monitor and track to closure the RTA's responses to Testing/Start-up/Training-related safety and security open items.

13.9 Project Turn-Over Phase

ODOT requires the RTA to issue a Certificate of Conformance for each certifiable element listed within the Safety and Security Certification Plan. The Certificate of System Safety and Security will signify that project complies with the established federal, state, and the RTA's safety and security criteria and standards. This Certificate will also serve as official notice from the RTA to ODOT that the project has been successfully tested as "safe and secure" and is ready for public use.

At the time of passenger revenue service, open items affecting the safety, security or operations of project may remain on certain facilities, systems, equipment, plans or procedures. ODOT requires that such open items be listed on a Safety and Security Open Items List for the purpose of ongoing tracking and monitoring by ODOT and the RTA.

ODOT also requires that the RTA provide the list of remaining open items and restrictions, their identified resolutions, and schedule for bringing these items to closure with the Safety and Security Certification Verification Report (SSCVR).

Refer to **Section 10** for additional details on the requirements for the safety and security certification process.

APPENDIX A

Federal Public Transportation Act of 2012
Moving Ahead for Progress in the 21st Century

Section 5326

§ 5326. Transit asset management

(a) DEFINITIONS.—In this section the following definitions shall apply:

(1) CAPITAL ASSET.—The term ‘capital asset’ includes equipment, rolling stock, infrastructure, and facilities for use in public transportation and owned or leased by a recipient or subrecipient of Federal financial assistance under this chapter.

(2) TRANSIT ASSET MANAGEMENT PLAN.—The term ‘transit asset management plan’ means a plan developed by a recipient of funding under this chapter that—

(A) includes, at a minimum, capital asset inventories and condition assessments, decision support tools, and investment prioritization; and

(B) the recipient certifies complies with the rule issued under this section.

(3) TRANSIT ASSET MANAGEMENT SYSTEM.—The term ‘transit asset management system’ means a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively throughout the life cycle of such assets.

(b) TRANSIT ASSET MANAGEMENT SYSTEM.—The Secretary shall establish and implement a national transit asset management system, which shall include—

(1) a definition of the term ‘state of good repair’ that includes objective standards for measuring the condition of capital assets of recipients, including equipment, rolling stock, infrastructure, and facilities;

(2) a requirement that recipients and subrecipients of Federal financial assistance under this chapter develop a transit asset management plan;

(3) a requirement that each designated recipient of Federal financial assistance under this chapter report on the condition of the system of the recipient and provide a description of any change in condition since the last report;

(4) an analytical process or decision support tool for use by public transportation systems that—

(A) allows for the estimation of capital investment needs of such systems over time; and

(B) assists with asset investment prioritization by such systems; and

(5) technical assistance to recipients of Federal financial assistance under this chapter.

(c) PERFORMANCE MEASURES AND TARGETS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a final rule to establish performance measures based on the state of good repair standards established under subsection (b)(1).

(2) TARGETS.—Not later than 3 months after the date on which the Secretary issues a final rule under paragraph (1), and each fiscal year thereafter, each recipient of Federal financial assistance under this chapter shall establish performance targets in relation to the performance measures established by the Secretary.

(3) REPORTS.—Each designated recipient of Federal financial assistance under this chapter shall submit to the Secretary an annual report that describes—

(A) the progress of the recipient during the fiscal year to which the report relates toward meeting the performance targets established under paragraph (2) for that fiscal year; and

(B) the performance targets established by the recipient for the subsequent fiscal year.

(d) RULEMAKING.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a final rule to implement the transit asset management system described in subsection (b).

Section 5329

(Includes text of section 20021(b) of MAP-21)

§ 5329. Public transportation safety program

(a) DEFINITION.—In this section, the term ‘recipient’ means a State or local governmental authority, or any other operator of a public transportation system, that receives financial assistance under this chapter.

(b) NATIONAL PUBLIC TRANSPORTATION SAFETY PLAN.—

(1) IN GENERAL.—The Secretary shall create and implement a national public transportation safety plan to improve the safety of all public transportation systems that receive funding under this chapter.

(2) CONTENTS OF PLAN.—The national public transportation safety plan under paragraph (1) shall include—

(A) safety performance criteria for all modes of public transportation;

(B) the definition of the term ‘state of good repair’ established under section 5326(b);

(C) minimum safety performance standards for public transportation vehicles used in revenue operations that—

(i) do not apply to rolling stock otherwise regulated by the Secretary or any other Federal agency; and

(ii) to the extent practicable, take into consideration—

(I) relevant recommendations of the National Transportation Safety Board; and

(II) recommendations of, and best practices standards developed by, the public transportation industry; and

(D) a public transportation safety certification training program, as described in subsection (c).

(c) PUBLIC TRANSPORTATION SAFETY CERTIFICATION TRAINING PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a public transportation safety certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems and employees of public transportation agencies directly responsible for safety oversight.

(2) INTERIM PROVISIONS.—Not later than 90 days after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall establish interim provisions for the certification and training of the personnel described in paragraph (1), which shall be in effect until the effective date of the final rule issued by the Secretary to implement this subsection.

(d) PUBLIC TRANSPORTATION AGENCY SAFETY PLAN.—

(1) IN GENERAL.—Effective 1 year after the effective date of a final rule issued by the Secretary to carry out this subsection, each recipient or State, as described in paragraph (3), shall certify that the recipient or State has established a comprehensive agency safety plan that includes, at a minimum—

(A) a requirement that the board of directors (or equivalent entity) of the recipient approve the agency safety plan and any updates to the agency safety plan;

(B) methods for identifying and evaluating safety risks throughout all elements of the public transportation system of the recipient;

(C) strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions;

(D) a process and timeline for conducting an annual review and update of the safety plan of the recipient;

(E) performance targets based on the safety performance criteria and state of good repair standards established under subparagraphs (A) and (B), respectively, of subsection (b)(2);

(F) assignment of an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the recipient; and

(G) a comprehensive staff training program for the operations personnel and personnel directly responsible for safety of the recipient that includes—

(i) the completion of a safety training program; and

(ii) continuing safety education and training.

(2) INTERIM AGENCY SAFETY PLAN.—A system safety plan developed pursuant to part 659 of title 49, Code of Federal Regulations, as in effect on the date of enactment of the Federal Public Transportation Act of 2012, shall remain in effect until such time as this subsection takes effect.

(3) PUBLIC TRANSPORTATION AGENCY SAFETY PLAN DRAFTING AND CERTIFICATION.—

(A) SECTION 5311.—For a recipient receiving assistance under section 5311, a State safety plan may be drafted and certified by the recipient or a State.

(B) SECTION 5307.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a rule designating recipients of assistance under section 5307 that are small public transportation providers or systems that may have their State safety plans drafted or certified by a State.

(e) STATE SAFETY OVERSIGHT PROGRAM.—

(1) APPLICABILITY.—This subsection applies only to eligible States.

(2) DEFINITION.—In this subsection, the term ‘eligible State’ means a State that has—

(A) a rail fixed guideway public transportation system within the jurisdiction of the State that is not subject to regulation by the Federal Railroad Administration; or (B) a rail fixed guideway public transportation system in the engineering or construction phase of development within the jurisdiction of the State that will not be subject to regulation by the Federal Railroad Administration.

(3) IN GENERAL.—In order to obligate funds apportioned under section 5338 to carry out this chapter, effective 3 years after the date on which a final rule under this subsection becomes effective, an eligible State shall have in effect a State safety oversight program approved by the Secretary under which the State—

(A) assumes responsibility for overseeing rail fixed guideway public transportation safety;

(B) adopts and enforces Federal and relevant State laws on rail fixed guideway public transportation safety;

(C) establishes a State safety oversight agency;

(D) determines, in consultation with the Secretary, an appropriate staffing level for the State safety oversight agency that is commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems in the eligible State;

(E) requires that employees and other designated personnel of the eligible State safety oversight agency who are responsible for rail fixed guideway public transportation safety oversight are qualified to perform such functions through appropriate training, including successful completion of the public transportation safety certification training program established under subsection (c); and

(F) prohibits any public transportation agency from providing funds to the State safety oversight agency or an entity designated by the eligible State as the State safety oversight agency under paragraph (4).

(4) STATE SAFETY OVERSIGHT AGENCY.—

(A) IN GENERAL.—Each State safety oversight program shall establish a State safety oversight agency that—

(i) is financially and legally independent from any public transportation entity that the State safety oversight agency oversees;

(ii) does not directly provide public transportation services in an area with a rail fixed guideway public transportation system subject to the requirements of this section;

(iii) does not employ any individual who is also responsible for the administration of rail fixed guideway public transportation programs subject to the requirements of this section;

(iv) has the authority to review, approve, oversee, and enforce the implementation by the rail fixed guideway public transportation agency of the public transportation agency safety plan required under subsection (d);

(v) has investigative and enforcement authority with respect to the safety of rail fixed guideway public transportation systems of the eligible State;

(vi) audits, at least once triennially, the compliance of the rail fixed guideway public transportation systems in the eligible State subject to this subsection with the public transportation agency safety plan required under subsection (d); and

(vii) provides, at least once annually, a status report on the safety of the rail fixed guideway public transportation systems the State safety oversight agency oversees to—

(I) the Federal Transit Administration;

(II) the Governor of the eligible State; and

(III) the board of directors, or equivalent entity, of any rail fixed guideway public transportation system that the State safety oversight agency oversees.

(B) WAIVER.—At the request of an eligible State, the Secretary may waive clauses (i) and (iii) of subparagraph (A) for eligible States with 1 or more rail fixed guideway systems in revenue operations, design, or construction, that—

(i) have fewer than 1,000,000 combined actual and projected rail fixed guideway revenue miles per year; or

(ii) provide fewer than 10,000,000 combined actual and projected unlinked passenger trips per year.

(5) PROGRAMS FOR MULTI-STATE RAIL FIXED GUIDEWAY PUBLIC TRANSPORTATION SYSTEMS.—An eligible State that has within the jurisdiction of the eligible State a rail fixed guideway public transportation system that operates in more than 1 eligible State shall—

(A) jointly with all other eligible States in which the rail fixed guideway public transportation system operates, ensure uniform safety standards and enforcement procedures that shall be in compliance with this section, and establish and implement a State safety oversight program approved by the Secretary; or

(B) jointly with all other eligible States in which the rail fixed guideway public transportation system operates, designate an entity having characteristics consistent with the characteristics described in paragraph (3) to carry out the State safety oversight program approved by the Secretary.

(6) GRANTS.—

(A) IN GENERAL.—The Secretary shall make grants to eligible States to develop or carry out State safety oversight programs under this subsection. Grant funds may be used for program operational and administrative expenses, including employee training activities.

(B) APPORTIONMENT.—

(i) FORMULA.—The amount made available for State safety oversight under section 5336(h) shall be apportioned among eligible States under a formula to be established by the Secretary. Such formula shall take into account fixed guideway vehicle revenue miles, fixed guideway route miles, and fixed guideway vehicle passenger miles attributable to all rail fixed guideway systems not subject to regulation by the Federal Railroad Administration within each eligible State.

(ii) ADMINISTRATIVE REQUIREMENTS.—Grant funds apportioned to States under this paragraph shall be subject to uniform administrative requirements for grants and cooperative agreements to State and local governments under part 18 of title 49, Code of Federal Regulations, and shall be subject to the requirements of this chapter as the Secretary determines appropriate.

(C) GOVERNMENT SHARE.—

(i) IN GENERAL.—The Government share of the reasonable cost of a State safety oversight program developed or carried out using a grant under this paragraph shall be 80 percent.

(ii) IN-KIND CONTRIBUTIONS.—Any calculation of the non-Government share of a State safety oversight program shall include in-kind contributions by an eligible State.

(iii) NON-GOVERNMENT SHARE.—The non-Government share of the cost of a State safety oversight program developed or carried out using a grant under this paragraph may not be met by—

(I) any Federal funds;

(II) any funds received from a public transportation agency; or

(III) any revenues earned by a public transportation agency.

(iv) SAFETY TRAINING PROGRAM.—Recipients of funds made available to carry out sections 5307 and 5311 may use not more than 0.5 percent of their formula funds to pay not more than 80 percent of the cost of participation in the public transportation safety certification training program established under subsection (c), by an employee of a State safety oversight agency or a recipient who is directly responsible for safety oversight.

(7) CERTIFICATION PROCESS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall determine whether or not each State safety oversight program meets the requirements of this subsection and the State safety oversight program is adequate to promote the purposes of this section.

(B) ISSUANCE OF CERTIFICATIONS AND DENIALS.—The Secretary shall issue a certification to each eligible State that the Secretary determines under subparagraph (A) adequately meets the requirements of this subsection, and shall issue a denial of certification to each eligible State that the Secretary determines under subparagraph (A) does not adequately meet the requirements of this subsection.

(C) DISAPPROVAL.—If the Secretary determines that a State safety oversight program does not meet the requirements of this subsection and denies certification, the Secretary shall transmit to the eligible State a written explanation and allow the eligible State to modify and resubmit the State safety oversight program for approval.

(D) FAILURE TO CORRECT.—If the Secretary determines that a modification by an eligible State of the State safety oversight program is not sufficient to certify the program, the Secretary—

(i) shall notify the Governor of the eligible State of such denial of certification and failure to adequately modify the program, and shall request that the Governor take all possible actions to correct deficiencies in the program to ensure the certification of the program; and

(ii) may—

(I) withhold funds available under paragraph (6) in an amount determined by the Secretary;

(II) withhold not more than 5 percent of the amount required to be appropriated for use in a State or urbanized area in the State under section 5307 of this title, until the State safety oversight program has been certified; or

(III) require fixed guideway public transportation systems under such State safety oversight program to provide up to 100 percent of Federal assistance made available under this chapter only for safety-related improvements on such systems, until the State safety oversight program has been certified.

(8) EVALUATION OF PROGRAM AND ANNUAL REPORT.—The Secretary shall continually evaluate the implementation of a State safety oversight program by a State safety oversight agency, and shall submit on or before July 1 of each year to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on—

(A) the amount of funds apportioned to each eligible State; and

(B) the certification status of each State safety oversight program, including what steps a State program that has been denied certification must take in order to be certified.

(9) FEDERAL OVERSIGHT.—The Secretary shall—

(A) oversee the implementation of each State safety oversight program under this subsection;

(B) audit the operations of each State safety oversight agency at least once triennially; and

(C) issue rules to carry out this subsection.

(f) AUTHORITY OF SECRETARY.—In carrying out this section, the Secretary may—

(1) conduct inspections, investigations, audits, examinations, and testing of the equipment, facilities, rolling stock, and operations of the public transportation system of a recipient;

(2) make reports and issue directives with respect to the safety of the public transportation system of a recipient;

(3) in conjunction with an accident investigation or an investigation into a pattern or practice of conduct that negatively affects public safety, issue a subpoena to, and take the deposition of, any employee of a recipient or a State safety oversight agency, if—

(A) before the issuance of the subpoena, the Secretary requests a determination by the Attorney General of the United States as to whether the subpoena will interfere with an ongoing criminal investigation; and

(B) the Attorney General—

(i) determines that the subpoena will not interfere with an ongoing criminal investigation; or

(ii) fails to make a determination under clause (i) before the date that is 30 days after the date on which the Secretary makes a request under subparagraph (A);

(4) require the production of documents by, and prescribe recordkeeping and reporting requirements for, a recipient or a State safety oversight agency;

(5) investigate public transportation accidents and incidents and provide guidance to recipients regarding prevention of accidents and incidents;

(6) at reasonable times and in a reasonable manner, enter and inspect equipment, facilities, rolling stock, operations, and relevant records of the public transportation system of a recipient; and

(7) issue rules to carry out this section.

(g) ENFORCEMENT ACTIONS.—

(1) TYPES OF ENFORCEMENT ACTIONS.—The Secretary may take enforcement action against an eligible State, as defined in subsection (e), that does not comply with Federal law with respect to the safety of the public transportation system, including—

(A) issuing directives;

(B) requiring more frequent oversight of the recipient by a State safety oversight agency or the Secretary;

(C) imposing more frequent reporting requirements; and

(D) requiring that any Federal financial assistance provided under this chapter be spent on correcting safety deficiencies identified by the Secretary or the State safety oversight agency before such funds are spent on other projects.

(2) USE OR WITHHOLDING OF FUNDS.—

(A) IN GENERAL.—The Secretary may require the use of funds in accordance with paragraph (1)(D) only if the Secretary finds that a recipient is engaged in a pattern or practice of serious

safety violations or has otherwise refused to comply with Federal law relating to the safety of the public transportation system.

(B) NOTICE.—Before withholding funds from a recipient, the Secretary shall provide to the recipient—

(i) written notice of a violation and the amount proposed to be withheld; and

(ii) a reasonable period of time within which the recipient may address the violation or propose and initiate an alternative means of compliance that the Secretary determines is acceptable.

(h) COST-BENEFIT ANALYSIS.—

(1) ANALYSIS REQUIRED.—In carrying out this section, the Secretary shall take into consideration the costs and benefits of each action the Secretary proposes to take under this section.

(2) WAIVER.—The Secretary may waive the requirement under this subsection if the Secretary determines that such a waiver is in the public interest.

(i) CONSULTATION BY THE SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall consult with the Secretary of Transportation before the Secretary of Homeland Security issues a rule or order that the Secretary of Transportation determines affects the safety of public transportation design, construction, or operations.

(j) ACTIONS UNDER STATE LAW.—

(1) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with—

(A) a Federal standard of care established by a regulation or order issued by the Secretary under this section; or

(B) its own program, rule, or standard that it created pursuant to a rule or order issued by the Secretary.

(2) EFFECTIVE DATE.—This subsection shall apply to any cause of action under State law arising from an event or activity occurring on or after the date of enactment of the Federal Public Transportation Act of 2012.

(3) JURISDICTION.—Nothing in this section shall be construed to create a cause of action under Federal law on behalf of an injured party or confer Federal question jurisdiction for a State law cause of action.

(k) NATIONAL PUBLIC TRANSPORTATION SAFETY REPORT.—Not later than 3 years after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

(1) analyzes public transportation safety trends among the States and documents the most effective safety programs implemented using grants under this section; and (2) describes the effect on public transportation safety of activities carried out using grants under this section.

Section 20021(b) of MAP-21:

(b) BUS SAFETY STUDY.—

(1) DEFINITION.—In this subsection, the term highway route means a route where 50 percent or more of the route is on roads having a speed limit of more than 45 miles per hour.

(2) STUDY.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

(A) examines the safety of public transportation buses that travel on highway routes;

(B) examines laws and regulations that apply to commercial over-the-road buses; and

(C) makes recommendations as to whether additional safety measures should be required for public transportation buses that travel on highway routes.

APPENDIX B

Fixing America's Surface Transportation (FAST) Act

PUBLIC LAW 114–94—DEC. 4, 2015

FIXING AMERICA'S SURFACE TRANSPORTATION ACT

Public Law 114–94
114th Congress

An Act

Dec. 4, 2015
[H.R. 22]

To authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Fixing America's Surface Transportation Act.
23 USC 101 note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Fixing America's Surface Transportation Act" or the "FAST Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

DIVISION A—SURFACE TRANSPORTATION

SEC. 1001. DEFINITIONS. 23 USC 101 note.

In this division, the following definitions apply:

(1) DEPARTMENT.—The term "Department" means the Department of Transportation.

(2) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

SEC. 1002. RECONCILIATION OF FUNDS.

The Secretary shall reduce the amount apportioned or allocated for a program, project, or activity under titles I and VI of this Act in fiscal year 2016 by amounts apportioned or allocated pursuant to any extension Act of MAP–21, including the amendments made by that extension Act, during the period beginning on October 1, 2015, and ending on the date of enactment of this Act. For purposes of making such reductions, funds set aside pursuant to section 133(h) of title 23, United States Code, as amended by

(i) by striking "section 5338(i)" and inserting section 5338(f); and

(ii) by striking "and" at the end; and

(B) by striking paragraph (2) and inserting the following:

"(2) a requirement that oversight—

"(A) begin during the project development phase of a project, unless the Secretary finds it more appropriate to begin the oversight during another phase of the project, to maximize the transportation benefits and cost savings associated with project management oversight; and

"(B) be limited to quarterly reviews of compliance by the recipient with the project management plan approved under subsection (b) unless the Secretary finds that the recipient requires more frequent oversight because the recipient has failed to meet the requirements of such plan and the project may be at risk of going over budget or becoming behind schedule; and

"(3) a process for recipients that the Secretary has found require more frequent oversight to return to quarterly reviews for purposes of paragraph (2)(B).".

SEC. 3013. PUBLIC TRANSPORTATION SAFETY PROGRAM.

Section 5329 of title 49, United States Code, is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (C) by striking "and" at the end;

(B) by redesignating subparagraph (D) as subparagraph (E); and

(C) by inserting after subparagraph (C) the following:

"(D) minimum safety standards to ensure the safe operation of public transportation systems that—

"(i) are not related to performance standards for public transportation vehicles developed under subparagraph (C); and

"(ii) to the extent practicable, take into consideration—

"(I) relevant recommendations of the National Transportation Safety Board;

"(II) best practices standards developed by the public transportation industry;

"(III) any minimum safety standards or performance criteria being implemented across the public transportation industry;

"(IV) relevant recommendations from the report under section 3020 of the Federal Public Transportation Act of 2015; and

"(V) any additional information that the Secretary determines necessary and appropriate; and";

(2) in subsection (e)—

(A) by redesignating paragraphs (8) and (9) as paragraphs (9) and (10), respectively; and

(B) by inserting after paragraph (7) the following:

"(8) FEDERAL SAFETY MANAGEMENT.—

"(A) IN GENERAL.—If the Secretary determines that a State safety oversight program is not being carried out in accordance with this section, has become inadequate

to ensure the enforcement of Federal safety regulation, or is incapable of providing adequate safety oversight consistent with the prevention of substantial risk of death, or personal injury, the Secretary shall administer the State safety oversight program until the eligible State develops a State safety oversight program certified by the Secretary in accordance with this subsection.

"(B) TEMPORARY FEDERAL OVERSIGHT.—In making a determination under subparagraph (A), the Secretary shall—

"(i) transmit to the eligible State and affected recipient or recipients, a written explanation of the determination or subsequent finding, including any intention to withhold funding under this section, the amount of funds proposed to be withheld, and if applicable, a formal notice of a withdrawal of State safety oversight program approval; and

"(ii) require the State to submit a State safety oversight program or modification for certification by the Secretary that meets the requirements of this subsection.

"(C) FAILURE TO CORRECT.—If the Secretary determines in accordance with subparagraph (A), that a State safety oversight program or modification required pursuant to subparagraph (B)(ii), submitted by a State is not sufficient, the Secretary may—

"(i) withhold funds available under paragraph (6) in an amount determined by the Secretary;

"(ii) beginning 1 year after the date of the determination, withhold not more than 5 percent of the amount required to be appropriated for use in a State or an urbanized area in the State under section 5307, until the State safety oversight program or modification has been certified; and

"(iii) use any other authorities authorized under this chapter considered necessary and appropriate.

"(D) ADMINISTRATIVE AND OVERSIGHT ACTIVITIES.—To carry out administrative and oversight activities authorized by this paragraph, the Secretary may use grant funds apportioned to an eligible State, under paragraph (6), to develop or carry out a State safety oversight program.";

(3) in subsection (f)(2), by inserting "or the public transportation industry generally" after "recipients";

(4) in subsection (g)(1)—

(A) in the matter preceding subparagraph (A) by striking "an eligible State, as defined in subsection (e)," and inserting "a recipient";

(B) in subparagraph (C) by striking "and" at the end;

(C) in subparagraph (D) by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following:

"(E) withholding not more than 25 percent of financial assistance under section 5307.";

(5) in subsection (g)(2)(A)—

(A) by inserting after "funds" the following: "or withhold funds"; and

(B) by inserting "or (1)(E)" after "paragraph (1)(D)"; and

(6) by striking subsection (h) and inserting the following:

"(h) RESTRICTIONS AND PROHIBITIONS.—

"(1) RESTRICTIONS AND PROHIBITIONS.—The Secretary shall issue restrictions and prohibitions by whatever means are determined necessary and appropriate, without regard to section 5334(c), if, through testing, inspection, investigation, audit, or research carried out under this chapter, the Secretary determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, exist such that there is a substantial risk of death or personal injury.

"(2) NOTICE.—The notice of restriction or prohibition shall describe the condition or practice, the subsequent risk and the standards and procedures required to address the restriction or prohibition.

"(3) CONTINUED AUTHORITY.—Nothing in this subsection shall be construed as limiting the Secretary's authority to maintain a restriction or prohibition for as long as is necessary to ensure that the risk has been substantially addressed.".

SEC. 3014. APPORTIONMENTS.

Section 5336 of title 49, United States Code, is amended—

(1) in subsection (a) in the matter preceding paragraph (1) by striking "subsection (h)(4)" and inserting "subsection (h)(5)";

(2) in subsection (b)(2)(E) by striking "22.27 percent" and inserting "27 percent"; and

(3) in subsection (h)—

(A) by striking paragraph (1) and inserting the following:

"(1) $30,000,000 shall be set aside each fiscal year to carry out section 5307(h);"; and

(B) by striking paragraph (3) and inserting the following:

"(3) of amounts not apportioned under paragraphs (1) and (2)—

"(A) for fiscal years 2016 through 2018, 1.5 percent shall be apportioned to urbanized areas with populations of less than 200,000 in accordance with subsection (i); and

"(B) for fiscal years 2019 and 2020, 2 percent shall be apportioned to urbanized areas with populations of less than 200,000 in accordance with subsection (i);".

SEC. 3015. STATE OF GOOD REPAIR GRANTS.

(a) IN GENERAL.—Section 5337 of title 49, United States Code, is amended—

(1) in subsection (c)(2)(B), by inserting "the provisions of" before "section 5336(b)(1)";

(2) in subsection (d)—

(A) in paragraph (2) by inserting "vehicle" after "motorbus"; and

(B) by adding at the end the following:

"(5) USE OF FUNDS.—Amounts apportioned under this subsection may be used for any project that is an eligible project under subsection (b)(1)."; and

(3) by adding at the end the following:

APPENDIX C

49 CFR Part 674
State Safety Oversight Rule

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 51 March 16, 2016

Part II

Department of Transportation

Federal Transit Administration

49 CFR Part 674
State Safety Oversight; Final Rule

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), USDOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration is issuing a final rule for State safety oversight of rail fixed guideway public transportation systems not regulated by the Federal Railroad Administration (FRA). This final rule replaces the current State Safety Oversight (SSO) rule, which will be rescinded no later than three years following the effective date of this rule. State Safety Oversight Agencies (SSOAs) and rail transit agencies (RTAs) will continue to comply until they come into compliance with these new regulations.

DATES: The effective date of this rule is April 15, 2016.

FOR FURTHER INFORMATION CONTACT: For program matters, Brian Alberts, Program Analyst, FTA Office of Transit Safety and Oversight, telephone 202–366–1783 or *Brian.Alberts@dot.gov.* For legal matters, Richard Wong, FTA Office of Chief Counsel, telephone 202–366–4011 or *Richard.Wong@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Executive Summary

This rule replaces the existing regulations for state safety oversight of rail fixed guideway public transportation systems in 49 CFR part 659 that have been in place for the past twenty years and significantly strengthens states' authorities to prevent and mitigate accidents and incidents on public transportation systems.

In the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, July 6, 2012), Congress directed FTA to establish a comprehensive public transportation safety program, one element of which is the State Safety Oversight (SSO) Program. (See 49 U.S.C. 5329). The purpose of today's final rule is to carry out the several explicit statutory mandates to strengthen the States' oversight of the safety of their Rail Transit Agencies (RTAs), including that States' oversight agencies have the necessary enforcement authority, legal independence, and financial and human resources for overseeing the number, size, and complexity of the RTAs within their jurisdictions.

On December 4, 2015, the President signed the Fixing America's Surface Transportation (''FAST'') Act (Pub. L. 114–94) into law, which did not modify the provisions included in MAP–21 that were the subject of the NPRM, but did augment FTA's safety authority by appending a new subparagraph (e)(8) ''Federal Safety Management'' to 49 U.S.C. 5329(e). However, because the FAST Act was enacted subsequent to publication of the SSO NPRM and the closure of the notice-and comment window, FTA is not including additional regulatory provisions about the new ''Federal Safety Management'' authority in today's rulemaking. To the extent FTA determines this new provision requires additional regulatory text, it will do so in a subsequent notice-and-comment rulemaking. Thus, for convenience, and accurate historical context, this rule will refer to MAP–21 throughout the preamble to signify the fundamental changes MAP–21 made to States' authorities and responsibilities for overseeing the safety of their rail transit fixed guideway systems.

In the legislative history of MAP–21, Congress identified several critical weaknesses in state oversight of rail transit system safety, including:

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

Today's final rule is a critical step in implementing new requirements for enhanced safety in public transportation. On February 5, 2016, FTA published for public review and comment the Public Transportation Agency Safety Plan NPRM (81 FR 6344) and a Notice of Availability of the proposed National Public Transportation Safety Plan, (81 FR 6372). In addition, FTA will be issuing a subsequent final rule addressing the Public Transportation Safety Certification Training Program.

- Legal Authority

Section 20021 of MAP–21, now codified at 49 U.S.C. 5329, enacted several new provisions that require FTA to establish a comprehensive public transportation safety program, the elements of which include a National Public Transportation Safety Plan; a training and certification program for Federal, state, and local transportation agency employees with safety responsibilities; Public Transportation Agency Safety Plans; and a strengthened State Safety Oversight Program.

- Summary of Key Provisions

The February 27, 2015, NPRM (80 FR 11001) proposed to make the following changes to strengthen the existing SSO program, which are being finalized today:

- 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 standard, certifying whether States are meeting the statutory criteria and withholding funds from those States that are not.
- FTA would impose financial penalties on those States with non-existent or non-compliant safety oversight programs.

In general, in this final rule, FTA has decided to maintain much of what was proposed in the NPRM. However, the agency has made several key changes in response to public comments. For example, FTA is revising the notification and reporting requirements by removing incidents from the types of events that require notification and an

investigation, thus reducing the administrative burdens on both SSOAs and RTAs. In addition, FTA is withdrawing the proposal in the NPRM that required SSOAs to conduct an independent investigation of every accident and incident and instead will allow SSOAs to delegate that responsibility to an RTA, with the proviso that the SSOA conduct an independent review of the RTA's findings and conclusions. Finally, FTA is removing the text from Appendix A addressing principles of SMS (Safety Management Systems), and is replacing it with a table illustrating the reporting requirements for accidents, incidents, and occurrences, due to comments that the practice of SMS is more applicable to RTAs than SSOAs. SMS is more fully and appropriately addressed in the proposed National Public Transportation Safety (National Safety Plan) Plan and the Public Transportation Agency Safety Plan (Agency Safety Plan) rulemaking, which were both published in the **Federal Register** for public notice and comment on February 5, 2016. *See,* 81 FR 6372–3 and 81 FR 6344–71. The proposed National Safety Plan lays out FTA's strategic approach to safety performance, with proposed safety performance criteria for all modes of public transportation, and is based on the principles and methods of SMS. The Agency Safety Plan NPRM would require recipients to development and implement a comprehensive agency safety plan that incorporates key SMS components. FTA encourages readers to submit comments to the docket for both documents by April 5, 2016.

- Costs and Benefits

In general, FTA has retained the approach to costs and benefits contained in the NPRM. Thus, the agency quantified, to the extent possible, the costs associated with this rule, and, instead of quantifying estimated benefits, instead conducted a breakeven analysis, to take into account significant uncertainties in determining the benefits.

However, the agency has made several changes to both the rule and the analysis that have affected this analysis. First, in response to concerns raised by commenters, FTA has revised the notification and reporting obligations by removing incidents from the types of events that require notification and an investigation; this change will reduce the administrative burdens on both State Safety Oversight Agencies (SSOAs) and Rail Transit Agencies (RTAs). In addition, FTA conducted a second review of the estimated recurring and non-recurring regulatory costs under the proposed regulations to SSOAs and RTAs, using a wage rate more closely aligned to the skillsets required of them. Further, FTA has revised its labor costs to include a 56 percent allowance for employee fringe benefits based on Bureau of Labor Statistics data for 2014. The labor cost for investigations has also been revised to reflect a higher cost for this specialty, along with the number of labor hours.

The costs of the rule are also offset by the presence of Federal funding, whereas over the previous two decades, the costs of administering the SSO program was borne by the States as an unfunded Federal mandate. FTA notes that Congress has authorized approximately $22 million in grant funds each year to the States to offset the annual costs for the purpose of making this rule revenue-neutral between the Federal government and the States. Also, RTAs may use FTA grant funds to meet their obligations under this final rule.

FTA conducted a breakeven analysis to determine what amount of the quantified benefits would need to accrue to outweigh the costs for both this rulemaking and the requirements for Public Transportation Agency Safety Plans for RTAs. Primarily, FTA looked at the safety events reported to FTA's National Transit Database and, in a more conservative analysis, only the five accidents investigated by the National Transportation Safety Board (NTSB) since 2004 which were related to inadequate safety oversight programs would need to be avoided in order to meet the cost of the rule. The first analysis, based on all rail incidents, showed that the breakeven level of incident reduction was 1.1%. The second analysis looked only at NTSB-investigated incidents and found a breakeven level at a reduction of 0.69 incidents per year of that severity, even if no other incidents were affected.

II. Rulemaking Background

Congress provided the framework for a comprehensive public transportation safety program in section 20021 of the Moving Ahead for Progress in the 21st Century Act (''MAP–21''), (Pub. L. 112–141, now codified at 49 U.S.C. 5329). The four key components of the program are the National Public Transportation Safety Plan, authorized by subsection 5329(b); the Public Transportation Safety Certification Training Program, authorized by subsection 5329(c); the Public Transportation Agency Safety Plans, authorized by subsection 5329(d); and the State Safety Oversight Program, authorized by subsection 5329(e).

On February 27, 2015, FTA published a Notice of Proposed Rulemaking (NPRM) for state safety oversight of rail fixed guideway public transportation systems (80 FR 11001). The NPRM provided an extensive summary of the history behind the SSO program, beginning with FTA's predecessor agency, the Urban Mass Transportation Administration being created as a grant-making and research-and-development program under the Urban Mass Transportation Act of 1964, and tracing the evolution of the agency's safety role through legislative amendments following various public transportation accidents, some of which resulted in recommendations from the NTSB.

The current SSO program for rail fixed guideway transit safety dates back to section 3029 of the 1991 Intermodal Surface Transportation Efficiency Act (''ISTEA'') (Pub. L. 102–240). In enacting section 3029, Congress determined 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 which, with few exceptions, does not cross state boundaries.

On December 27, 1995, FTA promulgated its initial SSO rule (49 CFR part 659) (60 FR 67034), with an effective date of January 1, 1997, to provide States a full year to enact state statutes and regulations to carry out the new safety mandates—States were required to designate an SSOA, create a system safety program standard for rail transit agencies to follow, conduct safety audits every three years, and investigate accidents and hazardous conditions. Transit agencies, in turn, had to develop a system safety program plan, conduct internal safety audits, conduct accident investigations at the direction of the SSOA, and submit corrective action plans for the SSOA's approval. Ten years later, FTA amended the SSO rule (70 FR 22562, April 29, 2005), to clarify the roles and responsibilities of States and their SSOAs; set a new definition of ''hazard'' and requirements for hazard management plans; revise the requirements for SSOAs to conduct investigations; create a 21-point check list for an RTA's System Safety Program Plans (SSPPs); establish baselines for accident notification; and set forth a framework for corrective action plans. However, these amendments provided no additional enforcement power to the SSOAs, and very little enforcement power to FTA—only the option of withholding up to five percent of an

RTA's urbanized area formula funding if FTA were to find a state not in compliance with the SSO regulations.

In MAP–21, Congress directed FTA to establish a more rigorous and comprehensive SSO Program. See 49 U.S.C. 5329(e). To meet the statutory mandate, today's final rule now specifies that a state must submit its SSO program standard to FTA for approval and to obtain FTA certification of its program standard. In addition, a state must demonstrate its SSOA's financial and legal independence from the RTAs it oversees; its ability to effectively oversee the safety of the rail fixed guideway public transportation systems throughout the state through the adoption and enforcement of Federal and relevant state safety laws, investigatory authority, and an audit procedure; an appropriate staffing level for its SSOAs; and the proper training and certification of the SSOA's personnel.

Today's final rule also requires public accountability. SSOAs must provide an annual status report to FTA, the Governor of the State, and the Board of Directors of the RTA that also will be available to the general public. In addition, FTA will publish and submit an annual evaluation of all SSO programs to Congress.

III. Summary of Comments and Section-by-Section Responses

Fifty-two individuals and organizations submitted comments to the docket for this rulemaking, including transit agencies, state governments, industry trade associations, and concerned individuals.

Section 674.1 Purpose

This section explained 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.

Comments Received: Numerous commenters expressed concerns that FTA is pursuing a rulemaking for State Safety Oversight without having issued the other rulemakings required under 49 U.S.C. 5329, such as the National Public Transportation Safety Plan and Public Transportation Agency Safety Plans. These commenters stated it would be difficult for them to provide comprehensive comments on the SSO NPRM without full knowledge of the regulatory structure that FTA will propose to implement all the requirements under 49 U.S.C. 5329.

Agency Response: The purpose of today's rulemaking is to implement the specific SSO requirements at 49 U.S.C. 5329(e). States can enact enabling legislation to bring their SSOAs into conformity with these requirements without the National Public Transportation Safety Plan in place, or a rulemaking for Public Transportation Agency Safety Plans. Readers should note in particular that 49 U.S.C. 5329(d)(2) provides an RTA's System Safety Program Plan (SSPP) developed pursuant to 49 CFR part 659 shall remain in effect until FTA publishes a final rule for Public Transportation Agency Safety Plans.

SSOAs will continue to oversee RTAs' SSPPs until the RTAs are required to adopt Public Transportation Agency Safety Plans in compliance with the future rulemaking under 49 U.S.C. 5329(d). In the meantime, states should be setting up the necessary framework to enable their SSOAs to perform the oversight functions enumerated at 49 U.S.C. 5329(e).

FTA is including this section in the final rule without change.

Section 674.3 Applicability

This section explained 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.

Comments Received: FTA did not receive any comments on this section.

Agency Response: FTA is including this section in the final rule without change.

Section 674.5 Policy

This section identified three separate, explicit policies that underlie these regulations: First, FTA proposed using the principles and methods of Safety Management Systems (SMS) as the basis for these regulations, and has similarly proposed SMS in other regulations and policies FTA has issued under the authority of 49 U.S.C. 5329. Second, the primary responsibility for overseeing the safety of RTAs lies with the States—and a State's SSOA must have sufficient authority and resources to oversee the number, size, and complexity of rail fixed guideway public transportation 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 programs are adequate to promote the purposes of the public transportation safety programs under 49 U.S.C. 5329.

Comments Received: Nine commenters responded to this section, with five providing varying views on FTA's SMS approach. Some did not see how the 21 elements currently required in an RTA's SSPP could be integrated into the four components of SMS (*i.e.,* safety policy, safety risk management, safety assurance, and safety promotion), while others asserted there is no difference between a fully implemented safety plan and SMS. Some expressed concerns of a significant delay in safety implementation if RTAs must start over with SMS as their means for safety management.

Three commenters requested that FTA provide a clarification of the terms ''sufficient authority,'' ''sufficient resources,'' and ''qualified personnel'' as used in this section. Two commenters asked FTA to publish criteria for determining whether a State's program is compliant with the Federal certification criteria and requirements. Commenters also asked FTA to identify under what circumstances FTA would withhold funds. Other commenters asked FTA to conduct outreach on the SSOA certification criteria and requirements before establishing the formal requirements and criteria for certification. Finally, one commenter asked whether the NPRM's omission of the System Security Plan currently required by 49 CFR 659.21 was intentional.

Agency Response: In this rule and in other actions, FTA has proposed adopting the principles and methods of SMS as the basis for enhancing the safety of public transportation. A number of transit agencies are using SMS principles in their safety plans, and other transit agencies have started the transition to SMS-based safety plans. Thus, it is important that SSOAs have an understanding of an SMS-based approach to safety. However, FTA has determined it is not necessary to include the policy statement related to SMS in the SSO rule. FTA is developing guidance and training to assist SSOAs in building their SMS competencies so that they would be able both to effectively review and approve an SMS-based Agency Safety Plan and oversee their RTA's implementation of SMS.

FTA believes that the more prescriptive 21-point checklist imposed on RTAs through System Safety Program Plans (SSPPs) is no longer needed because SMS will allow agencies to identify and address the risks on that current checklist that are applicable to that agency. One of the many benefits of SMS is that it is flexible; it does not impose a one-size-fits-all methodology. Rather, SMS can be tailored to the mode, size, and complexity of any transit agency in any

operating environment. Simply put, SMS requires a transit agency to identify its own safety risks, and to target its human and financial resources to manage the potential consequences of those risks.

FTA does not agree with the handful of commenters who expressed concern regarding the transition from the existing 21-point SSPP to SMS. As one commenter noted, the 21 points of the SSPP can readily be addressed within the four components of SMS—Safety Management Policy, Safety Risk Management, Safety Assurance, and Safety Promotion.

As stated above, some RTAs are using SMS principles as the basis for their safety programs, and others are making the transition; however, FTA recognizes that the transition to SMS will not be immediate. Thus, FTA will provide both SSOAs and the RTAs they oversee a reasonable time frame in which to implement the new SMS approach. As an RTA develops its flexible, site-specific, and proactive Agency Safety Plan, FTA expects it to do so in cooperation with the SSOA, which will aid in familiarizing the SSOA with the RTA's Agency Safety Plan and help the SSOA oversee its implementation.

With regard to the commenters who sought a clarification or definition of the terms ''sufficient authority,'' ''sufficient resources,'' and ''qualified personnel,'' and what would trigger the withholding of funds, FTA believes that these will be determined on a case-by-case and state-by-state basis. To reiterate, the statute (49 U.S.C. 5329(e)(4)(A)) sets forth the baseline requirements—that an SSOA has the authority to review, approve, oversee, and enforce the implementation of an RTA's safety plan; the authority to conduct investigations; and the resources necessary to do so. With regard to the qualifications of personnel, specifically, FTA's Notice of Proposed Rulemaking for the Safety Certification Training Program, published on December 3, 2015, (80 FR 75639), addresses these concerns, as will the Safety Certification Training Program final rule, which will be published subsequent to this rule for State Safety Oversight.

FTA has made significant efforts to assist the States through webinars, conference calls, workshops, and the availability of technical assistance regarding the criteria and requirements for SSOA certification. FTA has worked closely with the States as they developed certification work plans in support of their grant applications for SSO funds. FTA agrees with the commenters who asked that any updates to the certification criteria be made only following an opportunity to provide comment. Indeed, any subsequent amendments to today's final rule at part 674 will go through the normal regulatory process, which includes notice-and-comment and publication in the **Federal Register**.

With regard to the omission of the System Security Plan from today's rulemaking, the Transportation Security Administration (TSA), an agency of the United States Department of Homeland Security (DHS), has the prerogative and responsibility for all rulemakings on security in public transportation. Specifically, under the Implementing the Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53), and the September 2004 Memorandum of Agreement between DOT and DHS and the September 2005 modal annex between FTA and TSA, DHS is tasked with the responsibility for carrying out a national strategy for public transportation security to minimize security threats and to maximize the ability of public transportation agencies to mitigate damage from terrorist attacks and other major incidents. While this does not preclude RTAs from implementing measures securing their assets, it is no longer the responsibility of the SSOAs to oversee those measures. FTA recognizes, of course, that some of the steps an RTA takes to ensure the personal safety and security of its riders and employees will overlap with steps it takes to secure its system from a terrorist attack; for example, the steps an agency takes are part of a threat and vulnerability assessment. An RTA's expenses for both safety and security will continue to be eligible for Federal reimbursement under 49 U.S.C. Chapter 53.

Section 674.7 Definitions

The NPRM proposed a number of definitions for terms used repeatedly throughout the SSO rule and the other safety programs authorized by 49 U.S.C. 5329.

Comments Received: Forty entities submitted comments on several proposed definitions. For the convenience of the reader, FTA is organizing the comments to specific definitions and its responses in alphabetical order.

''*Accident.''* The previous SSO rule at 49 CFR part 659 did not define the term ''accident,'' although requirements for RTAs to notify SSOAs of accidents were identified at 49 CFR 659.33 (''Accident notification.''). In the NPRM, FTA proposed a definition of ''accident'' that incorporated many of the events specified in 49 CFR 659.33, but FTA proposed replacing the ''two or more individuals transported away from the scene for medical treatment'' notification threshold with any accident causing a ''serious injury,'' which focused on the level of injury incurred, rather on the number of individuals transported away from the scene for medical treatment. As FTA stated in the NPRM, the purpose of this change was to provide better alignment with the nomenclature used by other transportation modes, including the FAA and the NTSB, and to provide clarity during data analysis to identify safety trends.

Many commenters did not agree with the proposed change. Several requested that FTA revert back to the current threshold in 49 CFR 659.33, which they felt is a sufficiently clear, objective threshold for RTAs to determine whether an incident must be reported to the SSOA. Other commenters stated that it would be difficult, if not impossible, to determine if an event met the definition of ''serious injury'' due to medical privacy laws and the inability to obtain such information from hospitals. Some commenters stated that often the extent of one's injuries may not be immediately apparent to RTAs and discovery would likely exceed the 2-hour reporting threshold. One commenter suggested removing ''serious injury'' from the definition and incorporating the terms ''incapacitating injury'' and ''non-incapacitating injury.'' Also, several commenters suggested that FTA limit the NPRM's proposed notification threshold of ''property or equipment damage equal to or greater than $25,000'' to damage to rail transit property, noting that the proposed threshold could include both rail transit and non-rail transit property.

Some commenters expressed concerns regarding the removal of the term ''collision'' from the definition of ''accident,'' noting that under 49 CFR 659.33, collisions at a grade crossing and collisions between two rail transit vehicles or between one rail transit vehicle and a rail transit non-revenue vehicle require notification to the SSOA. Two commenters suggested that the definition of ''accident'' retain the requirement for notifications of grade crossing collisions, regardless of the cost of property or equipment damage.

One commenter suggested that the term ''fatality'' in the definition of ''accident'' include the language in 49 CFR 659.33 that describes a fatality as one that occurs ''at the scene'' or ''within thirty (30) days of a rail transit-related incident.'' Another commenter asked FTA to clarify whether both mainline and non-mainline derailments

were now considered ''accidents,'' noting that 49 CFR 659.33 required notification only of mainline derailments. Finally, one commenter suggested that the definition of ''accident'' be consistent throughout the U.S. Department of Transportation, including both FTA and FRA.

Agency Response: FTA does not agree with the commenters who suggested that the definition of ''accident'' require injuries to two or more people. FTA believes that a serious injury to a single person is of sufficient concern to warrant designation as an ''accident.'' However, ambulance transportation away from the accident may not necessarily be an accurate indicator of the actual gravity of the event, given the tendency of ambulance operators to transport individuals with minor injuries. Furthermore, by limiting the notification requirement to ''serious injuries,'' today's rule will eliminate many of the ''non-serious'' injuries that were reported under 49 CFR part 659 simply because two or more passengers accepted an offer of medical transportation away from an accident scene, regardless of any discernible injury to the passenger. Also, today's final rule will retain the term ''serious injury'' as proposed in the NPRM, bringing FTA's notification standard into conformity with FAA's and the NTSB's thresholds. While FTA acknowledges that it may be difficult to ascertain the precise type of injury due to medical privacy laws and the difficulty in obtaining medical records from hospitals and treatment centers, the nature of an injury is not so important as the need to notify an SSOA of an accident in a timely manner. If an injury initially thought to be ''minor'' turns out to be ''serious,'' or results in a fatality, the RTA should notify the SSOA within two hours of its discovery so that the SSOA may conduct an appropriate follow-up investigation, which may involve the participation of the RTA. In this regard, FTA does not agree with the commenter who suggested removing ''serious injury'' from the definition and incorporating the terms ''incapacitating injury'' and ''non-incapacitating injury,'' since those terms have not been commonly used in the SSO program and the use of those terms would not be consistent with the practice of other USDOT or Federal transportation safety agencies.

With regard to the elimination of $25,000 threshold for property or equipment damage and the inclusion of the term ''collision'' in the definition of ''accident,'' FTA is removing the $25,000 threshold because most collisions involving rail transit vehicles exceed $25,000 in property or equipment damage, and its removal eliminates any need to separate rail transit property from non-rail transit property in making an assessment of damages. FTA is also amending the definition of ''accident'' to include a collision involving a rail transit vehicle regardless of whether that collision occurs at a grade crossing, because any collision or derailment, at any location, is an ''accident'' for purposes of notifying the SSOA, with the SSOA having the discretion to determine the scope of the subsequent investigation. Readers should please see the table clarifying the notification and reporting procedures in a new Appendix A to today's rule. Consistent with the requirement under 49 CFR part 659 to report fatalities occurring within 30 days of an accident, FTA is retaining this timeframe.

''*Accountable Executive.''* The NPRM introduced the concept of an ''Accountable Executive''—the leader at the top of an organization who is ultimately responsible for safety, and offered a definition of the term that is consistent with the historical practice of SMS in other forms of transportation and other industries.

Comments Received: One commenter expressed concern about how the definition of ''Accountable Executive'' would be applied to an SSOA, since an SSOA does not manage an RTA or have control over the capital and human resources of an RTA. The commenter noted that if this title is to apply to SSOA officials, as used in the proposed section 674.27, titled ''State safety program standards,'' the definition needs further explanation.

Agency Response: Under the definition in the proposed section 674.7, the Accountable Executive is identified as the leader of a public transit agency who is ultimately responsible for carrying out the various safety functions of the agency, such as the Transit Asset Management Plan, and the agency's Public Transportation Agency Safety Plan. Under the proposed section 674.27(a)(3), a State's SSO program standard would identify an individual who serves as the ''functional equivalent'' of an Accountable Executive, but the proposed rule did not, and the final rule is not, requiring the SSOA to designate an individual with that formal title. Because of the nature of their role, SSOAs would not need to designate an Accountable Executive. Rather, SSOAs would need to be fully conversant with the requirements of the Agency Safety Plan and clearly demonstrate their capability to oversee and understand an RTA's implementation of those requirements in the RTA's safety plan; as well as have the necessary authority to direct oversight functions, whether that authority rests with in an individual or a board. FTA has revised the final rule at section 674.27(a)(3) accordingly, but has not made any change to the definition of an ''Accountable Executive.''

''*Event.''* The NPRM defined an ''event'' as an ''accident, incident, or occurrence,'' for the purpose of including virtually any type of safety concern.

Comments Received: Several commenters disagreed with FTA's broad definition of ''event,'' asserting that the term is unnecessary, redundant, and confusing. One commenter expressed concern that the proposed definition could reasonably be interpreted to encompass almost everything that occurs in a rail transit system, suggesting instead that the definition be revised to exclude minor instances and ''occurrences'' that do not affect transit operations. Another commenter suggested FTA abandon this complex redefinition process, which is not consistent with terminology used in the transit industry or by the U.S. Department of Homeland Security (DHS). This commenter suggested that accidents and incidents be defined as unplanned happenings and ''event'' be defined as a planned activity, consistent with DHS's usage.

Agency Response: The final rule keeps the proposed definition of ''event.'' The actions required of an RTA or an SSOA under each of the three types of events, however—two-hour notification, thirty-day reporting, and self-monitoring—will continue to differ as described in the definitions of ''accident,'' ''incident,'' and ''occurrence'' as described in Appendix A to the final rule.

While FTA is aware of the DHS terminology that differentiates ''planned'' from ''unplanned'' activities, the definitions in today's final rule will be used consistently not just within 49 CFR part 674, but across FTA's National Public Transportation Safety Plan and its other safety rulemakings. In addition, FTA has adjusted the National Transit Database's (NTD) safety reporting module to reflect these definitions of ''accident,'' ''incident,'' ''occurrence,'' and ''event.'' See Docket FTA–2014–0009 (January 2015).

''*Hazard.''* Given the importance of hazard identification, analysis, tracking and control in ensuring the safe operation of rail transit, the NPRM proposed a definition of ''hazard'' as ''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.'' The proposed definition is substantially similar to the definition of hazard in 49 CFR 659.5.

Comments Received: Several commenters felt that the proposed definition of ''hazard'' was too broad, and that too many items would need to be reported regardless of risk and therefore the rule could be overly burdensome. These commenters thought that it would be impractical to require the reporting of all hazards and incidents to an SSOA, as well as the burden it would place upon the RTA.

Agency Response: FTA is mindful of the reporting burdens for RTAs, thus, the final rule does not require that hazards be reported from the RTA to the SSOA or from the SSOA to FTA, as hazards are unrelated to the focus of today's rule, which requires certain events to be reported and documented. Although a hazard can cause an accident, it is not a reportable event in itself. However, hazard identification and analysis are absolutely critical to risk identification and mitigation; they are the first two steps in the process that help an RTA identify and address safety concerns before those concerns escalate into an accident or incident. FTA fully expects an RTA to implement its internal safety risk management process, including hazard identification and risk management, which are similar to the hazard management programs currently required under 49 CFR 659.19(f), which already requires hazard identification, hazard tracking, and hazard control and elimination.

''*Incident.''* Section 674.5 of the NPRM defined an ''incident'' as an event that exceeds the definition of ''occurrence,'' but does not rise to the level of an ''accident,'' and provided as examples, near misses, close calls, railyard derailments, non-serious injuries, and violations of safety standards.

Comments Received: A number of commenters expressed concern over the broadness of the term ''incident'' and the associated notification reporting burdens. These commenters felt that requiring all incidents to be reported and investigated would create excessive paperwork burdens that would divert scarce SSOA resources and contribute little towards safety.

Notably, one large RTA in the Northeast stated that in 2014, it experienced 1,264 rail incidents, 400 of which were reported to its SSOA. This RTA spent an average of 40 hours per accident/incident investigation, ranging from minor incidents taking less than 8 hours to investigate, to major events that required weeks. Monitoring corrective action plans took an additional number of hours which the RTA did not quantify, but noted that some monitoring activities stretched into years. The RTA noted that its SSOA has access to their database which allows the SSOA to review all 1,264 incidents, and reserves the right to conduct an independent investigation of any incident.

An SSOA from a Western state stated that it currently spends a minimum of 8 hours investigating every incident or accident that has been reported to it pursuant to 49 CFR 659.35. Similarly, an RTA from the Midwest stated that under the current rule, there were six reportable incidents in 2014, but applying the standard proposed in the NPRM would elevate this number to over three hundred. Another RTA from the West Coast claimed that requiring notification of every near-miss could add hundreds of hours of reporting time to each RTA as well as increasing the burdens of the SSOAs which must investigate each report. Likewise, another large transit agency in the Northeast stated that expanding its obligation to report incidents to its SSOA would increase its reporting burden by more than 17 times its current burden.

In the NPRM, FTA asked whether the Final Rule should include a definition of ''near miss'' and ''close call'' for the purpose of incident notification and reporting. In response, several commenters stated that near misses and close calls should not be treated as ''incidents'' because neither results in an injury or property damage. One commenter suggested there be a separate category for near misses and close calls. Another commenter noted, however, that the lack of a common definition would create inconsistencies by allowing RTAs and SSOAs to create their own definitions. One commenter felt that RTAs and SSOAs should have the discretion to define their own locally-developed thresholds. Others recommended the removal of the terms ''near miss'' and ''close call'' altogether, stating there would be far greater safety benefits from implementing a voluntary, non-punitive close call reporting system as recommended by the 2012 TRACS (Transit Advisory Committee for Safety) report, rather than increasing the paperwork burdens for both rail and oversight agencies.

Additionally, several commenters questioned the $25,000 damage threshold separating an accident from an incident, claiming that applying the lower threshold would create an undue burden on RTAs and their SSOAs, overwhelming agencies with minor investigative tasks and paperwork. One RTA stated that it experiences about 10 events a month where property damage does not exceed $25,000, but may result in a service delay, such as a missing third-rail cover board, objects struck by a train, or vandalism and theft. The RTA asked that SSOAs and RTAs be allowed to determine for themselves which incidents should be reported and investigated. Finally, one commenter asked that SSOAs and RTAs be given discretion to establish additional reporting thresholds for incidents beyond the definition contained in this rule.

Agency Response: FTA acknowledges the concerns of commenters who stressed the administrative burdens imposed by the notification and investigation of all incidents; thus, FTA has revised the definition of ''incident'' as well as the requirements of sections 674.33 and 674.35 in the final rule to alleviate some of those burdens. Nevertheless, a definition of incident is essential to an SSOA's oversight of the safety of RTAs. Specifically, FTA agrees with those commenters who suggested removing near misses, close calls, and violations of safety rules and policies from the ''incident'' category because FTA recognizes that these events do not typically result in personal injuries or property damage that would need to be reported to an SSOA. Instead, the final rule is placing these types of events into the definition of ''occurrence'' because they may be indicative of underlying safety risks that need to be collected, tracked, and analyzed by the RTA.

The final rule keeps the NPRM's categorization of non-serious injuries as ''incidents.'' Also, the final rule keeps the current threshold under 49 CFR 659.33 whereby an RTA must notify its SSOA of injuries that result in medical transportation away from the scene. However, rather than retaining the ''two or more individuals'' threshold under 49 CFR 659.33, the triggering event for notification is now one or more individuals, because even non-serious injuries suffered by a passenger or employee are safety events that need to be reported by the RTA to FTA. FTA does not believe that this change will translate to a significant increase in paperwork burdens. Although incidents must be reported, they will not necessarily require investigations by the SSOA, as had been proposed in section 674.35 of the NPRM.

Also, the final rule removes the $25,000 property damage threshold separating incidents from accidents. The

$25,000 figure dates back to the 2005 amendments to 49 CFR part 659 but had limited usefulness for purposes of safety, since even minor collisions routinely exceed that threshold. Instead, in the final rule, the determining factor is a simple operational determination of whether the damage to facilities, equipment, rolling stock, or infrastructure has disrupted the operations of the RTA. Removal of the arbitrary $25,000 threshold will relieve RTA personnel of the need to perform on-the-spot estimates of property damage to determine whether to notify the SSOA of the incident.

With regard to a commenter's question whether an SSOA may establish incident reporting thresholds more strict than those in today's rule, FTA stresses today's rule sets minimum reporting requirements for the SSOA under 49 U.S.C. 5329. If an SSOA wants to establish additional notification requirements, the SSOA may do so, consistent with its authority under state law.

''*Individual.''* The NPRM included a definition of ''individual'' stemming from the definition in the previous rule at 49 CFR 659.5. However, under today's final rule, the term ''individual'' is replaced by the term ''person,'' which is used in the definition of ''accident.''

''*Investigation.''* The NPRM proposed a definition of ''investigation'' as ''the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.'' The proposed definition was substantially similar to 49 CFR 659.5. The dozens of comments received regarding this definition concerned the potential paperwork burden triggered by the obligation to investigate accidents and incidents as proposed in the NPRM, rather than on the substance of the definition itself. Therefore, this definition remains unchanged.

''*National Public Transportation Safety Plan.''* FTA received no comments on this definition, thus the final rule keeps the definition as proposed.

''*NTSB.''* One commenter requested that this acronym be spelled out in the Definitions section, similar to FTA and FRA, thus the final rule does so.

Occurrence. The NPRM defined ''occurrence'' as ''an Event with no injuries, where damage occurs to property or equipment but does not affect transit operations.''

Comments Received: Several commenters suggested that this definition be omitted from the SSO rule because occurrences do not raise the same level of concerns as reportable accidents and incidents, and maintaining records of occurrences is a paperwork burden that serves no productive safety purpose. Some commenters said the definition was ambiguous and confusing as to whether occurrences must be reported to an SSOA and investigated by an SSOA. Many SSOAs who commented on the NPRM cited the administrative burden of tracking thousands of occurrences every year and requested less-burdensome alternatives.

Agency Response: FTA does not agree with those commenters who suggested that there be no definition of ''occurrence.'' FTA also disagrees with the commenter who suggested that ''occurrence'' need not be defined if it need not be reported. FTA believes it is critical to define and identify what type of events would constitute an occurrence, and that tracking occurrences is an essential element of the RTA's safety risk management activities. Specifically, occurrences may be indicative of underlying safety risks that could lead to a reportable ''accident'' or ''incident,'' particularly those that occur on a frequent or repeated basis. FTA encourages RTAs and SSOAs to collect, track, and analyze data on occurrences to develop leading indicators, to prevent the likelihood of future events, and to inform the development of mitigations that may be applied across the public transportation industry. Consistent with the discussion of ''incidents,'' above, FTA is moving close calls, near misses, and violations of a safety standard to the category of ''occurrence'' since they do not give rise to a fatality, injury, or property damage disrupting the operations of the RTA, but are serious enough to warrant heightened attention by both the RTA and its SSOA.

Finally, several commenters had differing views on the definition of ''occurrences'' with regard to property damage, personal injuries, impact on rail transit operations, and the types of vehicles involved. FTA believes the table in Appendix A will help to delineate the differences between ''accidents,'' ''incidents,'' and ''occurrences'' and will contribute towards a common definition of each event.

''*Passenger.''* The NPRM defined a ''passenger'' as ''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,'' which is the longstanding definition of ''passenger'' under 49 CFR 659.5.

Comments Received: FTA received several comments on this definition. Several commenters asked that the definition of ''passenger'' be expanded to include a person waiting to board a train in a station or on a platform. Another asked that the term ''patron'' be added to the SSOA rule, which, under the current SSO annual reporting requirements, is defined as ''an individual waiting for or leaving rail transit at stations, in mezzanines, on stairs, escalators, or elevators, in parking lots, and other transit-controlled property.''

Agency Response: FTA is deleting the definition of ''passenger'' from the SSO rule because it is no longer relevant to the notification and reporting requirements of this rule. Instead, FTA is adding a new definition for ''person,'' which is a more comprehensive term that includes passengers as well as patrons and RTA employees. FTA believes the notification and reporting obligations in section 674.33 of the final rule are broad enough to include anyone involved in an accident or incident occurring on the property of an RTA, whether that person is a passenger, patron, pedestrian, or employee. This approach is consistent with the current reporting program under 49 CFR part 659 and the NTD reporting manual.

''*Public Transportation Safety Certification Training Program.''* Section 5329(e) of Title 49 U.S.C. requires the proper training and certification of state safety oversight personnel, and 49 U.S.C. 5329(c) authorizes a training program for SSO and RTA personnel responsible for safety oversight. The NPRM included a definition of ''Public Transportation Safety Certification Program'' to reference these new requirements.

Comments Received: One commenter recommended adding ''contractors'' to ''employees of public transportation agencies directly responsible for safety oversight'' since many RTAs engage contractors or consultants to aid in the responsibility of safety oversight. Another commenter noted that currently, there are no minimal training requirements of Chief Executive Officers or other top transit agency executives other than the Chief Safety Officers.

Agency Response: The applicability of the training and certification requirements to SSOA personnel and their support contractors has been addressed in FTA's Safety Certification Training Program Interim Provisions (Feb. 27, 2015; 80 FR 10619) and NPRM (Dec. 5, 2015, 80 FR 75639) and will be further refined in the rulemaking for the Public Transportation Safety Certification Training Program.

Insofar as safety training for transit agency executives, FTA noted in its

Safety Certification Training Program NPRM that 49 U.S.C. 5329(c)(1) only contemplates the minimum requirements for Federal and state personnel who conduct safety audits and examinations of public transportation systems, and employees of public transportation agencies who are directly responsible for safety oversight. Thus, this rule does not require that executive management and board members for RTAs take safety training, nor does this rule preclude transit agency leadership from participating in various safety training courses and exercises, and FTA strongly encourages their participation.

''Risk Control.'' The NPRM included a definition of ''risk control,'' but FTA is revising the definition to one of ''Risk Mitigation'' to more accurately reflect the terminology amongst SMS practitioners. There were no significant comments on the NPRM definition.

''Serious Injury.'' One of the more significant changes proposed in the NPRM was the revision of the accident notification requirement from ''injuries requiring immediate medical attention away from the scene for two or more individuals'' to ''one or more persons suffers a serious injury.'' When FTA amended the 49 CFR part 659 rules in 2005, FTA acknowledged that the two-or-more person threshold was intended to capture ''serious events,'' even if the injuries themselves were minor, believing that the accident itself, regardless of the type of injury, warranted notification and investigation. As explained in the NPRM for this rulemaking, however, a definition of ''serious injury'' should align with the nomenclature and thresholds used in other transportation agencies with more extensive safety experience, such as the FAA and the NTSB. Also, a tighter definition of ''serious injury'' would improve data analysis and better identify safety trends.

Comments Received: A number of commenters disagreed with the proposed definition of ''serious injury,'' citing difficulty in determining the precise scope of a person's injuries at the scene of an event; the medical training required to determine whether a person's injuries meet the definition of ''serious;'' the need to monitor an individual's condition for days after an event to determine the seriousness of his or her injuries; and the difficulty in obtaining hospitalization and medical records due to Federal and state medical privacy laws. Several pointed out that the NPRM definition of ''serious injury'' treated bone fractures with the same seriousness as a fatality, thus requiring the same onerous standard of investigation, regardless of indication of fault or negligence on the part of the RTA.

As discussed above under the definition of ''accident,'' two commenters suggested that, instead of ''serious injury,'' the SSO rule use alternative terms such as ''incapacitating injuries'' (*i.e.,* the injury prevents the individual from walking away from the accident scene) and ''non-incapacitating injuries'' (*i.e.,* the injury is readily observable but does not prevent the person from walking away from the scene) as distinguishing factors. Another commenter suggested refining the definition to specify those injuries ''that can be determined by Transit Agency representatives at the site of an event,'' or ''known or observable by the Transit Agency.'' Other commenters suggested that the rule divide ''injuries'' into two categories—serious and non-serious.

Agency Response: FTA respects the views of commenters who would prefer a continuation of reporting and notification thresholds under 49 CFR part 659. In enacting MAP–21, however, Congress made it very clear that public transportation safety cannot proceed with business-as-usual and that FTA, SSOAs, and RTAs must all increase their efforts to improve the safety of public transportation. Towards that goal, FTA will proceed with aligning its accident notification thresholds to conform to the NTSB's, the independent Federal agency charged by Congress with investigating significant accidents in all forms of transportation.

FTA does not expect SSOA or RTA safety personnel to undergo medical training in order to determine whether an injury meets the threshold of ''serious.'' Instead, FTA expects safety personnel to exercise a common sense approach when evaluating injuries. As several commenters pointed out, some injuries may be readily known or observable at the scene of an event that would trigger the two-hour notification window, while other injuries may not be apparent until the person undergoes a medical examination, at which point notification would be required.

Regarding the commenters who suggested that a bone fracture does not have the same urgency of notification as a fatality, FTA recognizes that a bone fracture may not be readily apparent until the person undergoes a more thorough medical examination away from the scene of the accident, which is likely to occur more than two hours after the event. FTA also recognizes that while both a fatality and a serious injury would trigger the notification obligation, the scope of the actual investigation for each would differ, which is addressed in the discussion of section 674.35, ''Investigations,'' below.

FTA appreciates the recommendations from commenters who suggested using ''incapacitating injury'' and ''non-incapacitating injury'' as a means to determine ''serious injuries.'' But as noted above, the goal of this rulemaking is to bring the accident reporting practices into conformity with those of other Federal agencies with safety reporting and investigation procedures, thus this final rule is adopting the FAA and NTSB definition of ''serious injury.'' Finally, insofar as the suggestion that the rule set a definition of ''non-serious injury,'' FTA notes that such a term has not been defined by the NTSB or other Federal transportation safety agencies, and FTA is reluctant to invent such a definition. Although there is no requirement to report injuries that are not serious injuries, FTA encourages RTAs and their SSOAs to work together to determine whether injuries other than ''serious injuries'' should be reported to the SSOA.

''Transit Agency Safety Plan.'' Although FTA received no comment regard it use of this term in the NPRM, FTA is replacing it with ''Public Transportation Agency Safety Plan,'' which is the terminology used by the authorization statute, 49 U.S.C. 5329(d).

Section 674.9 Transition From Previous Requirements for State Safety Oversight

When mandating a strengthened SSO program in MAP–21, Congress recognized the States would need a period of transition in order to enact conforming statutes and regulations, particularly those States whose legislatures meet only part-time or biennially. Congress also recognized that FTA itself would need time to issue implementing rulemakings, and to go through a public notice and comment process. Thus, MAP–21 authorized the statute authorizing the current SSO program, 49 U.S.C. 5330, to remain in effect for three years after FTA promulgates its final rule creating a new SSO program that conforms with 49 U.S.C. 5329(e).

Comments Received: Nearly all of the commenters on this section supported the three-year transition process. However, several argued that the clock should commence only after FTA has issued its entire set of final rules implementing MAP–21's new requirements—the National Public Transportation Safety Plan, the Public Transportation Safety Certification

Training Program, and the Public Transportation Agency Safety Plans. Some asked for a delay so that RTAs and SSOAs would have a more comprehensive view of the new MAP–21 safety program and to ensure consistency, while one state DOT predicted it would need an underlying Federal mandate before its state legislature would enact enabling legislation. Other commenters expressed confusion regarding the language used by FTA in the NPRM, noting that the statute allowed a three-year transition, while the NPRM stated that 49 CFR part 659 would expire immediately upon the effective date of the new rule.

Agency Response: FTA does not agree with those commenters who suggested that the three-year clock not begin until FTA has promulgated all of its safety-related rulemakings. Congress was very clear in section 20030(e) of MAP–21, that 49 U.S.C. 5330 will be repealed three years after the effective date of the final rule issued by the Secretary of Transportation under 49 U.S.C. 5329(e), not after FTA completes the broader totality of rulemakings required under section 5329. Further, nearly all of the changes to the SSO program included in 5329(e) and today's final rule are not dependent on the other requirements of section 5329 and are instead designed to strengthen the SSO program.

FTA notes that the vast majority of states with rail fixed guideway public transportation systems had successfully established SSOAs prior to MAP–21, and expects states to modify their existing SSO programs to comply with 49 U.S.C. 5329(e) without waiting for the other FTA rulemakings to become final. FTA is well aware that many RTAs will not have safety plans compliant with 49 U.S.C. 5329(d)(1) in place for SSOAs to oversee and monitor until FTA promulgates a final rule for Public Transportation Agency Safety Plans, but this comprises only a portion of an SSOA's obligations. Moreover, the safety plans developed by RTAs for compliance with 49 CFR part 659 are expressly acceptable under the relevant statue, 49 U.S.C. 5329(d)(2), until FTA has promulgated a final rule for Public Transportation Agency Safety Plans. During this transition period, FTA expects states to provide their SSOAs with the necessary statutory and regulatory authority to implement MAP–21's requirements, and to remove any administrative and financial conflicts of interest. Once FTA issues the final rule for Public Transportation Agency Safety Plans, SSOAs should have the internal framework in place to oversee an RTA's compliance with its updated safety plan. FTA commends the SSOAs who have made progress towards full compliance, as evidenced by the Certification Work Plans (CWPs) submitted to FTA as part of the SSO Formula Grant Program (see 79 FR 13380, March 10, 2014).

With regard to the expiration date of 49 CFR part 659, the NPRM did not clearly explain the differences between the effective date of a rule and the mandatory compliance date. While rules have an effective date of thirty days after publication in the **Federal Register**, the compliance deadline can take place at a later date, as was the case with the 2005 amendments to the current 49 CFR part 659. Thus, to clarify, today's final rule will have an effective date of thirty days following publication in today's **Federal Register**, but States, SSOAs, and RTAs have a compliance deadline up to three years after the effective date of today's final rule.

FTA is aware, through its review of the CWPs, that some states will need three years following publication of this final rule before becoming fully compliant with the rule, and for that reason, FTA will retain 49 CFR part 659 for those states which have not yet implemented a fully compliant program. Conversely, the new rules at 49 CFR part 674 will serve as the appropriate regulation for those states that have achieved compliance ahead of the three-year deadline.

Subpart B—Role of the State

Section 674.11 State Safety Oversight Program

This section of the NPRM addressed the law, rules, and administrative standards that FTA expected states to enact as the minimum requirements for overseeing the safety of rail fixed guideway public transportation systems in the State; the financial, physical, and human resources necessary to establish and maintain an SSOA; and the system of checks and balances, within state government, that holds an SSOA accountable for its actions.

Comments Received: The majority of commenters to this section noted that the text of the proposed rule is very general; it did not provide specific criteria, definitions, or instructions for determining whether a state's SSO program is in compliance with the Federal standards. Commenters expressed concern that it would be difficult for States to enact enabling legislation without explicit FTA directions for that purpose. Some commenters suggested that FTA provide an SSO program standard or a template, or elaborate on the term ''relevant State law.'' One commenter recommended that the relevant statutes and regulations adopted by states be reviewed and approved by FTA for relevance and applicability.

Some commenters also addressed the human resources requirements of this section, noting that SSOAs are expected to staff up their programs within a limited time frame and with limited resources, particularly with regard to ensuring that SSOA personnel have completed the Safety Certification Training Program. They asked whether FTA would allow individuals with specialized rail safety-related expertise but without the FTA-mandated certifications, such as FRA-certified rail inspectors, to assist SSOAs. Several commenters asked FTA to clarify the principles, methods, and criteria it would use in determining that a state has demonstrated an ''appropriate'' staffing level, and to define the specific education and skills required of qualified SSOA personnel.

Agency Response: With regard to the proposed administrative procedures, the requirements in this section have been drawn directly from the statute, 49 U.S.C. 5329(e). FTA does not agree with those commenters who asked that the rule lay out explicit criteria, definitions, or minimum standards with 49 U.S.C. 5329(e) because the agency wishes to provide as much deference as possible to states to fashion their own legislation for their own needs. FTA recognizes that states must be allowed to follow their own unique procedures in adopting enabling statutes and regulations with minimal Federal interference.

Nevertheless, FTA believes it has addressed most of the concerns of the commenters without any need to amend the text of this rule. Over the past several months, FTA has provided extensive technical assistance to states in developing Certification Work Plans (CWPs) for the revised SSO program. In 2013, FTA reached out to SSOA program managers, providing a template and explaining what would be required in their CWP in order to be eligible for the SSO Formula Grant funds. FTA reviewed the CWPs and their underlying documentation, compared them to the statutory criteria, and engaged in one-on-one technical assistance calls with SSOAs to ensure that their CWPs were adequate to ensure their eligibility to receive the formula grants. In addition, FTA initiated quarterly conference calls with the SSOAs, established regional points of contact for the SSOAs, and in October 2015, hosted a five-day workshop for SSOA program managers to train them on SMS principles and to provide an

opportunity for face-to-face dialogue with FTA staff. FTA believes that technical assistance has helped clarify many of the misunderstandings about FTA's implementation of the SSO program. Indeed, most states are making substantial progress towards meeting the new requirements. FTA will continue to review and evaluate CWPs on a state-by-state basis, and will certify the compliance of each state as it accomplishes all the various elements within its CWP.

With regard to human resources, FTA recognizes that there is a limited pool of certified and knowledgeable individuals who possess the necessary certifications to perform SSO functions. FTA has revised the text of this rule to allow the use of Federal, state, and local experts or the hiring of contractors who are undergoing or who are making progress towards compliance with FTA's Safety Certification Training Program. Individuals who have not completed or are not enrolled in the training program may contribute on an ad hoc basis based on their specialized area of expertise, provided that they are under the supervision of individuals who have received the necessary training and certifications.

FTA declines to establish regulatory standards to determine whether an SSOA's staffing level is ''appropriate.'' Each state is unique in terms of the number of RTAs under its oversight and the resources available to it, and mandating specific staffing levels violates the principles of Federalism. Specifically, Federalism requires that each state be allowed to develop an appropriate level of enforcement authority unique to that state, and FTA is willing to accept flexibility within those approaches, provided that the SSOA possesses the necessary enforcement authority to implement its SSO program.

Section 674.13 Designation of Oversight Agency

This section of the NPRM simply reiterated the statutory requirements for the designation and establishment of an SSOA that are codified at 49 U.S.C. 5329(e)(4)(A)—financial and legal independence; audit, investigation and enforcement authority; safeguards against conflicts of interest between an SSOA and the RTAs under the SSOA's oversight; and an annual report on the safety of each RTA's system to a state's governor, FTA, and to the RTA's board of directors or equivalent entity.

Comments Received: Similar to the concerns raised under the previous section, several commenters stated that FTA needed to promulgate the remaining safety rules under 49 U.S.C. 5329 before a state could designate a SSOA.

One commenter suggested that an SSOA's reports to an RTA's Board of Directors be limited to the years coinciding with triennial audits, using the Triennial Audit Report as the basis for a comprehensive evaluation, while another suggested that the annual report be provided to the General Manager of an RTA instead of the Board of Directors, given that the agency's Chief Safety Officer reports directly to the general manager or CEO rather than to the Board. Another commenter supported submitting the annual report to the Board of Directors, which is consistent with the NTSB's recommendation following its investigation of the June 2009 WMATA Red Line accident.

Agency Response: As stated in the responses in the previous section, the final rule closely follows the text of the statute. FTA allows states maximal flexibility to enact the necessary statutory and regulatory provisions for their own SSO programs. And as noted earlier, states do not need to wait for the remaining FTA rulemakings before designating an SSOA to implement 49 U.S.C. 5329. The system safety program plans developed by RTAs under 49 CFR part 659 remain in effect, and existing SSOAs must continue to provide oversight of those plans. For those states who are establishing a new SSOA or re-designating an SSOA, FTA believes today's rule provides adequate guidance and direction for providing an SSOA with financial and legal independence; the authority to approve, oversee, and enforce a Public Transportation Agency Safety Plan; and adequate investigative and enforcement authority, without the need to wait for FTA to publish the remaining safety rules.

FTA does not agree with the commenters who suggested that SSO reports be issued on a triennial basis or to the General Manager in lieu of the Board of Directors. The direction of 49 U.S.C. 5329 is clear—the reports must be provided ''at least once annually'' and to the ''board of directors or equivalent entity,'' although nothing in today's final rule prevents an SSOA from providing an additional copy to a general manager and anyone else responsible for safety at the RTA.

Section 674.15 Designation of Oversight Agency for Multi-State System

The text of the proposed rule closely followed the statutory process prescribed for safety oversight of an RTA operating across state lines: the states may choose either to apply uniform safety standards and procedures to an RTA through an SSO program standard that complies with 49 U.S.C. 5329 and is approved by the Administrator, or they may choose to designate a single entity that meets the requirements for an SSOA to serve as the oversight agency for that RTA, again through a program approved by the Administrator.

Comments Received: FTA did not receive comments specific to this section.

Agency Response: The proposed section is included in the final rule without change.

Section 674.17 Use of Federal Financial Assistance

The text of the proposed rule set forth the administrative requirements for recipients of the State Safety Oversight Program grants; how the grants may be used for both operational and administrative expenses, including employee training; the formula under which the funds will be apportioned; the maximum Federal share of eligible expenses; and restrictions on the source of the state's matching share.

Comments Received: Several of the commenters to this section questioned the sufficiency of the currently authorized SSO funding levels, stating that they were not enough to offset the incremental costs of a strengthened state safety oversight program. One commenter opined that if Federal grants are insufficient to cover the costs of complying with all of the proposed regulatory requirements, the new rule may result in an overall weakening of state oversight programs, rather than strengthening them.

Other commenters took this opportunity to question FTA's cost calculations, claiming the wage rate used is considerably lower than the average wage rate in their states; consultant costs are expected to be greater than FTA's estimates; training costs will be higher due to increased out-of-state travel; FTA's estimate of labor hours do not adequately account for all the tasks envisioned under this rule, and the cost savings of SMS have not yet been fully demonstrated in the aviation industry. One SSOA expressed a concern that prior to MAP–21, its program was financially underwritten by the rail systems under its jurisdiction, and the SSOA has been unable to secure its state's commitment to provide the 20 percent local match.

Agency Response: FTA appreciates the concerns expressed by commenters that the current levels of Federal financial assistance may be insufficient to support a fully-compliant SSO

program. While FTA recognizes that the allocation of funds may be insufficient in some states to cover the totality of their oversight expenses, the amount of available funds is capped by 49 U.S.C. 5336(h)(4), which authorizes 0.5 percent of the amounts made available to urbanized areas under 49 U.S.C. 5307 to be used for SSOA activities. In FY 2013, this amount totaled $21,945,771, and in FY 2014, $22,293,250. Further, FTA established a formula to distribute the funds in an equitable manner, consistent with the statutory criteria set forth in 49 U.S.C. 5329(e)(6)(B)(i) (see, 79 FR 13380). FTA notes that the Federal matching funds are intended to supplement, not replace, existing state oversight expenditures, and that states should not reduce their expenditures down to the minimum 20 percent local share, particularly if it would result in a diminution or weakening of safety oversight.

In response to concerns from commenters regarding the cost estimations in the NPRM, FTA has revised those costs in the Cost-Benefit Analysis section of today's publication. Regarding the SSOA whose state has not yet committed funding to constitute the local match, FTA will work with that state to establish a local match, noting the severe consequences outlined in sections 674.19 and 674.21, which not only could result in the withholding of SSO grant funds from the SSOA, but also the withholding of FTA grant funds from the entire state.

Section 674.19 Certification of a State Safety Oversight Program

In 49 U.S.C. 5329(e), Congress set the framework for FTA certification of an SSO program; specifically, the mandate that the Administrator make a determination not only whether an SSO program meets the technical requirements of the statute, but whether that SSO program 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.

This section of the proposed rule set forth the requirements and the process for certification of a state's SSO program. Specifically, section 674.19(a) provided that the Administrator must determine whether an SSO program meets the requirements of the statute; section 674.19(b) required the Administrator to issue either a certification or a denial of certification for each state's SSO program; section 674.19(c) provided 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 SSO program 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.

Section 674.19(c) also elaborated on the Administrator's authority to impose financial penalties for non-compliance, highlighting three options: (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 SSO program can be certified; or (3) The Administrator can require all of the rail fixed guideway public transportation systems governed by the SSO program to spend up to 100 percent of their Federal funding under 49 U.S.C. Chapter 53 for ''safety-related improvements'' on their systems, until such time as the SSO program can be certified.

Section 674.19(d) stated that in deciding whether to issue a certification for a state's SSO program, the Administrator will evaluate whether the SSOA has sufficient authority, resources, and expertise to oversee the number, size, and complexity of the RTAs that operate within the state, or will attain the necessary authority, resources, and expertise in accordance with a developmental plan and schedule set forth in a sufficient level of detail in the state's SSO program.

Comments Received: Nearly thirty commenters responded to this section. The majority expressed the belief that FTA needed to define explicit criteria, standards or requirements by which SSO programs will be determined to be ''compliant'' or ''certified.'' Several repeated requests that FTA clarify what constituted ''sufficient authority,'' ''appropriate staffing levels,'' or ''qualified personnel.'' Without this specific information, commenters felt that FTA's enforcement of the rule would be arbitrary and capricious.

Several commenters repeated concerns noted previously that FTA needs to complete all of its safety rulemaking activities before a state or an SSOA can develop a comprehensive and compliant SSO program. These commenters were unwilling to commit to adopting SSO program standards or making costly and time-intensive revisions to their current System Safety Program Standard without knowing whether they would be consistent with FTA's final regulations.

Several commenters focused on the financial penalties associated with non-compliance, stating that withholding funds from transit agencies due to the non-compliance of an oversight agency was excessive and unfair, when it was the state, not the transit agency, that failed to implement a certified SSO program. Others noted that withholding funds from transit agencies because an SSOA failed to obtain certification did nothing to improve the SSOA's ability to develop a compliant SSO program.

Finally, some commenters asked FTA to define a ''safety-related improvement'' as used in the proposed section 674.19(c), with one noting that any infrastructure renewal program could meet this definition because maintaining a ''state of good repair'' is integral to safety.

Agency Response: Certifications of compliance will be based on a particular SSOA's internal readiness to oversee the RTAs within its jurisdiction, using the criteria set forth in the statute and this section of the rule. Similar to FTA's current work plan certifications to determine a state's eligibility to receive matching grant funds from FTA, certifications under this section will also proceed on a case-by-case basis, recognizing the need for flexibility when dealing with a diverse cast of state legislatures, chief executives, constitutional and statutory constructs, and SSO regulations. FTA believes that the information and technical assistance it has provided to the SSOAs under the work plan certifications has been open and transparent, and FTA will continue to provide customized, targeted assistance to each SSOA as appropriate.

With regard to the fairness of withholding funds from transit agencies within a state whose SSOA has not yet been certified by FTA, FTA is legislatively bound to carry out the statutory remedy prescribed by Congress. FTA believes Congress was very clear when it set forth the penalties for a state's inability or unwillingness to establish an SSO program that complied with MAP–21's new requirements, with 49 U.S.C. 5329(e)(7(D)(ii) specifically directing FTA to withhold up to five percent of a state's section 5307 funding for all affected recipients in the state, as an incentive to enlist the participation of local officials in ensuring that the state will provide the SSO with the necessary legal authority and independence and will commit the necessary resources.

FTA declines to provide a definition for a ''safety-related improvement'' in today's rule because the scope and nature of the improvement will be unique and individualized to each situation, based on FTA's review of a particular SSOA and the RTAs

operating within that SSOA's jurisdiction.

Section 674.21 Withholding of Federal Financial Assistance for Noncompliance

This section of the proposed rule provided 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 RTAs that will be affected by the penalty, and such other matters as justice may require.

There is one instance 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 an SSO program approved by the Administrator within three years of the effective date of today's final rule, 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 the final rule for State Safety Oversight within three years after this 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 that is compliant with the regulations.

Comments Received: Comments received to this section were similar to the comments received for the preceding section. Commenters asked for additional clarifications, definitions, and criteria regarding its terms; expressed concerns regarding the unfairness of the statutory penalty due to actions by the state that were beyond their control; and asked FTA to consider alternatives to the termination of funds.

Agency Response: FTA assures transit agencies that any cutoff of Federal funding will not be immediate and without adequate notification. Section 674.19 provides important due process guarantees to the state and potentially affected transit agencies. 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 SSO program 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.

In addition, transit agencies fearing a total and immediate termination of FTA funding should note that section 674.19(c) provides the Administrator with the authority to impose a range of financial penalties as authorized by Congress at 49 U.S.C. 5329(e)(7)(D). 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 SSO program can be certified; or (3) the Administrator can require all of the rail fixed guideway public transportation systems governed by the SSO program to spend up to 100 percent of their Federal funding under 49 U.S.C. Chapter 53 for safety-related improvements on their systems, only until such time as the SSO program can be certified. The appropriate use of each remedy, however, will be determined by FTA on a case-by-case basis.

FTA will make every effort to provide technical assistance to a state prior to terminating funds to transit agencies within that state, but Congress believed that withholding funds from transit agencies would help the state to recognize that public transportation is a shared benefit with shared responsibilities, and that states and their sub-entities must share the burden of ensuring adequate oversight so that transportation is provided in a safe and responsible manner.

Section 674.23 Confidentiality of Information

When FTA first promulgated its State Safety Oversight rule in 1995, FTA recognized that RTAs 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 RTAs to obtain comprehensive, confidential analyses of accidents. 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. . . .'' 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.

The NPRM proposed to clarify, and slightly expand, the rule at 49 CFR 659.11 by specifying that SSOAs and RTAs may withhold investigation reports prepared in accordance with this rule from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report. In addition, the NPRM proposed to 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.''

Comments Received: The majority of commenters expressed concerns whether the proposed language would supersede state public records laws. Some pointed out that FTA's language was insufficient to overcome their state's laws, asking FTA to strengthen protections for confidential information collected by SSOAs and RTAs during the scope of an accident investigation, while others noted that their states already have provided protection for this kind of information.

Agency Response: Unlike NTSB accident reports, which cannot be admitted into evidence or used in civil litigation in a suit for damages arising from an accident, there is no such protection under the SSO program. (See 49 U.S.C. 1154(b) regarding NTSB investigations). Rather, under today's final rule, states may enact state statutes regarding the admissibility into evidence of accident investigation of reports conducted in compliance with this Part, noting that any protections must be based on state, not Federal, law and rules of evidence.

With regard to records in the possession of FTA, FTA will maintain the confidentiality of accident investigations and incident reports to the maximum extent permitted under Federal law, including the various exemptions under the Freedom of Information Act.

Subpart C—State Safety Oversight Agencies

Section 674.25 Role of the State Safety Oversight Agency

This section of the NPRM proposed to continue the requirement of 49 CFR part 659 that the SSOA establish minimum standards for the safety of all RTAs within its oversight jurisdiction, review and approve the Public Transportation

Agency Safety Plans, investigate hazards or risks that threaten the safety of an RTA, and bear primary responsibility for investigating accidents occurring on a rail transit system. This proposed section also allowed 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, but stated that all personnel and contractors employed by an SSOA must comply with the requirements of the Safety Certification Training program.

Comments Received: A number of commenters on this section repeated earlier concerns that they would be unable to implement these requirements until FTA promulgated the other safety rules under MAP–21 and they asked that the deadline for this rule be extended until stakeholders had a comprehensive understanding of the entire safety regulatory structure. Several other commenters suggested that the Public Transportation Agency Safety Plans that SSOAs will oversee follow the existing 21-point SSPP, with its familiar annual updates, approvals, and internal audits.

A significant number of commenters expressed concerns with SSOAs having the primary responsibility for investigating all accidents, incidents, hazards, or risks. Numerous commenters cited the resources and time it would take to investigate every accident and incident, turning SSOAs into investigative agencies rather than oversight agencies, and claiming that the new matching grant funds are inadequate to underwrite this heightened level of activity. One commenter asserted that this investigatory role would require an RTA to lock down an accident scene until an SSOA investigator arrived, which could be severely disruptive to service.

Various commenters offered alternatives to the NPRM's approach. Several proposed that an SSOA be able to accept an RTA's investigatory work, with one asking whether FTA means for an SSOA ''to investigate'' or ''cause to be investigated.'' One suggested that the regulatory language be amended to state that the SSOA is one of the responsible parties to an investigation, while another suggested that the regulatory language be amended to allow SSOAs to delegate their investigative authority, with one more noting that the NPRM did not provide SSOAs with the authority to delegate investigative activities to the RTA.

FTA received several comments regarding the use of contractors and their qualifications. Numerous commenters supported the use of contractors, noting that there was only a limited pool of qualified individuals who could perform the work, but noted that requiring contractor personnel to meet the requirements of the Public Transportation Safety Certification Training Program would impede an SSOA's ability to perform its new duties, particularly if a contractor is being employed to perform a very narrow scope of work.

Agency Response: FTA recognizes that a number of SSOAs will need to revise and reissue their minimum standards for safety of rail fixed guideway public transportation once FTA promulgates the other safety rules required by 49 U.S.C. 5329 to ensure that their state standards are consistent with FTA regulations. FTA, though, notes that SSOAs have been given three years after the effective date of today's final rule in which to modify their procedures to receive, approve and oversee the Public Transportation Agency Safety Plans from RTAs within their jurisdictions. FTA also notes the distinction between process and content—SSOAs must have a process in place by which they will review, approve, and oversee implementation of an RTA's Safety Plan. The exact content of those plans, however, are the responsibility of each RTA, following FTA's publication of the Public Transportation Agency Safety Plan Final Rule. Comments concerning whether the 21-point SSPP should be retained for the agencies overseen by SSOAs are more appropriately addressed in the rulemaking on the Public Transportation Agency Safety Plans and FTA anticipates that SSOAs and any other interested parties will participate in that rulemaking. Further, as noted above, the SSPP required under 49 CFR part 659 will remain in effect until FTA issues a final rule for Public Transportation Agency Safety Plans.

With regard to the primary investigatory role that the NPRM would have imposed upon SSOAs, FTA is making revisions in section 674.35 of the final rule to acknowledge that while an SSOA does not have to investigate all accidents, hazards, and risks, an SSOA does have the primary role for approving and overseeing the investigative processes of an RTA, and has the authority to require the RTA to initiate an investigation. This requires an RTA to address the risks and hazards on its property and to investigate all accidents, but still requires the SSOA to exercise sufficient oversight to ensure that the RTA is meeting its requirements.

In the final rule, FTA is retaining the requirement that an SSOA bears the primary responsibility for investigating any allegation of noncompliance with elements of an RTA's Public Transportation Agency Safety Plan, which is a duty that cannot be delegated to an RTA. In addition, under the final rule, SSOAs have primary responsibility for investigating accidents.

Regarding the use of contractors, FTA recognizes that the pool of qualified individuals with transit rail safety expertise is limited, and that contractors may be called upon to perform specific tasks on behalf of an SSOA, rather than taking on the more extensive duties required of an SSOA. For that reason, FTA is revising the last paragraph of section 674.25 to require personnel and contractors to comply with the Training Certification Program ''as applicable.''

As an administrative note, FTA is removing the proposed paragraph 674.25(b) which simply stated that the basic principles and methods of SMS are located in Appendix A. Because of the wider applicability of SMS to transit agencies and their functions, SMS is being addressed in the National Public Transportation Safety Plan and the Public Transportation Agency Safety Plan rulemaking.

Section 674.27 State Safety Program Standards

This section of the proposed rule required each SSOA to adopt and distribute a written SSO program consistent with the National Public Transportation Safety Plan, the rules for Public Transportation Agency Safety Plans and the Safety Certification Training Program, and the principles and methods of SMS. Under the proposed rule, the SSO program would identify the processes and procedures that govern the activities of the SSOA, addressing the oversight authority of the SSOA; the SSOA's processes for developing its standards; how the SSOA will apply the principles and methods of SMS; the process by which the SSOA will receive and evaluate submissions by an RTA; the triennial audit process; accident notification procedures; investigations; corrective action plans; and annual FTA review of the program standard.

Comments Received: Similar to the comments received on other sections, some commenters cited difficulty in responding to this section until FTA issues all of the safety rules under 49 U.S.C. 5329. Others asked FTA not to judge or evaluate an SSOA's compliance with this section until three years have passed. Some asked FTA to establish a template or to provide explicit criteria

by which FTA would evaluate a State's SSO program standard, while others suggested that an SSOA be allowed to delegate or defer accident investigations to the NTSB, FTA, FRA, Occupational Health and Safety Administration (OSHA), or to the RTA itself.

Agency Response: FTA has responded to these general comments elsewhere in today's publication. The NPRM's proposed rule text was designed to build upon the existing requirements in 49 CFR 659.15 and 659.17. FTA is adopting these requirements in the final rule, albeit with the following changes: (1) The proposed text in paragraph 674.27(a)(3) regarding SMS is being deleted because SMS principles are more applicable to RTAs than an SSOA; (2) the paragraph titled ''Accident and incident notification'' now reflects accidents only; and (3) the paragraph titled ''Investigations'' is amended to reflect the SSOA's role under section 674.35. Also, FTA is making technical edits to insert the correct title of the Public Transportation Agency Safety Plan.

Although FTA appreciates the suggestions that an SSOA be allowed to delegate or defer accident investigations to other Federal agencies such as FTA, FRA, NTSB or OSHA, those agencies do not have the resources to investigate every reportable accident, and FTA does not have the authority to direct them to do so. FTA notes, however, that several of those agencies have independent statutory authority regarding accident investigations, and FTA believes that those agencies will use their investigative resources where and when appropriate.

Section 674.29 Public Transportation Agency Safety Plans: General Requirements

This section of the proposed rule required an SSOA to ensure that an RTA's Public Transportation Agency Safety Plan is compliant with the regulations FTA is promulgating at 49 CFR part 673, and is consistent with the National Public Transportation Safety Plan and the SSO program standard established by the SSOA.

Comments Received: Several commenters requested that FTA identify explicit criteria by which an SSOA would assess whether an RTA is in compliance, claiming that the terms used by the NPRM were ambiguous and would lead to confusion and inconsistencies in the RTA's safety plans. Others requested a return to the existing certification process of an RTA's SSPP under 49 CFR part 659.

Agency Response: One of the most significant changes in state safety oversight under today's rulemaking is the transition from the simple review-and-approval of an RTA's system safety program plan to the more hands-on, proactive role that Congress required for SSOAs in evaluating the effectiveness of an RTA's safety program. This means that SSOAs will need to make determinations based on their own expertise and authority. Rather than working from a set of prescriptive Federal standards, SSOAs must develop their own locally-developed state safety program standards and hold RTAs accountable to those standards. FTA does not agree that the text of the proposed rule is ''ambiguous'' or will lead to ''inconsistencies,'' however, we have made modifications to the regulatory text to more closely align with the statutory requirements for public transportation agency safety plans.

Section 674.31 Triennial Audits: General Requirements

The longstanding rule at 49 CFR 659.29 requires an SSOA to conduct an ''on-site review'' of an RTA's SSPP at least once every three years. The NPRM proposed to continue this timeframe, allowing an SSOA to conduct a complete audit of an RTA's compliance with its Public Transportation Agency Safety Plan at least once every three years, or on an on-going basis over a three-year timeframe. In the preamble of the NPRM, FTA suggested that this schedule be established with the consent of the RTA.

Also, in this section of the proposed rule, at the conclusion of the three-year audit cycle an SSOA would issue a report with findings and recommendations that include, at minimum, an analysis of the effectiveness of the Public Transportation Agency Safety Plan, recommendations for improvements, and a corrective action plan, if necessary. The RTA would be given an opportunity to comment on the findings and recommendations arising from the audit.

Comments Received: Several commenters representing SSOAs expressed concerns that the NPRM's suggestion that the three-year cycle be established in conjunction with the RTA gave too much authority to the subject of the audit and could be perceived as diminishing the authority of the auditor, particularly if FTA expected the auditor to perform an independent review. Others noted that some SSOAs and RTAs have cooperative relationships and have been able to schedule and coordinate their triennial audits. Several commenters asked FTA to determine requirements for the audit cycle—not the SSOA—and when RTA approval is required, with a number of commenters indicating that an SSOA should not be required to obtain an RTA's approval to conduct audits.

Agency Response: FTA agrees with the SSOAs who expressed concerns that RTAs should not have veto power over the scheduling of an SSOA's audit. Although the NPRM expressed optimism that the SSOA and RTA could cooperatively determine the scheduling of the triennial audit to best coordinate RTA resources and schedules, ultimately it is the responsibility of the SSOA, as the oversight agency, to exercise its authority in the manner established in its SSO program standard, and it is not up to the RTA to approve the scheduling or timing of an audit. Therefore, FTA has removed language relating to the RTA ''agreeing'' to the audit schedule but otherwise has adopted the NPRM's language without substantive change.

Section 674.33 Accident notification

This section of the NPRM incorporated the two-hour notification window for certain types of accidents in the longstanding rule at 49 CFR 659.33, with two significant changes. The first change was the addition of the term ''incident'' to the category of notifiable events. The second change was the proposal that FTA be notified along with the SSOA.

As proposed in the ''Definitions'' section of the NPRM, an ''incident'' was defined 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 property damage in an amount equal to or greater than $25,000. This was based on FTA's view that a near miss or close call may be as much or more important as a reporting threshold for detecting hazards and mitigating risk as an accident that results in personal injury or property damage, and that a violation of a safety standard called for notification, regardless of whether the violation led to personal injury or property damage.

FTA also requested simultaneous notification of accidents and incidents as a means of increasing FTA's awareness of these events. FTA was aware of electronic notification systems that a number of RTAs are using to inform multiple parties of accidents, including the notification system that railroads provide to the FRA via the National Response Center, and FTA believed that adding FTA to an automated list of addressees would require minimal effort, noting that the

specific manner of reporting would be determined via an electronic reporting manual that would be issued following publication of this rule.

Comments Received: As discussed in the ''Definitions'' section above, FTA received numerous comments regarding the definition of ''incident'' and the undue burden it would impose if RTAs were required to report all accidents and incidents to their SSOAs. SSOAs who commented did not disagree so much about the notifications it would receive of both accidents and incidents, but rather, on the obligation to investigate every notifiable event, as required in the proposed section 674.35, ''Investigations,'' below.

FTA also received comments regarding the manner of providing simultaneous notification to FTA via the same method used by the RTA to notify its SSOA. Several noted that the notification procedures should be established by regulation, rather than through an electronic reporting manual that can be changed whenever FTA decides to make a change. One commenter suggested using a negotiated rulemaking to gain the approval of SSOAs and RTAs in developing notification and reporting thresholds. A couple of commenters noted that rather than requiring an RTA to send separate notifications to FRA, OSHA, NTSB, the SSOA, and now FTA, FTA should consider utilizing the National Response Center model whereby one notification received from an RTA is delivered simultaneously to the relevant governmental agencies. Finally, one commenter suggested that because this rule is intended to promote greater state diligence and authority in overseeing rail transit safety, the SSOAs should be the parties responsible for notifying FTA.

Agency Response: In response to the concerns raised by the commenters, FTA is deleting ''incidents'' as an event triggering the two-hour notification window in this section. FTA believes that an SSOA's resources are best used by investigating accidents, while incidents will continue to be investigated by the RTA and reported to FTA within 30 days of the event through the National Transit Database (NTD) safety and security reporting module. Noting the heightened safety oversight role for SSOAs under 49 U.S.C. 5329(e) and today's rule, FTA expects SSOAs to be aware of all reportable incidents occurring at RTAs under their oversight, and to that point, FTA will provide SSOAs with electronic access to the NTD to allow them to review NTD accident reports on a regular basis. In addition, States may allow or require SSOAs to request these reports directly from the RTA.

With regard to the FTA notification process, FTA is retaining this requirement in the final rule. Although it was not feasible to prescribe an exact notification process in today's rule, particularly since FTA would have been doing so without the notice and comment process requested by stakeholders, FTA will be working with stakeholders to develop guidance for an electronic notification process. FTA appreciates the concern of the commenter who suggested that the SSOA should have the primary responsibility for notifying FTA, but since it is the RTA that must create the initial notification, FTA believes it is more practicable for the RTA to add FTA to its addressee list rather than requiring the SSOA to do so.

FTA also appreciates the commenters who suggested that FTA utilize the National Reporting Center (NRC) as a means of distributing accident reports to relevant governmental agencies. FTA notes, however, that only commuter railroads and a handful of rail transit agencies covered under the FRA's regulatory jurisdiction are required to submit reports to the FRA's NRC (see 49 CFR 225.3), which excludes the vast majority of RTAs from this requirement. Extending the NRC reporting mandate to all RTAs would also require approval from the White House Office of Management and Budget under the Paperwork Reduction Act, which FTA and FRA are not prepared to pursue at the present.

Section 674.35 Investigations

In enacting MAP–21, Congress decided that both FTA and the States, through their SSOAs, would have concurrent authority to investigate any accident involving the safety of a rail transit vehicle or taking place on the property of an RTA. Because MAP–21 provided SSOAs with the financial resources to conduct investigations, and required professional training and certification of their employees to investigate accidents, this section of the NPRM proposed to require an SSOA to conduct an ''independent investigation'' of any accident or incident that an RTA reports to the SSOA. Also, the proposed rule would have required the SSOA to issue a written report on its investigation of an accident or incident that identified the factors that caused or contributed to the accident or incident, described the SSOA's investigation activities, and set forth a corrective action plan, as necessary or appropriate. The report was to be transmitted to the RTA for review and concurrence, and if an RTA did not concur in an SSOA's investigation report, the SSOA could allow the RTA to submit a written dissent from the report, and the SSOA could include the RTA's dissent in the report, albeit at the discretion of the SSOA.

In addition, this section of the proposed rule would have required all personnel and contractors conducting investigations for an SSOA to be trained to conduct investigations in accordance with the Safety Certification Training program.

Comments Received: All thirty-six commenters to this section disagreed with the proposed language that would require an SSOA to conduct an ''independent investigation'' of any reportable accident or incident. As addressed in previous sections, commenters primarily cited the significant time and resource burden it would place on SSOAs and the inadequacy of the Federal grant funds to cover the incremental costs of conducting these investigations.

Numerous commenters pointed to the adequacy of the investigation process under the existing 49 CFR part 659 process. According to one commenter, SSOAs often delegate the investigatory process to the RTA and accept the conclusions of the RTA's investigation, but only after a rigorous review, comment, and approval period whereupon the SSOA has the ability to reject investigation reports that do not adequately address all of the causal and contributing factors, lack appropriate corrective actions, or suffer from any similar deficiency. Other commenters noted that the SSOA's role is one of oversight, and that while the RTA should bear the responsibility to generate its own accident investigation report, the SSOA should retain the final decision whether an independent accident investigation is warranted.

One commenter expressed dismay that if an RTA did not concur in an SSOA's investigation report, its only recourse was to submit a written dissent, which the SSOA could include at its discretion. The commenter claimed that unless the dissent was included, there would be no record documenting the RTA's attempts to develop an alternative solution.

Agency Response: FTA finds these arguments persuasive. Consistent with the current practice under 49 CFR part 659, SSOAs will retain their oversight role only, and may continue to direct RTAs to conduct initial inspections and investigations. However, under the strengthened SSO regimen of 49 U.S.C. 5329, an SSOA must conduct an independent review of an RTA's

investigative findings. Should an SSOA determine that an RTA's investigation is inadequate, it may conduct its own independent investigation. In addition, FTA may initiate its own investigation under the authority prescribed at 49 U.S.C. 5329(f) and implemented in the proposed Public Transportation Safety Program at 49 CFR part 670.

With regard to the commenter who objected to the SSOA's discretion to exclude an RTA's dissent from the SSOA's investigatory report, FTA recognizes that it is the SSOA, and not the RTA, that is ultimately responsible for the outcome of the investigation, and therefore has the discretion to determine whether a written dissent is relevant to the report.

Section 674.37 Corrective Action Plans

This section of the proposed rule stated that in any instance in which an RTA must develop a corrective action plan (CAP), the SSOA must first review and approve the plan before the RTA carries it out. The rationale was to ensure that the RTA is taking adequate steps to avoid or mitigate the risks and hazards that led to the plan, has adopted a realistic schedule for taking the corrective actions, and identified the persons responsible for taking the corrective actions.

Also the proposed rule required the RTA to periodically report its progress in carrying out a corrective action plan, and authorized the SSOA to monitor the RTA's progress through unannounced, on-site inspections, or any other means the SSOA deemed necessary or appropriate. Additionally, in any instance in which the NTSB had conducted an investigation, an SSOA could evaluate whether the NTSB's findings and recommendations warranted a corrective action plan by the RTA, and if so, the SSOA had the authority to order the RTA to develop and carry out a corrective action plan.

Comments Received: FTA received numerous comments on this section of the NPRM. Most commenters agreed that it should be the responsibility of the RTA, and not the SSOA, to develop a CAP. Rail transit agencies are more knowledgeable about their systems, and are therefore better suited for developing CAPs, which would then be submitted to the SSOA for their review and approval. One SSOA noted the positive relationship it has with its RTA in which the RTA develops a CAP and shares it with the SSOA, with both parties working collaboratively to address any concerns that arise.

A number of commenters expressed concerns with the proposal that an SSOA review and approve a CAP before an RTA can begin its implementation. They felt this would not make sense where the RTA discovers an imminent hazard or risk, or a potential catastrophic event that required immediate corrective action that should not wait for a time-intensive approval process.

Several commenters noted that it would be problematic for an SSOA to conduct unannounced on-site inspections of an RTA during the course of monitoring implementation of a CAP because of safety rules at the RTA that might require escorts in hazardous areas.

Agency Response: FTA agrees with those commenters who characterized CAPs as a joint effort to be developed in a collaborative manner, particularly since both an SSOA and an RTA have a shared and critical interest in safety. FTA agrees with commenters that an RTA should be given the opportunity to present a CAP to an SSOA for its review and approval, particularly since the RTA is most familiar with the risks and hazards within its system. While FTA does not believe it is the responsibility of the SSOA to develop CAPs for an RTA, ultimately it is the responsibility of the SSOA, as the oversight agency, to ensure that RTAs are developing and implementing appropriate CAPs.

With regard to the pre-approval process, FTA agrees with those commenters who described the impracticality of awaiting SSOA approval of a CAP to address an immediate or imminent risk or hazard, and FTA is modifying the language in section 674.37(a) of the final rule accordingly.

With regard to the commenters who raised safety concerns regarding unannounced, unplanned on-site inspections, FTA acknowledges that this requirement does not override an RTA's own safety policies and procedures, particularly where SSOA staff may want to enter trackways and other potentially hazardous areas. FTA strongly encourages SSOAs to ensure that their personnel conducting the inspections have completed the necessary qualifications and training, attended the requisite safety briefings, and possess the appropriate safety equipment prior to engaging in a track inspections or similar activity, which are part of the qualifications required for SSOA personnel addressed in subsection 674.11(e) of the final rule.

Section 674.39 State Safety Oversight Agency Annual Reporting to FTA

This section of the proposed rule was based on the 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 is 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 RTA's progress in carrying out any CAPs 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 Public Transportation Agency Safety Plans during the preceding year.

Comments Received: Six commenters responded to this section, with one indicating that a publicly available report would be useful for annual review, discussion, and training within an RTA. Conversely, some commenters questioned the need for FTA to expand reporting requirements to include ''incidents'' such as safety rule violations, and stated the annual reports would do little to assist FTA, the State, and the RTA's board of directors in assessing the functional safety of an RTA. One commenter asked if FTA would allow electronic submission of the reports, with another suggesting FTA improve its existing online annual reporting system for the National Transit Database.

Agency Response: FTA agrees with the commenter who views the annual reports as useful. FTA does not agree with the commenter who questions the need for additional reporting, however, MAP–21 calls on FTA, SSOAs, and RTAs to establish a more vigorous and extensive safety program. Tracking ''incidents'' as leading indicators of potential safety hazards is a vital component of the stronger safety program under 49 U.S.C. 5329. Although FTA appreciates the suggestions from commenters regarding improvements to FTA's electronic submissions portal, those comments do not require amendments to the proposed text. Therefore, FTA is adopting the proposed rule text without substantive change.

Section 674.41 Conflicts of Interest

The proposed subsection 674.41(a) incorporated 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 (*i.e.,* new construction) 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).

The proposed subsection 674.41(b) would fundamentally change the current rule 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, the proposed subsection 674.41(c) would make it clear that a contractor may not provide its services to both an SSOA and an RTA under the oversight of that SSOA. There is no waiver available with respect to this particular requirement.

Comments Received: The commenters responding to this section generally agreed that rail transit safety is highly specialized, and is problematic to implement, given that there are very few contractors available with the skill and expertise to assist either transit agencies or SSOAs with the program. One of the commenters stated that the proposed prohibition on conflicts of interest is not supported by 49 U.S.C. 5329 and suggested that FTA withdraw these prohibitions. Another recommended that the final rule make clear that the SSOA may request a waiver from this requirement, given the broad number of consultants employed by an RTA under its jurisdiction. One commenter suggested that the rule specify a minimum requirement for an SSOA to verify a contractor is not providing services to both an SSOA and an RTA, noting there is no regulatory requirement or means established for the SSOA to be made aware of the contractors providing services to the RTAs it oversees to ensure compliance with this requirement.

One commenter asked whether an SSOA will be able to use a consultant previously employed by an RTA to assist with the development of its program standard, while another recommended that FTA add a new subsection that would prohibit an SSOA from employing former RTA personnel to oversee that transit agency.

Agency Response: FTA is aware there is a small number of consultants in the field of rail transit safety. Given the uniqueness of the market, SSOAs may have difficulty finding consultants who are not also employed by RTAs. Although 49 U.S.C. 5329 does not expressly prohibit a conflict of interest for consulting contractors, the longstanding rule at 49 CFR 659.41 currently states that the SSOA shall prohibit a party or entity from providing services to both the SSOA and the RTA, if the state recognizes a conflict of interest. FTA notes that SSOAs and RTAs have been able to comply with 49 CFR 659.41 without the need to seek a waiver or otherwise being hindered in their ability to carry out their respective duties. However, FTA is also aware of the growth of large, multi-faceted consultancy firms that are capable of providing services to both SSOAs and RTAs. Thus, FTA is adding a waiver provision to the final rule at 674.41(c), similar to that in 674.41(a) and (b), which allows the Administrator to waive a consultant's conflict of interest if the SSOA can demonstrate adequate administrative and legal separation between a contractor employed by an SSOA and an RTA.

With respect to the suggestion to prohibit an SSOA from employing former RTA personnel to oversee that system, FTA believes that is a matter for the RTA, as an employer, to establish as a term and condition of that employee's post-employment restrictions, noting the views from commenters regarding the lack of trained safety personnel capable of carrying out rail transit safety oversight responsibilities. It is not feasible for FTA to establish a means whereby an SSOA could determine whether a consulting contractor is already providing services to an RTA within that SSOA's jurisdiction. Nevertheless, FTA believes that the SSOA can readily determine whether a conflict exists through the SSOA's contracting or bidding process, in which a contractor must disclose any potential conflicts of interest.

General: Economic Burden

Comment Summary: FTA received six comments regarding the NPRM's economic burden estimates. Several commenters claimed that FTA had underestimated the level of burden due to the increased oversight requirements, in particular the lack of funding for the additional requirements; omission of oversight activities; the added burden of reporting and data management, and an underestimate of labor hours and cost.

One commenter estimated the cost of implementing the proposed rule for their transit agency for the first year, noting that this cost would not be eligible for the capital grant funding assistance provided by FTA, thereby burdening local funding partners with an unfunded mandate instead. Another respondent commented on a number of omitted oversight tasks that would be detrimental to the SSOA's ability to implement the minimum requirements of the proposed SSO program, but did not specify what they were.

Two commenters mentioned the increased burden of additional notifications, investigations and reporting requirements resulting from broadened definitions of accidents, incidents and occurrences, without potential increase in safety benefits. Another commenter noted the additional costs of data collection, management and analysis, a cornerstone of implementing SMS. While the RTA currently collects this data, it is not all on the same data systems or on compatible data systems. The RTA would need to develop data systems and analytical tools to meet the requirements of other safety rules still pending, making it difficult to know the cost of the rule.

One commenter said that the labor hours and costs were grossly underestimated, despite which the estimated costs show a four-fold increase over current costs. Also, they noted that other rules will further change the current rail safety program rule (49 CFR part 659) requirements.

FTA Response: It is difficult for FTA to respond to RTA cost estimates of the likely burden of the new proposed rule without knowledge of specific data or knowing what the additional burdens would be if they are not specified. The requirements of the SSO rule pertain to responsibilities that an SSOA will carry out and only slightly impact the RTAs through additional reporting and investigations. The additional economic cost to the RTAs is not expected to be significant and MAP–21 authorized FTA to provide supplemental funding to SSOAs to offset their oversight expenses.

In response to the comments to the NPRM, FTA has undertaken the following actions that will reduce the economic burden estimates of the proposed final SSO rule. First, RTAs

will now only be required to report incidents that affect the operations of the RTA. This means near misses/close calls or safety rule and policy violations are no longer required to be reported to the SSOA or FTA, eliminating the cost of conducting an investigation. However, RTAs are still required to collect this information and make it available to SSOAs or FTA during an investigation or audit to reduce recurrences and support the practice of SMS. The reduction in the number of injuries triggering the accident notification threshold from two individuals down to one person could increase the number of accidents reported by about 7,000 incidents per year, but redefining ''accident'' to include only serious injuries is likely to reduce the number of overall events triggering notification and a subsequent investigation. Based on an FTA study on the cost of reporting to NTD, the new requirements will not significantly increase reporting costs for agencies, likely less than a few thousand dollars across the industry in the first year, and half of that in subsequent years. Similarly, the additional accidents that must be investigated under the new definitions will not be too burdensome since they will require a lower level of investigation effort than the more serious incidents involving fatalities and derailments, likely less than $100,000 a year for the RTAs and SSOAs.

FTA recognizes that relevant safety information may be stored electronically and require investment in data systems to better analyze the data to support SMS practices. SMS is mentioned by reference in the proposed rule since SSOAs will be responsible for ensuring that SMS principles are adopted into the transit agency safety plans and practiced to improve safety performance. The full cost of implementing SMS principles will be included in the Public Transportation Agency Safety Rule. Similarly, the costs of training are included in the Public Transportation Safety Certification Training Program.

FTA acknowledges that the labor costs were underestimated in the NPRM since it did not include full labor costs. Consequently, the labor costs have been revised to include a 56 percent allowance for employee fringe benefits based on Bureau of Labor Statistics data for 2014. In addition, the labor cost for investigations has also been revised to reflect a higher cost for this specialty, and the numbers for labor hours for investigations have also been revised based on comments received through the NPRM. The economic burden estimates for the final rule are now revised to reflect the redefined role of the SSOA in accident investigations.

Appendix A: Safety Management Systems (SMS) Framework

FTA is removing the SMS Appendix that appeared as Appendix A in the NPRM and, instead, is republishing it in the proposed Public Transportation National Safety Plan. FTA is replacing Appendix A with a table addressing the notification and reporting requirements for accidents, incidents, and occurrences; and providing representative examples of each. FTA has published the SMS Framework at: *http://www.fta.dot.gov/documents/FTA_SMS_Framework.pdf,* and interested stakeholders have an additional opportunity to provide comment through the National Public Transportation Safety Plan docket (FTA–2015–0017).

IV. Rulemaking Analyses and Notices

All comments received on or before the close of business on the comment closing date indicated above were considered and are available for examination in the docket at the above address.

Executive Orders 13563 and 12866; USDOT 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. In addition, FTA is required by 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 non-significant regulatory action within the meaning of Executive Order 12866 and is non-significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. FTA determined that this final rule is not economically significant because it will not result in an effect on the economy of $100 million or more. The proposals set forth in today's rule 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.

Existing 49 CFR Part 659 Program Requirements and Activities

As stated in the Background section above, this rule replaces a set of regulations that have been in place since December 27, 1995, and codified at 49 CFR part 659. As such, this rule applies to a discrete subsection of the public transportation industry—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 FRA; the states in which those rail systems operate; and the SSOAs that exercise oversight over the safety of those rail systems.

Through the implementation of 49 CFR part 659, the states, SSOAs, and RTAs affected by 49 U.S.C. 5329(e) already engage in core activities that address many of this rule's requirements. In practical terms, many of the changes required by this rule 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 of the rule are therefore presented as the difference between the costs of SSOA and RTA activities as required under the final rule, less the costs of activities under the current program (49 CFR part 659).

Costs to States of Implementing 49 CFR Part 659, Based on 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 RTAs 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 108,484 total hours per year implementing 49 CFR part 659 requirements. While these hours average out to roughly 3,774 per state per year, there is wide variation across the states in terms of the total level of effort devoted to compliance with 49 CFR part 659. Some states, such as California, oversee multiple RTAs with two or more full-time equivalents (FTEs) devoted to each system. Most states covered by 49 CFR part 659, however, have one rail fixed guideway system and devote between 0.5 and 1 FTEs per year to implementing 49 CFR part 659 requirements for that system, supplemented by contractor resources for major activities, such as triennial reviews and accident investigations.

The table below illustrates the break-down of activities and labor hours

currently expended to implement 49 CFR part 659 by states and SSOAs. In order to facilitate comparison with today's rule, the table uses activities required under 49 CFR part 674. Readers should note that some activities reflect a zero dollar cost because they were not required under 49 CFR part 659. Costs per hour are based on the 2014 Bureau of Labor Statistics (BLS) average wage rate of $44.47 per hour for state and local government operations managers, including a load factor for fringe benefits [1] that brings the total loaded cost per hour to $69.37. Given the special training required for accident investigators, a separate wage rate of $65 per hour is used for investigators, which yields a total loaded cost of $101.40 per hour when the same fringe benefit adjustment is made. The level of effort equates to an annual cost of approximately $7.7 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 System Safety Program Standard for a state implementing 49 CFR part 659. These costs are listed to reflect the reality that new states and RTAs 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 RTAs to 28 SSOAs and 48 RTAs. However, for calculation purposes, non-recurring costs of existing activities are considered sunk costs.

BASELINE: ANNUAL SSOA ACTIVITY TO IMPLEMENT REQUIREMENTS UNDER 49 CFR PART 659

[Mapped to provisions of proposed rule]

State oversight agency activity	Labor hours	Total cost
• Explicit Acknowledgement of State Responsibility to Oversee Safety of Rail Transit Agencies in Engineering, Construction and Operations *	0	$0
• Demonstrate Authority to Adopt and Enforce State and Federal Regulations *	0	0
• Demonstrate Adequate/Appropriate Staffing Level *	0	0
• Demonstrate Qualification and Certification of Staff *	0	0
• Demonstrate by Law Prohibition against Receiving Funding from Rail Transit Agency *	0	0
§ 674.13 Designation of oversight agency:		
• Legal and Financial Independence Procedures and Disclosures *	0	0
• Annual Updates and Legal and Financial Independence Disclosures	0	0
• Documentation of No Provision of Transit Service	0	0
• Documentation of No Employment for Personnel Administering Rail Transit Programs	0	0
• Establish and Document Authority to Review, Approve, Oversee, and Enforce Agency Safety Plan *	0	0
• Establish and Document Investigative and Enforcement Authority *	0	0
§ 674.15 Designation of oversight agency for multi-state system	0	0
§ 674.17 Use of Federal financial assistance:		
• Identifying and Providing Appropriate Match for Grant Program *	0	0
• SSO Grant Management and Reporting Activities	0	0
§ 674.19 Certification of a State Safety Oversight Program:		
• Certification Pre-Submittal Documentation to FTA	0	0
• Work Plan and Quarterly Updates to FTA	0	0
• Initial Certification Documentation	2,860	198,407
• Final Certification Documentation	0	0
• Maintenance of Annual Certification	0	0
§ 674.21 Withholding of Federal financial assistance for noncompliance	0	0
§ 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
§ 674.25 Role of the State safety oversight agency:		
• Establish minimum standards for the safety of rail transit agencies *	0	0
• Update minimum standards as needed or required	0	0
• Review and Approve Agency Safety Plan (§ 674.29 Public Transportation Agency Safety Plans: General requirements)	3,840	266,393
• Review and Approve Supporting and Referenced Procedures	3,072	213,114
• Review and Approve Annual Updates to Agency Safety Plan and Supporting and/or Referenced Procedures	3,072	213,114
• Oversee the Transit Agency's execution of its Public Transportation Agency Safety Plan	8,448	586,065
• Enforce the execution of a Public Transportation Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate	0	0
• Ensure that a Public Transportation 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
• Investigate any hazard or risk that threatens the safety of a Rail Transit Agency	19,200	1,331,965
• Investigate any allegation of noncompliance with a Public Transportation Agency Safety Plan	0	0
• Exert primary responsibility to investigate each Rail Transit Agency accident	0	0
• Enter into agreements with contractors	0	0
• Comply with the requirements of the Public Transportation Agency Safety Certification Training Program	3,840	266,393
§ 674.27 State safety program standards:		

[1] BLS data shows that wages are 64.1 percent of total compensation costs while benefits are 35.9 percent. This is based on an employer cost for employee compensation BLS News Release from September 2013 (*http://www.bls.gov/news.release/pdf/ecec.pdf*). Therefore, to derive the total compensation costs based on wages, one must factor wages by 1.56 (64.1 + 35.9/64.1). Benefits included in this adjustment include paid leave, supplemental pay, insurance, retirement and savings, and legally required benefits such as social security and Medicare.

BASELINE: ANNUAL SSOA ACTIVITY TO IMPLEMENT REQUIREMENTS UNDER 49 CFR PART 659—Continued

[Mapped to provisions of proposed rule]

State oversight agency activity	Labor hours	Total cost
• Develop and adopt program standard *	1,400	97,122
• Develop and adopt program procedures *	1,400	97,122
• Develop and adopt Safety Management Systems oversight principles and oversight methods *	0	0
• Review and update program standard and procedures	2,912	202,015
§ 674.31 Triennial audits: general requirements:		
• Conduct Three Year Audit	9,216	639,343
• Document Results and Findings	13,440	932,376
§ 674.33 Notifications: Accidents and other incidents:		
• Receive and track notification of accidents	0	0
• Report to FTA	0	0
§ 674.35 Investigations:		
• Prepare Accident Investigation Report	5,376	545,126
• Review, Approve and/or Adopt Accident Investigation Reports	6,144	623,002
§ 674.37 Corrective action plans	15,360	1,065,572
§ 674.39 State Safety Oversight Agency annual reporting to FTA	3,528	244,749
§ 674.41 Conflicts of interest	0	0
Travel	5,376	372,950
Total Recurring Hours and Costs	*105,684*	7,700,586
Total Non-recurring Hours and Costs	*2,800*	*$194,245*

* Non-recurring cost.

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

Based on information collected from SSOAs in annual reports and previous assessments conducted by the Government Accountability Office and the NTSB, FTA has also established the level of effort required to implement 49 CFR part 659 requirements for the 48 RTAs covered by the regulation. Based on this data, FTA has determined that each year, RTAs expend approximately 156,668 hours implementing relevant 49 CFR part 659 requirements.

While these hours average out to approximately 3,264 per RTA per year, there is variation in the rail transit industry based on the size of rail fixed guideway systems. The nation's five largest RTAs each employ between 6 and 15 full-time equivalents who work exclusively on 49 CFR part 659 activities. Most of the remaining RTAs devote between 0.5 and 2 FTEs to implement 49 CFR part 659 activities. Major activities performed by the RTAs 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.

Using the same 2014 BLS wage data and fringe adjustment as above (for a total loaded rate of $69.37 for staff time and $101.40 for investigations), FTA has determined that the rail transit industry spends about $11.8 million per year to implement the 49 CFR part 659 requirements nationwide. FTA's table below reflects non-recurring costs required for new RTAs covered by 49 CFR part 659, and for existing RTAs to address new extensions and capital projects, once they become operational, as averaged over the last three years.

BASELINE: ANNUAL RAIL TRANSIT AGENCY ACTIVITY TO IMPLEMENT REQUIREMENTS UNDER 49 CFR PART 659

[Mapped to provisions of proposed rule]

Rail transit agency activity	Labor hours	Cost
Conduct accident investigations	30,000	$3,042,000
Prepare accident investigation reports	19,168	1,329,745
Investigate unacceptable hazardous conditions	14,030	973,306
Prepare unacceptable hazardous condition reports	12,032	834,698
Implement hazard management process	32,312	2,241,587
Prepare and submit corrective action plans	19,090	1,324,334
Coordinate hazard management program activities with state oversight	23,848	1,654,412
Maintain safety data	3,570	247,662
Make submissions to state oversight agency	2,618	181,619
Total Recurring Hours and Costs	*156,668*	*11,829,364*
Total Non-recurring Hours and Costs	*0*	*0*

Limitations Under the Current Program

Based on the assessment provided in the two tables above, collectively the States, the SSOAs and the RTAs expend approximately 262,000 labor hours or $19.5 million in recurring costs 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 over the last decade. As discussed in the preamble to the NPRM, the rail transit industry remains vulnerable to catastrophic events.

Since 2004, the NTSB has investigated (or preliminarily investigated) 19 major rail transit accidents, and has issued 25 safety recommendations to FTA, including six 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 an RTA's operating procedure. The NTSB also identified the lack of a strong safety culture and a lack of adequate oversight both by the RTAs' SSOAs and FTA. Deficiencies in oversight—of the kind being addressed by this rulemaking—were specifically identified as a contributing factor for 5 of the 19 major accidents. As a result, the NTSB 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 RTAs 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 RTAs on safety oversight activities falls considerably below one percent of the roughly $4 billion that FTA awards to RTAs each year. A review of safety programs administered by other U.S. DOT modal administrations, such as the FRA, the Federal Highway Administration (FHWA), the Federal Motor Carrier Safety Administration (FMCSA), and the Federal Aviation Administration (FAA), demonstrates that at least one percent of the Federal investment is typically devoted to safety oversight activities and programs in most other related modes of transportation. Other transportation 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 RTAs 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 address some of these challenges through the institution of formal asset management programs.

In addition, this rule also implements the agency's decision to adopt the framework and principles of SMS. This decision was preliminarily communicated in a May 13, 2013, ''Dear Colleague'' letter to the public transportation industry. FTA's incorporation of SMS in this rule and in the subsequent Public Transportation Agency Safety Plan rule will allow SSOAs and RTAs 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 RTAs in engineering and construction, as well as in revenue service. This requirement increases the number of states subject to the SSO regulations from 28 to 30, and increases the number of RTAs from 48 to 60 nationwide.

MAP–21 SSO Grant Program—Costs to States

The statutory changes to the SSO program 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 SSO programs, 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 SSO activities for Federal Fiscal Year 2013, and $22,293,250 for Federal Fiscal Year 2014. 46 FR 13380. For purposes of cost-benefit analysis, this funding is a transfer and is excluded from the calculations.

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 program authorized at 49 U.S.C. 5329(e) and required by today's final rule. Readers should note that the 49 CFR part 659 labor hours and costs reflect 28 SSOAs and 48 RTAs, while the labor hours and costs under today's rule reflect 30 SSOAs and 60 RTAs. As discussed above, new definitions in 49 U.S.C. 5329 expand state safety oversight requirements to include RTAs in construction and engineering phases of development.

Labor estimates for the activities in this rule are 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 Conference Report accompanying 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 significant increase in the level of oversight activity performed to implement today's rule. Through the SSO grant program, this

additional oversight activity will be funded, thus resulting in little or no additional cost to the states.

COMPARISON TABLE—COSTS TO STATE SAFETY OVERSIGHT AGENCIES

State oversight agency activity	Current labor hours	Current cost	Proposed labor hours	Proposed 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	1,200	$83,248
• Demonstrate Authority to Adopt and Enforce State and Federal Regulations *	0	0	1,200	83,248
• Demonstrate Adequate/Appropriate Staffing Level *	0	0	3,000	208,120
• Demonstrate Qualification and Certification of Staff *	0	0	3,000	208,120
• Demonstrate by Law Prohibition against Receiving Funding from Rail Transit Agency *	0	0	600	41,624
§ 674.13 Designation of oversight agency:				
• Legal and Financial Independence Procedures and Disclosures *	0	0	2,400	166,496
• Annual Updates and Legal and Financial Independence Disclosures	0	0	600	41,624
• Documentation of No Provision of Transit Service	0	0	60	4,162
• Documentation of No Employment for Personnel Administering Rail Transit Programs	0	0	60	4,162
• Establish and Document Authority to Review, Approve, Oversee, and Enforce Agency Safety Plan *	0	0	30,000	2,081,196
• Establish and Document Investigative and Enforcement Authority *	0	0	30,000	2,081,196
§ 674.15 Designation of oversight agency for multi-state system	0	0	3,000	208,120
§ 674.17 Use of Federal financial assistance:				
• Identifying and Providing Appropriate Match for Grant Program *	0	0	6,000	416,239
• SSO Grant Management and Reporting Activities	0	0	3,000	208,120
§ 674.19 Certification of a State Safety Oversight Program:				
• Certification Pre-Submittal Documentation to FTA	0	0	2,400	166,496
• Work Plan and Quarterly Updates to FTA	0	0	3,000	208,120
• Initial Certification Documentation	2,860	198,407	300	20,812
• Final Certification Documentation	0	0	600	41,624
• Maintenance of Annual Certification	0	0	600	41,624
§ 674.21 Withholding of Federal financial assistance for noncompliance	0	0	0	0
§ 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	3,000	208,120
§ 674.25 Role of the State safety oversight agency:				
• Establish minimum standards for the safety of rail transit agencies *	0	0	30,000	2,081,196
• Update minimum standards as needed or required	0	0	6,000	416,239
• Review and approve Agency Safety Plan (§ 674.29 Public Transportation Agency Safety Plans: general requirements)	3,840	266,393	9,600	665,983
• Review and Approve Supporting and Referenced Procedures	3,072	213,114	9,600	665,983
• Review and Approve Annual Updates to Agency Safety Plan and Supporting and/or Referenced Procedures	3,072	213,114	4,800	332,991
• Oversee the Rail Transit Agency's execution of its Public Transportation Agency Safety Plan	8,448	586,065	60,000	4,162,392
• Enforce the execution of a Public Transportation Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate	0	0	1,200	83,248
• Ensure that a Public Transportation 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	1,200	83,248
• Investigate any hazard or risk that threatens the safety of a Rail Transit Agency	19,200	1,331,965	60,000	4,162,392
• Investigate any allegation of noncompliance with a Public Transportation Agency Safety Plan	0	0	0	0
• Exert primary responsibility to investigate each Rail Transit Agency accident	0	0	0	0
• Enter into agreements with contractors	0	0	6,000	416,239
• Comply with the requirements of the Public Transportation Agency Safety Certification Training Program	3,840	266,393	24,000	1,664,957
§ 674.27 State safety program standards:				
• Develop and adopt program standard *	1,400	97,122	6,000	416,239
• Develop and adopt program procedures *	1,400	97,122	6,000	416,239
• Develop and adopt Safety Management Systems oversight principles and oversight methods *	0	0	6,000	416,239
• Review and update program standard and procedures	2,912	202,015	600	41,624
§ 674.31 Triennial audits: General requirements:				
• Conduct Three Year Audit	9,216	639,343	36,000	2,497,435
• Document Results and Findings	13,440	932,376	12,000	832,478

COMPARISON TABLE—COSTS TO STATE SAFETY OVERSIGHT AGENCIES—Continued

State oversight agency activity	Current labor hours	Current cost	Proposed labor hours	Proposed cost
§ 674.33 Notifications: Accidents and other incidents:				
• Receive and track notification of accidents	0	0	1,000	69,373
• Report to FTA	0	0	1,000	69,373
§ 674.35 Investigations:				
• Prepare Accident Investigation Report	5,376	545,126	16,743	1,697,704
• Review, Approve and/or Adopt Accident Investigation Reports	6,144	623,002	7,680	778,752
§ 674.37 Corrective action plans	15,360	1,065,572	18,000	1,248,718
§ 674.39 State Safety Oversight Agency annual reporting to FTA	3,528	244,749	2,400	166,496
§ 674.41 Conflicts of interest	0	0	600	41,624
Travel, where not included with other items	5,376	372,950	1,200	83,248
Total Recurring Hours and Costs	*105,684*	7,700,586	*294,443*	*21,208,607*
Total Non-recurring Hours and Costs	*2,800*	*194,245*	*127,200*	*8,824,271*

* Non-recurring cost.

MAP–21 SSO Grant Program—Costs to Rail Transit Agencies

As discussed above, this NPRM implements the framework and principles of SMS. The costs included in the table below reflect FTA's estimation regarding the likely requirements of SMS adoption by the RTAs in critical areas overseen by the SSO program—investigations, inspections, and reviews; safety data acquisition and analysis; and safety performance monitoring. The cost estimates in the NPRM included potential costs associated with the Public Transportation Agency Safety Plan required under 49 U.S.C. 5329(d). FTA is deleting those costs from this rulemaking and instead will account for them in the Public Transportation Agency Safety Plan rulemaking.

This table depicts significant increases for the labor hours in several 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. Safety performance monitoring will become a critical component of the SSO program and the estimates above include labor hours for developing and adopting SMS principles and conducting oversight.

The reader should note that for the proposed MAP–21 columns, this table includes 60 RTAs, in contrast to the 48 RTAs covered by the current 49 CFR part 659 requirements. Even if no other changes were addressed, increasing the number of covered RTAs by 25 percent would raise the total cost of the SSO program considerably.

COMPARISON TABLE—COSTS TO RAIL TRANSIT AGENCIES

Rail transit agency activity	Current labor hours	Current cost	Proposed labor hours	Proposed cost
Conduct accident investigations	30,000	$3,042,000	38,000	$3,853,200
Prepare accident investigation reports	19,168	1,329,745	24,000	1,664,957
Investigate unacceptable hazardous conditions	14,030	973,306	60,000	4,162,392
Prepare unacceptable hazardous condition reports	12,032	834,698	Included in above	0
Implement hazard management process	32,312	2,241,587	60,000	4,162,392
Prepare and submit corrective action plans	19,090	1,324,334	24,000	1,664,957
Coordinate hazard management program activities with state oversight.	23,848	1,654,412	30,000	2,081,196
Maintain safety data	3,570	247,662	4,000	277,493
Make submissions to state oversight agency	2,618	181,619	9600	665,983
Total Recurring Hours and Costs	*156,668*	*11,829,364*	*249,600*	*18,532,569*
Total Non-recurring Hours and Costs	*0*	*0*	*0*	*0*

* Non-recurring cost.

Total Estimated Impact of Final Rule

Based on the tables provided above, FTA estimates that minimum implementation of this rule, as well as potential costs associated with the Public Transportation Agency Safety Plan for RTAs, will require, for Year 1 of the new program, a total of approximately $30.0 million for the 30 states to implement, and a total of roughly $26 million for the 60 RTAs to implement. Expenditures in subsequent years consist only of recurring costs and thus will be slightly lower, at roughly $21.2 million for the states and $18.5 million for the RTAs.

Compared to current spending levels of SSO activities, the proposed rule would require an *incremental* $13.5 million per year on the part of SSOAs and $6.7 million for RTAs, compared to current spending levels. This represents a combined increase of roughly $20.0 million per year over current levels. Incremental costs in Year 1 would be somewhat higher, at roughly $29 million, due to some one-time costs under the proposed rule.

	Existing regulation		Proposed regulation	
	Recurring costs	*Non-recurring costs*	*Recurring costs*	*Non-recurring costs*
SSOAs	$7,700,586	$194,245	$21,208,607	$8,824,271.
Rail Transit Agencies	$11,829,364	$0	$18,532,569	$0.
FTA Costs:				
Total, Year 1	$19,529,951 (Recurring Costs only, Non-recurring Costs Considered Sunk)		$48,565,448 (Recurring and Non-Recurring Costs).	
Total, Future Years	$19,529,951 (Recurring Costs Only)		$39,741,177 (Recurring Costs Only).	
Overall Difference, Year 1:	$29,035,497.			
Overall Difference, Future Years	$20,211,226.			

In terms of the actual costs to the States, FTA is providing approximately $22 million in grant funds each year to the States to offset this rule's annual costs. This funding is treated as a transfer for the purposes of cost-benefit analysis. In addition, since the states already expend an estimated $7.7 million to implement 49 CFR part 659 requirements, most of the existing expenditure will cover the 20 percent local match required in FTA's grant program. FTA therefore finds that that the states will bear little new net costs as a result of this rule. With regard to costs to the RTAs, FTA currently provides funding that RTAs may use for these purposes, but, since there is no safety-focused grant program similar to that for SSOs and each RTA receives and uses its formula funds differently, FTA is unable to provide an estimate of how much FTA funding will be used here.

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 RTAs and SSO audits confirm that all RTAs 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 nevertheless used here to provide a conservative estimate.

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 RTAs, as has been the case in the aviation and trucking industries. Initially, however, FTA anticipates that RTAs will be required to spend an additional $6.7 million per year (after year 1) to implement SMS, which equates to approximately $112,000 per RTA. Larger RTAs will be required to assume a larger portion of these costs, while smaller RTAs likely will spend considerably less.

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 RTAs is already quite low. These changes to the SSO regulations address longstanding deficiencies in the current SSO structure and improve the ability of SSOAs to carry out their mission of improving safety on 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, FRA in both its Final Rule implementing its System Safety Program (SSP) and NPRM on its Risk Reduction Program (RRP) provided evidence that both programs could lead to meaningful reductions in serious crashes and conducted breakeven analyses that found that approximately a 0.01 reduction in the incidents and accidents under consideration would lead to a cost-neutral SSP rule and an approximately 0.02 reduction (rounding up) for the RRP rule.[2] 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. FTA notes that this break-even analysis is not intended to be the full analysis of the potential benefits of SMS for transit safety, which will be conducted in FTA's subsequent safety rulemakings; rather, it is intended to provide some quantified estimate of the potential benefits of the changes to the SSO program in today's rule. Further, FTA notes that this analysis may understate the potential benefits because FTA did not have information on some non-injury related costs associated with many incidents, particularly regarding property damage and travel delays.

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 by an RTA to an SSOA). In an average year, these events include 135 fatalities (of which approximately 85 per year involve suicides and trespassers) and 645 injuries requiring hospitalization away from the scene. Using U.S. DOT guidance regarding the valuation of

[2] See FRA's SSP NPRM (77 FR 55371, Sept. 7, 2012) and RRP NPRM (80 FR 10949, Feb. 27, 2015).

fatalities and injuries,[3] these incidents have an economic value of $1.906 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. Some incident costs, such as passenger delays, could not be comprehensively quantified due to data limitations, despite FTA's request for data in the NPRM.

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 RTAs, this rule would only need to prevent 1.1 percent of these accidents per year, which does not include potentially significant unquantified costs related to property damage and disruption. FTA believes that this level of accident reduction will likely be attainable based on the enhancements to the SSO program and the associated improvements in RTA safety practices that lend themselves to greater awareness of risk and hazards.

FTA also performed a narrower 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 RTA 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	13,500,000

Again using U.S. DOT guidance regarding the valuation of fatalities and injuries,[4] FTA used a value of $9.4 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 ($28,200), Moderate is assumed to be AIS–2 ($441,800), and Severe is (conservatively) assumed to be AIS–3 ($987,000).

As such, the total quantifiable cost for the five incidents is approximately $145.6 million (fatalities: $103.4 million, minor injuries: $6.2 million, moderate injuries $14.6 million, severe injuries: $7.9 million, property damage: $13.5 million) or approximately $14.6 million per year over a ten year period. The average cost per incident was $29.1 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 $93 million in monetized injuries and fatalities 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 Red Line 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.

When considering the incremental costs to SSOs and RTAs, this rule would need to prevent less than 0.69 accidents per year significant enough to be investigated by NTSB and identified as being caused by inadequate safety oversight in order to break even, even in the absence of any other impacts.

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 rulemaking on small entities, and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The recipients of the SSO grant 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 rule will not have a significant economic effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking will 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 rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $155 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism Assessment)

This rulemaking has been analyzed in accordance with the principles and criteria established by Executive Order 13132 (Aug. 4, 1999), and FTA has determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA also determined that this 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 rule on state and local governments and determined that the collection and analysis of the

[3] Kathryn Thomson and Carlos Monje ''Guidance on Treatment of the Economic Value of a Statistical Life in U.S. Department of Transportation Analyses'' June 25, 2015. Office of the Secretary of Transportation, *http://www.transportation.gov/office-policy/transportation-policy/guidance-treatment-economic-value-statistical-life.*

[4] *Id.*

data is eligible for Federal funding as part of the SSO program costs.

Executive Order 12372 (Intergovernmental Review)

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities were applied during this rulemaking.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), 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 rule requires the 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 RTAs' compliance with their public transportation agency safety plans, requests for FTA certification of SSO programs, and completion of Public Transportation Safety Certification Training programs—all of which are mandated by 49 U.S.C. 5329(e).

FTA sought comment on whether the information collected would have practical utility; whether its estimation of the burden of the proposed information collection was accurate; whether the burden could have been 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 could have been enhanced.

Readers should note that the information collection is specific to each state and its SSOA, to facilitate and record the SSOA's exercise of its oversight responsibilities. The paperwork burden for each state and its SSOA is proportionate to the number of rail fixed guideway public transportation systems within that state, the modal types of those systems (*e.g.,* rapid rail, light rail, or streetcar), and the size and complexity of those RTAs. 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 part, 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 recent Notice of Request for Revisions of an Information Collection, submitted to OMB, published at 78 FR 51810–1 (August 21, 2013), 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 RTAs; 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 49 U.S.C. 5330. Most if not all of the information collection from States and SSOAs under section 5330 and 49 CFR part 659 is being carried over into the new SSO program 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 rule are eligible for reimbursement under the SSO grants authorized by 49 U.S.C. 5329(e)(6).

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

Respondents: Currently there are 30 states with 60 rail fixed guideway public transportation systems. Twenty-eight of these states have already established an SSO program and designated 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 establishing 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: 305,130, estimated as follows: Annually, each SSOA would devote approximately 1,980.5 hours to information collection activities for each of the RTAs 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 rulemaking, including the 60 rail fixed guideway public transportation systems, would spend an estimated annual total of 186,300 hours on information collection activities, or approximately 3,105 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.

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 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, Governmental Actions and Interference with Constitutionally Protected Property Rights (March 15, 1998).

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

Executive Order 13045 (Protection of Children)

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

Executive Order 13175 (Tribal Consultation)

FTA analyzed this rulemaking under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (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 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 required.

Privacy Act

In accordance with 5 U.S.C. 553(c), U.S. DOT solicits comments from the public to better inform its rulemaking process. U.S. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *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), now codified at 49 U.S.C. 5329(e)(10)(C), which requires the Secretary of Transportation to prescribe regulations for state safety oversight of rail fixed guideway public transportation systems. Also, pursuant to 49 U.S.C. 5329(f)(7), the Secretary is authorized to issue regulations to carry out the general provisions of a Public Transportation Safety Program.

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 to read as follows:

PART 674—STATE SAFETY OVERSIGHT

Subpart A—General Provisions

Subpart B—Role of the State

Subpart C—State Safety Oversight Agencies

Appendix to Part 674—Notification and reporting of accidents, incidents, and occurrences.

Authority: 49 U.S.C. 5329(e) and (f), as amended by section 20021(a) of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141) and the delegations of authority at 49 CFR 1.91.

Subpart A—General Provisions

§ 674.1 Purpose.

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

§ 674.3 Applicability.

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

§ 674.5 Policy.

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

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

§ 674.7 Definitions.

As used in this part:

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

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

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

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

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

Event means an Accident, Incident or Occurrence.

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

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

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

Incident means an event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a rail transit agency. An incident must be reported to FTA's National Transit Database in accordance with the thresholds for reporting set forth in Appendix A to this part. If a rail transit agency or State Safety Oversight Agency later determines that an Incident meets the definition of Accident in this section, that event must be reported to the SSOA in accordance with the thresholds for notification and reporting set forth in Appendix A to this part.

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

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

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

Occurrence means an Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a rail transit agency.

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

Public Transportation Agency Safety Plan (PTASP) means the comprehensive agency safety plan for a transit agency, including a Rail Transit Agency, that is required by 49 U.S.C. 5329(d) and based on a Safety Management System. Until one year after the effective date of FTA's PTASP final rule, a System Safety Program Plan (SSPP) developed pursuant to 49 CFR part 659 will serve as the rail transit agency's safety plan.

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

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

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

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

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

Safety risk management means a process within a Rail Transit Agency's Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.

Serious injury means any injury which:

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

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

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

(4) Involves any internal organ; or

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

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

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

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

§ 674.9 Transition from previous requirements for State safety oversight.

(a) Pursuant to section 20030(e) of the Moving Ahead for Progress in the 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) No later than three years after the effective date of the regulations set forth in this part, the regulations now codified at part 659 of this chapter will be rescinded.

(c) A System Safety Program Plan (SSPP) developed pursuant to 49 CFR

part 659 shall serve as the rail transit agency's safety plan until one year one year after the effective date of the Public Transportation Agency Safety Plan final rule, which will be codified in part 673 of this chapter.

Subpart B—Role of the State

§ 674.11 State Safety Oversight Program.

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

(a) Explicitly acknowledge the State's responsibility for overseeing the safety of the rail fixed guideway public transportation systems within the State;

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

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

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

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

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

§ 674.13 Designation of oversight agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Ensure that uniform safety standards and procedures in compliance with 49 U.S.C. 5329 are applied to that rail fixed guideway public transportation system, through an SSO program that has been approved by the Administrator; or

(b) Designate a single entity that meets the requirements for an SSOA to serve as the SSOA for that rail fixed guideway public transportation system, through an SSO program that has been approved by the Administrator.

§ 674.17 Use of Federal financial assistance.

(a) In accordance with 49 U.S.C. 5329(e)(6), FTA will make grants of Federal financial assistance to eligible States to help the States develop and carry out their SSO programs. This Federal financial assistance may be used for reimbursement of both the operational and administrative expenses of SSO programs, consistent with the uniform administrative requirements for grants to States under 2 CFR parts 200 and 1201. The expenses eligible for reimbursement include, specifically, the expense of employee training and the expense of establishing and maintaining a SSOA in compliance with 49 U.S.C. 5329(e)(4).

(b) The apportionments of available Federal financial assistance to eligible States will be made in accordance with a formula, established by the Administrator, following opportunity for public notice and comment. The formula will take into account fixed guideway vehicle revenue miles, fixed guideway route miles, and fixed guideway vehicle passenger miles attributable to all rail fixed guideway systems within each eligible State not subject to the jurisdiction of the FRA.

(c) The grants of Federal financial assistance for State safety oversight shall be subject to terms and conditions as the Administrator deems appropriate.

(d) The Federal share of the expenses eligible for reimbursement under a grant for State safety oversight activities shall be eighty percent of the reasonable costs incurred under that grant.

(e) The non-Federal share of the expenses eligible for reimbursement under a grant for State safety oversight activities may not be comprised of Federal funds, any funds received from a public transportation agency, or any

revenues earned by a public transportation agency.

§ 674.19 Certification of a State Safety Oversight Program.

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

(b) The Administrator must issue a certification to a State whose SSO program meets the requirements of 49 U.S.C. 5329(e). The Administrator must issue a denial of certification to a State whose SSO program does not meet the requirements of 49 U.S.C. 5329(e).

(c) In an instance in which the Administrator issues a denial of certification to a State whose SSO program does not meet the requirements of 49 U.S.C. 5329(e), the Administrator must provide a written explanation, and allow the State an opportunity to modify and resubmit its SSO program for the Administrator's approval. In the event the State is unable to modify its SSO program to merit the Administrator's issuance of a certification, the Administrator must notify the Governor of that fact, and must ask the Governor to take all possible actions to correct the deficiencies that are precluding the issuance of a certification for the SSO program. In his or her discretion, the Administrator may also impose financial penalties as authorized by 49 U.S.C. 5329(e), which may include:

(1) Withholding SSO grant funds from the State;

(2) Withholding up to five percent of the 49 U.S.C. 5307 Urbanized Area formula funds appropriated for use in the State or urbanized area in the State, until such time as the SSO program can be certified; or

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

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

§ 674.21 Withholding of Federal financial assistance for noncompliance.

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

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

§ 674.23 Confidentiality of information.

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

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

Subpart C—State Safety Oversight Agencies

§ 674.25 Role of the State safety oversight agency.

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

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

(c) An SSOA has primary responsibility for the investigation of any allegation of noncompliance with a Public Transportation Agency Safety Plan. These responsibilities do not preclude the Administrator from exercising his or her authority under 49 U.S.C. 5329(f) or 49 U.S.C. 5330.

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

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

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

§ 674.27 State safety oversight program standards.

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

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

the SSOA and every rail fixed guideway public transportation system within its oversight.

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

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

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

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

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

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

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

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

§ 674.29 Public Transportation Agency Safety Plans: general requirements.

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

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

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

§ 674.31 Triennial audits: general requirements.

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

§ 674.33 Notifications of accidents.

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

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

§ 674.35 Investigations.

(a) An SSOA must investigate or require an investigation of any accident and is ultimately responsible for the sufficiency and thoroughness of all investigations, whether conducted by

the SSOA or RTA. If an SSOA requires an RTA to investigate an accident, the SSOA must conduct an independent review of the RTA's findings of causation. In any instance in which an RTA is conducting its own internal investigation of the accident or incident, the SSOA and the RTA must coordinate their investigations in accordance with the SSO program standard and any agreements in effect.

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

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

(d) The Administrator may conduct an independent investigation of any accident or an independent review of an SSOA's or an RTA's findings of causation of an accident.

§ 674.37 Corrective action plans.

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

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

§ 674.39 State Safety Oversight Agency annual reporting to FTA.

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

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

(2) Evidence that each of its employees and contractors has completed the requirements of the Public Transportation Safety Certification Training Program, or, if in progress, the anticipated completion date of the training;

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

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

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

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

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

§ 674.41 Conflicts of interest.

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

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

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

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

Event/threshold	Human factors	Property damage	Types of events (examples)	Actions
Accident: Rail Transit Agency (RTA) to Notify State Safety Oversight Agency (SSOA) SSO and Federal Transit Administration (FTA) within two hours.	—Fatality (occurring at the scene or within 30 days following the accident). —One or more persons suffering serious injury (*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.).	—Property damage resulting from a collision involving a rail transit vehicle; or any derailment of a rail transit vehicle.	—A collision between a rail transit vehicle and another rail transit vehicle. —A collision at a grade crossing resulting in serious injury or fatality. —A collision with a person resulting in serious injury or fatality. —A collision with an object resulting in serious injury or fatality. —A runaway train. —Evacuation due to life safety reasons. —A derailment (mainline or yard). —Fires resulting in a serious injury or fatality.	—RTA to notify SSOA and FTA within 2 hours; Investigation required. —RTA to report to FTA within 30 days via the National Transit Database (NTD). —RTA to record for SMS Analysis.
Incident: RTA to Report to FTA (NTD) within 30 days.	—A personal injury that is not a serious injury. —One or more injuries requiring medical transportation away from the event.	—Non-collision-related damage to equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.	—Evacuation of a train into the right-of-way or onto adjacent track; or customer self-evacuation. —Certain low-speed collisions involving a rail transit vehicle that result in a non-serious injury or property damage. —Damage to catenary or third-rail equipment that disrupts transit operations. —Fires that result in a non-serious injury or property damage. —A train stopping due to an obstruction in the tracks/''hard stops''. —Most hazardous material spills.	—RTA to report to FTA within 30 days via the National Transit Database (NTD). —RTA to record for SMS Analysis.
Occurrence: RTA to record data and make available for SSO and/or FTA review.	—No personal injury	—Non-collision-related damage to equipment, rolling stock, or infrastructure that does not disrupt the operations of a transit agency.	—Close Calls/Near Misses ..... —Safety rule violations. —Violations of safety policies. —Damage to catenary or third-rail equipment that do not disrupt operations. —Vandalism or theft.	—RTA will collect, track and analyze data on Occurrences to reduce the likelihood of recurrence and inform the practice of SMS.

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APPENDIX D

49 CFR Part 673
Public Transportation Agency Safety Plan

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 673

[Docket No. FTA–2015–0021]

RIN 2132–AB23

Public Transportation Agency Safety Plan

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration (FTA) is publishing a final rule for Public Transportation Agency Safety Plans as authorized by the Moving Ahead for Progress in the 21st Century Act (MAP–21). This final rule requires States and certain operators of public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53 to develop Public Transportation Agency Safety Plans based on the Safety Management System approach. Operators of public transportation systems will be required to implement the safety plans. The development and implementation of safety plans will help ensure that public transportation systems are safe nationwide.

DATES: The effective date of this rule is July 19, 2019.

FTA's Office of Transit Safety and Oversight (TSO) will host a series of webinars to discuss the requirements of the Public Transportation Agency Safety Plan (PTASP) final rule. The first two webinars will be held at 2 p.m. on Wednesday, July 25, 2018 and Tuesday, July 31, 2018.

ADDRESSES: To register for webinars and for information about future webinars, please visit *https://www.transit.dot.gov/about/events.*

FTA is committed to providing equal access for all webinar participants. If you need alternative formats, options, or services, contact *FTA-Knowledge@dot.gov* at least three business days prior to the event. If you have any questions, please email *FTA-Knowledge@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For general information, contact *PTASP_QA@dot.gov.* For program matters, contact Adrianne Malasky, Office of Transit Safety and Oversight, (202) 366–1783 or *Adrianne.Malasky@dot.gov.* For legal matters, contact Michael Culotta, Office of Chief Counsel, (212) 668–2170 or *Michael.Culotta@dot.gov.* Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of Regulatory Action

The public transportation industry remains among the safest surface transportation modes in terms of total reported safety events, fatalities, and injuries.[1] Nonetheless, given public

[1] See United States Department of Transportation, Bureau of Transportation Statistics, ''Table 2–1: Transportation Fatalities by Mode 1960–2016,'' at *https://www.bts.gov/archive/publications/national_transportation_statistics/table_02_01;* and ''Table

transportation service complexities, the condition of transit equipment and facilities, turnover in the transit workforce, and the quality of policies, procedures, and training, the public transportation industry remains vulnerable to catastrophic accidents.

This rule outlines requirements for Public Transportation Agency Safety Plans that would carry out explicit statutory mandates in the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141; July 6, 2012) (MAP–21), which was reauthorized by the Fixing America's Surface Transportation Act (Pub. L. 114–94; December 4, 2015) (FAST Act) and codified at 49 U.S.C. 5329(d), to strengthen the safety of public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53. This rule requires the adoption of Safety Management Systems (SMS) principles and methods; the development, certification, implementation, and update of Public Transportation Agency Safety Plans; and the coordination of Public Transportation Agency Safety Plan elements with other FTA programs and rules, as specified in 49 U.S.C. 5303, 5304, and 5329.

B. Legal Authority

In Section 20021 of MAP–21, which is codified at 49 U.S.C. 5329, Congress directed FTA to establish a comprehensive Public Transportation Safety Program, one element of which is the requirement for Public Transportation Agency Safety Plans. Pursuant to 49 U.S.C. 5329(d), FTA must issue a final rule requiring operators of public transportation systems that receive financial assistance under Chapter 53 to develop and certify Public Transportation Agency Safety Plans.

C. Summary of Major Provisions

1. Summary of the Final Rule

This rule adds a new part 673, ''Public Transportation Agency Safety Plans,'' to Title 49 of the Code of Federal Regulations. The rule implements the requirements of 49 U.S.C. 5329(d).

One year after the effective date of this rule, each State, local governmental authority, and any other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. Chapter 53, must certify that it has established a comprehensive Public Transportation Agency Safety Plan (PTASP). 49 U.S.C. 5329(d)(1). At this time, the rule does not apply to an operator of a public transportation system that only receives Federal financial assistance under 49 U.S.C. 5310 (Section 5310), 49 U.S.C. 5311 (Section 5311), or both 49 U.S.C. 5310 and 49 U.S.C. 5311. Large transit providers must develop their own plans, have the plans approved by their Boards of Directors (or equivalent authorities), and certify to FTA that those plans are in place and comply with this part. Small public transportation providers that receive Urbanized Area Formula Program under 49 U.S.C. 5307 may have their plans drafted or certified by the State in which they operate. A small public transportation provider may opt to draft and certify its own plan.

At a minimum, and consistent with 49 U.S.C. 5329(d), each Public Transportation Agency Safety Plan must:

- Include the documented processes and procedures for the transit agency's Safety Management System, which consists of four main elements: (1) Safety Management Policy, (2) Safety Risk Management, (3) Safety Assurance, and (4) Safety Promotion, as discussed in more detail below (49 CFR 673.11(a)(2));
- Include performance targets based on the safety performance criteria established under the National Public Transportation Safety Plan (49 CFR 673.11(a)(3));
- Address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and National Public Transportation Safety Plan (49 CFR 673.11(a)(4)); and
- Establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan (49 CFR 673.11(a)(5)).

Each rail transit agency must include in its Public Transportation Agency Safety Plan an emergency preparedness and response plan, as historically required by FTA under the former regulatory provisions of the State Safety Oversight rule at 49 CFR part 659 (49 CFR 673.11(a)(6)).

A transit agency may develop one Public Transportation Agency Safety Plan for all modes of its service, or it may develop a Public Transportation Agency Safety Plan for each mode of service that is not subject to safety regulation by another Federal entity. 49 CFR 673.11(b). A transit agency must maintain records associated with its Public Transportation Agency Safety Plan. 49 CFR 673 subpart D. Any rail fixed guideway public transportation system that had a System Safety Program Plan (SSPP) compliant with the former regulatory provisions of 49 CFR part 659 as of October 1, 2012, may keep that plan in effect until one year after the effective date of this rule. 49 CFR 673.11(e). A transit agency that operates passenger ferry service regulated by the United States Coast Guard (USCG) or rail fixed guideway public transportation service regulated by the Federal Railroad Administration (FRA) is not required to develop a Public Transportation Agency Safety Plan for those modes of service. 49 CFR 673.11(f).

States and transit agencies must make their safety performance targets available to States and Metropolitan Planning Organizations (MPO) to aid in the planning process, and to the maximum extent practicable, States and transit agencies must coordinate with States and MPOs in the selection of State and MPO safety performance targets. 49 CFR 673.15.

On an annual basis, transit agencies and States must certify compliance with this rule. 49 CFR 673.13.

2. Summary of Public Comments

On February 5, 2016, FTA issued a Notice of Proposed Rulemaking (NPRM) for Public Transportation Agency Safety Plans. 81 FR 6344 (*https://www.gpo.gov/fdsys/pkg/FR-2016-02-05/pdf/2016-02017.pdf*). The public comment period closed on April 5, 2016. FTA received approximately 647 comments from approximately 77 entities, including States, transit agencies, trade associations, and individuals.

The majority of the comments addressed the administration of the rule. Over 100 comments focused on definitions, with the vast majority of those commenters requesting FTA to align terms and definitions with the terms and definitions that FTA recently finalized in other rules, such as the State Safety Oversight rule at 49 CFR part 674 and the Transit Asset Management rule at 49 CFR part 625. FTA received nearly 300 comments on issues relating to (1) the effective date and compliance date of the rule; (2) the drafting and certification of safety plans on behalf of recipients of FTA's Enhanced Mobility of Seniors and Individuals with Disabilities Program at 49 U.S.C. 5310 and other smaller recipients; (3) clarification of FTA's oversight process; (4) the need for FTA's technical assistance; (5) documentation and recordkeeping; and (6) the applicability of the rule.

FTA received over 80 comments on SMS. Many of the commenters expressed support for SMS, particularly given its flexibility and scalability.

1–40: U.S. Passenger Miles (Millions) 1960–2015,'' at *https://www.bts.gov/archive/publications/national_transportation_statistics/table_01_40.*

Some commenters requested clarification of the flexibility and scalability of SMS, and to that end, they requested that FTA develop and issue a safety plan template. Other commenters requested clarification regarding specific provisions of SMS. In the NPRM, FTA sought comments on alternative regulatory frameworks to SMS, and in response to this request, FTA received no comments.

Detailed comment summaries and responses are below.

3. Summary of the Major Changes to the Rule

In response to the public comments, FTA made a number of changes to the rule. Below is a summary of those changes, which are discussed in more detail in the sections that follow.

Section 673.1 Applicability

In the NPRM, FTA proposed to apply the rule to every ''State, local governmental authority, and any other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. Chapter 53.'' FTA specifically asked the public whether the rule should apply to recipients and subrecipients of funds under FTA's Enhanced Mobility of Seniors and Individuals with Disabilities Program at 49 U.S.C. 5310 (Section 5310). FTA also specifically asked the public for alternative regulatory frameworks that satisfy the statutory requirements of 49 U.S.C. 5329 and are tailored to fit the needs of smaller operators of public transportation.

FTA received numerous comments in response to these questions and the regulatory proposal. Several commenters suggested that FTA exempt Section 5310 recipients from the rule because they are smaller non-traditional transit providers. Several commenters suggested that FTA adopt a more streamlined and simplified approach that is more tailored for smaller operators. At least one commenter suggested that FTA exempt subrecipients of Section 5311 Rural Area Formula Program funds from the rule.

In light of these public comments and the need for further evaluation, FTA is deferring regulatory action at this time on operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds. This deferral will provide FTA time to further evaluate information and safety data related to these systems to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these systems. Thus, this final rule does not address operators of public transportation systems that only receive Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311.

Section 673.5 Definitions

FTA updated the definitions of the terms ''Accountable Executive'' and ''Transit Asset Management Plan,'' and FTA changed the term ''Performance Criteria'' to ''Performance Measure,'' in an effort to align these terms and definitions with those in FTA's Transit Asset Management rule at 49 CFR part 625, which was published on July 26, 2016. FTA updated the definition of the term ''Safety Risk Management,'' added the term ''Rail Fixed Guideway Public Transportation System,'' and changed the term ''Safety Risk'' to ''Risk'' in an effort to align these terms and definitions with those in FTA's State Safety Oversight rule at 49 CFR part 674, which was published on March 16, 2016. FTA clarified in its definition of ''Safety Management System Executive'' that it means a ''Chief'' Safety Officer or an equivalent. FTA changed the term ''Safety Risk Evaluation'' to ''Safety Risk Assessment'' to add clarity to the final rule.

In the NPRM, FTA proposed to define ''operator of a public transportation system'' to exclude operators that ''provide service that is closed to the general public and only available for a particular clientele.'' This language was intended to narrow the type of Section 5310 recipients that would be subject to the rule. In light of FTA's decision to defer action on the applicability of the rule to all Section 5310 recipients and subrecipients—including operators that ''provide service that is closed to the general public and only available for a particular clientele''—FTA is removing this language from the definition of ''operator of a public transportation system.''

In the NPRM, FTA proposed to define ''Small Public Transportation Provider'' to mean ''a recipient or subrecipient of Urbanized Area Formula Program funds under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in revenue service and does not operate a rail fixed guideway public transportation system.'' In response to public comments and for consistency with the Transit Asset Management Rule (81 FR 48889), FTA changed the definition of the term ''Small Public Transportation Provider'' to mean 100 or fewer vehicles in ''peak'' revenue service, as opposed to revenue service generally.

Section 673.11(a)(6) General Requirements: Emergency Preparedness and Response Plans

Based on public comments, FTA will provide rail transit agencies with the option to either include an emergency preparedness and response plan as a section of their Public Transportation Agency Safety Plan, or they may incorporate an existing emergency preparedness and response plan into their Public Transportation Agency Safety Plan by reference.

Section 673.11(d) General Requirements; § 673.13 Certification of Compliance: The Drafting and Certification of Public Transportation Agency Safety Plans on Behalf of Section 5310 Recipients and Subrecipients

In the NPRM, FTA proposed to require States to draft and certify safety plans on behalf of certain recipients and subrecipients of funds under Section 5310 and the Section 5311 Formula Grants for Rural Areas Program. In light of the public comments from these recipients requesting exemptions from the rule and a more streamlined and tailored regulatory approach for smaller operators, and given FTA has decided to defer action on applicability of the rule to Section 5310 and Section 5311 recipients and subrecipients, FTA does not need to require States to draft and certify safety plans for those recipients and subrecipients at this time.

Section 673.23(a) Safety Management Policy

In the NPRM, FTA proposed to require transit agencies to develop a written Safety Management Policy, which would include safety performance targets. FTA received numerous comments noting that FTA also was proposing to require transit agencies to set safety performance targets in the General Requirements section of the rule, so the requirement in the Safety Management Policy section appeared redundant. FTA agrees, and to eliminate any redundancies, FTA deleted that requirement from the Safety Management Policy section of the rule.

Section 673.25 Safety Risk Management

In response to comments, FTA revised its Safety Risk Management requirements to add clarity to the safety hazard identification, safety risk assessment, and safety risk mitigation processes in the final rule.

Section 673.27 Safety Assurance

In the NPRM, FTA proposed to require all transit agencies to develop

and implement a comprehensive Safety Assurance process. FTA proposed to require all transit agencies to develop and implement processes for (1) safety performance monitoring and measurement, (2) management of change, and (3) continuous improvement.

FTA received comments seeking clarity on one of the requirements related to safety performance monitoring and measurement, specifically, the requirement for each transit agency to ''[m]onitor its operations to identify hazards not identified through the Safety Risk Management process established in § 673.25 of this subpart.'' 49 CFR 673.27(b)(2) (as proposed in the NPRM). Some commenters suggested that this requirement appeared redundant and duplicative of each of the requirements under Safety Risk Management. FTA agrees with these commenters, and to add clarity, reduce redundancy, and lower burdens, FTA eliminated this requirement from the final rule.

More significantly, FTA received numerous comments requesting a reduction in the regulatory requirements for small public transportation providers. Given the limited administrative and financial resources available to small public transportation providers, FTA believes that a reduction in their regulatory burdens is appropriate. To that end, and to address the concerns expressed by commenters, FTA eliminated significant Safety Assurance requirements for all small public transportation providers. In the final rule, small public transportation providers only need to develop processes for safety performance monitoring and measurement. Small public transportation providers are not required to develop and implement processes for management of change and continuous improvement. FTA believes that these changes in the final rule will reduce their burdens significantly. Rail fixed guideway public transportation systems and recipients and subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53 that have more than one hundred vehicles in peak revenue service must develop and implement Safety Assurance processes that include all of the regulatory requirements under 49 CFR 673.27, specifically, processes for safety performance monitoring and measurement, management of change, and continuous improvement.

Section 673.29(a) Safety Promotion

In the NPRM, FTA proposed to require transit agencies to establish comprehensive safety training programs for staff and contractors directly responsible for ''the management of'' safety. FTA received several comments expressing confusion over this requirement and the requirements of FTA's proposed Safety Certification Training Program Rule, which applies to staff and contractors who responsible for safety ''oversight'' on rail transit systems. In an effort to respond to the commenters and to eliminate confusion, FTA struck the language ''the management of'' from the rule, so it now requires safety training for staff and contractors who are ''directly responsible for safety.''

Section 673.31 Safety Plan Documentation

In the NPRM, FTA proposed to require transit agencies to maintain their safety plan documents for a minimum of three years. To add clarity in the final rule, FTA is requiring transit agencies to maintain safety plan documents for three years ''after they are created.''

Also, in the NPRM, FTA proposed to require a number of additional records related to a Public Transportation Agency Safety Plan. Specifically, FTA proposed to require transit agencies to maintain records related to (1) safety risk mitigations, (2) results of safety performance assessments, and (3) employee safety training. FTA received numerous comments requesting reduced recordkeeping burdens. FTA also received numerous comments, in general, from smaller transit operators requesting reduced regulatory burdens.

Upon review of these comments, FTA has eliminated the recordkeeping requirements in proposed 49 CFR 673.33 in their entirety. FTA believes that the records developed and maintained in accordance with 49 CFR 673.31 are sufficient to ensure that transit agencies are complying with the requirements of the statute and this final rule. FTA believes that this change in the final rule significantly will reduce the administrative, financial, and regulatory burdens on all transit operators.

D. Costs and Benefits

As discussed in greater detail below, FTA was able to estimate some but not all of the rule's costs. FTA was able to estimate the costs for transit agencies to develop and implement Public Transportation Agency Safety Plans, which are approximately $41 million in the first year, and $30 million in each subsequent year, with annualized costs of $31 million discounted at 7 percent. These costs result from developing and certifying safety plans, documenting SMS processes and procedures, implementing SMS, and maintaining records. FTA was not able to estimate the costs of actions that transit agencies would be required to take to mitigate risk as a result of implementing this rule, such as vehicle modifications, additional training, technology investments, or changes to operating procedures and practices. It is not possible for FTA to anticipate the strategies and actions agencies may adopt to address safety risks, or the time period over which these actions would occur.

FTA was unable to quantify the rule's benefits. To estimate safety benefits, one would need information regarding the causes of safety events and the factors that may cause future events. This information is generally unavailable in the public transportation sector, given the infrequency and diversity of the type of safety events that occur. In addition, one would need information about the safety problems that agencies are likely to find through implementation of their safety plans and the actions agencies are likely to take to address those problems. Instead of quantifying benefits, FTA estimated the potential safety benefits. The potential safety benefits are an estimate of the cost of all bus and rail safety events over a future 20-year period. The estimate is an extrapolation of the total cost of bus and rail events that occurred from 2010 to 2016.

Table 1 below shows the summary of the Costs and the Potential Benefits. The benefits of the rule primarily will result from mitigating actions, which largely are not accounted for in this analysis. FTA has not estimated the benefits of implementing the rule without mitigating actions, but expects they are unlikely to be large. Estimated costs for agencies' safety plans include certain activities that could yield safety improvements, such as improved communication, identification of hazards, and greater employee awareness, as well as increased accountability at the higher echelons of the organization. It is plausible that these activities alone could produce accident reductions that surpass the cost of developing the plan, though even greater reductions could be achieved in concert with other mitigating actions.

TABLE 1—SUMMARY OF THE COSTS AND THE POTENTIAL BENEFITS IF ADDITIONAL UNQUANTIFIED MITIGATION INVESTMENTS OCCUR

[2016 Dollars]

	Current dollar value	7% Discounted value	3% Discounted value
Qualitative Benefits	• Reduced bus and rail safety incidents with mitigation actions. • Reduced delays in operations.		
Estimated Costs (20-Year Estimate)	$602,485,710	$323,732,747	$450,749,898
Unquantified Costs	• Investments associated with mitigating safety risks (such as additional training, vehicle modification, operational changes, maintenance, and information dissemination).		
Estimated Cost (Annualized)	.....	30,558,081	30,297,473

II. Background

On July 6, 2012, the President signed into law MAP–21 (Pub. L. 112–141). MAP–21 authorized a number of fundamental changes to the Federal transit programs at 49 U.S.C. Chapter 53. This rule addresses the Public Transportation Agency Safety Plan within the Public Transportation Safety Program authorized under 49 U.S.C. 5329. This authority was reauthorized when the President signed into law the FAST Act on December 4, 2015.

The Public Transportation Safety Program consists of several key elements: The National Public Transportation Safety Plan, authorized by 49 U.S.C. 5329(b); the Public Transportation Safety Certification Training Program, authorized by 49 U.S.C. 5329(c); the Public Transportation Agency Safety Plans, authorized by 49 U.S.C. 5329(d); and the State Safety Oversight Program, authorized by 49 U.S.C. 5329(e). FTA has issued rules and guidance, and it will continue to issue rules and guidance, to carry out all of these plans and programs under the rulemaking authority of 49 U.S.C. 5329 and 5334(a)(11).

On October 3, 2013, FTA issued an Advance Notice of Proposed Rulemaking (ANPRM) for Public Transportation Agency Safety Plans, the National Public Transportation Safety Plan, the Safety Certification Training Program, and a new Transit Asset Management System. 78 FR 61251 (*http://www.gpo.gov/fdsys/pkg/FR-2013-10-03/pdf/2013-23921.pdf*). Through the ANPRM, FTA sought comments on 123 questions related to the implementation of the public transportation safety program and transit asset management; 42 of the 123 questions specifically were related to Public Transportation Agency Safety Plans. The public comment period for the ANPRM closed on January 2, 2014. In response to the ANPRM, FTA received comments from 167 entities, including States, transit agencies, trade associations, and individuals.

Following a comprehensive review of the comments, FTA issued several NPRMs for safety and transit asset management. In particular, FTA issued the NPRM for Public Transportation Agency Safety Plans on February 5, 2016. In this NPRM, FTA addressed comments related to the 42 questions in the ANPRM on Public Transportation Agency Safety Plans, specifically, question numbers 8–10, 17–31, 33–44, 47, 107–110, 112, and 116–121. Through the NPRM, FTA proposed to create a new part 673 in Title 49 of the Code of Federal Regulations, which would require each operator of a public transportation system to develop and implement a Public Transportation Agency Safety Plan. FTA proposed specific requirements for these safety plans in accordance with 49 U.S.C. 5329(d), including the following minimum requirements:

- An approval by the transit agency's board of directors, or an equivalent entity, and a signature from the transit agency's Accountable Executive;
- Documented processes and procedures for an SMS, which would include a Safety Management Policy, a process for Safety Risk Management, a process for Safety Assurance, and Safety Promotion;
- Performance targets based on the safety performance measures set out in the National Public Transportation Safety Plan;
- Compliance with FTA's Public Transportation Agency Safety Plan and FTA's Public Transportation Safety Program; and
- A process and timeline for conducting an annual review and update of the plan. In addition, rail transit agencies would be required to include an emergency preparedness and response plan in their Public Transportation Agency Safety Plans.

In light of the public interest in this rulemaking, and in an effort to provide guidance on the proposal and to solicit well-informed comments, FTA conducted numerous public outreach sessions and a webinar series related to the NPRM. Specifically, on February 12, 2016, FTA conducted public outreach for tribes and hosted a Tribal Technical Assistance Workshop wherein FTA presented its proposed rule and responded to technical questions from tribes. FTA subsequently delivered the same presentation during a webinar series open to all members of the public on February 24, March 1, March 2, and March 3. On March 7, FTA delivered the same presentation at an outreach session hosted by the National Rural Transit Assistance Program, which also was open to all members of the public. During each of these public outreach sessions and the public webinar series, FTA received and responded to numerous technical questions regarding the NPRM. FTA recorded the presentations, including the question and answer sessions, and made available the following documents on the public docket for this rulemaking (Docket FTA–2015–0021): (1) FTA's PowerPoint Presentation from the public outreach sessions and public webinar series (*https://www.regulations.gov/document?D=FTA-2015-0021-0012*); (2) a written transcript of FTA's public webinar of March 1, 2016 (*https://www.regulations.gov/document?D=FTA-2015-0021-0010*); (3) a consolidated list of every Question and FTA Answer from the public outreach sessions and public webinar series (*https://www.regulations.gov/*

document?D=FTA-2015-0021-0041); and (4) the results of polling questions from FTA's public outreach sessions (*https://www.regulations.gov/document?D=FTA-2015-0021-0011*). FTA also uploaded onto YouTube an audiovisual recording of its webinar from March 1, 2016. The video is available at the following link: *https://www.youtube.com/watch?v=FBj5HRatwGA&feature=youtu.be.*

III. Notice of Proposed Rulemaking and Response to Relevant Comments

As stated above, FTA issued an NPRM for Public Transportation Agency Safety Plans on February 5, 2016. 81 FR 6344 (*https://www.gpo.gov/fdsys/pkg/FR-2016-02-05/pdf/2016-02017.pdf*). The public comment period for the NPRM subsequently closed on April 5, 2016. FTA received approximately 647 comments from approximately 77 entities, including States, transit agencies, trade associations, and individuals. FTA reviewed all of the comments and took them into consideration when developing today's final rule. Some comments were outside the scope of this rulemaking and FTA did not respond to comments that were outside the scope.

FTA received a number of comments related to the definitions of terms that are defined in other safety rulemakings. For example, FTA received comments on the terms, ''Accident,'' ''Incident,'' and ''Occurrence,'' which FTA defined in the NPRM to provide clarity regarding the types of safety ''Events'' that a transit agency should investigate, and these terms are defined in the State Safety Oversight (SSO) rulemaking. Given that the Public Transportation Agency Safety Plan rule has a more inclusive universe of stakeholders than the SSO rule, FTA is including responses to the majority of the comments that it received related to these and other definitions included in other safety rules, but in this final rule, FTA does not respond to comments related to reporting thresholds and other requirements under the final SSO rule. On March 16, 2016, FTA issued a final rule for State Safety Oversight (see *https://www.gpo.gov/fdsys/pkg/FR-2016-03-16/pdf/2016-05489.pdf* for a discussion of comments received on these terms), and FTA has adopted definitions found in that rulemaking in this rulemaking, where appropriate. Similarly, FTA received several comments related to the definition of the term ''State of Good Repair,'' which FTA was required to define in a rulemaking for transit asset management pursuant to 49 U.S.C. 5326. On July 26, 2016, FTA issued a final rule for Transit Asset Management wherein FTA defines the term ''State of Good Repair,'' and FTA has adopted that definition in this rulemaking. Please review the preamble of the Transit Asset Management final rule for FTA's responses to the comments that it received related to the proposed definition of ''State of Good Repair'' (see *https://www.gpo.gov/fdsys/pkg/FR-2016-07-26/pdf/2016-16883.pdf*). Relatedly, a number of commenters noted inconsistencies with the definitions throughout FTA's several safety rulemakings. In response, FTA has aligned the definitions in today's rule with other safety rulemakings and the Transit Asset Management final rule to ensure consistency.

Below, the NPRM comments and responses are subdivided by their corresponding sections of the proposed rule and subject matter.

A. Scope and Applicability of Public Transportation Agency Safety Plans

1. Section 5310, Section 5311, Small Section 5307, and Tribal Operators

Comments: Several commenters supported FTA's proposal to require States to draft and certify safety plans on behalf of recipients and subrecipients of FTA financial assistance through the Enhanced Mobility of Seniors and Individuals with Disabilities Program at Section 5310. Several commenters also supported FTA's proposal only to apply this rule to Section 5310 recipients and subrecipients that provide service open to the public, and not to apply this rule to Section 5310 recipients and subrecipients that provide service closed to the public and only available for a particular clientele.

Several commenters recommended that FTA exempt all Section 5310 recipients and subrecipients from this rule. These commenters asserted that many Section 5310 operators are not traditional transit agencies—they are human service organizations with a small transportation service, and they do not have sufficient staff, money, or resources to implement all aspects of a safety plan. One commenter stated that recipients and subrecipients of FTA financial assistance under Section 5310 and Section 5311 should not be considered operators of public transportation, and thus, they should not be subject to this rule. Several commenters also requested that tribal transit operators be excluded from the requirements of this rule.

A few commenters asserted that the proposed delineation between ''general public'' and ''closed door'' is ambiguous. These commenters expressed concern that many smaller Section 5310 recipients may decide to discontinue transit service, thus reducing mobility for seniors and individuals with disabilities.

One commenter stated that any new regulations should be tailored for small operators, and that FTA should avoid adding additional requirements and regulatory burdens. This commenter requested that FTA consider an exemption for transit agencies that operate fewer than 30 vehicles in peak revenue service. Another commenter suggested requiring a limited set of streamlined and simplified requirements, without identifying what those requirements might be.

Response: FTA appreciates the comments that it received regarding the proposed applicability of this rule. Pursuant to the statutory requirements of 49 U.S.C. 5329(d), ''each recipient or State'' is required to draft and certify a safety plan. The statute defines ''recipient'' to mean ''a State or local governmental authority, or any other operator of a public transportation system, that receives financial assistance under [49 U.S.C. Chapter 53].''

Notwithstanding this definition, and in light of the public comments and need for further evaluation, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds. Further evaluation of information and safety data related to these operators is needed to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators. Consequently, the rule does not apply to an operator of a public transportation system that only receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311.

FTA disagrees with the suggestion to create a threshold of 30 vehicles in peak revenue service, and it is adopting the definition of ''operator of a public transportation system'' as ''a provider of public transportation as defined under 49 U.S.C. 5302(14).''

FTA agrees with the commenters who suggested that the final rule should be tailored for small operators and that the final rule should have simplified requirements. To that end, and as discussed in more detail below, FTA eliminated several significant requirements related to Safety Assurance for all small public transportation providers. Additionally, FTA eliminated requirements for Safety Assurance and a series of recordkeeping

requirements for all transit operators, regardless of size, in an effort to reduce their administrative, financial, and regulatory burdens.

2. Commuter Rail and Passenger Ferry Service

Comments: Several commenters supported FTA's proposal to exclude from this rule rail fixed guideway public transportation (commuter rail) service regulated by FRA. Several commenters requested FTA to clarify that the rule applies to rail transit systems not subject to regulation by FRA. Three commenters requested FTA to clarify what it means to exclude rail transit agencies subject to regulation by another Federal agency. One commenter urged FTA to ensure that the rule does not duplicate the efforts of State Safety Oversight Agencies (SSOAs) and overly burden transit agencies.

One commenter suggested that FTA replace the term ''commuter rail system'' with the term ''passenger rail system.'' This commenter stated that the term ''commuter'' is not defined in the rule, leaving no context for determining what types of rail systems would be excluded. The commenter also asserted that rail transit agencies might provide passenger rail service that is subject to FRA regulations, but that service may not be considered ''commuter'' service, thus resulting in a too-narrow description of ''commuter'' and a contradiction to FTA's intent to prevent ''duplicative, inconsistent, or conflicting regulations.''

Several commenters supported FTA's proposal to exclude from this rule passenger ferry service regulated by USCG. Two commenters expressed support for the exclusion of USCG-inspected ferry vessels from the proposed rule. However, these commenters suggested that FTA should revise the term ''passenger ferries'' to clarify that the exclusion refers to passenger-only ferry vessels and ferry vessels that carry both passengers and vehicles (the commenters suggested the phrase ''ferry as defined by title 46 United States Code 2101(10b)''). Additionally, this commenter urged FTA to clarify that the exclusion of USCG-inspected vessels applies to subparts C and D of the proposed rule, in addition to subpart B.

Response: FTA appreciates the support for its proposal to exclude passenger rail service regulated by FRA and passenger ferry service regulated by USCG from the requirements of this rule. As discussed throughout this document, this rule applies to each operator of a public transportation system, including rail fixed guideway public transportation passenger rail service that is not regulated by another Federal agency. To further clarify, to the extent that an operator of a public transportation system provides passenger rail service that is regulated by FRA and rail fixed guideway public transportation service that is not regulated by FRA, this rule only would apply to that portion of the rail fixed guideway public transportation service that is not regulated by FRA.

FTA appreciates the concerns regarding the use of the term ''commuter rail system,'' which is not defined in this rule, and the suggestion to replace the term ''commuter rail system'' with the term ''passenger rail system.'' Instead, in an effort to use terms consistently throughout all of FTA's rules and regulations, FTA is replacing the term ''commuter rail system'' with the term ''rail fixed guideway public transportation'' and is adopting the definition of this term as used in FTA's new State Safety Oversight (SSO) rule at 49 CFR part 674.

With respect to passenger ferry service, FTA clarifies that this rule would not apply to any passenger ferry service that is regulated by USCG, including passenger ferry service and ferry service that involves the transportation of both passengers and vehicles. The exclusion of ferry service regulated by USCG applies to the rule in its entirety.

3. Contracted Service

Comments: Several commenters requested FTA to clarify how the rule would apply to transit agencies that contract for transit service. A commenter stated that the proposed elements of PTASPs are being implemented in the majority of transit systems operated by contractors, but contractors generally do not have direct relationships with transit agencies' top leadership. A commenter requested that FTA clarify how contracted agencies should divide roles and responsibilities and implement SMS without having to revisit existing contractual agreements. This commenter also encouraged FTA to provide additional technical assistance to assist agencies operating in contract environments in the development and implementation of PTASPs. Another transit agency urged FTA to clarify the extent to which the implementation and administration of SMS principles could be delegated to contractors. One commenter stated that if inter-city bus service is contracted, then the contractor, not the transit agency, should have primary responsibility for safety and compliance with the rule.

Two commenters asked FTA to clarify the rule's application to paratransit service. One of these commenters requested clarification as to how the rule would apply to an instance where a contractor provides paratransit service for a Section 5311 recipient and a separate Section 5310 recipient.

Response: As noted above, the statutory provisions of 49 U.S.C. 5329(d) require each ''State or local governmental authority, or any other operator of a public transportation system, that receives financial assistance under [49 U.S.C. Chapter 53]'' to draft and certify a safety plan. Consequently, this rule applies to FTA's recipients and subrecipients, unless the transit operator only receives Section 5310 and/or Section 5311 funds. To the extent that a recipient or subrecipient contracts for transit service, FTA will defer to the recipient or subrecipient to ensure that each of the requirements of this rule are being satisfied through the terms and conditions of its contract, including the identification of safety roles and responsibilities. Ultimately, under the statute, each FTA recipient or subrecipient has the responsibility to ensure compliance with this rule and to certify compliance annually—not a contractor.

Similarly, paratransit service—whether general public or ADA complementary, and including contracted paratransit service—is subject to this rule, unless the transit operator only receives Section 5310 and/or Section 5311 funds. To the extent that a contractor provides paratransit service for multiple FTA recipients, each FTA recipient ultimately has responsibility for ensuring that its transit operation complies with this rule.

B. Definitions

1. Accident

Comment: Several commenters expressed concerns with the proposed definition of ''Accident.'' Many of these commenters expressed concern with the phrase ''a report of a serious injury to a person'' within the definition of Accident. One commenter stated that ''serious injury'' relies on information that a transit agency is unlikely to possess or be able to validate. Another commenter expressed that this phrase would significantly increase transit agencies' notification and follow-up burdens. One commenter stated that the term ''Accident'' is a bias-laden term which suggests that an undesirable event could not be foreseen, prevented, or avoided. This commenter also asserted that the continued use of this

term diminishes advances made by safety and risk management professionals to adopt and promote bias-free language describing and categorizing incidents. Another commenter suggested that the proposed definition offers several categorizations for accidents without regard to cause, circumstance, or affected environment.

Several commenters suggested alternatives for the proposed definition of ''Accident.'' A commenter recommended using the threshold for accident notification in the former SSO rule at 49 CFR 659.33: ''[M]edical attention away from the scene for two or more individuals.'' Another commenter proposed that the definition for ''Accident'' should include a threshold of at least $100,000, otherwise every minor collision would be reportable in accordance with 49 CFR part 674, creating a burden on rail transit agencies' resources. This commenter suggested that accidents which result in property damage of $100,000 or less be classified as ''incidents,'' and be reportable to the SSOA and FTA, with a corresponding report to the National Transit Database (NTD) within thirty days. Another commenter remarked that the proposed definition of ''Accident'' should be more applicable to rail and bus/paratransit operations by using separate definitions for train and bus/paratransit accidents. For bus/paratransit, the commenter recommended that FTA should use the current Federal Motor Carrier Safety Administration (FMCSA) definition for ''Accident'' found in 49 CFR part 390. The commenter suggested that FTA could use an amended version of their proposed definition for ''Accident'' for rail operations that replaces ''a report of serious injury to a person,'' with ''injuries requiring immediate medical attention away from the scene for two or more individuals.''

Response: FTA included the definition of ''Accident'' in the proposed rule because the term appears in the definition of ''Event'' which is mentioned in the Safety Assurance section of the NPRM (a transit agency must develop a process to ''[i]nvestigate safety events to identify causal factors''). FTA defined ''Event'' as an ''Accident, Incident, or Occurrence,'' and to provide guidance to the industry on these terms, FTA defined them in its safety rules. Notably, FTA finalized a definition for ''Accident'' in its new SSO rule at 49 CFR part 674, and FTA is adopting that definition in today's rule to ensure consistency throughout FTA's regulatory framework for safety.

FTA did not propose any reporting or notification requirements in this rule. FTA established reporting and notification requirements in the new SSO rule at 49 CFR part 674 and FTA's NTD Reporting Manual. Today's rule requires transit agencies to develop safety plans, and this rule outlines the requirements for those plans. Accordingly, FTA will not amend those notification and reporting requirements through today's rule.

FTA disagrees with the commenter who suggested that the phrase ''serious injury'' will increase transit agencies' notification and follow-up burdens; this language should simplify, streamline, and make consistent any follow-up process. FTA also disagrees with the commenter who stated that the term ''Accident'' is a bias-laden term. Its use is intended to define the universe of safety Events that must be investigated. FTA disagrees with the suggestion that the proposed definition offers several categorizations for Accidents without regard to cause, circumstance, or affected environment. FTA has offered clarification on this term in Appendix A to the new SSO rule at 49 CFR part 674 (*https://www.gpo.gov/fdsys/pkg/FR-2016-03-16/pdf/2016-05489.pdf*).

FTA acknowledges that a transit agency may have difficulty ascertaining a precise type of injury due to medical privacy laws. FTA does not expect transit agencies to violate any medical privacy laws to determine whether an injury is serious. FTA does not expect transit agencies to seek medical records of individuals involved in Accidents that may have resulted in serious injuries.

FTA disagrees with the commenter who recommended using the threshold for accident notification in 49 CFR 659.33, ''medical attention away from the scene for two or more individuals,'' as FTA believes that a serious injury to a single person is of sufficient concern to warrant designation as an ''Accident.'' Additionally, ambulance transportation away from the scene may not necessarily be an accurate indicator of the actual gravity of the Event, given the possibility of ambulance operators transporting individuals with minor injuries.

FTA disagrees with the commenter who suggested that the definition of ''Accident'' include a threshold of at least $100,000, and that Events which result in property damage of $100,000 or less be classified as ''Incidents.'' FTA did not utilize the original $25,000 threshold for ''Accident'' in the SSO rule because most collisions involving rail transit vehicles exceeds $25,000 in property or equipment damage and FTA believes that any threshold for property damage is arbitrary when determining whether an Event qualifies as an Accident. Removal of the $25,000 threshold also eliminates any need to separate rail transit property from non-rail transit property when making an assessment of damages.

Finally, FTA disagrees with the commenter who suggested that the proposed definition of ''Accident'' be made more applicable to rail and bus/paratransit by using separate definitions for train and bus/paratransit accidents. FTA intends to be consistent with its definitions, especially since this final rule applies to all operators of public transportation systems.

2. Incident

Comments: One commenter stated that the proposed definition of ''Incident'' seems broad and undefined, asserting that under the proposed definition, any reported injury could be classified as an Incident. Another commenter asked how to distinguish between medical transport for serious and non-serious injuries. A commenter asked FTA to clarify what is considered ''damage to facilities, equipment, rolling stock, or infrastructure'' and how ''damage'' would be assessed to determine qualification for an Incident. Additionally, the commenter asked how a transit agency would differentiate damage and a simple mechanical issue, and whether every defect found on an inspection would now be considered ''damage.'' This commenter also remarked that the terms ''personal injury'' and ''injury,'' which are used in the definition for ''Incident,'' are not defined. A commenter suggested that the definition of ''Accident'' would be the better place to include one or more injuries requiring medical transport away from the scene.

One commenter asked whether a transit agency must track Incidents. Another commenter stated that the Appendix to 49 CFR part 674 requires rail transit agencies to report Incidents to FTA using NTD within thirty days; the commenter asked whether transit agencies providing bus transportation also must report bus-related incidents to FTA using NTD.

Response: FTA included the definition of ''Incident'' in the proposed rule because the term appears in the definition of ''Event'' which is mentioned in the Safety Assurance section of the NPRM (a transit agency must develop a process to ''[i]investigate safety events to identify causal factors''). FTA defined ''Event'' as an ''Accident, Incident, or Occurrence,'' and to provide guidance to the industry on these terms, FTA defined them in its safety rules. Notably, FTA finalized a

definition for ''Incident'' in its new SSO rule at 49 CFR part 674, and FTA is adopting that definition in today's rule to ensure consistency throughout FTA's regulatory framework for safety.

FTA disagrees with the commenter who stated that the definition of ''Incident'' is broad and undefined and that any reported injury could be classified as an Incident. As discussed in more detail in response to the comments on the definition for ''Serious Injury,'' FTA believes that there is a clear delineation between ''serious injury'' and ''non-serious injury.''

FTA provided guidance in Appendix A to 49 CFR part 674 on how to define ''damage to facilities, equipment, rolling stock, or infrastructure'' and how ''damage'' would be assessed to determine qualification for an Incident. In Appendix A, ''damage'' that meets the Incident threshold is any non-collision-related damage to equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency. Ultimately, each transit agency must assess the safety risk associated with any damage to its equipment facilities, equipment, rolling stock, or infrastructure, and whether it meets the definition of Accident, Incident, or Occurrence.

FTA does not believe that it is necessary to define ''injury'' or ''personal injury'' in this rule, and it defines ''Serious Injury'' for purposes of establishing a threshold by which an Event would be considered an Accident instead of an Incident. In today's rule, FTA has revised the definitions of ''Accident'' and ''Incident'' to make them consistent with FTA's SSO rule at 49 CFR part 674. Under the updated definitions, one or more ''serious injuries'' is the threshold for Accident and one or more non-serious injuries requiring medical transport away from the scene is considered an Incident.

Under FTA's new SSO rule at 49 CFR part 674, a rail transit agency must track and report an ''Incident'' through NTD, as has been the historical practice. Furthermore, a transit agency also must report Incident information for other modes to FTA through NTD. Please refer to the NTD Reporting Manual for further information on what information is collected on safety Events as a well as Accidents and Incidents, for both rail transit and bus agencies.

3. Occurrence

Comments: One commenter asked how damage would be differentiated from mechanical issues or normal wear-and-tear. This commenter asked FTA to clarify the relationship between ''Occurrence'' and ''Injury'' given that neither ''personal injury'' nor ''injury'' are defined in the rule. Another commenter asked FTA to define ''disrupt transit operations.'' Finally, one commenter recommended omitting the proposed definition because it is too broad and does not serve a clear purpose.

Response: FTA included the definition of ''Occurrence'' in the proposed rule because the term appears in the definition of ''Event'' which is mentioned in the Safety Assurance section of the NPRM (a transit agency must develop a process to ''[i]nvestigate safety events to identify causal factors''). FTA defined ''Event'' as an ''Accident, Incident, or Occurrence,'' and to provide guidance to the industry on these terms, FTA defined them in its safety rules. Notably, FTA finalized a definition for ''Occurrence'' in its new SSO rule at 49 CFR part 674, and FTA is adopting that definition in today's rule to ensure consistency throughout FTA's regulatory framework for safety.

FTA believes that there is a clear distinction between damage and mechanical issues or normal wear and tear. Damage is physical harm done to something or someone.[2] Mechanical issues and normal wear and tear are not the result of something or someone inflicting harm on equipment, facilities, equipment, rolling stock, or infrastructure.

A disruption to transit operations could be any interference with normal transit service at an agency. An Occurrence is a safety Event that only involves a disruption of transit service. A safety Event that results in a serious or non-serious injury would not be an Occurrence.

FTA disagrees with the commenter who suggested that FTA should omit the proposed definition of ''Occurrence'' because it does not serve a clear purpose. The definition helps identify the universe of activity that a transit agency should investigate because it could present a safety risk.

4. Serious Injury

Comments: Several commenters stated that transit agencies would not be able to obtain enough information about injuries to classify them as ''serious,'' given Federal Health Insurance Portability and Accountability Act (HIPAA) privacy regulations. These commenters suggested that HIPAA privacy regulations prevent transit agencies from obtaining personal medical information from individuals involved in accidents. One commenter remarked that, in their experience, hospital staff refused to provide personal medical information to a transit police officer.

One commenter recommended that FTA should explain how transit agencies and SSOAs can comply with this definition, and this commenter suggested that FTA create the legal authority for States to do so, or develop an alternative approach. A commenter remarked that if FTA has authority to obtain this type of information, then FTA should do so on its own accord. The commenter asked if it would meet one of the exemptions from the Government in the Sunshine Act if FTA collects information. One commenter asked how FTA would address and reconcile the proposed definition with other applicable Federal policies and regulations.

One commenter asked whether FTA would expect transit agencies, States, and SSOAs to obtain contact information for every individual involved in an accident, and then monitor local hospitals or contact these individuals in the seven-day period to determine if anyone involved in the accident had to be hospitalized for more than 48 hours as a result of this accident. Finally, one commenter asked whether a doctor would be required to respond to every transit event that has the possibility of being classified as an accident to triage the situation and determine whether the event meets the definition of an accident.

Several commenters expressed concern about the definition of ''Serious Injury'' and its associated burden on transit agency staff. A commenter concluded that the proposed definition would require transit agencies, States, and SSOAs to step outside their training to practice some form of medicine—for which they are not licensed—to comply with the proposed rule, unless transit agencies, States, and SSOAs are expected to hire trained medical personnel as a part of their programs. The commenter stated that transit agency staff may not be aware of the nature or extent of an individual's injury, and these staff may only know that an individual was transported away from the scene for medical attention with very limited ability (and no authority) to confirm the individual's injury status. A commenter stated that, in order to meet a similar FRA requirement, the commenter expends considerable resources following up on individual claims, and is sometimes unable to properly classify events for months or years after the event date. The commenter concluded that the resources needed to gather this

[2] See Merriam-Webster's Collegiate Dictionary (11th edition).

proposed information would be burdensome, as the volume of passengers is much greater for FTA.

A commenter asserted that transit agency staff could report certain findings on their initial incident reports, but this effort would be burdensome, and the transit agency staff would have to rely on eyewitness reports rather than medical professionals' opinions, rendering the effort unreliable. The commenter asked whether an initial patient/scene assessment would suffice, or whether a definitive medical diagnosis would be required.

Several commenters suggested alternatives to the proposed definition of ''Serious Injury.'' Two commenters recommended that FTA use the definition in the former SSO rule at 49 CFR 659.33, which states that an accident involves injuries if there is a need for ''immediate medical attention away from the scene for two or more individuals.'' According to these commenters, verifying transport away from the scene would have several benefits, such as: Not requiring transit agencies, States, and SSOAs to practice medicine to classify events; avoiding HIPAA complications; allowing events classified as accidents and incidents to be reported and investigated in a timely manner; being a more reasonable threshold for injury definitions; requiring only easily attainable information; and its alignment with NTD reporting requirements.

One commenter questioned how FTA determined the classification for ''serious'' and questioned how serious an injury could be if no medical treatment was sought for seven days. The commenter stated that FTA needs to define ''serious'' and remove the subjectivity of whether or not an injury is serious. Two commenters asked for the value of defining ''Serious Injury'' (that is, why does FTA want to collect this information and how would it enhance overall safety). One commenter recommended that FTA remove this definition from all of its safety rules.

Response: Through the Safety Assurance section of today's rule (49 CFR 673.27), FTA requires each operator of a public transportation system to develop a process for conducting investigations of safety events to identify causal factors. FTA defines the word ''Event,'' to mean an ''Accident, Incident, or Occurrence,'' and FTA defines ''Accident'' to mean, among other things, ''a report of a serious injury to a person.'' To provide guidance to the industry on this term, FTA defined ''Serious Injury'' in its safety rules, including its new SSO rule at 49 CFR part 674. FTA is adopting the definition of ''Serious Injury'' from the new SSO rule to ensure consistency throughout FTA's regulatory framework for safety.

FTA has addressed comments regarding its proposed definition of ''Serious Injury'' in the final SSO rule at 49 CFR part 674 (*https://www.gpo.gov/fdsys/pkg/FR-2016-03-16/pdf/2016-05489.pdf*) and in its responses to the definition of ''Accident,'' above. FTA acknowledges that a transit agency may have difficulty ascertaining a precise type of injury due to medical privacy laws, such as HIPPA. FTA does not expect transit agencies to violate these laws in order to obtain the information needed to determine whether an injury is serious, and it does not expect transit agencies to request the medical records of individuals involved in safety Events that may be classified as Accidents resulting in Serious Injuries. Nor does FTA expect transit agency staff to undergo medical training in order to determine whether an injury meets the threshold of ''serious.'' Instead, FTA expects safety personnel to exercise a common sense approach when evaluating injuries. As several commenters noted, some injuries may be readily known or observable at the scene of an event, in which case, a transit agency may make a determination as to whether an injury is serious. Other injuries may not be apparent until the individual undergoes a medical examination, in which case the injury would be deemed ''serious'' only if a transit agency becomes aware that the injury meets the threshold for seriousness. FTA believes that a transit agency may utilize these approaches when determining the seriousness of an injury, and it does not believe that it needs to reconcile the definition of ''Serious Injury'' with other laws.

Given the ability of transit agencies to make observations at the scenes of safety events and to evaluate data and information collected at these scenes, FTA does not believe that any burdens of this rule are unreasonable. FTA does not expect transit agencies to monitor local hospitals or contact individuals involved in safety events within the seven day period to determine if the individuals were hospitalized for more than 48 hours. FTA is not requiring doctors to respond to every safety Event that has the possibility of being classified as an Accident to triage the situation and determine whether the event meets the definition of an Accident, and FTA is not requiring transit agencies to hire medical personnel. In today's rule, FTA is requiring transit agencies to develop a process for conducting safety investigations.

5. Accountable Executive

Comments: FTA received numerous comments regarding its proposed definition of ''Accountable Executive.'' Several commenters provided input on the definition of ''Accountable Executive'' as it relates to ''Chief Safety Officer.'' One commenter stated that, according to the proposed rule, the Accountable Executive is responsible for implementing and maintaining the SMS; however, this should be a primary responsibility of the Chief Safety Officer. Another commenter asked whether an Accountable Executive would experience a conflict of interest if he or she also serves as the Chief Safety Officer or SMS Executive, as allowed under proposed 49 CFR 673.23(d)(2), because the duties also involve operational, financial, and other responsibilities that may be in conflict with safety responsibilities.

Several commenters recommended that FTA clarify in the final rule that State officials are not ''Accountable Executives'' unless the State is a transit operator, and if so, only with respect to the State's activities as a transit operator. Several commenters asked whether the Accountable Executive is the chief elected official, such as a county executive or mayor, in cases where the transit operator is a county or city government. A transit agency, with a general manager who is responsible for the day-to-day aspects of the transit system and a chief administrator who is responsible for the administrative aspects of the organization, asked how it would designate a single Accountable Executive who meets all of the criteria of 49 CFR part 673.

A few commenters expressed concerns about the overlapping and burdensome responsibilities of the Accountable Executive, which may not allow for sufficient attention to safety. Several commenters said the proposed definition may give an elected official or board chair the designation of an Accountable Executive despite serving at a policy, rather than an operational, level. A transit agency argued that the proposed definition is ambiguous and inconsistent with the proposed National Public Transportation Safety Plan, and some definitions state that the Accountable Executive is in charge of an asset management plan, while other areas omit this requirement. One commenter asserted that the job duties of planning staff are inherently much different from maintenance staff activities, and staff should report to their respective managers instead of a

single executive. Similarly, a commenter stated that, in some instances, a transit agency's reporting structure is shaped by State or local laws to promote a separation of duties and financial checks and balances, and these important governmental tenets should not be disrupted by the new safety requirements. Several commenters suggested that the definition of Accountable Executive may not be applicable in some non-traditional transit agency hierarchies.

Several commenters suggested that the Accountable Executive should be a general manager, president, or equivalent officer who is responsible for safety, asset management, and human resources, but not have full control over the budgeting process. Another commenter stated that that proposed definition may be inappropriate because having one Accountable Executive for SMS, the asset management plan, and the safety plan is ineffective because the Accountable Executive should be represented by different individuals for each regulatory program. The commenter recommended that FTA define an Accountable Executive to be ''an individual who is responsible for the Safety Management System and Agency Safety Plan, who shall be required to have a role in the [transit asset management plan] and investment prioritization for the respective agency.''

Response: Each transit operator must identify an Accountable Executive within its organization who ultimately is responsible for carrying out and implementing its safety plan and asset management plan. And to be clear, a State that drafts a plan on behalf of another recipient or subrecipient is not the Accountable Executive for those transit operators.

An Accountable Executive should be a transit operator's chief executive; this person is often the president, chief executive officer, or general manager. FTA understands that at many smaller transit operators, roles and responsibilities are more fluid. However, FTA believes that, even in circumstances where responsibilities are either shared or delegated, there must be one primary decision-maker who is ultimately responsible for both safety and transit asset management. It is a basic management tenet that accountabilities flow top-down. Therefore, as a management system, safety and transit asset management require that accountability reside with an operator's top executive.

FTA received numerous comments on its proposed definition of ''Accountable Executive'' in its rulemaking on transit asset management, and FTA directs readers to the final Transit Asset Management rule at 49 CFR part 625 for further information (*https://www.gpo.gov/fdsys/pkg/FR-2016-07-26/pdf/2016-16883.pdf*).

6. Chief Safety Officer

Comments: One commenter agreed with FTA that a Chief Safety Officer should not serve in other service, operational, or maintenance capacities. Several commenters agreed with FTA's proposal to allow Section 5310, Section 5311, and small public transportation providers to designate as the Chief Safety Officer a person who also undertakes other functions. Several commenters asked FTA to clarify the term ''adequately trained.''

One commenter expressed concern that FTA may be assuming that any rail transit agency is large enough to merit its own Chief Safety Officer with no additional operational or maintenance responsibilities, indicating that this requirement is burdensome because a rail transit agency would have to hire or contract a separate Chief Safety Officer for a limited role. The commenter suggested that FTA should permit an exemption for small rail transit agencies similar to the exemption for small public transportation providers to resolve this concern. This commenter also asked FTA to clarify whether a Chief Safety Officer has to be in the direct employ of a rail transit agency and whether he or she could be a part-time employee.

A commenter stated that FTA has proposed, but not promulgated, training rules for SSOA managers, Federal employees, and transit agency staff who are responsible for safety oversight, and argued that these training requirements also should apply to a Chief Safety Officer prior to designation by the Accountable Executive.

One commenter stated that the terms ''Chief Safety Officer'' and ''Safety Officer'' are inconsistently used, and the term ''Safety Officer'' was not defined in the NPRM. To rectify this inconsistency, the commenter, who concluded that it is implied that the Safety Officer is the Chief Safety Officer, suggested that FTA should replace the term ''Safety Officer'' with ''Chief Safety Officer.''

Response: FTA appreciates the support from commenters regarding its proposed definition of ''Chief Safety Officer.'' Given the different sizes of transit operators, and given the varying operating environments of transit systems across the nation, FTA is deferring to each transit operator to determine the level of training that is adequate for their Chief Safety Officer.

FTA disagrees with the commenter who suggested that a Chief Safety Officer at a rail transit agency should be able to have multiple roles within the organization. Given the more complex operating environments of rail transit systems and the increased safety risks in these environments, FTA will not allow the Chief Safety Officers for rail transit agencies to have additional operational and maintenance responsibilities; it is necessary to have a single individual wholly dedicated to ensuring safety. FTA believes that this role should be a full-time responsibility at rail transit agencies, unless a rail transit agency petitions FTA to allow its Chief Safety Officer to serve multiple roles given administrative and financial hardships with having a single, dedicated, and full-time Chief Safety Officer.

Finally, FTA notes that all references to the term ''Safety Officer'' in the NPRM were intended to mean the term ''Chief Safety Officer.''

7. Operator of Public Transportation System

Comments: One commenter suggested that an ''Operator of a Public Transportation System'' should be ''any organization, agency, or company that operates, or contracts someone to operate, any mode of transportation that is used by the general public in a defined city, State, or region.''

Response: The proposed rule defines ''Operator of a Public Transportation System'' as ''a provider of public transportation as defined under 49 U.S.C. 5302(14), and which does not provide service that is closed to the general public and only available for a particular clientele.'' Given that FTA is deferring action regarding the applicability of this rule to Section 5310 recipients, FTA has changed this definition in the final rule to be ''a provider of public transportation as defined under 49 U.S.C. 5302(14).'' The additional language—''and which does not provide service that is closed to the general public and only available for a particular clientele''—is not needed since the rule is not applicable to Section 5310 recipients at this time. FTA believes that the proposed definition is sufficiently broad to encompass the categories of transit providers referenced in the commenter's definition. FTA does not agree that the definition needs to specify that an operator provide service in a defined city, State, or region.

8. Rail Transit Agency

Comments: The proposed rule defines a ''Rail Transit Agency'' as ''any entity that provides services on a rail fixed

guideway public transportation system.'' One commenter asked FTA to clarify whether the proposed definition applies equally to a public transit operator and a contracted private firm that operates and maintains services on a rail fixed guideway public transportation system.

Response: This rule applies to any operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. Chapter 53, including rail transit operators that receive FTA funds and are not regulated by FRA, unless the operator only receives Section 5310 and/or Section 5311 funds. The application of this rule extends to contracted private firms that operate public transportation and receive FTA funds, but it does not extend to private contractors that provide service that is not public transportation.

9. Performance Target, Safety Performance Target, and Performance Criteria

Comments: One commenter remarked that the proposed definition for ''Performance Target'' needs clarity. Another commenter stated that FTA should consider deleting the proposed definition for ''Performance Target,'' because the proposed definition for ''Safety Performance Target'' is more appropriate for this safety-related rule. This commenter also suggested revising the definition of ''Safety Performance Target'' to ''a specific level of measurable performance for a given safety performance criteria over a specified timeframe.''

FTA proposed to define ''Performance Criteria'' as ''categories of measures indicating the level of safe performance within a transit agency.'' One commenter stated that this definition is confusing and possibly inconsistent with the proposed National Public Transportation Safety Plan. The commenter stated that the terms ''Criteria'' and ''Measures'' appear to be synonymous, and proposed the following definition for ''Performance Criteria'': ''Categories of safety performance measures that focus on the reduction of safety events, both for the public who use or interface with the rail system, and employees who operate and maintain the system.''

Response: As appropriate, FTA has incorporated into this rule definitions that appear in other rulemakings undertaken pursuant to 49 U.S.C. 5329 and 5326, as well as the final joint FHWA/FTA Planning Rule which was published May 27, 2016 (see *https://www.gpo.gov/fdsys/pkg/FR-2016-05-27/pdf/2016-11964.pdf*). Accordingly, FTA has revised the definition of ''Performance Target'' and added the definition of ''Performance Measure'' to match the definitions used in the joint FHWA/FTA Planning rule and FTA's Transit Asset Management rule.

To avoid redundancy, FTA is deleting the definition for ''Safety Performance Target'' and keeping the definition of ''Performance Target,'' since these terms are one and the same for purposes of this rule.

FTA had to reconcile the use of similar terms throughout its statutory authorizations for safety and asset management, including the terms ''criteria'' and ''measures.'' Although Congress used two different terms throughout 49 U.S.C. Chapter 53, it intended these terms to be synonymous. In the NPRM, FTA proposed to define ''Performance Criteria'' to mean ''categories of measures indicating the level of safe performance within a transit agency,'' but to eliminate confusion in this final rule, FTA removes that term, replaces it with the term ''Performance Measure,'' and incorporates the definition of ''Performance Measure'' as used in FTA's Transit Asset Management rule. Consequently, FTA uses the term ''Performance Measure,'' in the place of ''Performance Criteria,'' throughout this final rule.

10. Small Public Transportation Provider

Comments: The proposed rule defines ''Small Public Transportation Provider'' as ''a recipient or subrecipient of Urbanized Area Formula Program funds under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in revenue service and does not operate a rail fixed guideway public transportation system.''

Several commenters requested FTA to clarify that the ''100 buses in revenue service standard'' applies only to recipients of Section 5307 funds, and not recipients of Section 5310 or 5311 funds. One commenter asked whether the threshold of 100 vehicles in revenue service refers to total revenue fleet vehicles, peak vehicles, or something else. Another commenter that operates commuter rail service regulated by FRA, but has fewer than 100 buses in revenue service, asserted that they met the definition of a ''Small Public Transportation Provider.'' The commenter stated it posed this assertion to FTA during a webinar for this rulemaking on March 2, 2016, and it requested that FTA clarification the application of the rule to its scenario.

A couple of commenters remarked that the proposed definition for ''Small Public Transportation Provider'' differed between related rulemakings and notices, specifically the TAM proposed rule and FTA's Circular 9030.1E. Commenters noted that the TAM rule's reference to ''in revenue service'' is a typical definition in the industry and should be adhered to across all proposed rulemakings.

Other commenters suggested that the definition include providers with ''100 or fewer fixed-route vehicles,'' or be based on the service area's population rather than the number of buses. Additionally, one commenter suggested that vanpool fleets that are not open to the general public should be counted as revenue service vehicles.

Several commenters noted that significant differences exist between rail transit operators, large bus operators, and smaller operators, particularly in the ways in which they conduct business and in the rate of accidents and the consequences of those accidents. One commenter stated that the categories in the proposed rule are too broad and rigid and could have unintended consequences for small operators. The commenter remarked that the rigidity of a ''two-tier system'' could cause a Section 5307 recipient, with under 100 vehicles, to have their oversight provided by the State. Another commenter stated that the two-tier system does not take into account a Section 5311 recipient that may serve multiple counties with over 100 vehicles. The commenter remarked that there is no definition for this type of system within the ''tiers'' and that the Section 5311 recipient might be bumped into a higher category. One commenter suggested adding a third tier for systems operating fifty or fewer vehicles and no rail fixed guideway public transportation service to provide States with the opportunity to implement SMS scalable to the size and complexity of the transit organization.

Response: FTA appreciates the comments that it received regarding its proposed definition for ''Small Public Transportation Provider.'' FTA agrees with the commenters who suggested that FTA align this definition with the definition in the final TAM rule, and FTA agrees with the commenters who suggested that FTA create the threshold for Small Public Transportation Providers based on vehicles utilized in peak revenue service, as opposed to revenue service in general, as peak revenue service is a threshold commonly used in the transit industry. Therefore, in today's final rule, FTA defines ''Small Public Transportation Provider'' to mean ''a recipient or subrecipient of Federal financial

assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service and does not operate a rail fixed guideway public transportation system.''

11. Requests for New Definitions

Comments: One commenter requested that FTA add new definitions for the term ''safety performance assessment.'' One commenter recommended that FTA clarify whether the term ''Public Transportation Vehicle'' includes rail, bus, paratransit, maintenance, and non-revenue vehicles. Several commenters recommended that FTA define the term ''Transit Provider'' as follows: ''A State is not considered to be a transit provider by virtue of passing on funds to subrecipients under 49 U.S.C. 5310, 5311, or 5339, administering these programs, developing and implementing a TAM plan, or safety plan or certifying a safety plan, or taking any other steps required of a State by Chapter 53 of title 49, United States Code or other Federal statue, or by this or other FTA rules.''

Response: For purposes of implementing this rule, FTA does not find it necessary to further define the term ''safety performance assessment.'' Generally, this term refers to a transit agency's evaluation of its success of managing safety risks. To the extent there is any confusion over this term, FTA will provide technical assistance.

FTA notes that a public transportation vehicle may include rail, bus, paratransit, maintenance, and non-revenue vehicles, as the term is utilized in the definition of ''Accident.''

Finally, FTA did not propose to define the term ''Transit Provider'' in the NPRM, and FTA believes that the term is sufficiently descriptive and does not need to be defined in this rule.

C. General Requirements

Comments: Several commenters provided high-level feedback regarding the general requirements for PTASPs as proposed in 49 CFR 673.11. One commenter suggested that FTA should clearly emphasize that these elements are minimum requirements and that a transit agency should be able to enhance its SMS and incorporate tools and best practices that are proven to be effective, particularly given the adaptability, scalability, and flexibility of SMS.

One commenter asserted that the combination of the general requirements for each written safety plan, along with the requirements to ''establish SMS processes,'' results in a lack of clarity regarding the required contents of the actual document that a transit agency would consider to be its safety plan. This commenter stated that FTA should provide at least the same degree of specificity with regard to the required contents of a transit agency's written safety plan that FTA provided for SSPPs under the former SSO rule at 49 CFR part 659.

Response: As discussed throughout today's final rule, SMS is scalable and flexible, and it can be adapted to any transit agency's unique operating environment. The requirements in the rule provide the skeleton framework for safety plans, and FTA encourages transit agencies to incorporate tools and best practices that effectively mitigate and eliminate safety risks throughout their systems.

To be clear, each written safety plan must include the documented processes and procedures related to SMS, and the written plan must include each of the other requirements as outlined in the rule. FTA intentionally drafted broad, non-prescriptive requirements for SMS in an effort to develop a safety framework that could fit within the thousands of unique transit operating environments across the nation.

1. Role of the Accountable Executive

Comments: Pursuant to FTA's proposed provisions at 49 CFR 673.11(a)(1), each transit agency's Accountable Executive must sign the agency's safety plan and subsequent updates thereto. One commenter supported this provision and asserted that the requirement is essential for SMS and for maintaining a positive safety culture. Another commenter agreed that the Accountable Executive with budgetary authority should review and approve the safety plan.

A couple of commenters asked whether the Accountable Executive must be the same individual for purposes of approving the agency's safety plan and the agency's transit asset management plan, and they asked whether the Accountable Executive must be the individual explicitly ''responsible for implementing SMS.'' These commenters also inquired about the Accountable Executive's role for municipal government agencies, and they asked whether the head of a city's department of transportation, the head of a city's department of public works, or a city manager may serve as the Accountable Executive for a municipal government agency, as opposed to a city's mayor.

Response: As a preliminary matter, FTA distinguishes the role of the Accountable Executive from the role of a Board of Directors, or an Equivalent Authority. Pursuant to 49 CFR 673.11(a)(1), the Accountable Executive must sign the safety plan; the Board of Directors or an Equivalent Authority must approve the safety plan in accordance with 49 U.S.C. 5329(d)(1)(A).

Given the varying sizes and natures of transit systems, FTA defers to those systems in their designation of an Accountable Executive, so long as that single individual has the ultimate responsibility and accountability for the implementation and maintenance of the SMS 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 and the agency's transit asset management plan. For municipal government agencies, that individual could be a county executive or a mayor, or it could be the head of a city's department of transportation, the head of a city's department of public works, or a city manager. FTA has offered this non-exhaustive list of examples of Accountable Executives for illustrative purposes only. And while many individuals within a transit agency may be responsible for ''implementing'' SMS, the Accountable Executive is the individual with the ultimately responsibility for SMS implementation at the agency.

2. Approval of a Public Transportation Agency Safety Plan

Comments: Pursuant to FTA's proposed provisions at 49 CFR 673.11(a)(1), each transit agency would be required to have its safety plan, and subsequent updates thereto, approved by the agency's Board of Directors, or an Equivalent Authority. One commenter supported this provision, indicating that this activity is essential for SMS and for maintaining a positive safety culture.

Several commenters asserted that the agency's Accountable Executive, not the Board of Directors, would be the more appropriate entity to approve the safety plan. These commenters stated that a Board of Directors, which can consist of limited-term elected officials, are not subject to the same training requirements as the Accountable Executive, and do not have the operational knowledge and expertise suitable for the review and approval of a safety plan. One of these commenters suggested that the Accountable Executive have top-level ownership of the safety plan, with a stipulated responsibility to educate and report to the Board of Directors on the agency's safety program.

Several commenters asked questions about the implementation of this

provision for agencies that lack Boards of Directors. A couple of commenters asked if transit agencies can request FTA to approve their ''Equivalent Authorities,'' or whether they must wait for an FTA oversight review to determine whether their Equivalent Authorities are consistent with the rule. A couple of commenters had specific questions regarding the adequacy of an Equivalent Authority. One example involved a streetcar being owned by a city, but being operated and maintained by a non-profit organization with its own Board of Directors. Another example involved a State Department of Transportation which does not have a Board of Directors, but instead, has an Administrator/CEO. One commenter asked FTA to provide a clear example of an ''Equivalent Authority'' if a recipient does not have a Board of Directors. Similarly, another commenter asserted that a State may have difficulty identifying an Equivalent Authority because a subrecipient may be a parish or county that does not necessarily have a Board of Directors. Another commenter recommended that an Equivalent Authority should have a thorough knowledge of a transit agency's daily operations and the authority to obtain operational and safety data so that it could provide safety oversight.

One commenter asked about the measure of ''approval'' for the Board of Directors, and inquired as to what that approval would denote in terms of safety responsibility.

Another commenter observed that a transit agency with rail and bus operations must have its safety plan approved by the SSOA for purposes of its rail operations, and suggested that FTA would have to approve the safety plan for purposes of its bus operations. This commenter expressed concern that, unless there are very clear guidelines for the review and approval of the safety plans, there is the potential for conflicting views and approvals, including approval of one operation and not the other.

Response: FTA appreciates concerns from commenters indicating that members of a transit agency's Board of Directors may not be fully educated in safety; however, through the statutory provisions of 49 U.S.C. 5329(d)(1)(A), Congress required each transit agency's Board of Directors, or an Equivalent Authority, to approve the agency's safety plan. Through the Safety Management Policy provisions of 49 CFR 673.23 and the Safety Promotion provisions of 49 CFR 673.29, each transit agency is required to identify individuals who are responsible for safety in their organization and to ensure that those individuals are adequately trained, including staff and executive leadership, and this requirement should extend to a transit agency's Board of Directors.

If a transit agency does not have a Board of Directors, then an Equivalent Authority may approve its safety plan. An Equivalent Authority is an entity that carries out duties similar to that of a Board of Directors, including sufficient authority to review and approve a safety plan. For example, an Equivalent Authority could be the policy decision-maker/grant manager for a small public transportation provider; the city council and/or city manager for a city; a county legislature for a county; or a State transportation commission for a State. Given the varying sizes and organizational structures of the thousands of recipients and subrecipients throughout the country, FTA is not providing a prescriptive definition of this term, and it is deferring to each transit agency to identify who would be an Equivalent Authority for its system. FTA intends its list of examples to be non-exhaustive and illustrative only.

The approval of the safety plan should mean that the Board of Directors or the Equivalent Authority accepts the safety plan as satisfactory, that the safety plan complies with each of the requirements of this rule, and that the safety plan effectively will guide the transit operator with the management of safety risks.

Finally, to clarify, FTA does not intend to collect and ''approve'' safety plans. FTA intends to ensure that transit agencies comply with this rule by reviewing their safety plans through FTA's existing Triennial Reviews and State Management Reviews. Through these oversight processes, FTA may collect various documents, including safety plans, to ensure compliance with this part, but FTA will not provide regular ''approvals'' of the plans. SSOAs, however, must approve the safety plans of rail fixed guideway public transportation operations within their jurisdictions.

3. Documentation of SMS Processes and Activities

Comments: Pursuant to FTA's proposed provisions at 49 CFR 673.11(a)(2), each transit agency would be required to document its processes and activities related to SMS in its safety plan. One commenter sought clarity regarding whether the safety plan must detail the processes and activities, or just indicate that such processes and activities exist. Another commenter asked which documents should be included in the safety plan, specifically whether the safety plan should include documents that are generated by the results of ongoing SMS activities, or only those documents which formally present a description of SMS processes.

Response: Each safety plan must include documented SMS processes; it is not sufficient to merely indicate in the safety plan that SMS processes exist. Through the practice and implementation of SMS, each transit agency may generate data and other documentation, but the safety plan itself must document each of the processes as outlined in this rule. FTA is providing discretion to each transit agency to decide for itself whether it will incorporate processes and documented activities beyond those required in today's final rule.

4. Safety Performance Targets

Comments: Pursuant to FTA's proposed provisions at 49 CFR 673.11(a)(3), each transit agency would be required to identify in its safety plan performance targets based on the safety performance measures that FTA establishes in the National Public Transportation Safety Plan. One commenter supported FTA's proposed list of safety performance measures as outlined in the National Public Transportation Safety Plan, but several commenters recommended that FTA expand the list of performance measures. One commenter recommended that FTA reduce its proposed list of safety performance measures to align with the safety outcomes that transit agencies currently report to NTD. One commenter stated that the proposed definition of ''Performance Criteria'' is confusing and inconsistent with the National Public Transportation Safety Plan. The commenter stated that the terms ''Criteria'' and ''Measures'' are synonymous, and proposed the following alternate definition: ''categories of safety performance measures that focus on the reduction of safety events, both for the public who use or interface with the rail system, and employees who operate and maintain the system.'' Several commenters requested that FTA provide agencies with additional guidance on the four basic safety performance measures.

One commenter asked whether the safety plan must contain specific quantitative performance targets for all performance measures. This commenter stated that specific quantitative targets would pose challenges for transit agencies and that all targets should be

broad and not static to allow agencies to adjust their targets as new information dictates. Several commenters requested FTA to allow transit agencies to update and revise their safety plans if FTA alters or adjusts performance measures.

Response: FTA appreciates the comments that it received regarding its proposed safety performance measures; however, the proper vehicle for addressing these comments is through the notice and comment process tied to FTA's proposed National Public Transportation Safety Plan (RIN 2132–ZA04). The National Public Transportation Safety Plan will identify FTA's safety performance measures, not today's rule for Public Transportation Agency Safety Plans. The Public Transportation Agency Safety Plan rule only requires transit agencies to set performance targets based on the performance measures established in the National Public Transportation Safety Plan. FTA will address all of the comments related to safety performance measures in the National Public Transportation Safety Plan, including the above-referenced comments that were directed to this rulemaking.

FTA notes that in the NPRM for this rule, FTA used the term ''Performance Criteria,'' which it proposed to define as ''categories of measures indicating the level of safe performance within a transit agency.'' FTA used this term because the language of 49 U.S.C. 5329 uses the term ''Performance Criteria.'' Other parts of FTA's authorizing statute, such as the Transit Asset Management provisions of 49 U.S.C. 5326, use the term ''Performance Measures.'' FTA believes that Congress intended the terms ''Performance Criteria'' and ''Performance Measures'' to be synonymous. To eliminate confusion over distinctions between these terms and to ensure consistency with the use of these terms throughout FTA's programs, FTA has removed the term ''Performance Criteria'' from today's final rule and replaced it with the term ''Performance Measure.''

Finally, in accordance with the statutory requirements of 49 U.S.C. 5329(d)(1)(E), each transit agency must include in its safety plan, ''performance targets based on the safety performance criteria and state of good repair standards.'' These targets must be specific numerical targets set by transit agencies themselves. FTA emphasizes, however, that the safety plan is intended to be a living document that evolves over time. FTA expects transit agencies to modify their safety plans, and to adjust their performance targets, as they collect data and implement SMS. Indeed, the performance targets may change from year to year, or more frequently, as safety data may necessitate.

5. Future Requirements in FTA's Public Transportation Safety Program and National Public Transportation Safety Plan

Comments: One commenter requested FTA to provide guidance on what it means to ''address'' the requirements and standards in its Public Transportation Safety Program and National Public Transportation Safety Plan. Another commenter expressed concern that FTA has not established formal standards for these requirements, and requested FTA to establish minimum measures and targets for safety performance and improvement.

Response: In today's final rule, FTA is requiring each transit agency to address—more specifically, to ensure that it is complying with—all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program at 49 CFR part 671 and the National Public Transportation Safety Plan. In particular, each transit agency must identify safety performance targets based on the performance measures that FTA establishes in the National Public Transportation Safety Plan. Additionally, FTA encourages transit agencies to adopt any voluntary minimum safety performance standards established in the National Public Transportation Safety Plan, until mandatory standards are established, in which case each transit agency must fully comply with those safety performance standards. To the extent that FTA amends its Public Transportation Safety Program Rule or the National Public Transportation Safety Plan in the future, FTA expects each transit agency to amend its safety plan, as appropriate.

6. Process and Timeline for Annual Review and Update

Comments: One commenter asked FTA to clarify if the timeline for the annual review process is determined by each transit agency, or whether there is a particular date by which an annual review and update is required.

Several commenters disagreed with the proposed requirement that the plans be updated annually. Some commenters suggested that safety plans only need to be updated every two years because the requirement for an annual update of safety plans is excessive and burdensome. Several of these commenters asserted that if annual action is needed, an annual review and status report would be less resource intensive. A few commenters suggested that safety plans need only to be updated every two years, unless there is a significant policy or change in condition (such as a fatality) that warrants a change. Another commenter recommended the same approach, but with updates required every three years rather than two years. One commenter suggested alternative review schedules ranging from every two years to every five years. One commenter suggested that organizations which meet various criteria should be placed on a five year review plan and they should be required to submit any requested updates to policies for review and approval.

One commenter asserted the review requirement should be consistent with FTA's proposed rule for Transit Asset Management Plans, which would require each transit agency to update its Transit Asset Management Plan at least once every four years. Additionally, this commenter suggested that the rule should require an update of a safety plan in any year when risk assessments result in the need for substantial mitigation, or if there are significant changes to asset inventory, condition assessments, or investment prioritization.

A couple of commenters asked about the required annual update as it may relate to a rail transit agency's SSPP annual reviews. A commenter asked whether the process for conducting annual reviews would likely be similar to the SSPP annual reviews, including requirements that an Accountable Executive would perform the review and that a transit agency document all updates and revisions. A commenter suggested that the proposed requirement to conduct an annual review and update the safety plan, as needed, differed from the requirement to conduct a formal annual internal audit of the SSPP.

A commenter expressed concern with FTA's decision to publish the National Public Transportation Safety Plan with no schedule for revision, which would cause transit agencies to continuously update their safety plans to coincide with any changes in FTA guidance documents. This commenter further encouraged FTA to define prescriptive elements of the annual review and update process to better guide agencies.

Response: Pursuant to the statutory provisions of 49 U.S.C. 5239(d)(1)(D), each operator of a public transportation system must develop a safety plan which includes ''a process and timeline for conducting an annual review and update of the safety plan.'' In light of this statutory language, today's final rule requires each transit agency to establish a process and timeline for conducting a review and update of its

safety plan, and this review and update must occur at least annually. 49 CFR 673.11(a)(5).

Given the diversity in transit systems across the country, and given each transit agency's unique operating environment, FTA is deferring to each transit agency to determine, for itself, the frequency of its safety plan reviews and updates each year, and the process for doing so. Each transit agency must certify compliance with these requirements through its annual Certifications and Assurances to FTA.

FTA disagrees with the commenters who proposed that the annual review period for the safety plans be changed to a less frequent time period, such as two years, three years, four years, or five years. The statutory provisions of 49 U.S.C. 5329(d)(1)(D) do not provide that latitude. Notwithstanding the statute, as a matter of a best safety practice, FTA believes that each transit agency should annually review its process for hazard identification and risk analysis in an effort to prevent safety events. As a transit agency collects data through the hazard identification and risk analysis processes, the transit agency should be evaluating its safety performance targets to determine whether they need to be changed, as well.

FTA agrees with the commenter who suggested that along with an annual review, a transit agency should update its safety plan at any point when risk assessments result in the need for substantial safety mitigation, or if there are significant changes to asset inventory, condition assessments, or investment prioritization.

Regarding the annual reviews of SSPPs, FTA notes that under its new public transportation safety program, the requirements for SSPPs under the former regulatory provisions of FTA's SSO rule at 49 CFR part 659 have been eliminated. Today's requirement for a PTASP under 49 CFR part 673 replaces the old requirement for an SSPP under 49 CFR part 659. Therefore, annual reviews of the PTASP now will be required, and SSPPs will become obsolete for rail transit agencies one year after the effective date of this final rule.

Finally, regarding the National Public Transportation Safety Plan, FTA will update the National Public Transportation Safety Plan when it believes it is necessary to do so, based on safety needs in the public transportation industry. FTA notes that it must make any changes to the National Public Transportation Safety Plan through the public notice and comment process, and the transit industry will have the opportunity to provide input on any changes to this document. Furthermore, FTA believes that changes to the National Public Transportation Safety Plan will not necessarily cause transit agencies to update their PTASPs. Currently, the National Public Transportation Safety Plan and the Public Transportation Agency Safety Plans are linked through the requirements for performance targets in agency safety plans based on the performance measures in the National Public Transportation Safety Plan.

7. Emergency Preparedness and Response Plans

Comments: Pursuant to the proposed provisions of 49 CFR 673.11(a)(6), each rail transit agency would be required to include an emergency preparedness and response plan in its safety plan. Although a commenter noted that there is no statutory language in 49 U.S.C. 5329 which requires emergency preparedness and response plans, the commenter agreed that this type of plan is important and should be included in safety plans. One commenter supported the requirement that transit agencies develop a plan for the delegation of responsibilities during an emergency, but encouraged FTA to include in the final rule a requirement that ensures transit agencies provide adequate training for workers responsible for tasks during emergencies.

Two commenters suggested that FTA should provide transit agencies with the option of separating their safety plans and their emergency preparedness and response plans, developing them as two separate documents. One of these commenters suggested that these documents are fundamentally different and the emergency preparedness and response plan contains information that should not be widely distributed. One of these commenters suggested that some transit agencies that have not previously complied with 49 CFR part 659 may have difficulty developing a robust emergency preparedness and response plan. This commenter also stated that FTA should take into consideration the time and resources needed to develop a comprehensive emergency response plan by publishing templates for these plans, offering assistance to those transit agencies developing them for the first time, and extending the implementation deadline for this final rule. Another commenter requested clarification regarding whether this final rule would require a System Security Plan and an emergency preparedness and response plan to be separate documents.

One commenter suggested that FTA revise the rule to allow a transit agency to include or reference the emergency preparedness and response plan in its safety plan. This commenter said this revision would be consistent with the intent of FTA in the Section-by-Section Analysis portion of the NPRM which states that this section would require that each rail transit agency ''include, or incorporate by reference'' the emergency preparedness plan in its safety plan.

Another commenter asked FTA to clarify the relationship between the emergency preparedness and response plans required in this rule to the emergency preparedness and response plans required in the former SSO provisions of 49 CFR 659.19(k).

Response: Although the statutory provisions of 49 U.S.C. 5329 do not require emergency preparedness and response plans, FTA's State Safety Oversight Rule historically has required rail transit agencies to have emergency preparedness and response plans as part of their SSPPs. Since rail transit agencies already have these plans in place, FTA is carrying over the requirement for those plans into today's rule. FTA's intent is to make transit safer, not to make transit less safe by eliminating historical requirements that have proven to be effective. FTA acknowledges the potential burdens on transit agencies that do not have these plans in place, and therefore, FTA only is requiring emergency preparedness and response plans from rail transit agencies, which should already have them in place. FTA agrees with the commenter who suggested that these plans are important, as recent safety events have demonstrated the need and utility of emergency preparedness and response plans, particularly for rail transit systems.

FTA agrees that rail transit agencies should develop plans to include the delegation of responsibilities during an emergency. FTA is deferring to transit agencies on how to document their emergency preparedness and response plans, and FTA will allow transit agencies to combine, include, incorporate by reference, or separate their emergency preparedness and response plans and their safety plans.

FTA is issuing templates and guidance for safety plans concurrently with the issuance of today's final rule. FTA intends to develop guidance specific to emergency preparedness and response plans in the future. FTA also will provide technical assistance to rail transit agencies that are modifying or developing emergency preparedness and response plans.

FTA notes that it no longer is requiring System Security Plans as previously required for rail transit agencies under the former regulatory

provisions of 49 CFR part 659—the responsibility for the oversight of transit security resides with the U.S. Department of Homeland Security's Transportation Security Administration (TSA). However, to the extent that a transit agency has a security plan, FTA will allow a transit agency to incorporate the security plan into its safety plan, if the transit agency desires.

In light of the above, FTA is revising the language in today's final rule to match the intent referenced in the NPRM's Section-by-Section Analysis, which states that each rail transit agency is required to ''include, or incorporate by reference'' an emergency preparedness and response plan in its safety plan. FTA directs readers to its SSPP–PTASP Crosswalk interim guidance document for further information on the relationship between SSPPs and PTASPs (*https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/PTSP_NPRM_SSPP_Side_by_Side.pdf*). Additional guidance will be forthcoming, and FTA will post it on its website (see *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-safety-oversight-tso*).

8. Multiple Modes of Transit Service

Comments: A few commenters supported FTA's proposed flexibility for transit agencies to develop one safety plan for all modes of transit. A couple of commenters stated that they would develop one safety plan for all modes. One of these commenters stated that updating and monitoring several plans is unrealistic and increases the workload and approval processes. This commenter also asked if FTA would issue rules specific to locally operated transit systems.

A couple of commenters encouraged the use of one safety plan that encompasses all modes of transportation. A commenter stated that if a transit agency develops one safety plan for all transportation modes, then that transit agency should identify those portions of its system that are regulated by another Federal entity and include any additional requirements from those Federal entities in the safety plan.

One commenter suggested that safety plans for all transit modes creates a difficult regulatory process for SSOAs, since SSOAs have regulatory authority over the rail mode only. This commenter recommended that FTA require rail transit agencies to develop a separate plan for rail, since the safety plan must be submitted to the SSOA for review and approval. Alternatively, the commenter requested that FTA include specific processes for SSOAs and rail transit agencies when dealing with a single plan covering multiple modes.

Response: FTA agrees with and appreciates the commenters who would like the flexibility to either have one safety plan or multiple safety plans for multiple modes of transit service. As FTA stated in the NPRM, it intends to allow flexibility and choice so that transit agencies may draft multiple plans or only one plan, as there are many different sizes and types of transit agencies—a single plan may work better for some agencies, whereas multiple plans for multiple modes of transit service may work better for others (especially the larger transit agencies that have multiple divisions and operate commuter rail, heavy rail, light rail, bus, and other transit modes).

FTA disagrees with commenters who would like to develop a single plan for all modes of transportation service, particularly service that is regulated by another Federal entity, such as FRA. Other Federal regulators may have specific requirements for safety plans that fall under their jurisdiction that may conflict with this final rule. Notably, FRA's statutory and regulatory framework for rail safety provides data protection in safety plans; FTA's statutory and regulatory framework does not. FTA is concerned that combining PTASPs and FRA-regulated safety plans would result in a loss of that data protection for the rail safety covered by FRA. Therefore, FTA will not allow a transit agency to combine its PTASP with a safety plan for service regulated by another Federal agency.

FTA disagrees that SSOAs will have difficulty approving safety plans that address rail and bus service. Indeed, SSOAs have regulatory authority over rail transit service only, and SSOAs should review only the rail components of safety plans. FTA will provide additional guidance and training in the future to assist SSOAs with their review and oversight of PTASPs and SMS.

D. State and Transit Agency Roles

1. Large Transit Agencies

Comments: One commenter recommended that the rule detail the requirements applicable to large transit agencies.

Response: Pursuant to this rule, every operator of a public transportation system—large and small—must comply with each of the requirements outlined in today's final rule, unless the operator only receives Section 5310 and/or Section 5311 funds. All sections and requirements of this rule as outlined in 49 CFR part 673 are applicable to large transit agencies, specifically, rail fixed guideway public transportation systems and recipients and subrecipients of FTA funds under 49 U.S.C. Chapter 53 that operate more than 100 vehicles in peak revenue service.

2. Small Public Transportation Providers, Section 5311 Providers, and Section 5310 Providers

2.1. States Must Draft and Certify Safety Plans on Behalf of Small Public Transportation Providers

2.1.1. Option for State-Wide or Agency-Specific Safety Plans

Comments: Several commenters responded to FTA's question as to whether FTA should require States to draft a single state-wide plan; individual safety plans for each Section 5310, Section 5311, and small public transportation provider located within that State; or defer to the State's preference. A few commenters recommended that each State should have the flexibility to choose whether the State will develop and certify a single state-wide plan or draft individual safety plans on for each agency. One commenter stated that the State should be required to draft an umbrella plan for more than just ''small public transportation providers'' and an agency can choose to use that plan or develop their own plan that complies with the overarching plan. Another commenter stated that state-wide plans should be generic and that States should develop an SMS that would be flexible enough to meet the needs of each of the individual transit agencies within their jurisdictions. This commenter also asked what might happen when a transit agency's safety plan differs from another transit agency's safety plan drafted by their State. One commenter suggested a ''hybrid'' approach whereby the State may draft a single safety plan, and include appendices that incorporate unique situations for certain transit agencies. Another commenter suggested that if a State develops a state-wide plan, then all transit providers should be required to provide copies of their plans and self-certifications to the State.

One commenter asserted that small urban and rural operations likely will be different, and if a State must draft separate safety plans for each transit agency, then this effort will be burdensome. On the other hand, the commenter asserted, if the State drafts only a single safety plan for all transit agencies under this regulatory provision, then the safety plans may be ineffective and meaningless.

In response to FTA's question as to how a single state-wide safety plan could respond to the Safety Risk

Management component of SMS (such as the identification of risks and hazards for each unique transit agency), several commenters stated there are already processes in place at State Departments of Transportation that can integrate individual SMS components of Safety Risk Management for small bus public transportation providers to enable the drafting of a state-wide agency safety plan.

Response: To provide maximum flexibility for States and transit providers, FTA is deferring to the States and the small public transportation providers within those States to determine whether each State will draft and certify a single state-wide safety plan for all small public transportation providers or whether it will draft and certify multiple individualized safety plans for each of these transit operators. FTA recommends as a best practice that each State draft and certify individualized safety plans on behalf of each of these small public transportation providers given the inherently unique safety concerns, issues, hazards, and risks for each transit operator. If a State drafts a single state-wide safety plan, then the State must ensure that the plan clearly identifies each transit operator that the plan will cover, the names of the Accountable Executives and Chief Safety Officers, the safety performance targets for each transit operator (and determined in conjunction with each operator), and the hazard identification, risk analysis, Safety Assurance, and other SMS processes for each transit operator (and developed in conjunction with each transit operator).

FTA notes that, in this rule, States are not required to draft and certify safety plans on behalf of transit operators that only receive Section 5310 and/or Section 5311 funds. As discussed above, FTA is deferring regulatory action regarding the applicability of this rule on these operators until a later date.

2.1.2. Drafting and Certifying Safety Plans for Small Section 5307 Providers

Comments: Several commenters suggested that States should not be required to draft and certify safety plans for small Section 5307 providers in large urbanized areas because these providers are not subrecipients of funds apportioned to States, they have a direct funding relationship with FTA, States do not review their grant applications, States do not review their NTD reports, and States do not provide their oversight.

A few of these commenters only supported the requirement that States draft and certify safety plans on behalf of open door Section 5310 and Section 5311 subrecipients. A couple of commenters supported the requirement that a State draft and certify safety plans on behalf of small Section 5307 providers operating 100 or fewer vehicles, as long as the final rule clarifies that the ''100 vehicles in revenue service'' criteria applies only to Section 5307 recipients, not Section 5310 or Section 5311 recipients.

Response: FTA notes that 49 U.S.C. 5329(d)(3)(B) provides that States may draft or certify safety plans on behalf of ''small public transportation providers'' that receive Section 5307 funds, even though, for recipients in large urbanized areas, no funding relationship exists between the States and those small Section 5307 recipients. In response to comments and to ensure consistency across FTA's safety rules and Transit Asset Management rule, FTA is defining ''small public transportation provider'' to mean ''a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service and does not operate a rail fixed guideway public transportation system.'' A small Section 5307 provider may opt to draft and certify its own safety plan.

FTA notes that it received numerous comments requesting reduced requirements for small public transportation providers. Given their limited resources, FTA believes that a reduction in requirements for small public transportation providers is appropriate, and to that end, FTA eliminated Safety Assurance requirements for all small public transportation providers under 49 CFR 673.27(a).

2.2. Other Comments

Comments: One commenter expressed a concern about potential conflicts of interest regarding the drafting and certifying of safety plans. This commenter stated that if a State drafts and certifies a safety plan on behalf of a transit operator, and if the State is also the grant manager for the transit agency using the safety plan, then the State may monitor compliance with the safety plan that it drafted through grant compliance reviews. The commenter suggested that this situation may create a conflict of interest, similar to the conflict of interest that would arise if an SSOA drafted and certified a safety plan on behalf a rail transit agency subject to its jurisdiction.

One commenter asked whether a small transit provider may continue to use its safety plan drafted by its State if it grows to a size where it no longer would be considered small. In this scenario, the commenter asked how much time the transit provider would have to draft and certify a new safety plan.

One commenter recommended that FTA clarify the definition of the term ''State'' so that SSOAs would not draft or develop a transit agency's safety plan if a conflict of interest exists. Additionally, the commenter suggested adding the following language at the end of section 49 CFR 673.11: ''the State Safety Oversight Agency cannot be involved in the development of the Public Transportation Agency Safety Plans they are charged with overseeing.''

Response: FTA disagrees with the commenter who suggested that a potential conflict of interest would exist if a State drafted and certified a safety plan on behalf of a small transit provider. The funding relationships created by Congress differ from the new safety relationships in 49 U.S.C. 5329(d). From a federal perspective, the State has no role in safety enforcement or oversight of small Section 5307 providers. For rail transit agencies, the SSOAs serve in a different, independent role, and they are required by 49 U.S.C. 5329(e) to provide enforcement. Moreover, as a legal matter, the statutory provisions of 49 U.S.C. 5329(d) require States to draft and certify safety plans on behalf of small Section 5307 providers.

If a transit agency grows in size so that it no longer is considered ''small,'' then it would have one year to draft and certify its own safety plan. The safety plan developed by the State would remain in effect until the transit agency drafts its own safety plan.

Finally, FTA does not agree that the rule text should be clarified to distinguish between a State's role and an SSOA's role in the development and certification of safety plans. The rule provides that a State must draft and certify safety plans only on behalf of small public transportation providers that do not operate rail service, and that an SSOA must review and approve a rail transit agency's safety plan.

3. Small Transit Providers May Draft and Certify Their Own Safety Plans

Comments: Many commenters asserted that, when a transit agency ''opts out'' of the state-wide safety plan and drafts and certifies its own plan, then the final rule should clarify that the State has no further obligation related to the safety plan.

One commenter observed that the ''opt out'' provision places the decision on a State's responsibilities in the hands

of its subrecipients instead of the State, which is where that responsibility exists in the context of funding relationships. The commenter recommended that FTA clarify in the final rule that the State is responsible for its own safety plan and for those of its subrecipients, and that the determination of whether the State will draft plans for its subrecipients remains at the discretion of the State.

Response: If a transit agency ''opts out'' and decides to draft and certify its own safety plan, then the State has no further responsibility regarding that safety plan and the transit agency may seek guidance and technical assistance directly from FTA. FTA disagrees with the commenter who suggested that States should have the discretion to draft and certify safety plans. In an effort to reduce the administrative and financial burdens of small public transportation providers, and given the statutory requirements of 49 U.S.C. 5329(d), FTA is requiring States to draft and certify safety plans on behalf of small Section 5307 recipients and subrecipients. FTA is providing those recipients and subrecipients with the discretion to ''opt out'' of this arrangement (however, the State will not have the option to ''opt out,'' as this discretion lies with the small transit operator).

4. Direct and Designated Recipients Drafting and Certifying Safety Plans on Behalf of Smaller Transit Providers

Comments: Several commenters responded to FTA's question about whether a Section 5310 recipient should draft and certify their own safety plans if they are direct recipients, instead of having the States draft and certify their safety plans on their behalf. Many commenters stated that the designated or direct recipient should have this responsibility for themselves, given the fact that they do not receive their funds through the State under recent changes to the Section 5310 program under the FAST Act. One commenter supported the idea of having designated recipients draft and certify their own safety plans, as well as their subrecipients, only if the plans are based on templates provided by FTA. One commenter asked whether the State or the transit agency should be responsible for reviewing safety plans when a subrecipient receives funding through the transit agency and not the State.

Response: FTA appreciates the comments that it received regarding this issue. In light of the public comments that FTA received regarding the application of this rule to Section 5310 and Section 5311 recipients, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds. Further evaluation of information and safety data related to these operators is needed to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators. At this time, the rule does not apply to an operator of a public transportation system that only receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311. Consequently, States are not required to draft and certify safety plans on behalf of operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds.

Consistent with the statutory provisions of 49 U.S.C. 5329(d)(3)(B), a State still has the responsibility of drafting and certifying safety plans on behalf of small Section 5307 recipients, unless they opt to draft and certify their own safety plans. To ease the burdens with these efforts, FTA is issuing a safety plan template with today's rule to assist States and smaller operators with the drafting and certification of their plans.

E. Existing System Safety Program Plan Is Effective for One Year

1. General Comments

Comments: A couple of commenters suggested that the final SSO rule and the proposed PTASP rule are contradictory in terms of implementation deadlines, and they recommended that FTA allow an SSPP to remain in effect until an SSOA has approved a rail transit agency's new PTASP. One of these commenters stated that FTA should remove all requirements involving SSPPs from the final PTASP rule. One commenter asked if a rail transit agency must keep its SSPP and reference it in its PTASP.

Response: FTA acknowledges that the compliance dates in the final SSO rule at 49 CFR part 674 differ from those in the PTASP rule at 49 CFR part 673. These compliance dates are creations of statute. Pursuant to 49 U.S.C. 5329(e)(3), each State must have an SSO program compliant with the new SSO rule within three years after the effective date of that final rule. Pursuant to 49 U.S.C. 5329(d)(1), each operator of a public transportation system must have a PTASP compliant with the new PTASP rule within one year after the effective date of this final rule.

Although these compliance dates differ, an SSOA can apply the regulatory requirements of the PTASP rule and ultimately review and approve a PTASP based on those requirements, even if it has not fully developed its new program standard in accordance with the new SSO rule. As demonstrated through the SSPP–PTASP Crosswalk that FTA posted to this rulemaking docket, the substantive elements of the old SSPPs carry over into the SMS portions of PTASPs. The same basic requirements exist, albeit, reshuffled into a different format that is intended to more effectively address safety risks. Finally, the staff of SSOAs have been taking training courses in SMS in accordance with the interim rule for the Public Transportation Safety Certification Training Program. Given the above, FTA expects each SSOA to review and approve each PTASP of a rail transit agency within its jurisdiction, even if it has not fully complied with the new SSO rule at 49 CFR part 674.

Ultimately, the SSPP will become obsolete one year after the effective date of this final rule, and an agency's PTASP will replace the SSPP. However, if a transit agency would like to maintain the SSPP and use it as a reference document, it may do so. FTA only will conduct oversight, including Triennial and State Management Reviews, to ensure that a transit agency's PTASP complies with this rule, not its former SSPP. Given the April 15, 2019 deadline for updated SSO Programs under 49 CFR 674.11, FTA believes that the effective date and compliance date of today's final rule will provide rail transit agencies and their SSOAs with more time to harmonize their safety plans and program standards before they are finalized.

2. One-Year Compliance Timeframe

Comments: Several commenters provided input on the one-year compliance timeframe for the proposed rule. One commenter expressed support for the one-year compliance period, but stated that transit agencies may need more than one year to draft their safety plans, hire and train the necessary personnel, and certify the plan.

Some commenters stated that FTA should provide a longer compliance/implementation period for the rule. Several of these commenters remarked that the proposed compliance period is aggressive and may lead to rushed or subpar safety plans with limited SMS training for staff. The commenters also suggested that a longer compliance period may be necessary given the requirements for a signature from the Accountable Executive and approval from a Board of Directors. One commenter suggested that,

notwithstanding Federal requirements, State legislatures may not be able to amend State safety requirements prior to the compliance deadline for this rule, which may force some transit agencies to create two safety plans for purposes of Federal and State law, or be in non-compliance with the Federal and State laws.

Most commenters provided suggestions for an alternative compliance deadline, with many commenters suggesting that FTA extend the compliance deadline to two years. Several commenters suggested that FTA extend the compliance deadline or allow for a multi-part implementation or a transitional grace period for agencies to show progress with the development of their safety plans. A couple of commenters recommended that FTA extend the compliance period until one year after FTA issues templates for safety plans. One commenter stated that the compliance deadline for this rule should be tied to the finalization of the National Public Transportation Safety Plan. Several commenters also suggested aligning the compliance deadline of this rule with the two-year compliance deadline for the Transit Asset Management rule.

Response: As a preliminary matter, FTA notes that many commenters referred to the ''implementation'' deadline of this final rule, as opposed to the rule's ''compliance'' deadline. The compliance deadline is the date by which transit operators and States must comply with the final rule and have a safety plan in place. FTA emphasizes that this rule implements a statutory requirement that each operator of a public transportation system draft and certify a safety plan within one year after the effective date of this final rule. The safety plan must include all of the information, processes, and procedures as outlined in this rule. FTA expects each operator of a public transportation system to ''implement'' the processes and procedures outlined in its safety plan after it drafts and certifies that plan in accordance with this rule. That implementation should take place continually, and the implementation, particularly the implementation of SMS, should mature over time. But to comply with this rule, each operator of a public transportation system must draft and certify a safety plan within one year after the effective date of this final rule—that one-year deadline is the ''compliance'' deadline for this rule.

The one-year compliance deadline was created by the statutory provisions of 49 U.S.C. 5329(d)(1), and FTA does not have the flexibility to extend it. Nevertheless, FTA does not expect that all transit agencies will have fully implemented SMS one year after the effective date, but rather, FTA expects that transit agencies will have the processes and procedures put in place for SMS, including hazard identification, risk analysis, and the Safety Assurance procedures as outlined in Subpart C of this rule. The full implementation of SMS may take longer, in some cases years to fully mature in large multi-modal transit agencies. FTA is providing more guidance on how a transit agency may fully implement a mature SMS in the National Public Transportation Safety Plan, and it intends to provide additional guidance and technical assistance to the industry in the future.

FTA appreciates the comments that it received suggesting that transit agencies may need more than one year to certify compliance with the rule. Although, by statute, the compliance deadline must be one year from the rule's effective date, FTA has discretion on setting the effective date itself. In response to the public comments and in an effort to assist the industry with meeting the requirements of this rule, FTA is making the effective date one year after its publication date. As a result, transit agencies will have a total of two years (one year from the publication date to the effective date, plus another year from the effective date to the compliance deadline) to certify that they have safety plans meeting the requirements of 49 CFR part 673.

F. Certification of Safety Plans

Comments: Several commenters requested additional information on how agencies may certify compliance with this rule and what this certification means. One commenter remarked that the rule contains neither a definition nor an explanation of the term ''certification'' or ''certify.'' Two commenters questioned how an agency may certify their safety plans if FTA may adopt additional performance measures in the future.

One commenter expressed concern with self-certification, asserting that self-certification is not a reliable method for establishing effective safety management by public transportation providers. This commenter suggested that each transit agency should submit its safety plan to FTA for approval and certification so that FTA could verify that the plan satisfies the statutory and regulatory requirements.

Several commenters expressed concern over the one-year certification timeline, indicating that one year may not be enough time for transit agencies to certify compliance with the rule. One commenter suggested that FTA lengthen the certification period to two years, which would provide agencies with additional time and align the certification deadline for the compliance deadline for developing transit asset management plans as outlined in the TAM rule.

One commenter urged FTA to clarify the process by which a State should certify a safety plan on behalf of a Section 5310, Section 5311, or small Section 5307 recipient or sub-recipient. Additionally, the commenter asked who would conduct oversight on a safety plan if a small transit agency opts out of any plan developed by a State.

Response: As a statutory matter, pursuant to 49 U.S.C. 5329(d)(1), each recipient or State must ''certify'' that the recipient or State has established a comprehensive agency safety plan. Pursuant to 49 U.S.C. 5323(n), each recipient must submit to FTA a list of ''Certifications and Assurances'' as part of the grant award and oversight process during each fiscal year. FTA will use this existing Certifications and Assurances process to satisfy the statutory requirement for safety plan certifications. FTA has added a section to the list of Certifications and Assurances to address safety. FTA will issue future guidance on how States can certify safety plans and transit asset management plans on behalf of transit operators.

To the extent that FTA amends the National Public Transportation Safety Plan in the future, or any of its regulatory requirements in general, FTA will amend the annual list of Certifications and Assurances, as necessary.

FTA appreciates concerns regarding the self-certification process; however, FTA does not have the resources to collect and review hundreds of safety plans each fiscal year. Consequently, FTA intends to utilize its existing risk-based approach to oversight by using its Triennial Reviews and State Management Reviews to ensure compliance with this rule. FTA notes that it does not need to wait to review a safety plan every three years. FTA may review an agency's safety plan whenever it deems necessary.

As noted above, in response to the public comments and in an effort to assist the industry with meeting the requirements of this rule, FTA is making the effective date one year after its publication date. As a result, transit agencies will have a total of two years from the rule's publication date to certify that they have safety plans meeting the requirements of 49 CFR part 673.

G. SSOA Review and Approval of PTASPs for Rail Transit Systems

Comments: Pursuant to the proposed provisions at 49 CFR 673.13(a), each SSOA would be required to review and approve a PTASP developed by a rail fixed guideway system. Some commenters expressed concern with the one-year deadline that a transit agency has to certify its PTASP and the three-year deadline that an SSOA has to comply with the new SSO rule at 49 CFR part 674. One commenter recommended that FTA should allow rail transit agencies to certify compliance with the PTASP rule one year after the relevant SSOA develops its program standard pursuant to 49 CFR part 674. Several commenters questioned whether a rail transit agency must submit its PTASP to the SSOA by one year after the PTASP final rule's effective date, or whether the SSOA must approve the agency's PTASP by one year after the PTASP rule's effective date. Several commenters urged FTA to clarify whether SSOAs must update their program standards prior to approving rail transit safety plans since most SSOAs will be operating under a program standard based on 49 CFR part 659 when the PTASP final rule becomes effective.

A few commenters requested FTA to clarify the role of an SSOA with respect to PTASP certification. One commenter suggested that a PTASP should not be executed without SSOA approval. Several commenters suggested that FTA develop guidance for obtaining SSOA approval and a resolution process for situations in which a rail transit agency certifies compliance and then an SSOA does not approve the safety plan. Several commenters requested clarification of an SSOA's approval power and role, with a couple of these commenters encouraging FTA to modify the rule's text to make clear that SSOAs only have authority over rail transit systems. One commenter recommended that FTA require transit agencies that operate rail and bus service to develop separate safety plans for rail and bus service so that it is easier for SSOAs to approve the plans for rail safety.

A few commenters stated that FTA should define the SSOA's role and responsibilities in approving plans that contain modes of service not subject to state specific oversight rules, such as rules for bus transit. The commenters argued that while SSOAs are responsible for the review and approval of rail transit plans, FTA's proposed rule only specifies that bus agencies will self-certify.

Several commenters expressed concerns over the requirement to have the transit agency's Board of Directors and the SSOA approve the safety plan, fearing that this two-tiered review process could subject plans to conflicting evaluation criteria, which could weaken plans and cause delays in implementation.

One commenter suggested that FTA should clarify that SSPPs will become obsolete.

Response: As a preliminary matter, FTA notes that the comments above regarding state safety oversight are more appropriately addressed through FTA's SSO rule at 49 CFR part 674, which governs the activities of SSOAs. FTA's PTASP rule governs the activities of operators of public transportation systems. Nevertheless, to provide the industry with additional clarification regarding the role of SSOAs, FTA provides the responses below.

Through FTA's new SSO rule at 49 CFR part 674, each SSOA has a great deal of flexibility regarding the timing of its approval of a PTASP within its jurisdiction. Pursuant to the new rule, each SSOA is obliged to ''adopt and distribute a written SSO program standard'' consistent with the National Public Transportation Safety Plan and the PTASP rule (49 CFR 674.27(a)); ''explain'' an SSOA's ''role . . . in overseeing'' a rail transit agency's ''execution of its Public Transportation Agency Safety Plan'' (49 CFR 674.27(a)(4)); and ''describe the process whereby the SSOA will receive and evaluate all material submitted under the signature of [a rail transit agency's] accountable executive'' (49 CFR 674.27(a)(4)). Given these requirements, an SSOA could choose to ''approve'' a PTASP at virtually any point in time, and as often as it might like. FTA expects each SSOA to develop its program standard in consultation with the rail transit agencies within the SSOA's jurisdiction. FTA intends to provide deference to the State decision makers on this matter.

Optimally, an SSOA would have its program standard in place before reviewing the merits of a rail transit agency's PTASP, but it is not necessary, as a matter of law. An SSOA still operating under the old SSO rule at 49 CFR part 659 and transitioning to the new SSO rule at 49 CFR part 674 still can judge the adequacy of a rail transit agency's PTASP by applying the standards and regulatory requirements set forth in the new rules at 49 CFR parts 673 and 674.

Through the new SSO rule, FTA addresses scenarios in which an SSOA does not approve a PTASP. Pursuant to 49 CFR 674.29(c), ''In an instance in which an SSOA does not approve a Public Transportation Agency Safety Plan, the SSOA must provide a written explanation, and allow the [rail transit agency] an opportunity to modify and resubmit its . . . Plan for the SSOA's approval.'' This mechanism should lead to negotiations that resolve disagreements between an SSOA and a rail transit agency. In those instances in which an SSOA and a rail transit agency continue to disagree in good faith, FTA may step into the dispute to help the issue. If a rail transit agency is comfortable certifying its own compliance with the rules, but it receives objections or disapprovals from its SSOA, then FTA could take regulatory enforcement action under the Public Transportation Safety Program rule at 49 CFR part 670 (see *https://www.gpo.gov/fdsys/pkg/FR-2016-08-11/pdf/2016-18920.pdf*), as necessary and appropriate, to ensure compliance with the PTASP rule.

It is abundantly clear in 49 U.S.C. 5329(e) and FTA's new SSO rule at 49 CFR part 674 that an SSOA only has jurisdiction over a ''rail fixed guideway public transportation system'' that is not subject to regulation by FRA. Consequently, when reviewing a PTASP for an agency that operates rail fixed guideway public transportation and bus public transportation, an SSOA should focus its review on the rail fixed guideway public transportation system only, given the fact that as a legal matter, Federal law does not give an SSOA the authority to regulate the safety of bus systems. Unless provided by State law, an SSOA has no legal authority to compel a transit agency to change its safety practices for bus operations. FTA disagrees with the commenters who believe that FTA should require separate safety plans for rail and bus; FTA will defer to each transit agency to decide whether it is more appropriate for their system to have a single plan covering rail and bus (and other modes of transit) or whether to have multiple plans for each mode of transit.

Finally, FTA re-emphasizes that every operator of a public transportation system subject to this rule, or State, must certify compliance with this rule, whether it provides rail transit service, bus transit service, or other modes of transit service. SSPPs will become obsolete one year after the effective date of this final rule.

H. Safety Performance Targets and Performance-Based Planning

Comments: Pursuant to the proposed provisions at 49 CFR 673.15, each

transit agency or State would be required to make its safety performance targets available to States and MPOs to aid in the planning process, and each transit agency or State would be required to coordinate with States and MPOs in the selection of safety performance targets.

Several commenters generally supported the coordination provisions. One commenter supported flexibility in the target-setting process and coordination of targets between the State, regional, and transit agency levels. One commenter was encouraged that FTA acknowledged the vital role of the planning process in safety management and recommended that the Transit Asset Management Plans also be included in the coordination process.

A couple of commenters asked FTA to explain the purpose of communicating safety performance targets to States and MPOs. One commenter asked FTA to clarify the MPO's role in the planning process, stating that if an MPO has any approval or review authority of safety performance targets, then an MPO should be required to have the same safety expertise and training as an SSOA.

Several commenters asked whether a transit agency only would be required to make its targets available to a State and an MPO, or whether it also would be required to make the supporting performance data pertaining to those targets available to a State and an MPO. One commenter suggested that FTA avoid creating this requirement or to make a general requirement that transit agencies cooperate with States and MPOs in the planning process.

Several commenters expressed concerns with requiring coordination among planning organizations. They argued that this coordination would be unreasonably burdensome on some transit agencies. Several commenters argued that these provisions are not required by statute and that MPOs generally do not operate transit service and do not have transit operations and safety expertise or experience. Several commenters suggested that coordination should be revised to a ''consultation'' requirement. One commenter recommended that FTA delete these requirements, and that planning coordination should be encouraged through guidance instead.

Several commenters requested clarification on how a State or transit agency should coordinate with MPOs and States to select safety performance targets. One of these commenters argued that if by ''coordination,'' FTA's intent is that a transit agency share its PTASP (which will include performance targets) with States and MPOs, then FTA should clearly state such a requirement. Additionally, the commenter stated that the proposed rule did not specify which State agencies, other than MPOs, transit agencies are expected to coordinate with.

Several commenters asked which accountability measures will be used to ensure that coordination is occurring ''to the maximum extent practicable.'' One commenter asked what recourse an MPO would have if the State or transit operator chooses not to coordinate on target setting, claiming there is not a ''practicable'' way to do so. The commenter argued that the rule must recognize that target setting across multiple functions and dimensions would require an extremely robust degree of coordination and suggested removing that phrase.

One commenter stated that the proposed rule does not identify the responsibilities of the State in the planning process. Another commenter asked whether States and MPOs would be required to keep confidential any information related to safety performance targets.

One commenter stated that it is unclear how the development of performance targets at the State and MPO levels will impact individual transit agency targets in the future, particularly when FTA may develop safety performance targets under a separate NPRM. This commenter also said it is unclear how the State and MPO safety performance targets would impact individual transit agency safety plans, as these are to be determined at the local level by each individual transit agency.

Response: FTA appreciates the comments that it received in support of its proposed safety performance target provisions. FTA emphasizes that these requirements are rooted in the statutory provisions of 49 U.S.C. 5329(d)(1)(E), which requires each operator of a public transportation system subject to this rule to include in its PTASP ''performance targets based on [FTA's] safety performance criteria and state of good repair standards.'' Moreover, the statutory provisions of 49 U.S.C. 5303(h)(2)(B) and 49 U.S.C. 5304(d)(2)(B) further require that ''[s]election of performance targets by a metropolitan planning organization shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with sections . . . 5329(d)'' and ''[s]election of performance targets by a State shall be coordinated with the relevant metropolitan planning organizations to ensure consistency to the maximum extent practicable.'' Since these activities are required by law, FTA will not merely encourage these practices through guidance, as some commenters requested. FTA will require these practices as a legal matter. Moreover, FTA emphasizes that the PTASP rule only governs the activities of operators of public transportation systems. The recent FTA/FHWA joint planning rule 23 CFR part 450 governs the planning activities of transit agencies, States, and MPOs. FTA refers readers to the Final Rule dated May 27, 2016, for further guidance on the roles and responsibilities of States and MPOs in the planning process (see *https://www.gpo.gov/fdsys/pkg/FR-2016-05-27/pdf/2016-11964.pdf*).

In response to the question as to whether a transit agency only would be required to make its safety performance targets available to a State and an MPO, or whether it also would be required to make the supporting performance data pertaining to those targets available to a State and an MPO, FTA defers to the State and local processes developed by States and MPOs. FTA only requires that transit agencies coordinate with States and MPOs to the maximum extent practicable to assist those States and MPOs with the selection of Statewide and regional safety performance targets. At a minimum, FTA requires each operator of a public transportation agency to make its safety performance targets available to States and MPOs.

To ensure that a transit agency complies with these requirements, FTA intends to utilize its existing Triennial Reviews and State Management Reviews. FTA intends to ensure that MPOs comply with the joint planning rule through the existing MPO certification process.

Finally, FTA notes that it is not developing safety performance targets for the industry—it is developing safety performance measures by which each operator of a public transportation system, and each State and MPO, must set targets. These targets are intended to guide transit agencies, States, and MPOs with the prioritization of transportation investments. The goal is for the prioritization of capital investments that help meet safety performance targets and state of good repair targets.

I. Safety Management Systems

1. Safety Management Policy: General Comments

Comments: Numerous commenters expressed general support for the proposed Safety Management Policy provisions of 49 CFR 673.23.

Response: FTA appreciates the support from the transit industry on Safety Management Systems, and specifically the Safety Management Policy provisions of 49 CFR 673.23.

1.1. Safety Management Policy Statement

Comments: Several commenters encouraged FTA to allow for maximum flexibility in safety management policy statements and urged FTA to allow deviation in policy adoption whenever consistent with the overarching principles of SMS.

A few commenters expressed concern regarding the inclusion of safety performance targets in the safety management policy statement. One commenter suggested that it is inappropriate to include specific safety performance targets in an overarching safety management policy statement and suggested deleting the requirement from the rule. This commenter also suggested that FTA replace the term SMS with PTASP where references to safety performance targets are made. Another commenter urged FTA to clarify that the intent of including safety performance targets in the safety management policy statement is not to require annual updates of the target values, but rather, the measures that the targets address.

Response: FTA agrees with the commenters who suggested that the inclusion of safety performance targets in the safety management policy statement is unnecessary, and FTA has updated the rule text, accordingly. The location of this requirement under the ''Safety Management Policy'' section of this rule is redundant, given the fact that FTA is requiring each transit agency to establish safety performance targets through the ''General Requirements'' section of this rule at 49 CFR 673.11(a)(3). If a transit agency wishes to include its safety performance targets in its safety management policy, it may do so, although it may identify those targets in another section of its safety plan. The rule text in 49 CFR 673.23 now reads, ''A transit agency must establish its organizational accountabilities and responsibilities and have a written statement of safety management policy that includes the agency's safety objectives.''

To clarify, during a transit agency's annual review and update of its safety plan (which is required under 49 CFR 673.11(a)(5)), a transit agency may need to update its safety performance targets based on the data and safety conditions at that time, but a transit agency may not necessarily need to alter its target values each year. A transit agency only needs to examine them and decide, for itself, whether it should amend them.

1.2. Employee Reporting Program

Comments: Numerous commenters expressed support for FTA's proposed employee reporting program. Several commenters urged FTA to provide more detail on the requirements for employee reporting programs. Two commenters suggested that FTA encourage transit agencies to establish ''close call'' reporting programs. Another commenter requested guidance from FTA on how reports from employee reporting programs would be protected from disclosure.

One commenter supported non-punitive employee reporting, but stated that disciplinary actions for employee safety behaviors are the subject of collective bargaining at the majority of transit systems. As such, the commenter stated that collective bargaining agreements may affect disciplinary actions in employee reporting programs.

Response: FTA appreciates the support for employee reporting programs and believes it is an essential part of a transit agency's SMS. Pursuant to 49 CFR 673.23(b), FTA is requiring each transit agency to ''establish a process that allows employees to report safety conditions to senior management,'' and FTA is providing significant latitude and flexibility to transit agencies to determine their own processes for the reporting of safety conditions. These reporting processes could include hotlines, web-based reporting systems, form-based reporting systems, or direct reporting to management, but ultimately, each transit agency must decide the process and procedures that will work best within that individual agency.

''Close call'' reporting systems are a type of employee reporting, and FTA strongly supports the establishment of close call reporting systems, although these systems are not required.

Currently, FTA does not have statutory protections in place to protect safety information from public disclosure, as is the case with FRA and the System Safety Programs required of commuter and intercity passenger railroads under 49 CFR part 270 (see *http://www.fra.dot.gov/eLib/Details/L18294*). FTA requested these protections through the ''Grow America Act''. Following this request, in Section 3021 of the FAST Act, Congress authorized a study ''on evidentiary protection for public transportation safety program information.'' The results of this study will help inform the need to develop statutory and regulatory protections for safety data.

Finally, FTA acknowledges that disciplinary actions for employee safety behaviors may be the subject of collective bargaining agreements throughout the country. Consequently, many transit agencies may need to work with their labor unions to establish employee safety reporting programs that fit the needs of management and a transit agency's operational and maintenance staff.

1.3. Safety Accountabilities and Responsibilities

Comments: Two commenters expressed concern over the requirement that each transit agency employ an Accountable Executive and either a Chief Safety Officer or an SMS Executive. These commenters argued that this requirement could be overly burdensome for rural, specialized, tribal, or small transit systems where the administrative staff could be limited to only a single executive. One commenter suggested that FTA add language in the final rule that requires small transit agencies to hire necessary safety personnel. Another commenter urged FTA to clarify whether the Chief Safety Officer must be a direct employee of the transit agency or whether the Chief Safety Officer may be a position held by a part-time employee.

A few commenters provided input on the role of the Chief Safety Officer and other SMS executives. One commenter urged FTA to clarify the role of the Accountable Executive in relation to the Chief Safety Officer and the transit agency's Chief Executive Officer. The commenter argued that the proposed rule would require the Accountable Executive to implement and maintain SMS, but that responsibility should belong to the Chief Safety Officer. One commenter suggested that FTA identify the link between the transit agency's Chief Safety Officer or SMS Executive and the operations and asset management departments, which is integral for a successful SMS.

Response: FTA appreciates the comments that it received regarding the Accountable Executive and the Chief Safety Officer (or SMS Executive), however, FTA is requiring that each transit agency identify individuals to fill these positions in its system. FTA clarified in the NPRM for this rule, and it is clarifying again here, that at many smaller transit agencies, roles and responsibilities may be more fluid and shared. Nevertheless, even in circumstances where responsibilities are either shared or delegated, each transit agency must identify a single primary decision-maker, or ''Accountable Executive,'' who is ultimately

responsible for controlling the human and financial resources necessary to maintain and implement the transit agency's safety plan and transit asset management plan.

FTA acknowledges that small transit agencies may not have many executive staff, and therefore, FTA is allowing small Section 5307 recipients and subrecipients to identify a Chief Safety Officer, or ''SMS Executive,'' that may serve other functions, such as operations, maintenance, and grant administration. For these transit agencies, the Chief Safety Officer may be a full-time employee of the transit system who has responsibility for duties other than safety, a part-time employee of the transit system, or a contracted employee. To illustrate, in a small bus agency, the general manager or operations manager may be the same individual as the Chief Safety Officer or SMS Executive.

Given the increased safety risks and complex operations associated with rail transit systems, FTA is requiring each rail transit agency to identify a single full-time Chief Safety Officer solely dedicated to safety. These Chief Safety Officers cannot have responsibilities other than safety. Similarly, FTA expects bus transit systems that operate more than 100 vehicles in peak revenue service to have a dedicated Chief Safety Officer, given the increased safety risks in those systems, although, this is not a requirement.

The role of the Accountable Executive in relation to the Chief Safety Officer and transit agency's CEO may vary from system to system. In many cases, as a transit agency's CEO or president or general manager, that individual likely will serve as the Accountable Executive. The Accountable Executive and the Chief Safety Officer are responsible for implementing and maintaining a transit agency's SMS, although at smaller transit agencies, this individual may be the same person. Ultimately, as noted above, the Accountable Executive must be the individual with the authority to dedicate the human and financial resources to maintain and implement a transit agency's safety plan and transit asset management plan. The Accountable Executive should oversee, and the Chief Safety Officer should have a strong working relationship with, the operations and asset management departments at a transit agency in order for SMS to be successful and effective.

2. Safety Risk Management

2.1. Safety Risk Management: General Comments

Comments: Two commenters supported the general inclusion of a safety risk management process in a safety plan as detailed in the NPRM, but expressed concern about the level of data collection and assessment activities required. The commenters recommended that FTA provide best practices and technical assistance to assist States and transit agencies with the preparation and execution of safety risk management processes. Similarly, a commenter expressed concerns over the data requirements of the proposed rule, noting that the commenter's organization employs hazard identification and tracking logs, but the organization now would have to incorporate into its SMS the data obtained through these systems. The commenter asked FTA to clarify if it would need to apply a safety risk management process for paratransit services, and this commenter asked where transit asset management fits into the safety risk management process.

While stating that safety risk management is an essential component of SMS, a commenter asserted that the proposed provisions at 49 CFR 673.25 do not specify that hazard analysis, risk assessment, or safety certification is required for new and major capital projects. Additionally, the commenter suggested that the rule fails to address configuration management or risk assessments to system alterations, and it does not require transit agencies to consider the results of asset condition assessments while performing safety hazard identification activities. This commenter also asserted that the proposed rule suggests, but would not require, that the results of asset condition assessments and SMS analysis be considered in the determination of whether an asset meets the SGR standards under FTA's Transit Asset Management rule at 49 CFR part 625.

One commenter asked what the phrases ''new operations of service to the public'' and ''new operations or maintenance procedures'' mean, as used in the section-by-section analysis of the proposed 49 CFR 673.25(a). Additionally, the commenter stated that the definition of safety risk management is unclear.

Two commenters encouraged FTA to allow flexibility in the hazard identification and risk management processes. One of these commenters stated that transit agencies should be encouraged to incorporate existing hazard identification and risk management processes, and evaluate any new processes that may be more effective. The other commenter asked whether a transit agency must develop its own safety risk management process, or whether FTA will establish a nationwide model.

One commenter remarked that there are organizational pressures exerted on the safety staff and other personnel who participate in the safety risk management process to rate safety risk as low as possible. This commenter expressed a hope that with the full implementation of SMS in an organization, these types of organizational pressures would dissipate under a positive safety culture, but cautioned that the development of a positive safety culture could take five to six years, or even longer, in many organizations.

Response: FTA appreciates the support from the industry on the proposed safety risk management process. FTA intends this process to be flexible, and it avoided prescriptive requirements in this rule. For example, the level of data collection and assessment activities will vary from agency to agency. For some transit agencies, data collection and analysis processes could be conducted using computer software programs; at other transit agencies, especially at smaller transit agencies, the data collection and analysis processes could involve a transit agency's management team, staff, and bus operators meeting in a room and discussing the most significant safety hazards and evaluating any associated risks. FTA has produced a safety plan template with this final rule, and it should assist transit agencies with the development of Safety Risk Management processes and considerations. To be clear, this rule applies to any transit service not regulated by another Federal agency, including general public and ADA complementary paratransit service, so each transit service provider will need to develop a safety plan which includes a Safety Risk Management process.

Also, each transit agency must apply its Safety Risk Management processes—and all other SMS processes—to all elements of its operations, including the design, construction, and operation of major capital projects, New Starts and Small Starts projects, and any other extension or expansion of transit service. These requirements extend to any ''new operations or maintenance procedures,'' meaning, any new operations or maintenance processes for railcars, buses, track, facilities, or other service or infrastructure undertaken by

a transit agency. FTA is providing a great deal of flexibility here and is allowing systems to determine the hazards and risks for which it will prioritize and mitigate from an individual agency level. A transit agency also must apply its Safety Risk Management process to its existing operations and maintenance procedures, and all other aspects of its system. Pursuant to 49 CFR 673.5, FTA is defining the term ''Safety Risk Management'' to mean ''a process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.'' FTA outlines the scope of necessary procedures within Safety Risk Management 49 CFR 673.25.

With respect to condition assessments, FTA expects each transit agency to consider the results of its condition assessments undertaken pursuant to its Transit Asset Management plan when it conducts SMS activities. For example, if an asset does not meet a transit agency's state of good repair targets, then the transit agency may conduct Safety Risk Management activities and analysis to determine whether the asset presents a safety hazard and any safety risks. The transit agency could mitigate any risks and prioritize investments in its capital plan, accordingly. In an effort to provide flexibility and scalability, FTA defers to each transit agency to determine for itself its own processes and procedures for these activities.

FTA agrees with commenters who suggested that transit agencies should be encouraged to incorporate existing hazard identification and risk management processes, and utilize any new processes that may provide a more effective means of identifying and addressing safety hazards and safety risks. FTA is providing a safety plan template, technical assistance, and guidance to assist transit agencies with the development and implementation of Safety Risk Management, and it is not applying a one-size-fits-all model for the industry since safety hazards and safety risks vary significantly nationwide.

One of the goals of this rule is create stronger and more positive safety cultures within transit agencies, and FTA expects that a transit agency's personnel would not feel pressure to rate all safety risks as low as possible. To the extent this sentiment exists within a transit agency, FTA anticipates that these types of practices would dissipate as a transit agency implements its SMS over time. FTA agrees that it may take a few months to even a few years to fully implement a mature SMS, and FTA will provide guidance and technical assistance to the industry, as necessary.

2.2. Safety Hazard Identification and Analysis

Comments: One commenter suggested that FTA clarify the distinction between safety hazard analysis and safety risk evaluation. This commenter asserted that FTA should articulate this distinction because the concepts of evaluation and analysis are used interchangeably in common language. Another commenter asked FTA to define the term ''consequence.''

A commenter encouraged FTA to establish standard processes for hazard identification and provided FTA with the hazard analytical methods and safety risk determination techniques adapted from the U.S. Department of Defense's Military Standard 882 series of standards as a model for national standardization. Similarly, one commenter suggested that FTA specify that transit agencies must utilize data and information from oversight authorities, including FTA, when conducting hazard identification and risk analysis.

Response: In an effort to provide clarity to the Safety Risk Management process, FTA has amended the terminology used in the final rule. A transit agency must develop a Safety Risk Management process that is comprised of three steps: (1) Safety hazard identification, (2) safety risk assessment, and (3) safety risk mitigation. A transit agency must first identify potential hazards throughout its system, and then it must analyze these hazards to determine whether they present safety risks and safety consequences. After a transit agency identifies and analyzes potential hazards and consequences, the agency must undertake activities to assess and prioritize the safety risk associated with the potential consequences of the identified safety hazards, in accordance with 49 CFR 673.25(c). This process includes an evaluation wherein the transit agency assigns a level of probability and severity to the consequences, and then develops mitigation, as necessary and appropriate. FTA encourages transit agencies to utilize computer software programs for safety risk assessment and mitigation, although smaller transit operators may not need them.

FTA has taken efforts to avoid requiring prescriptive processes for hazard identification and risk analysis. FTA encourages transit agencies to review the U.S. Department of Defense's Military Standard 882 (available at *http://www.system-safety.org/Documents/MIL-STD-882E.pdf*) and utilize the hazard analytical methods and safety risk determination techniques, to the extent appropriate, but FTA is not mandating that transit agencies adopt any particular method of process for hazard identification and risk analysis—FTA is providing transit agencies with flexibility given the large range of sizes and types of operators nationwide. Finally, FTA will not specify the type of data and information that oversight authorities must share with transit agencies. Oversight authorities and transit agencies will need to make these decisions for themselves.

3. Safety Assurance

3.1. Safety Assurance: Safety Performance Monitoring and Measurement

Comments: Pursuant to the proposed provisions at 49 CFR 673.27(b)(2), each operator of a public transportation system would be required to monitor its operations to identify any potential safety hazards not previously identified through the Safety Risk Management process outlined in proposed 49 CFR 673.27. One commenter suggested that FTA delete this requirement because, presumably, transit agencies already would have established activities to identify potential safety hazards as part of their Safety Risk Management processes. One commenter suggested deleting the word ''any'' in the requirement because the word suggests that safety risk mitigations may not exist and/or the transit agency's Safety Risk Management Process is broken. One commenter asked what type of hazards might not be identified in the Safety Risk Management process and asked whether the proposed requirement indicates a flaw in the Safety Risk Management process.

A couple of commenters requested clarification of the term ''safety event'' as used in proposed 49 CFR 673.27(b)(4). Specifically, a transit agency asked if a ''safety event'' in this provision is the same as ''Event'' as defined in the proposed rule. If the terms are the same, then the commenter asked whether a transit agency would have to develop a process for investigating ''Accidents,'' ''Incidents,'' and ''Occurrences.'' Additionally, the commenter asked to whom it should report a ''safety event,'' if anyone.

Two commenters asserted that this aspect of SMS appears one-size-fits-all, perhaps appropriate for a large agency operating a rail system but burdensome for small-urban, rural, specialized, and

tribal transit agencies. Several commenters recommended that FTA should establish minimal monitoring requirements for Section 5310, Section 5311, and small Section 5307 recipients. These requirements should be scalable and reflect the size and scope of these organizations.

Response: FTA appreciates the comments that it received regarding the Safety Assurance processes proposed in the NPRM. FTA agrees with the commenter who suggested that the requirement for transit agencies to continually monitor their operations to identify any potential safety hazards that it might not have captured when undertaking its Safety Risk Management process is a redundant requirement. FTA has eliminated this requirement for all transit operators in the final rule.

Under the proposed provisions for Safety Assurance at 49 CFR 673.27(b)(4), a transit agency would be required to establish a process to: ''Investigate safety events to identify causal factors.'' FTA proposed the following definition for the word, ''event,'' as used throughout the rule: ''Accident, Incident, or Occurrence.'' Therefore, each transit agency must develop procedures for investigating Accidents, Incidents, and Occurrences.

As discussed throughout this rulemaking, SMS is scalable, and FTA is providing transit agencies with great latitude and flexibility in developing procedures for investigating Events. For example, a small bus operator may develop a simple process for investigating the cause of a bus accident. The process may involve an on-site examination of the vehicle and the scene, a review of any video recordings from cameras mounted inside or outside of the bus, an interview with the bus operator and witnesses at the scene, and a toxicology test for the bus operator. A large rail operator may need to develop a more robust process for investigating the cause of a rail car accident, involving communications between safety and operating divisions of the transit agency, a shutdown of track operations, the deployment of designated safety inspectors and engineers, a comprehensive investigative report, etc. FTA is not prescribing any particular process for investigating safety events, but it notes that, as part of the larger safety management process, it is critical for transit agencies to identify and understand the causes of the Accidents, Incidents, and Occurrences in their systems so that the circumstances leading to the Events can be mitigated and prevented in the future.

FTA notes that its reporting requirements for safety events are outlined in the National Transit Database Reporting Manuals (see *https://www.transit.dot.gov/ntd*). Rail transit agencies should follow the notification and reporting requirements of the new SSO rule at 49 CFR part 674, including Appendix A to that rule. FTA is not requiring any reporting through this PTASP rule.

Finally, FTA agrees with the commenters who recommended that FTA should establish minimal monitoring requirements for smaller transit operators. Consequently, in today's final rule, FTA has eliminated many of the Safety Assurance requirements for all small public transportation providers. Small public transportation providers only would need to develop procedures for safety performance monitoring and measurement; they would not need to develop procedures for management of change and continuous improvement. FTA believes that these revisions reduce the administrative, financial, and regulatory burdens for small transit providers significantly and help them transition to the new part 673. Rail fixed guideway public transportation systems, and FTA recipients and subrecipients that operate more than 100 vehicles in peak revenue service, would be required to develop safety plans that include all of the processes under Safety Assurance, namely, safety performance monitoring and measurement, management of change, and continuous improvement.

3.2. Safety Assurance: Management of Change

Comments: One commenter emphasized the importance of the proposed provisions at 49 CFR 673.27(c) involving the management of change and assessing changes that may introduce new hazards or impact a transit agency's safety performance. This commenter suggested moving these requirements from the Safety Assurance provisions of the rule to the Safety Risk Management provisions of the rule, indicating that this relocation would elevate the importance of the requirement. One commenter requested clarification regarding which changes might impact a transit agency's safety performance.

Another commenter encouraged FTA to include Management of Change within the SMS context, stating that safety within the scope of capital projects, acquisitions, procurements, and system changes only fully can be measured and verified through system safety engineering practices and principles. This commenter argued that Management of Change within the context of SMS should include effective safety management procedures and processes to ensure that plans, policies, procedures, and practices effectively are measured and incorporated into an overall Management of Change program. One commenter expressed confusion over the provision for transit agencies to map updates of their safety plans to Safety Assurance instead of Safety Management Policy.

Response: The Safety Assurance element of SMS involves the continual monitoring of a transit agency's safety performance. Safety Assurance activities serve as a check on the Safety Risk Management of a transit agency. The procedures are designed to ensure that safety risk mitigations are effective, to collect safety performance data that will help a transit agency predict future safety events and mitigate or eliminate them, and to analyze the potential safety risks of any new practices or procedures adopted by a transit agency. For these reasons, the ''Management of Change'' activities are housed within Safety Assurance. Each transit agency must establish a process for identifying and assessing changes that may introduce new hazards or impact the transit agency's safety performance, and if the transit agency determines that a change may impact its safety performance, then the transit agency must evaluate the proposed change through its Safety Risk Management process. FTA disagrees with the commenter who suggested that moving these procedures from Safety Assurance to Safety Risk Management will elevate their importance—ultimately, these all are requirements for safety plans. FTA is providing each transit agency with great latitude and flexibility in developing these procedures and identifying the types of changes in its system that could impact safety performance. These changes may include changes to the design of a new public transportation system, service changes to the existing public transportation system, new operational or maintenance procedures, new organizational changes, and changes to internal standard operating procedures, such as changes to procurement or safety management processes. Each of the SMS procedures are equally important and are designed to work together as a system for managing safety risks in a transit agency.

In response to the commenter who encouraged FTA to include Management of Change within the SMS context, FTA makes clear that all of the activities within Safety Assurance—Safety Performance Monitoring,

Management of Change, and Continuous Improvement—are core components of SMS.

Finally, as noted above, under today's final rule small public transportation providers are not subject to the management of change requirements under Safety Assurance. These requirements only apply to rail fixed guideway public transportation systems and FTA recipients and subrecipients that operate more than one hundred vehicles in peak revenue service.

3.3. Safety Assurance: Continuous Improvement

Comments: One commenter sought clarification on the term ''continuous improvement,'' and another commenter recommended replacing the term ''continuous'' in proposed 49 CFR 673.27(d) with ''continual'' because ''continuous'' suggests no room to backslide. Additionally, the commenter suggested replacing the phrase, ''If a transit agency identifies any deficiencies . . . , '' in proposed 49 CFR 673.27(d)(2) with the phrase, ''When a transit agency . . . , '' to maintain consistency with the spirit of SMS.

One commenter stated that transit agencies have developed practices for a variety of safety oversight programs to assess and ensure continuous improvement of safety performance. The commenter encouraged FTA to allow transit agencies to continue the development and execution of effective system safety oversight functions, such as safety audits, observations, inspections, assessments, and data analysis, in order to strengthen this component and work towards fully achieving the SMS model.

Response: FTA notes the suggested changes to the verbiage in 49 CFR 673.27(d), but these suggestions are stylistic in nature, and offer no substantive amendments to the regulatory text.

FTA appreciates the commenter who noted the various safety oversight programs that transit agencies have developed over the years to manage safety risk. FTA is providing transit agencies with great latitude and flexibility in developing procedures for managing safety risk, and through the requirements outlined in today's rule, transit agencies should be developing procedures for conducting safety observations, inspections, assessments, and data analysis. FTA expects that the continual efforts tied to safety implementation will improve a transit system's safety performance by reducing, mitigating, and preventing safety outcomes.

Finally, as noted above, under today's final rule small public transportation providers are not subject to continuous improvement requirements under Safety Assurance. These requirements only apply to rail fixed guideway public transportation systems and FTA recipients and subrecipients that operate more than one hundred vehicles in peak revenue service.

4. Safety Promotion

Comments: Several commenters supported the establishment of a comprehensive safety training program, including refresher training, through the Safety Promotion element of SMS. Several commenters provided input on or asked questions about the types of employees who would be subject to training. A few commenters expressed concern with the phrase ''directly responsible for the management of safety,'' asserting that this language is vague and could be interpreted inconsistently. One commenter stated that FTA should replace this phrase with the terminology in FTA's proposed Public Transportation Safety Certification Training Program rule at 49 CFR 672.13, which requires transit agencies to ''designate its personnel who are directly responsible for safety oversight and ensure that they comply with the applicable training requirements.'' Another commenter expressed concern that this phrase could be misinterpreted by transit agencies to imply that only management or safety department employees would be subject to a comprehensive safety training program. The commenter suggested that safety training should include all levels of employees at a transit agency and recommended that FTA change this language to cover all employees and contractors. One commenter, however, stated that transit agencies should not be required to train contractors. Another commenter suggested that the terminology used to describe categories of employees is not consistent with the terminology used in 49 CFR part 674, without qualification. Another commenter stated the rule should specify that the training program should apply to the Accountable Executive.

Several commenters recommended that FTA not apply the training requirements to Section 5310 and Section 5311 operators, arguing that the development and implementation of a training program would be a financial and administrative burden. These commenters suggested that FTA should only mandate driver safety training for these operators. Another commenter indicated that live, face-to-face training is preferred, but noted that this type of training is difficult to schedule and suggested that FTA provide online training and host workshops for the industry.

Several commenters requested additional clarification regarding the proposed training provisions. One commenter asked if FTA would ''grandfather'' in existing agency safety training programs. Another commenter asked what constitutes a ''comprehensive safety training program'' and whether FTA foresees any minimum requirements for this program. Another commenter asked whether FTA would provide further guidance on the specific types of safety training that it would require. One commenter believed that FTA's intent is to create a single, comprehensive training program, but references to training throughout the rule make that unclear. One commenter suggested that Safety Promotion could include certifications and evaluations, including a driver report card and/or a professional transit driver program.

Response: FTA appreciates the comments that it received supporting the safety training program. FTA emphasizes that this program is a statutory requirement under 49 U.S.C. 5329(d)(1)(G), which requires each operator of a public transportation system to establish ''a comprehensive staff training program for the operations personnel and personnel directly responsible for safety'' and includes ''completion of a safety training program'' and ''continuing safety education and training.''

Given the unique operating environments and operating systems of each transit agency, FTA is providing great latitude and flexibility in complying with these provisions. Each transit agency should determine for themselves the classes of employees who are directly responsible for safety in that unique system. These employees could include vehicle operators, maintenance staff, dispatchers, the Chief Safety Officer, the Accountable Executive, and other agency staff and management who have direct responsibility for safety. The training program should cover all levels of employees and contractors, and FTA disagrees with the commenter who suggested that these provisions should not apply to contractors. In many systems, contractors have direct responsibility for safety, particularly in circumstances where a transit agency contracts for service, and it is critical that these individuals have training in safety.

In response to the commenters who recommended that FTA not apply the training requirements to Section 5310 and Section 5311 operators, FTA notes that it is deferring regulatory action regarding the applicability of this rule to these recipients and subrecipients until a later time. FTA is providing the industry with template safety plans and training courses, including online training courses, to assist small and large transit agencies with the development of training programs.

In response to the question regarding whether FTA would ''grandfather'' in existing safety training programs, FTA does not find a need to do so. Certainly, transit agencies can use existing safety training programs, or augment those programs, so long as they meet the requirements in this rule. FTA is not issuing any prescriptive requirements regarding these training programs because it does not believe that a one-size-fits all approach is appropriate. FTA agrees with the commenter who suggested that Safety Promotion could include certifications and evaluations, including a driver report card and/or a professional transit driver program, although FTA is not requiring this type of documentation. Ultimately, each transit agency must determine what is best for its system. Finally, FTA agrees with the commenters who stated that the language in this section could be ''misinterpreted by transit agencies to imply that only management or safety department employees would be subject to a comprehensive safety training program'' and does intend to create confusion between today's rule and the Safety Certification Training Program rule. Therefore, FTA is updating the language in 49 U.S.C. 673.29 to state: ''A transit agency must establish and implement a comprehensive safety training program for all agency employees and contractors directly responsible for safety in the agency's public transportation system.''

5. Scalability of SMS

Comments: Many commenters requested guidance and technical assistance on how SMS could be scaled for small transit providers. One commenter urged FTA to keep guidance and templates at a high level so that they can be tailored to fit the unique needs and circumstances of the broad range of transit agencies subject to the PTASP rule.

Several commenters stated that an appropriately scaled safety plan is particularly important in a zero fatality environment, and FTA should clarify that the transit agency, or the State, is responsible for deciding how to scale the plan. These commenters suggested that FTA revise 49 CFR 673.21 by replacing ''appropriately scaled'' with ''appropriately scaled by the provider, or if applicable, the State.''

One commenter urged FTA to emphasize in the final rule that SMS provides flexibility and adaptability, and it urged FTA to avoid developing prescriptive and restrictive standards for transit agencies that may create major program gaps and limitations. Similarly, another commenter stated that FTA should allow for local choice in implementing SMS plans and programs, asserting that local flexibility would lead to greater and more comprehensive safety plans across individual systems.

Several commenters suggested that the rule lacks detail, and they indicated that FTA should add more detail to the various processes and procedures required, and that FTA should develop templates and associated technical assistance manuals where the requirements could be presented differently based on size, mode, and safety record. One commenter appreciated FTA's efforts to create a rule that considers each transit agency's uniqueness; however, this commenter concluded that the final rule should include identifiable and clearly stipulated requirements which can then be tailored to the individual characteristics of a transit agency.

Response: FTA appreciates the comments that it received regarding the need for technical assistance, guidance, and templates for safety plans. Concurrent with this final rule, FTA is issuing a safety plan template for the industry. FTA is not requiring transit agencies to use the template, but rather, FTA is releasing it as a guide to assist States and transit agencies with the development of their safety plans. Ultimately, each operator of a public transportation system must decide for itself the processes and procedures within the SMS framework that are most appropriate for its unique operating environment. A small bus operator may have simpler processes and procedures than a large rail operator. In situations where a State is drafting a safety plan on behalf of a small public transportation provider, the State and the small public transportation provider should work together and collaborate on the development of processes and procedures that are most appropriate for the operator.

FTA appreciates the comments noting the flexibility and adaptability of SMS, which FTA has emphasized throughout this rulemaking. FTA has taken great efforts to avoid the development of prescriptive and restrictive standards for transit agencies that may create major program gaps and limitations.

Finally, FTA believes that the requirements in the rule satisfy the minimum requirements of the statute at 49 U.S.C. 5329(d), and if the requirements were any more prescriptive, transit agencies would not have the flexibility that they need to tailor their safety plans to their unique operating environments. If this were the case, the safety plans would be more difficult to develop, and ultimately, less useful in mitigating and preventing safety events. FTA believes that today's rule strikes an appropriate balance in providing a general framework for safety plans and for allowing flexibility and scalability for each individual transit agency.

6. SMS and Safety Culture

Comments: A few commenters emphasized the need for communication between management and agency staff, and they noted the need for a healthy safety culture. One commenter supported the requirement that transit agencies use SMS principles to help achieve a high level of safety, and noted that, to achieve a high level of safety, management at transit agencies must listen to and incorporate the input from their frontline workers and their unions who have daily, firsthand experiences and in-depth knowledge of the transit systems. One commenter acknowledged that training and communication are key components of an effective SMS, but also noted that listening to employees, seeking their feedback, and ensuring a positive culture of safety in their work are also important components of SMS. Another commenter stated that local unions may present administrative challenges in adopting a positive and healthy safety culture.

Response: FTA appreciates the comments that it received regarding the need for a positive and healthy safety culture, and each of the requirements of this rule is designed to help ensure a positive safety culture at each transit agency. FTA wholeheartedly agrees that communication between management and staff, including labor unions, is critical in achieving a positive and healthy safety environment and in reducing safety events. One of the key requirements in today's rule is an employee reporting program, which will allow the frontline staff who have in-depth knowledge of the transit system to report unsafe conditions to management without fear of reprisal. FTA believes that these programs will help support a positive safety culture within transit organizations.

J. Safety Plan Documentation and Recordkeeping

1. Safety Plan Documentation

Comments: Two commenters recommended that transit agencies should keep their safety plan documents for more than three years. One of these commenters recommended that transit agencies be required to retain documentation for a minimum of fifteen years, or at least five triennial review cycles. Another commenter asserted that the data contained in the safety plan documentation would be valuable in determining historical trends in a transit agency's safety performance over time, so extending the minimum retention period would allow for more robust historical assessments.

Response: FTA recognizes the value associated with having access to years of data to assist with assessing historical trends. However, such a requirement must be balanced against the costs associated with maintaining such data over an extended timeframe as suggested by the commenter. With that in mind, FTA believes its proposal that transit agencies maintain documents required by this part for a minimum of three years is reasonable relative to cost and effort, and also aligns well with the three year period for Triennial Reviews and State Management Reviews. This requirement would not bar those transit agencies desiring to maintain documents beyond three years from doing so, and FTA would encourage this practice. Accordingly, the proposed three year minimum requirement is included in the final rule.

2. Safety Plan Records

Comments: Several commenters asked which records should be maintained related to training. One commenter asserted that employee training records under the Public Transportation Safety Training Certification Program are already stored in FTA's training portal. Another commenter stated that its agency maintains a Learning Management System to schedule and track training, and this commenter questioned whether this existing system is sufficient or whether the agency will need to keep additional records. One commenter urged FTA to require transit agencies to maintain additional records beyond what is required in the proposed rule.

One commenter requested clarification on whether the requirements to keep training records apply to locally operated transit systems. One commenter stated that it will maintain records on the SMS requirements for transit agencies that utilize a safety plan drafted by a State.

Response: FTA notes that the training required under the Public Transportation Safety Certification Training Program at 49 CFR part 672 is required of those who are ''directly responsible for safety oversight'' of the public transit system. FTA has developed a web portal to maintain the training records for those subject to the requirements of that rule. Today's final PTASP rule requires the development of a comprehensive staff training program for operations personnel and personnel who are ''directly responsible for safety.'' Thus, there are two different types of safety training requirements, applicable to different employees of a transit system.

The requirements of today's final rule include the completion of a safety training program and continuing safety education and training. Such training may or may not also include training requirements in accordance with the Public Transportation Safety Certification Training Program Rule at 49 CFR part 672. FTA emphasizes that each transit agency will have discretion and flexibility with regard to the requirements of the safety training program under this part. FTA encourages transit agencies to maintain training records to the maximum extent practicable, but in today's final rule, FTA is not requiring transit agencies to maintain these records and it has removed Section 673.33 ''Safety Plan Records'' in its entirety for all transit agencies. Specifically, transit agencies are not required to maintain records of safety risk mitigations, results from safety performance assessments, and employee training. FTA believes that this revision from the NPRM to the final rule responds to the industry's concerns regarding recordkeeping and it significantly will reduce the administrative and financial burdens for all transit operators.

3. Other Comments on Documentation and Recordkeeping

Commenters: Numerous commenters stated that transit agencies need data protection for the information in their safety plans. The commenters argued that SMS, by its nature, requires full and open review, evaluation, and prioritization of risk, and the possibility that these safety reviews could be released through the Freedom of Information Act (FOIA), State sunshine laws, or obtained through judicial proceedings serve as a barrier to well-documented and robust self-examination. The commenters encouraged FTA to state its intent to protect agency analyses to the full extent possible and pursue full authority to exempt safety analyses from discovery and use in judicial proceedings. One commenter suggested that FTA incorporate a confidentiality provision into the rule similar to the provisions in the old SSO rule at 49 CFR part 659.

One commenter suggested that the rule should acknowledge disclosure laws differ between States and that the rule should be written so that transit agencies are not required to disclose records to plaintiffs or allegedly injured parties if a State law does not require them to do so.

Response: When FTA first promulgated its SSO rule in 1995, FTA recognized that rail transit agencies often face litigation arising from accidents, and that the release of accident investigation reports can compromise both the defense of litigation and the ability of agencies to obtain comprehensive, confidential analyses of accidents. Thus, the former SSO rule at 49 CFR 659.11 provided 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.'' Courts are left to determine whether to admit investigation reports into evidence for litigation, in accordance with the relevant State law and the courts' rules of evidence.

Unlike NTSB accident reports, which cannot be admitted into evidence or used in civil litigation in a suit for damages arising from an accident, there is no such protection for data under FTA's safety rules (see 49 U.S.C. 1154(b) regarding NTSB investigations). Rather, States may enact statutes regarding the admissibility into evidence of accident investigation reports or safety data and analysis conducted in compliance with FTA requirements. FTA emphasizes that any protections must be based on State, not Federal, law and rules of evidence.

With regard to safety records in the possession of FTA, FTA will maintain the confidentiality of accident investigations and incident reports to the maximum extent permitted under Federal law, including the various exemptions under FOIA. Documents submitted to FTA are subject to FOIA and are generally releasable to the public upon request. However, unlike other Federal safety regulatory agencies such as FRA and FAA, Congress has yet to provide FTA with statutory authority to otherwise exempt safety-related information from disclosure. Section 3021 of the FAST Act authorized FTA to undertake a study to determine

whether data protection is necessary. FTA notes that its confidential treatment of information would not preempt State law; therefore, transit agencies still would be required to comply with their State's laws regarding the treatment of such information and should exercise their use of this provision accordingly.

4. Database Systems

Comments: One commenter expressed concern over integrating existing database systems and requested clarification from FTA on how to do so. The commenter urged FTA to clarify which data categories FTA expects to add to existing databases to capture information, and provide additional information on how it will support additional data management systems that agencies will need to acquire as a result of the rule.

Response: Each transit agency will have to determine for itself how it will integrate databases. FTA supports the use of data management systems if a transit agency determines that these systems are necessary to manage safety risks. However, FTA does not foresee transit agencies having to integrate or create new databases, necessarily, in order to comply with the requirements of 49 CFR part 673.

5. Staffing and Resources as a Result of Documentation and Recordkeeping

Comments: Two commenters expressed concern that the documentation and recordkeeping requirements in the proposed rule will produce a need for additional staffing and stretch already limited resources. The commenters stated that recordkeeping and documentation must be scalable.

Response: FTA understands that agencies will need to expend resources to comply with the documentation requirements. FTA has sought to minimize the rule's paperwork burdens and agrees that such requirements for documentation and recordkeeping must be scalable. To this end, FTA has eliminated many of its proposed recordkeeping requirements in their entirety. Specifically, transit agencies are not required to maintain records of safety risk mitigations, results from safety performance assessments, and employee training. FTA believes that this revision from the NPRM to the final rule responds to the industry's concerns regarding recordkeeping and it significantly will reduce the administrative and financial burdens for all transit operators. FTA reiterates that service providers within the public transportation industry can vary greatly based on size, complexity, and operating characteristics. Transit agencies need safety processes, activities, and tools that scale to the size, complexity, and uniqueness of their systems, and SMS provides such an approach. Therefore, FTA believes that the documentation that is kept for a smaller bus agency may be less voluminous and less complex than those of large rail or multi-modal transit agencies. Moreover, FTA is issuing a safety plan template concurrent with the issuance of this final rule. This template will reduce the burden on transit agencies in developing the documentation necessary (that is, the safety plan) to comply with this rule.

K. Funding

Comments: Several commenters asserted that the proposed rule results in additional costs relating to, among other provisions, reviews, training, software or software upgrades, and the scalability and implementation of SMS. The commenters expressed concern that these additional costs may impact their limited available resources and expressed concern that no additional resources would be provided to support the costs of achieving compliance. Several commenters remarked that this rulemaking seems like an unfunded mandate. These commenters also asked whether there would be additional Federal resources provided to implement the new safety plans. Another commenter asserted that costs related to oversight responsibilities should be eligible for reimbursement by States.

Response: FTA recognizes there are costs associated with implementing the requirements of this rule; however, this rule is a requirement of 49 U.S.C. 5329(d). FTA recognizes the need for increased investments in transit, but Congress determines the specific levels of funding available to FTA recipients. To this extent, FTA disagrees with those commenters who suggested that these requirements are an unfunded mandate. States and operators of public transportation systems may use Federal funding provided through the existing Section 5303, Section 5304, Section 5307, Section 5309, Section 5310, Section 5337, and Section 5339 programs to comply with the requirements in this rule, that is, developing and implementing their safety plans. Costs related to oversight by SSOAs are eligible for Federal reimbursement through the State Safety Oversight Grant Program created by 49 U.S.C. 5329.

In an effort to further reduce the administrative, financial, and regulatory burdens on recipients, FTA will provide technical assistance in the form of templates and guidance documents to assist with the development of safety plans. FTA also is providing training courses to assist the industry with compliance with this rule. FTA has removed Section 673.33 ''Safety Plan Records'' from the final rule in response to comments from the industry and to reduce costs for individual transit systems. FTA is deferring action regarding the applicability of this rule to the smaller recipients and subrecipients that only receive Section 5310 and/or Section 5311 funds so that it can evaluate additional information and safety data to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

L. Staffing

Comments: Several commenters expressed concerns about the limited staff of many transit agencies and asserted that compliance with the proposed rule, notably the administrative requirements, would require agencies to hire more staff, including contractors or expert consultants, thus increasing costs. One commenter expressed that medium-sized transit agencies may have difficulty absorbing the costs that may be necessary to hire more than one individual without additional funding. One commenter expressed concern that placing increasing requirements on State Department of Transportation staff could create unintended consequences, such as a reduction in work quality or causing staff to forego other critical work.

Response: FTA understands the concerns expressed by some commenters about the staffing resources needed to comply with the rule. Irrespective of the Federal funding stream, FTA continues to believe the scalability and flexibility in safety plan development will not unduly burden any particular transit agency. Given the scalability of SMS, transit agencies may have to reorganize existing staffing resources instead of hiring additional ones. Moreover, to reduce staffing burdens on transit agencies and States, FTA is issuing a safety plan template concurrent with this final rule. In accordance with 49 U.S.C. 5329(d), FTA also is requiring that States draft and certify plans on behalf of small public transportation providers which will further reduce the burden on smaller agencies. FTA is deferring action regarding the applicability of this rule to smaller recipients and subrecipients that only receive Section 5310 and/or

Section 5311 funds so that it can evaluate additional information and safety data to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

M. Enforcement and Oversight

1. Triennial Reviews and State Management Reviews

Comments: A few commenters preferred FTA's review of safety plans as part of the existing Triennial Review and State Management Review oversight processes, rather than annual reviews. One commenter asked FTA to provide more clarity on the State Management Review process. One commenter suggested that FTA could utilize findings from these oversight reviews for purposes of informing the transit industry on safety trends and best practices.

A few commenters expressed concern that FTA may conduct oversight and enforcement of this rule outside of the traditional Triennial Review and State Management Review processes, but FTA did not explain how this additional oversight may impact transit agencies and SSOAs. The commenters recommended that FTA issue guidance explaining this additional oversight so that States, SSOAs, and transit agencies can effectively anticipate and respond to this process, and so that FTA may administer it consistently nationwide. Commenters suggested that FTA should detail procedures for additional reviews or audits outside the normal review schedule, including an advanced notice process and an identification of roles for the SSOAs.

One commenter asked whether and to what extent reviewers could reject performance targets during the Triennial Review process. Another commenter asked about the consequences of a transit agency's failure to meet its safety goals.

Response: As a preliminary matter, pursuant to the statutory provisions of 49 U.S.C. 5329(d)(1)(D), each operator of a public transportation system is required to conduct an annual review and update of its safety plan. This annual review and update is a process to be undertaken by each transit agency independent of the triennial oversight process conducted by FTA. FTA will issue future guidance on any changes to the Triennial Review and State Management Review processes, including the role of an SSOA, to the extent necessary. FTA will not use the National Public Transportation Safety Plan to inform the industry how it will conduct the Triennial Review or State Management Review processes.

FTA will conduct additional oversight and enforcement of this rule outside of the Triennial Review and State Management Review processes as necessary and appropriate. FTA notes that its new Public Transportation Safety Program rule at 49 CFR part 670 outlines its authority to conduct investigations, inspections, audits, and examinations on transit systems. FTA will make oversight and enforcement determinations on a case-by-case basis.

Finally, FTA Triennial and State Management reviewers will not ''reject'' a transit agency's safety performance targets; however, they will ensure that each transit agency has identified safety performance targets based on the safety performance measures established in the National Public Transportation Safety Plan. To the extent that a transit agency does not meet its safety goals, then using its safety plan as guide, the transit agency must determine for itself which efforts it must undertake to do so.

2. State Oversight

Comments: One commenter stated that a State may reasonably be required to provide oversight in drafting a safety plans, but for some States with multiple responsibilities and multiple recipients and subrecipients of Section 5310 and Section 5311 funds, the additional responsibility of oversight of small Section 5307 operators could be daunting. One commenter remarked that incorporating oversight of public transit systems into the existing SSO program would require additional trained personnel.

Response: As discussed above, FTA is not requiring States to provide oversight of safety plans. States only are required to draft and certify the safety plans on behalf of small Section 5307 operators (unless the operator decides to draft and certify its own safety plan). FTA is responsible for providing oversight and enforcement of all safety plans, and it will utilize the existing Triennial Review and State Management Review processes to do so (with the exception of SSOAs, which have primary safety oversight and enforcement responsibility over rail transit systems). To ease the burden on States, FTA is issuing a safety plan template with this final rule. Also, as discussed above, there is no Federal legal authority for an SSOA to provide safety oversight of a bus system, and this rule does not contemplate an SSOA taking on that role.

3. Other Comments

Comments: One commenter encouraged FTA to provide standard thresholds that it would use to determine the need for a safety audit, this way, FTA would not appear to be arbitrary or inconsistent. This commenter also recommended that FTA provide each transit agency with the opportunity to answer questions and provide additional information to assist safety oversight reviewers.

One commenter asked if FTA would analyze the public's role in collisions rather than concentrating its oversight on transit agencies, arguing that, without addressing the public's interaction with the transit system, transit agencies may risk Federal funding if they do not meet their safety performance targets. Additionally, the commenter asked if FTA would have funding available for purposes of education (internal and external to include educating the public on safety), engineering (highway and vehicle designs), and enforcement if a transit agency fails to meet its safety performance targets.

Response: Through MAP–21 and the FAST Act, Congress provided FTA with significant authority to conduct oversight, inspections, investigations, audits, examinations, and testing, as well as enforcement actions. (49 U.S.C. 5329(f)–(g)). FTA has issued a new regulation at 49 CFR part 670 entitled the ''Public Transportation Safety Program'' rule. FTA directs readers to that rulemaking for issues related to safety audits conducted by FTA.

FTA has identified NTD reporting thresholds for an ''Incident,'' and those thresholds can be found in Appendix A to FTA's new SSO rule at 49 CFR part 674 (*https://www.gpo.gov/fdsys/pkg/FR-2016-03-16/pdf/2016-05489.pdf*). These thresholds do not limit FTA's authority to conduct a safety audit in the case of an Incident.

FTA notes that the statutory framework of 49 U.S.C. 5329(d) authorizes FTA to regulate operators of public transportation systems, not the riding public. Nevertheless, through the SMS framework, each transit operator is required to develop processes and procedures for addressing safety risks in all aspects of their systems, and therefore, they must consider the public's role and interaction with their systems when identifying hazards and evaluating risks.

Finally, as discussed throughout this final rule, FTA does not have control over its annual funding levels and appropriations. However, FTA supports the use of Federal funding for purposes

of education, engineering, and enforcement activities, and these types of activities may fall within the scope of eligibility for various funding programs under 49 U.S.C. Chapter 53.

N. NTD Reporting

Comments: One commenter recommended that FTA continue collecting additional safety reporting data through existing programs such as the NTD, which is currently used by transit agencies to report safety incidents.

Another commenter remarked that 49 CFR part 673 does not discuss reporting to FTA through NTD. Additionally, the commenter asked if FTA intends to substantially change the NTD reporting requirements upon the effective date of the proposed PTASP rule.

Response: During this rulemaking, FTA issued a ''Notice of Request for Comments on Updates to National Transit Database Safety Information Collection'' (*https://www.gpo.gov/fdsys/pkg/FR-2014-08-21/pdf/2014-19787.pdf*). FTA issued a ''Supplemental Notice and Response to Comments on National Transit Database'' (*https://www.gpo.gov/fdsys/pkg/FR-2015-11-18/pdf/2015-29384.pdf*). FTA issued final reporting requirements on July 26, 2016, and they are available here: *https://www.gpo.gov/fdsys/pkg/FR-2016-07-26/pdf/2016-17075.pdf.* Through today's final rule, FTA is not requiring any reporting of any information to any entity.

O. Security

Comments: Several commenters expressed concerns that the proposed rule did not address security, including terrorism, trespassing, vandalism, assaults, robberies, and cyber threats on transit systems. One commenter suggested that FTA address security and safety of the general public in this rule.

One commenter stated that the TSA is unable to establish cybersecurity requirements for transit control systems due to lack of funding and expertise. This commenter warned that the U.S. Department of Transportation's focus on transportation safety must include an emphasis on transportation control system security to guarantee the safety of associated transportation systems.

One commenter stated that FTA should provide direction regarding security and terrorism preparedness, noting that these preparations should be coordinated with TSA.

Response: As a preliminary matter, TSA has the prerogative and responsibility for all rulemakings on security in public transportation. Specifically, under the Implementing the Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53), the September 2004 Memorandum of Agreement between DOT and DHS, and the September 2005 modal annex between FTA and TSA, DHS is tasked with the responsibility for carrying out a national strategy for public transportation security to minimize security threats and to maximize the ability of public transportation agencies to mitigate damage from terrorist attacks and other major incidents. While this legislation and these agreements do not preclude transit agencies from implementing measures securing their assets, FTA is not requiring agencies to do so through this final rule. FTA recognizes, of course, that some of the steps that a transit agency takes to ensure the personal safety and security of its riders and employees will overlap with steps it takes to secure its system from a terrorist attack; for example, the steps an agency takes may be part of a threat and vulnerability assessment. FTA notes that a transit agency's expenses for safety and security will continue to be eligible for Federal reimbursement under 49 U.S.C. Chapter 53.

P. SSPP–PTASP Crosswalk

Comments: Although not a part of the PTASP NPRM, several commenters provided input on FTA's ''Crosswalk Matrix: 49 CFR part 659.19 System Safety Program Plan Requirements with Proposed Requirements for Public Transportation Agency Safety Plans,'' which it uploaded onto the docket for this rule. FTA intended this document to provide additional guidance to rail transit systems as to how the 21 elements of an SSPP would fit within the new regulatory requirements for a PTASP.

Several commenters expressed concerns that the crosswalk lumps some SSPP elements into a few categories for PTASPs, and these commenters asserted that the six most complicated SSPP elements are listed under multiple pillars of SMS. A few commenters asserted that some of the 21 elements of SSPPs fit into other pillars of SMS. One commenter encouraged FTA to work with rail transit systems to better align this matrix and promote a better understanding of SMS. One commenter suggested that performance targets should be listed under Safety Assurance, rather than Safety Management Policy. Another commenter provided several detailed suggestions for revised mapping of the SSPP elements with SMS.

Response: FTA agrees that the new PTASP places the former elements of SSPPs into fewer categories, and this is a result of a new statutory framework under 49 U.S.C. 5329. The statutory provisions of 49 U.S.C. 5329(d) provide specific requirements for PTASPs, and through the design of the new PTASP rule, FTA's intent is to ensure that rail transit systems will not become less safe than they were under the former SSO rule at 49 CFR part 659. Additional, more comprehensive guidance regarding the relationship between SSPPs and PTASPs is forthcoming, and FTA will post that guidance on its website (see *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-safety-oversight-tso*).

FTA agrees that some of the SSPP elements may be listed under multiple elements of SMS, but FTA believes that this mapping most appropriately connects the PTASP requirements to former SSPP elements. FTA disagrees that safety performance targets should be included under Safety Assurance, rather than Safety Management Policy because safety performance targets guide the safety management decisions, investment decisions, and policy decisions of a transit agency, all critical tenets of Safety Management Policy. Notwithstanding this connection between the former SSPPs and PTASPs, FTA only is requiring transit agencies to set safety performance targets as part of the ''General Requirements'' section of this final rule (49 CFR 673.11(a)((3)); to avoid redundancy, FTA is not also establishing this requirement in the ''Safety Management Policy'' section, although, transit agencies may include safety performance targets in their Safety Management Policies if they so choose.

Q. Safety Performance Measures

Comments: Several commenters urged FTA to revise the performance measures proposed in the National Public Transportation Safety Plan. Multiple commenters urged FTA to delete the proposed ''reliability'' performance criterion for the following reasons: Transit agencies currently do not report reliability data to NTD; the reliability performance measure is redundant of the TAM rule; reliability is a maintenance-related measure, not a safety measure; reliability is not easily quantified; and reliability could vary considerably between transit agencies.

One commenter sought further guidance regarding FTA's four proposed safety performance measures. This commenter suggested that without additional detail, transit agencies would not be able to determine the standards by which FTA and SSOAs would measure and evaluate the

appropriateness of the safety performance targets established by the agencies.

Response: FTA appreciates the comments that it received regarding safety performance measures; however, FTA notes that today's rule does not establish safety performance measures—FTA's National Public Transportation Safety Plan establishes the measures. FTA is addressing comments regarding the safety performance measures in the notice and comment process for the National Public Transportation Safety Plan.

R. Technical Assistance and Guidance

Comments: Numerous commenters supported FTA's proposal to issue a safety plan template and to provide technical assistance to industry on the development and implementation of safety plans, particularly to address the scalability of SMS to different transit modes and system sizes.

Some commenters stated that FTA should allow transit agencies to attach an appendix to the safety plan template, which would allow a State to avoid drafting multiple unique plans and capture a few unique issues. Several commenters stated that FTA clearly should allow a State to draft a template statewide safety plan or a series of individual safety plans tailored for each unique transit agency. One commenter stated that a transit agency should have the ability to tailor guidance and templates to its own needs, as long as it satisfies the substantive requirements of the final PTASP rule. Another commenter stated that it was looking forward to receiving implementation and gap analysis checklists.

Several commenters noted that there is no mandated timeframe for when FTA will provide technical assistance tools and urged FTA to provide them in a timely manner. Several commenters urged FTA to make PTASP templates available in advance of any implementation deadline; some commenters urged FTA to make PTASP templates available concurrently with this final rule. One commenter suggested that, if FTA is unable to provide PTASP templates on the day that the final rule is published, then FTA should change the implementation deadline to be one year from the date that FTA issues PTASP templates. Another commenter stated that FTA should refrain from issuing a final rule until FTA develops guidance and PTASP templates. One commenter recommended that FTA provide technical assistance tools to States upon request.

Several commenters requested other forms of technical assistance, including an FTA-sponsored website featuring national-level safety performance measurement data, online training, safety workshops, examples of industry best practices, and lessons learned in implementing SMS.

Response: FTA appreciates the support from commenters regarding its development of a safety plan template and other guidance and technical assistance. FTA recognizes the administrative and financial burdens that this rule may impose on the industry, and FTA intends to reduce these burdens through templates, guidance, and technical assistance. Ultimately, the safety plan template, guidance, and technical assistance will help reduce, mitigate, and eliminate hazards and risks and will help make public transportation safer. For these reasons, today, FTA is issuing a template for safety plans concurrent with the issuance of this rule. The safety plan template is generic, minimalistic, and addresses each of the requirements of today's final rule. States and transit agencies can tailor the template to meet the needs of the numerous unique operating environments across the nation.

FTA is providing deference to States in the development of plans on behalf of operators of public transportation. A State may draft a single statewide safety plan, it may draft a unique safety plan for each individual transit operator, it may develop a generic statewide safety plan with a more tailored appendix outlining various processes and procedures for each unique transit operator, or it may develop another method for complying with the rule, so long as the statewide plan or the individualized plans satisfy each of the elements of this rule and contain each of the required processes and procedures for SMS. Transit agencies are free to tailor guidance and templates to meet their own needs, so long as their safety plans satisfy the requirements of this rule. If a State drafts a statewide safety plan, then each individual operator that it covers should keep its plan on file, and the plan should include the relevant and unique information for that particular operator, such as the names of the Accountable Executive and Chief Safety Officer and the operator's safety performance targets.

FTA notes that it has been developing a website through which it has been providing technical assistance, including information related to safety performance, training, examples of industry best practices, and lessons learned in implementing SMS. The website is located at the following link: *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-safety-oversight-tso.* FTA has been uploading information onto this website, including guidance and other forms of technical assistance, as it becomes available. FTA encourages the transit industry to utilize the tools on this website with its development and implementation of successful safety practices, and it also encourages the industry to provide feedback on this website, as it evolves, through the ''Contact Us'' tool at the following link: *https://ftawebprod.fta.dot.gov/ContactUsTool/Public/NewRequest.aspx.*

Finally, as mentioned above, in an effort to assist the industry with meeting the requirements of this rule, FTA is making the effective date one year after its publication date. As a result, transit agencies will have a total of two years from the publication date to certify that they have safety plans meeting the requirements of 49 CFR part 673.

S. Coordination With Other Entities

Comments: Two commenters expressed concern with the potential for inconsistency and duplication between FTA and FRA safety regulations. One commenter urged FTA to coordinate its NTD with FRA's Accident/Incident Report Generator.NET (AIRGNET) to establish consistent terminology, reporting requirements, audit requirements, training requirements, and safety plan requirements.

One commenter recommended that FTA adopt safety standards and methodologies developed by the U.S. Department of Defense, including system safety analytical methods to assess hazards and consequences and system safety engineering principles and techniques to develop and design mitigation. Two commenters encouraged FTA to establish an advisory committee of transit operators to assist with the development of policies and procedures for smaller operators.

Response: FTA makes clear through today's rule that transit agencies that operate a rail fixed guideway public transportation system subject to regulation by FRA do not have to develop safety plans for that mode of service. 49 CFR 673.11(f). FTA does not intend to issue safety regulations that conflict or are inconsistent with FRA's safety regulations, and to that end, FTA has coordinated and will continue to coordinate with FRA on the development and implementation of this rule. FTA also has taken great efforts to ensure that terminology,

definitions, reporting requirements, training requirements, and regulatory enforcement efforts are consistent with other Federal safety and reporting regulations to the maximum extent possible.

FTA appreciates the suggestion that it should adopt safety standards and methodologies developed by the U.S. Department of Defense, including system safety analytical methods to assess hazards and consequences and system safety engineering principles and techniques to develop and design mitigations; FTA is adopting the SMS approach to addressing safety risk, which is consistent with the approach taken by other modes within the U.S. Department of Transportation.

Finally, as FTA develops and issues guidance and best practices for safety, FTA intends to consult with the transit industry, including the Transit Advisory Committee for Safety, to the maximum extent practicable.

T. Nexus Between the PTASP Rule and Other FTA Requirements

Comments: Numerous commenters suggested that FTA clarify the nexus between the PTASP rule and other related FTA requirements, specifically, the National Public Transportation Safety Plan, the SSO rule, the Safety Certification Training Program rule, the Bus Testing rule, and the Transit Asset Management rule. These commenters recommended that FTA clearly define the link between the PTASP rule and other FTA requirements, especially the Transit Asset Management rule, to be consistent to avoid conflicting regulations. One commenter recommended that, to foster a strong culture of safety, FTA should extend data protection to asset management analyses.

One commenter urged FTA to reinforce the link between the PTASP rule and the SSO rule, arguing that FTA should work to strengthen and streamline the mitigation, reporting, and notification processes.

Response: FTA appreciates the comments that it received regarding the connection between the PTASP rule and other related FTA regulations. With respect to the National Public Transportation Safety Plan, FTA emphasizes that the Plan establishes safety performance measures to which each operator of a public transportation system must set performance targets in their safety plans, as required in the PTASP rule.

In the SSO rule, FTA requires each SSOA to develop a program standard which, among other things, establishes minimum safety standards for the safety of all rail fixed guideway public transportation systems within its jurisdiction. FTA also requires each SSOA to approve the PTASP of every rail fixed guideway public transportation system within its jurisdiction. Each SSOA should review those safety plans to ensure that they are compliant with the PTASP rule, the National Public Transportation Safety Plan, and its own program standard. FTA notes that the PTASP rule does not add any additional notification or reporting requirements; those requirements are outlined in the SSO rule and the NTD Reporting Manuals.

In the Safety Certification Training Program rule, FTA establishes minimum training requirements for transit agency employees and contractors who are directly responsible for safety oversight of rail fixed guideway public transportation systems that receive FTA funds. In the PTASP rule, FTA requires each operator of a public transportation system to establish a comprehensive safety training program for all employees and contractors directly responsible for safety. In this section of the safety plan, a rail transit system also may include its training program for employees and contractors who are directly responsible for safety oversight.

In the Bus Testing rule, FTA requires recipients of FTA funds to test buses to ensure that they meet minimum performance standards, a scoring system, and a pass/fail threshold if they are using FTA funds to procure the buses. This rule exists separate and apart from the PTASP rule, but transit agencies may incorporate by reference into their safety plans any processes and procedures that they utilize for bus testing pursuant to the Bus Testing rule.

Finally, in the Transit Asset Management rule, FTA requires transit agencies to conduct asset inventories and then perform condition assessments on their assets. Those condition assessments should inform the SMS activities that a transit agency undertakes pursuant to its safety plan. To illustrate how these rules work together, if a transit agency finds through a condition assessment that an asset is not meeting its state of good repair standards, then the transit agency may conduct safety hazard identification and safety risk assessment analysis on that asset. The transit agency may mitigate any safety risks, as necessary, and it may reprioritize its capital plan in accordance with the FTA and FHWA Planning rule at 23 CFR part 450. FTA notes that it addressed any comments related to asset management in the final Transit Asset Management rule.

U. Americans With Disabilities Act Issues

Comments: One commenter stated that the proposed rule should not conflict with the Americans with Disabilities Act laws and regulations, and vice-versa. The commenter urged FTA to clarify how it will treat safety issues and incidents that may conflict with ADA requirements, remarking that agencies should not be subject to inspections, audits, examinations, investigations, directives, or other possible sanctions for adhering to ADA requirements.

Response: FTA does not intend the PTASP rule to conflict with the ADA and its implementing regulations, which are designed to prevent and eliminate discrimination. Nevertheless, to the extent that a transit agency is undertaking action to comply with the ADA—such as the construction of capital projects to make facilities ADA-compliant; the installation of accessible features on vehicles, platforms, and other transit facilities; and the provision of paratransit service—FTA expects that action to be undertaken safely and in accordance with this final rule and a transit agency's safety plan.

V. Other Comments on the Rule

Comments: One commenter suggested that all transit agencies should have safety plans only for maintenance and training, and that States should review safety plans only if a transit agency has safety issues. One commenter encouraged FTA to incorporate occupational health issues into the rule, focusing on driver assault, restroom breaks, and fatigue management. Another commenter encouraged FTA to join a ''Journey to Safety Excellence—a cycle of improvement that aims for a continuous reduction of risk with a goal of zero harm,'' stating that integrating the principles of the ''Journey to Safety Excellence'' into workplace safety strategies can make a great difference in saving lives and preventing injuries. One commenter remarked that zero is the only goal that transit agencies should establish in their performance targets.

A commenter expressed disapproval for the guidelines FRA developed for rail vehicle crashworthiness, citing the Union International des Chemins de Fers (UIC), an international rail regulatory body, as an alternative example. This commenter urged FTA to use UIC as an example and expressed hope that FTA can serve as a role model for FRA.

Response: FTA disagrees with the commenter who suggested that all

transit agencies should have safety plans only for maintenance and training, and that States should review safety plans only if a transit agency has safety issues. FTA's authorizing statute at 49 U.S.C. 5329(d)(1)(B) mandates that each operator of a public transportation system establish ''methods for identifying and evaluating safety risks throughout all elements of the public transportation system.'' This requirement would extend beyond mere maintenance and training, and in this final rule, FTA makes clear that transit agencies should address safety risks in all aspects of their systems, including maintenance, training, operations, construction of new facilities, rehabilitation of existing facilities, etc. Moreover, the statutory provisions of 49 U.S.C. 5329(d) require States to ''draft'' and ''certify'' safety plans on behalf of small Section 5307 operators. States cannot merely review plans if one of these transit agencies has ''safety issues.''

FTA appreciates the comment that it received regarding occupational health issues. To the extent that occupational health issues may be safety hazards and present safety risks, transit agencies should be addressing them through the SMS processes outlined in their safety plans. FTA will issue rules regarding operator assault in the future.

Regarding the establishment of ''zero'' as the only feasible goal in performance targets, FTA only is creating safety performance measures by which transit agencies are to set performance targets. FTA is not mandating any particular goal or target; it is deferring to each transit agency, MPO, and State and to set targets for each of their unique systems and geographical areas.

Finally, FTA notes that this final PTASP rule does not establish guidelines for rail vehicle crashworthiness. Please see the National Public Transportation Safety Plan, available on FTA's website, for more information regarding safety performance standards for public transportation vehicles.

W. Regulatory Impact Analyses

1. Costs

Comments: One commenter concluded that FTA underestimated the costs associated with the implementation of the rule. Similarly, a transit agency estimated cost increases to ensure compliance with the rule.

Several commenters provided specific cost estimates related to the proposed requirements. One commenter remarked that upgrading its surveillance system on buses would cost approximately $2 million and that it installed driver barriers in 30 new buses, at a cost of $4,202 per barrier, totaling $126,060. This commenter stated that the additional recordkeeping could require the purchase of new equipment and tracking software and the hiring and training of additional staff, which would result in costs of at least $4 million. This commenter asserted that staffing at the administrative level would cost about $85,000 annually and contractor personnel would cost about $75,000 annually. This commenter asserted that training for administrative staff would cost about $30,000 per person, and training for contractor personnel would cost about $10,000 per person. One commenter estimated that it would cost a State $200,000 annually to adequately perform any oversight responsibilities. One commenter estimated that its initial investment could reach at least $1 million for a risk management information system, training, and personnel. One commenter stated that it could not estimate the cost of coordination with MPOs on the establishment of performance targets.

Response: FTA appreciates the comments on the costs of the proposed rule. It is a challenge to develop cost estimates for the rule that can be representative of any one agency given the differences in agency size, modes, location, and level of maturity of safety programs. The regulatory analysis acknowledges that mitigation costs of identified risks are not included in the estimated cost of the proposed rule. The cost of onboard surveillance systems and driver barriers are mitigation costs. Typically, a transit agency makes these types of investment decisions with the understanding that there will be benefits of the mitigation that exceed the costs of the mitigation. Today's rule does not recommend any specific mitigation, and does not require agencies to implement mitigations that have greater costs than benefits.

The annual personnel costs of recordkeeping cited by the commenter are considerably higher than the estimated cost in the proposed rule. FTA's cost estimate for this particular type of agency is $20,000 for staff; $15,000 for information technology; and $4,000 for training, excluding travel costs. FTA cannot estimate costs for specific agencies, since FTA does not know how these costs would vary by size within each category. The larger the agency, the greater the amount of data and records that need to be maintained, with the possibility of significant economies of scale for certain recordkeeping tasks, but increased complexity in others, possibly requiring more sophisticated systems than those of the smaller agencies. It is possible that a large transit agency may need one additional full time staff and a contractor (at a total cost of $160,000 per year) to maintain records. Most likely, these individuals would be performing other duties. It also is possible that the initial set up costs may be higher for those who may not have the expertise in this area. FTA does not anticipate that these costs will be continual. Therefore, while FTA accepts that the cost estimates in the NPRM may be low for some agencies, FTA does not believe that the costs would be as high as suggested by the commenter and continuous into the future.

The commenter's estimated cost of $200,000 for ''oversight'' is significantly higher than FTA's estimated total State cost estimate of $18,000. FTA emphasizes it is not requiring States to conduct safety oversight through this rule; FTA is only requiring States to draft and certify safety plans on behalf of particular operators of public transportation systems. Moreover, with today's rule, FTA is providing a safety plan template which significantly will reduce costs to States and operators, particularly for the smaller operators. Therefore, FTA believes that the commenter overestimated the costs significantly.

The commenter's $1 million estimate for a risk management information system and associated staff may not be unreasonable. FTA estimates annual costs in the range of $15,000 to $20,000 for information technology systems for rail transit agencies and for large bus operators that receive Section 5307 funds. FTA estimates additional staff costs for risk assessment and assurance activities of approximately $60,000 per year for large Section 5307 operators. These costs would total $1 million over a span of thirteen years, at which time information technology systems may need to be updated. It is possible that the costs would be higher during the initial years and significantly reduced in subsequent years. Also, it is possible that the information technology system will be used for multiple tasks, some of which may not be related to this rule.

2. Benefits

Comments: One commenter questioned what benefit, if any, would be achieved from the rule if FTA is unable to provide evidence to show that the implementation of the rule would increase safety and reduce transit incidents. The commenter asserted that it seems unreasonable to require an ''economically significant'' expenditure of limited transit agency funds when

funds should be used for state of good repair and transit asset management needs. Another commenter concluded that FTA is premature in estimating economic benefits through the Regulatory Impact Analysis before this rulemaking is effective and implemented.

One commenter stated that a positive return on investment (ROI) may not be possible without adequate resources, and this commenter asserted that the NPRM does not specify whether an ROI would exceed a break-even point. The commenter asked to review actual results of implementing SMS to help justify the anticipated level of investment, suggesting that SMS should be piloted in a few transit agencies before being implemented nationally.

Response: As discussed in other sections of this rule and as discussed in more detail below, today's regulatory provisions are required by statute under 49 U.S.C. 5329(d), and FTA is implementing SMS in the least prescriptive way possible.

Safety Management Policy is the foundation of the organization's SMS. The safety management policy statement clearly states the organization's safety objectives and sets forth the policies, procedures, and organizational structures necessary to accomplish the safety objectives. It clearly delineates management and employee responsibilities for safety throughout the organization. It also ensures that management is actively engaged in the oversight of the organization's safety performance by requiring regular review of the safety policy by a designated Accountable Executive (general manager, president, or other person with similar authority). Within the context of the Public Transportation Agency Safety Plan, an organization's safety objectives will be articulated through the setting of performance targets based on, at a minimum, the safety performance measures established in the National Public Transportation Safety Plan. See 49 U.S.C. 5329(d)(1)(E).

Pursuant to the statutory requirements of 49 U.S.C. 5329(d)(1)(B) and (C), each agency's Public Transportation Agency Safety Plan must include ''methods for identifying and evaluating safety risks throughout all elements of the public transportation system,'' and ''strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions.'' Each of these requirements is consistent with the second component of SMS—Safety Risk Management—which requires the development of processes and activities to help the organization better identify hazards associated with its operational systems. Once identified, a transit agency must evaluate the safety risk associated with the potential consequences of these hazards, and then institute mitigations, as necessary, to control the consequences or minimize the safety risk.

The statutory requirements of 49 U.S.C. 5329(d)(1)(B), (C), and (D)—''methods for identifying and evaluating safety risks throughout all elements of the public transportation system,'' ''strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions,'' and ''a process and timeline for conducting an annual review and update of the safety plan''—encompass the requirements of the third component of SMS: Safety Assurance. Safety Assurance requires an organization to monitor its safety performance, and it is designed to ensure that the organization meets or exceeds its safety objectives through the collection, analysis, and assessment of data. Through regular reviews and updates of its safety plan, a transit agency would evaluate changes to its operations that might introduce new safety risks. If a transit agency identifies safety risks through its safety performance assessments, then it must take action to correct any safety deficiencies. All of these efforts are intended to minimize the exposure of the public, personnel, and property to safety hazards and unsafe conditions. To minimize administrative, financial, and regulatory burdens under Safety Assurance, FTA has reduced requirements for small public transportation providers and has developed a minimal set of Safety Assurance provisions under 49 CFR 673.27.

The fourth component of SMS—Safety Promotion—involves the training, awareness, and communication that support safety. The training aspect of SMS is consistent with the statutory requirement of 49 U.S.C. 5329(d)(1)(G) for a comprehensive staff training program for operations personnel and personnel directly responsible for safety.

FTA is intending to implement 49 U.S.C. 5329(d) in the least prescriptive way possible by designing minimalistic regulatory requirements that mirror the relevant statutory provisions. By utilizing SMS in the regulatory framework, transit operators of varying sizes, complexities, and operating characteristics can build safety plans that are flexible and scalable to meet their unique safety needs. Through its scalability, SMS helps reduce the costs and burdens associated with developing and implementing safety plans. Also, as noted above, FTA eliminated several significant Safety Assurance requirements for small public transportation providers in this final rule.

While FTA is unable to provide definitive evidence that the implementation of this rule would increase safety by reducing incidence of safety events, FTA fully anticipates that safety benefits will be realized if this rule is implemented. By adopting a systematic approach to safety through the development of the safety plan and the practice of SMS, transit agencies are expected to reduce the risk and probability of safety incidents. FTA expects that a proactive approach to managing safety risks is more effective than a reactive approach. The SMS approach to safety, which involves collecting data, predicting and mitigating future safety events, training, accountability, and open communication will reduce safety events and improve safety outcomes in the future. Indeed, state of good repair investments could prevent and mitigate future safety events.

FTA currently is conducting an SMS pilot program at a large multi-modal transit agency and is planning to implement two additional pilot programs for bus agencies to better understand how a transit agency would implement SMS. The results of these pilot programs will help inform FTA's efforts to provide guidance to the industry on SMS implementation. FTA notes that the benefits of SMS implementation may take years to be realized, and in turn, taking time for the benefits of SMS to be fully estimated and quantified.

In light of various public comments, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds. FTA is deferring action pending further evaluation of additional information and safety data related to these operators to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

Six years after the compliance date for this rule, FTA plans to prepare a report evaluating the benefits and effectiveness of the regulatory framework provided by this rule. In this report, FTA plans to utilize the results of the pilot program and information gathered from oversight reviews, which will include an evaluation of the flexibility and scalability of the SMS framework in developing and implementing safety

plans. The results in this report will be made available for public comment to help inform any future amendments that may be needed to the regulatory framework that improves the PTASP process and furthers the goal of public transportation safety.

3. Regulatory Flexibility Act

Comments: Several commenters provided input on the rule's impact to small entities. Several commenters asserted that small to medium sized transit agencies face budget constraints and expressed concern that these agencies may need to hire additional staff to comply with the rule or reduce transit service.

Several commenters expressed concern that FTA crafted the NPRM with only rail transit systems in mind. One commenter stated that the excellent safety record of rural transit systems warrants a limited approach to Federal safety regulation regarding rural bus systems, which would enable operators to focus scarce resources on safely delivering transit services, not on regulatory compliance. The commenter warned that if FTA does not tailor the rule to small transit systems, then many small bus operators would have to shift funds and personnel from the actual delivery of service to compliance with safety rules. The commenter asserted that MAP–21 reduced the portion of Section 5311 funds available for program administration from 15 percent to 10 percent. The commenter noted that, in Senate Report 3638, the Senate Committee on Banking, Housing, and Urban Affairs indicated its intent that FTA take a ''measured approach,'' and not a ''one size fits all'' approach, to safety.

One commenter stated that FTA's Regulatory Flexibility Act analysis is somewhat misleading, particularly where tribal governments are concerned. Due to the modest amount of funding available to tribes, the commenter concluded that the cost associated with developing a safety plan for tribal governments is much higher than FTA's estimate of 0.5 to 1.5 percent; the commenter asserted that the costs are closer to 5.5 to 15.5 percent.

Response: FTA has taken significant efforts to reduce the burden on small transit agencies. For small Section 5307 operators, FTA is requiring States to draft and certify their safety plans. FTA designed the requirements of today's rule, particularly the SMS requirements, to be scalable, flexible, and not prescriptive for small transit operators. Moreover, FTA developed a safety plan template for small operators to assist them with the development of their plans. FTA is offering live and online training to small transit operators, and it is offering any technical assistance that might be needed. FTA notes that many small transit agencies already have processes and procedures in place that comply with the requirements of today's rule, and given the safety record of many smaller operators, significant mitigation may not be necessary. FTA emphasizes that the statutory requirements of 49 U.S.C. 5329 make the rule applicable to any operator of a public transportation system, and small operators are not excluded from the rule.

To accommodate small public transportation providers and to reduce their administrative, financial, and regulatory burdens, FTA made significant changes to its proposed regulatory framework in the NPRM. FTA eliminated a Safety Assurance requirement for all transit agencies to monitor their operations to identify hazards not identified through their Safety Risk Management processes. Also, FTA eliminated an entire section of recordkeeping requirements related to safety risk mitigation, safety performance assessments, and employee safety training. FTA further tailored the rule for small operators and reduced their requirements under Safety Assurance. Small public transportation providers only need to develop processes for safety performance monitoring and measurement; they do not need to develop processes for management of change and continuous improvement. Through the elimination of these requirements for small public transportation providers, and through this tailored approach, FTA believes that it has reduced their burdens significantly.

Finally, FTA notes that in light of various public comments, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds. FTA is deferring action pending further evaluation of information and safety data related to these operators to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

X. Tribal Issues

1. Applicability of the Rule to Tribes

Comments: Several commenters suggested that some tribes operate modest public transportation systems and receive Federal financial assistance through either the discretionary or formula tribal transit programs under 49 U.S.C. 5311. One commenter stated that some tribes receive funds as subrecipients of States under 49 U.S.C. 5311, and therefore, FTA should exclude those subrecipients from this rule. The commenter also requested FTA to clarify the applicability of this rule to tribes. Finally, this commenter recommend that FTA's final rule exempt tribes from the definition of ''recipient'' under the proposed provisions of 49 CFR 673.1 until FTA has undertaken additional consultation with tribes and develops a template safety plan.

Response: FTA appreciates the commenter who stated that tribes operate modest public transportation systems, and in response, FTA has designed this rule to be as flexible and scalable as possible for smaller operators. In light of various public comments, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds, including tribal transit operators. FTA is deferring action pending further evaluation of additional information and safety data related to these operators to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

FTA has undertaken consultation with tribes throughout this rulemaking, and these efforts are described in more detail below.

2. The State's Role in Tribal Safety Plans

Comments: A few commenters recommended that FTA require tribes to develop their own safety plans, even if they are a State's subrecipients under 49 U.S.C. 5311, unless a State voluntarily agrees to draft and certify a safety plan for a tribal subrecipient. Some commenters expressed concerns that a State's preparation of safety plans for tribes could interfere with tribal sovereignty. One commenter suggested that a State's interaction with a tribe in relation to a safety plan is unwarranted and inconsistent with the laws and treaties that govern the status and protections for tribes. The commenter asserted that the Tribal Transit Program funded under 49 U.S.C. 5311(c) is not a subset of the Section 5311 program; it is a separate and direct tribal program and the rules associated with its administration should be structured accordingly. Several commenters stated that there often are positive relationships between States and tribes, but FTA should not treat tribes as subcomponents of State transit systems given the independent status of tribes.

One commenter expressed concern that FTA would be less willing to provide technical assistance to tribes if States draft and certify their safety plans.

Response: FTA recognizes the administrative and financial burdens that this rule may impose upon smaller transit operators, such as tribes. In an effort to relieve this burden, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds, including tribal transit operators. FTA is deferring action pending further evaluation of information and safety data to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

3. Financial Impact on Tribes

Comments: Several commenters stated that the proposed rule would result in administrative costs to tribes, such as costs for additional staff time and resources. One commenter stated that, like many other smaller transit agencies, tribal transit managers may have many different roles and shared duties, so the requirement for an Accountable Executive may be problematic because the staff are not structured in the way the proposed rule seems to envision. The commenter said that compliance with the rule may require consultants or new staff to handle the extra reporting paperwork and separation of positions, which would be difficult with limited resources. This commenter recommended that FTA should incorporate the following language somewhere into its rule: ''at agencies where such delineations exist between administrative positions.''

Several commenters noted that some tribes receive limited funding. One commenter stated that the average annual apportionment for tribal transit agencies is almost $220,000 and the average annual discretionary award is about $77,000, and some of 100 tribes participating in the Tribal Transit Program have apportionments as low as $4,000 annually. Several commenters argued that, for a tribe whose only source of Federal funding for its Tribal Transit Program is a $25,000 grant, the compliance costs associated with this rule (such as personnel time and the possible need for outside consultants) could easily consume the entire grant. The commenter stated that, although States divide more than $8.6 billion in Federal transit grants for Federal Fiscal Year 2016, tribes receive only $30 million under the Tribal Transit Program and an extra $5 million for the discretionary Tribal Transit Program under 49 U.S.C. 5311.

Response: FTA acknowledges that many smaller transit operators, including tribes, may experience substantial costs in complying with this rule. In light of the potential financial burden on smaller operators, including tribes, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds. FTA is deferring action pending further evaluation of information and safety data related to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

4. Tribal Consultation

Comments: Several commenters expressed concern regarding FTA's consultation with tribes. Several commenters alleged that FTA conducted no consultation with tribes, including meetings, conference calls, or webinars. Several commenters suggested that FTA conduct additional consultation with tribes, particularly given their smaller sizes.

Several commenters disagreed with FTA's preliminary determination that the rule would not have a substantial direct effect on tribes or impose substantial direct compliance costs on tribes, which is the criteria that would trigger tribal consultation under Executive Order 13175 and the U.S. Department of Transportation's tribal consultation policy. One commenter stated that the rule would have direct effects on tribes by adding regulatory requirements on them, thus changing the relationship between tribes and the Federal government with respect to the inspection, investigation, audits, examinations, and testing of transit infrastructure and rolling stock. This commenter expressed concern that courts have emphasized the need for advance consultation with tribes on rulemaking efforts that may impact them, and cited *Wyoming* v. *Department of the Interior* in which the U.S. District Court for the District of Wyoming issued a preliminary injunction against Bureau of Land Management's hydraulic fracturing regulations because the agency failed to adequately consult with tribes.

Another commenter stated that the promulgation of this rule may conflict with the Tribal Self-Governance Program created by the FAST Act, and asserted that the Tribal Self-Governance Program requires a negotiated rulemaking committee to develop rules and regulations for all modes of funding and U.S. Department of Transportation programs, led by the U.S. Department of Transportation's Deputy Assistant Secretary for Tribal Government Affairs.

One commenter suggested that, instead of requiring States to draft and certify safety plans on behalf of tribes, FTA should work with tribes to develop a model safety plan specifically for tribes.

Response: As a preliminary matter, FTA notes that it conducted extensive outreach with tribes throughout this rulemaking. Specifically, on February 12, 2016, FTA conducted public outreach for tribes and hosted a Tribal Technical Assistance Workshop wherein FTA presented its proposed rule and responded to numerous technical questions from tribes. FTA subsequently delivered the same presentation during a webinar series open to all members of the public on February 24, March 1, March 2, and March 3. On March 7, FTA delivered the same presentation at an outreach session hosted by the National Rural Transit Assistance Program, which also was open to all members of the public. During each of these public outreach sessions and the public webinar series, FTA received and responded to numerous technical questions regarding the NPRM. FTA recorded the presentations, including the question and answer sessions, and made available the following documents on the public docket for this rulemaking (Docket FTA–2015–0021): (1) FTA's PowerPoint Presentation from the public outreach sessions and public webinar series (*https://www.regulations.gov/document?D=FTA-2015-0021-0012*); (2) a written transcript of FTA's public webinar of March 1, 2016 (*https://www.regulations.gov/document?D=FTA-2015-0021-0010*); (3) a consolidated list of every Question and FTA Answer from the public outreach sessions and public webinar series (*https://www.regulations.gov/document?D=FTA-2015-0021-0041*); and (4) the results of polling questions from FTA's public outreach sessions (*https://www.regulations.gov/document?D=FTA-2015-0021-0011*). FTA also uploaded onto YouTube an audiovisual recording of its webinar from March 1, 2016. The video is available at the following link: *https://www.youtube.com/watch?v=FBj5HRatwGA&feature=youtu.be.*

FTA also notes that, in advance of publishing an NPRM, FTA sought comment from the transit industry, including tribes, on a wide range of topics pertaining to safety and asset management through an ANPRM. In the

NPRM, FTA asked specific questions about how today's rule should apply to tribal recipients and subrecipients of Section 5311 funds.

In light of the comments that FTA received from tribes throughout the rulemaking process, FTA is deferring regulatory action regarding applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds, including tribal transit operators. FTA is deferring action pending further evaluation of additional information and safety data to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

IV. Section-by-Section Analysis

Subpart A—General

673.1 Applicability

This section explains that this regulation applies to all States, local governmental authorities, and other operators of public transportation systems that are recipients and subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53. At this time, the regulation does not apply to an operator of a public transportation system that only receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311. In accordance with 49 U.S.C. 5329(d), a Public Transportation Agency Safety Plan is required of all operators of public transportation systems, whereas in the past, a ''system safety program plan'' only was required of rail fixed guideway public transportation systems, in accordance with the former regulatory provisions at 49 CFR 659.17. Each operator of a public transportation system must comply with today's rule within one calendar year of this rule's effective date.

673.3 Policy

This section explains that FTA is utilizing the principles and methods of SMS as the basis for this regulation and all other regulations and policies FTA has issued and will issue under the authority of 49 U.S.C. 5329, to the extent practicable and consistent with law and other applicable requirements (such as those for regulatory review). FTA's standards for SMS are flexible and scalable and may be tailored to the size and operating complexity of the transit operator.

673.5 Definitions

This section sets forth a number definitions, many of which are based on the principles and methods of SMS. Most notably, readers should refer to ''Accountable Executive,'' ''Hazard,'' ''Operator of a Public Transportation System,'' ''Safety Assurance,'' ''Safety Management System,'' ''Safety Management Policy,'' ''Safety Promotion,'' ''Safety Risk Management,'' and ''Small Public Transportation Provider.'' In recent years, SMS has emerged as the preferable 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. Many of the SMS-related definitions in § 673.5 are similar to those set forth in FAA's SMS regulation, entitled ''Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders,'' 14 CFR parts 5 and 119, 80 FR 1308, Jan. 8, 2015.

Additionally, a set of frequently asked questions about SMS are available on FTA's website at *http://www.fta.dot.gov/tso_15177.html.* FTA is incorporating these same definitions for SMS in its related rulemakings for the Public Transportation Safety Program and the Public Transportation Safety Certification Training Program, and FTA is incorporating these same definitions into the National Public Transportation Safety Plan.

FTA includes a definition for ''Accountable Executive'' that identifies the person at a transit agency that has the responsibility and accountability for the implementation of SMS and control and direction of the Public Transportation Agency Safety Plan and the Transit Asset Management Plan. FTA includes definitions for ''Safety Risk Management,'' ''Risk,'' ''Safety Assurance,'' and ''Safety Management Policy,'' all key terms to the implementation of SMS.

This section also defines a number of terms used repeatedly throughout the other safety programs authorized by 49 U.S.C. 5329. Some of these terms are included in FTA's new State Safety Oversight Rule at 49 CFR part 674, which was issued prior to today's final rule. FTA intends to have the same definitions for all terms utilized in its safety programs. Readers should refer, specifically, to the definitions of ''Accident,'' ''Event,'' ''Hazard,'' ''Incident,'' ''Investigation,'' ''Occurrence,'' ''Transit Agency,'' and ''Rail Transit Agency.'' FTA has updated its definitions of ''Accountable Executive,'' ''Safety Risk Assessment,'' ''Safety Risk Management,'' and ''Transit Asset Management Plan'' to make them consistent with definitions of these terms utilized in the SSO rule and the Transit Asset Management rule which were issued prior to today's final rule. FTA also added a definition of ''Rail Fixed Guideway Public Transportation System,'' which it defined in its SSO rule.

Pursuant to 49 U.S.C. 5329(d)(3)(B), FTA must issue a rule that designates which 49 U.S.C. 5307 small public transportation providers may have States draft Public Transportation Agency Safety Plans on their behalf. This section defines ''Small Public Transportation Provider'' (in accordance with 49 U.S.C. 5329(d)(3)(B)) as ''a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service and does not operate a rail fixed guideway public transportation system.''

FTA includes definitions for the terms ''National Public Transportation Safety Plan,'' ''Transit Asset Management Plan,'' and ''Equivalent Authority,'' all of which are consistent with the use of those terms in the statutes and FTA's related rulemakings on safety and transit asset management.

Subpart B—Public Transportation Agency Safety Plans

673.11 General Requirements

This section outlines the minimum elements to be included in a Public Transportation Agency Safety Plan. Pursuant to 49 U.S.C. 5329(d)(1), this section requires each operator of public transportation subject to this rule to develop and certify that it has a Public Transportation Agency Safety Plan consistent with this part. In accordance with 49 U.S.C. 5329(d)(3)(B), § 673.11(d) requires each State to draft the Public Transportation Agency Safety Plan for small transportation providers as defined in today's final rule. A State is not required to develop a Public Transportation Agency Safety Plan for a small public transportation provider if that agency notifies the State that it will develop its own plan.

In accordance with 49 U.S.C. 5329(d)(1)(A), § 673.11(a)(1) requires that each Public Transportation Agency Safety Plan, and any updates thereto, must be signed by the transit agency's designated Accountable Executive and approved by the transit agency's Board of Directors, or an Equivalent Authority. In today's final rule, the accountability for the contents of a Public Transportation Agency Safety Plan is formally elevated to the Accountable Executive and Board of Directors.

In accordance with 49 U.S.C. 5329(d)(1)(B), (C), (D), (E), (F), and (G), a transit agency must establish: Methods for identifying and evaluating safety risks throughout all elements of its public transportation system; strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions; a process and timeline for conducting an annual review and update of its safety plan; safety performance targets; a Chief Safety Officer who reports directly to the general manager, president, or equivalent officer; and a comprehensive staff training program for the operations personnel and personnel directly responsible for safety. These statutory requirements fit into the four key pillars of SMS: Safety Management Policy, Safety Risk Management, Safety Assurance, and Safety Promotion. Consequently, FTA is requiring each transit agency to develop and implement an SMS under § 673.11(a)(2); this SMS will satisfy the statutory requirements of 49 U.S.C. 5329(d)(1)(B), (C), (D), (E), (F), and (G). FTA recognizes that a Public Transportation Agency Safety Plan for a large, multi-modal, complex public transportation system most likely will be more complex than that of a very small bus operator. The scalability of SMS will allow transit agencies to develop safety plans that will meet the unique needs of their operating environments. FTA established a minimal set of Safety Assurance requirements for small public transportation providers to minimize their administrative, financial, and regulatory burdens.

In accordance with 49 U.S.C. 5329(d)(1)(E), § 673.11(a)(3) requires that each Public Transportation Agency Safety Plan must include safety performance targets based on the safety performance measures established by FTA in the National Public Transportation Safety Plan. In the National Public Transportation Safety Plan, FTA is adopting four initial safety performance measures: (1) Fatalities, (2) Injuries, (3) Safety Events, and (4) System Reliability. These safety performance measures are intended to reduce safety events, fatalities, and injuries. These measures are broad so that they will be relevant to all public transportation modes, and they are intended to focus transit agencies on the development of specific and measureable targets, as well as the actions each agency would implement to improve their own safety outcomes. Through the SMS process, FTA expects transit agencies to develop their own performance indicators and regularly monitor the performance of their systems to ensure that they are meeting their targets and improving safety outcomes. FTA expects transit agencies to evaluate their safety performances and determine whether they should change their safety performance targets at least annually when the transit agencies are reviewing and updating their Public Transportation Agency Safety Plans. A State or transit agency must make its safety performance targets available to States and Metropolitan Planning Organizations (MPO) to aid States and MPOs in the selection of their own performance targets.

Pursuant to § 673.11(a)(4), each Public Transportation Agency Safety Plan must address any standards or requirements, as applicable, set forth in FTA's Public Transportation Safety Program and FTA's National Public Transportation Safety Plan.

In accordance with 49 U.S.C. 5329(d)(1)(D), § 673.11(a)(5) requires that each transit agency must establish a process and timeline for conducting an annual review and update of its Public Transportation Agency Safety Plan.

Pursuant to § 673.11(a)(6), each rail transit agency must include, or incorporate by reference, in its Public Transportation Agency Safety Plan an emergency preparedness and response plan. Each emergency preparedness and response plan should address, at a minimum: The assignment of employee responsibilities, as necessary and appropriate, during an emergency; the integration of responses to all hazards, as appropriate; and processes for coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area. FTA understands that a transit agency may have developed an emergency preparedness and response plan that addresses these minimum requirements in accordance with regulations from other Federal and State agencies. Historically, FTA has required rail fixed guideway public transportation systems to have emergency preparedness plans through the former State Safety Oversight rule at 49 CFR 659.19(k). FTA intends to require rail transit systems to continue to implement the twenty-one elements of their SSPPs as required under the former provisions of 49 CFR part 659; FTA has repackaged the elements of SSPPs into the four elements of SMS required in today's rule. FTA is establishing the requirement for emergency preparedness and response plans in today's rule under § 673.11(a)(6), and the elements of SMS in Subpart C cover remaining requirements. FTA has developed a crosswalk between each of the twenty-one elements of system safety program plans and each of the elements of SMS. FTA added this crosswalk to the docket and made the crosswalk available on its website as a guidance document at *http://fta.dot.gov/tso.html.* Additional, more comprehensive guidance regarding the relationship between SSPPs and PTASPs is forthcoming, and FTA will post that guidance on its website (see *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-safety-oversight-tso*).

FTA notes that there are safety models that include emergency preparedness as a key element. For example, FAA requires certain air carriers to have emergency preparedness plans. *See* 14 CFR 5.27. Additionally, FRA recently issued a final System Safety Program rule under 49 CFR part 270 which requires railroads to have emergency preparedness plans (see *http://www.fra.dot.gov/eLib/Details/L18294*). Recent safety-related events have demonstrated the need for emergency preparedness plans in improving safety outcomes nationally.

In addition to the above general requirements, FTA expects a transit agency to comply with all other applicable Federal, State, and local requirements, laws, regulations, and codes as they may relate to safety.

Pursuant to § 673.11(b), a transit agency may develop one Public Transportation Agency Safety Plan for all modes of transit service, or it may develop separate Public Transportation Agency Safety Plans for each mode of service not subject to safety regulation by another Federal entity. If a transit agency has a safety plan for its commuter rail service, passenger ferry service, or aviation service, then the transit agency may not use that plan for purposes of satisfying 49 CFR part 673; the transit agency must develop a separate Public Transportation Agency Safety Plan consistent with this part.

Pursuant to § 673.11(c), each transit agency must maintain its Public Transportation Agency Safety Plan in accordance with the recordkeeping requirements of Subpart D.

Pursuant to § 673.11(d), each State must draft and certify a Public Transportation Agency Safety Plan on behalf of any small public transportation provider located inside of that particular State. A State is not required to draft a Public Transportation Agency Safety Plan if a small public transportation provider notifies the State that it will draft its own plan. In either instance, the transit agency must

ultimately implement and carry out its safety plan.

If a State drafts and certifies a Public Transportation Agency Safety Plan on behalf of a transit agency, and the transit agency later opts to draft and certify its own Public Transportation Agency Safety Plan, then the transit agency must notify the State, and the transit agency would have one year from the date of the notification to draft and certify a Public Transportation Agency Safety Plan that is compliant with this part.

Pursuant to § 673.11(e), any rail fixed guideway public transportation system that had an SSPP, in accordance with the former SSO rule at 49 CFR part 659 as of October 1, 2012, may keep that plan in effect until one year after the effective date of this final rule.

Pursuant to § 673.11(f), agencies that operate passenger ferries regulated by USCG or rail fixed guideway public transportation service regulated by FRA are not required to develop safety plans for those modes of service.

673.13 Certification of Compliance

In accordance with 49 U.S.C. 5329(d)(1), § 673.13(a) provides that not later than one year after the effective date of the final rule, each transit agency must certify its compliance with the requirements of this part. For small public transportation providers, a State must certify compliance unless the provider opts to draft and certify its own safety plan. In those cases where a State certifies compliance for a small public transportation provider, this certification also must occur within one year after the effective date of this final rule.

In addition to certification, and consistent with the new SSO rule at 49 CFR part 674, each SSOA must review and approve each Public Transportation Agency Safety Plan for every rail transit system within its jurisdiction. In accordance with 49 U.S.C. 5329(e)(4)(iv), an SSOA must have the authority to review, approve, oversee, and enforce the implementation of the Public Transportation Agency Safety Plans of transit agencies operating rail fixed guideway public transportation systems.

Section 673.13(b) requires that each transit agency or State certify compliance with part 673 on an annual basis.

673.15 Coordination With Metropolitan, Statewide, and Non-Metropolitan Planning Processes

In accordance with 49 U.S.C. 5303(h)(2)(B) and 5304(d)(2)(B), each State and transit agency must make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process. Section 673.15(b) requires, to the maximum extent practicable, a State or transit agency to coordinate with States and Metropolitan Planning Organizations in the selection of State and MPO safety performance targets.

Subpart C—Safety Management Systems

673.21 General Requirements

This section outlines the SMS elements that each transit agency must establish in its Public Transportation Agency Safety Plan. Under today's final, each transit agency must implement an SMS, and each transit agency should scale the SMS to the size, scope, and complexity of the transit agency's operations. Each transit agency must establish processes and procedures which include the four main pillars of SMS: (1) Safety Management Policy; (2) Safety Risk Management; (3) Safety Assurance; and (4) Safety Promotion. FTA expects that the scope and detail for each activity will vary based on the size and complexity of the system. FTA anticipates that activities, and documentation of those activities, for a small bus transit agency will be substantially less than those of a large multi-modal system. FTA has developed a minimal set of requirements under Safety Assurance for all small public transportation providers. To help clarify SMS development and implementation, FTA is issuing guidance and a safety plan template to the industry concurrent with today's final rule, and FTA designed these documents to accommodate the variance in transit system mode, size, and complexity.

673.23 Safety Management Policy

Pursuant to § 673.23(a), a transit agency must establish the organizational accountabilities and responsibilities necessary for implementing SMS and capture these under the first component of SMS, Safety Management Policy. The success of a transit agency's SMS is dependent upon the commitment of the entire organization and begins with the highest levels of transit agency management. The level of detail for organizational accountabilities and responsibilities should be commensurate with the size and complexity of the transit agency.

The Safety Management Policy statement must contain the transit agency's safety objectives. These objectives should include a broad description of the agency's overarching safety goals, which would be based upon that agency's unique needs.

Pursuant to § 673.23(b), a transit agency must include in its Safety Management Policy statement a process that allows employees to report safety conditions to senior management. This process must provide protections for employees who report safety conditions to senior management and a description of behaviors that are unacceptable and that would not be exempt from disciplinary actions. These procedures are critical for ensuring safety. A reporting program allows employees who identify safety hazards and risks in the day-to-day duties to directly notify senior personnel, without fear of reprisal, so that the hazards and risks can be mitigated or eliminated. NTSB has emphasized the need for transit agencies to have non-punitive employee safety reporting programs,[3] and this need was discussed at length in NTSB's Investigative Hearing on the WMATA Smoke and Electrical Arcing Incident in Washington, DC on June 23 and 24, 2015.[4]

Pursuant to § 673.23(c), the Safety Management Policy statement must be communicated throughout the transit agency, including the Board of Directors (or equivalent authority), and each transit agency must make its Safety Management Policy statement readily available to all of its employees and contractors.

Pursuant to § 673.23(d), each transit agency must establish its accountabilities, responsibilities, and organizational structure necessary to meet its safety objectives, particularly as they relate to the development and management of the transit agency's SMS. The level of detail in this section of the safety plan should be commensurate with the size and complexity of a transit agency's operations. At a minimum, a transit agency must identify an Accountable Executive, a Chief Safety Officer or SMS Executive, and agency leadership, executive management, and key staff who would be responsible for the implementation of a transit agency's safety plan.

[3] NTSB issued Safety Recommendation R–10/02 for the WMATA Metrorail train collision accident on June 22, 2009, found at: *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1002.pdf.* Through this report, NTSB recommends that ''FTA facilitate the development of non-punitive safety reporting programs at all transit agencies [in order] to collect reports from employees in all divisions within their agencies.''

[4] See the NTSB's hearing materials at *http://www.ntsb.gov/news/events/Pages/2015_WMATA_Washington_DC_IHG_Agenda.aspx.* and *http://dms.ntsb.gov/pubdms/search/document.cfm?docID=432379&docketID=57383&mkey=90596.*

673.25 Safety Risk Management

Pursuant to § 673.25(a), each transit agency must establish and implement its process for managing safety risk, including the following three steps: (1) Safety hazard identification, (2) safety risk assessment, and (3) safety risk mitigation, for all elements of its public transportation system, including changes to its public transportation system that may impact safety performance. At a minimum, FTA expects each transit agency to apply its safety risk management process to its existing operations and maintenance procedures, the design of a new public transportation system and other capital projects, changes to its existing public transportation system, new operations of service to the public, new operations or maintenance procedures, organizational changes, and changes to operations or maintenance procedures. Additionally, FTA expects each transit agency to develop measures to ensure that safety principles, requirements, and representatives are included in the transit agency's procurement process.[5]

Pursuant to § 673.25(b)(1), each transit agency must establish a process for safety hazard identification, including the identification of the sources, both proactive and reactive, for identifying hazards and their associated consequences. Activities for hazard identification could include formalized processes where a transit agency identifies hazards throughout its entire system, logs them into a database, performs risk analyses, and identifies mitigation measures. These activities also could include safety focus groups, reviews of safety reporting trends, and for smaller bus systems, it could mean holding a meeting with a few bus drivers, discussing hazards on the system, deciding which ones pose the greatest risk, and then developing mitigation.

A transit agency must apply its process for safety hazard identification to all elements of its system, including but not limited to its operational activities, system expansions, and state of good repair activities. FTA encourages transit agencies to take into account bicycle and pedestrian safety concerns, along with other factors, as agencies are conducting Safety Risk Management.[6] A transit agency should consider the results of its asset condition assessments when performing safety hazard identification activities within its SMS. The results of the condition assessments, and subsequent SMS analysis, will inform a transit agency's determination as to whether an asset meets the state of good repair standards under 49 CFR part 625.

Pursuant to § 673.25(b)(2), each transit agency must include, as a source for safety hazard identification, data and information provided by an oversight authority and FTA.

Safety hazard identification activities should be commensurate with the size of the transit agency's operations. For example, the number of identified hazards for a small rural bus system may be less than the number of hazards identified for a large multi-modal system.

Pursuant to § 673.25(c), each transit agency must establish procedures for assessing and prioritizing safety risks related to the potential consequences of hazards identified and analyzed in § 673.25(b). Each transit agency must assess safety risks in terms of probability (the likelihood of the hazard producing the potential consequences) and severity (the damage, or the potential consequences of a hazard, that may be caused if the hazard is not eliminated or its consequences are not successfully mitigated).

Pursuant to § 673.25(d), each transit agency also must establish criteria for the development of safety risk mitigations that are necessary based on the results of the agency's safety risk assessments. For example, a transit agency may decide that the criteria for developing safety risk mitigations could be the identification of a safety risk, benefit-cost analysis, a system level change (such as the addition of new technology on a vehicle), a change to operational procedures, or the expansion of service. To further illustrate these examples, a transit agency may color code different levels of safety risk (''red'' as high, ''yellow'' as medium, and ''green'' as minor) and develop different types of safety risk mitigations to correspond to those levels.

673.27 Safety Assurance

Pursuant to § 673.27(a), each transit agency must develop and implement a process for Safety Assurance. Rail fixed guideway public transportation systems and recipients and subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53 that operate more than one hundred vehicles in peak revenue service must develop processes for (1) safety performance monitoring and measurement, (2) management of change, and (3) continuous improvement. Small public transportation providers only need to develop a process for safety performance monitoring and measurement. Each transit agency's safety assurance activities should be scaled to the size and complexity of its operations. Through these activities, each transit agency should accurately determine whether it is meeting its safety objectives and safety performance targets, as well as the extent to which it is effectively implementing its SMS. Each transit agency must conduct an annual review of the effectiveness of its safety risk mitigations.

Pursuant to § 673.27(b), each transit agency must identify the data and information that it will collect from its operations, maintenance, and public transportation services so that it may monitor the agency's safety performance as well as the effectiveness of its SMS. Each transit agency must monitor its operations and maintenance protocols and procedures, and any safety risk mitigations, to ensure that it is implementing them as planned.

Each transit agency must investigate safety events (as defined in this final rule) and any reports of non-compliance with applicable regulations, standards, and legal authority. Finally, each transit agency must continually monitor information reported to it through any internal safety reporting programs, including the employee safety reporting program.

Pursuant to § 673.27(c), rail fixed guideway public transportation systems and recipients and subrecipients that are subject to this rule and operate more than one hundred vehicles in peak revenue service must manage changes in their systems. These transit agencies must develop processes for identifying and assessing changes that may introduce new hazards or impact safety performance. If a transit agency determines that a change might impact safety, then the transit agency would need to evaluate the change using Safety Risk Management activities established under § 673.25. These changes would include changes to operations or maintenance procedures, changes to service, the design and construction of major capital projects (such as New Starts and Small Starts projects and associated certifications), organizational changes, and any other changes to a transit agency's system that may impact safety performance. Each rail transit agency should include a description of the safety certification process that it uses to ensure that safety concerns and hazards are adequately addressed prior to the initiation of passenger operations

[5] *See* FTA's former State Safety Oversight rule at 49 CFR 659.19(u).

[6] The United States Department of Transportation is administering a bicycle and pedestrian safety initiative, and FTA encourages transit agencies to consider that initiative when developing their safety plans (see *https://www.transportation.gov/safer-people-safer-streets*).

for News Starts and other major capital projects to extend, rehabilitate, or modify an existing system, or to replace vehicles and equipment.

Pursuant to § 673.27(d), rail fixed guideway public transportation systems and recipients and subrecipients that are subject to this rule and operate more than one hundred vehicles in peak revenue service must regularly assess their safety performance. If a transit agency identifies any deficiencies during a safety performance assessment, then it must develop and carry out, under the direction of the Accountable Executive, a plan to address the identified safety deficiencies. FTA expect each transit agency to conduct a safety performance assessment at least annually, and the safety performance assessment can be completed in conjunction with the annual review and update to its overall safety plan as required by 49 U.S.C. 5329(d)(1)(D) and 49 CFR 673.11(a)(5).

673.29 Safety Promotion

This section requires each transit agency to establish competencies and training for all agency employees directly responsible for safety, and to establish and maintain the means for communicating safety performance and SMS information. Pursuant to § 673.29(a), each transit agency must establish a comprehensive safety training program. Through the safety training program, each transit agency must require each employee, as applicable, to complete training to enable the individual to meet his or her role and responsibilities for safety, and to complete refresher training, as necessary, to stay current with the agency's safety practices and procedures.

Pursuant to § 673.29(b), each transit agency must ensure that all employees are aware of any policies, activities, and procedures that are related to their safety-related roles and responsibilities. Safety communications may include information on hazards and safety risks that are relevant to the employee's role and responsibilities; explain reasons that a transit agency introduces or changes policies, activities, or procedures; and explain to an employee when actions are taken in response to reports submitted by the employee through the employee safety reporting program. FTA expects that each transit agency would define the means and mechanisms for effective safety communication based on its organization, structure, and size of operations.

Subpart D—Safety Plan Documentation and Recordkeeping

673.31 Safety Plan Documentation

This section requires each transit agency to keep records of its documents that are developed in accordance with this part. FTA expects a transit agency to maintain documents that set forth its Public Transportation Agency Safety Plan, including those related to the implementation of its SMS such as the results from SMS processes and activities. For the purpose of reviews, investigations, audits, or other purposes, this section requires each transit agency to make these documents available to FTA, SSOAs in the case of rail transit systems, and other Federal agencies as appropriate. A transit agency must maintain these documents for a minimum of three years.

V. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and USDOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); tailor its regulations to impose the least burden on society; assess all costs and benefits of available regulatory alternatives; and, if regulation is necessary, to select regulatory approaches that maximizes net benefits—including potential economic, environmental, public health, and safety effects, distributive impacts, and equity. Executive Order 13563 also emphasizes the importance of harmonizing rules and promoting flexibility.

FTA drafted this final rule in accordance with the principles set forth in Executive Orders 12866 and 13563. FTA has determined that this final rule is a significant regulatory action due to significant public interest in the area of transit safety. However, this rule is not estimated to be ''economically significant'' within the meaning of Executive Order 12866.

As discussed in greater detail below, FTA was able to estimate some, but not all, of the rule's costs. FTA was able to estimate the costs for transit agencies to develop and implement Public Transportation Agency Safety Plans which are approximately $41 million in the first year, and $30 million in each subsequent year, with annualized costs of $31 million discounted at 7 percent. These costs result from developing and certifying safety plans, documenting the SMS approach, implementing SMS, and associated recordkeeping. FTA was not able to estimate the costs of actions that transit agencies would be required to take to mitigate risk as a result of implementing this rule, such as vehicle modifications, additional training, technology investments, or changes to operating procedures and practices.

FTA has placed in the docket a final Regulatory Impact Analysis (RIA) that analyzes the benefits and costs of the regulatory changes in accordance with Executive Orders 12866 and 13563, and United States Department of Transportation (USDOT) policy.

Through this final rule, FTA requires all operators of public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53 to develop and implement Public Transportation Safety Plans in accordance with 49 U.S.C. 5329, using the SMS approach. As discussed above, FTA is deferring regulatory action at this time regarding recipients of FTA financial assistance under 49 U.S.C. 5310 and/or 49 U.S.C. 5311.

SMS is a flexible, scalable approach to safety that has been widely adopted across multiple modes of transportation in both the public and private sectors and overlaps significantly with the requirements included in 49 U.S.C. 5329. It employs a systematic, data-driven approach in which risks to safety are identified, then controlled or mitigated to acceptable levels. SMS brings business-like methods and principles to safety, similar to the ways in which an organization manages its finances, through safety plans, with targets and performance indicators, and continuous monitoring of safety performance throughout an organization.

In addition to responding to the specific statutory mandate, this final rule responds to National Transportation Safety Board (NTSB) recommendations regarding an expansion of SMS to reduce the risks of transit crashes. From 2004 to 2016, NTSB reported on eleven transit accidents that, collectively, resulted in 16 fatalities, 386 injuries, and over $30 million in property damages. Although transit systems have historically been among the safest means of surface transportation, the transit industry is facing increased pressures at a time when ridership has grown, infrastructure is aging, and large numbers of the workforce are retiring. During that same 2004–2016 time period, transit agencies reported over 290,000 incidents and other events,

more than 2,600 fatalities, and over 301,000 injuries to the NTD.

This RIA provides quantitative estimates of the expected compliance costs associated with the rule. Costs for transit agencies were estimated based on the staff labor hours, information technology systems, and travel costs associated with implementing the requirements of the proposed rule, with adjustments for agency size and for agencies' existing level of maturity with SMS approaches. FTA estimated three main cost areas: (1) Developing and certifying safety plans; (2) implementing and documenting the SMS approach; and (3) associated recordkeeping. Staff time was monetized using data on wage rates and benefits in the transit industry. Over the 20-year analysis period, total costs are estimated at $324 million in present value (using a 7% discount rate), or the equivalent of $31 million per year.

As previously noted, FTA was unable to estimate the cost of actions that agencies would take to mitigate or eliminate safety problems identified through implementation of their safety plans. FTA is unaware of information sources or methods to predict with sufficient confidence the number or type of safety problems agencies will identify through implementation of their safety plans, or the number, type, and cost of actions that agencies will take to address such problems. For similar reasons, FTA also is unable to quantify the rule's benefits. FTA sought information from the public through the NPRM for this rulemaking that would assist FTA with analyzing the benefits and costs of actions by agencies to mitigate or eliminate safety problems such as the number, types, benefits, and costs of such actions, but FTA did not receive adequate data from the public to assist with this effort.

FTA calculated potential safety benefits that could be realized by bus and rail modes if safety management practices outlined in the rule are followed to identify and implement investment strategies to reduce safety risk. FTA monetized benefits using information on transit crash costs, including direct costs and USDOT-standard statistical values for fatality and injury prevention. Although many other sectors report reductions in safety incidents after adopting SMS, it is not possible to transfer that experience to the transit industry due to the differences in organizational structures and practices.

FTA was unable to quantify the rule's benefits. To estimate safety benefits, one would need information regarding the causes of safety events and the factors that may cause future events. This information is generally unavailable in the public transportation sector, given the infrequency and diversity of the type of safety events that occur. In addition, one would need information about the safety problems that agencies are likely to find through implementation of their safety plans and the actions agencies are likely to take to address those problems. Instead of quantifying benefits, FTA estimated the potential safety benefits if additional unquantified mitigation investments occur. The potential safety benefits are an estimate of the cost of bus and rail safety events over a future 20-year period. FTA extrapolated the estimate based on the cost of bus and rail incidents that occurred from 2010 to 2016, assuming no growth in the number of incidents in the future.

The benefits of SMS primarily will result from mitigating actions. As previously stated, FTA could not account for the benefits and costs of such actions in this analysis. FTA has not estimated the benefits of implementing SMS without mitigating actions, but expects such benefits are unlikely to be large. Estimated costs for the Public Transportation Agency Safety Plans include certain activities that likely will yield safety improvements, such as improved communication, identification of hazards, and greater employee awareness. It is plausible that these changes alone could produce reductions in safety events that surpass estimated costs.

Under the performance management framework established by MAP–21, States, MPOs, and transit providers must establish targets in key national performance areas to document expectations for future performance. Pursuant to 49 U.S.C. 5303(h)(2)(B)(ii) and 5304(d)(2)(B)(ii), States and MPOs must coordinate the selection of their performance targets, to the maximum extent practicable, with performance targets set by transit providers under 49 U.S.C. 5326 (transit asset management) and 49 U.S.C. 5329 (safety), to ensure consistency.

In the joint FTA and FHWA Planning Rule, both agencies indicate that their performance-related rules would implement the basic elements of a performance management framework, including the establishment of measures and associated target setting. Because the performance-related rules implement these elements and the difficulty in estimating costs of target setting associated with unknown measures, the joint FTA and FHWA Planning Rule did not assess these costs. Rather, FTA and FHWA proposed that the costs associated with target setting at every level would be captured in each agency's respective ''performance management'' rules. For example, in its second performance management rule NPRM, FHWA assumes that the incremental costs to States and MPOs for establishing performance targets reflect the incremental wage costs for an operations manager and a statistician to analyze performance-related data.

The RIA accompanying the joint FTA and FHWA Planning Rule captures the costs of the effort by States, MPOs, and transit providers to coordinate in the setting of State and MPO transit performance targets for state of good repair and safety. FTA believes that the cost to MPOs and States to set transit performance targets is included within the costs of coordination. FTA requested comments on this issue through this rulemaking, and it received none.

A summary of the potential benefits and costs of this rule is provided in Table 2 below.

TABLE 2—SUMMARY OF THE COSTS AND THE POTENTIAL BENEFITS IF ADDITIONAL UNQUANTIFIED MITIGATION INVESTMENTS OCCUR

	Current dollar value	7% Discounted value	3% Discounted value
Bus Events (20-Year Estimate)	$78,698,984,508	$38,413,831,624	$56,680,780,091
Rail Events (20-Year Estimate)	45,019,196,393	21,974,360,164	32,423,838,587
Total Potential Benefits (20-Year Estimate)	123,718,180,901	60,388,191,787	89,104,618,678
Qualitative Benefits	• Reduced safety incidents with mitigation actions. • Reduced delays in operations.		

TABLE 2—SUMMARY OF THE COSTS AND THE POTENTIAL BENEFITS IF ADDITIONAL UNQUANTIFIED MITIGATION INVESTMENTS OCCUR—Continued

	Current dollar value	7% Discounted value	3% Discounted value
Estimated Costs (20-Year Estimate)	602,485,710	323,732,747	450,749,898
Unquantified Costs	• Investments associated with mitigating safety risks (such as additional training, vehicle modification, operational changes, maintenance, and information dissemination).		
Estimated Cost (Annualized)		30,558,081	30,297,473

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

Executive Order 13771 applies to any action considered ''significant'' under Executive Order 12866 that imposes total costs greater than zero. Actions subject to Executive Order 13771 must be offset by the elimination of existing costs associated with at least two prior regulations. This final rule is an action under Executive Order 13771 because it is considered a ''significant regulatory action'' under Executive Order 12866.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FTA has evaluated the effects of this rule on small entities and has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The rule will affect approximately 625 small entities, most of which are small government entities and small non-profit organizations that operate public transportation systems in small-urbanized areas. Compliance costs will vary according to agency size and complexity, the extent of current SMS practices, and the extent of current asset management practices. Costs are illustrated by an example calculation for a small operator (less than one hundred non-rail vehicles in maximum revenue service) of a public transportation system that receives Formula Grants for Urbanized Areas under 49 U.S.C. 5307, for which compliance costs are approximately $20,600 per agency (this estimate excludes the cost of mitigating actions). For the sake of comparison, while transit agency operations budgets vary significantly, the average for small Section 5307 agencies is around $6.3 million per year. Thus, the estimated costs of the rule are around 0.3% of agency budgets for small Section 5307 agencies. FTA is minimizing the costs for smaller operators of public transportation systems by requiring the States in which they are located to draft and certify Public Transportation Agency Safety Plans on their behalf, unless the operator chooses to develop and certify its own plan. Additionally, to lower the costs for smaller operators of public transportation systems, FTA is adopting the SMS approach to safety, which is scalable for the specific needs of a particular transit agency. To further reduce the burdens of this final rule, FTA tailored it by eliminating a series of Safety Assurance requirements specifically for small public transportation providers. As discussed in other sections of this document, small public transportation providers only need to develop Safety Assurance procedures for performance monitoring and measurement; they would not need to develop Safety Assurances procedures for management of change and continuous improvement. FTA also eliminated certain Safety Assurance and recordkeeping requirements for all transit operators, including small public transportation providers, to minimize the rule's costs. Concurrent with today's final rule, FTA is issuing a safety plan template with instructions and considerations to assist transit agencies with the development of their plans and to help reduce the overall costs associated with that effort.

Overall, while the rule may affect a substantial number of small entities, these impacts would not be significant due to the low magnitude of the costs. Moreover, FTA has designed the rule to allow flexibility for small entities. FTA is providing additional analysis of the Regulatory Flexibility Act's application to this rule in Regulatory Impact Analysis posted to the docket.

Unfunded Mandates Reform Act of 1995

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48; codified at 2 U.S.C. 1501 *et seq.*).

Pursuant to 2 U.S.C. 1501(8), one of the purposes of the Unfunded Mandates Reform Act is to consider ''the effect of . . . Federal statutes and regulations that impose Federal intergovernmental mandates.'' The term ''Federal intergovernmental mandate'' is defined at 2 U.S.C. 658(5)(A)(i) to mean ''any provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, except . . . a condition of Federal assistance.''

Given the fact that FTA's authorizing statute at 49 U.S.C. 5329(d) makes the development and implementation of Public Transportation Agency Safety Plans a condition of FTA Federal financial assistance, and given that FTA is proposing to require transit agencies to annually certify that they have safety plans consistent with this rule as a condition of that Federal financial assistance, this rule will not impose unfunded mandates.

Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria established by Executive Order 13132, and FTA has determined that this rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act (PRA)

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. *et seq.*) (PRA), and the White House Office of Management and Budget's (OMB) implementing regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for the Information Collection Request abstracted below. FTA acknowledges that this rule entails the collection of information to implement the Public Transportation Agency Safety Plan requirements of 49 U.S.C. 5329(d). Specifically, an operator of a public

transportation system must do the following: (1) Develop and certify a Public Transportation Agency Safety Plan; (2) implement and document the SMS approach; and (3) associated recordkeeping. As discussed above, FTA is deferring regulatory action at this time regarding recipients of FTA financial assistance under 49 U.S.C. 5310 and/or 49 U.S.C. 5311.

FTA sought public comments to evaluate whether the proposed collection of information is necessary for the proper performance of FTA's functions, including whether the information will have practical utility; whether the estimation of the burden of the proposed information collection is accurate, including the validity of the methodologies and assumptions used; ways in which the quality, utility, and clarity of the information can be enhanced; and whether the burden can be minimized, including through the use of automated collection techniques or other forms of information technology. FTA received no public comments on these issues.

Readers should note that the information collection would be specific to each operator of a public transportation system in an effort to facilitate and record the operator's safety responsibilities and activities. The paperwork burden for each operator of a public transportation system will be proportionate to the size and complexity of its operations. For example, an operator of a rail fixed guideway system and a bus system may need to generate more documentation than an operator of a bus system only.

Also, readers should note that FTA has required rail fixed guideway public transportation systems to develop System Safety Program Plans and System Security Plans in accordance with the former regulatory requirements at 49 CFR part 659. FTA has collected information from States and State Safety Oversight Agencies regarding these plans, and FTA anticipates that operators of rail fixed guideway systems will utilize some of this documentation for purposes of developing Public Transportation Agency Safety Plans. Please see FTA's currently approved collection, 2132–0558, available at *http://www.reginfo.gov/public/do/PRAMain.*

Type of Collection: Operators of public transportation systems.

Type of Review: OMB Clearance. New Information Collection Request.

Summary of the Collection: The information collection includes (1) The development and certification of a Public Transportation Agency Safety Plan; (2) the implementation and documentation of the SMS approach; and (3) associated recordkeeping.

Need for and Expected Use of the Information to be Collected: Collection of information for this program is necessary to ensure that operators of public transportation systems are performing their safety responsibilities and activities required by law at 49 U.S.C. 5329(d). Without the creation of Public Transportation Agency Safety Plans, FTA would be unable to determine each State's compliance with 49 U.S.C. 5329(d).

Respondents: Respondents include operators of public transportation as defined under 49 U.S.C. 5302(14). FTA is deferring regulatory action at this time on recipients of FTA financial assistance under 49 U.S.C. 5310 and/or 49 U.S.C. 5311. The total number of respondents is 336. This figure includes 242 respondents that are States, direct recipients, rail fixed guideway systems that receive Urbanized Area Formula Program funds under 49 U.S.C. 5307, or large bus systems that receive Urbanized Area Formula Program funds under 49 U.S.C. 5307. This figure also includes 94 respondents that receive Urbanized Area Formula Program funds under 49 U.S.C. 5307, operate one hundred or fewer vehicles in revenue service, and do not operate rail fixed guideway service that may draft and certify their own safety plans.

Frequency: Annual.

ESTIMATED TOTAL ANNUAL BURDEN HOURS ON RESPONDENTS

	Total responses	Burden hours per response	Total annual burden
Rail:			
Development/Certification	60	48	2,862
Implement/Document	60	1,114	66,869
Recordkeeping	60	43	2,562
Large 5307:			
Development/Certification	127	48	6,123
Implement/Document	127	760	96,581
Recordkeeping	127	42	5,298
Small 5307:			
Development/Certification	94	19	1,773
Implement/Document	625	270	168,622
Recordkeeping	625	38	23,647
States/Direct Recipients:			
Development/Certification	55	40	2,206
Implement/Document	55	0	0
Recordkeeping	55	0	0
Grand Total	336	2,422	376,543

FTA calculated costs using the same methodology that it used for the Regulatory Impact Analysis. FTA summarized the PRA costs in the table below. The total PRA cost of the rule is approximately $33 million per year averaged over the first three years, which is an average of $98,791 per respondent per year, or $38,256 per response per year.

PRA costs	Year 1	Year 2	Year 3	Total
Rail:				
Development/Certification	$733,863	$86,858	$86,858	$907,579

PRA costs	Year 1	Year 2	Year 3	Total
Implement/Document	9,366,439	6,651,817	6,651,817	22,670,072
Recordkeeping	1,179,917	1,179,917	1,179,917	3,539,750
Large 5307:				
Development/Certification	1,624,085	137,866	137,866	1,899,818
Implement/Document	9,235,788	6,593,697	6,593,697	22,423,182
Recordkeeping	1,830,066	1,830,066	1,830,066	5,490,199
Small 5307:				
Development/Certification	436,058	48,929	48,929	533,917
Implement/Document	12,166,099	9,118,251	9,118,251	30,402,601
Recordkeeping	3,565,974	3,565,974	3,565,974	10,697,922
States/Direct Recipients:				
Development/Certification	425,782	20,045	20,045	465,871
Implement/Document	0	0	0	0
Recordkeeping	183,333	183,333	183,333	550,000

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 either through a Categorical Exclusion, an Environmental Assessment, or an Environmental Impact Statement. This rule is categorically excluded under FTA's NEPA implementing regulations at 23 CFR 771.118(c)(4), which covers planning and administrative activities that do not involve or lead directly to construction, such as the promulgation of rules, regulations, directives, and program guidance. FTA has determined that no unusual circumstances exist and that this Categorical Exclusion is applicable.

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

Executive Order 12898 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 DOT's environmental justice initiatives accomplish this goal by involving the potentially affected public in developing transportation projects that fit harmoniously within their communities without sacrificing safety or mobility. FTA has developed a program circular addressing environmental justice in transit projects, Circular 4703.1, *Environmental Justice Policy Guidance for Federal Transit Administration Recipients.* The Circular is designed to provide a framework to assist recipients as they integrate principles of environmental justice into their transit decision-making process. The Circular contains recommendations for State DOTs, MPOs, and transit providers 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. This rule will not cause adverse environmental impacts, and as a result, minority populations and low-income populations will not be disproportionately impacted.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

FTA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this 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 rule under Executive Order 13175 (Nov. 6, 2000), and has determined that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Notwithstanding the above, FTA notes that it conducted extensive outreach with tribes throughout this rulemaking. Specifically, on February 12, 2016, FTA conducted public outreach for tribes and hosted a Tribal Technical Assistance Workshop wherein FTA presented its proposed rule and responded to numerous technical questions from tribes. FTA subsequently delivered the same presentation during a webinar series open to all members of the public on February 24, March 1, March 2, and March 3. On March 7, FTA delivered the same presentation at an outreach session hosted by the National Rural Transit Assistance Program, which also was open to all members of the public. During each of these public outreach sessions and the public webinar series, FTA received and responded to numerous technical questions regarding the NPRM. FTA recorded the presentations, including the question and answer sessions, and made available the following documents on the public docket for this rulemaking (Docket FTA–2015–0021): (1) FTA's PowerPoint Presentation from the public outreach sessions and public webinar series (*https://www.regulations.gov/document?D=FTA-2015-0021-0012*); (2) a written transcript of FTA's public webinar of March 1, 2016 (*https://www.regulations.gov/document?D=FTA-2015-0021-0010*); (3) a consolidated list of every Question and FTA Answer from the public outreach sessions and public webinar series (*https://www.regulations.gov/document?D=FTA-2015-0021-0041*); and (4) the results of polling questions from FTA's public outreach sessions (*https://www.regulations.gov/document?D=FTA-2015-0021-0011*). FTA also uploaded onto YouTube an audiovisual recording of its webinar

from March 1, 2016. The video is available at the following link: *https://www.youtube.com/watch?v=FBj5HRatwGA&feature=youtu.be.*

FTA also notes that, in advance of publishing an NPRM, FTA sought comment from the transit industry, including tribes, on a wide range of topics pertaining to safety and asset management through an ANPRM. In the NPRM, FTA asked specific questions about how today's rule should apply to tribal recipients and subrecipients of Section 5311 funds.

In light of the comments that FTA received from tribes in response to the NPRM, and in an effort to further reduce the burdens of this final rule, FTA is deferring regulatory action regarding the applicability of this rule to operators of public transportation systems that only receive Section 5310 and/or Section 5311 funds, including tribal transit operators. FTA is deferring action pending further evaluation of information and safety data to determine the appropriate level of regulatory burden necessary to address the safety risk presented by these operators.

Executive Order 13211 (Energy Effects)

FTA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that this rule is not a significant energy action under that Executive Order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Privacy Act

Any individual is able to search the electronic form of all comments received on any FTA docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review USDOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Statutory/Legal Authority for This Rulemaking

FTA is issuing this final rule under the authority of section 20021 of MAP–21, which requires public transportation agencies to develop and implement comprehensive safety plans. This authority was reauthorized under the FAST Act. The authority is codified at 49 U.S.C. 5329(d).

Regulation Identification Number

A 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 673

Mass transportation, Safety.

K. Jane Williams,

Acting Administrator.

■ For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5329(d) and 5334, 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 673 to read as follows:

PART 673—PUBLIC TRANSPORTATION AGENCY SAFETY PLANS

Subpart A—General

Subpart B—Safety Plans

Subpart C—Safety Management Systems

Subpart D—Safety Plan Documentation and Recordkeeping

Authority: 49 U.S.C. 5329(d) and 5334; 49 CFR 1.91.

Subpart A—General

§ 673.1 Applicability.

(a) This part applies to any State, local governmental authority, and any other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. Chapter 53.

(b) This part does not apply to an operator of a public transportation system that only receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311.

§ 673.3 Policy.

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

§ 673.5 Definitions.

As used in this part:

Accident means an Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision of public transportation vehicles; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.

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

Chief Safety Officer means an adequately trained individual who has responsibility for safety and reports directly to a transit agency's chief executive officer, general manager, president, or equivalent officer. A Chief Safety Officer may not serve in other operational or maintenance capacities, unless the Chief Safety Officer is employed by a transit agency that is a small public transportation provider as defined in this part, or a public transportation provider that does not operate a rail fixed guideway public transportation system.

Equivalent Authority means an entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. Chapter 53, including sufficient authority to review and approve a

recipient or subrecipient's Public Transportation Agency Safety Plan.

Event means any Accident, Incident, or Occurrence.

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

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

Incident means an event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.

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

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

Occurrence means an Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a transit agency.

Operator of a public transportation system means a provider of public transportation as defined under 49 U.S.C. 5302(14).

Performance measure means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.

Performance target means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the Federal Transit Administration (FTA).

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

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

Rail transit agency means any entity that provides services on a rail fixed guideway public transportation system.

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

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

Safety Assurance means processes within a transit agency's Safety Management System that functions to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

Safety Management Policy means a transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.

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

Safety Management System (SMS) Executive means a Chief Safety Officer or an equivalent.

Safety performance target means a Performance Target related to safety management activities.

Safety Promotion means a combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.

Safety risk assessment means the formal activity whereby a transit agency determines Safety Risk Management priorities by establishing the significance or value of its safety risks.

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

Serious injury means any injury which:

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

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

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

(4) Involves any internal organ; or

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

Small public transportation provider means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service and does not operate a rail fixed guideway public transportation system.

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

State of good repair means the condition in which a capital asset is able to operate at a full level of performance.

State Safety Oversight Agency means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations set forth in 49 CFR part 674.

Transit agency means an operator of a public transportation system.

Transit Asset Management Plan means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR part 625.

Subpart B—Safety Plans

§ 673.11 General requirements.

(a) A transit agency must, within one calendar year after July 19, 2019, establish a Public Transportation Agency Safety Plan that meets the requirements of this part and, at a minimum, consists of the following elements:

(1) The Public Transportation Agency Safety Plan, and subsequent updates, must be signed by the Accountable Executive and approved by the agency's Board of Directors, or an Equivalent Authority.

(2) The Public Transportation Agency Safety Plan must document the processes and activities related to Safety Management System (SMS) implementation, as required under subpart C of this part.

(3) The Public Transportation Agency Safety Plan must include performance targets based on the safety performance measures established under the National Public Transportation Safety Plan.

(4) The Public Transportation Agency Safety Plan must address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and the National Public Transportation Safety Plan. Compliance

with the minimum safety performance standards authorized under 49 U.S.C. 5329(b)(2)(C) is not required until standards have been established through the public notice and comment process.

(5) Each transit agency must establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan.

(6) A rail transit agency must include or incorporate by reference in its Public Transportation Agency Safety Plan an emergency preparedness and response plan or procedures that addresses, at a minimum, the assignment of employee responsibilities during an emergency; and coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area.

(b) A transit agency may develop one Public Transportation Agency Safety Plan for all modes of service, or may develop a Public Transportation Agency Safety Plan for each mode of service not subject to safety regulation by another Federal entity.

(c) A transit agency must maintain its Public Transportation Agency Safety Plan in accordance with the recordkeeping requirements in subpart D of this part.

(d) A State must draft and certify a Public Transportation Agency Safety Plan on behalf of any small public transportation provider that is located in that State. A State is not required to draft a Public Transportation Agency Safety Plan for a small public transportation provider if that agency notifies the State that it will draft its own plan. In each instance, the transit agency must carry out the plan. If a State drafts and certifies a Public Transportation Agency Safety Plan on behalf of a transit agency, and the transit agency later opts to draft and certify its own Public Transportation Agency Safety Plan, then the transit agency must notify the State. The transit agency has one year from the date of the notification to draft and certify a Public Transportation Agency Safety Plan that is compliant with this part. The Public Transportation Agency Safety Plan drafted by the State will remain in effect until the transit agency drafts its own Public Transportation Agency Safety Plan.

(e) Any rail fixed guideway public transportation system that had a System Safety Program Plan compliant with 49 CFR part 659 as of October 1, 2012, may keep that plan in effect until one year after July 19, 2019.

(f) Agencies that operate passenger ferries regulated by the United States Coast Guard (USCG) or rail fixed guideway public transportation service regulated by the Federal Railroad Administration (FRA) are not required to develop agency safety plans for those modes of service.

§ 673.13 Certification of compliance.

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

(b) On an annual basis, a transit agency, direct recipient, or State must certify its compliance with this part.

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

(a) A State or transit agency must make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process.

(b) To the maximum extent practicable, a State or transit agency must coordinate with States and Metropolitan Planning Organizations in the selection of State and MPO safety performance targets.

Subpart C—Safety Management Systems

§ 673.21 General requirements.

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

(a) Safety Management Policy as described in § 673.23;

(b) Safety Risk Management as described in § 673.25;

(c) Safety Assurance as described in § 673.27; and

(d) Safety Promotion as described in § 673.29.

§ 673.23 Safety management policy.

(a) A transit agency must establish its organizational accountabilities and responsibilities and have a written statement of safety management policy that includes the agency's safety objectives.

(b) A transit agency must establish and implement a process that allows employees to report safety conditions to senior management, protections for employees who report safety conditions to senior management, and a description of employee behaviors that may result in disciplinary action.

(c) The safety management policy must be communicated throughout the agency's organization.

(d) The transit agency must establish the necessary authorities, accountabilities, and responsibilities for the management of safety amongst the following individuals within its organization, as they relate to the development and management of the transit agency's Safety Management System (SMS):

(1) *Accountable Executive.* The transit agency must identify an Accountable Executive. The Accountable Executive is accountable for ensuring that the agency's SMS is effectively implemented, throughout the agency's public transportation system. The Accountable Executive is accountable for ensuring action is taken, as necessary, to address substandard performance in the agency's SMS. The Accountable Executive may delegate specific responsibilities, but the ultimate accountability for the transit agency's safety performance cannot be delegated and always rests with the Accountable Executive.

(2) *Chief Safety Officer or Safety Management System (SMS) Executive.* The Accountable Executive must designate a Chief Safety Officer or SMS Executive who has the authority and responsibility for day-to-day implementation and operation of an agency's SMS. The Chief Safety Officer or SMS Executive must hold a direct line of reporting to the Accountable Executive. A transit agency may allow the Accountable Executive to also serve as the Chief Safety Officer or SMS Executive.

(3) *Agency leadership and executive management.* A transit agency must identify those members of its leadership or executive management, other than an Accountable Executive, Chief Safety Officer, or SMS Executive, who have authorities or responsibilities for day-to-day implementation and operation of an agency's SMS.

(4) *Key staff.* A transit agency may designate key staff, groups of staff, or committees to support the Accountable Executive, Chief Safety Officer, or SMS Executive in developing, implementing, and operating the agency's SMS.

§ 673.25 Safety risk management.

(a) *Safety Risk Management process.* A transit agency must develop and implement a Safety Risk Management process for all elements of its public transportation system. The Safety Risk

Management process must be comprised of the following activities: Safety hazard identification, safety risk assessment, and safety risk mitigation.

(b) *Safety hazard identification.* (1) A transit agency must establish methods or processes to identify hazards and consequences of the hazards.

(2) A transit agency must consider, as a source for hazard identification, data and information provided by an oversight authority and the FTA.

(c) *Safety risk assessment.* (1) A transit agency must establish methods or processes to assess the safety risks associated with identified safety hazards.

(2) A safety risk assessment includes an assessment of the likelihood and severity of the consequences of the hazards, including existing mitigations, and prioritization of the hazards based on the safety risk.

(d) *Safety risk mitigation.* A transit agency must establish methods or processes to identify mitigations or strategies necessary as a result of the agency's safety risk assessment to reduce the likelihood and severity of the consequences.

§ 673.27 Safety assurance.

(a) *Safety assurance process.* A transit agency must develop and implement a safety assurance process, consistent with this subpart. A rail fixed guideway public transportation system, and a recipient or subrecipient of Federal financial assistance under 49 U.S.C. Chapter 53 that operates more than one hundred vehicles in peak revenue service, must include in its safety assurance process each of the requirements in paragraphs (b), (c), and (d) of this section. A small public transportation provider only must include in its safety assurance process the requirements in paragraph (b) of this section.

(b) *Safety performance monitoring and measurement.* A transit agency must establish activities to:

(1) Monitor its system for compliance with, and sufficiency of, the agency's procedures for operations and maintenance;

(2) Monitor its operations to identify any safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended;

(3) Conduct investigations of safety events to identify causal factors; and

(4) Monitor information reported through any internal safety reporting programs.

(c) *Management of change.* (1) A transit agency must establish a process for identifying and assessing changes that may introduce new hazards or impact the transit agency's safety performance.

(2) If a transit agency determines that a change may impact its safety performance, then the transit agency must evaluate the proposed change through its Safety Risk Management process.

(d) *Continuous improvement.* (1) A transit agency must establish a process to assess its safety performance.

(2) If a transit agency identifies any deficiencies as part of its safety performance assessment, then the transit agency must develop and carry out, under the direction of the Accountable Executive, a plan to address the identified safety deficiencies.

§ 673.29 Safety promotion.

(a) *Competencies and training.* A transit agency must establish and implement a comprehensive safety training program for all agency employees and contractors directly responsible for safety in the agency's public transportation system. The training program must include refresher training, as necessary.

(b) *Safety communication.* A transit agency must communicate safety and safety performance information throughout the agency's organization that, at a minimum, conveys information on hazards and safety risks relevant to employees' roles and responsibilities and informs employees of safety actions taken in response to reports submitted through an employee safety reporting program.

Subpart D—Safety Plan Documentation and Recordkeeping

§ 673.31 Safety plan documentation.

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

[FR Doc. 2018–15167 Filed 7–18–18; 8:45 am]

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APPENDIX E

49 CFR Part 672
Public Transportation Safety Certification Training Program

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
Massachusetts: Haverhill, City of, Essex County.	250085	April 30, 1974, Emerg; February 16, 1983, Reg; July 19, 2018, Susp	July 19, 2018	July 19, 2018.
Region V				
Ohio:				
Fairfield County, Unincorporated Areas	390158	March 21, 1977, Emerg; April 17, 1989, Reg; July 19, 2018, Susp	.....do *	Do.
Lancaster, City of, Fairfield County	390161	July 28, 1975, Emerg; May 1, 1980, Reg; July 19, 2018, Susp	.....do	Do.
Pickerington, City of, Fairfield and Franklin Counties.	390162	June 11, 1976, Emerg; August 5, 1991, Reg; July 19, 2018, Susp	.....do	Do.
Region VI				
Oklahoma:				
Billings, Town of, Noble County	400347	September 8, 1983, Emerg; June 19, 1985, Reg; July 19, 2018, Susp	.....do	Do.
Tribe of Ponca Indians of Oklahoma, Noble and Kay Counties.	400239	N/A, Emerg; July 15, 2008, Reg; July 19, 2018, Susp	.....do	Do.
Red Rock, Town of, Noble County	400135	June 12, 1975, Emerg; May 25, 1978, Reg; July 19, 2018, Susp	.....do	Do.
Region IX				
California:				
Elk Grove, City of, Sacramento County	060767	N/A, Emerg; October 15, 2001, Reg; July 19, 2018, Susp	.....do	Do.
Folsom, City of, Sacramento County	060263	March 10, 1977, Emerg; January 6, 1982, Reg; July 19, 2018, Susp	.....do	Do.
Rancho Cordova, City of, Sacramento County.	060772	N/A, Emerg; September 15, 2004, Reg; July 19, 2018, Susp	.....do	Do.
Sacramento County, Unincorporated Areas.	060262	March 31, 1972, Emerg; March 15, 1979, Reg; July 19, 2018, Susp	.....do	Do.

do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: June 29, 2018.

Michael M. Grimm,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

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BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 672

[Docket No. FTA–2015–0014]

RIN 2132–AB25

Public Transportation Safety Certification Training Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration is issuing a final rule for the Public Transportation Safety Certification Training Program to provide revised minimum training requirements for Federal and State personnel and contractors who conduct safety audits and examinations of transit systems and for transit agency personnel and contractors who are directly responsible for safety oversight. The revised requirements reduce the number of training hours required by the interim training program.

DATES: The effective date of this rule is August 20, 2018.

FOR FURTHER INFORMATION CONTACT: For program issues, contact FTA, Office of Transit Safety and Oversight (telephone: 202–366–1783 or email: *FTASafetyPromotion@dot.gov*). For legal issues, contact Bruce Walker, FTA, Office of Chief Counsel (telephone: 202–366–9109 or email: *Bruce.Walker@dot.gov*). Office hours are Monday through Friday from 8 a.m. to 6 p.m. (EST), except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

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 Public Transportation Safety Certification Training Program (PTSCTP). As a first step to implementing the PTSCTP, FTA developed requirements for the interim safety certification training program (interim training program) which became effective on May 28, 2015 (*see* 80 FR 10619). FTA then published a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 3, 2015 (80 FR 75639), which generally proposed to adopt the interim training program requirements for the PTSCTP final rule. As noted in Appendix A, the requirements in this final rule reduce the number of required training hours from a total of 181 hours (22.625 days) to 143 hours (17.875 days).

More recently, Congress enacted the Fixing America's Surface Transportation Act (''FAST'') (Pub. L. 114–94, Dec. 4, 2015). FAST did not make any amendments to 49 U.S.C. 5329(c)(1), the

statute authorizing the PTSCTP, that would affect today's rulemaking. Therefore, for convenience and accurate context, this rule will refer to MAP–21 throughout the preamble for consistency with the NPRM.

Today's rule revises the minimum training requirements for State Safety Oversight Agency (SSOA) personnel and contractors who conduct safety audits and examinations of public transportation systems that receive Federal transit funds. The rule also provides minimum training requirements for transit agency employees who are directly responsible for safety oversight of public transportation systems that receive Federal transit funds. Although not subject to this rule, pursuant to 49 U.S.C. 5329(c)(1), FTA personnel and contractors who conduct safety audits and examinations of rail public transportation systems will adhere to the applicable SSOA training requirements listed in Appendix A.

A. Statutory Authority

This rulemaking is issued under the authority of 49 U.S.C. 5329(c)(1), which requires the Secretary of Transportation to establish a public transportation safety certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems, and employees of public transportation agencies directly responsible for safety oversight. The Secretary is authorized to issue regulations to carry out the general provisions of this statutory requirement pursuant to 49 U.S.C. 5329(c)(2) and (f)(7).

B. Summary of Major Provisions

Today's rule adds a new part 672, Public Transportation Safety Certification Training Program, to title 49 of the Code of Federal Regulations. The purpose of the rule is to provide minimum requirements to enhance the proficiency of transit safety oversight professionals. In general, FTA maintained much of what was proposed in the NPRM. The mandatory training requirements apply to personnel who conduct safety audits and examinations of rail transit systems, and transit personnel with direct safety oversight responsibility of rail transit systems. Participation in the PTSCTP remains voluntary for State personnel, employees of bus transit agencies and the contractors directly responsible for safety oversight of public bus transportation systems.

C. Costs and Benefits

In general, FTA has retained the approach to costs contained in the NPRM. FTA quantified, to the extent possible, the costs associated with this rule. FTA expects that the codification of the PTSCTP will help promote a safety culture within the transit industry. This safety culture should help instill a transit agency-wide appreciation for shared goals, shared beliefs, best practices, and positive and vigilant attitudes towards safety.

Where appropriate, FTA has modified the analysis for this rule from that of the NPRM. For example, in response to comments, FTA revised the hourly wage rate upward to better reflect average labor rates including benefits within the public transportation sector and factored in modest travel costs for attendance. Also, FTA has eliminated the 36-hour Transit System Security course and the 2-hour SMS Gap online course as mandatory components of the PTSCTP program. This change has resulted in a reduced burden on course participants. The regulatory analysis is conducted in two parts. First, under Executive Order 12866, by comparing the costs of issuing the rule in relation to practice prior to MAP–21 and second, under Executive Order 13771, since this final rule is considered a deregulatory action due to the reduction in existing safety training requirements.

FTA used data from the Transportation Safety Institute (TSI) and reviewed the public transit workforce's participation in FTA's voluntary safety training programs to establish a maximum and minimum number of personnel, including contractors, that would be affected by the PTSCTP. The interim training program on which this rule is modeled became effective on May 28, 2015. Thus far, enrollment in the interim training program aligns with the assumptions FTA posed in the NPRM.

To determine annual costs for recipients to implement PTSCTP requirements, we continue with a minimum and maximum case scenario. For the minimum case, we maintain an assumption that all designated personnel under this program have received the Transit Safety and Security Program (TSSP) Certificate and require only the safety management system (SMS) portion of the coursework described in Appendix A of this rule. For the maximum case, we assume no one subject to the rule has a TSSP Certificate. In this scenario, all designated personnel will have to complete both the TSSP (minus the Transit System Security (TSS) course) and SMS coursework over a three (3) year period. However, in response to comments, some travel costs are now included for attending courses if participants are unable to attend locally. Also, since TSSP training was previously provided by TSI, the cost of that cannot be attributed to this final rule. The cost numbers were adjusted accordingly. As a result of the changes above, and extending the analysis period to ten years instead of three to include refresher training and staff turnover, the maximum cost estimate is adjusted to approximately $1.0 million annualized at 7 percent discount rate instead of the undiscounted $2.6 million per year over a three year period as noted in the NPRM.

This final rule will replace the interim safety training program provisions issued in February 2015. The final rule eliminates two training provisions as mentioned above. The cost of the final rule therefore reduces the costs of the interim provisions by over $51,000 over a ten year period, discounted at a 7 percent rate for the minimum case scenario and $1.6 million respectively for the maximum case scenario, resulting in a net benefit for the agencies. This results in an annualized cost savings (benefits) of $7,300 and $2,258 respectively for the two scenarios at the 7 percent discount rate.

We note that these costs do not reflect costs associated with any additional countermeasures that better trained personnel will take to increase safety that they would not have identified prior to the training. Pursuant to 49 U.S.C. 5329(e)(6)(C)(iv), recipients may use up to 0.5 percent of their FTA formula funds to cover up to 80 percent of costs of PTSCTP eligible expenditures.

II. Rulemaking Background

On October 3, 2013, FTA issued an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on all aspects of FTA's safety authority, including the training program. (*See* 78 FR 61251 at *http://www.gpo.gov/fdsys/pkg/FR-2013-10-03/pdf/2013-23921.pdf*). FTA noted that there are discrete and different skill-sets required for those who perform safety audit and examination functions compared to those who are directly responsible for safety oversight. Recognizing this distinction, FTA outlined its vision for the PTSCTP which included a wholly new FTA-sponsored training curriculum to enhance the technical proficiency of each category of these safety professionals.

On April 30, 2014, FTA published a document in the **Federal Register** requesting comment on its proposed vision for the interim training program. A number of the proposed requirements for the interim training program were based partly on recommendations provided by commenters to the ANPRM (*see* 79 FR 24363). FTA evaluated comments received in response to the document and promulgated the final interim training program requirements in a **Federal Register** document dated February 27, 2015 (*see* 80 FR 10619).

On December 3, 2015, FTA published a **Federal Register** document proposing to adopt the interim training program as the requirements for the PTSCTP (*see* 80 FR 75639). FTA reviewed comments to the NPRM and with this document promulgates the PTSCTP rule as 49 CFR part 672. This rule primarily applies to recipients of Chapter 53 funding; however, pursuant to 49 U.S.C. 5329(c)(1), the SSOA training requirements listed in Appendix A also apply to FTA personnel and contractors that conduct safety audits and examinations of rail transit systems.

III. Summary of NPRM Comments and FTA Responses

FTA proposed to utilize the interim training program requirements as the foundation for the PTSCTP. Similar to the interim training program, FTA proposed that the initial focus of the PTSCTP should be on enhancing the technical proficiency of safety oversight professionals in the rail transit industry. However, recognizing that safety is a priority for all public transit providers, safety oversight personnel of other modes of public transportation were encouraged to participate voluntarily. For that reason, FTA proposed that the initial *mandatory* PTSCTP requirements provide safety management system and technical training for Federal and SSOA personnel and their contractors, and rail transit agency personnel directly responsible for safety oversight of rail transit systems. Safety oversight personnel of recipients such as State Departments of Transportation (DOTs) and bus transit providers would be voluntary participants.

Nineteen commenters responded to the NPRM as follows: Seven (7) public transportation agencies; three (3) State Safety Oversight Agencies; one (1) member of the public; one (1) Federal safety agency; two (2) national safety associations; two (2) national public transportation associations; two (2) State Department of Transportations (DOTs); and, one (1) letter representing five (5) State DOTs. FTA reviewed all comments and noted that only one commenter provided remarks that were not responsive to the scope of the NPRM. Following is a summary of the comments received and FTA's responses.

Section 672.1 Purpose

FTA proposed to implement 49 U.S.C. 5329(c)(1), by establishing a uniform curriculum of safety certification training to enhance the technical proficiency of individuals who are directly responsible for safety oversight of public transportation systems not subject to the safety oversight requirements of another Federal agency. FTA also noted that the rule would not preempt a State from implementing its own safety certification training requirements for public transportation systems subject to its jurisdiction.

A commenter to this section expressed appreciation for FTA's effort to adopt a uniform training curriculum and establish guidelines for all individuals who are directly responsible for safety oversight of public transportation agencies. Another commenter noted that FTA's framework provides a training standard for system safety and ensures a basic level of competency in SMS across the public transportation industry.

FTA Response: Upon review, FTA determined the proposed text requires clarification and is revising the text of paragraph (a) to include reference to personnel who conduct safety audits and examinations of public transportation agencies in this section. Additionally, the phrase ''not subject to the safety oversight requirements of another Federal agency'' that was proposed in the NPRM is not included in the final rule because the definition for ''public transportation agency'' indicates this exception. The remainder of the proposed text is included in the final rule.

Section 672.3 Scope and Applicability

FTA proposed that in general, the rule would apply to all recipients of Federal public transportation funding under Chapter 53 of Title 49 of the United States Code. FTA noted, however, in order to manage Federal and local resources, the initial mandatory requirements would apply to SSOA personnel and contractors conducting safety audits and examinations, as well as Rail Transit Agency (RTA) personnel directly responsible for safety oversight of rail transit systems not subject to the requirements of the Federal Railroad Administration. All other recipients of Chapter 53 funding would be able to participate voluntarily in the PTSCTP.

In response to the NPRM, one commenter disagreed with FTA's approach and recommended that both rail and bus transit system personnel be required participants in the PTSCTP. The commenter noted that motor vehicle crashes are the second-leading cause of unintentional death in the United States. The commenter stated that bus operations would benefit from defensive driving training as well as SMS and other specific safety training.

Conversely, commenters affiliated with State DOTs and small bus transit providers agreed that FTA should not require safety oversight personnel from these entities to be mandatory participants. Many of these commenters referred to the excellent safety record of bus transit providers to support the exclusion of these entities from mandatory PTSCTP participation. The commenters stated that FTA should limit regulatory burdens on States and subrecipient transit agencies that receive funding for rural transit. Several commenters indicated that the final rule should expressly affirm that it does not apply to bus service providers other than on a voluntary basis.

A few commenters indicated that the rule should be revised to include FTA personnel and its contractors that conduct safety audits and examinations as mandatory participants. These commenters noted that FTA should be subject to the same training requirements as SSOA employees and contractors.

FTA Response: FTA continues to believe the initial focus of the PTSCTP should be on rail public transit providers and the Federal and State personnel who conduct safety audits and examinations. As noted in the preamble of the ANPRM published in 2013, the intent is to initially focus regulatory efforts on those responsible for safety oversight of rail transit systems. FTA adopted this approach because the increased potential for catastrophic accidents, loss of life, and property damage associated with rail transit warranted the most immediate attention (*see* 78 FR 61252).

FTA reiterates that although the initial regulatory focus is primarily on rail safety, safety in the bus transit industry will not be ignored. In addition, FTA continues to expand resources and partner with groups that promote bus safety. Recognizing that resources must be expended judiciously and enforcement efforts must be prioritized, FTA believes the current safety environment within the bus transit industry supports the option for voluntary participation in FTA's safety training program.

However, it is important to note that FTA is developing a more systematic safety reporting regime for the public transit industry. FTA is also increasing its capability for reviewing and analyzing safety data and trends across the industry. Should analysis of safety data and trends indicate increased safety risk in the bus transit industry, FTA retains authority to implement mandatory training requirements for bus transit safety oversight personnel.

In response to commenters who indicated this rule should apply also to FTA personnel conducting safety audits and examinations, FTA notes this rulemaking applies specifically to recipients of Federal transit funds under Chapter 53, Title 49 of the United States Code. However, FTA agrees that FTA personnel and contractors should observe the same training requirements as SSOA personnel and contractors. Accordingly, pursuant to 49 U.S.C. 5329(c)(1), this final rule requires FTA safety oversight personnel and contractors that conduct safety audits and examinations of rail fixed guideway public transportation systems to adhere to the same SSOA training courses noted in Appendix A. For the reasons herein, the text proposed in the NPRM is included in the final rule with clarifying edits. In paragraph (b), the phrase ''that are not subject to the requirements of the Federal Railroad Administration (FRA)'' was removed because the definition of ''rail fixed guideway public transportation systems'' includes the statement that such systems are not subject to FRA's jurisdiction. The text of paragraphs (a) and (c) are included in the final rule as proposed in the NPRM.

Section 672.5 Definitions

This section proposed definitions for some key terms in the rule. Many of the terms carry the same or similar meaning as used in other FTA documents. Additionally, some new terms were proposed with definitions consistent with common use.

Seven commenters responded to this section. One commenter stated that the term ''*contractor*'' should be revised to include RTA contractors that implement the RTA's safety program. Another commenter indicated the definition should be broadened to include all those who provide contracted services, supplies, or equipment to FTA recipients. Yet another commenter indicated the definition should be revised to include individuals and entities that perform safety-related tasks for an RTA through contract or other agreement.

Two commenters indicated the terms ''*safety audit*'' and ''*safety examination*'' required clarification. One questioned whether there is a practical difference between an examination conducted as part of the audit and the analysis of acts performed in conjunction with the examination. The other commenter indicated the definition for both terms require more specificity in order to distinguish between the activities associated with the terms and clarify who performs an examination.

A commenter indicated that the definition for ''*designated personnel*'' should be revised to include FTA safety oversight personnel and contractors in order to make them subject to this rule. Other commenters indicated that FTA needed to provide more clarity regarding the definition for ''*directly responsible for safety oversight*'' relative to RTA designated personnel. Another commenter suggested that the definition for ''*State Safety Oversight Agency*'' should not include reference to 49 CFR part 659 since that rule is set to expire.

FTA Response: FTA believes the definition for ''*contractor*'' proposed in the NPRM sufficiently describes entities that provide safety audit and examination services to FTA and SSOAs. However, FTA agrees with commenters who indicated the definition should be amended to include contractors that provide services to public transportation agencies. FTA also amended section 672.13 to include RTA contractors.

With regard to commenters who recommended revising the definition for ''*designated personnel*'' to include FTA personnel and contractor support, as noted earlier, this rule generally applies to FTA recipients; therefore, FTA personnel and contractors are not included in this definition. However, as noted with the ''*contractor*'' definition, subparagraph (1) of this definition is revised to also include contractors that provide safety oversight services to rail transit agencies.

FTA concurs with commenters regarding the definition for ''*directly responsible for safety oversight.*'' For clarity, FTA is revising the definition of the term relative to section 672.13(a), in recognition that RTA safety oversight personnel are already quite familiar with the safety oversight program requirements pursuant to 49 CFR part 659.

With regard to the terms ''*safety audit*'' and ''*safety examination*'', FTA agrees with those commenters who indicated the proposed definition for both terms should be reconciled. The terms are not unknown nor uncommon to those responsible for safety oversight of RTA systems. FTA, SSOA, and RTA personnel are familiar with activities associated with safety audits and examinations as the terms relate to 49 CFR part 659 requirements, as well as the new SSO program rule at 49 CFR part 674. Further, it is unreasonable to interpret the term ''examination'' as it appears 49 U.S.C. 5329(c)(1) to refer to anything other than examinations related to the safety of public transportation systems. Therefore, to remain consistent with the terms as they appear in statute, the term safety audit will be included in the final rule but the term ''safety examination'' will be modified to ''examination'' to align with the definition as it appears in 49 CFR 670.5. It is also noted that safety audits and examinations will generally be conducted by Federal and/or State personnel and contractors.

Lastly, FTA agrees in part with the commenter who suggested the definition of ''*State Safety Oversight Agency*'' should be revised in reference to 49 CFR part 659. FTA notes 49 U.S.C. 5329(d)(2) provides an RTA's System Safety Program Plan (SSPP) developed pursuant to 49 CFR part 659 shall remain in effect until FTA publishes a final rule for Public Transportation Agency Safety Plans. SSOAs will continue to oversee RTAs' SSPPs until the RTAs are required to adopt Public Transportation Agency Safety Plans in compliance with the future final rulemaking under 49 U.S.C. 5329(d). In recognition of this fact, this definition is revised in the final rule to include reference to the new rule at 49 CFR part 674, as well as 49 CFR part 659. The remaining definitions proposed in the NPRM are included in this rule with minor edits to certain terms to ensure consistency with other FTA safety rulemakings.

Section 672.11 Designated Personnel Who Conduct Safety Audits and Examinations

FTA proposed that the SSOA identify personnel who conduct safety audits and examinations of the RTA(s) subject to its jurisdiction. In general, those identified would be SSOA employees and contractors whose duties include on-site safety audits and examinations of rail public transportation systems. FTA proposed this would include the SSOA managers and supervisors with direct authority over such SSOA personnel.

FTA proposed that once identified, designated personnel would have 3 years to complete the applicable PTSCTP training requirements. FTA also proposed that designated personnel would be required to complete at least

one hour of refresher training every 2 years after completing the initial mandatory training. FTA further proposed that the SSOA would have discretion to determine the subject area and duration for such training. FTA also proposed that the interim training program requirements become the initial training requirements for this rule. The interim requirements were republished as Section IV of the NPRM. However, FTA did not seek comment on the curriculum of the interim training program since it was developed through public notice and comment and effective only since May 28, 2015.

Five commenters responded to this section. One commenter indicated that State personnel, such as commissioners and directors, should not be required to participate in the PTSCTP requirements. The commenter stated that these individuals do not actually conduct safety audits and examinations of the rail transit systems under their jurisdiction. Other commenters indicated that FTA personnel and contractors should be included as designated personnel.

Regarding refresher training, several commenters felt the two-year interval for refresher training was sufficient. However, one commenter disagreed with the two-year timeframe, indicating that more robust refresher training should be required annually with a minimum requirement of at least four hours of training. The commenter also stated that the initial timeframe for completing PTSCTP requirements should be less than the three years FTA proposed. One commenter recommended that FTA be more specific as to the required elements for refresher training. Another commenter stated that FTA should require at least one class of refresher training every two years without identifying a time limit for the class. Yet another commenter stated that refresher training should at minimum include the ''technical training component'' and ''knowledge of agency'' elements outlined in Section IV of the NPRM.

FTA Response: In general, FTA believes those with direct management and supervisory responsibility of SSOA personnel and contractors that conduct safety audits and examinations should be subject to the PTSCTP training requirements. However, as indicated by a commenter, there are SSOA management personnel who do not directly oversee SSOA personnel and contractors. Conversely, there are managers and supervisors who do. In either case, FTA recognizes an SSOA is better situated to determine which managers and supervisors require technical knowledge or perform functions identified in the technical training plan each SSOA is required to develop to comport with 49 U.S.C. 5329(e)(3)(E). For example, knowledge of railroad components is required only by those individuals actually conducting the examinations and audits of those specific railroad components, but not necessarily knowledge required of SSOA managers.

In short, some SSOA managers and supervisors will not be subject to PTSCTP requirements; however, those with direct supervisory responsibility of SSOA personnel and contractors subject to this part should share a common framework for understanding issues of risk and mitigation. For that reason, these managers and supervisors should at minimum undertake the SMS and TSSP curriculum identified in Appendix A. As indicated earlier, the SSOA will consult with FTA as it develops its technical training plan. This consultation should assist the SSOA with determining which of its personnel and contractor support should participate in the PTSCTP. However, FTA does not expect directors or commissioners, or similar State DOT personnel not involved in the day-to-day operations of an SSOA to be identified as designated personnel.

In response to comments suggesting the proposed three-year timeframe for completing the initial PTSCTP requirements is too long, FTA notes that RTAs and SSOAs already engage in significant safety training including the voluntary TSSP which underpins the PTSCTP requirements. FTA disagrees that the PTSCTP requirements should be completed in less than three years. FTA believes such a requirement would unduly burden recipients while not significantly contributing to public transportation safety. Furthermore, FTA notes that 49 U.S.C. 5329 provides additional tools that FTA can utilize if it finds that targeted training or remedial action is required immediately.

In response to comments regarding proposed refresher training requirements, from the onset FTA has stated its intent to take a comprehensive approach to safety training requirements. FTA recognizes there will be safety training requirements in other rules FTA is implementing for the National Public Transportation Safety Program (National Safety Program) which may apply also to some PTSCTP participants. FTA continues to believe that refresher training should be relevant to a recipient's specific circumstances and the recipient is in the best position to determine the subject matter and timeframe allotted for such training. In addition, FTA will provide guidance to assist recipients with identifying relevant subject matter for safety oversight refresher training.

FTA believes the proposed requirements are sufficient and that a one-year training completion requirement or annual refresher training requirement would not provide significant value considering other safety training initiatives will be occurring during the same timeframe. For these reasons, the proposed rule text is included in the final rule except FTA omitted paragraph (c), which provided that the Reference Document was available on the FTA website. The training curriculum and requirements are now found in Appendix A to this rule.

Section 672.13 Designated Personnel of Public Transportation Agencies

In the NPRM, FTA proposed that a recipient be required to identify its personnel whose job function is ''directly responsible for safety oversight'' of the public transportation system. FTA noted that the unique organizational framework of public transit systems does not reasonably allow for uniform designation of positions or functions that are ''directly responsible for safety oversight.''

FTA stated that once identified, designated personnel would have three years to complete the applicable training for the PTSCTP. FTA also proposed that designated personnel would be required to complete at least one hour of refresher training every two years following the completion of the initial PTSCTP requirements. FTA further stated that RTA personnel would be mandatory participants while State DOT and bus transit system personnel would be voluntary participants. All recipients would have discretion to determine the subject area and time for biannual refresher training. Seven commenters provided responses to this section. In general, commenters responded to FTA's proposed timeframe for completing the PTSCTP requirements; however, two commenters indicated they were unable to locate the specific requirements of the Reference Document.

One commenter stated that employees of rail systems should be required to meet the training requirements as soon as possible in order to ensure the safest transit operations for passengers. Several other commenters indicated that the three-year period for completing the required training should be extended because of potential scheduling conflicts. The commenters noted that

FTA's course availability is not always conducive to transit personnel being able to attend the training. Some commenters also indicated that there may be instances where the course location could interfere with attendance. One commenter suggested that FTA provide its training schedule as far in advance as possible in order to assist recipients with minimizing travel costs. The commenter also recommended that FTA increase the number of online courses.

One commenter indicated that FTA should not require the Transit System Security (TSS) course as a mandatory component of the PTSCTP curriculum since security matters are not generally under the purview of safety oversight personnel. Two commenters noted that the proposed rule required rail transit agencies to provide technical training to SSOA personnel and suggested that FTA instead develop specific rail transit technical training courses.

Regarding the requirement to identify personnel who are directly responsible for safety oversight, one commenter recommended that such personnel be limited to policymaking officials with broad safety accountabilities, rather than each employee who has a function or duty specific to an agency's safety plan. The commenter suggested that the rule apply only to those individuals who are accountable for the overall development, implementation, and review of the agency's safety program. Another commenter indicated that FTA use an approach in which it amplifies an SMS model where implementation of the agency safety plan is the shared responsibility of every position within the system (*i.e.,* safety, operations, maintenance, human resources, training, and administration). The commenter further suggested that FTA provide guidance, or identify criteria to assist agencies with objectively identifying staff subject to the PTSCTP requirements.

FTA Response: As noted in response to the section above, FTA disagrees with commenters who suggested that three years is not enough time to complete the required training. FTA has no indication that the current level of course offerings will not support completion of the requirements within three years. Review of the registration data website for interim training program registration indicates a significant number of those enrolling in the PTSCTP have already completed all, or some portion of the required TSSP component of the certificate program. However, FTA is providing additional course delivery dates to alleviate the potential burden due to the perceived lack of availability.

To facilitate course availability and predictability, FTA will continue to expand its capacity for delivering the PTSCTP curriculum at sites around the country and publish schedules as early as possible. Where appropriate, FTA will also work on expanding web based courses to increase training opportunities and further reduce costs associated with the PTSCTP.

Regarding SSOA training by RTAs, FTA did not propose a requirement for RTAs to provide technical training to SSOA personnel. However, FTA encourages SSOAs and RTAs to engage in joint training as much as practicable. This collaboration will only serve to promote a common framework of knowledge and improve communication between the RTA and the State regulator. Any training agreements between SSOAs and RTAs will be developed between the respective parties. If an RTA incurs additional expenses when including SSOA personnel with its training, then the parties can negotiate reimbursement for such expenses since SSOA training is an eligible expenditure of 49 U.S.C. 5329(e) grant funds.

FTA disagrees with commenters who suggested that FTA identify designated personnel for public transportation agencies. As commenters indicated in response to question 52 of the ANPRM that preceded the NPRM to this rule, each agency has its specific organizational construct and assignment of safety oversight functions. FTA continues to believe that each agency should have discretion to determine which functions and positions are directly responsible for safety oversight of the agency. However, FTA will provide guidance to assist RTAs with objectively identifying such personnel.

FTA agrees with commenters who indicated that employees who are in a position to be accountable for the development, implementation, and review of the agency's safety program should participate in the PTSCTP. This would also include RTA contractors. But the designation should not be limited only to personnel with management responsibility for the agency's safety plan. The designation should also include staff with primary responsibility for developing, implementing, and monitoring the agency's safety plan, as well as personnel who implement and execute SSOA requirements at the RTA. Depending on the size and organizational framework of the agency, this could be a few personnel or a sizable office or branch. The following guidance is provided to assist RTAs with identifying designated personnel:

SSOA's Program Standard—Processes and procedures an RTA must have in place to comply with the standard: Who at the RTA is responsible for developing, implementing or maintaining the following elements of the program standard?

(1) Program management;

(2) Program standard development;

(3) Program policy and objectives;

(4) Oversight of the agency safety plans and internal safety reviews (who will respond to the SSOA if the SSOA determines the plans are inadequate?);

(5) Triennial SSOA audits of Rail Public Transportation Agency Safety Plans (who will participate in the audit process and follow up on any findings or recommendations?);

(6) Accident notification (who is responsible for making appropriate notifications to FTA, SSOAs or when applicable FRA?);

(7) Investigations (who will conduct internal accident investigations or coordinate RTA investigations in accordance with the SSO program standard and any agreements in effect?), (if the RTA does not agree with elements of an SSOA report, who will submit a written dissent from the report?);

(8) Corrective action plans (CAPs) (who is responsible for developing and carrying out the CAPs required by the SSOA?), (who will manage an issued CAP, identifying steps to minimize, control, correct, or eliminate the risks and hazards identified by the CAP, the schedule for taking those actions, and the individuals responsible for taking those actions?), (who will periodically report to the SSOA on its progress in carrying out the CAP?), (who will collect, track, and analyze data on occurrences to develop leading indicators, to prevent the likelihood of future events, and to inform the practice of SMS across the RTA?).

FTA recognizes recipients may have questions as to which positions or functions should be designated as PTSCTP participants. Recipients may contact FTA via email at *FTASafetyPromotion@dot.gov* for assistance.

For the reasons herein, proposed paragraph (a) is revised to include RTA contractors and the phrase ''not subject to the safety oversight of another Federal agency'' is removed because the definition of ''rail fixed guideway public transportation systems'' includes the statement that such systems are not subject to FRA's jurisdiction. Paragraphs (b) and (c) are included in the final rule as proposed in the NPRM and proposed paragraph (d) is omitted now that the PTSCTP curriculum and training

requirements are listed in Appendix A to this rule.

Section 627.15 Evaluation of Prior Certification and Training

In the NPRM, FTA acknowledged that participants who have completed safety training from entities other than FTA should be able to have that training reviewed to determine if it is equivalent to the competencies of the PTSCTP curriculum. To that end, FTA proposed that a participant provide official documentation to FTA from the organization that conducted the training. FTA stated that the documentation should indicate the date(s) and subject matter of the training. In addition, the participant would be required to provide a narrative summary of the training objectives and the competencies obtained as a result of the training.

Six commenters responded to this section. In general, commenters agreed that FTA should review other safety training for PTSCTP equivalency. However, most did not agree with FTA's proposed process. Three commenters indicated that FTA should proactively evaluate training provided by other organizations. Commenters indicated the participant should not have to describe how the training meets the competency of the PTSCTP curriculum. One commenter recommended that FTA ''grandfather'' existing transit agency personnel who possess five years of experience executing the requirements of 49 CFR part 659. The commenter also stated that FTA should provide PTSCTP credit for personnel who possess a Certified Safety Professional credential/license. Another commenter suggested that FTA broadly and favorably consider equivalent training requests from those holding safety credentials, and degrees in safety. Lastly, one commenter noted that FTA should establish an objective measure for evaluating prior training and certification that is predictable, transparent, and fast.

FTA Response: In general, FTA agrees with commenters who indicated there should be an expedited and transparent process for evaluating safety training provided by entities other than FTA. To that end, FTA continues to refine its process for evaluating a participant's prior safety training. At this time, FTA is not prepared to provide independent approval of prior safety training or safety professional certifications without the participant providing official documentation and describing how the training or designation meets the objectives of the specific requirements of the PTSCTP. As the training program matures, FTA anticipates that it will offer a list of courses and training that meet the PTSCTP requirements. Accordingly, the final rule includes the text as proposed in the NPRM.

Section 672.21 Records

In the NPRM, FTA noted that an essential requirement of any training program is the maintenance of adequate records of training. To that end, FTA proposed to maintain an electronic record of each PTSCTP participant via its online enrollment process. However, FTA stated that the recipient would be required to ensure that its personnel periodically update their information with his or her course completion information. Designated personnel can enroll for the program and update their individual training records as they complete the applicable training requirements by following the instructions provided at FTA's training website. The following web address provides participants with enrollment and registration information: *https://www.transit.dot.gov/regulations-and-guidance/safety/safety-training.* Further, each recipient will be responsible for maintaining an updated training record for its designated personnel.

Additionally, FTA proposed that each SSOA maintain training records to document the technical training of its designated personnel for at least five years from the date the record is created. FTA noted this documentation would assist the SSOA in complying with the grant requirements in accordance 49 U.S.C. 5329(e)(3)(E) by documenting that SSOA personnel and contractors have received training to perform requisite safety oversight functions.

FTA received three comments to this section. One commenter indicated this section should be revised to require FTA to also maintain records of its personnel and contractors that are subject to PTSCTP training requirements. Commenters agreed that designated personnel should enroll through FTA's safety database; however, two commenters indicated that FTA should be responsible for updating the participant's training completion information, not the recipient.

One commenter stated that an SSOA should not be responsible for maintaining training records for its contractors. The commenter stated that SSOAs should be able to require a contractor to provide certification showing the contractor has completed the required training. The commenter suggested that once a contractor has provided the initial documentation, the SSOA should not be required to maintain their training records and the contractor should be responsible for maintaining their own records. The commenter also indicated that SSOA management should be able to rely on the FTA database to track the progress and status of SSOA personnel and contractors without the need for additional tracking mechanisms.

FTA Response: FTA concurs with commenters who indicated that FTA should administer and maintain the records for PTSCTP participants. However, FTA's ability to access participant training records for the PTSCTP does not relieve a recipient of the responsibility for ensuring its designated personnel, including its contractors, are in compliance with this part. The recipient is in the best position to ensure its designated personnel are timely updating course completion information. Furthermore, this process will assist the recipient with certifying compliance with this part.

FTA also agrees that a recipient, including an SSOA, should not be responsible for developing and maintaining training records for contractors. The contractor should be responsible for documenting and maintaining training records for its personnel. However, the recipient is responsible for ensuring its contractors comply with this part. To that end, a recipient may require its contractors to provide timely training documentation for contractor personnel subject to this part. To assist with grant documentation requirements, an SSOA should retain records of both its personnel and contractors in accordance with the timeframe prescribed in section 672.21(c) of this part.

As noted previously, this rule does not apply to FTA personnel and contractors. However, training records for FTA personnel are maintained in accordance with Federal standards; therefore, FTA disagrees with commenters who indicated this section should be revised to apply to FTA. However, as indicated by commenters, paragraph (b) is amended by replacing the term ''maintain'' with the term ''retain'' in reference to an SSOA's responsibility for the training records of its contractors. Paragraph (a) is included in the final rule as proposed, but subparagraphs (c)(1) through (5) are not included because Appendix A provides information required for SSOA technical training records.

Section 672.23 Availability of Records

FTA proposed a requirement for the safekeeping and limited release of information maintained in accordance with the requirements of this part. FTA

stated that information maintained in the training records should not be released without the consent of the participant for whom the record is maintained, except in limited circumstances. FTA further noted that a participant should receive a copy of his or her training records without cost to him or her upon request.

In the NPRM, FTA stated that a recipient would be required to provide appropriate Federal and SSOA personnel access to all of the recipient's facilities where required training is conducted. In addition, the recipient would be required to grant access to all training records required to be maintained by this part to appropriate U.S. Department of Transportation personnel and appropriate State officials who are responsible for safety oversight of public transportation systems. Additionally, a recipient would provide information regarding a participant's training when requested by the National Transportation Safety Board when such request is made as part of an accident investigation.

FTA Response: FTA received no comments directly related to this section. Accordingly, the text proposed in the NPRM is included in the final rule.

Section 672.31 Requirement To Certify Compliance

FTA noted in the NPRM that recipients are required annually to certify their compliance with Federal grant requirements as a condition for receiving Federal funding. FTA proposed that recipients for whom the PTSCTP training requirements are mandatory should self-certify compliance with this part through the annual FTA certification and assurances process. FTA proposed that the recipient identify someone within the organization as authorized to certify compliance with this part on behalf of the recipient.

One commenter to this section stated that FTA should annually certify its compliance with the PTSCTP requirements. Two other commenters indicated that similar to FTA's current annual certification and assurance process, a recipient's chief executive, such as the General Manager or equivalent, should be the official authorized to certify compliance. One of the commenters stated that a recipient's board of directors primarily performs policy-setting duties and should not be asked to certify safety compliance as it would be beyond their scope. Lastly, one commenter asked if the annual certification requirement also applied to SSOAs.

FTA Response: The proposed rule stated that the recipient's governing body or authority should identify the person responsible for certifying the recipient's compliance with this part. FTA did not indicate that the governing body or chief executive would specifically have to certify the recipient's compliance with this part.

Currently, recipients undergo FTA's annual self-certification and assurance process as a condition of receiving Federal transit funds administered through FTA (see *https://www.fta.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances*). Each recipient, including an SSOA, is required to annually certify compliance with numerous Federal requirements as a condition for receiving Chapter 53 funds. However, FTA is not a recipient; therefore, FTA is not included in the annual certification process. For recipients however, annual certification of compliance with this part will now be included with FTA's annual certifications and assurance. Consequently, a recipient is required to designate an authorized representative for the purpose of signing the certification on behalf of the recipient. Accordingly, the text proposed in the NPRM is included in the final rule.

Section 672.33 Compliance as a Condition of Financial Assistance

This section was proposed in the NPRM to outline options available to FTA when a recipient does not comply with the requirements of this part. This section indicated the Administrator's discretion to withhold Federal funds and provided a notice and comment period for recipients.

Two commenters responded to this section. One commenter suggested the section be revised to include its applicability to SSOAs unless they are considered recipients. The other commenter indicated that absent clarification regarding how to identify designated personnel there is the possibility for an uneven identification of personnel across different agencies which could lead to a situation, where in hindsight, the Administrator may decide that a recipient has failed to comply with the requirements.

FTA Response: FTA has reviewed this section in conjunction with the provisions of the Public Transportation Safety Program Safety Program (see 49 CFR part 670). FTA has determined that the provisions therein provide a recipient with sufficient notice and due process regarding the Administrator's authority and enforcement actions for noncompliance with this part. Therefore, FTA is not including proposed section 672.33 in this final rule.

Appendix A: Public Transportation Safety Certification Training Program

FTA proposed adopting the interim training program requirements listed in Section IV of the NPRM as the initial training requirements for the PTSCTP. FTA noted that the interim requirements were developed with public notice and comment and only became effective on May 28, 2015. For that reason, FTA only requested comments about the effectiveness of the curriculum and technical training requirements.

A number of commenters addressed FTA's proposed implementation of the PTSCTP and its applicability which we have already discussed; however, one commenter directly addressed the effectiveness of the proposed curriculum. The commenter noted that FTA should not require the Transit System Security (TSS) course as a mandatory component of the PTSCTP curriculum since security matters are not generally under the purview of safety oversight personnel.

FTA Response: FTA agrees with the commenter and has revised the PTSCTP curriculum so that the TSS course is no longer a required component. FTA recognizes the value of the TSS course and will continue to offer it, but concurs that security is not within the general scope of training required to implement 49 U.S.C. 5329(c)(1) safety oversight requirements. Additionally, FTA has determined that the course objectives for the 2-hour online ''SMS Gap course'' training are now included in the online ''SMS Awareness'' course and the ''SMS Principles for Transit'' course; therefore, it is no longer a requirement.

For clarity, FTA is renaming the ''SMS Principles for Rail Transit'' to ''SMS Principles for Transit'' in order to reflect its broader applicability across the industry. In addition, the ''SMS Principles for SSO Programs'' course is currently under development and is not expected to be available by the effective date of this rule; therefore, participants will have three years from the course's date of availability to complete it. The curriculum for the PTSCTP is revised accordingly and appears as Appendix A to this part and is no longer referred to as the Reference Document as noted in the NPRM. FTA will continue to evaluate the effectiveness of the PTSCTP requirements and should FTA determine revisions are warranted, FTA will seek public comment prior to doing so.

IV. Revised Regulatory Evaluation

Before MAP–21, FTA funded and supported a wide variety of safety training at no direct cost to the transit industry and participants engaged in the training on a voluntary basis. Subsequently, MAP–21 mandated that FTA develop an interim training safety certification program to enhance the technical qualifications of designated personnel directly responsible for safety oversight of public transportation systems in advance of a final rule for the Public Transportation Safety Certification Training Program. FTA noted that the interim program requirements were a condition of receiving Federal grant funding under sections 5307, 5311, and 5329 of title 49, United States Code. Although the interim program was not promulgated as a rulemaking, pursuant to 49 U.S.C. 5334(k), FTA sought public comment on the interim provisions. It was noted that most of a participant's cost in the interim program would be an eligible expenditure of Federal financial assistance provided under sections 5307, 5311, and 5329 grants and no cost benefit analysis was conducted. FTA will now incorporate many components of the interim program in the final rule for the PTSCTP; however, with a lessened regulatory burden for required participants.

The regulatory analyses below include the cost estimates for the final rule as required by Executive Order 12866 (Regulatory Planning and Review), using pre-MAP–21 estimates as the base line with revisions based on comments to the NPRM. The analysis also includes a deregulatory action cost estimate as required by Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), as the cost of the final rule is less than the cost of the interim rule.

For the initial analysis to assess the costs for the PTSCTP, FTA first reviewed data from the Transportation Safety Institute (TSI) the organization that provides FTA sponsored training for transit grantees and stakeholders. Using the TSI attendance data for the transit safety courses and knowledge of how SSOAs and rail transit agencies are organized, FTA developed a maximum and minimum number of personnel, to include employees and contractors that would be affected by the PTSCTP. FTA also reviewed the number of FTA personnel who participate in safety audits and examinations and determined the number of FTA personnel that would be required to undergo some level of training and certification.

In developing annual costs for personnel that would attend the PTSCTP, FTA assumed a minimum and maximum case scenario. Under the minimum case scenario, it is assumed that no additional staff will take the TSSP other than the ones who are already doing so. The TSI data prior to MAP–21 shows that on average 250 individuals attended the four TSSP courses, ranging from 175 attendees for transit rail incident investigations to 345 attendees for the transit rail system safety course. Given the total number of transit and SSOA entities, there were between two to three individuals per agency on average attending the courses already. The only additional training taken would be for the Safety Management System curriculum. In addition, to meet the requirements of this rule, the agencies would need to apply for certification for courses attended at TSI or at another venue and to maintain records of the training completed. The cost of the additional effort is included below.

The maximum case scenario assumes a higher number of attendees than the current practice and assumes no prior completion of safety training. This scenario is being presented to show the cost of the rule if the level of attendance increases due to the publication of this final rule and if the training already taken by individuals does not satisfy the TSSP course requirements under this final rule.

FTA notes that this analysis includes only the costs that could be quantified, which are those costs associated with the training, certification and record keeping. It does not reflect costs associated with any additional countermeasures that better trained personnel might take to increase safety that they would not have identified prior to taking the training.

The initial cost-benefit analysis was provided in the NPRM for public comment. Several commenters asked if additional Federal funding would be available to pay for the training and asked why additional funding is not available for RTAs, but available to SSOAs.

FTA Response: Funding determinations are made by Congress through statutory parameters for Chapter 53 recipients, including RTAs. In this instance, the training costs associated with the PTSCTP are an eligible expense for the Federal grants available to RTAs. However, Congress has provided funding for the State Safety Oversight program to eliminate the conflict of interest inherent between SSOAs and RTAs when RTAs provide funding to SSOAs that provide oversight of these RTAs. Furthermore, the incremental cost per RTA is not expected to be significant considering many agency employees already undertake or have completed most of the required courses. Additionally, much of the new SMS training is available online at no additional monetary cost, except staff time.

Several commenters noted the additional cost burden of travel to meet the training requirements if the courses are not available locally or online. One commenter indicated that its costs could be approximately $3,000 per course per employee to take the TSSP courses. It was also mentioned that employees will be away from their jobs to attend the training and this will result in loss of productivity. One commenter requested that costs be shown on a per capita basis for each recipient instead of the aggregate estimate reflected in the NPRM.

FTA Response: FTA does not expect agencies to incur significant additional travel costs since much of the SMS training is available online and FTA plans to increase its capacity to deliver training locally, which will provide more opportunities to attend without incurring additional expenses. FTA will also make training schedules available earlier to support improved scheduling. However, recognizing there may be occasions where travel may be required; FTA is including estimated travel costs in the revised assumptions for this rule.

Regarding cost estimates (labor cost), the assumptions herein reflect the loss of individual productivity to attend the training. It is anticipated that this cost will be regained through benefits from improved safety performance of the agencies. However, FTA notes that it is a challenge to project costs per recipient because each recipient is responsible for identifying which of its safety oversight personnel will be required participants. Furthermore, participants will have varying degrees of requirements to fulfill depending on their prior TSSP participation.

To determine aggregate costs, FTA made the following revisions to its analysis. FTA is now using the hourly wage rate for a transit manager from the 2016 Bureau of Labor Statistics to represent the average cost for personnel attending the training. The wage rate is adjusted to account for benefits and other employee compensation cost to reflect the full agency cost. The revised estimate also considers travel costs, assuming that 5 percent of required participants may not be able to attend courses locally. Furthermore, the Transit System Security (TSS) is eliminated, thus reducing the required

training from 140 hours over three years to 104 hours over the same period. The TSS training remains available for participants, but is optional.

Additionally, FTA has eliminated the 2-hour SMS Gap course, which reduces the number of SMS training from 41 hours over three years to 39 hours over the same period. This results in lower personnel training costs relative to PTSCTP compliance costs, but does not significantly reduce FTA's cost for providing the training.

For the minimum case, we continued with the assumption that all designated personnel under this program had already completed the required courses and would require only the SMS portion of the curriculum. This assumption is supported given the popularity of the TSSP within the industry. It is supported further by the level of voluntary participation of transit industry personnel obtained from current graduation/attendance data at TSI.

For the maximum case, we continue with the assumption that no one subject to the rule has a TSSP Certificate. In this case, all designated personnel would have to take and complete both the TSSP (minus the TSS course) and SMS coursework over the allotted three-year period. The table below shows the estimated counts used in our analysis. To simplify the analysis, we assume that the total designated personnel under this rule would undertake one-third of the total coursework each year. The required training would be completed over a period of three years.

ESTIMATED UNIVERSE OF POTENTIAL SSOA, RAIL TRANSIT AGENCY, AND FTA PERSONNEL

	Minimum	Maximum
SSOA Personnel	70	120
Rail Transit Agency Personnel	200	340
FTA Personnel	40	40
Total	310	500

Next, we determined the training by course that would be required of each person within the scope of the PTSCTP.

TSSP Curriculum

The TSSP consists of three courses.[1] The Table below lists the courses and duration.

TSSP COURSEWORK REQUIRED

[Completed within a 3 year period]

TSSP courses	Hours
Rail System Safety	36
Rail Incident Investigation	36
Transit System Security (TSS) (no longer mandatory but available as a voluntary course)	0
Effectively Managing Transit Emergencies	32
Total	104

SMS Curriculum

The SMS curriculum consists of two in-person courses and two online training sessions. While SSO personnel will be required to now take 39 hours of total training, rail transit agency personnel will no longer be required to take the 2 hour SMS Gap course.

SMS COURSEWORK—IN-CLASS AND ONLINE REQUIRED

[Completed within a 3 year period]

SMS courses	Hours
SMS Awareness	1
Safety Assurance	2
SMS Gap (no longer mandatory)	0
SMS Principles for Transit	20
SMS Principles for SSO Programs	16
Total	39

Wage Rates

An average wage rate of $86.11 is assumed for those taking training under this program, based on 2016 Bureau of Labor Statistics data on average wages for transit managers, including an adjustment for benefits and other employee compensation costs.[2] Using this wage assumption, we have revised

[1] The TSSP has two tracks, one for rail and one for bus-based transport. Since the PTSCTP is optional for bus-based transit we do not address those costs or benefits in the analysis.

[2] Bureau of Labor Statistics, Occupational Employment Statistics for Urban Transit Systems (485100), General and Operations Managers (11–1021), May 2014. The average hourly wage of $55.18 was multiplied by a benefits adjustment of 1.56.

Lower Bound and Upper Bound costs for attendance as depicted in the table below.

ANNUAL COSTS FOR ATTENDANCE OF SSOA, RAIL TRANSIT AGENCY, AND FTA PERSONNEL WITHIN A 3-YEAR PERIOD

	Number of personnel	Hourly rate	Training time (hours)	Annual attendance costs (total costs divided by 3)
Lower Bound Mandatory Cost/Year	310	$86.11	39 SSOA-FTA, 23 RTA	$255,174
Upper Bound Mandatory Cost/Year	500	86.11	143 SSOA-FTA, 127 RTA 120	1,896,156

In addition to the training requirements for certification, RTA personnel are required to attend one hour of training every two years to maintain the certification of their own choosing. This would add an ongoing annual cost of $13,347 for the minimum case scenario and just over $21,527 for the maximum case scenario.

Travel Costs

To allow for situations where staff are unable to attend local training, travel costs are estimated. Based on current air and hotel rates, and hourly wage rate of $86.11, transportation cost of $600 and lodging and meals of $250 per day and travel time cost of $690 for eight hours of travel time is estimated. It is unknown how many participants would need to travel to attend training. However, training is frequently provided by FTA across the country and agencies have three years in which to complete the training; therefore, only a small percentage are expected to travel. FTA estimated the cost assuming that only 5 percent of the required participants may travel to another location to attend a course out of state. The table below shows the annual travel costs for attending safety training courses.

ANNUAL TRAVEL COST TO ATTEND THE TRAINING

Personnel required to travel to attend training	Number of personnel	Travel cost per person	Total annual travel cost
Lower Bound (5%)	4	$4,078	$18,282
Upper Bound (5%)	8	11,694	89,852

Administrative Costs

To comply with the requirements of the final rule, SSOAs and RTAs will incur time to designate appropriate staff for training; seek evaluation for safety training previously taken to ensure compliance with FTA requirements; keep records of training completed and ensure certification. The total annual costs of these activities are estimated to be $212,735. The same cost estimate is applied to the lower and upper bound, although the cost would be higher for the lower bound since the course evaluation will not be needed if all personnel attend the new training, as assumed for the upper bound estimates.

Next, we assessed costs associated with developing, managing, and administering the coursework for the PTSCTP. First, we reviewed the course catalog for TSI and determined the percentage of courses required by the PTSCTP of the total courses offered—a little more than one-fourth (six courses plus three online courses out of 21 total courses or about 29 percent) of the total course offerings would be required of the combined TSSP/SMS training under this rule. Furthermore, of the total days of coursework offered by TSI, 30 percent were attributable to the TSSP/SMS coursework. To be conservative, we used a 30 percent weighting for allocating fixed costs and allocated full costs where we were able to identify costs resulting from the TSSP and/or SMS training components. Using data from FTA's budget for TSI, the cost for the administration of courses, contract costs, and costs for the development of new coursework, we developed the program costs. We factored no facility costs as regional transit agencies or FTA Regional Offices host courses. Lastly, no tuition fees are associated with taking the coursework for public agency employees, other than a small fee for course materials.

The total cost for FTA to deliver the courses required under PTSTCP was about $1.4 million. However, since the TSSP training was previously provided prior to MAP–21, this cost is excluded from estimating the incremental cost of this rule. SMS training courses have been more recently developed to support safety goals, thus that is the only cost included here.

TSI PROGRAM COSTS ASSOCIATED WITH TSSP AND SMS COURSEWORK

Contract Services	$211,600
Equipment, Supplies, Other *	33,291
Travel (Other than Course Delivery) *	7,886
Course Delivery	186,744
Indirect at 19%	106,332
Total Program	665,974

* Weighted Cost Allocation.

The total annual cost of providing the SMS training is estimated to be $665,974 per year. Table below shows the total annual cost of the final rule over the first three years.

TOTAL ANNUAL COSTS FOR THE PTSCTP OVER A 3 YEAR CERTIFICATION PERIOD

	SSOA and RTA costs	TSI costs	Total costs
Aggregate COSTS MIN	$486,191	$665,974	$1,152,166
Aggregate COSTS MAX	2,198,743	665,974	2,864,717

After completing the required training over the three-year period, RTA staff are required to complete an hour of refresher training every two years. These costs will incur beyond the three-year period discussed above. Similarly, any new personnel joining the agencies would be required to complete the training. To estimate the cost of training for the new staff, we used the rate of separations published in the U.S. Bureau of Labor Statistics monthly report, Job Opening and Labor Turnover. Using the rate of separation (quits, layoffs and discharges) of 1.8 percent for State and local government employees, excluding education, over the period September 2016 to September 2017, we estimated the number of staff requiring training after the third year. The annual cost of the refresher training and the new personnel is about $34,000 for the minimum case and $83,000 for the maximum case beyond the first three years. Using a ten year period of analysis, the total present value cost of the final rule is $8.4 million at 7 percent discount rate for the minimum case scenario and $3.4 million at 7 percent discount rate for maximum scenario. At the 7 percent discount rate, the annualized costs are $0.48 million and $1.2 million for the minimum and maximum scenario. The annualized cost for the minimum and the maximum case, at 3 percent discount rate is $0.42 million and $1.03 million respectively.

Potential Benefits

Since the interim provisions have been in effect for only a short time, we were unable to generate any estimate of their benefits. Thus, to assess the benefits for the PTSCTP, we considered how the training required in this rulemaking could strengthen the State Safety Oversight program, since better trained personnel would be expected to take actions that are likely to lead to decreased safety risks.

While the TSSP has been available for some time, it was an optional certification that many SSOA, rail, and bus safety oversight personnel sought out of self-initiative. With the delineation of a mandatory pool of safety oversight employees, FTA hopes to unify and harmonize the provision of safety-related activities across SSOAs and rail transit agencies. In this way, this pool of employees will gain knowledge to identify and control hazards with the ultimate goal of decreasing incidents. Additionally, FTA expects that the codification of the PTSCTP will help promote a safety culture within the transit industry. This safety culture should help instill a transit agency-wide appreciation for shared goals, shared beliefs, best practices, and positive and vigilant attitudes towards safety.

It may be difficult to quantify the effects of a positive safety culture, as a safety culture will develop over time. Characteristics of a positive safety culture include: Actively seeking out information on hazards; employee training; information exchanges; and understanding that responsibility for safety is shared. While the returns on investment in training should be fairly quick, establishing, promoting, and increasing safety in an industry that is already very safe is difficult to predict with any certainty.

Comparison of the Cost of the Final Rule With the Interim Provisions

On February 27, 2015, FTA issued a notice of interim safety certification training program provisions for Federal and State Safety Oversight Agency personnel and their contractor support who conduct safety audits and examinations of public transportation systems not otherwise regulated by another Federal agency. The proposed final rule will replace the provisions outlined in the interim notice. The training program outlined in this final rule will eliminate two requirements; the Transit System Security course and the SMS Gap online course. Rail security is not under FTA's authority, so it is not a training requirement mandated by 49 U.S.C. 5329. The SMS Gap course requirement is eliminated because many of the elements of this course are included in the SMS Principles for Transit. This reduces the burden of the final rule compared to the interim provisions enacted in February 2015. The table below shows the annual cost of the Interim Rule and the Final rule.

PUBLIC TRANSPORTATION SAFETY CERTIFICATION TRAINING PROGRAM—HOURS AND COST DECREASE

Training requirements	Interim rule	Final rule	Difference between rules
Safety Management System (SMS) Gap Course (Hours) [3]	[4] 41	39	−2
Transit System Security (TSS) Course (days) [5]	140	104	−36
Total	181	143	−38
Minimum Case Scenario Present Value Cost (7%)	$3,447,233	$3,395,753	−$51,480
Maximum Case Scenario Present Value Cost (7%)	$10,022,279	$8,436,102	−$1,586,177
Minimum Case Scenario Mandatory Annualized Cost (7%)	$490,808	$483,479	−$7,330
Maximum Case Scenario Annualized Cost ((7%))	$1,426,947	$1,201,111	−$225,836

Over a ten-year period, the final rule reduces the cost of the rule by $51,480 at the minimum case scenario and $1.6 million at the maximum case scenario using a discount rate of 7 percent. The annualized cost reductions of the final rule are $7,330 for the minimum case and $225,836 for the maximum case, using a 7 percent discount rate, resulting in a net benefit for the training participants. The reduced training requirements will not hinder the effectiveness of the safety training program since the participants will receive much of the relevant content through other courses or by other requirements, not covered under this rule certification requirements.

V. Regulatory Analyses and Notices

Regulatory Flexibility Act and Executive Order 13272

This rule was developed in accordance with Executive Order 13272 (Proper Consideration of Small Entities in Agency rulemaking) and DOT's policies and procedures to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) which requires an agency to review regulations to assess the impact on small entities. In compliance with the Regulatory Flexibility Act, FTA has evaluated the likely effects of the proposals set forth in this rule on small entities. This rule will apply to recipients of public transportation grants under 49 U.S.C. Chapter 53. Section 5329(e)(6) permits recipients of rural and urbanized area formula funds to use Federal funds to cover up to 80 percent of the PTSCTP costs. Additionally, FTA believes many of the PTSCPT participants will be eligible to receive credit for prior safety training which will further reduce the cost and impact associated with this rulemaking. For these reasons, FTA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and 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. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

FTA has determined this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866, Executive Order 13563, and the U.S. Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980, 44 FR 11034, Feb. 26, 1979). FTA has determined that this rulemaking is not economically significant. The proposals set forth in this rulemaking will not result in an effect on the economy of $100 million or more. The requirements set forth in the rulemaking 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.

Executive Order 13771

As indicated in the cost-benefit analysis above and the summary chart below, this final rule is considered an Executive Order 13771 deregulatory action because it reduces the cost of complying with FTA's Interim Safety Certification and Training Program (interim program) requirements promulgated in accordance with 49 U.S.C. 5329(c)(2) (see 80 FR 10619).

Training requirements	Interim rule	Final rule	Difference between rules
Safety Management System (SMS) Course (Hours) [6]	[7] 41	39	−2
Transit Safety and Security (TSS) Course (days) [8]	140	104	−36
Total	181	143	−38
Minimum Case Scenario Present Value Cost (7%)	$3,447,233	$3,395,753	−$51,480
Maximum Case Scenario Present Value Cost (7%)	$10,022,279	$8,436,102	−$1,586,177
Minimum Case Scenario Mandatory Annualized Cost (7%)	$490,808	$483,479	−$7,330
Maximum Case Scenario Annualized Cost ((7%))	$1,426,947	$1,201,111	−$225,836

Unfunded Mandates Reform Act of 1995

This rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The cost of training to comply with this rule is an eligible expenditure of Federal financial assistance provided to recipients under 49 U.S.C. Chapter 53. This rulemaking will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $155 million or more in any one year.

Executive Order 12372 (Intergovernmental Review)

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities were applied during this rulemaking.

Executive Order 13132 (Federalism)

This rulemaking has been analyzed in accordance with the principles and criteria established by Executive Order 13132, and FTA has determined that this rulemaking would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also concluded that this rulemaking would not preempt any State law or State regulation or affect the States' abilities to discharge

[3] FTA eliminated the ''SMS Gap'' course as part of the mandatory curriculum for the final rule since the ''SMS Principles for Transit'' course includes similar objectives.

[4] The number of hours of training for the SMS Principles for Rail Transit course (''SMS Principles for Transit'' in final rule) was incorrectly cited in the interim rule as 16 hours instead of 20 hours, this has been corrected in the final rule.

[5] Based on public comment FTA eliminated the TSS course as part of the mandatory curriculum for the final rule.

[6] FTA eliminated the ''SMS Gap'' course as part of the mandatory curriculum for the final rule since the ''SMS Principles for Transit'' course includes similar objectives.

[7] The number of hours of training for the SMS Principles for Rail Transit course (''SMS Principles for Transit'' in final rule) was incorrectly cited in the interim rule as 16 hours instead of 20 hours, this has been corrected in the final rule.

[8] Based on public comment FTA eliminated the TSS course as part of the mandatory curriculum for the final rule.

traditional State governmental functions.

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. In order to comply with the requirements to implement the PTSCTP in accordance with 49 U.S.C. 5329(c)(1), this rulemaking requires recipients to provide information to FTA regarding the participation of their respective designated personnel as abstracted below. Designated personnel would provide enrollment information, periodically update compliance with PTSCTP training requirements, and where applicable, submit supporting documentation of prior training for credit towards PTSCTP training requirements. All recipients of mandatory PTSCTP requirements would annually certify compliance with the PTSCTP requirements. Additionally, SSOAs would be required to develop annual technical training plans for FTA approval. The plans would support the SSOA requirement to demonstrate that applicable SSOA personnel are qualified to perform safety audits and examinations.

The information collection would be different for each type of recipient (Federal government personnel, Federal contractors, SSOAs and their contractors, and rail transit agencies). Therefore, the paperwork burden would vary. For example, the burden on SSOAs would be proportionate to the number of rail transit agencies within that State, and the size and complexity of those rail transit systems. This would affect the number of personnel designated for participation. FTA proposes to bear the cost associated with the development and maintenance of the website.

Type of Review: OMB Clearance. New information collection request.

Respondents: Currently there are 30 States with 60 rail fixed guideway public transportation systems in engineering, construction, and operations. The PRA estimate is based on participation in the PTSCTP by a total of 30 States and 60 rail transit agencies. In addition, we estimate participation by 35–45 SSOA contractors and approximately 30 Federal personnel and contractors.

Frequency: Information will be collected through the website on an ongoing basis throughout the year. Participants must complete training requirements within 3 years and refresher training every 2 years. Certification of compliance will be required annually.

Estimated Total Annual Burden Hours: In the first year of the program, we estimate a total burden of between 5,209 (minimum) and 5,909 (maximum) hours, depending on how many individuals are required to participate. Annually, each SSOA would devote between 88–91 hours to information collection activities including the development and submission of training plans to FTA. SSOA contractors would devote approximately 140–180 hours to information collection activities. These activities would have a combined total of 2,780–2,920 hours, depending on how many individuals are required to participate. The mandatory participants affected by 49 U.S.C. 5329(c)(1) and today's rulemaking include 60 rail fixed guideway public transportation systems which would spend an estimated annual total of between 2,060 (minimum) and 2,620 (maximum) hours on information collection activities in the first year, or approximately 34–44 hours each. Finally, FTA is expected to expend approximately 249 hours in furtherance of the PTSCTP in the first year, and Federal contractors will spend an estimated four (4) hours each, for a combined total of approximately 369 hours in the first year. For this rule, OMB has issued control number 2132–0578.

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 rulemaking is categorically excluded under FTA's environmental impact procedure at 23 CFR 771.118(c)(4), 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.

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

Executive Order 12898 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 to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rulemaking under Executive Order 13045. FTA certifies that this 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 rulemaking under Executive Order 13175 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 rulemaking under Executive Order 13211 and 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 required.

Privacy Act

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

Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of 49 U.S.C. 5329(c)(1) as amended, which requires the Secretary of Transportation to prescribe a public transportation safety certification training program for Federal and State employees, and other designated personnel, who conduct safety audits and examinations of public transportation systems and employees of public transportation agencies directly responsible for safety oversight. The Secretary is authorized to issue regulations to carry out the general provisions of this statutory requirement 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 can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 672

Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

K. Jane Williams,

Acting Administrator.

■ For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5329(c), 5329(f), and the delegation of authority at 49 CFR 1.91, FTA hereby amends Chapter VI of Title 49, Code of Federal Regulations, by adding part 672 to read as follows:

PART 672—PUBLIC TRANSPORTATION SAFETY CERTIFICATION TRAINING PROGRAM

Subpart A—General Provisions

Subpart B—Training Requirements

Subpart C—Administrative Requirements

Subpart D—Compliance and Certification Requirements

Authority: 49 U.S.C. 5329(c) and (f), and 49 CFR 1.91.

Subpart A—General Provisions

§ 672.1 Purpose.

(a) This part implements a uniform safety certification training curriculum and requirements to enhance the technical proficiency of individuals who conduct safety audits and examinations of public transportation systems operated by public transportation agencies and those who are directly responsible for safety oversight of public transportation agencies.

(b) This part does not preempt any safety certification training requirements required by a State for public transportation agencies within its jurisdiction.

§ 672.3 Scope and applicability.

(a) In general, this part applies to all recipients of Federal financial assistance under 49 U.S.C. chapter 53.

(b) The mandatory requirements of this part will apply only to State Safety Oversight Agency personnel and contractors that conduct safety audits and examinations of rail fixed guideway public transportation systems, and designated personnel and contractors who are directly responsible for the safety oversight of a recipient's rail fixed guideway public transportation systems.

(c) Other FTA recipients may participate voluntarily in accordance with this part.

§ 672.5 Definitions.

As used in this part:

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

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

Designated personnel means:

(1) Employees and contractors identified by a recipient whose job function is directly responsible for safety oversight of the public transportation system of the public transportation agency; or

(2) Employees and contractors of a State Safety Oversight Agency whose job function requires them to conduct safety audits and examinations of the rail fixed guideway public transportation systems subject to the jurisdiction of the agency.

Directly responsible for safety oversight means public transportation agency personnel whose primary job function includes the development, implementation and review of the agency's safety plan, and/or the SSOA requirements for the rail fixed guideway public transportation system pursuant to 49 CFR parts 659 or 674.

Examination means a process for gathering or analyzing facts or information related to the safety of a public transportation system.

FTA means the Federal Transit Administration.

Public transportation agency means an entity that provides public transportation service as defined in 49 U.S.C. 5302 and that has one or more modes of service not subject to the safety oversight requirements of another Federal agency.

Rail fixed guideway public transportation system means any fixed guideway system as defined in § 674.7 of this chapter.

Recipient means a State or local governmental authority, or any other operator of a public transportation system receiving financial assistance under 49 U.S.C. chapter 53.

Safety audit means a review or analysis of safety records and related materials, including, but not limited to, those related to financial accounts.

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

State Safety Oversight Agency (SSOA) means an agency established by a State

that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations set forth in 49 CFR parts 659 and 674.

Subpart B—Training Requirements

§ 672.11 Designated personnel who conduct safety audits and examinations.

(a) Each SSOA shall designate its personnel and contractors who conduct safety audits and examinations of public transportation systems, including appropriate managers and supervisors of such personnel, that must comply with the applicable training requirements of Appendix A to this part.

(b) Designated personnel shall complete applicable training requirements of this part within three (3) years of their initial designation. Thereafter, refresher training shall be completed every two (2) years. The SSOA shall determine refresher training requirements which must include, at a minimum, one (1) hour of safety oversight training.

§ 672.13 Designated personnel of public transportation agencies.

(a) Each recipient that operates a rail fixed guideway public transportation system shall designate its personnel and contractors who are directly responsible for safety oversight and ensure their compliance with the applicable training requirements set forth in Appendix A to this part.

(b) Each recipient that operates a bus or other public transportation system not subject to the safety oversight of another Federal agency may designate its personnel who are directly responsible for safety oversight to participate in the applicable training requirements as set forth in Appendix A to this part.

(c) Personnel designated under paragraph (a) of this section shall complete applicable training requirements of this part within three (3) years of their initial designation. Thereafter, refresher training shall be completed every two (2) years. The recipient shall determine refresher training requirements which must include, at a minimum, one (1) hour of safety oversight training.

§ 672.15 Evaluation of prior certification and training.

(a) Designated personnel subject to this part may request that FTA evaluate safety training or certification previously obtained from another entity to determine if the training satisfies an applicable training requirement of this part.

(b) Designated personnel must provide FTA with an official transcript or certificate of the training, a description of the curriculum and competencies obtained, and a brief statement detailing how the training or certification satisfies the applicable requirements of this part.

(c) FTA will evaluate the submission and determine if a training requirement of this part may be waived. If a waiver is granted, designated personnel are responsible for completing all other applicable requirements of this part.

Subpart C—Administrative Requirements.

§ 672.21 Records.

(a) *General requirement.* Each recipient shall ensure that its designated personnel are enrolled in the PTSCTP. Each recipient shall ensure that designated personnel update their individual training record as he or she completes the applicable training requirements of this part.

(b) *SSOA requirement.* Each SSOA shall retain a record of the technical training completed by its designated personnel in accordance with the technical training requirements of Appendix A to this part. Such records shall be retained by the SSOA for at least five (5) years from the date the record is created.

§ 672.23 Availability of records.

(a) Except as required by law, or expressly authorized or required by this part, a recipient may not release information pertaining to designated personnel that is required by this part without the written consent of the designated personnel.

(b) Designated personnel are entitled, upon written request to the recipient, to obtain copies of any records pertaining to his or her training required by this part. The recipient shall promptly provide the records requested by designated personnel and access shall not be contingent upon the recipient's receipt of payment for the production of such records.

(c) A recipient shall permit access to all facilities utilized and records compiled in accordance with the requirements of this part to the Secretary of Transportation, the Federal Transit Administration, or any State agency with jurisdiction over public transportation safety oversight of the recipient.

(d) When requested by the National Transportation Safety Board as part of an accident investigation, a recipient shall disclose information related to the training of designated personnel.

Subpart D—Compliance and Certification Requirements

§ 672.31 Requirement to certify compliance.

(a) A recipient of FTA financial assistance described in § 672.3(b) shall annually certify compliance with this part in accordance with FTA's procedures for annual grant certification and assurances.

(b) A certification must be authorized by the recipient's governing board or other authorizing official, and must be signed by a party specifically authorized to do so.

Appendix A to Part 672—Public Transportation Safety Certification Training Program

A. Required Curriculum Over a Three-Year Period

(1) *FTA/SSOA personnel and contractor support, and public transportation agency personnel with direct responsibility for safety oversight of rail fixed guideway public transportation systems:*

(a) One (1) hour course on SMS Awareness—e-learning delivery (all required participants)

(b) Two (2) hour courses on Safety Assurance—e-learning delivery (all required participants)

(c) Twenty (20) hours on SMS Principles for Transit (all required participants)

(d) Sixteen (16) hours on SMS Principles for SSO Programs (FTA/SSOA/contractor support personnel only)

(e) TSSP curriculum (minus Transit System Security (TSS) course) (all required participants—credit will be provided if participant has a Course Completion Certificate of previously taken TSSP courses)

(i) Rail System Safety (36 hours)

(ii) Effectively Managing Transit Emergencies (32 hours)

(iii) Rail Incident Investigation (36 hours)

(2) *FTA/SSOA/contractor support personnel* (*technical training component*):

(a) Each SSOA shall develop a technical training plan for designated personnel and contractor support personnel who perform safety audits and examinations. The SSOA will submit its proposed technical training plan to FTA for review and evaluation as part of the SSOA certification program in accordance with 49 U.S.C. 5329(e)(7). This review and approval process will support the consultation required between FTA and SSOAs regarding the staffing and qualification of the SSOAs' employees and other designated personnel in accordance with 49 U.S.C. 5329(e)(3)(D).

(b) Recognizing that each rail fixed guideway public transportation system has unique characteristics, each SSOA will identify the tasks related to inspections, examinations, and audits, and all activities requiring sign-off, which must be performed by the SSOA to carry out its safety oversight requirements, and identify the skills and knowledge necessary to perform each task at that system. At a minimum, the technical training plan will describe the process for

receiving technical training in the following competency areas appropriate to the specific rail fixed guideway public transportation system(s) for which safety audits and examinations are conducted:

(i) Agency organizational structure

(ii) System Safety Program Plan and Security Program Plan

(iii) Knowledge of agency:

(I) Territory and revenue service schedules

(II) Current bulletins, general orders, and other associated directives that ensure safe operations

(III) Operations and maintenance rule books

(IV) Safety rules

(V) Standard Operating Procedures

(VI) Roadway Worker Protection

(VII) Employee Hours of Service and Fatigue Management program

(VIII) Employee Observation and Testing Program (Efficiency Testing)

(IX) Employee training and certification requirements

(X) Vehicle inspection and maintenance programs, schedules and records

(XI) Track inspection and maintenance programs, schedules and records

(XII) Tunnels, bridges, and other structures inspection and maintenance programs, schedules and records

(XIII) Traction power (substation, overhead catenary system, and third rail), load dispatching, inspection and maintenance programs, schedules and records

(XIV) Signal and train control inspection and maintenance programs, schedules and records

(c) The SSOA will determine the length of time for the technical training based on the skill level of the designated personnel relative to the applicable rail transit agency(s). FTA will provide a template as requested to assist the SSOA with preparing and monitoring its technical training plan and will provide technical assistance as requested. Each SSOA technical training plan that is submitted to FTA for review will:

(i) Require designated personnel to successfully:

(I) Complete training that covers the skills and knowledge needed to effectively perform the tasks.

(II) Pass a written and/or oral examination covering the skills and knowledge required for the designated personnel to effectively perform his or her tasks.

(III) Demonstrate hands-on capability to perform his or her tasks to the satisfaction of the appropriate SSOA supervisor or designated instructor.

(ii) Establish equivalencies or written and oral examinations to allow designated personnel to demonstrate that they possess the skill and qualification required to perform their tasks.

(iii) Require biennial refresher training to maintain technical skills and abilities which includes classroom and hands-on training, as well as testing. Observation and evaluation of actual performance of duties may be used to meet the hands-on portion of this requirement, provided that such testing is documented.

(iv) Require that training records be maintained to demonstrate the current qualification status of designated personnel assigned to carry out the oversight program. Records may be maintained either electronically or in writing and must be provided to FTA upon request.

(v) Records must include the following information concerning each designated personnel:

(I) Name;

(II) The title and date each training course was completed and the proficiency test score(s) where applicable;

(III) The content of each training course successfully completed;

(IV) A description of the designated personnel's hands-on performance applying the skills and knowledge required to perform the tasks that the employee will be responsible for performing and the factual basis supporting the determination;

(V) The tasks the designated personnel are deemed qualified to perform; and

(VI) Provide the date that the designated personnel's status as qualified to perform the tasks expires, and the date in which biennial refresher training is due.

(vi) Ensure the qualification of contractors performing oversight activities. SSOAs may use demonstrations, previous training and education, and written and oral examinations to determine if contractors possess the skill and qualification required to perform their tasks.

(vii) Periodically assess the effectiveness of the technical training. One method of validation and assessment could be through the use of efficiency tests or periodic review of employee performance.

B. Voluntary Curriculum

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

(a) SMS Awareness—e-learning delivery

(b) Safety Assurance—e-learning delivery

(c) SMS Principles for Transit

(d) Courses offered through the TSSP Certificate (Bus)

i. Effectively Managing Transit Emergencies

ii. Transit Bus System Safety

iii. Fundamentals of Bus Collision Investigation

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APPENDIX F

49 CFR Part 670
National Public Transportation Safety Program

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 670

[Docket No. FTA–2015–0009]

RIN 2132–AB22

Public Transportation Safety Program

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

ACTION: Final rule.

SUMMARY: The Federal Transit Administration is issuing a final rule to establish substantive and procedural rules for FTA's administration of a comprehensive safety program to improve the safety of the Nation's public transportation systems. This final rule provides the framework for FTA to monitor, oversee and enforce transit safety, based on the methods and principles of Safety Management Systems.

DATES: The effective date of this rule is September 12, 2016.

FOR FURTHER INFORMATION CONTACT: For program matters, contact Brian Alberts, Office of Transit Safety and Oversight, (202) 366–1783 or *brian.alberts@dot.gov.* For legal matters, contact Candace Key, Office of Chief Counsel, (202) 366–1936 or *candace.key@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of Regulatory Action

This final rule establishes substantive and procedural rules to support the Federal Transit Administrator in carrying out the Public Transportation Safety Program (Safety Program), first authorized in the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141 (2012)), and codified at 49 U.S.C. 5329. On December 4, 2015, the President signed into law the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94 (2015)). The FAST Act made two amendments to the Safety Program that affect today's rulemaking and are discussed further, below.

B. Statutory Authority

Under 49 U.S.C. 5329 (Section 5329), FTA, through the authority delegated by the Secretary of the Department of Transportation, must create a comprehensive Public Transportation Safety Program. Most notably, Section 5329 provides FTA with the following explicit authorities to administer the Safety Program and to take enforcement actions:

- 49 U.S.C. 5329(f), provides FTA with the authority to inspect and audit a public transportation system; make reports and issue directives with respect to the safety of a public transportation system or the public transportation industry generally; issue subpoenas and take depositions; require the production of documents; prescribe recordkeeping and reporting requirements; investigate public transportation accidents and incidents; enter into and inspect the equipment, rolling stock, operations and relevant records of a public transportation system; and issue regulations.
- 49 U.S.C. 5329(g) authorizes FTA to take enforcement actions against a recipient of Federal financial assistance under 49 U.S.C. chapter 53 that is noncompliant with Federal transit safety law, through issuing directives, requiring more frequent oversight, imposing more frequent reporting requirements, requiring that chapter 53 funds be spent to correct safety deficiencies before those funds are spent on other projects, and withholding funds from a recipient.
- 49 U.S.C. 5329(h) authorizes FTA to impose restrictions and prohibitions on a recipient's operations, where FTA determines that an unsafe practice or condition creates a substantial risk of death or personal injury.

C. Summary of Major Provisions

In the Notice of Proposed Rulemaking (NPRM), 80 FR 48794, (August 14, 2015), FTA proposed (1) to add a new part 670, ''Public Transportation Safety Program,'' to title 49 of the Code of Federal Regulations (CFR); (2) to formally adopt a Safety Management Systems (SMS) approach as the foundation of the Safety Program; (3) to establish substantive and procedural rules for FTA's administration of the Safety Program; and (4) to describe the contents of a National Public Transportation Safety Plan (National Safety Plan or Plan).

This final rule will add a new part 670, ''Public Transportation Safety Program,'' to title 49 of the CFR. In response to public comments, FTA has made a number of nonsubstantive, clarifying edits. In addition, FTA has made the following substantive changes:

1. Amended section 670.23(b) to state that FTA may withhold not more than 25 percent of a recipient's Urbanized Area Formula funds.

2. Amended section 670.27 to provide that the Deputy Administrator may issue special directives, with petitions for reconsideration going to the Administrator.

3. Amended section 670.29 to remove language stating that FTA would consider whether a recipient has complied with an advisory when taking enforcement actions.

D. Costs and Benefits

This final rule establishes substantive and procedural rules for FTA's authority to inspect, investigate, audit, examine and test transit agencies' facilities, equipment, and records; direct or withhold Federal transit funds; and issue directives and advisories. The final rule does not impose additional costs on entities other than FTA. The costs to recipients associated with FTA's enforcement authorities are captured in the rulemakings for Public Transportation Agency Safety Plans, State Safety Oversight, and the Public Transportation Safety Certification Training Program. FTA received a number of comments on the cost assumptions in the NPRM, which are summarized in section III, below.

II. Rulemaking Background

On October 3, 2013, FTA introduced the transit industry to fundamental changes to the Federal transit safety program authorized by MAP–21 with a consolidated advance notice of proposed rulemaking (ANPRM). 78 FR 61251. FTA issued the ANPRM to provide the public with a better understanding of FTA's proposed approach to implementing the requirements for transit asset management and safety, and to obtain stakeholder input. Throughout the ANPRM, FTA expressed its intention to adopt a comprehensive approach to transit asset management and safety that would be scalable and flexible. In addition, the ANPRM highlighted the inherent linkages between asset condition (state of good repair) and safety performance through the explanation of FTA's anticipated proposal to adopt the principles and methods of SMS as the foundation for the development, implementation, oversight and enforcement of the Safety Program.

In the August 2015 NPRM, FTA proposed a series of specific substantive and procedural rules for FTA's administration of the Safety Program. FTA took the public comments on both the ANPRM and NPRM into consideration in developing today's final rule.

III. Summary of NPRM Comments and FTA's Responses

FTA received comments from 118 entities, including transit agencies, trade associations, state and local governments, and private citizens. Some comments were outside the scope of this rulemaking, and some pertained to other safety rulemakings. For example, many commenters expressed support for MAP–21's safety objectives, but indicated that FTA appeared to be using language to implement SMS principles that would be more appropriate for the rail transit industry or that do not translate easily to the bus industry. To the extent these comments concerned the applicability of FTA's authority to specific types of transit agencies, please see the below discussion on ''Purpose and Applicability.'' To the extent these comments concerned the scalability of SMS, we believe they are more appropriately handled in the final rule concerning the Public Transportation Agency Safety Plans, which FTA plans to issue in the coming months. In general, this document does not respond to those comments that were not related to the substance of today's rulemaking; however, to assist with understanding the intent of today's rule, FTA does address some comments that are related to other safety rulemakings. Following are summaries of the comments received and FTA's responses.

A. General Comments

Comments: Costs and Benefits

A number of commenters stated that the rule would have moderate to significant direct cost implications and economic impacts, due to its detailed implementation requirements, including nationwide SMS implementation. Some commenters were concerned that the proposed rule would impose costs and administrative burdens on States and transit agencies. Some commenters suggested that the NPRM would be an ''unfunded mandate'' because FTA did not identify any specially designated funding that could be used by recipients towards complying with the rule. Some commenters stated that FTA had not properly accounted for the costs to recipients, including State Safety Oversight Agencies (SSOAs), to implement the other rulemakings required under 49 U.S.C. 5329. Some commenters indicated that it is difficult to evaluate and quantify the costs of implementing each component of the Safety Program rule until FTA issues all of the final rules on safety.

Several commenters requested that FTA cite the research study that provided the data and analysis supporting its assumption that the rule would not have a financial impact on the economy, States, and transit agencies. Some commenters noted that recipients would incur additional costs such as requiring more staff to implement SMS and comply with FTA's safety rulemakings. Other commenters suggested that recipients would incur costs when responding to FTA enforcement actions.

FTA Response: Costs and Benefits

FTA has considered the comments and continues to find that this rule does not impose specific costs to recipients. Rather, this final rule establishes substantive and procedural rules to support FTA's own administration of the Safety Program. The final rule does not require recipients to take any specific action. Specific requirements for recipients, such as implementing SMS, have been outlined by FTA in the proposed and final rulemakings (as applicable) for Public Transportation Agency Safety Plans, the State Safety Oversight Program, and the Public Transportation Safety Certification Training Program. The cost projections, underlying assumptions, and research for each requirement are included in the cost benefit analysis section for each of those rulemakings.

Comments: Funding

A few commenters stated that adequate funding should be set aside, authorized, and appropriated by Congress prior to implementation of this rulemaking. Further, a few commenters indicated that funding to implement the Safety Program (including reporting requirements) should not come from existing operating and capital improvement grant funds, but rather from new and additional grant funds set aside by FTA. One commenter suggested that FTA create a special category of funding that local agencies could use to pay for the costs to mitigate risks associated with safety inspection findings. One commenter suggested that FTA designate special funding for hazard mitigation.

Some commenters noted that FTA should be aware of existing and increasing funding shortfalls already faced by many recipients, including forced service cuts, fare increases and layoffs. Commenters noted that the expected cost implications would create significant issues with their prioritization of funding.

Several commenters recommended that FTA work to secure the necessary funding at the Federal, State, and local level and that each State be allowed to distribute the funds. One commenter stated that FTA should examine the process by which other U.S. Department of Transportation agencies secure funding for their safety programs.

FTA Response: Funding

The Safety Program is a requirement of 49 U.S.C. 5329. Congress determines the level of funding for the Federal transit program. FTA recognizes the need for increased investments in transit at all levels of government, and recommends funding levels for the Federal transit programs through the annual congressional appropriations process.

Comments: Tribal Consultation

FTA received one comment related to Tribal consultation. The commenter indicated that the worthy goal of this rulemaking can only properly be realized in Indian Country following meaningful consultation with Tribal governments and technical discussions and collaboration with the Tribal Transportation Program Coordinating Committee. The commenter noted that most Tribal transit systems operate on a very small scale, and with severe financial and administrative limitations. The commenter stated that for these practical reasons, FTA has an obligation as a prudent policy maker to engage in a meaningful consultation with Tribal nations prior to developing regulations that will apply to Tribally-operated transit systems. The commenter stated that the represented Tribes do not agree with FTA's view that Tribal consultation requirements do not apply to this rule. The commenter recommended that FTA either clarify the scope of the rule so that it does not apply to Tribes or engage in formal Tribal consultation before issuing a final rule.

FTA Response: Tribal Consultation

FTA appreciates the comments from Tribal representatives. However, FTA disagrees that this rule will have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.'' Executive Order 13175, November 6, 2000. This rule establishes substantive

and procedural rules for FTA's administration of the Safety Program. As noted above, this regulation outlines FTA's authorities to conduct reviews, audits, investigations, examinations, inspections and testing, and to issue findings and directives which would require corrective actions by recipients. The rule does not impose specific requirements on Tribes or any other recipients. Therefore, FTA finds that the final rule does not impose substantial direct effects on one or more Indian Tribes and does not impose substantial direct compliance costs on Tribal governments.

Although not required to under Executive Order 13175, FTA has engaged in active consultation with Tribes in the development of this final rule. In advance of publishing an NPRM, FTA sought comment from the transit industry on a wide range of topics pertaining to the new Public Transportation Safety Program provisions authorized by MAP–21 through an ANPRM. FTA asked specific questions about how FTA should apply the new safety requirements to recipients of the section 5311 Tribal Transit Formula Program and Tribal Transit Discretionary Program. Additionally, FTA continued to engage with the industry following the publication of the NPRM through subsequent outreach efforts, including a webinar for small, rural and Tribal transit providers, which was held on October 27, 2015. FTA also held a listening session at the National Rural Transit Assistance Program Annual Meeting, which historically has been well attended by Tribal representatives.

Comments: Other

One commenter suggested that the proposed rule would create federalism issues and asked FTA to explain why it did not believe that the rule would create federalism issues.

FTA Response: Other

Pursuant to Executive Order 13132, to the extent practicable and permitted by law, a Federal agency cannot promulgate two types of rules unless it meets certain conditions. The two types of rules are:

1. Rules with Federalism Implications, substantial direct compliance costs on state and local governments, and not required by statute, and

2. Rules with Federalism Implications and that preempt state or local law.

Federalism Implications are defined as having substantial direct effects on States or local governments (individually or collectively), on the relationship between the National government and the States, or on the distribution of power and responsibilities among the various levels of government. FTA does not believe that this rule has substantial direct effects on States or local governments or the distribution of power and responsibilities among the various levels of government. Further, this rule does not preempt State or local law. This rule merely restates FTA's statutory authority to administer the Safety Program and provides processes to support FTA's administration of the Safety Program.

B. Section by Section Comments

Subpart A General Provisions

670.1 Purpose and Applicability

This section proposed that the purpose of the regulations would be to establish a Public Transportation Safety Program, and that the part would apply to all recipients of Federal transit funds.

Comments: Purpose and Applicability

Several commenters requested clarification regarding the applicability of the proposed rule. One commenter asked for clarification regarding the statutory authority that was referenced in the proposed purpose and applicability section.

One commenter stated that the proposed rule could be read to apply to Tribes that are direct recipients and to Tribes that are subrecipients of a State. Some commenters suggested that the rule should not apply to commuter rail operators that are subject to Federal Railroad Administration (FRA) regulations and recommended that FTA amend subpart D to clearly exclude commuter railroads. A few commenters queried whether the proposed rule would apply to bus operations. Two commenters asked if SSOAs would be considered recipients within the scope of this rule. One commenter suggested that FTA clarify whether the proposed rule would apply to third party contractors.

Some commenters indicated that the rule should allow flexibility for a State recipient to determine whether the rules should apply to subrecipients. One commenter asserted that Section 5329 allows FTA to adopt a different approach for the Enhanced Mobility of Seniors and Individuals with Disabilities Formula Program authorized at 49 U.S.C. 5310 (Section 5310) because Section 5329 specifically references the Rural Area Formula Program, 49 U.S.C. 5311, and the Urbanized Area Formula Program, 49 U.S.C. 5307, but makes no reference to Section 5310 grantees. The commenter recommended that FTA add language under section 670.1 to state that the part would not apply to public transportation systems that only receive Section 5310 funds. The commenter also recommended that FTA allow direct recipients under the Section 5310 program to lay out their approach to safety for their subrecipients in the State or Program Management Plan required under the Section 5310 program circular (C 9070 1G).

FTA Response: Purpose and Applicability

With the enactment of MAP–21, Congress directed FTA to develop a Public Transportation Safety Program for all recipients of Federal financial assistance under 49 U.S.C. chapter 53. Section 5329(a) of Title 49 of the United States Code specifically defines recipient as a ''State or local governmental authority, or any other operator of a public transportation system.'' Accordingly, this final rule applies to recipients of Federal financial assistance under 49 U.S.C. chapter 53, regardless of mode, including recipients of funding under 49 U.S.C. 5310 that provide public transportation, States, SSOAs, and Tribes. The rule applies to contractors who function in the capacity of the defined recipients; however, a recipient ultimately is responsible for ensuring its contractors are in compliance with the Safety Program.

FTA recognizes that some recipients, such as commuter rail operators, are subject to the safety regulatory requirements of other Federal agencies. Accordingly, a chapter 53 recipient that operates commuter rail, light rail, and a bus system will continue to have its commuter rail operations governed by the FRA, but its light rail and bus operations will be governed by 49 U.S.C. 5329 and FTA's safety regulations.

FTA has amended this section in the final rule to align with the definition of ''recipient'' at 49 U.S.C. 5329(a) and to clarify that the rule establishes substantive and procedural rules for FTA's administration of the Safety Program.

670.3 Policy

This section proposed the formal adoption of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States.

Comments: Policy: Safety Management Systems

A number of commenters indicated support for FTA's adoption of SMS principles and methods as the basis for

the Safety Program. Other commenters were critical of SMS being FTA's sole approach to implementing the Safety Program. Some commenters stated that FTA's approach is focused on urban rail transit systems. These commenters noted that FTA should provide alternative methods for implementing the Safety Program that are consistent with SMS concepts, but are more applicable to smaller bus systems.

Several commenters suggested that FTA adopt an approach that is simple to understand and easy to implement. One commenter expressed confidence that an SMS approach would result in improved and uniform safety standards across the country, but suggested that without further clarification from FTA, the proposed rule could unduly burden smaller public transportation systems by subjecting them to currently unknown facets of SMS that are only necessary or, in practice, applicable to the largest public transportation systems.

FTA RESPONSE: Policy: Safety Management System

FTA understands those commenters that expressed concern over FTA's proposed adoption of SMS as the basis for the Safety Program. To clarify, the NPRM did not propose, nor does this final rule require a recipient to adopt SMS. On February 5, 2016, FTA issued a proposed rule for Public Transportation Agency Safety Plans that would require each recipient to develop an agency safety plan based on SMS (*See* 81 FR 6344–71). The preamble to that rule describes SMS as a scalable and flexible approach that can apply across the transit industry. The comment period for the Public Transportation Agency Safety Plan closed on April 5, 2016. FTA is reviewing the public comments and anticipates publishing a final rule this calendar year.

FTA disagrees with those commenters who suggest that SMS is not a practical approach for the Nation's diverse transit industry. FTA is taking a risk-based, proactive approach to implementation of the Public Transportation Safety Program. Specifically, the SMS pillars of safety risk management and safety assurance are designed to assist in identifying in advance where potential safety risks reside, and developing and implementing mitigations (rules, directives, guidance, best practices) that would prevent the likelihood and minimize the severity of the risk. FTA is committed to developing, implementing, and consistently improving strategies and processes to ensure that transit achieves the highest practicable level of safety. SMS is FTA's approach to achieving this goal by building a 21st-century safety regime that is flexible, scalable, and responsive to emerging safety issues.

FTA has revised this section in the final rule to clarify that the policy statement specifically applies to actions undertaken by FTA.

670.5 Definitions

This section included proposed definitions for terms used in the NPRM.

Comments: Definitions

Commenters generally were concerned that any words or language intended to describe an event or circumstance that would trigger an enforcement action under the proposed rule must be defined clearly and concisely so that all affected recipients are treated equally. Some commenters felt that if the terms were left to the discretion and interpretation of the investigator or FTA representative handling the issue, there would be the potential for an uneven application of the regulation across recipients and subrecipients. In light of this concern, a number of commenters suggested that FTA clarify some of the proposed definitions, including, specifically, Accountable Executive; pattern or practice; audit; examination; inspection; investigation; corrective action plan; advisory; National Public Transportation Safety Plan; recipient; and testing.

In general, FTA appreciates the concerns regarding some of the proposed definitions, and the requests for additional definitions. As appropriate, FTA has incorporated into this rulemaking definitions that appear in other Section 5329 rulemakings, including the definition of hazard. FTA made changes to the following definitions to clarify their meaning: Advisory; audit; corrective action plan; directive; examination; inspection; pattern or practice; and State Safety Oversight Agency.

''Accountable Executive''

Several commenters asked whether an ''Accountable Executive'' would be an agency CEO or general manager. Some commenters also asked for clarification on the qualifications required to fulfill this role, stating that incumbents with this responsibility should possess comparable levels of competence, experience and authority to ensure consistency across the industry. One commenter requested that FTA revised the definition to state that a State Department of Transportation (State DOT), by virtue of providing funds, advice, or administrative planning or support to a subrecipient agency, is not an Accountable Executive with respect to that agency. Finally, one commenter asked FTA to define ''Transit Asset Management Plan,'' which appears without elaboration in the definition of Accountable Executive.

FTA RESPONSE: FTA has aligned the definition of ''Accountable Executive'' with the definition established in the final State Safety Oversight rule, now codified at 49 CFR part 674. FTA believes the definition is both broad and specific enough to allow the intended local safety oversight responsibility to function effectively while also allowing for flexibility to scale to the needs of various recipients and their systems. Notably, a State DOT would not be an Accountable Executive; however, there may be situations in which an employee of a State DOT is an Accountable Executive, as when the State DOT provides public transportation service. FTA declines to establish minimum qualifications for Accountable Executives, as the level of experience and authority required may vary from agency to agency. The term ''Transit Asset Management Plan'' which appears within the definition of ''Accountable Executive'' is not defined in this rule because it is defined in FTA's recently issued Transit Asset Management rule. (*See* 81 FR 48890, July 26, 2016.) FTA believes the definition for ''National Public Transportation Safety Plan'' is sufficient given the additional description of the Plan in section 670.31.

''Pattern or practice'' and ''Finding''

A number of commenters were concerned that the definition of ''pattern or practice'' is unclear, and does not explicitly define what constitutes a ''finding.'' In particular, commenters were concerned with the lack of specificity on what minimal and maximal time span between findings would constitute a pattern; whether findings would be limited to only violations found during one investigation or over multiple investigations; and whether findings must be related or be of some specific but undefined level of severity. Commenters suggested that ''finding'' should be included as a defined term, to clarify how the results of inspections, investigations, audits, examinations and testing relate to ''findings'' and whether the conclusions from inspections, investigations, audits, examinations and testing constitute ''findings'' or if a ''finding'' is something pursuant to a more specific process or particular procedure. Some commenters suggested that pattern or practice should be more

explicitly defined as two or more events within a 12-month period. Finally, a few commenters stated that a pattern or practice should only apply to multiple findings with the same operator and not across multiple operators in an overall public transit system.

FTA RESPONSE: FTA has chosen not to make substantive changes to the proposed definition of ''pattern or practice.'' A narrow definition of this term would limit FTA's ability to administer its safety oversight responsibilities. Moreover, a pattern or practice triggering an enforcement action will differ from one recipient to the next, and will depend, in part, on a recipient's mode of operation, the size and complexity of the recipient's operations, and the recipient's unique operating environment. This same rationale applies to many other definitions FTA is leaving unchanged. Finally, terms such as ''finding'' that are not defined by statute or regulation will be interpreted in accordance with the definition set forth in dictionaries of common usage.

''Examination,'' ''Inspection,'' ''Audit'' and ''Investigation''

Several commenters stated the differences between the definitions of ''examination,'' ''inspection,'' ''audit'' and ''investigation'' were minor and not well-defined, particularly the differences between examination and inspection. Some questioned why an inspection might lead to a finding of a pattern or practice of safety violations, but examinations and audits would not. One commenter suggested deleting ''examination'' since it was very similar to ''inspection.''

FTA RESPONSE: In response to concerns over the lack of obvious distinctions between the definitions of examinations, inspections, audits and investigations, FTA has revised the definition of ''inspection'' in the final rule to elaborate on the activities and distinguishing characteristics of an inspection versus an ''examination.'' Specifically, the final rule clarifies that an inspection is a physical act of observation whereas an examination is a process. Each of these functions—investigations, inspections, audits, and examinations—are authorized by 49 U.S.C. 5329(g), and each is a separate but integral part of the overall mechanism and process for collecting relevant information for purposes of safety oversight. FTA has chosen not to define the phrase ''reasonable time and manner'' as it applies to this information collection process, as a narrow definition of this term would impede FTA's ability to effectively carry out its congressionally mandated safety oversight role.

''Unsafe Condition or Practice'' and ''Safety Violation''

With respect to the definition of ''pattern or practice'' and in general response to the proposed rule's sections on enforcement actions, several commenters asked FTA to define ''unsafe condition or practice'' and ''safety violation.'' Some also suggested adding the term ''serious'' or ''serious safety violation'' as a definition to clarify what constituted ''serious'' safety violations, and what the relative and actionable difference was between a ''serious'' safety violation and a safety violation that was not ''serious.''

FTA RESPONSE: FTA does not believe that it is appropriate to define ''serious safety violation'' through regulation. As previously mentioned, FTA's approach to the administration of the safety program is both scalable and flexible. A narrow definition of ''serious safety violation'' would impede FTA's ability to provide flexible oversight of the Safety Program. For example, a serious safety violation could include a violation of Federal transit safety law that leads to death or serious injury of a passenger or transit employee. A serious safety violation also could include a violation of Federal transit safety law that could lead to death or serious injury of a passenger or transit employee. Further, a serious safety violation could include a rail transit agency's failure to comply with a corrective action plan or a small bus operator's failure to develop and implement a transit agency safety plan, once the rule requiring such plans becomes final. FTA does not believe that the aforementioned examples, however, encompass the full scope of what FTA could consider a serious safety violation, and therefore does not agree that it should define the term in this rule.

''Recipient''

Some commenters stated that although the definition of ''recipient'' implies inclusion of SSOAs as recipients of Chapter 53 funding, the description of actual affected entities throughout the NPRM suggested that it applied to public transit agencies and not SSOAs. Those commenters asked for clarification on whether SSOAs were implicitly included in the definition. Those commenters further stated that if FTA intended to include SSOAs, there would be a disincentive for SSOAs to participate in the formula grant program, and recommended that FTA explicitly exclude SSOAs from the definition of ''recipient.''

FTA RESPONSE: In response to comments, FTA has revised the definition of ''recipient'' to align with the statutory definition of that term at 49 U.S.C. 5329(a). We have also clarified that the term ''recipient'' includes State Safety Oversight Agencies.

''More Frequent Oversight''

A few commenters asked FTA to define what it meant by ''more frequent oversight'' as part of the suite of enforcement actions that FTA could initiate under section 670.21.

FTA RESPONSE: FTA does not agree that it should provide a definition for the term ''more frequent oversight.'' The frequency of enhanced oversight of a recipient by FTA will vary on a case-by-case basis.

''Reportable Incident'' and ''Occurrence''

One commenter asked if the definitions from FTA's SSO rule, codified at 49 CFR 674, of ''reportable incident'' and ''occurrence'' would be incorporated into the current proposed rule.

FTA RESPONSE: Definitions for ''reportable incident'' and ''occurrence'' were not included in the NPRM, and therefore, will not be included in this final rule.

''Corrective Action Plan''

A few commenters asked FTA to enhance the existing ''corrective action plan'' definition to capture the broader processes or mechanisms associated with the ongoing management of corrective action plans by recipients and oversight agencies.

FTA RESPONSE: FTA has revised the definition of ''corrective action plan'' to align with the definition of that term in the final rule for State Safety Oversight at 49 CFR part 674.

Other Terms

One commenter asked for definitions of the following individual terms: ''hazard''; ''assessment''; ''evaluation''; ''light rail'' and ''heavy rail''; ''enforcement''; ''employee accident and injury''; and ''near miss''. Commenters also suggested that FTA define the following additional terms: analysis; safety deficiency; noncompliance; public transportation system; and state of good repair.

FTA RESPONSE: FTA is not including definitions for the following terms that were not included in the NPRM proposals: ''light rail,'' ''heavy rail,'' ''employee accident and injury,'' and ''near miss.'' The following terms

are not defined in this rule, statute or regulation and will be interpreted in accordance with the definition set forth in dictionaries of common usage: ''assessment''; ''evaluation'';'' analysis''; and ''noncompliance.''

FTA does not agree that it needs to define the term ''public transportation system.'' FTA believes that it is clear that the term means a transit system operated by a recipient of funds under 49 U.S.C. chapter 53 and ''recipient'' is a defined term under the rule.

FTA does not agree that it should define the term ''safety deficiency.'' What amounts to a ''safety deficiency'' will vary on a case-by-case basis.

As required by 49 U.S.C. 5326(b)(1), FTA has defined the term ''state of good repair'' in the Transit Asset Management final rule, which was published on July 26, 2016. (81 FR 48889).

Subpart B—Compliance Assessments

In this final rule, FTA has changed the heading of this subpart from ''Compliance Assessments'' to ''Inspections, Investigations, Audits, Examinations and Testing'' to better describe the subject matter of this subpart.

670.11 General

In this final rule, FTA has changed the title of this section from ''Inspections, Investigations, Audits, Examinations and Testing'' to ''General.'' In the NPRM, this section set forth FTA's statutory authority to conduct inspections, investigations, audits, examinations and testing. In the NPRM, FTA asked how it should define ''reasonable time and manner'' for entering into and inspecting a recipient's equipment, facilities, rolling stock, operations, and relevant records.

Comments: General

With respect to ''reasonable time,'' commenters suggested: (1) At least forty-eight hours; (2) twenty-four hours; (3) a few days (4); five days; (5) thirty days; and (6) sixty days. A few commenters also recommended that FTA adopt the investigation processes currently used by other Federal agencies. A few commenters indicated the need for more clarity and requested that FTA propose specific language to define the terms ''reasonable time'' and ''reasonable manner.'' One commenter requested clarity regarding ''written notice'' as it is used in section 670.11(b). Another commenter asked what would trigger an inspection: passage of time; a particular incident; or an industry-wide issue. The commenter stated that uncertainties would lead to confusion about what is expected as transit agencies seek to accommodate FTA's efforts and requirements. Another commenter requested that FTA define the SSOA's role and responsibilities when FTA takes enforcement actions.

One commenter stated that FTA should clarify whether it has the authority to enter a transit property even without the consent of the recipient. The commenter noted that even with written notification, a recipient may object to external auditors entering its property for various reasons, including insufficient training (such as roadway worker protection) and administrative issues, such as schedule conflicts. Other commenters requested that FTA clarify the following: (1) Whether its representatives must be escorted by authorized transit agency representatives while on the property for the purposes of conducting an audit or inspection; and (2) whether FTA representatives must receive agency-required safety training (such as roadway worker protection) in order to enter a rail right-of-way. Several commenters noted that FTA should require its representatives to follow all of a recipient's applicable safety rules and procedures during the course of conducting an audit or inspection.

Regarding the process for providing notice, some commenters stated that FTA should provide advance written notice to a recipient stating the purpose for the inspection. Several commenters noted that the written notice should reference the specific information that FTA would be seeking. A few commenters recommended that FTA also provide notice to an SSOA prior to inspecting a rail transit agency. Many commenters suggested that the written notice should be directed to a recipient's general manager, chief executive officer, or other Accountable Executive, with a copy provided to the SSOA. A few commenters stated that notification should include an official letter emailed to the Accountable Executive or their designated point of contact and a phone call. Several commenters suggested that FTA require some form of delivery/read receipt to confirm a recipient's receipt of the notification.

One commenter recommended that FTA work cooperatively and collaboratively with a recipient to establish an agenda for the site visit. Other commenters acknowledged that emergency situations would eliminate the need for notification. Two commenters noted that there should be limits on the number of times FTA can audit a transit agency unless there are significant safety findings during an audit or investigation. One commenter indicated support for unannounced FTA inspections, testing, and records reviews, but noted that the Federal process should not prevent the transit agency from providing its routine transit service safely, nor put any of the FTA, SSOA, transit agency personnel, or members of the public at risk during the process.

Some commenters recommended that Federal personnel should receive the recipient's approved track safety training prior to conducting activities within a recipient's transit system. One commenter stated that Federal personnel should provide a recipient with details of their safety training and certification.

One commenter stated that a final rule explicitly should allow host agencies to determine reasonable and safe options for granting an FTA request to inspect or test equipment, or to enter restricted or otherwise potentially hazardous areas. Additionally, the commenter suggested that a final rule should allow the host agency's lead representative to call an emergency ''stop'' to activities, at his or her discretion, for fire-life-safety reasons, if unsafe behavior is observed that could potentially place a person in danger, or if required personal protective equipment is not worn or not used appropriately.

Commenters requested additional details regarding how, why and when FTA would enter a public transportation system to conduct a safety inspection. Commenters also requested that FTA define its role, responsibilities and authority in the testing and inspection of a public transportation system's equipment, facilities, rolling stock and operations.

A number of commenters questioned how FTA and SSOAs would coordinate activities with a rail transit agency when FTA exercises its authority under the section. Some commenters recommended that FTA develop program standards for conducting activities under the section and submit them for public comment. Several commenters also noted that the proposed regulatory text did not include notification to the State when FTA would notify a recipient of its intent to exercise authority under the section. A few other commenters recommended that FTA focus its oversight on rail safety, asserting that bus-only systems are already safe.

One commenter asked how FTA's inspections, oversight, safety standards, or directives would complement, supplement, or possibly conflict with those of SSOAs. The commenter recommended that FTA clarify the

nature of coordination, if any, between FTA and an SSOA. The commenter also suggested that FTA's authority to conduct random safety inspections at any time without notice or coordination with a rail transit agency could consequently divert critical staff resources away from operations or maintenance activities or interfere with the smooth functioning of daily transit operations.

Commenters also asked whether FTA would delegate its authority to carry out this section to an SSOA. Similarly, a commenter stated that since SSOAs and FTA are safety oversight partners, there should be a mechanism for FTA to work with an SSOA and factor SSOA findings into any FTA enforcement action. The commenter recommended that there should be a detailed process for monitoring corrective actions between FTA and SSOAs.

FTA also received comments regarding how this section aligned with FTA's available online SMS Awareness training. One commenter noted, and asked for an explanation of, an apparent discrepancy between FTA's SMS Awareness training, which specifically says that investigations are not a function of SMS, and the NPRM, which indicates that the inspections, investigations, audits, examinations and testing are directly a part of an SMS approach.

Several commenters noted that the SMS reviews and audits should be part of the triennial or state management reviews, unless there has been an accident that the National Transportation Safety Board (NTSB) is investigating. These commenters recommended that FTA define the specific types of incidents or complaints that could result in an FTA audit or investigation. Another commenter suggested that FTA state the frequency it proposes to inspect, audit or perform a ''compliance assessment'' of each property. This commenter also recommended that for efficiency purposes, FTA's inspection cycle should correspond with the SSOA triennial reviews of local rail transit operators. Commenters stated that if a property is undertaking a robust SMS, then the FTA assessment cycle should be longer. For clarity, commenters recommended that FTA include language which describes the new compliance assessments contemplated by this rulemaking, and describes how they will correspond with existing oversight programs and grant management procedures.

With regard to proposed section 670.11(b), commenters queried whether the prescription of ''recordkeeping and reporting requirements'' was meant to apply solely to the production of documents for the purposes of the inspection or audit at hand, or if FTA would be able to direct agency-wide recordkeeping and reporting practices at any time.

FTA Response: General

FTA appreciates those commenters who responded to our request for comment on how ''reasonable time'' and ''reasonable manner'' should be defined for the purpose of FTA entering into and inspecting equipment, facilities, rolling stock, operations and relevant records. Upon consideration of the comments, FTA has decided not to define ''reasonable time'' or ''reasonable manner'' in regulatory text. FTA does not believe that narrowly defining ''reasonable time and manner'' would enable FTA to sufficiently oversee the safety of our Nation's transit systems. For instance, there are a number of scenarios that may require FTA to enter into and inspect a recipient's property with minimal notification.

Accordingly, under the final rule, the Administrator has discretion in determining what amounts to a reasonable time and manner, on a case-by-case basis. FTA believes it should have flexibility with regard to how it will notify a recipient. Thus, the medium utilized to convey notice should not be limited by regulatory text. FTA will use reasonable means of communication to include telephonic and electronic media. FTA will work with transit systems and appropriate State entities to ensure that adequate notice is provided so that Federal personnel do not unduly impede operations.

FTA does not agree with those commenters who indicated that a host agency should be able to place limitations on FTA's exercise of its statutory authority when conducting compliance activities associated with this rule. Further, FTA does not agree with commenters who suggested that it should prescribe through regulation how and when it would conduct safety inspections, investigations, audits, examinations and testing. FTA's actions will be based on consideration of particular sets of facts. FTA does not believe that limiting the scope of the actions it has the authority to take via rulemaking contributes to improving public transportation safety. Relatedly, FTA does not believe it is appropriate to define through regulation its role, responsibilities, and authority in the inspecting, investigating, auditing, examining, and testing of a public transportation system's equipment, facilities, rolling stock and operation, as each activity may require flexibility on behalf of FTA and the recipient.

FTA agrees with those commenters who suggested that FTA and its designees comply with a recipient's safety and training protocols and requirements. FTA will coordinate with recipients to ensure its activities are carried out in a safe manner. In addition, when FTA conducts safety activities at a rail transit agency, FTA will coordinate with the relevant SSOA as necessary and to the extent practicable. However, it may not always be feasible for an FTA representative to undergo agency-specific training or verify his or her training to a recipient before conducting safety activities on behalf of FTA under this rule.

In general, FTA disagrees with those commenters who suggested that FTA provide more prescriptive processes. FTA believes that a certain level of flexibility is necessary in order for the agency to effectively administer the Safety Program. For example, FTA does not believe that it should be limited to only engaging in activities under this section upon the consent of a recipient. To do so would be unreasonable, considering there will likely be occasions when inspections and investigations are required when FTA becomes aware of an accident. In addition, FTA does not agree with commenters who suggested that FTA formally establish a schedule for conducting activities under this section or that FTA align its activities under this section with existing audit processes. FTA may establish a formal schedule for conducting activities under this section in the future, but a schedule is not appropriate for this rule.

In exercising its enhanced statutory authority for safety oversight, FTA recognizes the critical role of State and local safety oversight partners. To that end, FTA will work with SSOA and transit system personnel to accommodate operational and staffing challenges that may occur as it exercises its authority. However, FTA does not agree that it should delegate its authority to the SSOAs. In response to the comment regarding SMS Awareness training, FTA notes that implementation of SMS principles in no way contradicts or conflicts with its authority to engage in inspections, investigations, or other regulatory compliance processes.

One commenter asked whether the proposed provision to impose more frequent reporting requirements applied to documents requested for purposes of an audit or inspection, or if FTA would be able to direct agency-wide recordkeeping and reporting practices at

any time. As proposed, FTA could impose more frequent reporting requirements that would not necessarily be tied to an audit or inspection. FTA maintained this provision in the final rule without substantive change.

FTA made a few nonsubstantive, clarifying edits to this section in the final rule. In addition, FTA eliminated the 30-day response timeframe for document requests because there may be instances where FTA needs requested information more quickly. Also, as stated above, FTA refined the notice provision in this section to provide that the Administrator will decide on a case-by-case basis what ''reasonable time and manner'' would be for FTA to enter into and inspect or test equipment, facilities, rolling stock, operations, and relevant records.

670.13 Request for Confidential Treatment of Records

This section proposed procedures for a recipient to request confidential treatment of any record filed with or otherwise provided to FTA in connection with its administration of the Safety Program.

Comments: Request for Confidential Treatment of Records

Many commenters questioned the authority by which FTA would be able to protect information it received from recipients from public disclosure. Commenters asked how FTA would ensure the integrity of confidential information during all phases of the reporting and information retention process. A few commenters stated that the proposed regulatory text was insufficient to provide automatic blanket protection for any information pertaining to public safety or that is safety-critical or safety-sensitive. Several commenters stated that FTA's proposed confidentiality clause would add nothing to existing law, and only narrow the exemption window through overly technical requirements which would allow automatic full disclosure of potentially security sensitive information if a transit agency accidentally neglects to submit the correct format.

A few commenters suggested that FTA clarify that the Freedom of Information Act (FOIA) exemptions apply to all recipients, whether or not they are subject to FOIA. One commenter further noted FTA should explicitly recognize confidentiality provisions under other FOIA-like policies that are adopted by transit agencies. However, a number of commenters asserted that State law could overrule Federal confidentiality protection, and that the language of the proposed rule was not sufficient to prevent documents from being discovered in a civil action or being disclosed in response to a public records request at the State level. Commenters suggested that FTA should recognize that States are unable to afford transit agencies this protection, even if FTA determines a record is confidential. The commenters recommended that FTA provide protection for any sensitive or confidential information, and ensure that Federal confidentiality supersedes any State disclosure requirements.

Another commenter asked that FTA describe the objective process FTA would use to determine if records are subject to public disclosure. One commenter was concerned that a recipient may use the provision to report directly to FTA and bypass and withhold information from its SSOA, which is obligated (as a State/local agency) under State law to disclose any investigative reports or safety information.

A few commenters expressed concern that FTA proposed to reserve the right to make its own final determination of whether a confidentiality request would be granted. Commenters asked for clarification on the circumstances under which FTA would not keep records confidential, as requested. The commenters also stated such authority to make final determinations would overrule existing State laws and authorities, as well as Sensitive Security Information (SSI) guidelines.

One large transit agency commented that 18 U.S.C. 1905 applies only to Federal employees or Federal agencies, and not to transit agencies since they are not Federal entities. The commenter suggested that this section should therefore include clarification that the disclosure provisions of 18 U.S.C. 1905 will apply to transit agencies that submit records pursuant to a request for confidentiality, even though they are not Federal entities. Another commenter stated that since an agency is required to submit any record for which it is seeking confidential status, the act of that submittal destroys or constitutes a waiver of a transit agency's right to confidentiality of records for which it claims attorney-client or work product privilege. The commenter suggested that a transit agency could instead provide pertinent information regarding date, time, location and a brief explanation of the basis for asserting attorney-client or work product privilege.

Several commenters suggested that FTA allow a transit agency 30 working days to evaluate and respond to a decision by the Administrator to deny a confidentiality request. Commenters recommended that a final rule provide a reasonable appeal mechanism for transit agencies that disagree with the Administrator's decision to release records. Other commenters recommended that the minimum amount of time given to an agency to respond to an FTA denial of confidential treatment should be changed to at least 10 days, due to the harm that such release could cause.

FTA Response: Request for Confidential Treatment of Records

To clarify, the proposed confidentiality provision was not intended to protect information from public disclosure. The provision was intended to provide recipients with the opportunity to alert FTA of the alleged confidentiality of a requested record. Unlike other Federal safety regulatory agencies, FTA does not have statutory authority to protect safety-related information. However, under the State Safety Oversight (SSO) rules at 49 CFR 674.27(a)(7), an SSOA's program standard must include procedures for protecting the confidentiality of investigation reports.

Documents submitted to FTA are subject to FOIA and are generally releasable to the public upon request. FTA may maintain the confidentiality of accident investigations, incident reports, and other safety-related information to the maximum extent permitted under Federal law, including the nine exemptions under FOIA. FTA will evaluate whether or not a document may be withheld from public disclosure under the Department of Transportation's FOIA rules at 49 CFR part 7.

FTA agrees that its confidential treatment of information would not preempt State law; therefore, recipients should exercise their use of this provision accordingly.

FTA made nonsubstantive, clarifying edits to this section in the final rule.

Subpart C Enforcement

670.21 General

This section of the NPRM set forth the Administrator's enforcement authorities under 49 U.S.C. 5329.

In general, FTA's responses to comments received on this section are addressed in other sections throughout the preamble. For example, comments related to reporting requirements are addressed in the response to comments under section 670.11, above. Responses to comments related to withholding of funds immediately follow this section, below.

FTA has made two changes to this section as a result of FAST Act amendments made to 49 U.S.C. 5329. First, FTA revised section 670.21(e) to limit withholding of a recipient's 49 U.S.C. 5307 funds to no more than twenty-five (25) percent. Second, FTA added a new section 670.21(g) to explicitly incorporate into this rule FTA's authority to issue restrictions and prohibitions on a recipient's operations, if through testing, inspection, investigation, audit or research the Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, exist such that there is a substantial risk of death or personal injury. The language in the rule is identical to the language in the statute. Further, the proposed rule included the authority for FTA to issue special directives in the event an unsafe practice or condition caused an emergency situation involving a hazard of death, personal injury, damage to property or equipment, or significant harm to the environment. The authority under new section 670.21(g) may be considered a specific type of special directive, applicable in certain circumstances, and thus is materially related to FTA's proposal to issue special directives. Moreover, FTA finds good cause to include reference to its authority to issue restrictions and prohibitions in the final rule. In the NPRM, section 670.21(a)–(f) included a list of the authorities provided to FTA by Congress in MAP–21 to carry out the Safety Program. In this final rule, FTA has added a new subsection 670.21(g) which merely adds to the list of authorities provided to FTA under MAP–21, to reflect the authority to issue restrictions and prohibitions that was added under the FAST Act. Accordingly, FTA has ''good cause'' under the Administrative Procedure Act (5 U.S.C. 553(b)) to finalize these provisions at this time because additional public comment is ''unnecessary'' as the rule merely restates the statutory provision.

670.23 Use or Withholding of Funds

This section proposed procedures for FTA to direct the use of Chapter 53 funds where safety deficiencies are identified by the Administrator or an SSOA. This section also proposed procedures for withholding of Chapter 53 funds from a recipient or State for non-compliance, where the Administrator determines that there has been a pattern or practice of serious violations of the Safety Program or any regulation or directive issued under those laws for which the Administrator exercises enforcement authority for safety.

Comments: Use or Withholding of Funds

Many commenters expressed concern about the potential loss of Federal funding as a result of safety violations, as many safety violations may be due to preexisting and chronic underinvestment, with any loss of funding resulting in a worsening of transit agencies' financial situations and greater safety deficiencies. In addition, several commenters stated that the connection between States, SSOAs and transit agencies was unclear, and that the NPRM did not explain how a State would be held responsible for a safety deficiency at a transit agency. These commenters asked that the rule clarify what is meant by a State, and to clearly differentiate how the notification, appeal, and withholding actions and procedures would affect the various entities.

One commenter stated that SSOAs should not be subject to this section because, although the definition of ''recipient'' in section 670.5 implies inclusion of SSOAs, the description of actual affected entities throughout the NPRM instead suggests only public transit agencies. The commenter suggested that SSOA funding be excluded from the definition of ''recipient'' under section 670.5.

Several commenters expressed concern that funding could be withheld from the entire State or SSOA, due to the action (or inaction) of a single subrecipient, thus penalizing all the subrecipients in the State. The commenters asked that FTA add language to section 670.23 to either explain the rationale and process for holding a State liable for the deficiencies of a particular transit agency, or add language which would limit enforcement actions to the particular subrecipient instead of the entire State. Similarly, one commenter stated that there should be a process to ensure that a rail transit agency in one State does not cause FTA to withhold chapter 53 funds from an SSOA or rail transit agency in another State.

Several commenters stated that section 670.23(b)(3) only allows, but does not compel, FTA to consider a recipient's response to a notice of violation. Commenters suggested that FTA should have to consider a recipient's response to a notice of violation. These commenters also stated that this section did not adequately provide an opportunity for notice and comment. In addition, commenters stated that this section did not provide a sufficient process for a transit agency to appeal an erroneous notice of violation, which could result in a significant loss of funding. One commenter further stated that withholding of funds should be considered only after consultation with the SSOA and after a rail transit agency has been given ample opportunity to address the safety concern and respond to FTA. One commenter suggested that FTA should not withhold funding from a recipient who corrects an identified deficiency by implementing FTA's required remedial action and mitigates the deficiency within the 90 days following the initial notice of violation.

Some commenters stated that because of the similarities between this section and section 670.27, special directives should be invoked as a remedy for program deficiencies before withholding funds, and that this sequence should be clearly required in the rule. Another commenter requested that section 670.23 be incorporated into section 670.27, due to its more developed appeal process, so that transit agencies would have more recourse in the case of an FTA decision to withhold funding.

Several commenters asked what would happen if FTA failed to adhere to the established 30-day decision timeline under section 670.23(b)(3) and queried whether the violation would be automatically dismissed if the deadline passed or whether FTA would be subject to consequences for missing the deadlines. One commenter stated that an FTA decision to redirect or withhold funds amounts to an unfunded mandate.

FTA Response: Use or Withholding of Funds

FTA understands that many transit operators, especially smaller transit operators, have limited financial resources. However, FTA believes that the decision to withhold funds should be at the discretion of the FTA Administrator, in consideration of the nature and severity of the safety violation at issue. FTA may consult with an SSOA before withholding any funding or issuing a violation to a rail transit agency. However, FTA does not believe that it needs to prescribe such a process in regulatory text.

FTA will not hold an SSOA directly accountable for a safety deficiency at a rail transit agency. However, FTA may hold an SSOA accountable for failing to adequately oversee a rail transit system. Accordingly, FTA does not believe that SSOAs should be excluded from this rule. FTA agrees that all subrecipients in a State should not be held accountable for one subrecipient's actions, and we have removed the word

''State'' from 670.23(c)(ii). FTA will not withhold funds from a rail transit agency because of a safety issue related to another rail transit agency.

In the NPRM, FTA proposed a process for a recipient to respond to a notice of violation. FTA proposed to issue a response to the recipient within 30 days of its receipt of the recipient's response. FTA has changed ''may'' to ''shall'' to indicate the Administrator will consider a recipient's response. FTA intends to make a decision within 30 days of receiving a response from a recipient, but FTA will not automatically dismiss violations if it misses the deadline.

FTA's enforcement tools under the Safety Program include directing the use of funds, withholding funds, and issuing directives. Intentionally, FTA did not define specific circumstances that would trigger FTA to take one action over another or prescribe specific timeframes that a recipient would need to comply with a special directive. An enforcement action that may be appropriate to address one recipient's safety issue may not be appropriate to address the same issue at another recipient's transit system. FTA's recipients range in diversity of mode, operating environment, sophistication, expertise and resources. FTA believes it is important to establish and implement the Safety Program in a manner that is both scalable and flexible. FTA does not agree that requiring that funding be redirected or withheld is an unfunded mandate.

In the final rule, FTA has reorganized this section for clarity. In addition, FTA has revised this section to limit the amount that may be withheld to not more than 25% of section 5307 funds in accordance with 49 U.S.C. 5329(g).

670.25 General Directives and 670.27 Special Directives

In section 670.25, FTA proposed procedures for the issuance of a general directive by the Administrator. In section 670.27, FTA proposed procedures for the issuance of a special directive to one or more named recipients.

Comments: General Directives and Special Directives

FTA received a number of comments related to the proposed rule for general and special directives. Some commenters asked for clarifications on the proposed procedures for both types of directives. Some comments requested that FTA specify which directives require general manager and Board response, stipulate timelines for response due dates, and clarify the notice and appeal processes. One commenter stated that there was no process identified for FTA to notify a recipient in a timely way that its response to a directive is satisfactory, which could delay a recipient's implementation of a corrective action and put the transit system in a position of increased liability or undermine public confidence. One commenter noted that State and local agencies would need time to implement a general or special directive and recommended that FTA provide a time period for implementation.

Several commenters noted that the processes for responding to or appealing the FTA Administrator's decisions under part 670 are inconsistent depending on whether it is a general directive, a special directive, or a withholding of funds. One commenter suggested that FTA devote one section solely to responding to or appealing the Administrator's decisions.

A number of commenters noted that the rule did not define emergency situations that might give rise to the issuance of a general directive. Commenters suggested that FTA define ''emergency situation.''

Some commenters stated that FTA did not have the authority to take enforcement action because of a ''significant harm to the environment.''

One commenter requested that FTA provide specific details about the enforcement action that could be taken under each section. A commenter asked how FTA would identify the need for a general or special directive and how FTA would ensure that qualified persons were involved in the development of a directive.

One commenter noted that under proposed section 670.27(d), a recipient would be required to ''observe'' a special directive during FTA's review of a petition for reconsideration. The commenter also noted that proposed section 670.27(f)(4) did not provide a timeframe from when FTA would make a decision to when a recipient would be notified of FTA's decision, during which time a recipient would still be required to ''observe'' the special directive. The commenter asked what ''observe'' meant and how FTA would enforce the provision if a recipient could not meet the requirements of a special directive.

One commenter suggested that petitions for reconsideration should, at a minimum, be handled by the original authority, a peer, or a superior authority, instead of the FTA Chief Counsel, asserting that the Chief Counsel should not be placed in the position of appellate authority over his or her Administrator.

FTA Response: General Directives and Special Directives

Intentionally, FTA did not define specific circumstances that would trigger FTA to take one action over another or prescribe specific timeframes that a recipient would need to comply with either a general or special directive. As stated above, an enforcement action that may be appropriate to address one recipient's safety issue may not be appropriate to address the same issue at another recipient's transit system. FTA's recipients range in diversity of mode, operating environment, sophistication, expertise and resources. FTA believes that it is important to establish and implement the Safety Program in a manner that is both scalable and flexible.

In section 670.25, FTA proposed to issue general directives that could apply to all recipients or a subset of recipients and that would be effective upon notice provided by the Administrator in the **Federal Register**. A general directive would be subject to a public comment period. Following the public notice and comment period, FTA would publish a response to the comments in the **Federal Register**. The **Federal Register** notice also would include a final iteration of the general directive.

Upon further consideration, FTA has determined that general directives and the **Federal Register** process are not appropriate means with which to address an emergency situation. However, FTA believes that providing notice and an opportunity for comment through the **Federal Register** is an appropriate method of addressing safety issues that require mitigation, but need not be addressed immediately upon notice. Accordingly, under the final rule, FTA would not use a general directive to address an emergency situation.

Special directives are the more appropriate tool to address emergency situations. In the NPRM, FTA proposed to issue a special directive to one or more named recipients to address a safety issue specific to the recipient's transit systems. A special directive would become effective upon direct notice from FTA to a recipient. FTA has retained the NPRM provisions related to when FTA would issue a special directive.

FTA agrees with the commenter who suggested that FTA's Chief Counsel should not be placed in the position of appellate authority over the Administrator. Under this rule, the Deputy Administrator will issue special directives, and the Administrator will

serve as the final appellate authority for special directives. Within 90 days of the receipt of a petition for reconsideration, the Administrator would either grant or deny a petition, in whole or in part, and provide notice to a recipient of his or her decision.

Because FTA will issue special directives when it FTA finds a substantial risk of death or personal injury, or damage to property or equipment, a recipient will be required to ''observe'' the actions required under a special directive while its petition was being reviewed by the Administrator. Within this context, ''observe'' means that the recipient must implement the requirements under the special directive during the review period. FTA will provide guidance to a recipient on what specific steps need be taken to implement the requirements of the special directive during the review period.

FTA agrees with commenters who suggested that FTA not take action under this rule to address a ''significant harm to the environment.'' FTA's primary goal under the Safety Program is to ensure the safety of passengers and transit workers. Readers should note, however, that FTA does have the authority to address environmental issues related to a public transportation system that have an impact on passenger or worker safety. FTA has revised the final rule to remove the language related to harm to the environment.

670.29 Advisories

This section described how the Administrator would issue advisories, which would recommend corrective actions to resolve or mitigate an unsafe condition.

Comments: Advisories

Several commenters noted that, as proposed, compliance by a recipient with an advisory would be discretionary. Commenters also noted that advisories issued by other Federal agencies are not discretionary and include required actions. Accordingly, a commenter suggested that FTA use ''bulletin'' instead of ''advisory.''

Commenters asked why FTA did not propose to submit an advisory to a public notice and comment process similar to what was proposed for a general directive. One commenter recommended that FTA establish a formal process for issuing advisories. Several commenters requested clarification on how an advisory would be issued and whether a recipient would have an opportunity to respond.

There were a number of comments related to proposed section 670.29(b). In that section, FTA proposed that the Administrator could take a recipient's noncompliance with an advisory into consideration when deciding to take an enforcement action. One commenter noted that this section was inconsistent with SMS. The commenter noted that each agency would determine whether or not the hazard or risk referenced in the advisory was relevant, and if so, determine an appropriate strategy to reduce risk to an acceptable level, which could include an alternative mitigation than what was recommended in the advisory.

Some commenters asked whether the subject matter of an advisory could lead to the issuance of a special directive. One commenter asked whether FTA planned to issue civil penalties against a recipient which did not comply with an advisory, and noted that other U.S. DOT administrations do not assess civil penalties under such circumstances.

Several commenters sought clarification on the difference between an advisory and a directive. One commenter suggested that FTA strike the section on advisories because FTA should address unsafe conditions with a general directive.

FTA Response: Advisories

In the NPRM, FTA proposed that advisories would include recommended actions. Directives require a recipient to take mandatory action to mitigate a specific safety risk. FTA believes it is important to establish several tools that may be used to address different levels of safety risks, from low to high. An advisory would be used to address lower level safety risks or in situations where FTA lacks sufficient data to accurately assess the risk.

Commenters were accurate in their assertions that ''compliance'' with an advisory would be at a recipient's discretion. FTA agrees that each agency should determine whether or not the hazard or risk addressed in an advisory is relevant to its system and determine appropriate mitigations. Due to the nature of an advisory, a recipient need not ''comply'' with an advisory, but instead would decide whether or not to adopt the recommended actions. Accordingly, FTA has revised this section in the final rule to remove the language stating that the Administrator would take a recipient's noncompliance with an advisory into consideration when taking enforcement actions. FTA is aware that other Federal agencies use advisories to impose mandatory requirements on their regulated communities. FTA has elected to impose mandatory requirements through the use of directives, and recommendations through the use of advisories.

FTA does not have the authority to issue civil penalties. However, FTA could issue a directive subsequent to an advisory if FTA finds that the hazard or risk identified in the advisory requires further mitigation.

FTA does not agree that it should submit mere recommendations through the public notice and comment process or establish another formal process for issuing an advisory. FTA will notify recipients of an advisory by publishing a notice in the **Federal Register**. FTA will continue to post advisories to its public Web site and incorporate them into the National Safety Plan.

670.31 Purpose and Content of the National Public Transportation Safety Plan

This section described the statutory mandates and proposed components of a National Public Transportation Safety Plan (National Safety Plan).

Comments: National Safety Plan

Several commenters supported FTA's proposals for a National Safety Plan. Some commenters requested additional information and clarification about the contents of a National Safety Plan in order to be able to comply with the Plan's requirements. One commenter asked how FTA would update a National Safety Plan and whether each update would be subject to notice and comment.

One commenter stated that a National Safety Plan must be implemented via rulemaking if SSOAs would be expected to ensure that rail transit agencies are complying with the Plan. The commenter stated that a National Safety Plan should not be updated periodically because any changes may require an SSOA to establish new rules, which would be cumbersome, time consuming and expensive. Further, the commenter noted that many small transit providers adopt rules, policies and safety plans through Board actions. Therefore, if a National Safety Plan is changed periodically, transit agencies would need several months to comply with any changes, and to allow an opportunity for comment.

One commenter requested that FTA coordinate the development of safety criteria and standards with the other U.S. DOT modal administrations, such as the FRA, to avoid conflicting standards. One commenter encouraged FTA to coordinate with transit agencies in the development of standards and criteria. The commenter suggested that

a National Safety Plan include a description of safety outcomes and goals, and methods for identifying risks and targeting priorities to achieve safety goals.

Several commenters noted that it was difficult to comment on a National Safety Plan because FTA had not published final rules for other components of the Public Transportation Safety Program. Some commenters requested additional information from FTA on the nexus between state of good repair and safety.

One commenter suggested that FTA adopt the framework for a National Safety Plan that was recommended by the Transit Advisory Committee for Safety (TRACS). The commenter noted that the proposed rule included a few of the TRACS recommendations, but would benefit from a more detailed description of the necessary elements that contribute to a more robust framework.

Several commenters suggested other issues that FTA should address in a National Safety Plan, including employee issues such as driver assaults, restroom breaks, and blind spots. To ensure the safety of transit operators, a commenter recommended that a National Safety Plan require that buses be equipped with clear plastic partitions, a driver side door or window, and an emergency alarm. A commenter also recommended that a National Safety Plan require increased use of wayside fare collection, which the commenter suggested is a safer means to collect payment. Another commenter stated that a National Safety Plan must address blind spots, which make safe operation of transit buses difficult. Other commenters suggested that a National Safety Plan address pedestrian and bicycle safety.

FTA Response: National Safety Plan

FTA intends for the National Safety Plan to serve as both the primary tool for FTA to communicate with the transit industry about its safety performance, and as a repository of guidance, best practices, technical assistance, tools and other information. FTA believes that a flexible approach to implementing a National Safety Plan would be the most effective way to disseminate information. Therefore, FTA intends to publish proposed substantive updates to the National Safety Plan, such as new performance criteria, for public notice and comment, but does not believe that the National Safety Plan needs to be a rule. FTA will incorporate guidance, technical assistance, and other tools into the Plan as they become available.

In the NPRM, FTA proposed the initial contents of a National Safety Plan. The list of proposed contents was not exhaustive. On February 5, 2016, FTA published its first proposed National Safety Plan for public notice and comment. *See* 81 FR 6372. The proposed Plan includes four safety performance criteria, an SMS implementation guide, and other guidance. The proposed Plan also includes proposed voluntary standards. FTA will coordinate with relevant U.S. DOT modal administrations and the transit industry in the adoption of any mandatory standards. In addition, the proposed Plan discusses safety outcomes and goals, the nexus between state of good repair and safety, pedestrian and bicycle safety, and the role of TRACS. The comment period for the proposed Plan closed on April 5, 2016, and FTA expects to publish its first National Safety Plan in the near future.

FTA revised this section in the final rule to reflect changes to 49 U.S.C. 5329(b) as amended by the FAST Act, which require a National Safety Plan to include standards to ensure the safe operation of transit systems.

IV. Regulatory Analyses and Notices

Executive Order 12866 and 13563; USDOT 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. As stated above, FTA does not believe that this rule imposes direct costs on entities other than FTA.

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 rule will not result in an effect on the economy of $100 million or more. The rule 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 rule on small entities, and has determined that they will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 109 Stat. 48).

Executive Order 13132 (Federalism)

FTA has analyzed this rule in accordance with the principles and criteria established by Executive Order 13132, and determined that this rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this rule will 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 determined that the rule does not impose direct compliance costs on State and local governments.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

This rulemaking will not impose additional collection requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.,* or the OMB regulation at 5 CFR 1320.8(d). To the extent that there are any costs and burdens associated with any collections under this rule, the information collection will be incorporated into the rulemakings for Public Transportation Agency Safety Plans, State Safety Oversight, and the Safety Certification Training Program.

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 rule is categorically

excluded under FTA's environmental impact procedure at 23 CFR 771.118(c)(4), 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 (February 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 how to: (1) Fully engage environmental justice populations in the transportation decision-making process; (2) 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) 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 (February 5, 1996), Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rule under Executive Order 13045 (April 21, 1997), Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this 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 action under Executive Order 13175 (November 6, 2000), and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this rule 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 required.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of FTA's dockets by the name of the individual submitting the comment or signing the comment if submitted on behalf of an association, business, labor union, or any other entity. You may review USDOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477–8.

Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of 49 U.S.C. 5329(f)(7), which authorizes the Secretary to issue rules to carry out the mandate for a Public Transportation Safety Program at 49 U.S.C. 5329.

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 670

Public Transportation, Safety.

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

Carolyn Flowers,

Acting Administrator.

For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5329(f)(7), 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 670 as set forth below:

PART 670—PUBLIC TRANSPORTATION SAFETY PROGRAM

Subpart A—General Provisions

Subpart B—Inspections, Investigations, Audits, Examinations, and Testing

Subpart C—Enforcement

Subpart D—National Public Transportation Safety Plan

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

Subpart A—General Provisions

§ 670.1 Purpose and applicability.

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

§ 670.3 Policy.

The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (SMS) as the basis for enhancing the

safety of public transportation in the United States. FTA will follow the principles and methods of SMS in its development of rules, regulations, policies, guidance, best practices and technical assistance administered under the authority of 49 U.S.C. 5329.

§ 670.5 Definitions.

As used in this part:

Accountable Executive means a single, identifiable individual who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction 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 his or her designee.

Advisory means a notice that informs or warns a recipient of hazards or risks to the recipient's public transportation system. An advisory may include recommendations for avoiding or mitigating the hazards or risks.

Audit means a review or analysis of records and related materials, including, but not limited to, those related to financial accounts.

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

Deputy Administrator means the Federal Transit Deputy Administrator or his or her designee.

Directive means a written communication from FTA to a recipient that requires the recipient to take one or more specific actions to ensure the safety of the recipient's public transportation system.

Examination means a process for gathering or analyzing facts or information related to the safety of a public transportation system.

FTA means the Federal Transit Administration.

Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a recipient's public transportation system; or damage to the environment.

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

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

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

Pattern or practice means two or more findings by FTA of a recipient's violation of the requirements of 49 U.S.C. 5329 or the regulations thereunder.

Recipient means a State or local governmental authority, or any other operator of public transportation that receives financial assistance under 49 U.S.C. Chapter 53. The term ''recipient'' includes State Safety Oversight Agencies.

Record means any writing, drawing, map, recording, diskette, DVD, CD–ROM, tape, film, photograph, or other documentary material by which information is preserved. The term ''record'' also includes any such documentary material stored electronically.

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

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

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

State Safety Oversight Agency means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations set forth in 49 CFR part 659 or 49 CFR part 674.

Testing means an assessment of equipment, facilities, rolling stock or operations of a recipient's public transportation system.

Subpart B—Inspections, Investigations, Audits, Examinations and Testing

§ 670.11 General.

(a) The Administrator may conduct investigations, inspections, audits and examinations, and test the equipment, facilities, rolling stock and operations of a recipient's public transportation system.

(b) To the extent practicable, the Administrator will provide notice to a recipient prior to initiating any activities carried out under the authorities listed in paragraph (a) of this section.

(c) The Administrator will conduct activities carried out under this section at reasonable times and in a reasonable manner, as determined by the Administrator.

(d) In carrying out this section, the Administrator may require the production of relevant documents and records, take evidence, issue subpoenas and depositions, and prescribe recordkeeping and reporting requirements.

§ 670.13 Request for confidential treatment of records.

(a) The Administrator may grant a recipient's request for confidential treatment of records produced under § 670.11, on the basis that the records are—

(1) Exempt from the mandatory disclosure requirements of the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt from public disclosure under Federal or State laws.

(b) A recipient must submit the record that contains the alleged confidential information with the request for confidential treatment.

(c) A recipient's request for confidential treatment must include a statement justifying nondisclosure and provide the specific legal basis upon which the request for nondisclosure should be granted.

(d) A recipient's justification statement must indicate whether the recipient is requesting confidentiality for the entire record, or whether non-confidential information in the record can be reasonably segregated from the confidential information. If a recipient is requesting confidentiality for only a portion of the record, the request must include a copy of the entire record and a second copy of the record where the purportedly confidential information has been redacted. The Administrator may assume there is no objection to public disclosure of the record in its entirety if the requestor does not submit a second copy of the record with the confidential information redacted at the time that the request is submitted.

(e) A recipient must mark any record containing any information for which confidential treatment is requested as

follows—''CONFIDENTIAL'' or ''CONTAINS CONFIDENTIAL INFORMATION'' in bold letters.

(f) The Administrator will provide notice to a recipient of his or her decision to approve or deny a request, in whole or in part, no less than five (5) days prior to the public disclosure of a record by FTA. The Administrator will provide an opportunity for a recipient to respond to his or her decision prior to the public disclosure of a record.

Subpart C—Authorities

§ 670. 21 General.

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

(a) Require more frequent oversight of a recipient by a State Safety Oversight Agency that has jurisdiction over the recipient;

(b) Impose requirements for more frequent reporting by a recipient;

(c) Order a recipient to develop and carry out a corrective action plan; and

(d) Issue restrictions and prohibitions, if through testing, inspection, investigation, audit or research carried out under Chapter 53, the Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, exist such that there is a substantial risk of death or personal injury.

§ 670.23 Use or withholding of funds.

(a) *Directing the use of funds.* The Administrator may require a recipient to use Chapter 53 funds to correct safety violations identified by the Administrator or a State Safety Oversight Agency before such funds are used for any other purpose.

(b) *Withholding of funds.* Except as provided under 49 CFR part 674, the Administrator may withhold not more than twenty-five (25) percent of funds apportioned under 49 U.S.C. 5307 from a recipient when the Administrator has evidence that the recipient has engaged in a pattern or practice of serious safety violations, or has otherwise refused to comply with the Public Transportation Safety Program, as codified at 49 U.S.C. 5329, or any regulation or directive issued under those laws for which the Administrator exercises enforcement authority for safety.

(c) *Notice.* The Administrator will issue a notice of violation that includes the amount the Administrator proposes to redirect or withhold at least ninety (90) days prior to the date from when the funds will be redirected or withheld. The notice will contain—

(1) A statement of the legal authority for its issuance;

(2) A statement of the regulatory provisions or directives FTA believes the recipient has violated;

(3) A statement of the remedial action sought to correct the violation; and

(4) A statement of facts supporting the proposed remedial action.

(d) *Reply.* Within thirty (30) days of service of a notice of violation, a recipient may file a written reply with the Administrator. Upon receipt of a written request, the Administrator may extend the time for filing for good cause shown. The reply must be in writing, and signed by the recipient's Accountable Executive or equivalent entity. A written reply may include an explanation for the alleged violation, provide relevant information or materials in response to the alleged violation or in mitigation thereof, or recommend alternative means of compliance for consideration by the Administrator.

(e) *Decision.* The Administrator will issue a written decision within thirty (30) days of his or her receipt of a recipient's reply. The Administrator shall consider a recipient's response in determining whether to dismiss the notice of violation in whole or in part. If a notice of violation is not dismissed, the Administrator may undertake any other enforcement action he or she deems appropriate.

§ 670.25 General directives.

(a) *General.* The Administrator may issue a general directive under this part that is applicable to all recipients or a subset of recipients for the following reasons—

(1) The Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, exists such that there is a risk of death or personal injury, or damage to property or equipment; or

(2) For any other purpose where the Administrator determines that the public interest requires the avoidance or mitigation of a hazard or risk.

(b) *Effective date.* A general directive is effective upon final notice provided by the Administrator under paragraph (e) of this section.

(c) *Notice.* The Administrator will provide notice of a general directive to recipients in the **Federal Register**. The notice will include at minimum—

(1) A reference to the authority under which the directive is being issued;

(2) A statement of the purpose of the issuance of the directive, including a description of the subjects or issues involved and a statement of the remedial actions sought; and

(3) A statement of the time within which written comments must be received by FTA.

(d) *Consideration of comments received.* The Administrator will consider all timely comments received. Late filed comments will be considered to the extent practicable.

(e) *Final notice.* After consideration of timely comments received, the Administrator will publish a notice in the **Federal Register** that includes both a response to comments and a final general directive or a statement rescinding, revising, revoking or suspending the directive.

§ 670.27 Special directives.

(a) *General.* The Deputy Administrator may issue a special directive under this part to one or more named recipients for the following reasons—

(1) The Deputy Administrator has reason to believe that a recipient is engaging in conduct, or there is evidence of a pattern or practice of a recipient's conduct, in violation of the Public Transportation Safety Program or any regulation or directive issued under those laws for which the Administrator exercises enforcement authority for safety;

(2) The Deputy Administrator determines that an unsafe condition or practice, or a combination of unsafe conditions and practices exists such that there is a substantial risk of death or personal injury, or damage to property or equipment; or

(3) For any other purpose where the Deputy Administrator determines that the public interest requires the avoidance or mitigation of a hazard or risk through immediate compliance.

(b) *Effective date.* A special directive is effective upon notice provided by the Deputy Administrator under paragraph (c) of this section.

(c) *Notice.* The Deputy Administrator will provide notice to a recipient that is subject to a special directive. The Deputy Administrator may initially provide notice through telephonic or electronic communication; however, written notice will be served by personal service or by U.S. mail following telephonic or electronic communication. Notice will include the following information, at minimum—

(1) The name of the recipient or recipients to which the directive applies;

(2) A reference to the authority under which the directive is being issued; and

(3) A statement of the purpose of the issuance of the directive, including a description of the subjects or issues involved, a statement of facts upon

which the notice is being issued, a statement of the remedial actions being sought, and the date by which such remedial actions must be taken.

(d) *Petition for reconsideration.* Within thirty (30) days of service of a notice issued under paragraph (c) of this section, a recipient may file a petition for reconsideration with the Administrator. Unless explicitly stayed or modified by the Administrator, a special directive will remain in effect and must be observed pending review of a petition for reconsideration. Any such petition:

(1) Must be in writing and signed by a recipient's Accountable Executive or equivalent entity;

(2) Must include a brief explanation of why the recipient believes the special directive should not apply to it or why compliance with the special directive is not possible, is not practicable, is unreasonable, or is not in the public interest; and

(3) May include relevant information regarding the factual basis upon which the special directive was issued, information in response to any alleged violation or in mitigation thereof, recommend alternative means of compliance for consideration, and any other information deemed appropriate by the recipient.

(e) *Request for extension.* Upon written request, the Administrator may extend the time for filing a request for reconsideration for good cause shown.

(f) *Filing a petition for reconsideration.* A petition must be submitted to the Office of the Administrator, Federal Transit Administration, using one of the following methods—

(1) Email to FTA, sent to an email address provided in the notice of special directive;

(2) Facsimile to FTA at 202–366–9854; or

(3) Mail to FTA at: FTA, Office of the Administrator, 1200 New Jersey Ave. SE., Washington, DC 20590.

(g) *Processing of petitions for reconsideration*—(1) *General.* Each petition received under this section will be reviewed and disposed of by the Administrator no later than ninety days (90) after receipt of the petition. No hearing, argument or other proceeding will be held directly on a petition before its disposition under this section.

(2) *Grants.* If the Administrator determines the petition contains adequate justification, he or she may grant the petition, in whole or in part.

(3) *Denials.* If the Administrator determines the petition does not justify modifying, rescinding or revoking the directive, in whole or in part, he or she may deny the petition.

(4) *Notification.* The Administrator will issue notification to a recipient of his or her decision.

(h) *Judicial review.* A recipient may seek judicial review in an appropriate United States District Court after a final action of FTA under this section, as provided in 5 U.S.C. 701–706.

§ 670.29 Advisories.

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

Subpart D—National Public Transportation Safety Plan

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

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

(a) Safety performance criteria for all modes of public transportation, established through public notice and comment;

(b) The definition of *state of good repair;*

(c) Minimum safety performance standards for vehicles in revenue operations, established through public notice and comment;

(d) Minimum performance standards for public transportation operations established through public notice and comment;

(e) The Public Transportation Safety Certification Training Program;

(f) Safety advisories, directives and reports;

(g) Best practices, technical assistance, templates and other tools;

(h) Research, reports, data and information on hazard identification and risk management in public transportation, and guidance regarding the prevention of accidents and incidents in public transportation; and

(i) Any other content as determined by FTA.

[FR Doc. 2016–18920 Filed 8–10–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 219

[Docket No. 150413360–6558–04]

RIN 0648–BF02

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Northeast Fisheries Science Center Fisheries Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS' Office of Protected Resources (hereinafter ''OPR'' or ''we'' or ''our''), upon request of NMFS' Northeast Fisheries Science Center (NEFSC), hereby issues a regulation to govern the unintentional taking of marine mammals incidental to fisheries research conducted in a specified geographical region, over the course of five years. This regulation, which allows for the issuance of a Letter of Authorization for the incidental take of marine mammals during the described activities and specified timeframes, prescribes the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective from September 12, 2016 through September 9, 2021.

ADDRESSES: A copy of the NEFSC's application, application addendum, and supporting documents, as well as a list of the references cited in this document, are available on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* In case of problems accessing these documents, please call the contact listed below this section (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Executive Summary

This regulation, under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*), establishes a framework for authorizing the take of marine mammals incidental to the NEFSC's fisheries research activities in a specified geographical region (the

APPENDIX G

49 CFR Parts 625 and 630
National Transit Database / Transit Asset Management

FEDERAL REGISTER

Vol. 81 Tuesday,
No. 143 July 26, 2016

Part II

Department of Transportation

Federal Transit Administration

49 CFR Parts 625 and 630
National Transit Database; Transit Asset Management; Final Rule; Notices; National Transit Database: Capital Asset Reporting; Transit Asset Management: Proposed Guidebooks

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Parts 625 and 630

[Docket No. FTA–2014–0020]

RIN 2132–AB07

Transit Asset Management; National Transit Database

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

ACTION: Final rule.

SUMMARY: The Federal Transit Administration is publishing a final rule to define the term *state of good repair* and to establish minimum Federal requirements for transit asset management that will apply to all recipients and subrecipients of chapter 53 funds that own, operate, or manage public transportation capital assets. This final rule requires public transportation providers to develop and implement out transit asset management (TAM) plans. TAM plans must include an asset inventory, condition assessments of inventoried assets, and a prioritized list of investments to improve the state of good repair of their capital assets. This final rule also establishes state good repair standards and four state of good repair (SGR) performance measures. Transit providers are required to set performance targets for their capital assets based on the SGR measures and report their targets, as well as information related to the condition of their capital assets, to the National Transit Database.

DATES: Effective October 1, 2016.

FOR FURTHER INFORMATION CONTACT: For program matters, Mshadoni Smith, Office of Budget and Policy, (202) 366–4050 or *Mshadoni.Smith@dot.gov*. For legal matters, Candace Key, Office of Chief Counsel, (202) 366–4011 or *Candace.Key@dot.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose of Regulatory Action

This final rule establishes a National Transit Asset Management (TAM) System in accordance with section 20019 of the Moving Ahead for Progress in the 21st Century Act (MAP–21; Pub. L. 112–141 (2012), codified at 49 U.S.C. 5326).[1] A transit asset management system is ''a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively through the life cycle of such assets.'' 49 U.S.C. 5326(a)(3).

Critical to the safety and performance of a public transportation system is the condition of its capital assets—most notably, its equipment, rolling stock, infrastructure, and facilities. When transit assets are not in a state of good repair, the consequences include increased safety risks, decreased system reliability, higher maintenance costs, and lower system performance.

Comprehensive quantitative information about the consequences of capital assets not being in a state of good repair is unavailable. However, insufficient funding combined with inadequate transit asset management practices have contributed to an estimated $85.9 billion transit state of good repair (SGR) backlog—a value derived from FTA's Transit Economic Requirements Model (TERM).[2] The SGR backlog is representative of the reinvestment cost to replace any transit assets whose condition is below the midpoint on TERM's 1 (poor) to 5 (excellent) scale, or 2.5. The SGR backlog poses a significant challenge during these fiscally constrained times, given FTA's estimates that an additional $2.5 billion per year above current funding levels from all levels of government is needed just to prevent the SGR backlog from growing.

The National TAM System is a scalable and flexible framework. The components of the National TAM System will work together to ensure that achieving and maintaining a state of good repair becomes, and remains, a top priority for transit providers, as well as States and Metropolitan Planning Organizations (MPOs).

B. Statutory Authority

Section 20019 of MAP–21 amended Federal transit law by adding a new section 5326 to Chapter 53 of title 49 of the United States Code. The provisions of 49 U.S.C. 5326 require the Secretary of Transportation to establish and implement a National TAM System which (1) defines the term state of good repair, (2) requires that all Chapter 53 recipients and subrecipients develop a TAM plan, (3) establishes annual reporting requirements, and (4) includes technical assistance. 49 U.S.C. 5326(b).

The Secretary also must establish SGR performance measures, and recipients must set performance targets based on the measures. 49 U.S.C. 5326(c)(1) and (2). Each designated recipient must submit two annual reports to the Secretary—one report on the condition of their recipients' public transportation systems, including a description of any change in condition since the last report, and another describing its recipients' progress towards meeting performance targets established during that fiscal year and a description of the recipients' performance targets for the subsequent fiscal year. 49 U.S.C. 5326 (b)(3) and 49 U.S.C. 5326(c)(3).[3]

C. Summary of Major Provisions

1. Transit Asset Management

This final rule adds a new part 625, ''Transit Asset Management,'' to title 49 of the Code of Federal Regulations (part 625). This rule implements the several statutory requirements of 49 U.S.C. 5326(b) and (c), referenced in the previous section, by coalescing them into a comprehensive National TAM

[1] On December 4, 2015, the President signed into law the Fixing America's Surface Transportation (''FAST'') Act (Pub. L. 114–94), which supersedes MAP–21; however, FAST made no amendments to the transit asset management statute at 49 U.S.C. 5326. This notice will refer to MAP–21 throughout the preamble.

[2] Individual transit agencies were not involved in developing the assessment of the $85.9 billion state of good repair backlog. FTA developed the estimate by feeding combined data into TERM. TERM produces national-level estimates of the national state of good repair backlog, based on an underlying set of models relating the expected average true condition of an asset to the asset's age. Currently, FTA does not collect the systematic data necessary to do a detailed time-series analysis on whether the SGR backlog is growing in real terms. The $2.5 billion estimate is based on the 2013 Conditions and Performance Report, which uses a combination of National Transit Database, systematic and ad hoc data collections in combination with estimates produced by TERM. Under this final rule, FTA will collect additional data which will improve future estimates. The 2013 Conditions and Performance Report is available at *http://www.fhwa.dot.gov/policy/2013cpr/*.

[3] The term ''designated recipient'' is defined in statute as ''(A) an entity designated, in accordance with the planning process under sections 5303and 5304, by the Governor of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 to urbanized areas of $200,000 or more in population; or (B) a State or regional authority, if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation.'' 49 U.S.C. 5302(4).

System. The National TAM System is comprised of the following five pillars: (1) The definition of ''state of good repair,'' 49 U.S.C. 5326(b)(1); (2) a requirement that recipients and subrecipients develop TAM plans, 49 U.S.C. 5326(b)(2); (3) SGR performance measures, and a requirement that recipients and subrecipients set performance targets based on the measures, 49 U.S.C. 5326(c)(1) and (2); (4) annual reporting requirements for recipients and subrecipients, 49 U.S.C. 5326(c)(3); and (5) technical assistance from FTA. 49 U.S.C. 5326(b)(4) and (5). The elements of the National TAM System are listed in § 625.15.

Section 625.17 establishes basic principles of transit asset management and requires a transit provider to balance competing needs when considering the life-cycle investment needs of its assets. The disrepair of any particular asset within a public transportation system does not necessarily mean that other assets are in disrepair; whether an asset has achieved a state of good repair is an independent determination that would be made by each transit provider.

Sections 625.25 through 625.33 set forth specific requirements for TAM plans. Each transit provider that receives Chapter 53 funds as a recipient or subrecipient and either owns, operates, or manages capital assets used in the provision of public transportation, is required to develop and implement a TAM plan. A TAM plan is a tool that will aide transit providers in: (1) Assessing the current condition of its capital assets; (2) determining what the condition and performance of its assets should be (if they are not already in a state of good repair); (3) identifying the unacceptable risks, including safety risks, in continuing to use an asset that is not in a state of good repair; and (4) deciding how to best balance and prioritize reasonably anticipated funds (revenues from all sources) towards improving asset condition and achieving a sufficient level of performance within those means.

Section 625.25 lists the TAM plan requirements, including an asset inventory, condition assessments, a description of analytical processes or decision-support tools used to estimate and prioritize capital investment needs over time, and a project-based prioritization of investments. In general, an asset inventory must include all equipment, rolling stock, facilities and infrastructure that a provider owns. A provider may exclude from its asset inventory any equipment with an acquisition value of less than $50,000, unless the asset is service vehicle equipment. The inventory also must include all rolling stock (revenue vehicles), passenger stations, administrative and exclusive use maintenance facilities, and guideway infrastructure owned by a third-party and used by the provider in the provision of public transportation. The level of detail in a provider's asset inventory should be commensurate with the level of detail in its program of capital projects. A transit provider is required to conduct a condition assessment on all inventoried assets for which the provider has direct capital responsibility, and also set targets and develop a project-based prioritization of investments for those assets.

Section 625.27 requires States to develop a group TAM plan for all subrecipients under the Rural Area Formula Program, authorized under 49 U.S.C. 5311, including American Indian tribes. TAM plan sponsors, which include States, and designated and direct recipients, must develop group TAM plans for their tier II provider subrecipients, except those subrecipients that also are direct recipients under the Urbanized Area Formula Program authorized at 49 U.S.C. 5307. Tier II providers are those transit operators that do not operate rail fixed-guideway public transportation systems and have either one hundred (100) or fewer vehicles in fixed-route revenue service during peak regular service or have one hundred (100) or fewer vehicles in general demand response service during peak regular service hours. Tier I providers are those operators with one hundred and one (101) or more vehicles in revenue service during peak regular service or operators of rail fixed-guideway public transportation systems. Tier I providers must develop their own, individual TAM plan.

The group TAM plan approach is intended to reduce the burden on smaller transit providers of developing their own TAM plans and reporting to FTA's National Transit Database (NTD). A group TAM plan is subject to the same requirements for individual TAM plans. However, sponsors and participants should coordinate to determine their specific roles and responsibilities in complying with this rule.

Section 625.33 implements requirements for investment prioritization. Transit providers are required to rate state of good repair projects in order of priority. The investment prioritization requirements aid a transit provider in making more informed investment decisions to improve the state of good repair of its capital assets.

Sections 625.41 through 625.45 implement specific performance management requirements. Section 625.41 lists the objective standards for measuring the condition of capital assets. Section 625.43 establishes SGR performance measures based on the SGR standards. Section 625.45 requires recipients and subrecipients to set one or more performance targets per asset class based on the SGR measures and also requires transit providers to coordinate with States and with Metropolitan Planning Organizations (MPOs), to the maximum extent practicable, in the selection of State and MPO performance targets.

Together, these requirements allow transit providers to better assess their SGR needs, and in turn make more informed investment decisions. The coordination amongst transit providers, States and MPOs should influence MPO and State transportation funding investment decisions and is intended to increase the likelihood that transit SGR needs are programmed, committed to, and funded as part of the planning process.

Section 625.55 requires transit providers to report their targets and the condition of their capital assets annually to FTA's NTD. This data both helps FTA better estimate the Nation's SGR backlog and supports the need for additional funding at all levels of government to maintain, improve, and replace the Nation's aging transit capital assets.

2. National Transit Database

This final rule amends the regulations for FTA's National Transit Database (NTD) at 49 CFR part 630, to conform to the reporting requirements for the National TAM System. Previously, the scope of 49 CFR part 630 was limited to implementing the reporting mandate at 49 U.S.C. 5335(b) for recipients and beneficiaries of section 5307 urban formula funds and section 5311 rural formula funds to report to the NTD. Under this rule, FTA has aligned 49 CFR part 630 with the requirements found at 49 U.S.C. 5326(c)(3) that require recipients of Federal financial assistance under 49 U.S.C. Chapter 53 that own, operate, or manage capital assets used in the provision of public transportation to report their performance targets and their progress towards meeting those targets to the NTD. Under this rule, recipients that receive neither Urbanized Area Formula funds (49 U.S.C. 5307) nor Rural Area Formula funds (49 U.S.C. 5311) remain excluded from other NTD reporting

requirements that are unrelated to transit asset management.

D. Summary of Costs and Benefits

TABLE 1—SUMMARY OF THE FINAL RULE'S BENEFITS AND COSTS

[$ Millions] [4]

	Low cost case			High cost case		
	Undiscounted dollars	Discounted at 7% discount rate	Discounted at 3% discount rate	Undiscounted dollars	Discounted at 7% discount rate	Discounted at 3% discount rate
Quantified Costs (20 years)	449	246	338	868	471	652
Quantified Costs Annualized	22.5	23.2	22.8	43.4	44.5	43.8
Unquantified Costs	• Additional asset maintenance, rehabilitation and replacement. • Costs of inventory and assessment for non-revenue vehicles and for equipment, administrative buildings, and parking facilities that are not part of a station or maintenance facility. • Other third party assets not reported to NTD.					
Qualitative Benefits	• Reduced operation and maintenance costs and/or reduced lifecycle costs of asset ownership. • Reduced mechanical breakdowns and other improvements to transit system performance, reliability and safety.					

The costs benefits analysis includes both qualitative and quantitative components and is designed to provide information about the likely impacts of the final rule at the societal level. FTA estimated the costs and benefits of the final rule by using Bureau of Labor Statistics studies and through dialogue with transit providers. Due to the limited number of quantitative resources, many of the estimated impacts are based on explicit assumptions that are outlined in section III of this notice. As described in section III, both low case and high case estimates were calculated based on in-house versus contractor estimated costs.

According to Government Accountability Office (GAO) reports and other studies, existing practices in transit asset management vary widely from transit provider to transit provider, though most providers already perform at least some of the functions required under the final rule. FTA estimated the costs of the final rule based on the incremental time that it will take a transit provider's staff to fulfill each of the National TAM System requirements, deducting the costs of the transit industry's current practices. Where relevant, the estimates are associated with the size of a transit provider's asset portfolio, as reported in the NTD. FTA monetized the time requirements using average wage rates from relevant job categories, as reported by the Bureau of Labor Statistics in 2015, and adjusted for employee fringe benefits.

Table 1 includes a summary of the estimated costs of the National TAM System. The quantified costs are for transit providers to assess their assets, develop TAM plans, and report certain information to the NTD. They do not include any incremental costs related to asset replacement, rehabilitation or maintenance—those costs are presented in the table as unquantified costs. FTA was also unable to estimate costs for assessing the condition of equipment that is not located at maintenance facilities or passenger stations or facilities not reported to NTD. The analysis covers a period of twenty years following the effective date of the final rule. Under the low cost case, the total undiscounted costs for the twenty years are $449 million. Using a discount rate of 7% (with 3% sensitivity case) for future values, the final rule has annualized costs of $23.2 million.

Under the high cost case, if all the tasks are contracted out by the transit agencies or States, rather than performed in-house, the cost of the final rule will be roughly double the estimated in-house cost. The total undiscounted costs for the twenty years are $868 million. Using a discount rate of 7% (with 3% sensitivity case) for future values, the final rule has annualized costs of $44.5 million.

The initial costs for collecting data and developing new methodologies will be just over $62 million spread over the first two years, followed by reduced amounts in subsequent years under the low cost case. Under the high cost case, initial costs will be approximately $115 million over two years. FTA expects that the benefits of the final rule will stem from improved maintenance practices and from improved decision-making in capital asset maintenance and replacement. By identifying and prioritizing state of good repair needs, a transit provider could reduce costs for mechanical breakdowns of transit vehicles, reduce travel delays for passengers, and yield potential safety improvements. For some providers, this may be feasible by shifting priorities within their maintenance budgets. For example, by identifying slow zones where deteriorated asset conditions have reduced system travel speeds, transit systems may assign maintenance efforts towards repairs that will eliminate the slow zone and ensure consistent and reliable travel times for passengers. For other providers, this may be accomplished through proactive replacement of capital assets. For example, rather than operating buses until they become unreliable in old age, some transit providers will now establish a consistent replacement age for their buses that will prevent costly in-service breakdowns.

Some providers may need additional funding to more effectively maintain their capital assets. To increase funding for maintenance, providers may, need to reduce expenditures for system expansion, particularly if the agencies' goal is to reduce the SGR backlog. Additionally, assembling a quantitative asset inventory and condition assessments will better equip transit providers to make the case to funding stakeholders for how much money is needed to bring their systems into a state of good repair. However, it is difficult to predict accurately how each provider is likely to respond.

The final rule's benefits could not be quantified due to the lack of available information on the impacts of asset

[4] Cost estimates are sensitive to the extent agencies use in-house or contractor staff to conduct compliance activities. If all compliance activities are contracted out by the transit agencies or States, rather than performed in-house, the cost of the final rule will be roughly double the estimated in-house cost.

management programs on transit systems. Instead, FTA conducted a breakeven analysis based on the incidence of transit vehicle mechanical breakdowns reported to NTD and their associated costs. For instance, in 2013, 524,629 mechanical failures of vehicles in service were reported to the NTD, and a total of $2.2 billion in vehicle maintenance costs were reported to the NTD. Assuming that in the absence of the rule, vehicle maintenance costs in each of the next 20 years are the same as they were in 2013, the final rule would need to avoid 1.02% or 1.95% of the mechanical failure breakdowns each year to yield savings that are equal to the portion of the rule's costs that FTA was able to monetize, in the low and high cost cases, respectively. For the rule's benefits to equal all of its costs, it would need to prevent a larger but unknown amount of vehicle maintenance costs. The full methodology for the low and high cost cases are described in the Regulatory Analysis section.

Current management practices may delay maintenance of vehicles due to various reasons. For instance, some providers may keep vehicles in operation to meet the current demand, delaying regular maintenance of vehicles, resulting in mechanical failure of vehicles in service. Others may shortchange maintenance budgets to expand their systems. In each case, providers struggle to meet system demands with limited resources.

Implementing a TAM system will require a provider to collect and use asset condition data, set targets, and develop strategies to prioritize investments to meet the provider's goals. One strategy may be to ensure that assets are maintained on a regular schedule to avoid failure of vehicles in service, which are expensive to manage and cause delays on the system. Based on limited findings on transit asset management-related cost savings from transit provider initiatives and from the literature in other transportation fields, notably highways, this level of improvement appears readily achievable. Additionally, there will be important non-quantifiable benefits in areas such as improved transparency and accountability.

II. Summary of Notice of Proposed Rulemaking (NPRM) Comments and Responses

A. Rulemaking Background

On October 3, 2013, FTA published a consolidated advance notice of proposed rulemaking (ANPRM) requesting public comment on a wide range of topics pertaining to the Public Transportation Safety Program and the TAM program authorized by MAP 21. 78 FR. 61251 (Oct. 3, 2013). Throughout the ANPRM, FTA expressed its intention to adopt a scalable and flexible approach to transit asset management and safety and highlighted the inherent linkages between asset condition and safety performance.

On September 30, 2015, FTA published a Notice of Proposed Rulemaking (NPRM) for Transit Asset Management and the National Transit Database (80 FR 58911). The NPRM provided a summary of the status of the Nation's state of good repair backlog and the history behind FTA's proposals for the National TAM System. FTA took into consideration public comments it received in response to the ANPRM and NPRM during the development of this final rule.

FTA received a total of 119 public comments on the NPRM. In general, FTA has not responded to those comments that related specifically to other rulemakings. Several commenters requested an extension to the comment period. FTA did not extend the comment period, but did accept late filed comments. A couple of comments suggested that FTA provide an opportunity for States and others to offer additional comments after FHWA and FTA issue all of the performance management-related NPRMs. FTA will continue to engage with the States, transit agencies and other members of the public on the implementation of its programs and requirements. The public can also submit questions or comments at any time to FTA's Web site at *http://ftawebprod.fta.dot.gov/ContactUsTool/Public/NewRequest.aspx.*

A number of comments requested guidance from FTA on how to implement the requirements of the proposed rule. The Transit Asset Management page on FTA's Web site at *www.transit.dot.gov/regulations-and-guidance/asset-management/transit-asset-management* contains a number of useful guidance documents and resources. For example, FTA has developed an Asset Management Guide for Small Providers [5] to assist small providers and States' Department of Transportations in developing TAM plans. FTA encourages transit providers and sponsors to visit the page regularly to access the most up-to-date resources.

Following is a summary of the public comments on the NPRM and FTA's responses.

[5] *https://www.transit.dot.gov/research-innovation/asset-management-guide-small-providers-fta-report-no0092.*

B. General Comments and FTA's Responses

This section provides summarized comments that are not specifically related to a section of the NPRM. This section is organized around common themes found in the responses to the NPRM such as, FTA's approach to implementing the TAM requirements, Nexus between state of good repair and safety, Nexus between transit asset management and planning, responses to the NPRM appendix that provided examples of asset classes and individual assets, Implementation and Oversight, and Technical assistance needs.

COMMENTS: FTA's Approach to Implementing the TAM Requirements

Some commenters expressed general support for FTA's efforts to use transit asset management to help transit providers maintain bus and rail systems in a state of good repair (SGR). A State agency expressed support for FTA's efforts to increase safety through the NRPM. A transit operator emphasized that investments to resolve the SGR backlog must be guided by a plan that emphasizes the goals stated for the TAM program.

However, a few commenters expressed general concern about the proposal. For example, although supporting the idea of a National TAM System, one commenter urged that the implementation be directed towards bringing the nation's transit system into a state of good repair, rather than creating reporting and oversight requirements that have no relation to this goal. A transit operator expressed concern that the guidance prescribed in the NPRM could require transit providers already mature in TAM best practices to alter their programs, which could result in compliant but less optimal TAM programs. An anonymous commenter said the rule must be kept as simple as possible.

FTA'S RESPONSE: FTA's Approach to Implementing the TAM Requirements

FTA appreciates those comments in support of its efforts to implement a National TAM System to achieve and maintain a state of good repair for the Nation's transit assets, improving transit safety, and increasing service reliability and performance. FTA agrees that transit providers should be guided by the goals of the National TAM System in using their funding from all sources for state of good repair.

Throughout the NPRM, FTA expressed its intention to adopt a scalable and flexible approach to transit asset management and safety. This final

rule sets minimum Federal requirements that can be adopted by any transit provider and tailored to any transit system.

COMMENTS: Nexus Between State of Good Repair and Safety

Several transit operators, a business association, and other commenters recommended that FTA clarify the interaction between TAM and safety, expressing concern that failure to do so could subject transit agencies to unnecessary litigation risk. These commenters suggested that Useful Life Benchmarks (ULBs) should not drive replacement cycles to the exclusion of safe operations and asserted that the safety of any asset should be the determining factor in prioritization of asset replacement. For similar reasons, a professional association argued that SGR and safety should not be tied together and urged FTA not to use SGR and safety reporting as a methodology for awarding or not awarding funding to transportation agencies. A transit operator stated that operator experience, training, and prudence play a more critical role in life safety than asset condition. This commenter suggested that it would be more prudent to have a separate safety flag that identifies any asset that poses an ''imminent danger'' to an operator or passenger with specific guidelines for the management of such assets.

Although acknowledging that consideration for safety in asset management decisions is important, one transit operator stated that there should not be a direct measurable link to safety performance because that determination would require greater innovation in integrating safety and asset management systems. Further, this commenter stated that it is difficult to assess the link between safety and asset management because it is not a direct relationship.

A local transit operator suggested that FTA provide documentation and guidance on how to integrate SMS directly into TAM plans. Further, this commenter suggested that FTA allow each individual transit provider to make their own determinations about the safety of their assets.

A State transit association expressed concerns about the viability of a top-down approach, stating that it may conflict with already-negotiated union contracts or hinder future negotiations. The commenter stated that, rather than the overly burdensome SMS and TAM plan requirements, a National Transit Institute (NTI) course with appropriate certification(s) could achieve the same goals and outcomes. In contrast, one transit operator concurred with FTA that MAP–21 requirements for a National TAM System can best be implemented within the context of an SMS framework imposed by the overarching Public Transportation Safety Program.

Another transit operator and an individual commenter expressed concern that because FTA has not published a final National Public Transportation Safety Plan, it is difficult to address issues in the TAM NPRM that pertain to the linkage between the two documents. A transit operator expressed concerns about the identification of unacceptable safety risks in safety plans and TAM plans, reasoning that public access to this information may increase safety risks for the rail system.

An individual commenter said a National TAM System will significantly affect the efficiency and cost-effectiveness of capital asset management and maintenance. The commenter said it also will help to improve transit safety. A State agency and a transit operator also agreed with FTA's statements on the linkages between SGR and safety.

A transit operator recommended that part 625 should reference part 670 and ''prioritize'' the significance that safety plays in determining SGR.

FTA'S RESPONSE: Nexus Between State of Good Repair and Safety

FTA believes that Congress intended for it to establish a National TAM System that not only increases the performance and reliability of capital assets, but also ''improve[s] safety.'' [6] For example, pursuant to 49 U.S.C. 5329(b)(2)(B), FTA must develop and implement a new National Public Transportation Safety Plan that includes the definition of state of good repair developed under this final rule. Additionally, pursuant to 49 U.S.C. 5329(d)(1)(E), a transit agency safety plan must include performance targets based on the SGR measures that will be included in a National Safety Plan.

The final rule reflects FTA's recognition of the nexus between transit asset management and safety. While asset condition is not always a contributing factor in safety events, FTA believes that there is a relationship between the condition of an asset and safety performance. FTA acknowledges that a transit asset that is in a state of good repair may be operated unsafely; conversely, a transit asset that is not in a state of good repair may be operated safely through appropriate safety risk mitigation strategies.

FTA's approach to TAM is consistent with its proposed SMS approach to safety. A fundamental aspect of transit asset management is the monitoring of asset condition data as an indicator of system performance. Similarly, SMS is a formal data-driven approach to managing safety risk and assuring the effectiveness of safety risk mitigations. SMS does not require a provider to take a specific action be taken to address a specific safety risk. Implementing SMS merely provides an organization with a systematic way to identify and understand safety risks, and subsequently make a determination about how to mitigate those risks.

The requirements of this final rule can be implemented in the absence of the components of the National Safety Program referenced in the comments. Again, this final rule is scalable and flexible. The final rule neither defines nor prescribes standards for ''unacceptable safety risk.'' FTA believes that each provider is in the best position, based on knowledge of both its unique operating environment and availability of resources, to make determinations regarding categorization and mitigation of risks. The final rule merely requires that a transit provider give due consideration in its investment prioritization to those assets that pose an identified unacceptable safety risk.

FTA does not agree with the commenter who suggested that public access to those safety risks that may be identified in a TAM plan or safety plan, may increase safety risks for the rail system. FTA did not propose in the NPRM that a transit provider document its safety risks in its TAM plan. In determining the state of good repair of an asset, FTA proposed that a provider consider whether or not the asset poses an identified unacceptable safety risk and that a provider considers those risks in the development of its investment prioritization.

This final rule allows a transit provider to determine its own ULBs, based on knowledge of its operating environment and the performance of its individual assets. Each transit provider will need to determine what investments should be made in order to improve the performance of its transit system.

[6] H.R. Rep. No. 112–557 at 603 (2012) (Conf. Rep.). In addition, the text of the Public Transportation Safety Act of 2010 was incorporated into both the transit asset management and safety provisions of MAP–21. *See* S. 3638, 111th Cong. (2010). In the report accompanying the 2010 Act, Congress stated that ''state of good repair directly relates to the safety of a public transportation system, as the likelihood of accidents increases as the condition of equipment and infrastructure worsens.'' S. Rept. 112–232 at 10 (2010). The requirements proposed under the Act were intended to establish a ''monitoring system for the safety and condition of the nation's public transportation assets.'' *Id.* at 1.

FTA understands the uncertainty expressed by some commenters regarding the nexus between transit asset management and safety. FTA also understands the uncertainty expressed in those comments regarding compliance with the requirements of the final rule that are related to safety, in the absence of a final National Public Transportation Safety Plan and a final rule for public transportation agency safety plans.

On February 5, 2016, FTA issued a proposed National Public Transportation Safety Plan (81 FR 6372–3) and a notice of proposed rulemaking (NPRM) for Public Transportation Agency Safety Plans (Agency Safety Plans). 81 FR 6344–71. The proposed rule for Agency Safety Plans would require transit agencies to set performance targets based on the safety performance criteria under the National Safety Plan. FTA proposed one criterion to measure the relationship between asset condition and safety performance. The proposed Agency Safety Plan rule also would require a transit operator to establish methods for identifying and evaluating safety risks throughout all elements of its public transportation system, including its capital assets. In the coming months, FTA plans to issue both a final National Safety Plan and a final rule for Agency Safety Plans and accompanying guidance, technical assistance and other tools for both safety and TAM.

COMMENTS: Nexus Between Transit Asset Management and Planning

A Metropolitan Planning Organization (MPO) commented that States and MPOs must consider and integrate transit providers' TAM plans and targets, as well as Transit Agency Safety Plans and targets, into the planning process, including decision-making on funding allocations and prioritization of investment strategies. A State DOT stated that consistency between FTA's and Federal Highway Administration's (FHWA's) TAM final rules is necessary and that State DOTs should be given flexibility to choose a phase-in option for the development of its first initial asset management plan and targets.

Several State DOTs said FTA should promote more definitive language for how TAM plans will feed into long- and short-range transportation planning and programming. Some commenters said the investment prioritization approach must be relevant to the existing planning and programming process without supplanting the statewide transportation improvement program (STIP) project selection process and capital programming processes.

One commenter requested clarification on the relationship between TAM plans and their future impacts on the development of Regional Transportation Plans. A transit operator said the proposed rule is written as if the National TAM System and TAM Program start at procurement and there is little to no mention of planning, requirements gathering, concept of operations, and hazard avoidance, which are central to true whole life-cycle management and SMS concepts.

FTA'S RESPONSE: Nexus Between Transit Asset Management and Planning

The NPRM did not propose that a transit provider abandon its existing capital planning program and the TAM requirements are not intended to supplant the capital planning process. This final rule is a baseline. The TAM requirements are intended to produce information critical to informed, sound decision-making for capital asset lifecycle investment needs. FTA understands that there may be other processes, considerations, or concepts that are not explicitly referenced in the rule, but may be central to a transit provider's implementation of a comprehensive TAM program. FTA believes that a transit provider could incorporate these other elements into its TAM plan through several of the requirements at § 625.25(b), specifically:

1. The SGR policy;
2. The TAM plan implementation strategy; and
3. An outline of how the TAM plan and related business practices will be monitored, evaluated and updated, as needed, to ensure the continuous improvement of transit asset management practices.

FTA acknowledges that compliance with the requirements for metropolitan planning will not become effective until the publication of the final TAM rule that establishes the SGR performance measures. Therefore, in the final rule on metropolitan and statewide and nonmetropolitan planning, FTA and FHWA have provided a phase-in of certain requirements to support States, MPOs and transit providers as they transition into performance-based planning and programming. FTA directs commenters to the Final Rule on Metropolitan and Statewide Planning and Non Metropolitan Planning [7] where State and MPO integration of transit providers' TAM plans, targets, and investment priorities into the performance-based planning and programming process are addressed.

COMMENTS: Appendix A: Examples of Asset Categories, Asset Classes, and Individual Assets

One commenter supported FTA's approach in Appendix A. However, a professional association and several State DOTs recommend that either Appendix A be removed from the final rule, or that the content included in Appendix A be replaced with asset categories and asset classes required for reporting to the NTD in order to align the two processes and keep reporting to a minimum. If Appendix A is retained, several of these commenters recommended that FTA either remove ''Administration'' assets from Appendix A or amend its definition to clarify what falls under the class of assets known as ''Administration.''

A professional association and a couple of State DOTs asked if the asset category infrastructure is only applicable to fixed guideway. Based on Appendix A, a couple of State DOTs said it is unclear whether FTA envisions that office equipment and vehicle related equipment (such as bus cameras) or shop equipment (*e.g.,* vehicle lifts, fueling and lubricating fuel dispensers, test equipment, etc.) would be included in a TAM plan.

A local government recommended that FTA delineate furniture and fixtures as an asset class or individual asset that is not applicable when categorizing under TAM. The commenter also suggested that FTA clarify that TAM is not a replacement for, nor should be confused with, the standard generally accepted accounting principle fixed asset categories such as Buildings, Leasehold Improvements, Land, Furniture and Fixtures, Technology, etc. Rather it is an extension or categorization of transit capital assets within the limited scope of TAM in improving safety, reliability, and performance of our nation's public transportation; thereby reducing the SGR backlog.

An individual commenter asked if FTA will provide a cross reference from Appendix A—Asset Classification in the TERM Lite Quick Start User Guide—to the Asset Category/Asset Class in Appendix A in the rule.

A transit operator stated that, in lieu of the categorizations as proposed for Appendix A, and associated definitions throughout the rule, it would support a system of asset categories and classes that is consistent with the one described in Table 2.9 in Transit Cooperative Research Program (TCRP) Report 172, ''Guidance for Developing a Transit

[7] *https://www.federalregister.gov/articles/2016/05/27/2016-11964/statewide-and-nonmetropolitan-transportation-planning-metropolitan-transportation-planning.*

Asset Management Plan,'' which also aligns more closely with the asset aggregations used in the TERM model. Another transit operator suggested that Appendix A should align with the corresponding table in FTA's 2012 Asset Management Guide because proposed Appendix A deviates from past FTA sanctioned practices and would likely disrupt systems already in use without improving the quality of data obtained. An MPO asked FTA to clarify the detail expected in Appendix A when a TAM plan is prepared as part of a group TAM plan by a State versus when prepared by the individual transit provider.

FTA'S RESPONSE: Appendix A: Examples of Asset Categories, Asset Classes, and Individual Assets

FTA included Appendix A in the NPRM to provide an illustrative example of an asset hierarchy. FTA did not intend for Appendix A to serve as an exhaustive list of asset classes and individual assets. Appendix A did not include systems as a separate asset category because systems would fall under the infrastructure category. Each asset category in the final rule is broad enough for a transit provider to incorporate its existing defined categories. Components of an asset, such as bus cameras or shop equipment, would be itemized in the asset inventory at the level of detail found in a transit providers program of capital projects. Specifically, with regard to the equipment asset category, the only assets that a provider must include in its inventory are non-revenue service vehicles and owned equipment over $50,000 in acquisition value. Additionally, equipment assets considered under the SGR performance measure and reported to NTD are exclusively non-revenue service vehicles. The equipment asset category does not include supplies, such as trash bins or pencils. A transit provider is not required to include any third-party equipment in its asset inventory. Also, see FTA's response to comments on ''Capital Asset'' and ''Equipment'' in § 625.25 Definitions.

The infrastructure asset category includes infrastructure assets for all modes. However, FTA proposed that the performance measure for infrastructure be limited to rail fixed-guideway assets. Therefore, a transit provider that does not operate a rail system would not have to set a performance target for its non-rail infrastructure assets. Similarly, the performance measure for equipment is limited to non-revenue service vehicles, and a transit provider is only required to set an equipment target for service vehicles. However, all other owned equipment over $50,000 must be included in a TAM plan. The asset inventory compiled for a transit provider's own TAM plan, particularly a rail transit provider's TAM plan, may have a greater level of detail than the inventory information reported to the NTD.

COMMENTS: Implementation and Oversight

Two commenters suggested that the oversight of the asset management reporting requirements should occur as part of a regularly scheduled oversight activity and existing programs, such as the triennial oversight program. One of these commenters encouraged FTA to set forth criteria that would prompt an as-needed asset management review, ensuring that reviews are triggered based on quantifiable criteria and defined risk, rather than on an arbitrary basis. Another commenter assumed that audit and compliance checks will be done during the triennial review because it was stated at the FTA webinars supporting the issuance of the NPRM that the TAM plans would not be submitted to FTA. The commenter requested that FTA clarify the audit and compliance verification of TAM plans in the final rule. One commenter expressed concern about FTA's assertion that it reserves the right to conduct additional oversight of TAM plans outside the triennial review process. A State DOT asked for FTA's determination of whether the National TAM System will be part of Satisfactory Continuing Control or Maintenance as it relates to the triennial review.

Several commenters said the rule should state how individual and group TAM plans will be reviewed and approved. A professional association said FTA should explicitly state that for rail fixed guideway systems, the State Safety Oversight Agency has a review and approval role.

Some commenters recommended that FTA further engage stakeholders with regard to implementing the rule. A State DOT suggested that FTA conduct a survey of all data requirements from the user level to determine if there is a way to coordinate and consolidate the process. A transit operator said FTA should consider providing an opportunity for a small delegation of transit providers to have a face-to-face dialogue to discuss concerns with the NPRM. A transit operator said there should be no additional changes to add more specific requirements in the final rule beyond those included in the NPRM, without another opportunity for the transit industry to review and comment.

FTA'S RESPONSE: Implementation and Oversight

FTA will not routinely collect or approve TAM plans. Individual transit providers, and sponsors on behalf of group TAM plan participants, must self-certify their compliance with the requirements of the final rule. FTA will consider developing a self-assessment tool as part of its technical assistance efforts. FTA intends to oversee self-certifications of TAM plans through the existing Triennial Review and State Management Review (SMR) processes, likely through the addition of a TAM module. FTA continues to reserve the right to conduct additional oversight of any of its requirements, including those related to TAM, outside of the Triennial Review and SMR processes.

FTA fully appreciates the role that State Safety Oversight (SSO) Agencies play in the safety of rail fixed guideway transit systems. FTA supports a rail transit provider's decisions to further align its safety program with its TAM program by seeking review and approval of its TAM plan by its SSO Agency. However, the final rule does not require SSO Agencies to review and approve the TAM plans of the rail transit systems that they oversee.

FTA has provided a number of opportunities for the public to comment on its approach and proposals on transit asset management. In addition to the ANPRM and NPRM, FTA sponsored several SGR roundtables, conducted an online dialogue, and issued a Transit Asset Management Guide. FTA will continue to engage with the industry on the implementation of both the TAM and safety requirements.

COMMENTS: Technical Assistance Needs

Several commenters provided statements concerning a potential template for TAM plans. A transit operator asked if FTA will issue a template that service providers can use to assure they are providing all required information FTA requires in an acceptable format. One commenter said FTA should offer technical assistance for tier II providers, or work with tier II stakeholders, to create TAM plan templates for smaller agencies and/or group TAM plans. Another commenter supported the idea that the State DOT and other sponsoring agencies develop one TAM plan template, but expressed concern about DOT's lack of adequate resources to develop a template, provide oversight, track assets and provide NTD reports on SGR and asset management.

Several commenters said FTA should provide training on the use of TERM

and the TERM scale for State DOTs and subrecipients prior to inclusion of facilities in the TAM plan.

A couple of commenters said FTA could provide assistance to those transit agencies that are new to asset management by publishing a sample definition of an asset. One of these commenters also said FTA should provide a toolkit as part of the final rule.

Some commenters asked for technical assistance from FTA on the following specific topics:

1. Decision processes and tools for assessing probability of risks.
2. SGR backlog calculation.
3. Developing quality and cost-effective condition assessments.
4. The new reporting requirements.

One commenter requested that FTA engage in a comprehensive asset management technical assistance effort as soon as the final rule has been published.

FTA'S RESPONSE: Technical Assistance Needs

FTA appreciates the recommendations for technical assistance tools. FTA's suite of TAM technical assistance tools will include one or more TAM plan templates, guidance or training for TERM, and guidance for performance measurement. Currently, the 2012 TAM Guide is FTA's primary guidance on transit asset management. It combines previous research, case studies, lessons learned from other FTA initiatives, and best practices.

COMMENTS: Additional Comments

A couple of commenters said FTA should ensure consistency between FTA and FHWA transportation asset management rulemakings.

One commenter said FTA should clarify to what degree the new asset management framework is potentially displacing local agency decision-making. The commenter said it has been a long-standing understanding that FTA will not substitute its judgment for that of its grantees, and final decisions on the allocation of both Federal and local funds should still rest with the implementing agency, not an entity operating at the national level.

Another commenter urged FTA to consider and request comments on adding governance metrics to the TAM rule that would permit external stakeholders to understand the challenges faced by individual agencies in balancing their capital and operating needs, and to identify agencies exerting insufficient effort in prioritizing SGR projects. For example, the commenter suggested that the following metrics might be appropriate: Available capital funding per transit asset; available capital funding per cumulative annual passenger trip; and proportion of capital budget appropriate to SGR projects.

An individual commenter asserted that the proposed rule's failure to address public transportation's human capital assets is a missed opportunity to address the high risks to both safety and performance that have resulted from the sector's failure to take a more strategic and systematic approach to acquiring, developing, and retaining individuals with needed skills. This commenter urged FTA to incorporate into the National TAM System requirements that would ensure the collection and reporting of basic workforce data, and provided specific suggestions of human resources performance data to collect.

FTA'S RESPONSE: Additional Comments

The FHWA and FTA asset management statutes are not identical; therefore the requirements under each agency's asset management rule will be different. However, the purpose of both rulemakings is to improve the condition of the Nation's transportation assets. Another rulemaking effort, the coordinated FHWA and FTA Metropolitan and Statewide and Non-Metropolitan Transportation Planning, will implement a performance-based approach to planning and programming (PBPP). This final rule supports the PBPP framework by requiring transit providers to share their TAM plans with their State and MPO planning partners and to coordinate with States and MPOs in the selection of State and MPO targets.

The requirements of the final rule do not displace local agency decision-making. The requirements of the final rule do not limit a transit provider from implementing additional TAM provisions, activities, and metrics. The final rule's information gathering, analysis, and prioritization requirements are intended to inform the local decision-making process.

FTA recognizes that human capital assets are an essential component of implementing a TAM plan; however they do not meet the statutory definition of ''capital asset.'' In the NPRM, FTA proposed that a tier I provider develop a nine element TAM plan, and has maintained this requirement in the final rule. One of the nine elements was a specification of resources, including personnel needed to develop and implement the TAM plan.

C. Section by Section NPRM Comments and FTA's Responses

This section provides summarized comments by NPRM section, FTA's responses, and changes made in the final rule.

Section 625.1 Purpose

This section proposed that the purpose of these regulations is to carry out the mandate of 49 U.S.C. 5326 for transit asset management.

COMMENTS:

A few commenters expressed support for the Federal objectives for the National TAM System laid out in proposed § 625.1. A transit operator asked if FTA has considered using the ISO 55000 framework to accomplish this mandate.

FTA'S RESPONSE:

Prior to MAP–21, FTA began researching transit asset management and developing TAM policies and best practices for the transit industry. FTA reviewed a number of resources prior to developing the NPRM, including the international asset management standard established by ISO. FTA believes that this final rule sets forth a flexible approach to implementing transit asset management that is consistent with current best practices.

FINAL RULE:

FTA is including this section in the final rule without change.

Section 625.3 Applicability

This section proposed that the regulations would apply to all transit providers that: (1) Are recipients or subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53; and (2) own, operate, or manage transit capital assets.

COMMENTS: Applicability—Assets Maintained, Owned, or Operated by a Third-Party

Many public comments addressed the applicability of the rule to contractor assets. Numerous local transit operators, several State DOTs, and other commenters asserted that a third party contractor's assets should not be required to be included in a provider's TAM plan. Some of these commenters suggested that this is a matter of contract administration and a transit provider should determine how they will approach the issue of the condition of a contractor's assets based on the nature of each individual contract. A private company in supply of transit assets recommended that assets other than rolling stock that are fully owned

by a private contractor (*e.g.,* tools and diagnostic equipment) should not be incorporated into TAM asset inventory. In contrast, one State DOT expressed support for the applicability of TAM performance targets to a transit provider's leased assets and assets operated under a service contract.

Two transit operators and an MPO pointed out that in some instances a contractor may be providing services to several transit agencies using the same assets or multiple transit agencies may share an intermodal terminal, and it is unclear which agency would be responsible for collecting condition information and reporting of those shared assets. For this reason, the MPO commented that overlapping reporting of the same assets by different agencies would cause reconciliation issues, unnecessary data collection costs, and unnecessary coordination issues to ensure consistency in asset representation. Also relating to shared assets, a transit operator expressed concern that the transit provider has no control over the maintenance schedule; repair or replacement of contractor owned assets and suggested that each transit provider should be allowed to determine which assets to include in its TAM plan. For similar reasons, two transit operators and a business association recommended that capital assets outside a transit operator's control—such as passenger stations maintained by station cities, track owned and maintained by freight railroads used under shared-use agreements, or a building for which a transit agency is leasing a portion—should not be included in the agency's TAM plan.

Some commenters asked whether assets owned by a third party contractor and used in the provision of public transportation service (*e.g.,* vehicles owned by third party paratransit provider, maintenance facilities where contractor-owned buses are stored and maintained) must be included in a recipient's asset inventory. A transit operator asked if space it leases for its administrative offices needs to be included in its TAM asset inventory. Two transit operators asked if taxicabs and other vehicles occasionally used to provide paratransit service pursuant to the Americans with Disabilities Act (ADA) should be included in the TAM asset inventory. If so, one of these commenters requested that FTA provide an explanation in the final rule as to how an agency would decide which vehicles to include. Commenting that a transit provider has little control over which assets are used by a third-party provider, a transit operator asked if rolling stock that is used intermittently through third-party providers would be included in the TAM plan.

A transit operator expressed concern that condition assessments for assets maintained by its contractual partners may be considered proprietary information that the private carriers are not willing to share due to liability issues. A local transit provider asked how FTA would suggest an agency impose and monitor more stringent safety/SGR investment standards to third party providers that have a service contract for asset maintenance and/or operation. Several State DOTs and another commenter recommended that leased assets that otherwise would be required to be included in a TAM plan should not be included unless the lease is for a minimum of 5 years.

A State DOT asked whether a non-profit agency providing specialized transportation service to complement a subrecipient's service would need to include all of its vehicles in a TAM plan or only those vehicles that is leases from the subrecipient.

If the assets of a contracted service provider do fall under a transit agency's asset inventory for purposes of TAM plan requirements, a transit operator recommended that FTA allow for a transition period for contracted services in which existing contracts can be modified or new contracts can be bid and awarded to accommodate the new requirements. This commenter also expressed concern that the introduction of TAM requirements into service contracts would increase contract costs without meaningfully improved service, and in some cases could lead to service reductions as a result of contracted cost increases.

An MPO suggested that, if FTA is interested in getting the full picture of an agency, it could require reporting of the shared, leased, and contracted assets that are directly used by the agency, but at a very basic level and that the non-owners should be exempted from the performance metrics for these assets. As an alternative to reporting leased and contracted assets, this commenter suggested that FTA could request that agencies meet the performance requirements of leased and contracted assets by including language regarding compliance with FTA's SGR performance standards in the agency's contracts with vendors.

A transit operator commented that a tier I provider should not be required to include assets used and maintained by other tier I providers as part of its TAM asset inventory. An MPO requested guidance from FTA on how and which TAM plan(s) should incorporate capital assets that are collectively purchased and collectively maintained by a regional authority.

FTA'S RESPONSE: Applicability—Assets Maintained, Owned, or Operated by a Third-Party

The applicability of the requirements proposed in the NPRM was consistent with FTA's analysis of the SGR backlog and with current NTD reporting requirements. The Nation's $85.9 billion SGR backlog is a value derived from FTA's TERM, which is based on a comprehensive assessment of the Nation's transit capital stock reported to the NTD, including those assets that are owned by third parties.

FTA agrees with commenters who suggested that requiring the inclusion of contracted assets in a TAM plan may be difficult to implement and may prove to be overly burdensome and costly. However, the agency continues to believe that a TAM plan should, to a certain extent, take into account these types of assets. Thus, in this final rule, FTA has attempted to strike a balance between these concerns.

This final rule requires that a transit provider include in its asset inventory all equipment, rolling stock, facilities, and infrastructure that it owns. A provider may exclude from its asset inventory any equipment with an acquisition value of less than $50,000, unless the equipment asset is a service vehicle. A transit provider must only include in its asset inventory third-party owned, or jointly-procured rolling stock, passenger stations, administrative and exclusive-use maintenance facilities, and guideway infrastructure assets for which it has direct capital responsibility.

Further, the final rule only requires a transit provider to conduct condition assessments, establish performance targets, and include in its investment prioritization, those inventoried assets for which it has direct capital responsibility.[8] A transit provider has direct capital responsibility for any asset that it owns. A transit provider also has direct capital responsibility for any asset that is currently included in its program of capital projects or an asset that the provider can reasonably anticipate it will include in its program of capital projects during the TAM plan horizon period. Once an asset becomes a part of a transit provider's capital program, the transit provider must comply with the final rule's condition assessment, target setting (if applicable), and investment prioritization requirements. This

[8] See Appendix C for example tables to illustrate the relationship amongst TAM plan elements.

reduction of scope allows a transit provider to obtain a broad view of the condition of the assets within its system, but limits the majority of the burden of associated with other activities that may have limited impact due to the provider not having direct capital responsibility.

FTA does not believe that it will be overly burdensome for a transit provider to include third-party owned vehicles, facilities, and guideway infrastructure in its asset inventory. Transit providers are already required to include detailed information on third-party vehicles and third-party guideway infrastructure in the NTD. FTA believes expanding asset inventories to include third-party passenger facilities and exclusive use maintenance facilities is important, as it will provide valuable information on the total number, size, and scope of facilities in the transit industry. The inclusion of a broad set of assets into the inventory is intended to provide funding decision makers with a full picture of their system and an opportunity to think proactively and long term about investment priorities for state of good repair.

FINAL RULE:

FTA is including this section in the final rule without substantive change. However, FTA is revising § 625.25(b)(1) to clarify which assets used in the provision of public transportation must be included in an asset inventory and to require condition assessments for those asset that a transit provider has direct capital responsibility for. FTA will issue guidance to aid transit providers in the implementation of the requirements of this final rule.

COMMENTS: Applicability—Other Comments

Some public comment submissions included other comments relating to the scope or applicability of the proposed rule. A State DOT, a business association, and a tribal government suggested that the TAM rule should apply only to capital assets purchased (or eligible to be funded) with FTA funding. State DOTs and other commenters said TAM plans for providers that only receive Section 5310 funds should only be required to include ''FTA-funded'' assets, even if FTA does not apply this definition to all TAM plans. An MPO, a State DOT, and a State transit agency said Section 5310 recipients should be excluded if they do not own vehicles funded through FTA sources. Two State DOTs and a transit operator suggested that all Section 5310 subrecipients that are not also Section 5307 or 5311 subrecipients should be excluded from the FTA TAM requirements. Three State DOTs, an MPO, and other commenters recommended that 5310 requirements for TAM reporting should be scaled back to a level that is reasonable and appropriate, reasoning that most 5310 subrecipients do not have the resources to implement a TAM or report to the NTD.

A professional association and a transit operator requested that FTA provide an exemption from the FTA TAM requirements to transportation providers that have fewer than 30 or 31 vehicles operating during peak service, which the commenters said would include most Section 5310 agencies. The transit operator stated that subrecipients awarded Section 5310 program funds are predominantly very small human service agencies including disability, aging, and health service providers, and asserted that human services agencies performing as transit providers are vastly different than transportation agencies in size, function, investment, and target populations served. Further, the professional association stated that the 30-vehicle threshold is consistent with the definition used in NTD reporting requirements to differentiate small from large agencies.

Similarly, a State DOT urged FTA to reduce the requirements for rural transit systems that have a minimal number of assets, including Section 5310 and Section 5311 subrecipients. An MPO recommended the creation of a tier III for Section 5311 subrecipients to ensure that the Group plans are manageable in scope and size. Two State DOTs and other commenters suggested that Section 5310 subrecipients should be exempt from the rule; however, if they are included, then these commenters recommended that Section 5310 subrecipients having less than ten vehicles should be exempt. Another State DOT suggested that any transit agency with fewer than ten vehicles should be exempt from TAM plan requirements. One commenter stated that the inclusion of Section 5310 vehicles was confusing because they have a much smaller useful life and operate in a different area than public transportation vehicles. This commenter was concerned that including these vehicles would dilute the SGR for the program as a whole.

An association that serves as a liaison between state departments of transportation and the Federal government said that 5310 subrecipients will find the burden of accepting FTA funds to significantly outweigh the benefits to their organization. According to this association:

> ''State DOTs will find it increasingly difficult to find effective subrecipients with the final result being loss of essential transportation services. Seniors and persons with disabilities will lose their only means for transportation to the grocery store, friends and family, and medical services. Section 5310 is an important aspect of the Rides to Wellness Initiative. One of the goals of the Coordinating Council on Access and Mobility is to ''Streamline federal rules and regulations that may impede the coordinated delivery of services, and improve the efficiency of services using existing resources.'' However, without scaling back the TAM plan requirements for Section 5310 subrecipients, FTA is adding barriers that may be impossible to overcome.''

Other commenters also stated that the cost of complying with the TAM requirements may result in Section 5310 entities discontinuing the services they provide.

A transit operator recommended that tier II providers that can demonstrate that they have effective existing asset management systems should be eligible for waivers from the TAM plan requirement. Several State DOTs and other commenters said subrecipients that receive solely Section 5311(f) funds should be excluded from the TAM planning process because intercity bus service (Section 5311(f)) is expressly excluded as a public transportation provider under the MAP–21 definition of public transportation in 49 U.S.C. 5302. If the final rule does not exempt the Section 5311(f) program in its entirety, one State DOT suggested that the rule should clarify that for the Section 5311(f) program, each State DOT may limit its TAM plan to just those assets deployed in their State and the State DOT has directly funded with Section 5311(f) funds, given that many States contract with national or regional private companies for the program.

An anonymous commenter asked if subrecipients of 5309 grant-funded vehicles that serve their clients and do not provide public transit service must be included in the TAM plan.

Two State DOTs said assessing the condition of and making an investment plan for each capital asset unit will place too large of a burden on subrecipients since the unit or units in question might represent a very small portion of the total dollar value of the provider's assets. Another State DOT suggested that (1) the rule should only focus on those assets that require long-term financial planning windows, (2) leased assets should not be included in the scope of the rule unless the lease is for a minimum of 5 years, and (3) the rule should expressly exclude office

space or other administrative support facilities or equipment.

A representative of tribal governments commented that it interprets the proposal as covering every Indian tribe that receives Chapter 53 transit funding, regardless of how small such Federal assistance may be or how few capital assets a tribal transit system may possess. A tribal government suggested that FTA consider a tier III transit provider classification for Indian tribal governments that would mandate much simpler planning and reporting requirements. This commenter reasoned that because Indian tribes own and operate ten vehicles or less at any given point in time, the man-hours burden to comply with the TAM rule cannot be justified for transit systems of this size and scale.

A State DOT recommended that FTA should develop a four tiered approach similar to current Federal regulations, with tier requirements based on population (*i.e.,* less than 50,000, 50,000–200,000, and greater than 200,000), with a fourth tier for specialized services. This commenter reasoned that the proposed two-tier framework based on a threshold of peak revenue vehicles would not adequately segregate systems with varying sizes and asset management capabilities. A trade association recommended that FTA revise its proposed TAM rule to incorporate scalable mechanisms for TAM plans appropriate to the size and scope of each agency.

Two commenters suggested that FTA change proposed § 625.3 language to read: ''This part applies to all recipients or subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53 that own, operate, or manage capital assets used in the provision of all modes of public transportation.''

A State DOT recommended that FTA provide in § 625.3 a more comprehensive list of all FTA recipient and subrecipient types that would be subject to the FTA TAM regulation.

An MPO commented that the requirements for non-public transit provider recipients to comply with the TAM rule potentially would create an undue burden for FTA and the funding recipients and the cost for these projects and services to comply likely outweighs their impacts to the transit SGR for most regions. For this reason, the commenter recommended that FTA should either exempt recipients that receive only Section 5307 or Section 5310 funds from the TAM plan requirements, or further reduce the requirements for those providers.

Asserting that TAM requirements should be different for bus-only systems, a professional association suggested that FTA consider using the language and concepts developed in the voluntary bus safety program developed from the 2003 Memorandum of Understanding signed by FTA, American Association of State Highway and Transportation Officials (AASHTO), the American Public Transportation Association (APTA), and the Community Transportation Association of America (CTAA).

FTA'S RESPONSE: Applicability—Other Comments

In order to address the SGR backlog in a meaningful way, FTA believes that a TAM plan must account for both those assets acquired with FTA funding and those that were not. In many cases, it is neither feasible nor does it make sense to distinguish between assets that were acquired with FTA funds and those that were not. Indeed, many of the legacy rail assets in the state of good repair backlog that are most in need of replacement were procured decades ago, prior to the establishment of a Federal financial assistance program for public transportation. The source of funds used to acquire the asset is of no consequence when making a determination regarding whether or not an asset is in a state of good repair and whether or not the asset needs to be included in the investment prioritization. FTA believes that accounting for all assets will provide a transit provider with important information that should be used to make more informed investment decisions for state of good repair.

FTA believes that this final rule is sufficiently scalable and flexible. FTA does not agree that it should provide waivers for tier I providers who already have effective transit asset management systems. The rule does not require a transit provider to abandon existing effective practices. Instead, the requirements of the rule can be integrated into and complement existing practices. Moreover, FTA does not agree that some or all tier II providers should be exempted from the TAM requirements. Tier II providers are only required to develop a four element TAM plan. A tier II plan must include only (1) an asset inventory, (2) condition assessments, (3) a decision support tool, and (4) a prioritization of investments for state of good repair.[9] A tier II provider also is required to set performance targets and report to the NTD. The fewer assets a provider has, the fewer assets would be included in an asset inventory, and the less time and effort would be required to comply with the other requirements.

In addition to the reduced requirements, tier II providers also may be eligible to participate in a group TAM plan that would be developed by a sponsor. The sponsor would be responsible for developing the TAM plan, setting targets, and reporting to the NTD on behalf of the group TAM plan participants. FTA believes that the two-tiered approach and group TAM plan option significantly reduce the burden of the TAM requirements on smaller, less sophisticated transit providers.

To the commenter concerned that inclusion of 5310 would ''dilute the SGR of the program as a whole,'' under the final rule, the performance measure for vehicles is based on the ULB. A transit provider may set a ULB in consideration of the type of vehicle, type of service, and operating environment. The ULB option allows for a more accurate assessment of the useful lives of vehicles based on operational realities.

This final rule only applies to recipients and subrecipients of chapter 53 funds who own, operate, or manage public transportation capital assets used in the provision of public transportation. The final rule does not apply to recipients of planning or research grants and cooperative agreements that do not provide public transportation. The term ''public transportation'' is defined at 49 U.S.C. 5302(14) and means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and does not include—

1. intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity) of Title 49,
2. intercity bus service,
3. charter bus service,
4. school bus service,
5. sightseeing service,
6. courtesy shuttle service for patrons of one or more specific establishments, or
7. intra-terminal or intra-facility shuttle services.

Public transportation does not include intercity bus transportation that may be

[9] By contrast, a tier I plan must include these four elements and also these five additional elements: A TAM and SGR policy; a TAM plan implementation strategy; a description of key TAM activities that the provider intends to engage in over the TAM plan horizon period; a summary or list of the resources, including personnel, that the provider needs to develop and carry out the TAM plan; and an outline of how the provider will monitor, update, and evaluate, as needed, its TAM plan and related business practices, to ensure the continuous improvement of its TAM practices.

eligible for financial assistance under 49 U.S.C. 5311(f). In addition, public transportation does not include service that is closed to the general public and only available to a particular clientele. For example, a subrecipient under the formula program for elderly persons and persons with disabilities (49 U.S.C. 5310) that operates service that is open to a segment of the general public (*e.g.* elderly persons or persons with disabilities) must comply with this final rule. However, a nonprofit subrecipient under the section 5310 program that operates closed-door service (*e.g.* for members of a specific senior center or for participants in a specific sheltered workshop program only), is not a provider of public transportation and is not subject to the final rule.

To clarify, recipients and subrecipients of 49 U.S.C. 5310 program funds that do not operate public transportation are not subject to this rule. FTA estimates that this rule would apply to approximately 20% of all recipients and subrecipients of section 5310 funds. Those 5310 providers that are subject to the rule are eligible to participate in a group plan developed by a TAM plan sponsor which significantly reduces the impact of this rule to 5310 providers.. FTA does not believe the TAM provisions in this rule will result in a reduction or discontinuation of 5310 services, nor does FTA believe that State DOTs will find it difficult to find effective subrecipients to participate in their 5310 programs as a result of the rule.

FINAL RULE:

FTA is including this section in the final rule without substantive change. However, FTA has revised § 625.25(b)(1) to clarify which assets used in providing public transportation, including but not limited to all revenue vehicles, all passenger stations, all exclusive use maintenance facilities, all non-revenue service vehicles regardless of value, and owned equipment over $50,000 in acquisition value, must be included in an asset inventory and § 625.25(b)(2) to require condition assessments of only those asset that a transit provider has direct capital responsibility for.

Section 625.5 Definitions

This section proposed definitions for terms that would be applicable to the proposed part. Some of the terms were familiar to the transit industry, but were defined slightly differently for purposes of the NPRM. This final rule includes a number of non-substantive changes to the definitions proposed in the NPRM to provide further clarity regarding the meaning of terms.

COMMENTS: Definition of ''Accountable Executive''

Several State DOTs and other commenters recommended that FTA should clarify the definition of Accountable Executive by adding, ''An official of a State may not be considered to be an Accountable Executive unless the State is a transit provider and, if so, only with respect to the State's activities as a transit provider.'' One State DOT requested that FTA redefine ''Accountable Executive'' for State DOTs or subrecipients who are in a group plan and state that the executive does not necessarily have the full range of responsibilities as defined.

Three commenters suggested that the definition should take into consideration that some transit agencies may have an organizational structure where the listed responsibilities are divided among more than one executive. For such agencies, these commenters suggested that the agency should be allowed to identify the Accountable Executives and their respective roles as part of the TAM plan. For similar reasons, rather than defining the Accountable Executive, a transit operator suggested that FTA inform State and local governing bodies that whoever is designated as the Accountable Executive must be granted authority to implement the adopted capital and TAM plan. Further, this commenter proposed that FTA add a provision that states no liability rests on the Accountable Executive personally.

An industry association commented that it may be overly burdensome and cause an overlap of job duties to have one Accountable Executive that oversees all safety and asset management requirements in planning, operations, maintenance, and other departments. A transit agency recommended that the Accountable Executive for asset management decisions and for the certification of agency TAM plans, be enabled to be separate from the decision-maker on safety because in many agencies the safety management decision-maker and the asset management decision-maker are different people, reporting to the chief executive.

Two MPOs stated that, in the case of the small, urbanized areas, it is unclear how the Accountable Executive at the local level can be responsible for approving the TAM plan if it is developed, approved, and implemented by the State.

A transit operator asked FTA to clarify whether the Accountable Executive may be the Chief Executive Officer (CEO) or General Manager (GM). Stating that the proposed definition of Accountable Executive is not consistent with the SMS rule that was provided earlier this year, one commenter suggested that if the intent is to point directly at the GM, CEO, President, or highest ranking executive, the definition should be shortened to that statement.

FTA'S RESPONSE: Definition of ''Accountable Executive''

FTA agrees with commenters who suggested that a group TAM plan sponsor is not the Accountable Executive for each participating transit provider. However, by participating in a group TAM plan, an individual transit provider's Accountable Executive may be required to defer to the decisions of the sponsor regarding prioritization of investments. Nonetheless, each transit provider's Accountable Executive is ultimately responsible for implementing TAM at their agency.

An Accountable Executive should be a transit provider's chief executive; this person is often the CEO or GM. FTA understands that at many smaller transit providers, roles and responsibilities are more fluid. However, FTA does believe that, even in circumstances where responsibilities are either shared or delegated, there must be one primary decision-maker who is ultimately responsible for both transit asset management and safety. It is a basic management tenet that accountabilities flow top-down. Therefore, as a management system, transit asset management requires that accountability reside with an operator's top executive.

FINAL RULE:

FTA is including the definition in the final rule without substantive change.

COMMENTS: Definitions of ''Asset Category'' and ''Asset Class''

A transit operator commented that the grantee should have flexibility to establish classes that match its existing planning and/or budgeting systems. This commenter recommended that Appendix A should be clearly labeled as not being definitive.

Three commenters recommended that FTA align the proposed asset categories with FTA's TERM/TERM Lite programs. A transit operator expressed support for FTA's approach to asset categories stating that this flexible approach would allow the classes to mirror each provider's capital program more effectively.

FTA'S RESPONSE: Definitions of ''Asset Category'' and ''Asset Class''

FTA proposed simple, flexible definitions for the terms ''asset category'' and ''asset class.'' The proposed definitions are compatible with most existing planning and budgetary systems, including those used by TERM-Lite. The asset class examples listed in appendix A do not represent all possible classes of assets, nor do they represent the only asset categories that may be used. For example, TERM-Lite uses a separate asset category for systems, whereas this rule includes systems as part of the infrastructure category. Nonetheless, the two definitions are compatible, and can be cross-referenced with each other.

FTA has labeled Appendix A as an example, as suggested by a commenter. Each transit provider may define its own asset classes within an asset category, provided that the transit provider is able to meet the performance measure target-setting and NTD reporting requirements of the final rule.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definition of ''Asset Inventory''

A transit provider recommended that the regulation and any guidance should specify that the term ''asset inventory'' refers to the required biennial inventory and that references to the inventory are comparable wherever it is required. Further, this commenter suggested that FTA consider adopting the FHWA Highway Economic Requirements System (HERS) approach, which is based on statistical sampling, and which the commenter asserted would improve data quality and reduce data collection burden.

FTA'S RESPONSE: Definition of ''Asset Inventory''

FTA proposed a simple definition for the term ''asset inventory.'' A transit provider may develop an asset inventory to meet the requirements of the final rule by using a number of sources, including its existing biennial inventory. FTA did not set forth a sampling method for a transit provider to determine which assets it should include in its asset inventory. This final rule requires that a transit provider's asset inventory include all assets used in providing public transportation. However, a transit provider may satisfy the requirement for condition assessments by conducting a sampling of assets within an asset class, or use another method of their choosing.

FINAL RULE:

FTA is including the definition in the final rule without change. However, FTA notes that § 625.25(b)(1) has been modified to clarify the assets this final rule requires to be included in the TAM plan asset inventory.

COMMENTS: Definition of ''Capital Asset''

Several transit operators and State DOTs requested a clearly defined monetary threshold for ''capital assets.'' Some commenters that recommended a minimal monetary threshold reasoned that it would allow for the collection of only useful data and eliminate the tracking of items of minimal value that are not critical to the provision of public transportation (such as trash dumpsters, office desks, copiers, fax machines, floor jacks, desk calculators, office chairs, coffee pots, clocks, battery chargers, etc.), which would impose a substantial burden on transit agencies. A transit operator urged FTA to decide on a dollar threshold based on evidence with some likely projection of outcome (*e.g.,* number of assets and value of the data from the assets).

Some commenters recommended specific monetary thresholds, including $100,000, $50,000, $25,000, $10,000, and $5,000.

Other commenters suggested other criteria in addition to monetary thresholds for what should be considered an asset. For example, three State DOTs and other commenters recommended that a capital asset must meet all of the following criteria to be required as part of TAM plan asset inventory: (a) FTA-funded, including assets likely to be maintained, replaced, or repaired with FTA funds; (b) an initial cost of at least $50,000 (as determined by the provider) or any rolling stock; (c) a ULB of at least 5 years or greater. Two transit operators also suggested that only federally funded assets should be considered capital assets for purposes of the TAM plans. In contrast, one State DOT expressed support for the TAM plan covering all assets in the provision of public transportation and not just the ones purchased with Federal funding, reasoning that it would allow for more consistency in the TAM development, implementation, and review process.

A business association agreed with criteria (b) and (c) of the above suggested capital asset definition. This commenter and an MPO also requested that FTA specify the assets to be included to avoid inconsistencies during reviews. For example, these commenters asked whether spare parts with a new bus should be included. These commenters also recommended that FTA provide a phase-in for asset classes that are lower priority, such as equipment with a value of less than $50,000.

A State DOT agreed with criteria (a) of the above suggested capital asset definition, but for the monetary threshold (criteria (b)), it recommend a lower value threshold of $20,000. Similarly, to reduce the cost burden to transit providers, two MPOs and three other commenters recommended that FTA limit assets reported in the TAM plan to assets with a value of at least $50,000 and a ULB of five years or greater. A State DOT agreed with these thresholds for non-rolling stock transportation assets, but suggested that the scope of assets included in a TAM plan should include all rolling stock.

A joint submission from regional transit organizations said FTA should define a cost/expected life threshold of an asset to be tracked and assessed. For purposes of FTA's TAM program, assets thresholds should be at higher levels (*i.e.,* over $50,000 and more than a 3-year life) or established risk vulnerabilities. A transit operator suggested further defining what is considered a capital asset for purposes of the National TAM System by providing thresholds of a minimum cost of $50,000 and a useful life of 1 year.

A professional association, a State DOT, and transit providers requested that FTA permit States and direct recipients to use their own definition of capital asset or existing industry standard best practices (*e.g.,* ISO 12224 standards). Some transit operators recommended that each transit operator should be allowed to determine which assets to include in its TAM plan (*e.g.,* only assets deemed critical to a transit provider's operation or service/risk model), with one commenter expressing concern about double counting of shared assets. Although commenting that the definition of asset is unique to each agency, an MPO requested that FTA issue broad guidance or a set of parameters that would clarify what FTA considers an asset.

A transit operator made the following comments: (1) It is important that asset definitions are understood uniformly across the departments of a single organization, and across transit agencies, nationwide, (2) FTA should refrain from expanding the definition of capital asset beyond the level of detail prescribed by 49 U.S.C. 5326, and (3) the regulatory definition should be narrowed, rather than broadened, to provide clarification. The commenter also said FTA should update its C5010.1

Grants Management and C5300.1 State of Good Repair Grants Program guidance documents to reflect the definitions established by this rulemaking.

In contrast, expressing concern that the term ''minimum level of granularity'' could be construed to include assets whose value is so minimal as to make the maintenance of the asset inventory unreasonable, a State public transportation system urged FTA to instead define and construe capital assets more broadly. Similarly, a transit agency recommended that FTA not restrict agencies to focus only on ''capital assets'' and simply use the term ''assets.'' Two commenters suggested that FTA revise the definition to reference an asset ''used in any mode of public transportation.''

A transit operator suggested that capital assets should, at a minimum, include items that most agencies presently track as an asset due to their cost and impact on the overall asset's condition (*e.g.,* bus engines, bus transmission, bus axles, rail HVAC units, and rail trucks). Another transit operator also expressed concern with the proposed definition of capital asset, commenting that systems within facilities or portions of infrastructure may be more realistically considered capital assets.

FTA'S RESPONSE: Definition of ''Capital Asset''

FTA proposed a broad definition of ''capital asset''. The definition encompassed all capital assets that may be used in the provision of public transportation service. Commenters who suggested that FTA include a monetary threshold in the definition of the term capital asset should understand that there is a distinction between what a capital asset is and whether or not it must be included in an asset inventory. FTA clarifies that the definition of ''capital asset'' does not include supplies (such as trash dumpsters, office desks, copiers, fax machines, floor jacks, desk calculators, office chairs, coffee pots, clocks, battery chargers, etc.); implementation guidelines will provide specific alignment with other FTA program guidance, for example, FTA's Grant Management Requirements Circular 5010.1.D. FTA has revised the final rule to clarify which capital assets a transit provider must include in its asset inventory.

FTA considered including a monetary threshold in the definition of a capital asset, and alternatively, a monetary threshold for including a capital asset in the TAM plan, but has decided against this approach. FTA wanted to propose a flexible and scalable approach to TAM that could apply to all different types of transit agencies. FTA believes the proposed definition is consistent with a scalable and flexible approach that can accommodate many existing capital planning practices. A monetary threshold could work against that interest because it would establish a one size fits all fiscal indicator, which may not have the same significance for every transit provider. Further, in order to stay current, FTA would need to regularly adjust a monetary threshold for inflation over time.

However, FTA has identified a monetary threshold for the equipment category to provide structure and consistency to the types of assets required in this category. The equipment category could be misapplied depending on the size of a transit provider's portfolio, as some transit providers identify equipment to a level of specificity beyond usefulness in a TAM plan. FTA has determined that all non-revenue service vehicles regardless of value and any owned equipment over $50,000 in acquisition value must be included in a TAM plan asset inventory. These constraints maintain the value of including equipment assets in the TAM plan without introducing undue burden on transit providers to include items of minimal value.

Historically, FTA has not required tracking of Federally-funded assets below $5,000 in value. This rule does not change that. Transit providers will not be required to include in their asset inventories any assets, regardless of funding source, that fall below the $5,000 threshold, or whatever subsequent threshold is established by FTA Circular 5010 or its successors.

In addition, FTA does not agree with the comments that recommended FTA phase-in requirements for assets. Each transit provider will determine the appropriate asset hierarchy and the level of detail based on the level of detail a transit provider already captures in their program of capital plans. The practice of transit asset management requires that a transit provider have a robust and complete assessment and understating of all of the assets within its system. To require a transit provider to identify ''priority'' assets would undervalue this fundamental aspect of TAM. Moreover, only when a transit provider has a complete understanding of the condition of the assets within its system is it able to create meaningful investment prioritization to improve or maintain a state of good repair.

FTA believes that third-party assets are mission-critical to the provision of public transportation service, and need to be accounted for in an asset inventory in order to have a clear picture of which assets are essential to the transit provider in delivering service. In this final rule, a transit provider must incorporate into its inventory only those capital assets that either it owns or specific asset types owned by a third party. Specifically, transit provider is not required to include in its asset inventory equipment that is owned by a third-party or third-party owned shared-use maintenance facilities. For example, a transit provider that uses a commercial, third-party maintenance facility, such as a national chain oil change company, attached to a commercial gas station does not need to include this asset in its inventory. However, a transit provider must only comply with the requirements in the rule for conditions assessments, targets, and investment prioritization for those assets for which the provider has direct capital responsibility, including third-party owned assets.

This final rule does not prescribe a level of detail for the asset inventory hierarchy. Instead, the final rule requires that a transit provider disaggregate divisible capital assets in a manner that is consistent with how the assets are identified in the transit provider's program of capital projects. For example, a project for a facility, which is comprised of multiple components, could be programmed as a project for an HVAC system or as a project for condenser and duct work; in either case, if the provider's program of capital projects itemizes the project as HVAC, then the provider may report HVAC in the TAM asset inventory. If a capital asset is of such low value that it would not be included in a transit provider's program of capital projects, then that asset need not be identified in the asset inventory required under this final rule.

FINAL RULE:

FTA is including the definition in the final rule without change. However, § 625.25(b)(1) has been revised to clarify which assets used in the provision of public transportation must be included in an asset inventory, including but not limited to all revenue vehicles, all passenger stations, all exclusive use maintenance facilities, all non-revenue service vehicles regardless of value, and owned equipment over $50,000 in acquisition value, must be included in an asset inventory at a level of detail commensurate with the level of detail used to describe assets in a transit provider's program of capital projects.

COMMENTS: Definition of ''Decision Support Tool''

Two commenters recommended that FTA revise paragraph (1) of the proposed definition of ''decision support tool'' to add the phrase ''including safety critical systems and components'' after ''condition data.''

FTA'S RESPONSE: Definition of ''Decision Support Tool''

FTA proposed a broad definition of ''decision support tool.'' FTA does not believe that it is necessary for the definition to explicitly include reference to ''safety-critical systems and components'' in the definition of decision support tool

FINAL RULE:

FTA is including the definition in the final rule without substantive change.

COMMENTS: Definition of ''Equipment''

A State transit association said the definition of ''equipment'' should have a dollar threshold attached. An MPO recommended that a unit of equipment be defined as an FTA-funded asset with an initial cost of at least $50,000, or any rolling stock with a ULB of at least 5 years or more.

A public transportation association said that no individual asset with an initial value under $50,000 or such higher value as the agency has established for financial statement purposes should be tracked as a ''unit of equipment.'' Requiring agencies to assess and report TAM information for equipment with lesser values could capture mundane assets such as trash dumpsters. According to this commenter, ''even with a $50,000 or locally established threshold, transit agencies would be free to track other assets deemed critical to their operation. Rolling stock such as paratransit vans would continue to be captured as rolling stock. Both FTA and the individual agency would have useful data, free from the clutter of hundreds or thousands of line items of minimal value and not critical to the agency mission, consistent with the example in draft Appendix A. Additionally, this would allow agencies to report with an eye to risk. Without linking the reporting requirement to operational risk, the transit industry is simply counting and spending money to gather irrelevant data.''

Several commenters stated that the proposed definition of ''equipment'' seems to include a wide range of asset classes, while other parts of the proposed rule define equipment as non-revenue vehicles (*e.g.,* Appendix A, § 625.41, § 625.43(a)). One transit agency recommended that non-revenue vehicles should be included in the vehicle asset class, not the equipment class. Similarly, another transit agency asserted that transit providers use the term ''equipment'' in regards to portable tools, work machinery, or components, and that it is not a term reserved for non-revenue vehicles.

Another commenter suggested that FTA allow the transit agency to define equipment, as well as other categories in the TAM plan, at a level that is suitable to the agency (*e.g.,* ''equipment means an item that is necessary to perform the primary transit function of moving people in a safe efficient manner'').

A transit operator expressed concern that the definition as proposed would unintentionally drive useful life to less than 1 year. This commenter proposed that equipment be grouped together; for example, overhead doors would be maintained and replaced as one group instead of individual assets. Asserting that a 1-year useful life threshold is too short, a transit operator suggested that FTA allow grantees to rely on State laws that determine eligibility for capital investments to determine what property qualifies as ''equipment.''

FTA'S RESPONSE: Definition of ''Equipment''

The purpose of the National TAM System is to tackle the Nation's growing SGR backlog by improving the condition of transit assets. FTA does not believe that a definition of equipment should exclude assets that are not in a state of good repair, but don't meet a monetary threshold. However, FTA acknowledges that an unspecified minimum threshold is confusing to transit providers. The final rule allows a provider to exclude from its asset inventory all equipment with an acquisition value below $50,000. However, an asset inventory must include all non-revenue service vehicles regardless of value.

This final rule does not prescribe a level of detail for the equipment asset category. Instead, the final rule requires that a transit provider identify capital assets in a manner that is consistent with how the assets are identified in the transit provider's program of capital projects. FTA conducted a review of nine transit providers, representing three types of transit operations, to find out the level of detail captured in their program of capital projects. FTA found that each transit provider, included varying levels of detail in their program of capital projects, but none so detailed as to include items of de minimus value, such as trash bins, pencils etc. FTA clarifies that ''equipment'' does not include supplies; implementation guidelines will provide specific alignment with other FTA program guidance, for example, FTA's Grant Management Requirements Circular 5010.

FTA recognizes that the threshold in this final rule differs from the current definition of equipment in the 5010 Circular, which states a $5000 acquisition value. FTA believes that equipment assets that fall between the $5000 threshold of the current 5010 Circular and the $50,000 threshold of this final rule are likely to be limited to assets that do not affect the SGR backlog. However, FTA notes that transit providers are encouraged to include equipment assets in their TAM plan that will impact their safety and operations to be considered alongside other assets in their inventory and investment prioritization.

FTA included Appendix A example in the NPRM to provide examples of asset classes. FTA did not intend for Appendix A to serve as an exhaustive list. A transit provider may choose how it defines asset classes within the equipment category for its TAM plan.

FTA agrees with the commenter that highlights that the final rule allows transit providers to establish locally defined thresholds to track assets deemed critical to their operation, providing ''useful data free from clutter of hundreds of thousands of line items of minimal value not critical to the agency mission''. FTA notes that this rule does not specify a risk-based approach to asset management but does recognize linking reporting to operational risk is a practice some transit providers may undertake.

FINAL RULE:

FTA is including the definition in the final rule without change. However, § 625.25(b)(1) has been revised to clarify that the only equipment assets that must be included in a TAM plan asset inventory are; non-revenue service vehicles regardless of value and owned equipment over $50,000 in acquisition value.

COMMENTS: Definition of ''Facility''

A transit provider commented that FTA's definition should recognize that not all buildings or structures used in the provision of public transportation are the same and asserted that the proposed definition does not provide an adequate description of public facing, operational, and administrative facilities.

FTA'S RESPONSE: Definition of ''Facility''

To clarify, FTA proposed a broad definition of facility that encompassed any buildings or structures used in providing public transportation, including passenger stations, operations, maintenance, and administrative facilities.

FINAL RULE:

FTA is including the proposed definition in the final rule without change.

COMMENTS: Definition of ''Full Level of Performance''

Three transit operators suggested that this term should not include the word ''full''; rather, they suggested that the performance of the asset is the ability to provide the required level of service to customers or performance. Further, one of these commenters suggested the addition of the sentence, ''Generally, this can be measured in terms of reliability, availability, capacity, and meeting customer demands and needs.'' The other transit operators reasoned that a benchmark for legacy transit systems is subject to interpretation.

Two commenters suggested that FTA expand the definition of ''full level of performance,'' reasoning that the proposed meaning is unclear because an asset degrades from new overtime and with use, thus, never again being at its ''full level'' of performance. These commenters also recommended that FTA add references for compliance with the Americans with Disabilities Act (ADA) requirements as set forth in 49 CFR parts 37, 38, and 39, which would speak to ensuring entities are meeting their obligations under 49 CFR 37.161.

A transit operator and a business association recommended that FTA use ''fit for intended purpose'' rather than ''full level of performance'' because it would still allow for reduced performance as long as an asset meets the required performance level and that the FTA's proposed SGR definition does not allow for the somewhat degraded performance of some assets experienced over time under even ideal conditions. Minimally, this commenter asserted that ''full level of performance'' requires additional explanation or slight modification to say ''acceptable level of performance'' or something similar, reasoning that ''full level of performance'' implies an absolute condition, which is not always achievable in transit. Although expressing support for the FTA definition of SGR because it would provide flexibility for each local agency to establish its own standards, a State DOT recommended that FTA reconsider the previously proposed definition that included ''fit for purpose'' and similar descriptions.

A State transit association said using safety as a component of ''full level of performance'' without further clarification overlooks the reality of operating policies.

FTA'S RESPONSE: Definition of ''Full Level of Performance''

FTA intentionally proposed an aspirational definition of ''state of good repair.'' FTA intended for the proposed definition to describe an asset at its best ideal performance condition. The term ''full'' describes an aspirational level of performance, which would require a transit provider, even those of legacy systems, to consider how far beyond optimal performance the system is operating. Full level of performance is not an absolute ''like new'' condition, but FTA proposed that a transit provider measure the state of good repair of its assets by applying the three objective standards.

FTA recognizes that old assets and assets in deteriorated condition may still provide an acceptable level of performance. However, merely operating at an ''acceptable'' level of performance with older assets in need of replacement does not represent a state of good repair.

FTA does not believe that ''fit for its intended purpose'' is sufficient to meet the statutory requirement that the definition of state of good repair include ''objective standards'' for measuring the condition of capital assets. For example, it is not uncommon for a transit provider to continue to use a railcar with limited functioning HVAC during high demand periods. While the rail car may be ''fit for the intended purpose'' of meeting revenue service demands, the performance of the HVAC system indicates the deteriorating condition of that rail car, which is not the same as full performance. This initial indicator of declining condition should be used to inform decisions on asset replacement. The purpose of the National TAM System is to improve the condition of the Nation's aging capital assets. In order to bring about meaningful change, FTA does not believe it should establish a system based on the status quo. Instead, FTA must establish a baseline that will bring about change.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definition of ''Horizon Period''

A transit operator suggested that FTA explain how the term ''horizon period'' compares to the term ''useful life.''

FTA'S RESPONSE: Definition of ''Horizon Period''

The ''horizon period'' is the period of time beginning with the completion of a TAM plan and ending four years later. The term ''useful life,'' used in FTA grant programs refers to the FTA-developed performance period for a capital asset. In general, FTA funds may not be used to replace an asset until it has reached or exceeded its useful life.

FINAL RULE:

FTA is including the definition in the final rule without substantive change.

COMMENTS: Definition of ''Infrastructure''

Two commenters recommended that the definition for infrastructure should also provide itemized categories including but not limited to Power, Track, Ventilation, Elevators, Escalators, Detectable Warning Strips, PA/VMS Equipment, Rolling Stock Subsystem Elements including doors, ramps, bridge plates, lifts, designation signs, public address equipment, and securement systems, among others.

A local government said the word ''interconnect,'' as used in the definition, can be interpreted tangibly or intangibly. In order to provide consistency across what is reported among bus and van providers, the commenter recommended that the final rule should either include applicable examples or else establish that this asset category may not apply to providers whose rolling stock capital assets are limited to buses and vans.

A transit operator said that the definition is vague when it is applied to assets other than rail infrastructure. Another transit operator commented that this term overlaps with ''facility.''

FTA'S RESPONSE: Definition of ''Infrastructure''

FTA proposed a broad definition of infrastructure, which encompassed all infrastructure classes for all modes of public transportation. Given this broad definition, FTA does not believe that more narrowly itemized categories are necessary.

FINAL RULE:

FTA is including the definition in the final rule without substantive change.

COMMENTS: Definition of ''Investment Prioritization''

A transit operator recommended that paragraph (2) of the definition should reference safety risk considerations. Expressing confusion that under this definition, investment prioritization must be fiscally constrained, a transit operator asked what needs to be reported if activities are not undertaken due to such constraints. Another transit operator suggested adding language to acknowledge other factors outside the prioritization criteria, such as intangibles, outside influences, and other defendable mitigating circumstances.

FTA'S RESPONSE: Definition of ''Investment Prioritization''

The NPRM proposed that a transit provider consider safety needs in the process of developing its investment prioritization. Resilience to climate change and service reliability are two other risks that transit providers may consider in the process of prioritizing investments. FTA did not propose a mandatory requirement for specific risk based analyses. However, FTA encourages and supports the application of a risk based asset management approach to the development of a transit provider's investment priorities.

Funding for any transit purpose is defined by Congress. FTA may not, through rule, establish additional sources of funding for any purpose that is not already eligible for such funding. A TAM plan should provide a transit provider with quantitative information that may be provided to a transit board and local funding bodies to support a strategic justification for the allocation of additional funds.

FINAL RULE:

FTA is including the definition in the final rule without substantive change. Section 625.33 included requirements for investment prioritization. Investment prioritization is both the analytical process used to prioritize investments and the resulting list of capital programs and projects. Investment prioritization is temporally and fiscally constrained, and should be based on reasonably anticipated funding levels from all revenue sources. The resultant list can be ranked by category or order.

COMMENTS: Definition of ''Key Asset Management Activities''

A transit operator commented that for a large grantee the size and complexity of this list will reflect the scale of the organization, and the interconnectedness of the grantee's management structure may make the presentation of such a list seem like an ''unwieldy organization chart.''

FTA'S RESPONSE: Definition of ''Key Asset Management Activities''

FTA agrees with the commenter that the scale and complexity of key asset management activities will reflect the scale and complexity of the transit provider's system.

FINAL RULE:

FTA is including the definition in the final rule without substantive change. Key asset management activities are the actions that a transit provider determines are necessary for implementing TAM practices within the organization and are critical to achieving the provider's transit asset management goals. These activities are not limited to outputs of transit asset management, but may include activities that support asset management, such as the purchase of decision-support software or a training program for key personnel.

COMMENTS: Public Transportation System

A State DOT asked if Section 5310 fund recipients are considered general public transportation.

FTA'S RESPONSE: Public Transportation System

Public transportation does not include service that is closed to the general public and only available for particular clientele. For example a subrecipient under the section 5310 program that operates service which is open to a segment of the general public, (*e.g.,* all elderly persons or persons with disabilities) would be required to comply with this rule. However, a subrecipient nonprofit or community organization under the section 5310 program that operates closed-door service, (*e.g.,* for members of senior center or work program only) would not be providers of public transportation and therefore are not required to comply with this rule.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definition of ''Rolling Stock''

An individual commenter asked which vehicles fall under the Asset Category/Asset Class of Equipment/Service Vehicles and which vehicles fall under the Asset Category/Asset Class of Rolling Stock/Cars and Vans.

FTA'S RESPONSE: Rolling Stock

Rolling stock includes vehicles used primarily to transport passengers. Service vehicles, which fall under the equipment category, are used primarily to support maintenance and repair work for a public transportation system, supervisory work, or for the delivery of materials, equipment, or tools.

FINAL RULE:

FTA is including the definition in the final rule without change and is adding a definition for the term ''service vehicle.''

COMMENTS: Safety Management Systems

A transit operator recommended that FTA consider how it will implement this part of the rule if there will be additional rules for the National Public Transportation Safety Program, suggesting that FTA may want to implement all of its safety related rules at the same time.

FTA'S RESPONSE: Safety Management Systems

In the NPRM, FTA proposed that the Accountable Executive be responsible for the development and implementation of a TAM plan. The requirements of this rule related to the role and responsibilities of an Accountable Executive related to transit asset management may be implemented in the absence of rules to implement the several components of the National Public Transportation Safety Program.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definition of ''State of Good Repair''

Asserting that the proposed rule followed the spirit of MAP–21, one commenter said that MAP–21 directed FTA to establish a nationwide definition for SGR and to use this definition to establish the National TAM System, the goal of which is to enable transit agencies to better use capital funding, and for decision-makers to more efficiently and effectively distribute grants. A transit operator supported FTA's definition of SGR as the condition in which a capital asset is able to operate at a full level of performance.

Another commenter approved of the proposed SGR definition, as it is aspirational with some flexibility.

A State DOT said the SGR definition is too limiting and creates a situation where SGR may only be achieved for a very limited time, or not at all, for most

assets, especially vehicles, due to the use of the phrase ''full level of performance.'' Another State DOT said an older asset may not be ''able to operate at a full level of performance,'' but still be in a state of good repair.

A local transit operator asked how FTA envisions tying the asset performance measures to the SGR definition, particularly to safety risk, as well as how FTA would account for asset rehabilitations and life extensions. A State agency said the definition should require that the asset be shown to operate in a safe and reliable manner in order to be considered in a SGR. An individual commenter said the definition may need to be subjective in some way to enable the individual responsible for measuring SGR to improve the safety of the asset.

A transit operator proposed a definition that includes ''an asset that performs as designed safely and cost effectively,'' reasoning that the proposed definition did not address the idea of risk or cost to maintain full level of performance. Two commenters recommended that FTA revise the definition to mean ''the condition in which a capital asset is able to operate safely at a full level of performance,'' and define ''operate safely'' as asset functioning within the manufacturer's recommended specified work limits.

A transit operator said that the proposed definition is not consistent with the SGR principles (§ 625.19) and SGR performance metrics (§ 625.41). This commenter recommended that the definition be modified to ''a state of good repair means the condition in which a capital asset is able to operate at the required level of performance and is fit for its intended purpose.''

FTA'S RESPONSE: Definition of ''State of Good Repair''

FTA appreciates commenters' agreement that the definition of SGR achieves the intent of the MAP–21 mandate, while providing flexibility and objective standards for measuring state of good repair. FTA intended for the proposed definition to describe an asset at its best ideal performance condition.

FTA disagrees that the SGR definition is not consistent with the SGR principles and standards for measuring condition of capital assets. As proposed, if an asset meets each of the objective standards, it is operating at a full level of performance and is therefore in a state of good repair. FTA agrees that the cross-section of cost and performance are the basis of asset management principles. State of good repair is a threshold that identifies the desired performance condition. Please note the ''full level of performance'' definition response above provides a more expanded description of this term. The SGR principles § 625.17 outline the relationship of TAM to SGR.

FTA recognizes the critical relationship of safety and asset condition. The SGR definition is in part expressed by identifying the presence of an unacceptable safety risk. The National TAM system does not direct transit providers to prove the safe and reliable operation of their assets. FTA will define safety hazard identification and safety risk assessment requirements in a proposed NPRM for public transportation agency safety plans.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definitions of ''Tier I Provider'' and ''Tier II Provider''

A transit operator requested that the distinction between tier I and tier II operators be revised for consistency with the Federal formula grant definition of small-to-medium transit agencies. Specifically, this commenter suggested that tier II should be defined as operators that provide service to geographic areas with populations under 200,000 people. A State DOT recommended the tiers be based on FTA program type (49 U.S.C. 5307, 5310, 5311, etc.) rather than on the number of vehicles a transit provider operates.

To limit the administrative load on smaller transit agencies, transit providers, an industry association, and a business association suggested that the tier I and tier II definitions or the definition of vehicle in revenue service during peak operations should be specifically limited to buses, excluding paratransit cutaways, vans, and non-dedicated assets (*e.g.,* taxis, vanpools). A transit provider said that the ''100 or fewer vehicles during peak operations'' criteria for a tier II provider should not include non-dedicated equipment (*i.e.,* contractor-owned and used for other non-contract purposes) and vanpool vehicles.

A business association recommended that FTA revise the definition of ''Tier II provider'' to include any 49 U.S.C. 5310 subrecipients. A transit operator said many small agencies have more than 100 revenue vehicles in peak service if vanpools, mobility programs, and other services are counted, but they may not have more than 50 motorbus revenue vehicles in peak revenue service. The commenter recommended expanding/revising the definition of tier I and tier II agencies to include the types of vehicles and potentially revise the vehicle threshold.

An MPO requested clarity on how the TAM tier thresholds relate to differing service levels. For example, this commenter stated that many vanpool programs have vehicles operating in a single peak hour trip, rather than operating continuously throughout the peak hours. The commenter requested flexibility in how the threshold is defined, particularly for agencies that have limited service operations. A local government asked which tier it would fall under, as it operates less than 100 vehicles but also operates a Vehicular Inclined Plane.

FTA'S RESPONSE: Definitions of ''Tier I Provider'' and ''Tier II Provider''

FTA proposed to establish separate requirements for smaller (tier II) and larger (tier I) transit providers. FTA agrees that the tier definition should parallel the calculation used to determine if a small operator in a large urbanized area is eligible for operating assistance under the 49 U.S.C. 5307 Urbanized Area formula program. FTA does not agree that the tier delineations should solely be based on population, area served or funding program. FTA notes that some of the smallest transit providers in the country, with just a handful of vehicles in operation, are sometimes actually located in some of the largest urbanized areas with more than one million persons in population. Likewise, there are some very large operators that receive some funding under the 49 U.S.C. 5311 Rural Area Formula Grant Program and under the 49 U.S.C. 5310 Grant Program for special services to the elderly and disabled.

FTA clarifies that a tier I provider has 101 or more fixed-route vehicles in peak revenue service, or has 101 or more non-fixed route vehicles in peak revenue service. To calculate, the fixed-route vehicles and non-fixed route vehicles should be considered separately. For example, an urbanized area transit provider with no rail service, 80 fixed-route vehicles, and 35 non-fixed-route vehicles (for a total of 115 vehicles) would be considered a tier II provider. This clarification makes the calculation consistent with how the calculation for operating assistance eligibility in large urbanized areas is calculated.

Therefore, FTA believes this rule limits the administrative load on smaller transit agencies and has clarified that tier definitions are based on the type of services a provider offers either, fixed route (*e.g.* busses) or non-fixed route (*e.g.* paratransit cutaways) peak revenue vehicles.

FINAL RULE:

FTA has revised the definitions transit provider, tier I provider, and tier II provider in the final rule.

COMMENTS: Definition of ''Transit Asset Management''

A transit operator said this definition should also include ''disposing'' in the list of specified lifecycle stages. Two commenters suggested that FTA revise this definition to read in part ''. . . costs over their life cycle in order to provide safe, cost-effective, ADA-compliant, and reliable service.''

FTA'S RESPONSE: Definition of ''Transit Asset Management''

FTA proposed a comprehensive definition of the term ''transit asset management,'' which can be applied to a number of activities, including ensuring that an asset is ADA-compliant. FTA does not believe that adding the language proposed in the comments is necessary.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENT: Definition of ''Transit Asset Management Policy''

One commenter suggested modifying the proposed language defining TAM policy to avoid implying that every agency that falls under this rule is out of SGR.

FTA'S RESPONSE: Definition of ''Transit Asset Management Policy''

FTA did not intend for the proposed definition to imply that every agency that falls under the rule is not in a state of good repair. In fact, FTA purposely proposed an asset-based definition, as opposed to a system-based definition, in order to make achieving and maintaining a state of good repair an achievable goal.

FINAL RULE:

FTA has revised the definition in the final rule to clarify that a TAM policy and the final rule applies to a provider whose entire inventory of capital assets is in a state of good repair.

COMMENTS: Definition of ''Transit Asset Management System''

Two MPOs recommended removing ''operating, maintaining, and improving'' from the definition and replacing it with ''managing the use of.'' A transit operator recommended that FTA revise this definition to replace the word ''system'' with ''program,'' reasoning that ''system'' implies that a software package is necessary for asset management, which the commenter asserted is counter to other recommendations made by FTA. Another commenter expressed support for the proposed definition.

FTA'S RESPONSE: Definition of ''Transit Asset Management System''

The proposed definition of the term transit asset management system was derived from the statute, 49 U.S.C. 5326(a)(3). FTA believes that the statutory definition is sufficient.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definition of ''Transit Provider''

Several State DOTs and other commenters suggested that FTA clarify the definition of ''transit provider'' by adding, ''A State is not considered to be a transit provider by virtue of passing on funds to subrecipients, administering the programs under 49 U.S.C 5310 and 5311, developing and implementing a TAM plan, or taking any other steps required of a State by this or other FTA rules.''

Two commenters recommended that FTA revise the definition to specify ''capital assets used in the ''provision of *all modes* of public transportation.''

A State DOT expressed concern that because the definition of ''transit provider'' includes operators providing services under the 49 U.S.C. 5310 and 5311 programs, there would be double reporting by the transit providers and the State sponsors of the group TAM plans in which the transit providers are included.

FTA'S RESPONSE: Definition of ''Transit Provider''

In the NPRM, FTA proposed a definition of the term ''transit provider'' meaning ''a recipient or subrecipient who owns, operates, or manages capital assets used in the provision of public transportation.'' A transit provider must provide transit service, either directly or through a third-party, not merely pass funds through to a transit provider or develop a group TAM plan.

FTA proposed that a sponsor satisfy the reporting requirements on behalf of its group plan participants. Alternatively, any transit provider that develops its own individual plan, including eligible tier II providers that choose to opt-out of a group TAM plan, must report directly to the NTD.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definition of ''Useful Life Benchmark''

Several State DOTs recommend removing the word ''acceptable'' from the definition, reasoning that it could lead to arguments that operation past that period is ''not acceptable.'' If this term cannot be removed, these commenters suggested that at a minimum the final rule should include a statement that the use of the term ''acceptable'' in the definitions of ''useful life'' and ''useful life benchmark'' ''are solely for general asset management planning purposes.''

A transit operator supported the establishment of a ULB as the proxy for the condition of revenue vehicles but recommended that FTA's guidance reflect that age is only one aspect that affects SGR. According to this commenter, other factors include usage (including passenger loads, service hours/miles) and operating conditions (including topography and stop frequency). Similarly, another transit operator expressed concern that the ULB assessment threshold based on an asset's age is problematic in that a set of rolling stock may be beyond its ULB yet remain roadworthy and safe as a result of the agency's maintenance practices. The commenter said this could discourage agencies from utilizing strong maintenance practices, as even a well-maintained bus or rail vehicle would fail the test of age-based asset condition reporting. One transit provider suggested that FTA revise the definition of ULB to include both safety and cost effectiveness.

Another transit operator urged FTA to allow for recognition of obsolescence in defining ULB by ensuring flexibility that would allow individual transit systems to adjust ULBs based on changing conditions or changes in technology lifecycles. Further, this commenter recommended that FTA should allow an exception for the ULB to be less than the minimum life in FTA's formula programs to account for impacts due to obsolescence if justified with proper documentation. Similarly, a transit operator commented that a ULB could be less than the minimum useful life used in FTA's formula programs and may also be different from agency depreciation schedules, which are set when the assets are placed on the agency's books.

A transit operator stated that while ULB works well for most of the capital assets, it is challenging to define it based on traditional replacement standards for some assets, such as historic streetcars. This commenter recommended that FTA add language to

the ULB definition that includes ''or when they are considered renewed to a good condition.''

A local government recommended that FTA create a ULB table specific to regions from which transit providers can base their performance and set targets to reduce the potential wide swings from one similar provider to the next.

Two commenters suggested that FTA consider referencing compliance with ADA requirements as set forth in 49 CFR parts 37, 38, and 39.

FTA'S RESPONSE: Definition of ''Useful Life Benchmark''

A ULB takes into consideration both the age of an asset and its operating environment. Consideration of the asset's operating environment allows transit providers to develop performance targets that reflect their specific operating environments. Transit providers operate their assets in diverse environments, where the geography, frequency of service, passenger loads, etc. will vary. Therefore, a general national standard may not adequately address asset condition. For example, a transit provider that operates for only 4 hours per day would have different vehicle conditions than a transit provider that offers 24-hour service, even if the vehicles for both providers are the same age. As a result, the estimate of a vehicle's useful life also may be different. The ULB framework enables a transit provider to report its performance and set targets for its performance on a scale that is tailored to it.

The term ''acceptable'' in the proposed definition of ULB was intended to allow a transit provider the ability to define their own period of use based upon their operating environment. A transit provider should establish a ULB by taking into consideration the operating environment of its assets, historical evidence, manufacturer guidelines, and any other relevant factors. Transit providers may elect to use the default ULB for assets, which is derived from FTA's TERM.[10] If an asset exceeds its ULB, then it is an indicator that it may not be in a state of good repair.

FTA agrees that age alone is not the only aspect that affects SGR and will provide guidance to assist transit providers in developing their own ULBs to reflect their operating conditions, which may include the considerations provided by commenters, historical evidence, and manufacturer guidelines.

FTA agrees with the commenter that suggests an asset may be roadworthy and safe as a result of its agency's maintenance practices. A transit provider may develop its own ULB which reflects its maintenance practices. FTA will provide default ULBs, and encourages providers to develop their own customized ULBs. Once a provider establishes its ULB, it is entirely possible that over time and changes in their policies and practices, the transit provider may need to establish a revised ULB and submit it to FTA for approval.

FTA did not propose to change the useful life requirements for vehicle replacement under FTA's grant programs. A ULB is distinct from the term ''useful life'' or ''minimum useful life'' that applies to FTA grant programs. Under FTA grant programs, ''useful life'' refers to the Federal financial interest in a capital asset, which is based on the length of time in service or accumulated miles. Generally, assets are not eligible for replacement with FTA funds until they have met or exceeded their minimum useful lives. A ULB, however, takes into consideration operational factors, discussed above, that may impact the condition of a capital asset. Thus, a ULB that is less than the useful life for grant programs may impact a transit provider's ability to maintain their SGR targets.

The proposed rule would have required a transit provider to consider ADA requirements in the development of its investment prioritization. FTA has determined that referencing ADA compliance in the definition of ULB is not feasible.

FINAL RULE:

FTA is including the definition in the final rule without change.

COMMENTS: Definitions—Other Comments

Two transit agencies and an anonymous commenter requested a definition for ''non-revenue vehicles''. Another transit operator suggested that FTA consider adding a definition for ''asset condition'' to mean ''reflects the physical state of the asset, which may or may not affect its performance.'' A transit operator suggested that the list of definitions should be numbered subparagraphs.

FTA'S RESPONSE: Definitions—Other Comments

FTA did not propose definitions for ''non-revenue vehicles'' or ''asset condition'' because both terms are commonly understood within the transit industry.

The structure of the definitions section is consistent with the structure of the definitions sections in previous FTA regulations.

FINAL RULE:

FTA did not make any changes to the final rule based on these comments. However, FTA has added a definition of ''service vehicle'' in the final rule. In addition FTA has modified the definition of ''Performance Measure'' and ''Performance Target'' to match the definitions in the coordinated FHWA and FTA Metropolitan and Statewide and Non-Metropolitan Transportation Planning final rule.

625.15 Elements of the National Transit Asset Management System

This section proposed the elements of the National TAM System as set forth at 49 U.S.C. 5326(b). FTA will establish performance measures, transit providers will set targets, and transit providers will report their targets to FTA's NTD. The performance management and reporting components of the National TAM System are important for assessing both the benefits of transit asset management on a National level and the transit industry's current SGR needs.

COMMENTS: 625.15 Elements of the National Transit Asset Management System

A couple of commenters agreed with the elements of the National TAM System as specified in proposed § 625.15. A State DOT appreciated the flexibility given to transit providers to develop SGR performance measures and performance targets.

Regarding paragraph (d), a transit operator said FTA should allow industry best practices (for example ISO) to be the basis of analytical processes and decision tools. The commenter suggested that the paragraph could indicate FTA ''or equivalent'' best practices.

FTA'S RESPONSE: 625.15 Elements of the National Transit Asset Management System

FTA appreciates the comments on the elements of a proposed National TAM System. FTA currently is developing guidance and other resources that will aid the industry in its implementation of the requirements of this final rule. FTA is aware that other organizations

[10] The TERM model consists of a database of transit assets and deterioration schedules that express asset conditions principally as a function of an asset's age. Vehicle condition is based on an estimate of vehicle maintenance history and major rehabilitation expenditures in addition to vehicle age; the conditions of wayside control systems and track are based on an estimate of use (revenue miles per mile of track) in addition to age.

have developed resources for asset management and encourages transit providers to research those options and use them, as appropriate, to aid in the implementation of the requirements of this final rule.

FINAL RULE:

FTA is including this section in the final rule without substantive change.

625.17 State of Good Repair Principles

FTA proposed SGR principles intended both to highlight the relationship of SGR to other transit priorities and to guide a transit provider's practice of transit asset management. SGR is related to, but not synonymous with, TAM and is a condition that can be achieved through good TAM practices. TAM practices inform the capital investment planning and programming processes by producing data that informs investment prioritization. TAM allows a transit provider to realistically predict the impact of its policies and investment decisions on the condition of its assets throughout an asset's life cycle. TAM enhances a transit provider's ability to maintain a state of good repair and proactively invest in its assets before the asset condition deteriorates to an unacceptable level.

A key connection of SGR to TAM is performance management. Asset management is a business model that uses the condition of assets to determine the finances needed in order to achieve predetermined outcomes. In the case of TAM, and this rulemaking, the goal is to achieve and maintain a state of good repair. A key focus of asset management is cost-risk balancing to achieve performance goals through a transparent, organization-wide process of decision-making.

TAM provides a framework for how to maintain a state of good repair by considering the condition of assets in the transit provider's inventory and the transit provider's local operating environment, along with the policies that a transit provider establishes for prevention, preservation, rehabilitation, disposal, and replacement. TAM allows a transit provider to realistically predict the impact of their TAM and maintenance policies on the condition of their assets and how much it would cost to improve asset condition at various stages of an asset's life cycle, while balancing prioritization of capital, operating and expansion needs.

COMMENTS: 625.17 State of Good Repair Principles

Several commenters expressed concern about the use of the term ''full level of performance'' in § 625.17(a) and (b) (and elsewhere in the rule). Some commenters said FTA should instead use the term ''required level of performance'' and others suggested ''fit for intended purpose.'' Another commenter suggested that the second sentence of § 625.17(a) be removed because the ''state'' of an object is the condition at any point in time without respect to any previous or future conditions. A transit operator said § 625.17(a)'s emphasis on life-cycle maintenance as a determining factor in assessing a capital asset's SGR would amount to establishing a misleading ''bright line measurement tool'' based on an asset's maintenance schedule. A State agency said, due to increased financial constraints, providers may be managing the decline of assets. The commenter said the rule should include specific language stating that without additional financial resources, establishing an asset management plan may not in itself enable a provider or a group to reach a SGR.

Several commenters provided input on § 625.17(c), expressing concern about how this paragraph affects the role of the accountable executive. A professional association and several State DOTs said the provision for a transit provider's accountable executive to ''balance transit asset management, safety, operation, and expansion needs'' should use the word ''consider'' rather than ''balance,'' to help ensure, for example, that an executive does not have to put some funding into expansion in order to ''balance'' that factor. A State agency said safety should be given a higher level of consideration than other agency needs (*e.g.,* expansion of service). Some of these commenters said this paragraph underscores the importance of a State not being construed as a ''transit provider'' if it is not an operator (directly or through operating contracts) of public transit service.

A few commenters noted that the SGR principles (§ 625.17), SGR standards (§ 625.41) and SGR performance measures (§ 625.43) do not appear to be consistent. In each case, according to these commenters, SGR is defined or measured differently. A couple of these commenters said this is not a concern, as long as affected agencies and the departments understand the differences, and suggested that inserting compliance with ADA requirements as set forth in 49 CFR parts 37, 38, and 39 may also strengthen this definition.

Regarding the proposal that each transit provider determine whether they have achieved a state of good repair regarding their assets, a State transit association said this is too subjective and base perimeters need to be set, as well as having third party determinations. Similarly, a transit operator stated that, if an asset's SGR is determined by the agency without a clear definition and validation by FTA, there will be very little value in the determination.

A couple of commenters said the SGR status of an asset should not be affected by the condition of the other assets in the same category.

FTA'S RESPONSE: 625.17 State of Good Repair Principles

FTA has addressed the ''full level of performance'' comments previously, in the definition section.

FTA disagrees that the term ''state'' should be removed from the ''state of good repair'' in § 625.17(a). This section describes the principles of SGR and removing state would be misleading. However, FTA does agree with the commenter that the state of an asset is a condition at a point in time. The intent of this section is to describe the principles supporting SGR and their relationship to TAM.

FTA disagrees that elevating the importance of lifecycle investments would establish a misleading emphasis on an asset's maintenance schedule, although effective and proactive lifecycle investment and maintenance practices are fundamental to SGR. The proposed SGR definition contained three objective standards and maintenance schedules relate directly to just one; the lifecycle maintenance needs being met or recovered. While FTA recognizes that the maintenance of an asset is not the only relevant factor in determining SGR, it is critical to achieving and maintaining a state of good repair.

FTA disagrees that a third-party determination is necessary to measure a transit provider's' SGR. FTA believes the objective standards are the base parameters for a transit provider to measure its SGR. FTA did not propose that it would validate a transit provider's SGR determination.

FTA agrees that financial constraints may leave a transit provider in the position of managing the deterioration of assets that it can no longer afford to maintain and replace on a timetable that sustains the assets' full level of performance. The proposed SGR principles do not preclude the management of declining asset condition. In some instances, FTA expects that maintaining an asset's condition may not be a transit provider's highest priority, and therefore the asset's condition may

decline based on strategic and informed decisions.

FTA agrees that a sponsor is not an accountable executive merely because it develops a group TAM plan. Each transit provider has its own accountable executive. FTA does not agree that it should change ''balance'' to ''consider'' because the change would make no substantive difference. In order to balance transit asset management, safety, operation and expansion needs, an operator must consider a number of things, including financial and human capital resources.

FTA disagrees that the proposed SGR principles (§ 625.17), standards (§ 625.41) and performance measures (§ 625.43) are inconsistent. These three sections described the fundamental principles of SGR and its relationship to TAM (§ 625.17); the definition and objective measures for a transit provider to measure their assets' SGR (§ 625.41); and the description of performance measures for which FTA will collect targets (§ 625.43). As discussed above, the SGR performance measures are a proxy for the SGR, nationally. The proposed SGR definitions were intended to standardize the term and its objective measures. The SGR principles are provided to describe the foundation of the SGR definition and its relationship to TAM. The performance measures are provided to describe a transit providers' obligation to establish and report targets.

FINAL RULE:

FTA is including this section in the rule without substantive change. FTA is including an example in Appendix B to the final rule to illustrate the relationship amongst the measures, definition and principles.

Section 625.25 Transit Asset Management Plan Requirements

Pursuant to 49 U.S.C. 5326(b)(2), the NPRM proposed all recipients and subrecipients of Chapter 53 funds must develop a TAM plan. FTA interpreted this requirement to apply only to those recipients and subrecipients that actually operate public transportation systems and own, operate, or manage capital assets for that system. Therefore, the TAM plan requirements do not apply to an MPO that merely receives funds from FTA and passes the funds along to transit operators. However, a pass through MPO would be required to sponsor a group TAM plan for its eligible tier II subrecipients. Accordingly, § 625.25(a) required each transit provider that owns, operates, or manages public transportation capital assets to develop and carry out a TAM plan.

The NPRM proposed that tier II providers have the option to participate in a group TAM plan. The group TAM plan concept is intended to reduce the burden on smaller operators associated with developing individual TAM plans. Under a group TAM plan, a sponsor (typically a State, or direct recipient) develops a single group TAM plan on behalf of one or more tier II providers. Each tier I provider, including group TAM plan sponsors, that operates or manages capital assets must develop its own individual TAM plan for its own system. Under all circumstances, it is the responsibility of the relevant State or MPO to integrate the TAM plans (group or individual) into the statewide and metropolitan transportation planning process.

It is the responsibility of each transit provider's Accountable Executive to ensure that the TAM plan is carried out at his or her organization. For those transit providers that develop an individual TAM plan, the Accountable Executive is responsible for making informed investment decisions and ensuring that meaningful SGR targets are set. The Accountable Executive for a group TAM plan participant is responsible for coordinating development of the group TAM plan with the sponsor, and for implementing the TAM plan at their transit agency. This coordination may involve providing accurate asset inventory data, maintenance and repair records, or other relevant data to the sponsor. It may also involve participating in development of targets for the group and negotiations about investment priorities.

Section 625.25(b) listed elements of a TAM plan, including:

1. An asset inventory, which is a list of the transit provider's capital assets;
2. A condition assessment, which is a rating (*e.g.,* good/fair/poor or percentage of residual life) of the condition of assets in the inventory. The NPRM did not speak to the condition rating scale or process a transit provider should use;
3. A list of the decision support tool or tools that were used to create the TAM plan. A decision support tool is a methodology to help transit providers make decisions, such as prioritizing projects based on condition data and objective criteria. A decision support tool can be software, but is not exclusively software. A decision support tool may be a process;
4. An investment prioritization. The investment prioritization is a list of the proposed projects and programs that a transit provider estimates would achieve its SGR goals, and a ranking of the projects and programs based on priority;
5. An identification of the transit provider's policies and strategies for developing an effective TAM plan, including a transit provider's executive-level directions to set or support the goals for its TAM plan;
6. A strategy for implementation of the TAM plan, which is the process a transit provider identifies to follow in order to achieve its TAM plan. This strategy differs from the strategies identified in element (5) in that this is an operation-level decision;
7. A list of the key activities or actions that are critically important to achieving the transit provider's asset management goals for the year (—*e.g.,* management-supported activities such as purchasing software or training);
8. An identification of the financial resources that a transit provider estimates are necessary for implementing its TAM plan and achieving its asset management goals. This might include internal staff time, technology requirements, etc.; and
9. A continuous improvement plan that sets timelines and milestones that can be revisited to track the transit provider's progress towards meeting its asset management goals.

The first four elements relate to identifying performance goals, while elements 5 through 9 relate to the implementation of TAM concepts. To reduce the burden on smaller transit providers, a TAM plan for a tier II provider or other eligible group TAM plan participant is required to include only elements 1 through 4. The majority of the SGR backlog exists in capital assets at larger transit systems, particularly those with rail fixed-guideway public transportation systems. As a result, FTA believes that these larger, complex operations require a more holistic and strategic process, addressed through elements 5 through 9, for consideration of asset conditions throughout the asset's life cycle, as well as institutionalization of TAM principles. Although not required, FTA nevertheless still recommends that tier II providers incorporate elements 5 through 9 as best practices.

Section 625.25(b)(1) required that each TAM plan include an inventory of the transit provider's capital assets. The asset inventory is expected to cover the capital assets that a transit provider owns, operates or manages, including leased assets and those assets operated under contract by an external entity. This asset inventory may be a combination of other inventories a transit provider may have on hand. For example, the grant management

guidance circular 5010 requires grantees to collect, maintain, and report records for rolling stock and equipment. This existing inventory could be used to initiate or refresh the capital asset inventory to satisfy the requirements of the proposed rule.

Section 625.25(b)(2) required that each TAM plan include a condition assessment of capital assets that generates information in a level of detail sufficient to monitor and predict the performance of each capital asset identified in the asset inventory. Condition assessments are required for only those capital assets in the asset inventory for which a transit provider has direct financial responsibility. This section does not prescribe how a condition assessment must be conducted, rather the required result of the assessment. It is up to the transit provider or group TAM plan sponsor to decide whether to conduct condition assessments at the individual or asset class level.

COMMENTS: TAM Plan—Role of Accountable Executive in Development of TAM Plan

Several commenters addressed the proposed role of the Accountable Executive in the development of TAM plans at § 625.25(a)(3). A State transit association asserted that the TAM requirements of Accountable Executive, decision support tools, etc. will result in more transit providers under the 49 U.S.C. 5310 program disengaging from coordination efforts and ''siloing,'' as was seen with the Community Development Transportation Coordination Plan requirements. A transit provider agreed that a responsible executive should approve the plan, but requested flexibility with regards to where the responsible executive sits within their organization.

FTA'S RESPONSE: TAM Plan—Role of Accountable Executive in Development of TAM Plan

FTA estimates that approximately 80 percent of 49 U.S.C. 5310 providers will be exempt from this rule because as providers of closed-door service to a specific group or specific program, they are not considered providers of public transportation. Almost all other 49 U.S.C. 5310 providers fall into the tier II category, eligible to participate in a group TAM plan with reduced requirements. The group TAM plan option is intended to reduce the administrative burden on smaller providers associated with developing a TAM plan.

An Accountable Executive should be a transit provider's most-senior executive; often times this person is the CEO or GM. FTA understands that at many smaller transit providers, roles and responsibilities are more fluid. However, FTA does believe that, even in circumstances where responsibilities are either shared or delegated, there must be one primary decision-maker.

FINAL RULE:

FTA is revising 625.25 (a)(3) to clarify the role and responsibilities of complying with this final rule for group plan sponsors and participants is a local level decision.

COMMENTS: TAM Plan—Coordination With State and Metropolitan Planning Organizations (MPOs)

Some public comments addressed the proposed requirement that a TAM plan must be coordinated to the extent practicable with States and MPOs at § 625.25(a)(4). A transit operator said that the role of the MPO should be to aggregate the transit operators targets, prioritization, performance and condition information, etc. to form the MPO's targets and priorities. This commenter stated that it should be a bottom up approach from the transit operators rather than top down imposition of goals from the MPO. A transit operator asked if the State and MPO would now be required to include local transit operators' asset planning in their TAM plan and, if so, whether the transit operator is required to follow the State/MPO recommendations. Another transit operator recommended that FTA revise § 625.25(a)(4) to state that the ''TAM will be used to inform the grantee's portion of the MPO TIP, to the extent practicable.'' An industry association predicted that it is unlikely that States and MPOs could incorporate TAMs in their STIPs and TIPs within the proposed timeline. A transit provider requested clarification about the role of MPOs in setting investment priorities. A State DOT asked if the State can reject a provider's priorities if they do not meet the state's investment priorities.

A State DOT and an industry association asked that FTA provide an example of when the MPO would have the responsibility for integrating group TAM plans and when it is a State responsibility. One of these commenters stated that it believes it is ultimately the State's responsibility. An MPO recommended strengthening the requirements for TAM plan developers to coordinate with the MPO. The specific regulatory language recommended by this commenter is ''A TAM plan developed under this part should/shall be developed cooperatively coordinated, to the extent practicable, with States and Metropolitan Planning Organizations.'' A transit operator suggested that continuous coordination with States and/or MPOs on TAM plans, asset data, finances, and strategies should be restricted to documents and processes where the State and MPO can directly contribute and play a role.

FTA'S RESPONSE: TAM Plan—Coordination With State and MPOs

MAP–21 fundamentally shifted the focus of Federal investment in transit to emphasize the need to maintain, rehabilitate, and replace existing transit investments. The ability of FTA grant recipients, along with States and MPOs, to both set meaningful transit SGR performance targets and to achieve those targets is critically dependent upon the ability of all parties to work together to prioritize the funding of SGR projects from existing funding sources. How a transit provider sets its performance targets is an entirely local process and decision. However, FTA strongly encourages transit providers, States, and MPOs to set meaningful progressive SGR targets based on creative and strategic leveraging of all available financial resources.

This rule does not prescribe requirements for how States and MPOs should integrate TAM plans or targets into the planning process. The rule requires transit providers and sponsors to coordinate with States and MPO's to the extent practicable in the selection of State and MPO SGR performance targets. However, the NPRM suggested that transit providers and sponsors coordinate individual and group TAM plans, respectively, with the relevant State or MPO to aid in the planning process. FTA clarifies that coordination of TAM plan development with States and MPOs is optional by removing regulatory language for transit providers to coordinate to the extent practicable. Early coordination with planning partners is encouraged but not required under this rule.

The joint FHWA/FTA final planning rule prescribes requirements for incorporating components of the National TAM System into the planning processes. FTA and FHWA will develop and issue guidance to aid the transit industry in its implementation of the performance-based planning requirements.

FINAL RULE:

FTA has removed § 625.25 (a)(4) from the final rule in response to these comments.

COMMENTS: TAM Plan—Responsibilities for Development of TAM Plans

Some public comments addressed other issues relating to responsibilities for the development of TAM plans. An anonymous commenter asked whether the following entities must develop their own TAM plan or whether they could be a member of a group TAM plan: (1) a tribal agency that receives both funding from FTA as a direct recipient and funding from the State DOT as a subrecipient under the 49 U.S.C. 5310 or 5311 programs, and (2) an inter-city agency that receives 49 U.S.C. 5310 funds and serves several States.

FTA'S RESPONSE: TAM Plan—Responsibilities for Development of TAM Plans

All tier II providers are eligible to participate in a group TAM plan. Although Group Plan sponsors are not required to include those tier II providers that are also recipients of 49 U.S.C. 5307 funds, a sponsor may allow those tier II providers to participate in a group plan. A transit provider with only 30 vehicles operated in regular, peak, fixed route service that receives both Section 5307 urbanized area formula funds and Section 5311 rural area formula funds from multiple states, remains a tier II provider. A Tribe that receives funds directly through the Tribal Transit Program remains a tier II provider, regardless of other funding received. FTA notes that intercity bus providers are not providers of public transportation, and are therefore exempt from the rule.

FTA recognizes the commenter's confusion in determining the appropriate tier in certain instances and has clarified the definitions of tier I and tier II and is providing the following examples: (1) A transit provider that is a subrecipient of 49 U.S.C. 5311 funds only, but has 150 vehicles and no rail service, is a tier II provider and eligible to participate in a group TAM plan sponsored by a State. (2) a transit provider that is a subrecipient of funds under 49 U.S.C. 5310, 5311, or 5339 with a fleet of 30 vehicles and no rail service, is a tier II provider and eligible to participate in a group TAM plan sponsored by a sponsor. (3) a transit provider that is a subrecipient of funds under 49 U.S.C. 5307 and 5311 with 110 vehicles and no rail service, is a tier II provider, but is only eligible to participate in a group TAM plan through consent of sponsor.

FINAL RULE:

FTA is revising the definition of tier II provider in the final rule to clarify that all American Indian tribes are considered tier II providers and are eligible to participate in a group TAM plan, regardless both of the source of funding it may receive and of its status as a recipient or subrecipient.

COMMENTS: TAM Plan—Asset Inventory

Several public comments addressed the asset inventory required by proposed § 625.25(b)(1), with several expressing concerns or confusion relating to the expected level of granularity at which transit agencies would be expected to inventory capital assets. A transit provider and several State DOTs asserted that ''the level at which a project would be identified in a provider's program of capital projects'' is too vague and could lead to confusion because ''program of capital projects'' is not a defined term.

Two associations and several State DOTs recommended that the final rule include a clearly worded provision that would limit the coverage of the rule to important assets. At least for non-rail assets, these commenters recommended that FTA:

1. Limit coverage to revenue vehicles and to assets other than revenue vehicles with an initial cost of at least $50,000.

2. Limit coverage of assets other than revenue vehicles to those with an initial minimum ULB of at least 5 years.

3. Limit coverage of assets other than revenue vehicles by excluding office space or other administrative support facilities or equipment (and by not including an ''administrative'' line item in Appendix A to part 625).

Similarly, a transit operator stated that the proposed definition of ''equipment'' would include office chairs, storage cabinets, and other incidental ''equipment,'' that are not worth investing in data capture and management. The commenter recommended a risk-based approach to prioritize detailed data collection for more important assets (*e.g.,* trackway and rail vehicles) and limited data collection for less important assets (*e.g.,* office chairs).

A transit operator requested that FTA clarify the level of detail required in reporting asset data, asserting that it is described differently in sections 625.5 and 625.25(b)(1). Another commenter asked whether it could simply list a bus or whether it needed an inventory for all equipment installed on the bus post-manufacture (*e.g.,* Drive Cam, cameras, fare box, radios, CAD/AVL). This commenter also asked if a vehicle camera system would be classified in the rolling stock or equipment categories. An MPO said that the final rule should either confirm that the TAM plan sponsor has flexibility in defining the granularity of the asset inventory or FTA should provide additional guidance as part of the final rulemaking.

A couple of commenters requested additional clarity on the definition of equipment, stating that it is different in §§ 625.5, this section, and 625.43.

One of these commenters, a transit agency stated that guidance is necessary for consistency and suggested that FTA could have transit agencies report at a systems-level (*i.e.,* electrical, plumbing, building envelope, roof, lifts, etc.) for facilities/stations, and by miles or linear feet of ROW for specific types of infrastructure assets. Further, the commenter suggested that substations could be reported both as a facility (broken out by systems) with the traction power equipment identified separately based on age and type. This transit agency asserted that by specifying a concrete approach that is replicable across agencies, FTA would ensure that data sets from various agencies can be merged at the national level and aggregated. Another transit operator suggested that transit agencies consider asset attributes in the development of an asset inventory, reasoning that otherwise performance targets would be difficult to establish.

Expressing concern about the ability for transit operators to have completed a full asset inventory within the 2-year deadline, a transit operator requested clarification on whether a full inventory would need to be submitted with the first TAM plan.

A regional transit operator commented that it will take all prudent steps to complete the data inventory for its contracted assets; however, some of the information may be considered proprietary and the private carriers may not be willing to share it due to liability issues.

FTA'S RESPONSE: TAM Plan—Asset Inventory

FTA disagrees with the commenters who suggested that FTA only require the asset inventory to include assets above a specific monetary threshold. This final rule does not prescribe a level of detail for the asset inventory. Instead, the rule requires that the disaggregation of a divisible capital asset be identified in a manner that is consistent with the assets identified in a transit provider's program of capital projects. If an asset is ''large'' enough that a transit provider

includes it in its capital program, then it should be included in its asset inventory. However, FTA has added clarity for the equipment asset category of what to include in the asset inventory. Specifically, only transit provider owned equipment assets over $50,000 and all non-revenue service vehicles regardless of value must be included in a TAM asset inventory. FTA encourages transit providers to include additional equipment assets that impact safety and operations to be considered alongside other equipment assets in their TAM plan elements.

FTA does not believe that the final rule needs to include a definition of program of capital projects. Each transit provider regularly undergoes capital planning and programming activities to determine needs for the following year. FTA understands that each transit provider's planning and programming process may be unique, and as a result, the final rule provides the flexibility for each transit provider to fulfill the asset inventory requirement without imposing a one-size-fits-all process for identifying capital assets.

Readers should understand that there is a distinction between the categorization of an asset (*i.e.* whether it meets the definition of equipment, infrastructure, rolling stock, or a facility) and whether or not a transit provider must include the asset in its asset inventory. Categorization of an asset is also distinct from whether or not a transit provider must set an SGR performance target for the asset (tabular illustration in Appendix C—Table 1). The final rule requires each transit provider to include in its asset inventory infrastructure, all non-revenue service vehicles regardless of value and owned equipment assets over $50,000, at a level of detail commensurate with its program of capital projects, and conduct a condition assessment of those assets for which it has capital responsibility. However, at this time, the performance measure for infrastructure is limited to rail fixed guideway assets and the performance measure for equipment is limited to non-revenue service vehicles. Therefore, a transit provider that does not operate a rail fixed guideway transit system would not have to set an SGR performance target for its non-rail infrastructure assets nor any equipment other than non-revenue service vehicles.

FTA further clarifies the asset inventory must include all revenue vehicles, all passenger stations, all exclusive use maintenance facilities, all non-revenue service vehicles and provider owned equipment over $50,000, regardless of funding source. Also see FTA's response to definition of ''Capital Asset'' for an extended discussion.

An illustrative example of the relationship between asset inventories, condition assessments and SGR performance measures is found in Appendix C—Table 2.

FINAL RULE:

FTA is revising § 625.25(b)(1) to clarify which assets (including but not limited to all revenue vehicles, all passenger stations, all exclusive use maintenance facilities, and provider owned equipment over $50,000 including all non-revenue service vehicles regardless of value) used in the provision of public transportation must be included in an asset inventory, at a level of detail commensurate with the level of detail used to describe assets in a transit provider's program of capital projects.

COMMENTS: TAM Plan—Condition Assessment

A State DOT and an individual commenter recommended that § 625.25(b)(2) should include a universal condition rating scale. A State agency said it is important to develop objective methodologies to evaluate asset condition and to establish a link between those assessments and an investment prioritization plan.

Several transit operators said the asset condition assessment must be more flexible. Two transit operators said FTA should allow transit operators to adopt a more rigorous means of condition assessment than age and ULB and report the results of their local assessment process. Two State DOTs and other commenters recommended allowing condition assessments to be made at the class level, rather than by individual projects, because targets are set at the class level. Another transit operator expressed support for FTA's proposal for allowing transit providers to choose a method or methods for conducting condition assessments, provided that the level of detail is sufficient to monitor the performance of capital assets. One transit company assumed that because the rule is silent with respect to how condition should be determined, any method is acceptable.

Several commenters requested guidance on condition assessment. A transit operator asked if FTA will provide condition assessment guidance and what method of tracking should transit agencies follow. A transit agency similarly expressed concern that ''condition'' alone is vague, subjective, and open to individual interpretation and requested additional direction regarding condition assessment. An individual commenter requested a minimal condition assessment outline for guidance and to provide consistency. In particular, another transit operator asked to what level of detail service providers are expected to break down facilities and stations and their components for the purpose of the facilities asset category performance measure condition assessment, and whether the standard of condition being ≥3.0 would apply to the whole facility (*e.g.,* a weighted average of all its components). A transit agency requested additional guidance on condition assessments for facilities but also requested that the guidance be flexible to allow current assessment processes to apply. A transit agency asked if actual condition of the asset is required or if age would be an acceptable substitute. The commenter also asked if other proxies, as determined by the implementing agency, would be acceptable in lieu of physical condition.

A State DOT said that the requirement to use a 1–5 TERM scale is inconsistent with the NPRM preamble, which states that transit providers may continue to use their own existing condition rating systems. This commenter requested clarification on this point, TERM training, and a conversion mechanism for ratings arrived through other assessment mechanisms. Similarly, a transit agency recommended that FTA develop criteria for assessing asset condition utilizing the TERM scale, recommending that the TERM condition of 2.5 be set as the minimum for which an asset is in a state of good repair, to remain consistent with previously published FTA guidance.

A transit operator said that whole collection of actual asset condition data would be useful in the establishment of targets and investment prioritization, and that particular focus should be paid to performance of the asset relative to its designed purpose and cost effectiveness. This commenter asserted that using age, mileage, standard replacement, and maintenance schedules as a condition assessment does not keep to the intent of MAP–21. The commenter suggested that FTA define ''condition assessment'' in a manner that may include age and mileage information. In its own assessments, this transit operator explained that it also uses fluid analysis and corrosion inspections to determine the remaining useful life of rolling stock assets. This commenter suggested that condition assessments along with performance-based monitoring be used for measuring the condition of infrastructure.

A transit operator stated that the text implies that that the condition assessment should be informed by the SMS. The commenter expressed concern that because this requirement ties the evaluation of safety risk to another proposed regulation, the application of SMS to the National TAM System is not definitive until the SMS rule is final.

A transit operator said the preamble discusses the TAM requirement for a condition assessment that must identify a safety hazard or failure to meet ADA requirements related to the use of that capital asset. The commenter said the requirement to include this sensitive data and analysis in the public TAM document could potentially expose a transit agency to risks that could compromise the agency and its efforts to keep assets in a state of good repair.

FTA'S RESPONSE: TAM Plan—Condition Assessment

FTA has provided flexibility for condition assessments so individual transit providers and sponsors can determine the most effective methodology to use for their circumstances. A universal condition rating scale would not support this intent. FTA agrees that it is important for a transit provider to develop objective methodologies to evaluate asset condition. FTA is developing guidance to assist transit providers with developing these methodologies, but the final rule does not establish a universal condition rating scale.

It is important to note the differences between the TAM plan condition assessment requirement and performance measure development. For the TAM plan asset inventory, FTA only requires that ''a condition assessment generates information in a level of detail sufficient to monitor and predict the performance of capital assets.'' Conversely, the performance measures are not reflective of the entire asset inventory, only those specific asset classes related to the performance measures. For facilities the performance measure includes: (1) Administrative and maintenance facilities as well as (2) passenger and parking facilities. The equipment performance measure only includes non-revenue service vehicles. The rolling stock performance measure includes all revenue vehicles, by mode. Lastly, the infrastructure performance measure only includes rail fixed guideway. See also Appendix C_Table 1 and 2.

FTA asked the industry a number of questions regarding measuring condition in the ANPRM and analyzed those responses in the NPRM. The resulting performance measures represent a range of condition measurement approaches from simple to complex. FTA does not require sophisticated condition measurement methodologies for the TAM plan element or for SGR performance measures, but encourages transit providers of sufficient experience and sophistication to pursue more complex condition assessments based on more than age and mileage for rolling stock as well as other asset categories. FTA recognizes that some transit providers are prepared for more sophisticated condition assessment requirements and some are not, therefore the final rule provides for flexibility. FTA agrees that condition assessments can be conducted at the class level. A transit provider may develop its own condition assessment methodologies. FTA is developing guidance for measuring facility and infrastructure conditions.

The performance measure for the facility asset category is measured by the TERM scale. However, FTA does not require that transit providers use this scale in the condition assessments required under § 625.15(b)(2). FTA declines to set the performance benchmark at 2.5, rather than 3.0, because a benchmark of 2.5 would require all transit providers to use the TERM-Lite model in order to calculate the 2.5 rating. FTA believes that this would be overly burdensome on many transit providers. The TERM scale is an integer based scale, thus a direct measure of condition 2.5 is not possible. Instead, condition ratings to one decimal point are produced by the TERM-Lite model as an estimate of condition between condition assessments. Thus, FTA is setting the benchmark at 3.0, as this will reflect the actual results being produced by transit providers carrying out their own condition assessments.

FTA does not plan to produce a TERM conversion mechanism, as there are a number of methodologies a transit provider could use for condition assessment. It would not be possible for FTA to produce conversion mechanisms for all of them. However, FTA will provide technical assistance to those transit providers who require assistance with either determining the best condition assessment methodology or adapting their existing methodology to the TERM scale for the SGR performance measure targets.

FTA agrees that there is a link between condition assessments and the investment prioritization. The condition assessment informs the investment prioritization and thus must collect the relevant information regarding the asset's ability to perform in its current condition. For example, if an asset fails to meet an ADA requirement which will increase costs associated with any program or project related to that asset class, this information is gathered at the condition assessment stage and will inform the investment prioritization. This final rule does not increase a transit provider's responsibilities under the ADA, but merely explicitly incorporates ADA accessibility assets into the TAM framework.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments. However the final rule does clarify that recipients and subrecipients are required to assess and report the condition of only assets inventoried for which the transit provider has direct capital responsibility.

COMMENTS: TAM Plan—List of Analytical Processes or Decision Support Tools

Some public comments addressed the § 625.25(b)(3) proposed requirement that a TAM plan must include the identification of which decision support tool or tools were used to create the TAM plan.

A professional association and a State DOT asked for clarification on what decision and support tools are considered appropriate and sufficient. A transit operator asked if an agency's decision support tool should prioritize investment using the same methodology that FTA has previously used to report to Congress (*i.e.,* TERM and TERM Lite). An individual commenter also urged FTA to provide guidance on this TAM plan element and asserted that requiring a description of decision support tools is shortsighted because the purpose of this section is to ask grantees to provide the method of prioritizing projects.

A transit operator asked how FTA anticipates that analytical tools will assist decision-making. Another transit operator recommended that rather than referring to ''list of the'' following, FTA should say ''A description of the transit provider's analytical processes or decision-support tools that. . .'' One transit agency said the decision support tool and methodology will result in more 5310 providers disengaging from coordination efforts and ''siloing.''

FTA'S RESPONSE: TAM Plan—List of Analytical Processes or Decision Support Tools

A decision support tool must be able to support development of the investment prioritization. The tool may be a documented process and does not

need to be electronic. Whatever the medium, the tool should assist a transit provider in understanding its capital investment needs and in prioritizing reasonably anticipated funding towards those needs.

FTA agrees with the commenter who suggested that FTA change requirements from a listing to a description of analytical processes and decision support tools. FTA believes that this change will make it clearer that the analytical process or decision support tool need not be electronic.

FINAL RULE:

FTA is revising this section based on comments from NPRM to require that a TAM plan include a description of analytical processes or decision support tools.

COMMENTS: TAM Plan—TAM and SGR Policy

A few public comments addressed the fifth proposed TAM plan element (§ 625.25(b)(5)), which was described in the NPRM as an identification of the transit provider's policies and strategies for developing an effective TAM plan, including a transit provider's executive level directions to set or support the goals for its TAM plan. A transit operator asked what needs to be reported in response to § 625.25(b)(5) and (6) if an agency already has a TAM plan and policy.

FTA'S RESPONSE: TAM Plan—TAM and SGR Policy

The NPRM did not propose to require a transit provider to report its TAM policy to FTA. Transit providers are required to submit to the NTD an annual data report that includes the SGR performance targets for the following year and a current assessment of the condition of the transit providers' public transportation system. Transit providers are also required to submit an annual narrative report to the NTD that provides a description of any change in the condition of a transit provider's transit system from the previous year and describes the progress made during the year to meet the performance targets set in the previous reporting year. There are no additional reporting requirements under this rule.

This final rule is flexible and scalable. A transit provider may incorporate its existing TAM policies and practices into its TAM plan.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

COMMENT: TAM Plan—Strategy for Implementation of TAM Plan

A few public comments addressed the sixth proposed TAM plan element (§ 625.25(b)(6)), which was described in the NPRM as a strategy for TAM plan implementation, *i.e.,* the process a transit provider will follow in order to achieve its TAM plan. A transit agency expressed support for the inclusion of a TAM policy as part of a certified TAM plan. However, the commenter requested additional information on how to meet this non-statuary requirement without being duplicative of other TAM plan components. Without clarification, the commenter recommended removing this provision.

FTA'S RESPONSES: TAM Plan—Strategy for Implementation of TAM Plan

A transit provider's TAM plan implementation strategy should outline a plan showing the activities necessary to achieve its asset management goals (including all aspects of change management). The plan should outline a schedule with roles, responsibilities, accountabilities, tasks, and dependencies. The implementation process should addresses dependencies, including reliance on the hiring of new staff, funding availability, or software development. The process also should reconcile asset management priorities against other agency initiatives. Implementing activities should be established based on an assessment of how well they are expected to accomplish the goal of achieving or maintaining a state of good repair of the provider's assets. To the extent possible, the implementation strategy should address specific problems or deficiencies that improve performance.

FINAL RULE:

FTA is not making any revision to this section in the final rule related to these comments.

COMMENTS: TAM Plan—Description of Annual Key Transit Asset Management Activities

Some public comments addressed the seventh proposed TAM plan element (§ 625.25(b)(7)), which was described in the NPRM as a list of the key activities or actions that are critically important to achieving the transit provider's asset management goals for the year. A transit operator asked if the ''key activities'' are intended to focus on discrete projects and actions or if it meant to document ongoing, routine asset management practices for each asset class (*i.e.,* describing asset life-cycle procedures from specification and procurement, through to disposition). If the latter, the commenter asked how it should determine which asset classes warrant specific levels of detail documentation, and how much additional cost and staff effort would be required to prepare such a TAM plan.

A transit operator requested that, if FTA is proposing to require a list of annual activities in a TAM plan, then FTA should provide an easy way to update the previous year's submission because anticipated annual changes would be minor. Another transit operator asked, in the case of an agency that already has a TAM plan, if this TAM plan element would be a list of next steps for continual improvement.

FTA'S RESPONSES: TAM Plan—Description of Annual Key Transit Asset Management Activities

In the NPRM FTA proposed that a TAM plan include a description of a transit provider's key asset management activities that it plans to accomplish in the upcoming year. This final rule does not prescribe what the description must include or how a transit provider must develop it. However, examples of activities include ''combine three departments' asset inventories'', ''develop a lifecycle management template and populate it with information from three most-critical asset classes,'' or ''hire an asset management program manager.'' A description of activities also could include a list of next steps for continual improvement.

FINAL RULE:

FTA is not making revisions to this section in the final rule related to these comments.

COMMENTS: TAM Plan—Specification of Resources Needed To Develop and Implement the TAM Plan

Some public comments addressed the eighth proposed TAM plan element (§ 625.25(b)(8)), which was described in the NPRM as an identification of the financial resources that a transit provider estimates are necessary for implementing its TAM plan and achieving its asset management goals. A transit operator asked FTA to clarify if this TAM plan element should include an analysis of resources required to perform maintenance activities in addition to capital investment work or whether it is only intended to capture the costs associated with TAM plan preparation. Another transit operator stated that this additional TAM plan requirement for tier I providers as well as the one in proposed § 625.25(b)(9) would create a reporting burden that

may divert time and resources from improving asset condition and system safety.

FTA'S RESPONSES: TAM Plan—Specification of Resources Needed To Develop and Implement the TAM Plan

The NPRM proposed that a transit provider identify the resource needs to develop and implement a TAM plan, including those resources that a transit provider reasonably anticipates would be available over the TAM plan horizon period. In order to set achievable SGR goals and in order to do a meaningful investment prioritization, a transit provider needs to know what resources it anticipates needing and what is available. The resources could include financial, human, equipment, and software. FTA has not required a specific methodology or format in the final rule.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

COMMENTS: TAM Plan—Monitoring TAM Plan and Related Business Practices

A few public comments addressed the ninth proposed TAM plan element (§ 625.25(b)(9)), which was described in the NPRM as a continuous improvement plan that sets timelines and milestones to track the transit provider's progress towards meeting its asset management goal. A transit operator recommended that if FTA is planning to adopt an oversight schedule to evaluate grantees' TAM plans then it should be integrated into existing FTA oversight functions instead of being a stand-alone requirement. Another transit operator said the requirement for a monitoring and evaluation plan should be better differentiated from other TAM plan components. An individual commenter asked for guidance and instruction on the continuous improvement process.

FTA'S RESPONSE: TAM Plan—Monitoring TAM Plan and Related Business Practices

FTA intends to incorporate compliance with requirements of the final rule into its existing oversight activities. FTA will issue guidance to aid transit providers in their implementation of the final rule.

FINAL RULE:

FTA is not making any revisions to this section in the final rule related to these comments.

COMMENT: TAM Plan—Tier II Providers Exempt for TAM Elements

A business association expressed appreciation for FTA's efforts to create a tiered approach for the proposed National TAM System that acknowledges the diversity of transit systems.

Some public commenters provided other comments on FTA's proposed approach to transit asset management. For example, a transit operator asserted that the proposed rule has not provided the necessary flexibility to facilitate the effective participation of small transit operators. A professional association urged FTA to recognize the inherent differences in the size of agencies by ensuring that any new regulations allow flexibility for small operators to more easily comply and by establishing minimal universal requirements that can be applied across all agencies to allow for greater flexibility and a scaled approach for implementation. Voicing similar concerns, a transit operator recommended that FTA finalize the rule by implementing TAM principles without overly burdening States, small providers, and 49 U.S.C. 5310 subrecipients.

Some public comments addressed the proposed special provision for tier II providers that would allow them to include only the first four proposed TAM plan elements in their TAM plans (§ 625.25(c)).

Several State DOTs and other commenters expressed support for the reduced requirements for small operators. Three State DOTs said Section 5310 subrecipients should be excluded from this rule. One of the State DOTs and another commenter recommended that, at a minimum, Section 5310 subrecipients should be limited to only including the TAM plan elements at proposed § 625.25(b)(1) and (2). Similarly, a transit operator recommended further scaling back the requirements for small operators.

A tribal government appreciated the reduced TAM plan requirements for tier II providers but asserted that it is not enough of a burden reduction given FTA's expectations for the analytical processes, decision support tools, investment needs, and prioritization strategies for tier II providers. However, one State DOT said the non-statutory criteria should extend to tier II providers who are transporting the public.

A transit operator supported inclusion of the non-statutory TAM plan requirements in proposed § 625.25(b)(5) through (9) because they align with ISO 55000 and international best practices for asset management. However, the commenter said FTA must understand that grantees will have to dedicate significant resources to developing TAM plans that exceed the statutory requirement. In contrast, a private transit operator asserted that because the TAM plan requirements in proposed § 625.25(b)(5) through (9) are not included in MAP–21, those elements should not be a requirement of the final rule.

FTA'S RESPONSE: TAM Plan—Tier II Providers Exempt for TAM Elements

The National TAM System is a scalable and flexible framework that establishes terms and concepts and allows for consistency and standardization of formats, without being prescriptive on methods or application. FTA understands that smaller, rural, or less sophisticated transit providers may not have the expertise or resources to develop and implement a nine element TAM plan. FTA believes that this final rule imposes the least burdensome reporting requirements while still meeting the requirements in the law by allowing tier II providers the option to develop and implement a four element TAM plan and participate in a group TAM plan developed by a sponsor. The sponsor would be responsible for reporting required information to FTA on behalf of all group TAM plan participants, thereby reducing the burden on those small providers.

FTA believes that the mechanics of the development for a group TAM plan is a local decision. Although sponsors are primarily responsible for the development of the group TAM plan, participants should collaborate or contribute to the development of the group TAM plan, to the extent practicable.

FINAL RULE:

In the final rule FTA revises the definition of tier II provider to include explicitly American Indian tribes.

COMMENTS: TAM Plan—Additional Comments

Some commenters provided other comments on the proposed TAM plan requirements that were not otherwise addressed above.

Two trade associations and a transit operator urged FTA to provide as much flexibility in compliance as possible so that agencies can make use of their existing processes and documents—including TAM plans required by the State—without too much additional burden. Similarly, a transit operator said attempting to define how each TAM

plan should look and how each agency will perform asset management by means of strict regulation and use of required methodology limits all agencies from creating a plan that would add value to their existing processes while meeting the needs of the legislation. An MPO and two transit operators requested that the final rule clarify, that if other documents contain all of the required elements, such as Short Range Transit Plans (SRTPs), such documents may be used to satisfy the requirement for a TAM plan.

Two transit operators recommended that FTA eliminate a separate requirement to prepare fleet management plans, stating that separate asset management and fleet management reporting requirements will create redundancy and unnecessarily burden grantees.

Some commenters provided suggestions for additional elements to include in the TAM plan, including a description of QA/QC methods, organizational charts, and a list of asset management personnel. A trade association recommended that the grantees' TAM plan and project prioritization be made public.

Expressing concern about the limited resources of tier II systems, a trade association urged FTA to not require—either stipulated or a functional byproduct of the rulemaking—that small urban, rural, or tribal providers hire additional staff to oversee compliance with new regulations. A transit operator recommended that FTA revise its SGR formula program language so that ''transit asset management practices inform the capital investment planning and programming processes by producing data that informs the investment prioritization.''

FTA'S RESPONSE: TAM Plan—Additional Comments

When possible, FTA has remained silent on methodologies transit providers must use and has recognized that a strict national system would not be useful or effective. FTA does not want to create redundancy with effective practices and has established a framework and standard terminology the industry can follow to compare their TAM and SGR nationally.

A transit provider may use any source available to it, including existing asset inventories, to develop a TAM plan required under the final rule. The fleet management plan required at the grant making stage of a project may differ from the TAM plan asset inventory as the TAM plan has a four year horizon, while the grant application primarily reflects current acquisitions.

FTA encourages and supports the use of additional TAM plan elements such as QA/QC methods, organizational charts, etc. but does not require them in the final rule.

FTA will not collect or approve TAM plans. A transit provider will certify compliance with the final rule through FTA's certification and assurances process. The role of the sponsor of a group TAM plan is to certify on behalf of their participants. In addition, the sponsor will accept certification from their subrecipients that opt-out of a group TAM plan.

FTA has addressed the comments related to the role of SSO previously in the Implementation and Oversight section.

FTA has attempted to minimize the compliance burden on small operators and has also provided an option which shifts the administrative and oversight burden from the small operator to the sponsor. However, the individual transit provider is the only entity capable of implementing TAM at its agency.

Unless protected under State law, a TAM plan would be available to the public.

FINAL RULE:

FTA is not making any revisions to this section in the final rule related to these comments.

625.27 Group Plans for Transit Asset Management

The NPRM proposed that all recipients and subrecipients of Chapter 53 financial assistance must develop a TAM plan. This requirement is met either through an individual TAM plan or through a group TAM plan. The statute includes other requirements for the National TAM System, which were proposed in the NPRM, and tied to the sponsorship of the TAM plan. Sponsoring a group TAM plan does not make the sponsor a transit provider; a sponsor must own, operate or manage capital assets in transit service to be a transit provider.

This section proposed that any recipient of FTA funds with subrecipients must sponsor a group TAM plan for their tier II provider subrecipients that are not also recipients of 5307. Thus, all subrecipients under the 49 U.S.C. 5311 rural area formula program that are not also direct recipients of 49 U.S.C. 5307 urbanized area formula grants, regardless of size, must have the opportunity to participate in a group TAM plan. Sponsors would not be permitted to reject requests from a tier II provider to participate in a group TAM plan and must develop a group TAM plan for all eligible tier II providers. However, a group TAM plan participant may choose to opt-out of a group TAM plan by notifying the group TAM plan sponsor of its intent and by creating its own TAM plan. In addition, an eligible participant that is a subrecipient to more than one sponsor may select which group TAM plan it would like to participate in. For example, a rural area formula program subrecipient that operates in multiple states may be eligible to participate in more than one group TAM plan. The subrecipient would need to select which group TAM plan it wanted to participate in, and formally opt out of the plan that it chose not to participate in. In the absence of explicit notification from a tier II provider of its intent to opt-out, the sponsor must include that provider in the group TAM plan. A State or direct recipient that is also transit provider may only participate in a group TAM plan as the sponsor. Such a State or direct recipient may not include itself in the group plan it is sponsoring for its subrecipients; it is required to develop a separate, individual TAM plan for its own transit system.

Each transit provider's Accountable Executive is required to coordinate, to the extent practicable, with a group TAM plan sponsor in the development of the group TAM plan. Accordingly, a group TAM plan sponsor is required to coordinate the development of the plan with each of the plan participants' Accountable Executive. Notably, the transit provider retains responsibility for implementing the group TAM plan at their agency.

COMMENT: Group Plans—Responsibilities for States, Tribes, and Direct Recipients

Numerous public comments addressed the option for tier II providers to participate in a group TAM plan (proposed § 625.27(a)(2)) and the related responsibilities for States, tribes, and direct recipients relating to group TAM plans (proposed § 625.27(a)(1) through (3)). Two State DOTs opposed a mandate on the State to develop a group TAM plan for all of its tier II providers. One State DOT suggested that States should not be required to prepare a TAM plan for their tier I or tier II subrecipients. One State DOT requested that DOTs be allowed to prepare a group TAM plan that includes all transit operators in the State (tier I and tier II). A transit operator stated that sponsorship of a group TAM plan should be a voluntary choice and that the sponsor should serve in a coordinating and collaborative role. The commenter stated that any costs incurred by the group TAM plan

sponsor should either be allowed to be passed through to the participating subrecipients or else should be eligible for reimbursement by FTA.

Several State DOTs and other commenters recommended that State DOTs be mandated only to do a group TAM plan for its subrecipients under the 49 U.S.C. 5310 and Section 5311 programs as these subrecipients are already subject to State oversight and their Federal funds are already programmed by the State across the entire group. One of these State DOTs and other commenters suggested that separate group TAM plans should be allowed for subrecipients under the 49 U.S.C. 5310 and 5311 programs.

A State DOT urged FTA to establish a smaller fleet size threshold for urban systems to qualify for inclusion in a State plan, which the commenter said would recognize the urban/rural distinctions that already exist. Alternatively, this commenter would endorse limiting mandatory State plan participation for subrecipients under 49 U.S.C. 5310 and 5311. Two State DOTs suggested that 49 U.S.C. 5310 subrecipients with less than 10 vehicles should be excluded from the group TAM plan requirements. To decrease the burden further, these commenters recommended that FTA require reporting only on FTA-funded assets for 49 U.S.C. 5310 subrecipients.

A State public transportation system also suggested that group TAM plans should be limited to only FTA-funded assets used in the provision of public transportation services, reasoning that it would be an inappropriate burden to apply the TAM regulations to all of subrecipients' assets that directly or indirectly support its transportation service. This commenter also urged FTA to eliminate the TAM plan requirements for subrecipients that only receive 49 U.S.C. 5310 funds, reasoning that a majority of such subrecipients in the State have fewer than five vehicles, which are used to provide transportation to only program participants with specific needs, rather than for public transportation services.

Some State DOTs and a professional association said that for subrecipients other than those that are solely subrecipients under 49 U.S.C. 5310 or 5311, it should be a mutual decision between a group TAM plan sponsor and the eligible providers in the group if a group TAM plan will be done. One of the State DOTs and the professional association stated that after the mutual decision to produce a group plan is made, it should be the sponsor, not the individual providers, who determine if an individual provider may opt out. A State DOT requested that rather than requiring State DOTs to develop a group plan unless participants opt out, the FTA TAM rule should allow operators to develop their own plans with State DOTs developing a group TAM plan for remaining participants.

A few State DOTs and a professional association said that by mandating the State DOT to prepare a group plan for small urban providers (*e.g.,* subrecipients under 49 U.S.C. 5307 and Section 5339), FTA would significantly increase the role of the State DOT in planning and subsequent oversight of this group of providers. These commenters opposed the transferring of additional responsibilities for small urban providers from FTA to the States. A professional association requested additional funding for State DOTs to be able to prepare the group TAM plans.

A transit operator said it is the direct recipient of 49 U.S.C. 5307 funds, and that it also has one subrecipient of its 49 U.S.C. 5307 funds. This commenter stated that its subrecipient is also a subrecipient of 49 U.S.C. 5310 and Section 5311 funding from the State, and asked if it would be required to complete a Group TAM plan. A transit operator expressed concern that while it will need to complete an individual TAM plan because of its Tier I status, as a 49 U.S.C. Section 5311 subrecipient it will also be obliged to participate in a State group TAM plan. The commenter said this will result in an additional cost that may not have been captured in the cost analysis performed by FTA.

A transit operator asked if tier I agencies that have subrecipients will be able to combine their agency plan with those of their subrecipients. A State DOT and a professional association suggested that States that are both transit operators and sponsors of group TAM plans should only be required to prepare a single TAM plan inclusive of the statewide system, which may include all the assets of direct recipients, subrecipients, and transit providers if that makes sense for their State. Some State DOTs and a professional association requested clarity on the State's roles and responsibilities in resolving conflicts that may arise between TAM plan sponsors and a subrecipient.

A State DOT requested an example of a non-State group TAM plan sponsor and clarification as to whether an MPO could be a group TAM plan sponsor. This commenter requested an example of when the MPO would have the responsibility for integrating group TAM plans and when it is a State responsibility. An MPO requested that FTA add explicit clarifying language to the final rule stating that an MPO that merely receives funds from FTA and passes the funds along to transit operators would not be required to develop and carry out a TAM plan or a group TAM plan, consistent with the analysis of §§ 625.5 and 625.27 in the NPRM. Another MPO requested that FTA clarify the level of responsibility of a group TAM plan sponsor by setting a minimum expectation that requires the sponsor to focus on coordination and collaboration while preserving local decision-making.

A professional association supported the ability of American Indian tribes to develop their own TAM plans, even when they are (tier II) subrecipients of the State under the 49 U.S.C. 5311 program. This commenter also recommended that the rule should clarify that it is a mutual decision between the tribe and the group TAM plan sponsor if a tribe will be include in a group TAM plan and should clearly state that, if a tribe opts to be part of a group TAM plan, the tribe must to agree to setting targets and prioritizing investment across the entire group, which could result in the State DOT being involved in programming Federal funds available to the tribe both as a subrecipient and direct recipient.

A State transit association recommended that FTA should eliminate the lead agency model and not implement a requirement that ''designated recipients [must] review TAM plans for subrecipients.'' The commenter asserted that many transit agencies the DOT has approached to be lead agency have refused based on unwarranted liability, lack of staffing to monitor sub-grantees, and lack of additional administrative funding to cover oversight.

FTA'S RESPONSE: Group Plans—Responsibilities for States, Tribes, and Direct Recipients

FTA has established a two-tier approach to TAM plan development to reduce the burden on smaller transit providers. The NPRM proposal was consistent with other FTA programs whereby a State, direct or designated recipient oversees subrecipients and certifies to FTA on their behalf. The costs associated with developing a group TAM plan are eligible under many grant programs (*e.g.,* Urban area formula program, rural area formula program, state of good repair formula), and the Sponsor is in a better position to determine the future funding for investment prioritization.

The feasibility of the group TAM plan assumes that the funding relationship between recipients and subrecipients

naturally lends itself to this type of arrangement because the process of prioritizing investments is already occurring at the sponsor level. As a result, it is logical to require States and direct recipients (or designated recipients of 49 U.S.C. 5310 funds) to take a leadership role in developing group TAM plans for their subrecipients. However, if this relationship is not appropriate for a particular tier II provider, then that tier II provider can opt out of the group TAM plan and develop its own TAM plan.

The sponsor may determine that multiple group TAM plans are necessary for their subrecipients. For example, a State DOT may decide to establish separate group TAM plans for its 49 U.S.C. 5310 and 5311 subrecipients. Or a State DOT may decide to establish a single group plan for all of its subrecipients. The final rule provides flexibility to sponsors to decide the number of group plans that it should develop.

FTA agrees that the group TAM plan should include those subrecipients already subject to the sponsor's oversight and does not intend to create new relationship of oversight not already in practice. Thus, FTA has revised the final rule to clarify that sponsors are not required to offer a group TAM plan to those subrecipients that are also direct recipients of 49 U.S.C. 5307 funds. However, any direct recipient of 49 U.S.C. 5307 funds that is a tier II provider remains eligible to participate in a group plan by mutual agreement of the sponsor and the transit provider. For example, a tier II transit provider that is a direct recipient of 49 U.S.C. 5307 funds, and is a subrecipient of 49 U.S.C. 5311 funds from the State may participate in the State's group plan by mutual agreement, but the State is not required to include this subrecipient in a group TAM plan.

FTA recognizes that subrecipients with very small fleets of less than ten vehicles have unique circumstances, and FTA has sought to minimize the burden on these providers as much as possible.

As noted earlier, the intention of the asset inventory is to provide a strategic perspective capital assets used in the provision of public transit. As such all assets, regardless of funding source, are parts of the landscape and subject to these provisions.

FTA wishes to clarify that there are three types of TAM plans (1) a nine element individual tier I plan, (2) a four element individual tier II plan, and (3) a four element group TAM plan. A transit provider that is a recipient under one program and subrecipient under another is not required to do two TAM plans, but must determine which is most appropriate.

The role of a sponsor in the development of the TAM plan is that of the leader—the sponsor determines the asset inventory level of detail, the condition assessment methodology, and the criteria and weighting for investment priorities as well as which tools to use to support these efforts. As the leader, the sponsor is responsible to the extent practicable, for coordination and collaboration with all participants, while preserving local decision making. The participant is an active partner in the development of the TAM plan providing information necessary to conduct the analyses and providing feedback to the sponsor. The tier II participant maintains the autonomy to opt-out of a group plan if it is not effective.

An example of a non-State sponsor is an MPO or transit provider who may be the designated recipient of 49 U.S.C. 5310 funds for their urbanized area and distributes those funds to subrecipients. Another example would be an MPO or transit provider that distributes some of the 49 U.S.C. 5307 funds for their urbanized area to subrecipients.

FTA agrees that Native America tribes preserve the autonomy to develop their own TAM plan even if they are tier II provider subrecipients of the State. A tribe also may choose to participate in a group TAM plan sponsored by the State. Each participant must provide the sponsor with information necessary for the development of the group TAM plan.

FTA disagrees that it should eliminate the lead agency model. The lead agency model reduces the burden on smaller providers, which FTA believes justifies the additional coordination burden placed on the sponsor. The lead agency approach seeks to use existing oversight relationships to reduce additional oversight burden to the sponsor.

FINAL RULE:

FTA has made revisions to the final rule to clarify eligibility for participation in a group TAM plan and the responsibilities of a sponsor.

COMMENTS: Group Plan—Opting Out of Group TAM Plan

Some public comments addressed the proposed option for a tier II provider subrecipient to ''opt-out'' of a group TAM plan and create its own TAM plan at proposed § 625.27(a)(4). An MPO requested clarification on the requirements for a State to develop a group TAM plan for all tier II recipients and the ability of a participating accountable executive to opt-out of the State plan. A professional association expressed support for the provision that tier II agencies can elect to complete their own TAM plan.

FTA'S RESPONSES: Group Plan—Opting Out of Group TAM Plan

The NPRM proposed that all sponsors develop a group TAM plan for their tier II provider subrecipients. A tier II provider's accountable executive may choose to opt-out of a group TAM plan for a number of reasons, including if the provider will develop its own individual TAM plan.

FINAL RULE:

FTA is not making any substantive revisions in the final rule related to these comments.

COMMENTS: Group Plan—Plan Requirements

Several commenters provided input on the group plan requirements proposed in § 625.27(b). A State DOT said the group TAM plan requirements seem reasonable.

Several commenters requested clarification on investment prioritization under group plans. Several State DOTs and other commenters said that the sponsor of a group TAM plan should establish targets and investment prioritization for all members of the group, as a whole. An MPO said FTA should clarify that the group investment prioritization should be based on the priorities of the individual tier II providers rather than those of the agency responsible for the development of the group TAM plan. A State DOT said language should be included to specify that policy guidelines by group TAM plan sponsors can guide asset investment prioritization at a high level. A State DOT said investment priorities for group TAM plans should only be advisory since they are set across the entire group.

An individual commenter asked if all assets in a group TAM plan must be prioritized as if it were one transit agency, and if so, how this would affect grant decision-making.

One commenter questioned whether it would then be advantageous or disadvantageous for a small operator to opt-out of the group plan and create its own plan in order to compete separately for State grant funding.

A State DOT said it is unclear whether the proposed rule would require group TAM plan sponsors to develop ULBs for all providers

regardless of the providers' unique operating environments.

A transit operator asked for guidance on asset planning, management, and inventory in a group TAM plan where a transit agency operates and maintains assets owned by another transit agency.

FTA'S RESPONSES: Group Plan—Plan Requirements

In the NPRM, FTA proposed that sponsors develop unified targets for group TAM plans. This means that a sponsor would develop performance targets for each asset class in the group plan, for the entire group. While some participants may not have assets in every asset class included in the group plan, they are responsible for the programs and projects identified in the group plan investment prioritization that relate to their asset inventory. For example, a group plan participant that has ten cutaway vans, but no buses would have its assets included in the cutaway van mode SGR target, but the group plan may also include a target for buses. This participant is only responsible for implementing the TAM plan as it relates to their vans. They would not however, be involved in the attainment of the bus target.

FTA agrees that a sponsor should establish the investment prioritization based on the priorities of the whole group, to the extent practicable. The methodology and practice for developing the group TAM plan are a local decision. FTA will provide guidance and technical assistance for sponsors and participants to assist in developing TAM group plans.

A benefit of participating in a group TAM plan is the reduced administrative burden. A potential drawback is the lack of individuality in the TAM plan, as the TAM group plan is developed as if the group were one transit operator, pooling asset inventories and ultimately developing unified targets across the group as a whole.

FTA clarifies that a ULB is not transit operator specific, but may be specific to a particular number of vehicles within the asset inventory. Group TAM plan sponsors will be able to specify different ULBs for different participants, or even for different fleets operated by a single group plan participant.

FTA disagrees with the commenter that asserts the two tiered approach would lead to tier I Accountable Executives being responsible for tier II providers. The group TAM plan approach uses existing relationships between recipients. A tier II provider always reserves the option to opt-out of a group plan. A group TAM plan sponsor that is also a tier I provider must develop its own separate individual TAM plan.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

COMMENTS: Group Plan—Role of the Accountable Executive in Development of Group TAM Plans

Several public comments addressed the role of the Accountable Executive in the development of group TAM plans as proposed in § 625.27(c)(2) and (3).

Several commenters, including transit operators and professional associations, requested clarification on whether the Accountable Executive responsibilities remain with each tier II agency or whether the responsibility ''rolls up'' to the group TAM plan sponsor's Accountable Executive, with most generally expressing that each participating transit agency should have its own Accountable Executive. Some commenters requested FTA to clarity that tier II reporting agencies are not required to cede the role of Accountable Executive (or management of their agency) to their respective States or other direct recipients. A State DOT stated that, if States are required to include tier II 49 U.S.C. 5307 recipients, then it does not wish to assume the responsibility of the group's Accountable Executive. Another commenter asserted that the group TAM plan sponsor's designated Accountable Executive, if necessary under the rule, would have limited authority in making progress towards the targets. If the responsibility ''rolls up'' to the group TAM plan sponsor's Accountable Executive, a transit operator asked if such responsibility would provide the commenter with the authority to establish the capital program priorities for each of the tier II subrecipients.

Some State DOTs and a professional association recommended that FTA clarify that just because the State DOT (as a group TAM plan sponsor) coordinates a group TAM plan, it does not mean that the State is responsible for implementation of the group TAM plan. Additionally, these commenters suggested that the State should not be considered a transit provider and not be required to have an Accountable Executive solely as a result of sponsoring a group TAM plan.

A transit operator asserted that since tier I providers do not control the funding of the tier II providers, tier I should not be dictating how tier II providers manage their assets. This commenter said that this would force greater centralization of decision-making and tier I would need to have control over tier II funding decisions. Thus, according to this commenter, the Accountable Executive would end up being responsible for both the primary agency and the roll-up agencies managing their assets.

FTA'S RESPONSES: Group Plan—Role of the Accountable Executive in Development of Group TAM Plans

In this final rule, FTA clarifies that a sponsor for a group TAM plan is not the Accountable Executive for each participating transit provider. By participating in a group TAM plan, an Accountable Executive may be required to defer to the decisions of the sponsor regarding prioritization of investments. However, each Accountable Executive is ultimately responsible for implementing a TAM plan. The Accountable Executive responsibilities do not ''roll-up'' to the sponsor.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

COMMENT: Group Plan—Providing Sponsors With Necessary Information (Role of Sponsor and Participant)

A few public comment submissions addressed the proposed requirement that group TAM plan participants must provide group TAM plan sponsors with all relevant and necessary information for the development of the group TAM plan as proposed in § 625.27(c)(4). An MPO suggested that the rule clarify the consequences of a group TAM plan participant not providing the required information, and provide the group TAM plan sponsor with a remedy or methodology to proceed without the missing information.

FTA'S RESPONSES: Group Plan—Providing Sponsors With Necessary Information (Role of Sponsor and Participant)

The ultimate responsibility for development of a group TAM plan lies with the sponsor. However, participants should collaborate with sponsors and contribute to the development of the group TAM plan, to the extent practicable. FTA believes that the mechanics of the development for a group TAM plan are a local decision.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

COMMENTS: Group Plan—Other Comments

Some commenters provided other comments on group TAM plans. For example, a transit operator asked how

SGR measures for several different agencies within a region can be rolled up if each service provider can define its own approach to quantify SGR. This commenter also asked what the role of a regional oversight board would be in the TAM effort if it oversees providers that would develop individual TAM plans due to the tier I level designation. An individual commenter stated that the group TAM plan provider cannot guarantee that they will be able to meet the plan's SGR goals because they cannot allocate the local funding that is required for capital grants.

A trade association requested additional guidance on group TAM plans, including ongoing participation of grantees and subrecipients, in order to ensure consistency.

Several State DOTs and other commenters urged FTA to clarify that a group TAM plan is not to be a collection of individual subrecipient plans into a single document; rather, it should provide group-level information. A State DOT requested that the group TAM plan approach provide increased flexibility.

An MPO requested clarification on the relationship between the Coordinated Plan and the group TAM plan process requesting confirmation that the TAM plan investment prioritization does not supplant the Coordinated Plan.

A State DOT requested guidance on the approval or certification process of a TAM plan. The commenter suggested that group TAM plans should be approved by the plan's sponsor, in coordination with each member of the group. However, the commenter said that formal approval by each Accountable Executive who is in a group TAM plan should not be mandated because the Accountable Executive for an individual member may not be fully supportive of the investment priorities made for the group as a whole.

FTA'S RESPONSES: Group Plan—Other Comments

This final rule establishes the SGR performance measures in § 625.43. Each provider or sponsor must set performance targets based on the measures.

Each transit provider can make its own SGR determinations taking into consideration the three objective standards.

FTA agrees that a sponsor cannot guarantee results of their TAM plan because the responsibility for implementing the TAM plan resides with each transit provider. However, each participant should support the group's investment priorities. There are no financial rewards or penalties associated with target attainment.

The group TAM plan is most effective if the group remains consistent over time. However, the tier II participants maintain the option to opt-out of the group TAM plan and create their own. In addition, a group TAM plan approach will be most effective where the required activities and analyses are conducted in consideration of the group as a whole, as opposed to a compilation of individual analyses, in order to develop unified targets. Nevertheless, the mechanics of the group TAM plan are a local decision. Additionally, FTA agrees that the group TAM plan process does not supplant existing decision making practices, such as the Coordinated Plan for Human Service Transportation.

FTA will not routinely collect or approve TAM plans. Each transit provider or sponsor will certify compliance with the final rule through FTAs certification and assurances process.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

625.29 Transit Asset Management Plan: Horizon Period, Amendments and Updates

This section proposed timeframes for developing and updating a TAM plan. A TAM plan is required to be forward looking, and is required to forecast projects, targets, and activities for at least four fiscal years. Some transit providers may desire a longer analysis period, however, the analysis period must be at least four years. Ideally, the TAM plan cycle should coincide, to the extent practicable, with the State and metropolitan planning cycle for development of the STIP and the TIP.

This section also provided that a TAM plan should be updated in its entirety at least every four years, and again, this should ideally, coincide, to the extent practicable with the update cycle for the STIP and the TIP. The requirement to update the TAM plan means that a transit provider must revisit every element of its TAM plan and make any necessary changes for a subsequent version, at least once every four years. Additionally, during the course of the horizon period, a transit provider may choose to amend its TAM plan to reflect changes to investment priorities, targets, or other unforeseen occurrences (like a natural disaster) that impact the relevance of the TAM plan.

FTA recommends that transit providers should consider current and future climate and weather-related hazards as part of their prioritization of investments. For example, the frequency and severity of potential hazards such as heavy rainfalls, coastal and riverine flooding, heat waves, extreme cold, and wind events may directly impact assets located in vulnerable areas. These potential hazards affect how a provider identifies and prioritizes necessary hazard mitigations, asset-replacement schedules, or the expected useful service duration of capital assets. A transit provider should have knowledge of the vulnerability of its system to natural hazards and prioritize protecting their assets from those hazards and improve the resilience of the system; however, FTA is not requiring a formal climate resiliency analysis as part of this rule.

COMMMENTS: Horizon Period

Several commenters suggested that the TAM plans allow agencies to better align other plans, such as their capital plan. Accordingly, a few of these commenters suggested that the plan should be valid for four to eight years. Another commenter suggested that the TAM plan and targets should be valid for five years.

A business association expressed support for proposed section 625.29 because it would align TAM plans on a cycle that coincides with TIP and STIP development. In contrast, one transit operator commented that the metropolitan planning process (LRTPs, STIPs, and TIPs) is every five years and the FTA triennial review process is every three years, and asked why the TAM plan does not match one of these timeframes.

A State transit association supported the peer recommendation that investment prioritization time periods should reflect a provider's short-term capital plans and be closely coordinated with TIP and STIP processes. However, this commenter recommended that FTA provide some guidance to DOT staff responsible for procurement regarding purchasing timelines, explaining that from the time an agency receives an award confirmation letter from the DOT, it typically takes up to 3 years to receive the vehicle.

A transit operator asked in which instances, if any, would FTA allow investment prioritization to exceed the four-year target. If none, this commenter asked if FTA would provide a method in which agencies could request an extension of time to set forth the ''sufficient investment'' that must be directed to projects that pose safety risks. Another transit operator said that the rule is unclear about how to reflect evolving priorities from year-to-year in

a TAM plan that requires project planning and prioritization to occur for a four year period.

FTA'S RESPONSE: Horizon Period

FTA established the horizon period for TAM plans of four years to align with the Federal metropolitan and statewide planning processes. FTA recognizes that priorities and funding may shift over a four year horizon and has provided the option to update or amend the TAM plan during the horizon period.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

COMMENTS: Amendments and Updates

Some transit operators and an MPO stated that developing a fixed 4-year investment plan would be in conflict with their shorter capital budget cycles. These commenters suggested that the updates to the capital budgets should not require updates to the TAM plan. Also, two of the commenters suggested that agencies should be enabled to deviate from the project list in the TAM plan without alerting FTA in order to respond appropriately to changes in risk, financial conditions, service levels, or other considerations of asset management.

A transit operator recommended that FTA allow agencies to update projects included in the TAM plan annually, reasoning that it may be difficult for agencies to forecast all projects to be included in the 4-year timeframe, particularly in the early stages of implementing the TAM System.

Two commenters recommended that the final rule state that annual target setting should adjust the prior year's targets only if significant asset changes occurred. Another commenter asserted that requiring updates each time the prioritization of projects changes equates to a yearly update, which is unnecessarily burdensome. This commenter suggested that updates should only be required concurrent with production of the STIP or TIP as written by the governing MPO. A transit operator asked FTA to clarify how it would define a ''significant change'' that would warrant an annual update to the TAM plan.

FTA'S RESPONSE: Amendments and Updates

FTA agrees that an update to a transit providers' capital budget does not by itself require a TAM plan update. However, depending on the magnitude of funding differential initially expected, a transit provider may determine an amendment or update is necessary to align the TAM approach with the current funding conditions. The investment prioritization and program of projects are a strategic projection for the four year horizon period. Using the best data and analysis available, the transit provider should be able to determine the priorities of investments. However, if deviations occur due to change in condition, risk, or other considerations, a transit provider may update or amend its TAM plan to reflect those deviations.

The difference between a TAM plan update and a TAM plan amendment is the degree of the unexpected change. For example, a transit provider may update its TAM plan if it receives discretionary program funds that it did not anticipate receiving when it developed its investment prioritization.

FINAL RULE:

FTA is not making any revisions to the final rule related to these comments.

COMMENTS: TAM Plan Process

A professional association and three State DOTs said that FTA should clarify in the final rule how individual and group plans will be approved.

A transit operator commented that the NPRM is unclear on how transit agencies will report TAM plans and updates to those plans. This commenter also asked to what extent reviewers during the FTA triennial review process will be empowered to reject performance targets in TAM plans.

A transit operator said FTA should delay finalization of the present rulemaking to coincide with promulgation of final safety performance criteria for all modes of public transportation; and minimum safety performance standards for vehicles in revenue operations, as prescribed by 49 U.S.C. 5329(b)(2)(A) and (C).

FTA'S RESPONSE: TAM Plan Process

FTA will not routinely collect or approve all TAM plans. Individual plans will be certified by a transit provider and group TAM plans will be certified by a sponsor as part of the other certifications and assurances that must be provided to FTA as part of any grant. The development and implementation of a TAM plan should not be merely an exercise to comply with the requirements of the final rule. The TAM plan is supposed to be a tool that a transit provider can use to assess the condition of its assets and make decisions on how to best prioritize funding for those assets in order to achieve and maintain a state of good repair. FTA intends to verify compliance with todays' final rule through its existing oversight activities. Performance targets are a local decision, and are neither approved nor rejected by FTA.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

625.31 Implementation Deadline

This section proposed that all TAM plan development should be completed no more than two years after the effective date of the final rule. If the rule becomes effective at any time after the first day of the transit provider's or sponsor's fiscal year, the initial TAM plan should cover the remaining portion of that year plus a four-year time horizon. FTA will allow transit providers to extend the TAM plan implementation deadline by submitting a written request. A written request would need to include documentation which shows that the transit provider has made a good faith effort to meet the deadline, an explanation of why the transit provider could not meet the deadline, and a proposed new deadline, subject to FTA approval. FTA reserves the right to deny a request to extend the deadline.

COMMENT: 625.31 Implementation Deadline

Some public comments addressed the proposed implementation deadline in § 625.31. Several State DOTs supported FTA's recognition that the requirement to develop a TAM plan must have a delayed effective date. A State DOT and a transit operator expressed support for the two-year implementation period to develop a TAM plan. Another transit operator expressed support for the proposal to allow transit providers extra time to develop a TAM plan with a written request.

Several commenters recommended that FTA phase-in implementation of the TAM plan requirements. Four State DOTs and other commenters recommended that (1) the initial TAM plan (due after two years) only be required to include revenue vehicles, (2) within one year of TERM training in the State, facilities should be included in the plan and (3) all other assets should be included within four years from the final rule date. However, some of these commenters suggested that the third and final phase should only require FTA-funded assets and should occur four years after the initial TAM plan, versus four years from the final rule date. Similarly, a transit operator said two

years may be sufficient for some categories of assets (*i.e.,* rolling stock), but asked that FTA consider phasing in categories where guidance is not currently available, such as facilities. A professional association and a State DOT recommended that facilities be exempted from target setting and from inclusion in a TAM plan until training is provided (preferably State-by-State) on the use of the TERM for the State DOT and its subrecipients. One State DOT explained that it will need a significant amount of time to complete physical inspections on all its facilities.

A business association and an MPO recommended phasing in TAM requirements as follows: (1) begin with rail systems only (reasoning that these systems account for the greatest amount of capital assets and have the greatest safety risk exposure); (2) phase in transit systems with 100 vehicles or more between 2 and 4 years after phase 1; (3) consider phasing in transit systems with less than 100 vehicles in revenue service no more than two years after phase 2.

An industry association and three State DOTs said the TAM plan should be required no sooner than 2 years after FTA has issued a TAM plan manual and template. A State DOT requested that FTA extend the proposed implementation deadline from two years to three years, reasoning that the additional time would result in sponsored plans and asset management regimes nationwide that will better meet FTA's objectives. Similarly, two transit operators and a State DOT expressed concern that the two-year time frame is not sufficient to develop a TAM plan, inventory and assess the conditions of assets, and meet all the requirements stated in subpart C, particularly given the number of agencies and partners that must be involved in the TAM development process. A transit operator recommended that the two-year deadline should be for development of the TAM plan, not implementation.

Several commenters suggested that, while a two-year deadline for tier I transit agencies to develop an initial individual TAM plan is reasonable, the development of a group TAM plan and tier II plans should be extended to three years to allow adequate time for coordination between agencies. A State DOT said FTA should delay the implementation deadline until after all comments have been received for all performance management-related NPRMs in order to ensure cross-functionality for each individual performance management area. Two MPOs urged that the implementation of the FTA TAM rule must be coordinated with the implementation of other planning and safety rulemakings mandated by the authorization statutes and requested a single effective date that starts a phase-in process.

FTA'S RESPONSE: 625.31 Implementation Deadline

FTA believes that the two year statutory timeline is sufficient time for a transit provider to develop and implement a TAM plan. Moreover, the final rule includes an option for a transit provider to submit a written request to FTA for an extension of the implementation deadline.

The final rule provides each transit provider with the opportunity to develop and implement a TAM plan that is tailored to its public transportation system. Todays' final rule does not require a transit provider to conduct a condition assessment on all of its facilities within the two year initial TAM plan development timeframe. Each transit provider may adopt a condition assessment method that is appropriate for its particular operating environment and within its available resources. For example, one commenter suggested and FTA agrees that a transit provider may measure the condition of its assets by measuring the condition of a sampling of like assets.

It is not necessary for FTA to wait to issue a final rule for transit asset management until it issues final rules for safety or planning. Todays' final rule may be implemented in its entirety before the aforementioned rules become effective. FTA and FHWA are aware that transit providers, States, and MPOs will have to comply with the requirements of several rules. FTA will ensure that there is sufficient time for States, transit agencies, and planning agencies to implement the requirements of all related rules.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

625.33 Investment Prioritization

This section proposed requirements for investment prioritization. The investment prioritization provides strategic guidance for improving the condition of assets through both consideration of life-cycle costs and itemization of the actions necessary to achieve desired asset conditions. Each transit provider determines its own approach to investment prioritization and project selection. However, the transit provider is required to base its approach on the policies, goals, objectives, and strategies identified in their TAM plan and ensure that safety is given due consideration. A transit provider's approach to investment prioritization must reflect the balancing considerations of competing priorities in order to maximize a return on investment and achieve a desired state of good repair.

The investment prioritization needs to reflect adequate consideration of safety concerns previously identified within a public transportation system. Moreover, when a transit provider plans for the replacement of an asset, it should ensure that it is complying with all relevant regulatory requirements, including the ADA, which requires that accessibility features be maintained in operating order and are promptly repaired if they are out of service. Certain SGR projects may also be regarded as ''alterations'' under DOT ADA regulations, and may require additional resources. *See generally,* 49 CFR part 37.

Safety and minimizing life-cycle costs are the most common objectives in prioritizing projects. However, a transit provider may identify additional criteria and factors and weigh them according to local needs. Another criterion that a transit provider may consider is the resiliency of its assets and systems to natural disasters, as described in the NIST National Disaster Resilience Framework [11]. The impact that local concerns may have on condition-improvement costs should be reflected in the investment-prioritization list.

Investment prioritization uses the transit provider's selected prioritization approach and predetermined importance factors to determine rankings. The ability of a project or program to meet the objectives established by the transit provider in its TAM plan should be reflected by a rating. Based on the relative weight a transit provider assigns to each objective, a transit provider can establish a prioritized list of programs and projects. For example, a transit provider may identify track maintenance as the highest priority based on the condition of the track or its maintenance approach as part of its TAM policy. This may result in assigning a higher score to track-asset projects over facility-maintenance projects, even if the facility is in a worse condition, objectively. The costs associated with each project can be assessed and then compared with the transit provider's estimated funding (from all revenue sources) over the TAM plan horizon for each year. The output

[11] For more information on the NIST National Disaster Resilience Framework, please visit *http://www.nist.gov/el/resilience/*

of the process is a list of ranked projects by asset class that identify assets from the asset inventory required under § 625.25(b)(1) that would be funded over the TAM plan horizon period. A provider should only include programs and projects in its ranked list that it expects to undertake during the time horizon and identify the project year.

COMMENTS: 625.33 Investment Prioritization

Numerous public comments addressed the proposed requirements for TAM plan investment prioritization, specified in §§ 625.25(b)(4) (as an element of the TAM plan) and 625.33 (as proposed requirements for investment prioritization process).

Several State DOTs and other commenters said any ranking of projects under § 625.33(b) should be a categorical ranking (High, Medium, Low) and not a sequential ranking (First, Second, Third, Fourth etc.). Several State DOTs and a professional association said this approach is preferred if the investment prioritization must include individual projects rather than keeping the prioritization at the asset class level or program level; however, they would prefer there be no requirement to go below the asset class or program level. Specifically, two of these State DOTs said TAM plans and investment prioritization should focus on ''asset class'' to avoid conflicts between the TIP and TAM plans and to allow transit agencies of all sizes to advocate for Federal, State, and regional funding. A transit operator said an agency should be able to ''bundle'' less critical asset renewal and replacement projects to make improvements in a concentrated geographic area and achieve cost savings. An individual commenter suggested that it may be more practical to rank investment priorities within specific asset categories rather than across categories.

A regional commission requested that investment prioritization include categorical ranking (High, Medium, Low) of the projects in addition to the sequential numerical ranking (1, 2, 3, etc.). A transit operator recommended allowing agencies to define their own investment prioritization methodology or allowing the grouping of investment projects using qualitative levels of priority (*i.e.* most critical, critical, less critical) rather than age-based assessments. Similarly, some commenters suggested that assets should be weighted to reflect the criticality of a given asset on system operations.

Several State DOTs and a professional association said an asset management plan should be able to show assets in declining conditions, not just improving and maintaining. Specifically, one of the State DOTs requested that § 625.33(a) be revised to read ''A TAM plan must include an investment prioritization that identifies projects to improve or maintain or manage the decline in the state of good repair of capital assets over the horizon period of the TAM plan. Alternatively, an MPO suggested changing the phrase ''projects to improve or maintain the state of good repair'' to ''projects to manage or maintain the state of good repair.''

Two State DOTs requested clarification regarding the NPRM statement that ''transit providers should consider current and future climate and weather-related hazards as part of their prioritization of investment,'' asserting that it is unclear which future hazards should be included and which should be excluded from consideration. Two other commenters stated that, without further clarification, this requirement seems unrealistic. A professional association asked if the reference to including ''current and future climate and weather-related hazards'' meant that an all-hazards approach should be taken to investment prioritization. If so, the commenter asked for an enhanced description of what hazards should be included or excluded.

A State DOT, some transit operators, and a local utility, said that the safety of any asset should be the determining factor in prioritization of asset replacement, rather than the ULB. A State DOT recommended that FTA should reinforce this concept by clarifying the interaction between TAM and safety. A State transit operator proposed that each asset should receive a fixed safety rating based on how important that asset is to safety and funding should be prioritized for assets rated higher on the safety scale.

Several commenters took issue with the phrase ''pose an identified unacceptable safety risk'' in § 625.33(d). A professional association asserted that by identifying an opportunity to improve safety, a State has not indicated an unsafe condition. Several commenters proposed that FTA strike the reference to projects that are needed to address circumstances that ''pose an identified unacceptable safety risk.'' One of these commenters offered an alternative phrases: ''provide opportunities to improve safety or reduction in the frequency and severity of some undesirable events.'' Other commenters said the rule should state that investment prioritization ''must give due consideration to those projects for state of good repair that address safety risk.'' A transit operator and a private citizen requested that FTA explain how an unacceptable safety risk is to be incorporated in the investment prioritization, and how unacceptable safety risks should be mitigated, financially, if the investment money is not afforded.

One commenter also asked whether there is a requirement to follow the project rankings to address all non-SGR capital assets prior to funding other projects.

Regarding the NPRM preamble statement that a transit provider may identify additional criteria and factors for prioritizing projects (in addition to safety and minimizing life-cycle costs) and weigh them according to local needs, a State public transportation system suggested that FTA clarify that such additional criteria should not take priority over considerations of SGR or system safety. A transit operator asked if FTA is recommending any standardized approach for criteria weighting or whether the weighting of criteria is left to the discretion of the transit provider. A State DOT requested guidance on expected investment prioritization criteria and weighting. A transit operator recommended adding language to acknowledge other factors outside the prioritization criteria (*e.g.,* regional needs, non-asset based priorities, and funding mechanisms/constraints) so there is room for intangibles, outside influences, and other mitigating circumstances that are defendable.

A local transit operator asked whether future acquisitions and construction projects (*e.g.,* system expansion) should be included in the project prioritization. This commenter also asked if projects that prevent assets from falling out of a state of good repair should be given higher ranking if they provide a better return on investment. A State DOT and a local transit agency asked if the investment prioritization should be based on the available budget or the needs. If the prioritization must be constrained then the State DOT commenter said it may not be able to meet the SGR principal of ''full level of performance.'' A transit operator asked how an agency can account for projects/assets for which it would like to apply for grant funding if investment prioritization is fiscally constrained.

A State DOT asked if the investment ranking is binding (that is, if investments must be made in the specific order in the TAM plan).

An MPO and a transit operator requested that FTA provide an opportunity to use alternative approaches to prioritizing projects that

matches such grantee characteristics as organizational size and maturity. A transit operator supported the FTA in allowing transit providers to use a selected prioritization approach and predetermined importance factors for determining project rankings. A trade association requested that the final rule not specify the value/capitalization levels, but instead allow each agency the flexibility to form their own capitalization policies.

Regarding the proposed § 625.33(f) requirement that investment prioritization must take into consideration requirements concerning maintenance of accessible features (at 49 CFR 37.161 and 37.163), a transit operator said that other processes should be the basis for complying with ADA requirements and the TAM prioritization process should not include an expansion of the ADA mandate.

A transit operator suggested that existing documents (Metropolitan Transportation Plan (MTP), Regional Transportation Plan (RTP), Statewide Transportation Improvement Plan (STIP, Transportation Improvement Plan (TIP), and Capital Improvement Plan (CIP)) should continue to be the location for documenting specific project listings.

FTA'S RESPONSE: 625.33 Investment Prioritization

The ranking of investment prioritization programs and projects can be categorical (high, medium, low), sequential (first, second, third), or another method that is appropriate for the transit provider. It must, however, indicate which year the transit provider intends to carry out the program or project. The output of the process is a list of ranked projects at the asset class level that identify assets from the asset inventory. FTA will issue guidance on methodologies for investment prioritization and TAM plan development.

FTA notes that the requirement to develop an investment prioritization does not necessarily require a transit provider to invest in that plan. With the exception of 49 U.S.C. 5337 program recipients who are required to identify their projects are included in their TAM plans. However, FTA believes the TAM approach will result in a useable and effective investment prioritization that transit providers are encouraged to use to achieve or maintain a state of good repair for their assets.

FTA disagrees that investment prioritization itemized at the asset level could conflict with the TIP process. FTA believes that it is a best practice for transit providers to first prioritize their own projects based on their own needs, before engaging in larger planning processes in conjunction with the State, the MPO, and other transit providers to establish a prioritized over-arching program of projects for the larger area.

FTA understands that performance targets, and by extension, asset condition, may decline even with good asset management practices in place. The purpose of the final rule is to provide a proactive strategic framework for transit providers to balance competing needs and limited funds in an informed decision making process to reduce the SGR backlog. FTA agrees that'' improve or maintain SGR'' limits the options available and has modified § 625.33(a) to read ''improve or manage the state of good repair''.

FTA recommends that transit providers consider climate resiliency and reliability in their investment prioritization by identifying capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure, provide for multimodal capacity increases based on regional priorities and needs, and reduce the vulnerability of the existing transportation infrastructure to natural disasters.[12] For example, severe rainfall events may cause flooding that shuts down operations at a transit maintenance facility. In this case, the continued availability of the asset during such events may require the installation of a watertight perimeter around the facility, which will both protect the condition of the asset and ensure its availability for continued transit operations. FTA is aware of publicly available tools to assist in the identification of vulnerabilities for specific systems or assets, and encourages transit providers to conduct a vulnerability analysis as part of their overall asset management approach. For a TAM plan, FTA recommends that transit providers identify any fixed assets that are located within the current FEMA-published flood hazard area (100-year floodplain), and the degree to which these assets have been built to withstand projected hazards that may occur over the assets anticipated useful life.

FTA agrees that safety is a critical factor in determining the prioritization of asset investments; however it is not the only factor. FTA does not propose a specific methodology for investment prioritization. Safety needs are fluid and any fixed assessment limits a transit provider's ability to respond to the changing environment,

FTA agrees that identifying an opportunity to improve safety does not indicate an unsafe condition. If a transit provider identifies an unacceptable safety risk associated with its asset, it should place that asset higher up in its investment prioritization, to the extent practicable. However, this rule does not establish selection criteria for a transit providers' investment prioritization.

FTA supports the proactive strategic approach of identifying future projects and ranking preventative projects with better return on investment higher in the investment prioritization. The final rule establishes that an investment prioritization is a fiscally constrained list of needed projects, ranked or grouped in order of priority. Therefore, a transit provider has discretion in prioritizing projects and programs over the TAM plan horizon period.

FTA recognizes that no funding is guaranteed but most resources can be realistically estimated. For example, for FTA formula grant funds, a transit provider may not know the exact amount of funds it may receive two years hence, but it can make a reasonable determination of the projects it wants to pursue if it does receive the funding. Other funding that may be less estimable, such as discretionary funding, may require a TAM update.

FTA reiterates that the NPRM did not propose that a transit provider abandon its existing project listing documentation processes nor are these requirements intended to supplant existing decision making practices.

FTA disagrees that consideration of the costs associated with maintaining accessible features is an expansion of the existing mandate.

FTA further clarifies that the ULB is used for performance measure metrics not for investment prioritization.

FINAL RULE:

FTA is revising this section to reflect that programs or projects within an investment prioritization can be for either improving or managing state of good repair. FTA also has revised this section to require that investment prioritization only apply to assets for which a provider has direct capital responsibility.

625.41 Standards for Measuring the Condition of Capital Assets

Pursuant to 49 U.S.C. 5326(b)(1), the definition of state of good repair must contain objective standards for measuring the condition of capital assets. FTA proposed to define state of good repair for public transportation

[12] Fixing America's Surface Transportation Act (''FAST'') (Pub. L. 114–94),

capital assets as ''the condition in which an asset is able to operate at a full level of performance.'' This section proposed objective standards for equipment, rolling stock, facilities and infrastructure that are intended to further define ''full level of performance,'' and clearly indicate when an asset is in a state of good repair.

The objective standards allow transit providers to operationalize and quantify state of good repair to audit their SGR performance. To accomplish this, FTA proposed three objective standards, detailed in section 625.41. The proposed objective standards are: (1) the asset is able to perform its manufactured design function; (2) the use of the asset in its current condition does not pose an identified unacceptable safety risk; and (3) the asset's life-cycle investment needs have been met or recovered, including all scheduled maintenance, rehabilitation and replacements. The objective standards allow for an auditable SGR definition that is high-level and broad enough to incorporate existing transit asset management practices at transit providers of different modes, different sizes, and different operating environments.

An asset is in a state of good repair when each objective standard is met. The first objective standard in § 625.41(b)(1) requires that an asset is able to perform its manufactured design function. This objective standard takes into consideration that an asset may be in poor condition, but is still able to operate. For example, a transit provider may institute a slow zone to allow a rail car to operate on deteriorated track that can no longer support rail cars traveling over it at the original design speed, but can support rail cars traveling at slower speeds. In this case, the infrastructure track segment would not meet this SGR standard because it was designed to carry railcars at a speed that its current condition will not support. Achieving state of good repair means not accepting compromised performance from assets that are over age or of deteriorated condition.

The next objective standard in § 625.41(b)(2) requires that an asset not pose an unacceptable identified safety risk. Going back to the previous example, track deterioration can lead to derailments and other safety hazards and, depending on the condition, may not meet this standard. If the asset is operating according to its designed function, but is introducing a safety risk to the system that the Accountable Executive considers to be unacceptable, then the asset is not in a state of good repair. A safety risk may be identified through a number of ways, including through a transit provider's practice of Safety Management Systems (SMS) as proposed under FTA's notice of proposed rulemaking for public transportation agency safety plans. Achieving state of good repair means not compromising designed performance to mitigate safety risks or otherwise accepting safety risks from assets that are over age or in deteriorated condition.

Lastly, the third objective standard proposed in § 625.41(b)(3) requires that the life-cycle investment needs of the asset be met. This means that the inspection, maintenance, rehabilitation, and replacement schedules have been met or recovered for the asset. Deferring maintenance on an asset may not have immediate consequences for an asset's safety, reliability, or performance. However, deferred maintenance leads to these long-term consequences in the future. Thus, it cannot be said that an asset is in a state of good repair, when the maintenance practices that will maintain the asset's full performance level are being deferred.

An asset that meets all three objective standards is in a state of good repair.

COMMENTS: Objective Standard—''Capital Asset Is Able To Perform Its Designed Function''

A few commenters provided input on the SGR standard that an asset must be able to perform its designed function, as specified in § 625.41(b)(1). A transit operator said FTA should add the word ''constructed'' to the term ''manufactured design function'' since many facilities and infrastructure assets are constructed on-site rather than manufactured. A couple of transit operators said the inclusion of the term ''designed function'' in the SGR standard neglects to include the assets' performance and operating conditions. In the case of legacy transit operators, these commenters said the designed function of an asset may be different than the required performance function.

Another commenter asserted that this proposed SGR standard is not objective because the rule provides no definitions for ''perform'' and ''design standards,'' which will make it impossible for FTA and other stakeholders to accurately compare agencies against each other. This commenter recommended that FTA define each of these terms, provide transit agencies with additional guidance beyond the definitions that is applicable to varying vehicles and infrastructure, and request comment on the inclusion of specific, measurable statistics (*e.g.,* requiring a vehicle to have fewer than a certain number of maintenance-related breakdowns or fewer than a certain number of maintenance-related passenger injuries per 100,000 revenue miles) to increase the objectivity of this standard.

FTA'S RESPONSE: Objective Standard—''Capital Asset Is Able To Perform Its Designed Function''

This final rule clarifies that the term ''designed function'' is intended to include facilities that are constructed on-site rather than manufactured. FTA agrees that the designed function objective standard does not explicitly include assets' performance and operating conditions. When used in concert with the other objective standards, specifically, the lifecycle investment needs standard, a representation of the asset is more fully fleshed out. In addition, a SGR determination is aspirational and should reflect the absence of compromises accepted due to over age and deteriorated assets. With regard to comments about legacy assets, FTA recognizes that the designed function may be outdated. However, this standard is intended to identify the extent of those potential discrepancies.

FTA disagrees that this standard is not objective. The intention of the SGR determination and objective standards is to provide agencies with a method to measure their assets' SGR based on standard principles, as provided by FTA. The final rule also establishes national performance measures to allow for comparisons across similarly situated providers. The metrics proposed by commenters, such as maintenance-related injuries per 100,000 revenue vehicles, are not asset-based measures, but are an output metric of a process that, prior to this final rule, has not been standardized.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

COMMENTS: Objective Standard—''Use in Current Condition Does Not Pose an Unacceptable Safety Risk''

Some public comments provided input on the SGR standard that use of the asset in its current condition does not pose a identified unacceptable safety risk, as specified in § 625.41(b)(2).

Several State DOTs said the final rule should delete the phrase ''[assets that] pose an identified unacceptable safety risk'' and use a different formulation, possibly such as to projects that ''provide opportunities to improve the safety of an already safe system.'' These commenters also said the rule should specify that, ''by identifying an

opportunity to improve safety, a State has not indicated an unsafe condition.''

A professional association and a couple of State DOTs supported the rule's language in § 625.41(b)(2) as a measure for SGR, but said FTA needs to ensure that a provider or plan sponsor is not required to maintain records and report to the FTA that a specific asset has an ''identified unacceptable risk.''

A trade association and two transit operators stated that identifying ''unacceptable safety risks'' cannot be defined or addressed until FTA has established safety performance criteria, through notice and comment, for all modes and minimum safety performance standards for vehicles in revenue service.

A transit operator said ''unacceptable risk'' should not apply in an asset management planning context because such risks will be immediately addressed through safety initiatives or safety planning prior to adoption measures through a TAM plan.

Stating that ''unacceptable safety risks'' seems subjective, a transit operator suggested that transit agencies should use procedures under their SMS program to determine unacceptable safety risk and that FTA require transparency on what a provider defines as unacceptable safety risks. Another commenter similarly asserted that this proposed SGR standard is not objective because the rule provides no definitions for ''known,'' ''unacceptable,'' and ''safety risk,'' each of which could be interpreted differently by agencies, which would make it impossible for FTA and other stakeholders to compare transit agencies to each other accurately. This commenter recommended that FTA define each of these terms, provide transit agencies with additional guidance beyond the definitions that is applicable to varying vehicles and infrastructure, and request comment on the inclusion of specific, measurable statistics (*e.g.,* requiring a vehicle to have fewer than a certain number of maintenance-related breakdowns or fewer than a certain number of maintenance-related passenger injuries per 100,000 revenue miles) to increase the objectivity of this standard.

FTA'S RESPONSE: Objective Standard—''Use in Current Condition Does Not Pose an Unacceptable Safety Risk''

FTA understands the uncertainty expressed in some comments regarding compliance with the requirements of this final rule that are related to safety, in the absence of a final National Public Transportation Safety Plan and a final rule for public transportation agency safety plans. However, FTA believes that the requirements of this final rule can be implemented in the absence of the two aforementioned components of the National Safety Program because they are not dependent on the requirements under a final National Safety Plan or a final rule for Public Transportation Agency Safety Plans. Operators are already making decisions about what risks and level of risks are unacceptable within their system. Again, the final rule is scalable and flexible.

This proposed standard has both an objective and subjective component. Whether or not the condition of an asset poses a particular risk is an objective determination—it either does or does not pose a risk. Whether or not that risk is unacceptable is a subjective determination. The final rule neither defines nor prescribes standards for ''unacceptable safety risk.'' To the contrary, intentionally, the rule leaves the determination of what constitutes an ''unacceptable safety risk'' to the individual transit provider. FTA believes that each provider, not FTA, is in the best position to make a determination, based on knowledge of both its unique operating environment and availability of resources, regarding the categorization and mitigation of risks, to include managing risks arising from an asset not being in state of good repair. Therefore, it would be up to the individual provider to determine what investments should be made to improve the performance of its transit system. The rule does not require that a transit provider rely on performance target as the primary driver in setting its investment priorities. Instead, the rule final requires a transit provider to give due consideration to those assets that pose an identified unacceptable safety risk when setting its investment priorities.

FTA's approach to TAM is consistent with its proposed SMS approach to safety. A fundamental aspect of transit asset management is the monitoring of asset condition data as an indicator of system performance. Similarly, SMS is a formal data-driven approach to managing safety risk and assuring the effectiveness of safety risk mitigations. SMS does not require that an organization take a specific action to address a specific safety risk. Identification, analysis and mitigation of safety risks, and any other risks that exist within a transit system, are activities that a transit provider should already be engaging in.

FTA does not agree with the commenter who suggested that public access to safety risks that may be identified in a TAM plan or safety plan may increase safety risks for the rail system. The NPRM did not propose that a transit provider document safety risks in its TAM plan. In making a determination regarding the state of good repair of an asset, the provider must consider whether or not an asset poses an identified unacceptable safety risk. Where the condition of an asset may pose an unacceptable safety risk, the final rule requires a provider to apply an appropriate level of consideration to those assets when making investment prioritization decisions.

FINAL RULE:

FTA is not making any changes in the final rule related to these comments.

COMMENTS: Objective Measure—''Lifecycle Investment Needs of the Asset Have Been Met or Recovered''

Several public comments provided input on the SGR standard that life-cycle investment needs of the asset have been met or recovered, as specified in § 625.41(b)(3).

Several commenters said the life-cycle maintenance condition must be flexible and fluid. For example, some of these commenters said a bus that is due for maintenance would not be rendered out of good repair because the oil change was delayed. One transit operator urged that maintenance schedules should not be so rigid as to incorrectly label a vehicle out of good repair based on minor deviations from the regular maintenance schedule. A transit operator stated that the maintenance life-cycle can be impacted by major overhauls and repairs, but not minor maintenance tasks. This commenter recommended the phrase ''meets required level of service performance, and whether major maintenance and rehabilitation have been completed.'' One commenter said there are times when certain assets do not meet the life-cycle expectations, and the agency must weigh the cost of continuous maintenance with the cost of replacement, regardless of the lifecycle. A couple of commenters said FTA should recognize that regulatory and technology changes could render assets obsolete prior to reaching their ULB ages and FTA's minimum life requirements.

A State DOT said FTA should clarify the term ''all scheduled maintenance,'' asking if it is just those items tied to safe operation of service or inclusive of oil changes and auxiliary systems maintenance. A couple of transit operators stated that the standard should be clarified to show that the

rehabilitation and replacement elements are ''as necessary'' rather than ''scheduled.'' One of those commenters stated that the proposed wording may lead agencies to prioritize meeting the SGR definition at the expense of making maintenance or replacement decisions based on condition or risk assessments. According to this commenter, it could also incentivize agencies to specify less aggressive maintenance plans in order to achieve greater compliance with the SGR definition. The other commenter noted that ''scheduled'' rehabilitation and replacement are not always necessary and can reasonably be postponed or cancelled without any notable effect on an asset due to varying usage and wear patterns. A couple of commenters suggested that FTA remove the term ''scheduled maintenance'' in order to limit the SGR standard to meeting all capital investment needs through an asset's life-cycle, as opposed to day-to-day operating expenditures.

A transit operator asked if, by including this SGR standard, FTA is asking if asset maintenance plans are being followed.

Another transit operator said that the addition of this SGR standard is not required under the authorization statute, 49 U.S.C. 5326. The commenter asked, unless FTA is willing to define the life-cycle investment needs of each asset, how will it be determined if they have been met? Another transit operator requested clarity and additional information on the exact meaning of ''recovered'' in terms of life-cycle investments being met or recovered, and how to make such a determination. A different commenter also expressed concerns that life-cycle needs are identified by the transit agencies and are not standardized where needs are equal, and that this standards does not take into account the quality of maintenance. To remedy this flaw, the commenter recommended that FTA develop standard guidelines for maintenance requirements, with variations permitted for factors such as climate conditions and operating conditions.

An individual commenter asked a number of questions about this provision: 1–What about unscheduled maintenance and repair needs such as a bus engine or transmission that needs to be replaced? 2–What are ''rehabilitation'' schedules when applied to buses? 3–How should assets such as engines and transmissions be tracked, reported, and prioritized as compared to buses? 4–How should ULBs be determined for buses as compared to major components such as engines and transmissions?

FTA'S RESPONSE: Objective Measure—''Lifecycle Investment Needs of the Asset Have Been Met or Recovered''

This final rule establishes three objective standards for the SGR determination. Each of the standards will be evaluated at the transit provider level, which is where the SGR determination occurs. FTA does not define an asset's life-cycle investment needs, which may include its maintenance schedules, rehabilitation policies and other operational decisions. A transit provider is in the best position to determine the life-cycle needs of its assets.

Each transit provider must define its assets' life-cycle investment needs, and thus must determine if the needs have been met or recovered. Meeting the life-cycle investment needs of an asset means that the maintenance, preventative and responsive, major and minor, has occurred on a schedule and as needed. Recovering the life-cycle investment needs means that the asset may have not strictly adhered to its schedule, but it has received all of the maintenance established for a particular point on its life-cycle.

FTA recognizes that some maintenance activities are more impactful to condition, costly, and time dependent. However, FTA also notes that long term delay of relatively minor maintenance has an impact on condition over time. Thus, FTA did not propose a minimum maintenance level for consideration in an asset's life-cycle investment needs. Further, FTA recognizes that unscheduled maintenance often is more impactful initially, but posits that scheduled maintenance can help to reduce unscheduled maintenance and provide valuable information to the local decision making process.

FTA disagrees with the commenter who states that the SGR standard is not required under MAP–21. The law explicitly requires FTA to develop a definition of state of good repair which includes objective standards.

FTA is developing guidance and technical assistance to assist transit providers in how to establish life-cycle investment needs. The guidance will address the questions posed by commenters regarding how to develop ULBs for assets and subsystems, how to apply rehabilitation schedules, and more.

FINAL RULE: FTA is not making any revisions in the final rule related to these comments.

COMMENTS: Objective Standards—Other Comments

A couple of commenters said § 625.41(b) should read ''. . . condition sufficient to enable the asset to operate *safely* at a full level of performance.''

A few commenters raised other general concerns with the SGR standards. A transit operator said FTA should promulgate final safety performance criteria for all modes of public transportation and minimum safety performance standards for vehicles in revenue operations. A tribal government expressed concern that, while the SGR standards make sense from a maintenance and depreciation standpoint, they do not make sense if funding is not available for capital replacement. This commenter asserted that there will be times when services will shut down in order to comply with these standards.

A transit operator said the SGR standards in this section are inconsistent with the definition provided in § 625.5 and the principles provided in § 625.17. The commenter said the final rule should align these three components of the regulation. A transit operator noted that condition by itself is not even a factor in considering whether an asset is in SGR (per the proposed SGR definition and § 625.41 standards).

One commenter asserted that none of the three proposed SGR standards are sufficiently objective to comply with the requirement of MAP–21. A transit operator asked how agencies could determine if assets are in SGR if agencies are not required to collect and report uniform objective measurements of safety performance, reliability performance, efficiency performance, and quality performance. Another transit operator suggested that limiting the designation of asset condition as a binary response of ''Yes'' or ''No'' in terms of whether the asset in in a state of good repair would be simpler.

One commenter requested guidance on measuring asset conditions. A couple of commenters requested guidance on calculating SGR backlog. Expressing concern that the proposed SGR criteria do now allow for sufficient flexibility in determining whether an asset is in an SGR or not, a transit operator recommended that the proposed SGR criteria be provided as guidelines, rather than mandatory criteria for determining SGR.

FTA'S RESPONSE: Objective Standards—Other Comments

FTA proposed an aspirational SGR definition which identifies an asset at

its best operation performance condition. Full level of performance is not an absolute condition, but it can be measured objectively by the three standards identified in § 625.41 (b) (1) through (3).

FTA recognizes that there are more SGR needs than funding available for state of good repair projects. The National TAM System provides a strategic, proactive framework for decision making.

FTA disagrees that the proposed SGR definition (§ 625.5), SGR principles (§ 625.17), and SGR standards (§ 625.41) are inconsistent with one another. Please refer to FTA's response to the comments on the state of good repair definition in § 625.5.

FTA disagrees that the condition of an asset is not a factor in SGR determination. Each of the objective standards is a measure of an asset's condition. FTA also disagrees that the standards are not sufficiently objective. Each transit provider can use the standards established in the final rule to determine if its assets are or are not in a condition to meet each standard, and thus operating at a full level of performance, which indicates a state of good repair.

FTA agrees that a binary (yes or no) determination of SGR would be simpler, but it would not meet the statutory requirement for objective standards for SGR.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

625.43 SGR Performance Measures for Capital Assets

In accordance with 49 U.S.C. 5326(c)(1), this section proposed four SGR performance measures based on the SGR objective standards proposed in § 625.41. FTA proposed one measure for each asset class. Each SGR performance measure is based on using calculable quantities of asset conditions to assess state of good repair. FTA's priority in selecting performance measures were to minimize reporting burden, especially on small operators, and to provide a meaningful and consistent basis for transit providers to compare their own state of good repair performance over time. In some cases, this means that FTA selected a proxy for measuring state of good repair, rather than measuring asset condition directly. Although FTA only proposed four performance measures in this rule, one per asset category, a transit provider may still apply its asset management systems to its entire inventory of capital assets, including those assets for which no performance measure has been established.

Performance Measures for each asset class might include several SGR measures within each asset category (rolling stock, infrastructure, equipment and facilities). For example, a transit provider that has a fleet of 40′ buses, light rail vehicles and paratransit vans would have 3 rolling stock performance measures: percent of 40′ buses that have met or exceeded their ULB, percent of light rail vehicles that have met or exceeded their ULB, and percent of paratransit vans that have met or exceeded their ULB.

COMMENTS: Performance Measures—General

Several commenters recommended flexibility in the use of performance measures. A few transit operators and a State DOT said that FTA should allow transit providers the flexibility to right-size their own performance measures and provide flexibility in the classification of certain assets. One commenter recommended replacing the entirety of § 625.43 with a simple statement that ''performance measures for each asset class must be set and approved by the responsible executive at each agency.''

Other commenters provided other suggestions for modification of the proposed performance measures. A couple of commenters recommended weighting (or allowing agencies to weight) the performance measures because some assets are of higher value or are more critical than others. A few commenters recommended a phase-in period for asset classes. Specifically, some of these commenters said FTA's focus should be on rolling stock and infrastructure; equipment and facilities should be phased in three to four years later. A transit operator proposed a comprehensive approach to measuring the condition of all transit assets, including age, physical condition, and performance measurements. Further, this commenter suggested that when grouping assets and measuring condition and performance, FTA should consider the idea that utilization impacts measures of performance at the asset category level. The commenter also cautioned that care must be taken when ''averaging'' or rolling assets into categories where variability in condition and performance can be hidden. A State DOT said asset performance measures should account for risk. A transit operator stated that FTA should consider permitting the terms ''systems,'' ''guideway elements,'' ''vehicles,'' and ''stations'' to be used as asset categories for rail transit properties.

Several commenters discussed ULBs. A State DOT said, for equipment and rolling stock, the ULB described in the proposed rule does not provide a useful overview of the asset's actual condition or a practical measure on which to base investment decisions. The commenter requested the flexibility to use its own life-cycle analysis to determine the appropriate useful life. One commenter recommended adding a requirement for RTAs to provide ULBs to State Safety Oversight Agencies (SSOAs) for review and comment. A transit operator said if FTA wishes to use a different ULB for a TAM plan than for grant authorization, the TAM plan useful life should not be shorter than grant useful life. In reference to FTA's statement that it anticipates publishing ''a default ULB based on TERM data that may be used in lieu of a local condition-based calculation of ULB,'' several commenters said FTA should cite where and when this default ULB will be published, provide an explanation of how the ULB measure will be calculated, and ensure that the default ULB is available to transit providers before initial targets will need to be set. A tribal government requested clarification regarding the NPRM statement that providers may use FTA-established default ULB in lieu of a local condition-based calculation of ULB.

Asserting that ULB of agency revenue vehicles is not alone a sufficient metric for measuring progress on improving SGR, one commenter recommended that FTA consider including additional performance metrics, such as measures relating to mechanical failures, effects on safety (*e.g.,* passenger injuries per 100,000 revenue miles attributable to maintenance failures). This commenter also discussed the potential costs and benefits associated with implementing this recommendation.

A couple of commenters stated that none of the proposed performance measures are tied directly to the proposed definition of SGR, which effectively requires that all three standards outlined in § 625.41 are met. The commenters said FTA should clarify that performance measures serve only as a ''proxy'' for measuring SGR—they cannot be used alone to calculate the SGR backlog.

A trade association urged FTA to issue guidance on performance measures. A transit operator requested more guidance on how to categorize assets such as tunnels, which the commenter said could fall under facilities or infrastructure.

Regarding the NPRM statement that FTA would support transit providers that elect to use more sophisticated performance measures, a transit operator asked how FTA intends to collect this data in the NTD if every agency uses a different measure for each asset class/category. This commenter also asked if FTA is open to using different measures across all three of the major asset categories, reasoning that in some instances, (*e.g.,* rolling stock) assets can and should be measured using condition and/or performance.

FTA'S RESPONSE: Performance Measures—General

FTA has developed a combination of performance measures using a variety of approaches, including age, condition, and performance. The measures are actionable and scalable. FTA encourages transit providers with sophisticated TAM practices to pursue more advanced approaches, in addition to setting targets for the performance measures in § 625.43.

FTA believes the industry is prepared to use SGR performance measures and a phased-in approach is not necessary. Minimizing reporting burden was a major consideration in FTA's selection of each measure. FTA believes that the relatively simple and straight-forward approach it selected for each measure will lend itself to immediate implementation.

FTA proposed the ULB option to allow a transit provider to incorporate consideration of its operating environment into its performance targets. FTA will publish default ULBs on its asset management Web page concurrent with publication of the final rule, and as suggested, will document the date of publication. FTA is also developing guidance for transit providers to use in calculating local-condition based ULBs.

FTA agrees with the comment that the SGR performance measures are a ''proxy'' for measuring SGR and they cannot be used to calculate the total SGR backlog. Further, the performance measures serve as a ''proxy'' for SGR and cannot necessarily be used to determine an assets' SGR. Similarly, the TERM Scale is calibrated such that the number of cases where a facility is below condition 3.0, but still meets all three objective standards for SGR in 625.41, and vice versa, should be relatively small. As discussed earlier, however, FTA believes that the lower burden on the industry of using a 3.0 condition threshold on the TERM Scale, rather than a 2.5 threshold, merits using this in the performance measure. However, almost all rail guideway infrastructure that has a slow zone in place will, by definition, not meet the three objective standards for SGR in 625.41.

FTA clarifies that each transit provider or sponsor is required to report their performance measure targets to the NTD as per § 625.43, regardless of the approach used to determine them.

FTA will develop guidance and technical assistance for transit providers to assist transit providers in applying each of the performance measures.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

625.43(a) Equipment- (non-revenue) service vehicles

This section proposed the performance measure for non-revenue, support-service and maintenance vehicles is the percentage of vehicles that have met or exceeded their useful life benchmark. To determine the ULB, a transit provider may either use the default ULB established by FTA or a ULB established by the transit provider in consideration of local conditions and usage and approved by FTA.

COMMENT: Performance Measure—Equipment

Several transit operators noted that the definition provided for equipment in § 625.43(a) is significantly different than the definition provided in § 625.5. One commenter said this provision implies that equipment is only non-revenue vehicles, while the definition states something more burdensome. A transit operator recommended that non-revenue vehicles be included in the vehicle asset class. Another transit operator said equipment that impacts operations should be defined as ''equipment,'' and non-revenue vehicles are not always considered equipment, but usually are grouped as part of a fleet. Several commenters concluded that the transit agency should be allowed to define and track ''equipment'' that is relevant to their service or risk model.

A State DOT recommended the following additional criteria for equipment (and rolling stock): Average ULB, measured as a percentage.

A transit operator said the term ''equipment'' is typically employed in regards to portable tools, work machinery, or components and not reserved for non-revenue vehicles.

FTA'S RESPONSE: Performance Measure—Equipment

FTA agrees that the definition of equipment (§ 625.5) and the equipment performance measure (§ 625.43) differ. Example 1 in Appendix B to the final rule explains the differences. Specifically, the SGR performance measure for equipment only applies to non-revenue service vehicles; the Asset Category equipment includes all ''articles of expendable, tangible property having a useful life of at least one year;'' and the TAM plan requires all non-revenue service vehicles and owned equipment over $50,000 in acquisition value. Non-service vehicles are an easily understood and readily identifiable category of equipment, and the age-based performance measure is the most-simple and straight-forward performance measure available. Thus, FTA believes that transit systems of all sizes will be reasonably able to implement this measure.

FTA did consider establishing other performance measures for different types of equipment, but ultimately declined to do so based on a desire to minimize reporting burden and there being relatively few ready-to-implement candidate performance measures for other types of equipment at a national level. For example, FTA's existing TERM Model does not have particularly robust treatment of equipment. Further, FTA did not receive any comments suggesting another performance measure for equipment. FTA, though, is considering conducting additional research in this area.

FTA recognizes that non-revenue service vehicles are not always labeled as equipment at every transit provider. However, FTA believes this is a minor burden to align the transit provider asset category for the required SGR performance measure calculation.

A transit provider should conduct its performance measure calculation by mode, which means a ULB cannot be averaged across modes. A transit provider may define, calculate, and track additional performance measures and targets.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

625.43(b) Rolling stock

This section proposed the performance measure for rolling stock is the percentage of revenue vehicles within a particular asset class that have either met or exceeded their ULB. To determine the ULB, a transit provider may either use the default ULB established by FTA or a ULB established by the transit provider in consideration of local conditions and usage and approved by FTA.

COMMENTS: Performance Measures—Rolling Stock

Many public comments provided input on the performance measure for rolling stock, as specified in § 625.43(b).

Several transit operators noted the deficiencies of an age-based performance measure and requested flexibility in determining ULB for rolling stock. Several commenters expressed concern that for many agencies (notably smaller and rural agencies), age-based ULB reporting for rolling stock may be inadequate and provide a skewed view of the condition of a particular agency's assets. Several of these commenters suggested that individual agencies should have the option of utilizing an age-based reporting format and also be allowed to adopt additional or alternative means of condition assessments (*e.g.,* by vehicle type as well as asset class). These commenters also said a strict age-based reporting system would discourage agencies from strong maintenance practices, since even a well-maintained, fully functional bus would fail the test of age based asset condition reporting. A few commenters said SGR for rolling stock should be based on mileage or maintenance history, rather than only age. Another commenter said FTA should consider a condition-based evaluation of vehicles. A transit operator recommended that FTA specify that age-based performance measures are a proxy and not a direct measure of condition when used to evaluate state of good repair.

Asserting that many electric vehicles have a useful life that may be largely independent from a strict age-based assessment of the SGR, a transit operator urged FTA to provide clarity regarding how ULB and the standard useful life requirement would apply to electric vehicles. A couple of commenters said this section should reference the standards at 49 CFR part 38.

FTA'S RESPONSE: Performance Measures—Rolling Stock

FTA proposed an age based performance measure for rolling stock. This measure is simple, well understood, and accessible to all transit providers. FTA believes that this performance measure is appropriate to address the national TAM system goals.

FTA notes that transit providers will be able to account for variations in maintenance practices and operating conditions by adjusting the useful life benchmark for particular fleets of vehicles. That is, a well-maintained vehicle may have a longer ULB and thus would not meet or exceed their ULB until a later date with regard to a less well-maintained vehicle. FTA encourages transit providers to develop performance measures for rolling stock, in addition to those required in § 625.43, that are more sophisticated and use advanced methods of calculation such as condition, performance, or a risk based models for use at their agency. FTA recognizes that age is not necessarily the most accurate performance measure available. However, age is a simple and widely-used performance measure for vehicles that can approximate the condition of rolling stock assets for capital investment planning.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments. Section 625.43(b) requires a measure for rolling stock that is based on the percentage of rolling stock that have met or exceeded their ULB. This performance measure is applicable to all asset classes of revenue vehicles. For example, a transit provider operating buses, replica trolleys, paratransit vans, and light rail vehicles would establish a performance target for each asset class. Each performance target would quantify the percentage of rolling stock in each class that is over the transit provider's ULB for that asset class.

Both the equipment and rolling stock measure assume that most vehicles provide reliable service for a predictable period of time (adjusted by level of usage for some types of assets), after which they should be replaced. Since there is typically a long lead time for replacing transit vehicles, this measure reflects the best practice of planning for the replacement of transit vehicles as they reach a certain age.

625.43(c) Infrastructure-rail fixed-guideway track, signals, and systems

This section proposed the performance measure for rail fixed-guideway track, signals, and systems is the percentage of track segments, signal, and systems with performance restrictions.

COMMENTS: Performance Measures—Infrastructure

A couple of commenters expressed concern with using performance restrictions (*i.e.,* slow zones or slow orders) as an indicator of asset condition. A State DOT said a slow zone may be imposed to address maintenance of a rail bridge, but has no connection to the state of good repair of the catenary, track or signal system. A transit operator said slow zones can be temporarily alleviated by short-term fixes to track, which do not resolve the underlying problems or create an asset that is truly in a state of good repair, and the connection is more tenuous for other asset types. The commenter said ULB may be more useful for these assets. However, this commenter also acknowledged that the performance restriction metric as applied broadly to this asset category may be an incremental step toward capturing more complete information by asset type, and that agencies may be asked to supply additional information as the industry develops more sophisticated asset tracking capabilities. A State agency said the infrastructure performance measure may discourage RTAs from issuing restrictions when needed, which could reduce safety.

A few commenters requested clarification about the parameters for developing performance measures for infrastructure assets. A transit operator specifically asked what standards would apply to calculating the percentage of a system subject to performance restrictions in response to a single defective track component. The commenter also asked if the measure would be calculated be based on the length of the signal blocks affected; the relative share of the defective component among all components of the same asset class; or by some other method. Another transit operator asked how bus systems that do not have guideway should report on assets within the infrastructure asset class (*e.g.,* systems).

A transit operator recommended that FTA align the components of the infrastructure asset class with the previously published asset management guidelines. This commenter also recommended utilizing a performance metric of age as a percentage of remaining useful life to assess the performance of infrastructure.

A transit operator said this provision should be subdivided to into three separate parts: Track, signals, and systems. However, another commenter said systems and signals be an element of their own and not included in the heavy rail element of infrastructure. A State DOT opposed any requirements that might conflict with the well-established, industry wide National Bridge Inventory (NBI) Rating Scale.

FTA'S RESPONSE: Performance Measures—Infrastructure

FTA recognizes that slow orders may be issued for bridge maintenance. The infrastructure measure is a proxy for both track condition and underlying guideway condition. However, FTA neither intends nor anticipates conflict

with the National Bridge Inventory (NBI) rating scale or other established structural policy and procedures.

Transit providers should use the data gathered to comply with the final rule to improve their decision making. There is no penalty or reward for target attainment.

The asset category for infrastructure includes more asset classes than the SGR performance measure, which only includes rail transit infrastructure. FTA encourages transit providers to develop additional performance measures for infrastructure assets such as signals and systems.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments. Section 625.43(c) requires a measure for infrastructure based on the percentage of guideway directional route miles with performance restrictions. This performance measure would be applicable to all rail fixed guideway infrastructure. Most transit providers already collect data on slow zones—this performance measure would standardize their reporting.

The performance-based approach is based on a regular, comprehensive assessment of a system's performance and relies upon the assumption that as assets age, they become less durable and reliable, resulting in decreased operational performance. The ability of an asset to safely and reliably perform its assigned function at a full-performance level is at the heart of state of good repair. The performance-based approach requires integration of operations and capital maintenance activities and is particularly beneficial because it focuses on the actual outcomes of capital assets being in a state of good repair.

625.43(d) Facilities

This section proposed the performance measure for facilities is the percentage of facilities within an asset class, rated below condition 3 on the TERM scale.

COMMENTS: Performance Measures—Facilities

Most of the commenters on this topic either requested clarification on or else proposed modifications to FTA's use of the TERM scale. Several commenters suggested that FTA should not alter its approach to the TERM scale and revert back to a threshold rating of 2.5 under the existing TERM system. For example, two transit operators expressed concern with the TERM scale defined in the proposed rule because FTA's Asset Management Guide sets 2.5 as the asset condition threshold for ''adequate,'' while the NPRM proposed 3.0 as ''adequate.'' One of these commenters asserted that this change would be problematic for agencies that have already begun working on transit asset management. Similarly, another commenter stated that the proposed SGR level of 3.0 is a move in the wrong direction and suggested that the adequate level be moved to level 1 or level 2.

Other commenters said use of TERM and the TERM scale should be optional, not required. A transit operator proposed using an industry-established system like the Facilities Condition Assessments and the Facilities Condition Index for buildings and facilities. Another transit operator said FTA should consider extending the ULB and asset age to all asset types, which will be more attainable for agencies than the condition assessment metric prescribed for facilities. The commenter said requiring all assets in this category to have a full condition assessment with a 1–5 ranking based on the TERM scale will be extraordinarily expensive for larger agencies and may also be cost-prohibitive for smaller agencies with fewer assets and less funding. A transit operator recommended using a performance metric of age as a percentage of remaining useful life to assess the performance of facilities. An MPO supported the condition-based approach proposed for measuring the condition of facilities and encouraged FTA to consider the inclusion of similar measures, in addition to the age-based approach, that were proposed to measure rolling stock and equipment conditions.

A State DOT said it currently performs a condition assessment for stations using a similar 0–9 scale as the rail bridges, and it is not familiar with the 1–5 TERM rating system. A transit operator requested clarification about the characteristics of a facility that would be determinate of specific ratings on the TERM scale and also about the parameters for defining facilities asset classes for purposes of grouping and reporting. The commenter stated that use of the TERM scale, in the absence of uniform standards for assessing the SGR of facilities, risks fostering an illusion of precision and comparability across properties. Absent such parameters, the commenter suggested revising the proposed performance measure for facilities to read: ''Percentage of Facilities within an asset class in marginal or poor condition,'' which would afford grantees with the flexibility they will need to define evaluation criteria based on their current practices.

A transit operator said this provision may benefit from measuring ADA compliance with the 49 CFR part 37 standards, at least with respect to sidewalks, walkways, lobbies, vertical circulation, signage, and platforms.

Another transit operator stated that FTA has included equipment that is located in the facilities, but some equipment does not lend itself to a condition-based evaluation and should instead be an age-based evaluation.

FTA'S RESPONSE: Performance Measures—Facilities

FTA proposed a condition based performance measure for the facilities asset category using the TERM scale. As previously mentioned, FTA did not set the performance benchmark at 2.5, because a benchmark of 2.5 would require all transit providers subject to the final rule to use the TERM-Lite model to calculate a 2.5 rating. The TERM scale is an integer based scale, thus a direct measure of condition rating 2.5 is not possible. In contrast, condition ratings to one decimal point are produced by the TERM-Lite model as an estimate of condition between condition assessments. Thus, FTA is setting the benchmark at 3.0, as this will reflect the actual results being produced by transit providers carrying out their own condition assessments.

FTA does not agree that TERM scale should be optional, but does agree that using the TERM-Lite model is optional. The TERM scale effectively acts as a standard for reporting facility condition and is already a well-known tool within the transit industry.

The condition-based SGR performance measure for the facility asset category is not equivalent to the condition assessment element of TAM plan § 625.25(b)(2). The facility grouping and reporting asset class are determined by the asset inventory asset classes. The asset inventory level of detail is commensurate to the level of detail provided in the transit providers' program of capital projects. Further, the subsystems and components of each asset category are determined by the transit provider, in their asset inventory. FTA recognizes that the subdivision of component asset classes within the facility asset category may differ from provider to provider.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments. Section 625.43(d) requires a condition-based performance measure for facilities based on the percentage of facilities

with a condition rating of less than 3.0 on the TERM). The TERM Scale rates asset condition on a 1 (poor) to 5 (excellent) scale. This condition-based approach would require a transit provider to conduct periodic condition assessments of its assets using a set of standardized procedures and criteria. This approach directly identifies the condition of each asset based upon its actual usage and maintenance history.

625.45 Setting Performance Targets for Capital Assets

In accordance with the statutory mandate at 49 U.S.C. 5326(c)(2), this section proposed that transit providers establish quantifiable targets for each performance measure identified in § 625.43. FTA recognizes that in its determination of targets, a transit provider would need to consider a wide range of factors that may either constrain its ability to impact outcomes or may adversely impact outcomes (such as the population growth of an area). Transit providers should consider these factors along with the expected revenue sources from all sources in establishing targets and should explain in the annual report to FTA how the factors were addressed in setting their targets.

Under this section, the NPRM proposed group TAM plan sponsors to set one unified performance target for each asset class in the group TAM plan asset inventory. FTA recognizes that the condition of assets may vary significantly among group TAM plan participants. Therefore, each unified target should reflect the anticipated progress in asset performance for a fiscal year for the entire group. For example, group TAM plan participants are responsible for meeting a target. Thus, each transit provider's asset inventory and condition assessment results are combined to determine the unified targets in the group TAM plan.

The group TAM plan sponsor is responsible for coordinating development of the targets with participating transit providers' Accountable Executives, to the extent practicable. In addition, transit providers are required to coordinate with States and MPOs, to the maximum extent practicable, in the selection of State and MPO TAM performance targets to ensure consistency.

COMMENT: Performance Targets—Three-Month Deadline

Several commenters expressed concern about the 3-month deadline for target setting specified in § 625.45(a)(1). Some commenters generally requested more time to develop targets, some recommended revising the target-setting deadline to a minimum of 6-months, and others recommended that FTA allow a year to develop the targets. One transit operator recommended that the two-year implementation period for TAM plans should apply to all aspects of the plan, including the performance targets. A trade association said FTA should require the initial setting of targets six months after the completion of the first TAM and annually after that. A State DOT said the three-month target setting process may be sufficient for an individual TAM plan, but a group TAM plan may require more time to build consensus for the targets. Several commenters said until FTA promulgates prerequisite performance criteria and standards, the 3-month turn-around deadline cannot be expected to produce meaningful results.

Multiple commenters recommended a phased-in approach for target setting where the initial target setting (those due in three months) are classified as preliminary, with some commenters reasoning that targets set within three months will not be useful in guiding investment decisions. A State DOT said the rule should clarify that recipients and subrecipients will not be held accountable to the initial targets, but rather to the targets that are included in the more formalized asset management plans.

Several commenters argued that the establishment of performance targets for capital assets should not need to be accomplished prior to the development of the TAM plan. Most of these commenters said the TAM plan should direct the process and criteria for performance targets and, therefore, must be developed in conjunction with, or prior to, the development performance targets.

A few commenters requested that FTA publish the rule but set an effective date several months in the future (consistent with all other U.S. DOT performance rules). A transit operator asked if FTA would consider adjusting the target setting timeframe based on the size of the transit agency.

FTA'S RESPONSE: Performance Targets—Three-Month Deadline

Pursuant to 49 U.S.C. 5326(c)(2), recipients must set targets within 3 months after the effective date of a final rule to establish performance measures. In many cases, the effective date of a final rule is several months after the publication of the final rule, in which case a transit provider would actually have more than three months to establish performance targets. FTA believes that three months is sufficient time to complete initial target-setting. Sponsors are responsible for setting initial and subsequent targets for small and rural operators that are eligible to participate in a group TAM plan.

FTA recognizes the transit industry will be engaged in a learning process as it implements the principles and practices of transit asset management, including those requirements contained in this final rule. FTA understands that as transit providers gather more information, the initial targets will be revised and refined in successive rounds of target-setting. However, the purpose of the initial targets is to establish a performance baseline. That baseline will change as a provider matures in its practice of transit asset management.

FINAL RULE:

FTA is not making any changes to the final rule related to these comments.

COMMENTS: Performance Targets—Annual Performance Targets

Some commenters provided input on the requirement to set SGR performance targets annually, as specified in § 625.45(a)(2). Several commenters said the annual target setting should be limited to revisiting the prior year's target based on prior year investments and updating if significant changes are needed. These commenters said a full re-evaluation of targets should only be required every 4 to 8 years as determined by the provider (for an individual plan) or a sponsor (for a group plan).

However, these commenters suggested that new target setting should be done more frequently if a TAM plan is amended prior to the established full reevaluation deadline. A State transit association did not support progressive SGR targets, unless they can be tied to increased levels of funding. A transit operator stated that requiring SGR performance targets to be set each year does not fit with generally accepted methods for developing multi-year capital programs.

FTA'S RESPONSE: Performance Targets—Annual Performance Targets

49 U.S.C. 5326 requires recipients of FTA funding to establish performance targets annually. The proposed rule did not prescribe a process for how a transit provider would establish a target, however. A transit provider may establish performance targets by updating the prior year's target based on the prior year's investment, or by another approach.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

COMMENTS: Performance Targets—Realistic Expectations

Several commenters provided input on the requirement that an SGR performance target must be set based on realistic expectations, as specified in § 625.45(a)(4). Several commenters requested clarification of the term ''realistic expectations.'' Multiple commenters recommended that FTA specify in that an ''SGR performance target must be set on realistic expectations, which could mean that targets are set based on managing a decline in asset condition,'' rather than just improving or maintaining conditions as proposed. A commenter said this requirement is prescriptive and not required as part of the MAP–21 legislation.

One of the State DOT requested that § 625.45(a)(4) be revised to read, ''An SGR performance target must be set on realistic expectations, which could require that targets be established to manage a decline in asset condition.''

FTA'S RESPONSE: Performance Targets—Realistic Expectations

Each transit provider should be setting its performance targets in consideration of the condition of its assets and the funding that it anticipates will be available to it from all available resources. For example, if 30 percent of a transit providers buses are beyond their useful life benchmark, it is not realistic for that provider to set a target of 100 percent to bring all of its buses under the ULB, if it will likely only have funding to renew a portion of those buses through either major life enhancing rehabilitation or replacement.

FTA understands that there may be instances where a transit provider may choose to set a negative target. A negative target would indicate a declining asset condition; the target itself is not a negative value, but represents a lack of improvement. For example, a transit provider with a fleet of 100 busses, 15 of which are beyond the default ULB, the current metric for their rolling stock performance measure: Bus metric is equal to 15 percent. If the provider plans to replace 3 vehicles and overhaul 2 in the next fiscal year its projected bus metric would be 10 percent-the target for the performance measure rolling stock, asset class: Bus. If 10 of the busses exceed the ULB this fiscal year, the current year metric is the same at 15 percent, but the projected bus metric is now 20 percent, which indicates a declining asset condition (older vehicle fleet) and a negative target. In this example, for rolling stock, asset class: Bus, a target of 20 percent represents a negative improvement over a target of 10 percent.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

COMMENTS: Performance Targets—Recent Data and Available Resources

Several commenters addressed the requirement in § 625.45(a)(5) to base the SGR target on recent data and available financial resources. A couple of commenters expressed concern that transit providers may unilaterally identify competitive (or flexed) financial resources and thus could potentially over-count available resources at the regional level. One commenter said this requires a financial measure, rather than a performance measure. The commenter said the definition of SGR as proposed is not compatible with this statement.

FTA'S RESPONSE: Performance Targets—Recent Data and Available Resources

In the NPRM, FTA proposed that a transit provider set performance targets based on recent data and resources that the provider could reasonably anticipate would be available. This final rule does not prescribe a method for setting performance targets and FTA understands that target-setting is not an exact science. However, FTA believes that the most accurate targets can be established based on recent data and reasonably anticipated funding. FTA understands that effective target-setting and effective development of investment prioritizations will require coordination and communication among funding partners and stakeholders to produce the best results.

FINAL RULE:

FTA is not making revisions to the final rule related to these comments.

COMMENTS: Performance Targets—Other Comments

A State DOT supported FTA's proposed requirement that performance targets be set for each asset class, as specified in § 625.45(a)(3). A transit operator agreed that agencies should have the ability to set their own performance targets, asserting that this would result in targets that are more aligned with each operating environment.

Asserting that the empirical basis for believing that TAM improves efficiency of transit operations is very limited, one commenter suggested that because the proposed National TAM System includes explicit blocks on funding decisions being tied directly to performance metrics, transit agencies may have little incentive to actually set or achieve a reasonable target.

FTA'S RESPONSE: Performance Targets—Other Comments

FTA does not have the authority to award or penalize a transit provider for achieving or missing a target. However, FTA encourages transit providers to be aggressive about setting targets, both to support making the case for additional funds to meet state of good repair goals, and to encourage finding innovative methods for using existing funding levels to meet state of good repair goals.

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

COMMENTS: Performance Targets—Role of Accountable Executive

A transit operator asked if the Accountable Executive would be required to establish and approve each SGR performance target for the subrecipients.

FTA'S RESPONSE: Performance Targets—Role of Accountable Executive

The Accountable Executive for a transit provider that develops an individual TAM plan must approve the provider's performance targets. If a transit operator is also a group TAM plan sponsor, it must establish performance targets for the plan participants in coordination with each participant's Accountable Executive. In its responses to the comments regarding the definition of Accountable Executive, above, FTA clarified that a group TAM plan sponsor is not the Accountable Executive for each participating transit provider. However, by participating in a group TAM plan, a transit provider's Accountable Executive may be required to defer to the decisions of the sponsor regarding prioritization of investments.

FINAL RULE:

FTA is not making any changes to the final rule related to these comments.

COMMENTS: Performance Targets—Setting Targets for Participants

Some public comments addressed the requirement for setting targets for group plan participants in § 625.45(c). Several commenters said the rule should clarify that the plan sponsor for a group plan may establish targets and investment

prioritization across the entire group (*i.e.,* for all members of the group).

However, several commenters expressed concern that setting a single SGR target at the asset class level would not be useful. An MPO recommended that FTA devise a methodology that recognizes the array of operations and provides a means for setting meaningful performance targets within the group. Similarly, another MPO recommended that within a group plan that multiple performance targets be set depending on a transit agencies size, service type and service levels. A State DOT said setting a single target could be difficult if a group TAM includes rural and smaller urban transit providers from across the State, which may operate within quite different geographic and local conditions.

FTA'S RESPONSE: Performance Targets—Setting Targets for Participants

The sponsor is responsible for setting unified performance targets for plan participants based on the investment priorities established in the group TAM plan. FTA believes that target-setting approaches and methodologies are local decisions. The sponsor should coordinate with plan participants to develop an approach for setting unified targets. FTA agrees that it may be difficult to set a unified target for both rural and urban providers. This final rule does not prohibit a sponsor from establishing separate group plans and targets for its subrecipients under the urban and rural formula programs.

FINAL RULE:

FTA is revising the final rule to clarify that a sponsor must set one unified target per asset class, but may set more.

COMMENT: Performance Targets—Coordination

Some public comments provided input on the requirement in § 625.45(d) to coordinate with States and MPOs in the selection of performance targets.

Several commenters requested clarification regarding the role of the State and MPOs in target setting. Some commenters requested general guidance on how States and MPOs would be responsible for the targets being set or achieved. Some commenters sought clarification on the distinction between performance targets set at the State and MPO level and those established by the transit agencies themselves. A transit operator said it is unclear how transit agencies will report TAM plans and updates to MPOs and States, and it is also unclear how the State and MPO performance targets will impact individual transit agency TAM plans and performance goals.

A couple of commenters requested confirmation that the MPO would aggregate targets and measures, prioritization, performance and condition information from the local transit agency in order to set regional measure and targets. A transit operator said FTA should ensure that this section is not interpreted as giving MPOs mandate for developing parallel standards or targets that agencies must meet in addition to what is required by FTA. A State transit association supported the peer recommendation that FTA should not require MPOs to set a region-wide target or incorporate both the safety and transit SGR targets from each transit system within their jurisdictions into the performance-based planning process

A State DOT agreed that coordination with regional planning organizations supports the goals of effective transit asset management, but said the State should have the flexibility to develop the appropriate processes to achieve this coordination. However, a transit operator said there should be no requirements for agencies that are not State-funded to involve State agencies in target setting, project prioritization, or strategic leveraging of resources.

An MPO said that the requirement for coordination with the MPO should be strengthened by deleting ''to the maximum extent practicable.'' However, a couple of commenters expressed concern that the rule indicates significant additional work will be required of MPOs and all transit-related partners that may produce speculative results with few tangible benefits. A transit operator said FTA should clarify whether the coordination suggested with the MPO is required for asset management or for service performance.

FTA'S RESPONSE: Performance Targets—Coordination

Pursuant to the requirements at 49 U.S.C. 5303 and 5304, States and MPOs must coordinate with transit providers to the maximum extent practicable in selecting State and MPO TAM performance targets.[13] The performance targets set by transit providers, along with other performance targets set pursuant to other statutes, are an essential component of the planning process. The planning provisions at 49 U.S.C. 5303 and 5304 require States and MPOs to establish performance targets for transit that are based on the national measures for state of good repair and safety established by FTA and to coordinate the selection of those performance targets, to the maximum extent practicable, with performance targets set by transit providers to ensure consistency. See, specifically, 49 U.S.C. 5303(h)(2)(B)(ii), 5304(d)(2)(B)(ii).

This final rule does not require a transit provider to coordinate with its planning partners in the selection of its own performance targets. The rule requires transit providers to coordinate with States and MPOs in the selection of State and MPO performance targets. However, FTA would strongly encourage transit providers, States, and MPOs to coordinate in the establishment of meaningful, progressive local and regional targets.

FTA believes that target-setting approaches and methodologies are local decisions. Transit providers should work with their planning partners to integrate their TAM plans into the statewide and metropolitan transportation planning processes. *See* 49 U.S.C. 5303(h)(2)(D), 5304(d)(2)(B)(ii). To support this integration, transit providers must share information regarding transit system condition, targets, investment priorities and strategies, which are parts of its TAM plan, in accordance with § 625.53(b).

The final rule on Metropolitan and Statewide Planning and Non Metropolitan published May 27, 2016 [14] FTA and FHWA issued e guidance to aid the industry in the implementation of the performance-based planning requirements.

FINAL RULE:

FTA is not making any substantive changes to the final rule related to these comments.

COMMENTS: Performance Targets—Setting Performance Targets

Some public comments provided other comments on performance target setting that were not otherwise addressed above. A couple of commenters said additional guidance is needed from FTA to ensure consistent calculation and application of targets.

A couple of commenters recommended that facilities be exempted from target setting until training is provided on the use of TERM for the State DOT and its subrecipients. Specifically, commenters recommended that facilities be included in a TAM plan a year after the training has been provided in the region.

[13] *See* 49 U.S.C. 5303(h)(2)(B)(ii), 49 U.S.C. 5304(d)(2)(B)(ii).

[14] *https://www.federalregister.gov/articles/2016/05/27/2016-11964/statewide-and-nonmetropolitan-transportation-planning-metropolitan-transportation-planning.*

An MPO said the use of the term ''transit provider'' in this section is inconsistent with the use of tier I and tier II providers in the previous sections. The commenter said it is not intended that the TIP projects be constantly updated to make minor changes to projects that do not represent TIP amendments.

One commenter noted that the preamble states that performance targets are required ''for each performance measure identified in § 625.43.'' If this is the expectation, the commenter said this should be made clearer within the language of § 625.45.

A transit operator said FTA should clarify that having and meeting performance targets set at 100 percent is not a prerequisite to meeting the state of good repair standard under § 625.41. Without this clarification, the commenter said some transit agencies may be led to believe only agencies meeting 100 percent performance targets have assets in a state of good repair.

A transit operator said agencies need to have flexibility to determine performance targets and how best to establish their definition of a state of good repair. Another transit operator asked to what extent will reviewers during the triennial review process be empowered to reject these targets, and if a transit agency has self-certified its TAM plan, to what extent will the reviewers be empowered to reject the certification if they believe it does not meet the standards.

A transit operator said the NPRM includes discussion about the lack of authority for FTA to reward or penalize transit agencies whether or not they meet SGR performance targets. The commenter expressed concern that there is a reasonable expectation that funding, through FTA, MPOs, or States, may in the future be directed to performance areas where transit agencies fell short of SGR performance targets.

FTA'S RESPONSE: Performance Targets—Setting Performance Targets

FTA is preparing two guidebooks to aid in the calculation and application of the Facility and Infrastructure performance measures. The National Transit Institute offers training on TERM-Lite.[15]

FTA disagrees that the term transit provider is inconsistent with the definition of tier I and tier II.

FINAL RULE:

FTA is not making any substantive changes to the final rule related to these comments.

625.53 Recordkeeping for Transit Asset Management

This section proposed that a transit provider keep records of the documents it develops to meet the requirements of this part for at least four years. Excel spreadsheets, agreements, or policies that were used to develop a TAM plan may prove useful in the next iteration, as well as assist in certification and review. This section proposed also that a transit provider or group TAM sponsor share its records with its State and MPO to aid in the planning process.

COMMENTS: 625.53 Recordkeeping for Transit Asset Management

Some public comments addressed the proposed recordkeeping requirements in § 625.53. A few commenters expressed support for proposed § 625.53.

One commenter stated that the information in proposed § 625.53(b) is public and readily shared with partners, including MPOs and, therefore, unnecessary to include in the rule. A transit operator recommended that tier I agencies only be required to share performance targets and progress with States and MPOs. Another transit operator said the documentation required to be provided to States and MPOs should be limited as such agencies may not provide funding to the transit agency.

Expressing concern that the use of supporting records by the MPO would increase the staff burden for some MPOs, a transit operator recommended that FTA revise § 625.53 to only say that the grantee should use its TAM plan to inform its proposal of projects to the MPO for inclusion in the TIP.

A business association expressed support for State-level maintenance of records and documents for tier II TAM group plans along with NTD data, as it would lessen the administrative burdens on smaller systems.

FTA'S RESPONSE: 625.53 Recordkeeping for Transit Asset Management

Through the enactment of MAP–21 in 2012, the Congress fundamentally shifted the focus of Federal investment in transit to emphasize the need to maintain, rehabilitate, and replace existing transit investments. The ability of FTA grant recipients, along with States and MPOs, to both set meaningful transit SGR performance targets and to achieve those targets is critically dependent upon the ability of all parties to work together to prioritize the funding of SGR projects from existing funding sources. In order to work together, all parties, including tier II providers, must share information openly.

This final rule requires that a transit provider or group TAM sponsor make its TAM plan and supporting documents available to a State or MPO that provides funding to a transit provider. It will be up to the State or MPO to prescribe how it wants to receive the information.

FINAL RULE:

FTA has revised this section in the final rule to clarify that a transit provider must make its TAM plan available to a State or MPO that provides funding to it.

625.55 Annual Reporting for Transit Asset Management

This section proposed a description of the annual report a transit provider or group TAM plan sponsor would have to submit to NTD. The annual report would include a data report and a narrative report. The data report would need to include performance targets for the next fiscal year and the condition of the system, at minimum. In the case of a group TAM plan, the report would need to include the uniform performance targets and the condition of the amalgamated system. The narrative report would include a description of the change in condition of the transit system, and the progress toward achieving the performance targets set for the previous fiscal year. A report for group TAM plan participants should include the amalgamated system and progress toward the uniform performance targets.

Both reports would allow FTA to customize triennial reviews to the transit provider. In addition, the data will be used by FTA to estimate and predict the national SGR backlog and the default ULB for rolling stock assets.

COMMENT: 625.55 Annual Reporting for Transit Asset Management

Many public comments addressed the proposed annual NTD reporting required by a transit provider or a group TAM plan sponsor in § 625.55.

A State transit association supported the peer recommendation that FTA should build upon the existing NTD Safety Event Reporting data collection effort and leverage historical data collection to identify safety trends, rather than establishing a new data collection and reporting system. Similarly, a transit operator expressed support for using the NTD to submit the

[15] National Transit Institute (NTI) *Using the Transit Economic Requirements Model (TERM-Lite) Computer Lab* (*http://www.ntionline.com/courses/courseinfo.php?id=271.*)

annual data reports, performance target reporting, narrative changes in the condition of the transit system, and progress to meet SGR targets. Two State DOTs and other commenters urged FTA to keep the amount of reporting and target setting to a minimum of only what is required for the NTD.

A transit operator asked why the data report and the narrative report would not be due at the same time covering the same year. Another transit operator recommended that the deadline for the annual NTD data and narrative reports should be four months after the Federal Fiscal Year (FY) for the data report and six months after for the narrative report, asserting that four months after the end of the standard FY in June would be too short for agencies to collect necessary data and conduct analysis. A few commenters urged FTA to sync up NTD reporting and target setting with TAM plan reporting and target setting, as well as FHWA reporting cycles. A business association urged FTA to allow agencies to report asset condition consistently with their established internal asset management practices, reasoning that forcing agencies to report in what would normally be off years would be expensive and disruptive to agencies, without adding quality to the national view obtained by FTA.

A State agency suggested that rail fixed guideway transit systems be required to provide the annual data report and annual narrative report to State Safety Oversight Agencies (SSOAs) simultaneously with their delivery to FTA.

Several commenters expressed concern about the data collection resources that would be needed for transit providers to assess and submit performance conditions for all assets annually. A State DOT commented that requiring both annual data and narrative reports describing any changes and requiring TAM plan reassessment every four years is onerous and burdensome. A transit operator stated that annual reporting and annual target setting may be excessive and labor intensive since their own experience indicates that there are not significant changes over the course of a year. A transit operator stated asserted that annual reporting did not make ''good business sense'' from a risk perspective of a transit agency and that the volume of data in the annual assessment would overwhelm the database system.

Absent a change in funding or an unanticipated change in assets condition, an MPO commented that it would be more appropriate to report the SGR targets on a consistent basis with changes in the targets set as part of a new TIP/STIP development every four years.

A transit operator commented that it is difficult to comment on proposed reporting requirements without reviewing the forthcoming guidance proposal on the NTD Reporting Manual that would describe the content of the new data report. This commenter recommended that the final rule should include more guidance on the new reporting requirements and that FTA provide a template for the new data and narrative report requirements for NTD.

A local transit provider asked if service providers would have to report SGR for each asset in their inventory or whether this would be done at a higher, aggregated asset category level. This commenter also expressed concern about proposed Appendix A to part 625, asserting that FTA should endorse the TERM asset hierarchy throughout the rulemaking rather than changing to a different classification hierarchy.

Commenting that the NPRM did not provide guidance on the level of reporting that would be required when submitting NTD required reports, a State public transportation system urged FTA to ensure that the transit provider determine the level of detail in its asset inventory and that the NTD input requirements are structured so that the providers could have one database that could feed both NTD and asset management reporting requirements.

An MPO urged FTA to acknowledge in the final rule that it needs to expand the NTD to accommodate the additional reporting and that the scheme for reporting this data has not yet been developed. This commenter suggested that FTA should have a public comment request for its proposal to amend the NTD. A State DOT suggested that because the rule would require annual reporting of asset condition using the NTD, the NTD should include a function that automatically compares a currently reported condition to the most recent previously reported condition in order to meet the requirement for assessing the change in asset condition at § 625.55. The commenter reasoned that this function would help smaller agencies, which typically do not have staff resources to evaluate and document changes in asset condition.

A transit operator said capital asset inventories should be afforded the protections of Federal laws prohibiting the public disclosure of sensitive information. Similarly, two other operators said FTA should safeguard sensitive information related to condition and risk, stating that any compromise of data is almost certain to limit any agency's motivation to fully embrace this strong self-analysis. A transit operator asked to what extent assembled data could be protected from discovery in litigation or disclosure through the Freedom of Information Act (FOIA).

A State DOT recommended that the reporting requirement should be for a single annual report that includes both the asset condition report and performance target progress and milestones, rather than requiring both separately.

Two commenters noted that, although it seems like a good practice, the proposed rule would not require an agency to report the percentage of assets in SGR or the SGR backlog amount. A State DOT asked FTA to clarify whether annual reporting to NTD will be required for transit agencies receiving 49 U.S.C. 5307 funds. Another transit operator asked several detailed technical questions about the mechanics of National Transit Database Reporting.

FTA'S RESPONSE: 625.55 Annual Reporting for Transit Asset Management

The NPRM proposed that a transit provider submit two annual reports to the NTD. The reporting requirements for TAM do not conflict other NTD reporting requirements.

FTA did not propose that SSOAs review and approve TAM plans. However, a rail transit system may coordinate and collaborate with its SSOA to develop and carry out its TAM plan.

FTA believes the reporting and target setting requirements in this final rule are appropriate. FTA recognizes that for many transit providers there will be minimal changes to the asset inventory and condition information reported to the NTD from year to year. The online reporting system of the NTD will pre-populate asset inventory and condition information from the previous year, thus minimizing the annual reporting burden on transit providers when there are few changes. Interested parties can consult the existing NTD Reporting Manuals for technical questions about the logistics of NTD reporting.

The NTD data report will not include an exhaustive inventory of all of a provider's assets, nor an exhaustive deposit of all its condition information available. Transit providers can organize the asset inventory and condition assessment in their own TAM plan according to any asset hierarchy that still allows them to meet the relevant NTD reporting requirements.

FTA recognizes that the annual change in targets may be minimal. A transit provider may report targets that are either identical, or only

incrementally different from the targets it reported in the previous year. If there is little change from one year to the next, then a transit provider may have the same numerical target for more than one year. In addition, a transit provider may decide to set a longer range target and divide it incrementally to report as annual targets.

FTA does not have the statutory authority to exempt the reports required under the final rule from the Freedom of Information Act (FOIA).

FINAL RULE:

FTA is not making any revisions in the final rule related to these comments.

Part 630—National Transit Database

FTA proposed to revise §§ 630.3, 630.4, and 630.5 of subpart A of 49 CFR part 630 to conform to the reporting requirements set forth in proposed part 625. The proposed reporting requirements for National TAM System apply to all chapter 53 recipients or subrecipients who own, operate, or manage public transportation capital assets. FTA's National Transit Database (NTD) currently requires reports from recipients or beneficiaries of the Urbanized Area Formula Program (49 U.S.C. 5307) and the Rural Area Formula Program (49 U.S.C. 5311). FTA proposed to replace references to 49 U.S.C. 5307 and 5311 recipients with references to recipients and subrecipients of chapter 53 funds. This change will require recipients and subrecipients of other FTA grant programs, such as the 49 U.S.C. 5310 formula program for the enhanced mobility of seniors and individuals with disabilities who are not also receiving funds under 49 U.S.C. 5307 or 5311, to start reporting TAM required performance data to the NTD. FTA will not apply existing NTD reporting requirements to all recipients of chapter 53 funds. FTA will only apply the reporting requirements proposed under the National TAM System to those transit providers that do not currently report.

COMMENT:

A couple commenters expressed support for FTA's proposed changes to the NTD regulations at 49 CFR part 630.

FTA'S RESPONSE:

FTA appreciates the comments in support of its proposed amendments to the NTD.

On November 8, 2015, FTA published a notice in the **Federal Register** which responded to comments on a previous proposed expansion of the NTD; requested comments on additional proposed reporting; and requested comments on updating the NTD's approval to collect information under the Paperwork Reduction Act. 80 FR 72137. Some of the proposed reporting requirements in that notice relate to the contents of this rule. The comment period for the notice on NTD reporting closed on January 19, 2016 comments relevant to this final rule made to the docket for NTD reporting requirements are summarized below. The complete list of comments and responses including burden estimates can be found in the NTD Reporting Manual **Federal Register** notice.

NTD Reporting Manual Background

The proposed changes to the NTD Reporting Manual stem from amendments to Federal transit law made by the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, July 6, 2012), which require recipients of Chapter 53 funds to report to the NTD any information relating to a transit asset inventory of condition assessment conducted by the recipient. (59 U.S.C. 5335(c)) Currently, the NTD only collects asset inventory information on revenue vehicles and summary counts for other asset categories, such as maintenance facilities and fixed guideway. There are some assets, such as signal or communications systems, for which NTD collects no data. In both the initial and second notice, FTA proposed to collect additional asset inventory data to meet the asset inventory and condition reporting requirements at 49 U.S.C. 5335(c).

Comments Relevant to National TAM System Final Rule From the NTD Reporting Manual Notice Docket

FTA received comments related to 1- Asset inventory burden, 2- Reporting requirements for 5310 recipients, 3- Reporting of service equipment, and 4- Guidance for useful life benchmark (ULB). In addition, the NTD Reporting Manual notice received duplicative comments to those addressed in this final rule on third party asset reporting and dollar thresholds for asset inventory. FTAs responses to the duplicative comments are addressed previously in this final rule.

NTD Notice Comments: Asset Inventory Burden

FTA received a number of comments expressing concern over the additional burden imposed by expanding the asset inventory. Twenty (20) commenters stated that the proposal was too burdensome. Thirteen (13) commenters expressed the concern that the additional reporting burden may divert resources away from transit service provision. Eight (8) commenters felt the burden estimates provided by FTA were 'understated'.

FTA's Response: Asset Inventory Burden

The NTD burden estimate, which will be more fully described in the separate **Federal Register** Notice responding to comments on FTA seeking approval under the Paperwork Reduction Act for updated NTD Reporting Manual guidance, assumes that an agency will already have an asset inventory in place as part of their compliance with the TAM rule and, therefore, only includes the time and costs estimated to enter existing asset inventory information into the NTD reporting system. In some cases, modifications to existing data may be necessary to enter this information into the NTD. The burden estimates provided in the second NTD notice take into account small modifications of existing information in the asset inventories required by the TAM Rule for reporting in the standard formats established by the NTD.

In calculating the burden estimate for NTD reporting, FTA asked several agencies to enter their existing asset inventory information into the proposed format and report the time necessary to complete this task. Three agencies completed an entire report and their experience with the new reporting requirements served as the foundation for the final estimates. A 'per field' reporting time was calculated and then multiplied out over the estimated data fields expected nationally to create a final burden estimate. Because the numbers presented are averages, some agencies may expect to spend more time and some agencies will spend considerably less than the estimated average.

FTA remains committed to implementing reasonable data reporting requirements, while also meeting the requirements in the law for reporting asset condition information. In response to the first round of comments on the asset inventory, FTA made several modifications to reduce the overall reporting burden including removing replacement cost information for all asset types and also eliminating the proposal for reporting details of individual components within facilities. FTA believes that this revised proposal for asset inventory reporting fulfills the MAP–21 update to 49 U.S.C. 4335(c) that recipients report asset inventory and condition assessment information to the NTD. These data will support better state of good repair estimates from

FTA's Transit Equipment Requirements Model and will support the calculation of performance results under the performance measures established in this rule. While FTA recognizes that the proposed changes would result in an increase over the current reporting requirements, the highest burden would exist in the first year of start-up reporting. Once an asset has been entered into the inventory module, the information would be pre-populated for each subsequent year. Reporters only would be responsible for providing annual updates to new or retired asset inventory items in subsequent years.

NTD Notice Comments: Reporting Requirements for 5310 Recipients

An additional area of concern was related to the new reporting requirements for 5310 recipients. Commenters stated that reporting for 5310 recipients should be limited or eliminated entirely. In addition, commenters felt that any reporting done on behalf of 5310 recipients should be done at the designated recipient level rather than the subrecipient level to minimize the burden of this new reporting. This same group of commenters suggested that only vehicles used in public transit and, preferably only vehicles purchased with federal money, should be reported. Some commenters requested that performance targets and reporting should be removed for 5310 recipients.

FTA's Response: Reporting Requirements for 5310 Recipients

FTA is committed to developing requirements that are mindful of the burden for small transit providers. FTA understands that direct reporting may prove to be a difficulty for small section 5310 recipients. In order to minimize this burden, FTA concurs with the comment that reporting on the assets for 5310 recipients should be done at the designated recipient or State level. The reporting guidance will be updated to reflect this change.

In response to the applicability of reporting for 5310 reporters: the NTD asset inventory requirements will mirror the reporting requirements established by the Transit Asset Management rule. The final reporting requirements for National TAM System apply to all chapter 53 recipients or subrecipients who own, operate, or manage public transportation capital assets. FTA currently requires NTD reports from recipients of funds under the Urbanized Area Formula Program (49 U.S.C. 5307) and the Rural Area Formula Program (49 U.S.C. 5311). As such, this new rule replaces references to 49 U.S.C. 5307 and 5311 recipients with references to recipients and subrecipients of chapter 53 funds. This change will require recipients and subrecipients of other FTA grant programs, such as the 49 U.S.C. 5310 formula program for the enhanced mobility of seniors and individuals with disabilities, who are not also receiving funds under 49 U.S.C. 5307 or 5311, to start reporting to the NTD. FTA will not apply existing NTD reporting requirements to all recipients of chapter 53 funds. FTA will apply only the reporting requirements mandated under the National TAM System final rule to those transit providers that do not currently report.

NTD Notice Comments: Reporting of Service Equipment

Some commenters requested the removal of service equipment from the NTD Asset Inventory.

FTA's Response: Reporting of Service Equipment

In order to best align the NTD asset inventory with the TAM rule reporting requirements, FTA believes it is appropriate to keep an inventory of 'service equipment' in the NTD. This information will provide verification of the TAM performance targets and performance against those targets. In addition, non-service vehicles and equipment represent a large capital expense for some agencies. Including a basic inventory of these vehicles and equipment in the NTD will provide additional clarity on the state of good repair backlog for the transit industry.

The final TAM rule requires transit providers to report the percentage of on non-revenue, support-service and maintenance vehicles that have met or exceeded their useful life benchmark. This is the identified SGR performance measure for equipment. FTA feels that non-service vehicles are an easily understood and readily identifiable category of equipment, and the age-based performance measure is the most-simple and straight-forward performance measure available.

NTD Notice Comment: Guidance for Useful Life Benchmark (ULB)

One commenter requested guidance on calculating a useful life benchmark (ULB) that is not based on accounting depreciation standards.

FTA's Response: Guidance for Useful Life Benchmark (ULB)

The calculation of a useful life benchmark may vary considerably between transit operators based on original equipment specifications, operating environment and maintenance or capital replacement schedules. Due to these variations, the FTA intends to leave the calculation of such a metric up to the individual providers. To facilitate reporting, FTA will provide a ULB default estimate based on the Transit Economic Requirements Model (TERM) depreciation curves in the NTD reporting system. These default estimates will also be available in the reporting manual. The ULB default estimate provided by NTD will be the point at which a vehicle reaches 2.5 in TERM.

FINAL RULE:

FTA is including the proposed amendments to the NTD in the final rule without change.

III. Regulatory Analyses and Notices

A. Regulatory Analyses and Notices NPRM Comments and FTA's Responses

COMMENTS: Funding for Transit Asset Management

A transit operator argued that because the TAM rule requirements will come with significant costs, there should be a dedicated funding source that does not diminish other programs. A business association similarly expressed concerns that the current investment from government is insufficient to meet both the capital and operating needs of the nation's mobility providers and is unlikely to change in the foreseeable future.

After expressing concern about the increased resources that would be required to comply with the rule, several commenters requested that funding be allocated to assist transit providers in developing and implementing TAM. A transit agency said dedicated funding should be made available with specific eligibility for TAM business processes needed to comply with the rulemaking requirements that does not include competing eligibilities with capital replacement projects. A transit operator requested that FTA identify a source of funding, in addition to formula funding, to help agencies comply with this new mandate. A State DOT said it is unclear if FTA will provide financial support for training of maintenance and reporting agency staff and for purchasing software to manage TAM systems. A transit operator requested clarification on how a service provider can request funding under specific grant programs.

A State transit association noted that the NPRM stated that ''on average, fare revenue cover only one-third of total operating expenses, and do not cover any capital expenses,'' but there is no discussion about the systems that do not

charge fares, thus allowing them to qualify for more Federal funding than the systems charging fares. The commenter said FTA should consider allowing at least 10 percent of fare collection to be set aside for capital purchases or major repairs as local match. The commenter asserted that this would result in an incentive to agencies to seek user financial support in achieving SGR goals.

Several commenters said FTA should recognize the lack of funding available to assure state of good repair. An MPO said it is not appropriate to place the burden of SGR on the transit operators' management practices when Congress has stepped away from the traditional partnership role in funding transit capital needs. Another commenter asked if national and local funding prioritization will be in alignment with SGR targets, as the Secretary is required to establish SGR performance measures and recipients are required to set performance targets based on these measures. This commenter also asked what portions of funding would the FTA consider reasonable to be allocated to achieving these targets and what level of confidence needs to be established that funding of projects will impact measures in reaching targets. A State DOT encouraged FTA to make the case for dedicated Federal funding for the TAM plan initiative, and/or consider clarifying which existing Chapter 53 planning and technical assistance funds may be applied to TAM plan development.

FTA'S RESPONSE: Funding for Transit Asset Management

In its 2013 Conditions and Performance Report, FTA estimated that the Nation's SGR backlog is $85.9 billion. FTA recognizes that addressing this backlog will require multiple approaches, including increased funding for asset management activities and state of good repair projects. However, FTA does believe that the National TAM System will support the transit provider's strategic allocation of available funds towards reducing the SGR backlog. FTA grant recipients, along with States and Metropolitan Planning Organizations (MPOs) will need to coordinate in order to set meaningful SGR targets and to prioritize funding from all sources towards reducing the SGR backlog.

There is specific funding available for transit asset management and state of good repair purposes. In MAP–21, Congress created the State of Good Repair Formula Program at 49 U.S.C. 5337. Funding for the SGR Program was reauthorized in the FAST Act at approximately $2.5 billion for fiscal years 2016–2020, a significant increase over MAP–21's authorized funding levels. Eligible projects include TAM plan development and implementation, and Capital projects to maintain a system in a state of good repair. Upon the effective date of this final rule, projects eligible for funding under the SGR Formula Program must be identified within the investment prioritization of a transit provider's TAM plan.[16]

Funds from other FTA grant programs may also be used to cover costs related to TAM plans. In general, costs associated with capital projects to purchase new capital assets or to rehabilitate or maintain existing assets are available for state of good repair purposes. The software costs for an asset inventory system, for estimating capital investment needs over time, or for a decision support tool for investment prioritization are all eligible capital costs. Costs related to assembling and maintaining an asset inventory, or related to condition inspections, are generally eligible preventive maintenance costs that can be funded by capital assistance. Finally, costs related to creating a TAM plan itself are an eligible expense under the section 5307 Urbanized Area Formula Program and the section 5311 Rural Area Formula Program.

Although fare revenues that are program income are not currently an eligible source of local match for FTA's grant programs, FTA does not have the statutory authority under current law to change this approach. Whether or not a transit provider charges a fare does not impact the amount of funding it may receive from FTA.

COMMENTS: Other Funding for TAM

An MPO said more recordkeeping without additional funding accomplishes nothing other than demonstrate the unmet need. This commenter asserted that a systematic approach to manage existing resources will not fully address the financial need to replace assets. Another commenter suggested that while the TAM rule may provide data and systemization for agencies as they assess their SGR, it is unclear if this will result in a better funding outlook.

One commenter expressed concern that requiring service providers to publicly document asset safety shortcomings while possibly not having sufficient funding to address all needs would increase legal liability risk for agencies.

A State transit association suggested that FTA (1) consider setting guidance to allow for local agencies to have fare set-asides to establish ''sinking funds'' to pay for new rolling stock purchases or major vehicle repairs, and (2) allow agencies be able to make loan payments from fares, reporting balance of fares less loan payments on quarterly DOT reports. A State DOT recommended that the rule should include specific language stating that, without additional financial resources, establishing an asset management plan may not in itself enable a provider or a group to reach a state of good repair.

Expressing concern that the rule would not allow legacy transit providers to work towards improvements in their facilities performance measure without diverting funds from other, potentially more critical needs, a local transit operator asked what the consequences would be of reporting declining performance measures for facilities to ensure maintaining or improving performance targets for fleet and infrastructure.

FTA'S RESPONSE: Other Funding for TAM

FTA believes recordkeeping and reporting will create a database that can be used to better identify the unmet needs. In many States, data-driven performance management practices have resulted in increased funding for transportation programs from state and local governments. Being able to demonstrate transportation needs, based on sound quantitative analysis, lends credibility to the funding requests and makes it easier for legislatures to support increased funding.

FTA acknowledges that the efficiencies realized through improved data-driven decision-making may not be adequate to meet all of the financial needs to address SGR, and that TAM plan development costs may divert funds from the current capital programs and that this may affect system performance. However, FTA anticipates that improved asset management practices will result in decisions that reduce maintenance and rehabilitation costs overtime. These cost savings might offset the costs of the TAM plan.

The TAM final rule does not include penalties for agencies that demonstrate declining performance of assets. The goal of the final rule is for transit service providers to develop or improve on existing asset management processes to provide and use data to make better decisions. Making trade-offs among

[16] For more guidance on the SGR Formula Program, please review the program guidance available on FTA's Web site at *http://www.fta.dot.gov/legislation_law/12349_16262.html.*

competing investments is part of the process. A goal of the TAM plan is to help agencies improve their current asset management practices to better manage assets over the whole life of an asset and to identify what can be achieved with current funding in order to meet desired performance goals.

This rule does not require agencies to list or document assets that pose an unacceptable safety risk.

FINAL RULE:

No change has been made in the final rule due to these comments.

COMMENTS: NPRM Regulatory Impact Analysis—Total Cost

Many comments were made on the costs associated with the proposed rule. Many commenters said FTA's estimated costs of compliance with the rule (coordination, data collection, reporting, etc.) are underestimated. One commenter said the rule's activities could require more than three times the number of hours estimated by FTA, and approximately five times the estimated cost. A State DOT said its current cost estimate for the initial phase of asset management planning (performance gap analysis) is about $300,000 in upfront costs, including project staff labor, training and consultant services for one year, which is significantly higher than the tier I annual cost of $33,451 per provider estimated by FTA. Some commenters provided specific estimated costs of complying with the rule, which ranged between $20,000 and $500,000 per transit agency. Another commenter stated that it uses two full-time equivalents (FTEs) just to update the asset inventory and the contracted costs for its recently completed TAM plan was three times the average cost from the FTA analysis for all TAM activities. Further, this commenter asserted that there would be further costs to bring it into compliance with the final rulemaking.

A transit operator said requiring all assets in the facilities category to have a full condition assessment with a 1–5 ranking based on the TERM scale would be extraordinarily expensive for larger agencies and may also be cost-prohibitive for smaller agencies with fewer assets and less funding. The commenter stated that, given the geographic breadth of the rail system and the number of stations, it would not be unrealistic to assume a $4–5 million undertaking to produce something of value. The commenter stated that because FTA has been supplied with the budget updates for this project on a monthly basis for several years, it was surprising that the estimates and approach did not reflect any of this information, but rather relied on the feedback from four newer and smaller agencies.

FTA'S RESPONSE: NPRM Regulatory Impact Analysis—Total Cost

FTA appreciates the comments on the cost estimates and the assumptions used. FTA acknowledges that the general consensus of the comments was that the estimated costs were lower than would be expected. FTA agrees that this may be the case in some instances for various reasons. However, it can be misleading to compare individual agency costs with an average for an industry that is very diverse in size, such that a few large agencies provide a large share of transit services. For example, among agencies receiving 5307 formula funds, 3 percent of the agencies own nearly 50 percent of the revenue vehicles. Since the average cost estimates in NPRM are the average cost per transit provider, they are more representative of the costs for the smaller providers, who are much more numerous, than for the large-medium to large providers. Thus, FTA agrees that costs for particular larger agencies may be higher, while, costs to smaller agencies may be lower, than the estimated average.

Tier I agencies range in size from agencies with revenue vehicles of over 101 to 10,000. Out of the 284 agencies in tier I, only twenty three have revenue vehicles greater than one thousand. As mentioned above, the average costs for tier I providers are more representative of the costs to the smaller tier I agencies. To illustrate this point, estimates are made for a large tier I agency, with 2500 vehicles and one with 500 vehicles. The quantified costs of implementing the rule are $234,477 for the larger agency and $109,312 for the smaller agency. The costs would approximately double if most of the tasks were contracted out.

However, for a more realistic comparison between the final rule's costs and the estimates cited by the commenters, FTA compared the costs for the specific agency providing the comment against the costs that would be predicted by FTA's model as used in the NPRM. For example, a State DOT commented that it has incurred $300,000 in upfront costs for asset management planning (performance gap analysis), significantly more than the average for tier I. FTA's cost estimate for this agency to implement the TAM rule is $99,000 in upfront costs. Many other agencies provided cost estimates ranging from $20,000 to $500,000. For these agencies, the NPRM upfront cost estimates ranged from $41,000 to $161,000. Another commenter noted that it could cost an agency between $4–5 million to undertake a full condition assessment based on TERM scales and other TAM requirements. For this agency the NPRM cost estimate is about $240,000 in upfront costs.

There are a number of reasons why the cost estimates in the NPRM are lower than the estimates provided by the commenters. First, the cost estimates in the NPRM were for the additional or incremental activities resulting from implementing the final rule. Adopting the requirements of the TAM rule will replace some existing practices and create new ones to better manage assets in a systematic way. In some instances, the TAM provisions may not add any new burden at all. Because the baseline compliance level is different across agencies, the final analysis does not estimate that every agency—or even every agency that is similar in size to the commenter's agency—will incur the same costs as identified by a particular commenter.

For instance, it is known that for the project with estimated costs of $4–5 million, a large component of the cost was for updating asset condition data that had been done previously using a new method. The cost estimate provided is therefore not an incremental cost of the rule. Also, it is noted elsewhere in this rule that FTA has not prescribed any specific condition assessment approaches or other analytical tools. So, if an organization decides to adopt an approach that is more expensive, it is their decision based on their need.

Second, the scope of the efforts for which commenters provided costs may be beyond what is required by this rule. For example, the document referenced by the State DOT commenter is referred to as 'performance gap analysis.' Performance management is generally more encompassing than asset management and particularly more than what is required in the TAM rule. Without additional information, it is hard to provide a realistic validation of these numbers.

Third, FTA acknowledges that its estimates are based on the data available in the NTD. It does not include all the assets owned or operated by an agency or even the ones required to be included in the TAM plan. Fourthly, FTA estimates assume the work is being done in-house with qualified staff available with the appropriate skills. This would result in significant underestimation if most of the work was contracted out. To address this issue the final rule includes a scenario for contracting out work tasks. The costs roughly double under

this scenario. This is presented as an upper bound cost (high case) and in-house as a lower bound cost (low case). The estimates presented above are for the in-house scenario (low case).

FINAL RULE:

No changes were made to the rule based on these comments. However, in consideration of other comments summarized below, changes have been made to the assumptions upon which the costs are estimated. These changes include additional asset inventory costs; the presentation of a high-cost case that assumes contractor support; modified personnel category, update of wage rates and additional IT costs.

COMMENTS: Regulatory Impact Analysis—Specific Task Costs

A commenter said FTA has underestimated the amount of labor hours needed for the continuous tracking and annual reporting process, particularly in the areas of vehicles and facilities. A transit operator said FTA underestimated the effort required for tier I providers in keeping large asset management datasets useful and coordinated. The commenter said FTA's estimate of 80 hours every 4 years should be at least 4 times that amount, equating to 80 hours per year. A transit operator also commented that creating a prioritized project list would require more time both initially and on an on-going basis to set criteria and score assets. A transit operator said an estimated 520 person-hours may be sufficient to update or enhance an existing decision support tool but not nearly enough for an agency that is implementing a new decision support tool. Several commenters said FTA should take into consideration that not all agencies have basic asset management software in place and, thus, will need additional time and resources to procure software. An individual commenter said software costs may be eligible for capital costs but the availability of capital costs are so limited that those funds are already allocated to the capital needs of the agency.

Several transit operators said it is not accurate to assume that a complete asset inventory (in the correct format) already exists as a baseline for every agency. These commenters explained that FTA's assumption that financial or property accounting systems may be used as asset inventories for TAM purposes is overstated. The commenters explained that the way this information is captured and reported would need to be modified to support TAM implementation and additional data elements would need to be collected. A transit operator said FTA's assumption that no incremental costs would result due to completion of asset inventories is not valid for commuter rail operators because currently only vehicle assets are included in the NTD report.

Another transit operator said using wage rates based on May 2013 Bureau of Labor Statistics data for urban transit systems significantly understates the cost associated with TAM implementation for services. A couple of commenters said FTA's average estimated cost for a tier I agency is understated. A State transit association said the assumption that an administrative support worker would develop the prioritized project list is probably incorrect. Similarly, a transit operator did not agree with the level of personnel that the FTA has assumed work on the prioritization of projects that is required of tier I providers. A medium to large size transit operator said the assumption of two staff members with the expertise necessary to assess the condition of all the equipment and subcomponents in one day seems optimistic.

A professional association and several State DOTs stated that the rule should take into consideration that transit agencies will likely be unable to implement the TAM requirements in-house, and would likely hire consultants. Similarly, several other commenters stated the rule would require transit agencies to add resources to comply with the new rules. A joint submission from several State DOTs said the regulations could divert scarce financial and personnel resources from investments that support transit service to regulatory compliance.

FTA'S RESPONSE: Regulatory Impact Analysis—Specific Task Costs

FTA agrees that existing inventory data may not be in the format required for the TAM provisions and may be dispersed in different databases. Therefore, additional costs for creating a single usable database are included in the final rule. Additional labor hours are added for the asset inventory task, which was previously assumed to be zero, to develop a TAM inventory database from disparate existing data systems. In response to comments received about employee responsibilities, FTA has also included costs for IT investments such as new software or other devices for recording information.

FTA agrees that some transit providers may use contract support versus in-house resources to develop their TAM plans and compliance. The final rule presents two sets of total costs, one assuming in-house plan development and another with contractor support. It is unknown what percentage of the plans would be in-house and what percent contracted out, so the cost of the rule is presented as a range. The results indicate the costs to contract development of the TAM plan are assumed to be double that of work performed in-house. FTA has updated the labor rates to use the latest year of data available in this final rule, which is the 2015 Bureau of Labor Statistics. In response to comments on the skill level of staff assumed for investment prioritization, FTA is using higher skilled personnel for the investment prioritization task in the final rule cost estimate.

FINAL RULE:

FTA made revisions to the Regulatory Impact Analysis and the Paperwork Reduction Act analysis of the final rule in response to these comments.

The following revisions are made to the final rule costs: The number of hours for asset inventory task is increased by 96 hours for the first 2 years and 36 hours thereafter for both tier I and tier II agencies; an additional cost of $5,000 per plan is now included for information technology to support TAM plan development; and the wage rate for the analytical processes and project prioritization task for tier II providers is increased from $23.04 to $41.98 to address the low personnel skill level comment. The average wage rate for the staff categories used in this rule has increased by about 2% on average since 2013, and costs estimates have been adjusted to account for the changes in wages in the final rule.

COMMENTS: Regulatory Impact Analysis—Other Assumptions

Regarding FTA's assumptions used for quantifying costs and benefits, a State DOT asserted that, while theory suggests best practices may yield cost benefits if employed, until the final rules are published, the cost and benefits will be unknown. Several commenters suggested that another non-quantifiable cost will be the time dedicated by managers who will need to attend asset management meetings as part of the coordination efforts throughout the year. Additionally, several commenters asserted that mechanics will need to be trained, which will improve efficiency for the agency, but will affect operating expenses. Another commenter stated that closer scrutiny should result in cost saving benefits but may require more staff time/resources in order to

implement the plan. Therefore, the commenter said any cost savings may be offset by a better state of good repair and less down time.

Several commenters responded about additional costs for States and MPOs in target setting beyond the coordination costs included in the planning rule. A State DOT said compliance with this rule may result in the need for additional staff or higher level of certification for mechanics. An MPO stated that targets are dependent on financial resources available during a particular time period, and that it is a challenging task for MPOs to coordinate transportation targets with fluctuating funding sources. Another MPO said MPOs, large and small, will need continued support and resources from Federal and State government to implement the new rules regarding transportation planning.

A transit operator said the rule does very little to mention or address operating costs which, over time, typically exceed original capital purchase cost. The commenter said this issue must be addressed along with capital asset investments.

A transit operator stated that if FTA provides the latitude that has been represented over the last few years in many presentations, then the cost has the potential to be within the limits proposed. However, if FTA mandates specific means of compliance, this commenter asserted that the cost would increase for those agencies that will need to modify existing processes that currently meet the intent of the legislation.

One commenter urged FTA to identify and seriously consider plausible alternatives, asserting that FTA did not provide any in the NPRM and where ANPRM commenters proposed alternatives, FTA's responses were inadequate. For example, this commenter asserted that there are conceivable ways to disaggregate safety and SGR from the way they were presented in the NPRM that would still be consistent with the statute.

A transit operator suggested that the analytical processes estimate may increase with implementation of a new SMS.

In response to FTA's request for any data that could assist in quantifying the costs or benefits of the rule, a State DOT said it could analyze rolling stock preventative maintenance costs of the past 2 years, beginning with baseline year of 2015 to determine a baseline and then adjust for inflation. However, these would all be projections and estimates, at best.

FTA'S RESPONSE: Regulatory Impact Analysis—Other Assumptions

FTA agrees that additional training for specialists, including mechanics, may be required to perform some of the tasks outlined in the final rule. Instead of adding additional resources for training, the revised cost estimates below include an estimate for contracting out the tasks for the TAM plan. So, rather than training agency staff, a transit agency can contract the services of a trained mechanic, or other skilled services, whichever is more cost effective. Since it is unknown which tasks may require skills unavailable at a transit agency, this rule presents a range of costs. The low cost case assumes in-house work and the higher cost case assumes that all tasks are contracted out.

FTA appreciates commenters who stated that the cost estimates are reasonable, providing the agencies latitude under TAM to develop their own practices, rather than being prescriptive. The goal of the TAM rule is not to be prescriptive, but allow agencies to develop practices that meet agency needs. Also, another commenter notes that the agencies will incur additional costs in implementing the TAM rule, but acknowledged that the benefits from improved asset management practice may cover these additional costs.

FTA believes that addressing operating costs is a separate issue from managing the assets and is not the subject of this rule. Operating costs are an optional consideration that transit providers may consider when developing their investment prioritization.

FTA agrees that the NPRM did not quantify other alternative approaches. However, alternative approaches were considered in developing the rule. As discussed in the NPRM, FTA developed a tiered approach that allows smaller operators to shift certain burdens of this rule to States. The TAM rule has not expanded on the requirements of the MAP–21 mandate, so an alternative was not considered to be essential. The TAM rule provides agencies significant discretion in choosing methods for data analysis, target setting and project selection.

The cost of applying SMS principles for the safety programs will be included in the appropriate rules—if such principles are adopted—and is not accounted for under this rule. The TAM NPRM assumed additional costs for coordination of group plans above what was estimated in the planning rule.

FINAL RULE:

There are no changes to the final rule as a result of these comments. However, other revisions were made to the analysis to conform with changes made to the final rule.

For example, the number of 49 U.S.C. 5310 subrecipients required to comply with the requirements of this rule is significantly reduced. Applicability changes that only public transportation providers must follow requirements led FTA to use information from a 2006 study from the University of Montana[17] in order to estimate the number of 5310 recipients likely to be effected by this rule. FTA reduced its estimate from 1700 affected in NPRM to 700 in the final rule. This change reduces the cost of inventory and asset condition assessment for the rule.

COMMENTS: Regulatory Flexibility Act

Some commenters provided input on the impacts of the rule to small entities. Several commenters stated that the rule's asset management requirements would be a burden to smaller transit providers and urged FTA to minimize the financial burden and allow flexibility so small operators can more easily comply (*e.g.,* minimal universal requirements that can be applied across all agencies). A tribal government expressed concern that the TAM rule requirements would have a profound effect on its transit program, which consists of only seven buses and no access to additional funding sources. An individual commenter suggested that FTA should define small entities as those entities that are not the certain large entities (which the commenter went on to list by name). A transit operator predicted that the additional cost of setup and continued maintenance would cost an additional 416 hours per year (8 hours per week) of staff time in order to meet the requirements set out by FTA.

Another commenter supported FTA's recognition of the disparate needs of the country's transit agencies and asserted that the proposal's accommodations for smaller agencies are practical and appropriate.

FTA'S RESPONSE: Regulatory Flexibility Act

The FTA accommodates the needs of the small providers by establishing a two-tiered approach that limits the number of TAM plan elements and

[17] *Allocation and Use of Section 5310 Funds in Urban and Rural America,* Tom Seekins, Alexandra Enders, Alison Pepper, and Stephen Sticka, Research and Training Center on Disability in Rural Communities of the Rural Institute, University of Montana

allows participation in group plans to leverage the administrative burden on small providers.

FINAL RULE:

No change has been made in the final rule in response to this comment.

COMMENTS: Paperwork Reduction Act

A transit operator agreed that performance targets are helpful for gauging progress, but expressed concern about the reporting burden FTA proposes to impose on transit agencies, and having this information be used to customize the focus of triennial reviews for individual agencies.

FTA'S RESPONSE: Paperwork Reduction Act

FTA agrees there is a reporting burden on transit agencies; these estimates of burden were included in the PRA section of the NPRM and are also included in this final rule estimates.

FINAL RULE:

No change has been made in the final rule due to these comments.

COMMENTS: Other Regulatory Analyses

A law firm on behalf of a tribal government stated that meaningful tribal consultation is required for this rulemaking and failure to do so can lead to arbitrary and capricious rulemaking. The commenter disagreed with the Administration's conclusion that the proposed rule will ''not have substantial direct effects'' on one or more Indian tribes or will not impose ''substantial direct compliance costs on Indian tribal governments.'' The commenter asserted that FTA has not yet engaged in any consultation specifically with tribal governments regarding the impact of the rule on tribal transit programs, the vast majority of which do not operate rail systems and receive only modest funding from the FTA. The commenter recommended that the final rule exempt Federally recognized Indian tribes and their transportation agencies from the definition of ''recipient'' under § 625.5 until such time as the FTA has undertaken meaningful consultation with tribes on this issue.

Asserting that the structure of the proposed TAM rule makes it impossible to review retrospectively due to a lack of defined baseline, a commenter recommended that FTA establish a baseline for the rule, *i.e.,* a current snapshot of asset management practices and the corresponding SGR of assets, which could take the form of an overall survey of asset quality sufficiently representative of transit agencies.

FTA'S RESPONSE: Other Regulatory Analyses

FTA appreciates the comments from tribal representatives and agrees that the final rule will have a substantial impact on tribes.

FTA believes that each of the four elements in a tier II plan is already a part of each transit provider's capital program. For example, in accordance with FTA's Grants Management Requirements Circular 5010.1D, those tribes that are direct recipients of FTA grants must demonstrate procedures for asset management and adequate maintenance of equipment and facilities and maintain an inventory of project property. In addition, FTA anticipates that tribes will coordinate with their State partners in the development of a group TAM plan. This rule does not impose a substantial direct effect on one or more Indian tribes, but merely establishes a framework to achieve and maintain a state of good repair by streamlining existing requirements and practices and supporting informed decision making.

Please also see the analyses of Executive Order 13175 for more specific information about FTAs approach to tribal outreach. FTA recognizes that developing an individual TAM plan, maintaining documentation and reporting requires that a TAM rule be flexible and scalable. This rule is scalable and flexible and provides several options to reduce the burden on small providers, including American Indian tribes.

The baseline for the analysis was developed using current reports published by GAO, FTA and TCRP, and input from five transit agencies interviewed by FTA. SGR baseline is based on current data submitted to NTD. Given the large number of transit agencies, it would be a challenge to develop an exact baseline for the industry to be covered by the rule under the current PRA regulations.

B. Final Rule Analyses and Notices

Executive Order 12866 and 13563; USDOT 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 has examined the potential economic impacts of this rulemaking and has determined that this rulemaking is likely to be economically significant, in that it may lead to transit providers making investment and prioritization decisions that would result in economic impacts that could exceed $100 million in a year. However, as discussed in greater detail below, FTA was unable to quantify the potential impacts of this rule beyond the costs for transit agencies to assess their assets, develop TAM plans, and report certain information to FTA. Most significantly, due to lack of information about how and the extent to which agencies will change their asset maintenance, rehabilitation and replacement plans and practices in response to this rule, FTA was unable to estimate costs or benefits for additional asset maintenance, rehabilitation or replacement.

The Need for Federal Regulatory Action

In 2014, the number of transit trips exceeded 10 billion for the 8th year in a row. APTA,[18] the 10.7 billion public transportation trips taken in 2014 represented the highest ridership level for transit since 1956. There is reason to believe that this is just the beginning of a sustained period of growing demand for public transportation. Moreover, factors such as the migration of people to urban areas, an aging population that will rely heavily on public transportation and a retiring transit maintenance workforce will further increase demands on existing public transportation systems. While this will increase revenues for the transit agencies, there will be an increased need for funds for maintenance and expansion of the system to meet the growth in demand. Given existing fiscal constraints, it is unlikely that the Nation's SGR backlog can be addressed through increased spending alone. Rather, a systematic approach is needed to ensure that existing funding resources are strategically managed to target the SGR backlog and meet the increased demand for transit.

MAP–21 fundamentally shifted the focus of Federal investment in transit to emphasize the need to maintain, rehabilitate, and replace existing transit investments. The ability of FTA grant recipients, along with States and MPOs, to both set meaningful transit SGR performance targets and to achieve

[18] *http://www.apta.com/resources/statistics/Documents/FactBook/2016-APTA-Fact-Book-Appendix-A.pdf.*

those targets is critically dependent upon the ability of all parties to work together to prioritize the funding of SGR projects from existing funding sources. Although the new SGR Grant Program for fixed-guideway systems and for fixed-route bus systems operating on high-occupancy vehicle (HOV) lanes will also be an essential component of this process, the SGR grants alone will not be enough to address the backlog. The FAST Act increased appropriations to this program, but funding increases by any one source to any one program will not be enough to fully address the financial needs. In these financially constrained times, transit agencies will need to be more strategic in the use of all available funds. The various components of this new National TAM System would work together to ensure that state of good repair becomes and remains a top priority for transit providers, as well as States and MPOs. Together, these elements will assist FTA and the transit industry in justifying SGR investments, both for securing new funding resources and for prioritizing SGR investments with existing funding sources.

Congressional Mandate and Legal Authority

Section 20019 of MAP–21, amended Federal transit law by adding a new section 5326 to Chapter 53 of title 49 of the United States Code (section 5326). The provisions of section 5326 require the Secretary of Transportation to establish and implement a National TAM System which defines the term ''state of good repair;'' requires that all recipients and subrecipients under Chapter 53 develop a TAM plan, which would include an asset inventory, an assessment of the condition of those assets, decision support tools, and investment prioritization; establishes annual reporting requirements; and mandates that FTA provide technical assistance to Chapter 53 recipients and sub-recipients, including an analytical process or decision support tool that allows for the estimation of capital asset needs and assists with investment prioritization. 49 U.S.C. 5326(b). In addition, section 5326 requires the Secretary to establish SGR performance measures, and recipients are required to set performance targets based on the measures. 49 U.S.C. 5326(c)(1) and (2). Furthermore, each designated recipient must submit an annual report to the Secretary on the condition of their recipients' public transportation systems and include a description of any change in condition since the last report. (49 U.S.C. 5326(b)(3). Each designated recipient must submit also an annual report to the Secretary which describes its recipients' progress towards meeting performance targets established during that fiscal year and a description of the recipients' performance targets for the subsequent fiscal year. (49 U.S.C. 5326(c)(3)).[19]

Identification of Available Alternative Approaches

For the purposes of the analysis below, the costs and benefits of the rule are compared against the base case of existing practice. During the development of the rule, FTA considered various alternative approaches to ensure that the rule remained scalable and flexible enough for different types of transit modes and operating environments. As detailed in Section II of this document, FTA issued an advance notice of proposed rulemaking (ANPRM) and a notice of proposed rulemaking (NPRM) to get feedback from the transit industry and other stakeholders on specific questions relevant to developing the final rule.

For instance, transit providers are classified into two tiers, based on the number of vehicles operated in revenue service and the mode. A tier I provider owns, operates, or manages (1) a rail transit mode or (2) more than one hundred one revenue vehicles. A tier II provider owns, operates, or manages less than one hundred revenue vehicles, or is a rural subrecipient under 49 U.S.C. 5311, or is an American Indian tribe, and is a provider that has no rail fixed-guideway. A tier II provider's TAM plan would be required to include only elements 1 through 4 outlined in § 625.25(b), instead of all nine elements required for tier I providers. Moreover, most tier II providers are eligible to participate in a group TAM plan which would reduce the burden on the provider of developing an individual TAM plan.

FTA considered several definitions for state of good repair before selecting the definition in the rule. FTA believes that the proposed performance measures have the most potential for use by transit providers in estimating the performance of their system, while imposing the least burden for extensive data collection and calculation of measures. Transit providers have the option of using additional performance measures, in particular, for assets for which FTA did not establish performance measures.

As discussed in the NPRM, for example, FTA considered alternatives submitted by commenters that would have limited the asset inventory to rolling stock; however, FTA elected to include rolling stock, equipment, infrastructure and facilities because these other asset categories are important components of transit service and were specifically included in the MAP–21 mandate (49 U.S.C. 5326(b)(1)).

In response to the comments to the NPRM, FTA further reconsidered the choice of which assets to include in the TAM plan, considering the potential costs and benefits. Many commenters expressed concern about the inclusion of third party assets in the TAM plan, arguing that it would be difficult to implement and may prove to be overly burdensome and costly. In consideration of these comments, this final rule requires that only those vehicles, passenger stations, exclusive use maintenance facilities, and guideway infrastructure used in the provision of transit service be included in a transit providers asset inventory, including those vehicles, facilities, and guideway infrastructure that are owned, operated, or maintained by a third-party or were procured jointly. Equipment owned, operated, or maintained by a third-party need not be inventoried under this final rule.

FTA does not believe that it will be overly burdensome for a transit provider to include third-party owned vehicles, facilities, and guideway infrastructure in its asset inventory. Transit providers are already required to include detailed information on third-party vehicles and third-party guideway infrastructure in the NTD, and so already have access to this information for their asset inventory. Expanding asset inventories to include third-party passenger facilities is important, as it will provide valuable information on the total number, size, and scope of facilities in the transit industry, which is an important contributor to state of good repair needs. The inclusion of a broad set of assets into the inventory is intended to provide funding decision makers with a full picture of their system and an opportunity to think proactively and long term about investment priorities for state of good repair.

FTA recognizes the challenge of providing asset condition for assets the agencies have no capital responsibility for. This could be burdensome and of

[19] The term ''designated recipient'' is defined in statute as ''(A) an entity designated, in accordance with the planning process under sections 5303 and 5304, by the Governor of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 to urbanized areas of $200,000 or more in population; or (B) a State or regional authority, if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation.'' 49 U.S.C. 5302(4).

little value to FTA or the transit agencies as they are not responsible for the capital expenditures for these assets. So, the final rule only requires a transit provider to conduct condition assessments, establish performance targets, and include in its investment prioritization, those capital assets (vehicles, passenger facilities, exclusive-use maintenance facilities and guideway infrastructure) that it has direct capital responsibility for.

Estimated Costs and Benefits

FTA's estimates of the costs of the rule are based on current industry practices, and responses to the NPRM from the industry. There is no data on the cost of the current practice in the industry. The section below outlines the current practice based on studies available. FTA used information from the studies to estimate the incremental costs that transit providers likely would incur to implement the rule. FTA did not estimate the benefits of this rule. Instead, FTA conducted a threshold analysis based on a portion of the rule's costs—specifically those that FTA was able to monetize.

Baseline

There is no single comprehensive source of information on the existing level of compliance with this rule. Most of the roughly two dozen transit providers that have been profiled in existing reports already conduct some or all of the transit asset management activities that would be required under the rule, and this analysis attempts to consider that baseline as the starting point for identifying the incremental costs and benefits of the rule. The transit providers that were profiled in the reports, though, are not a representative sample of the whole transit industry. In general, they represent the large and medium sized urban transit agencies that would fall into tier I.

- The Government Accountability Office (GAO), Transit Asset Management (GAO–13–571) [20] studied nine agencies, which had transit asset management practices with varying levels of sophistication, along with a group of ''leaders'' in asset management. Overall, GAO found in its case study discussions that all agencies had at least some process for tracking assets and making investment decisions, but many faced challenges with collecting asset-condition data, analyzing performance, and making prioritization decisions in a systematic way. These challenges included a lack of funding, managing staff resources and change in general, and integrating processes such as ranking capital projects with established criteria. In addition, only two of these nine agencies specifically tracked the impact of their capital investment projects on their assets' conditions. However, at least four agencies did track the impacts on service reliability and on-time performance.
- FTA's 2009 Rail Modernization Study [21] Report to Congress examined seven of the nation's largest rail systems. The study found that of the seven agencies examined, all had asset inventory data, but only three had comprehensively updated asset condition data (namely, New York City Transit, Metro-North Railroad, and Long Island Rail Road). Experience with using decision support tools and objective investment prioritization was limited. Only one transit provider, the Massachusetts Bay Transportation Authority, used a decision tool. Prioritization decisions were based on mission critical, safety, coordination on line segment maintenance and maintenance of historical funding levels.
- A 2010 report from FTA, ''Transit Asset Management Practices: A National and International Review,'' [22] presents case studies from around the United States. In this report, FTA found that all fourteen of the US agencies studied had asset inventory data and an inspection program, although this was not always systematic; for example, information on asset condition or defects was not typically rolled up into an overall asset condition metric. Vehicles and track tended to have the best coverage. Most agencies had at least some strategies, performance measures, and maintenance policies, though agencies' project selection and other decision support tools were often separate from the system used to track asset inventory and condition.
- Transit Cooperative Research Program Report 92, Transit Asset Condition Report: A Synthesis of Transit Practice,[23] notes that large agencies generally have asset-tracking databases, but that many agencies maintain separate equipment rosters that are independent from the mainstream planning, programming and budgeting processes. Most large agencies determine asset condition through age and inspection, and generally do not use asset-condition data to set investment priorities for capital programming.
- FTA's Report to Congress on the State of Good Repair Initiative (2011) [24] stated that only two of the twenty-three agencies contacted were using an objective, multi-factor project- scoring process to help rank and prioritize their investment needs. The report also provided information on FTA's programs in this area, including SGR grants made to transit agencies to implement or enhance a transit asset management system.

Overall, the available literature on current practices suggests that there is room for improvement in transit providers' asset management practices. A handful of leaders in the field, including roughly a dozen agencies that have been profiled by FTA or GAO reports, have implemented sophisticated decision-support systems and integrated transit asset management principles into their planning and operations, with associated ''agency culture'' changes to encourage collaboration across departments.[25] However, at most other agencies, both large and small, some elements of transit asset management are in place, such as asset inventories, periodic condition assessments, and/or performance measures, but they have not been integrated into a comprehensive system to support data-driven decision-making and project prioritization, much less to trace impacts on ridership, service quality, life-cycle costs, safety and other outcomes. This rulemaking attempts to address that gap by establishing a framework for a National TAM System.

Definition and Evaluation of the Benefits and Costs

For estimating the incremental costs, FTA assumes that most agencies have already incorporated some elements of asset management into their practice. FTA made this assumption using findings from the literature on the state of the practice, comments received on the ANPRM and NPRM, and a limited number of case study interviews. As such, the incremental cost of some activities is likely to be minimal, as agencies move away from their old practices and adopt new ones. Smaller agencies are less likely to have full-fledged asset management systems, but

[20] *http://www.gao.gov/assets/660/655837.pdf.*

[21] *http://www.fta.dot.gov/documents/Rail_Mod_Final_Report_4-27-09.pdf.*

[22] *https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/TAM_A_National_and_International_Review_-_6.10_FINAL_0.pdf.*

[23] *http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_syn_92.pdf.*

[24] *http://www.fta.dot.gov/documents/SGR_Report_to_Congress_12-12-11_Final.pdf.*

[25] These initiatives are described as cost-effective in the literature, but there is very little quantitative information about the outcomes associated with these programs, because they have generally not had independent evaluation.

many of their TAM requirements are already standard practice, such as keeping an inventory of assets and tracking vehicle ages.

Costs are estimated for an average transit provider or asset-type. This is a challenge since it is hard to define an average for an industry that is very diverse, ranging from agencies with thousands of vehicles, multiple modes and many facilities to an operator with a few buses. Some of this has been addressed by estimating costs by tiers defined above. In addition, agencies may be at different stages of asset management practice. The estimates presented below are therefore very difficult to apply to any particular provider.

Costs are estimated using both FTA records such as NTD data and Bureau of Labor Statistics wage data as detailed more specifically in the sections below. To supplement the information available from existing studies, follow-up telephone interviews were conducted with four agencies that received funding through FTA-sponsored pilot programs for TAM initiatives.[26] Although the interviews did not directly address the proposed rule, interviewees' experiences with transit asset management programs provided background on transit provider impacts and helped to gauge the reasonableness of FTA's assumptions for development of a TAM plan and related activities. This very limited set must be regarded as a non-representative sample and merely illustrative of the types of impacts that TAM programs can have.

FTA has limited data on current practices and the costs associated with asset management activities, such as condition assessment, because TAM is a relatively new practice and requirement for transit agencies. FTA made assumptions in order to estimate costs based on the information available. There is also little in the academic literature on quantified benefits or costs for asset management programs for transit agencies.

Another key limitation of the analysis is that FTA has data only on certain asset categories, such as revenue vehicles, stations, maintenance facilities, and guideway miles. As a result, FTA's cost estimation process could not include non-revenue vehicles, or parking facilities and equipment that are not associated with a station or facility.

[26] North Dakota DOT, Long Beach Transit (CA), Sound Transit (WA), and Valley Regional Transit (ID).

The analysis takes a societal perspective, including benefits and costs regardless of to whom they accrue. FTA estimates the initial costs (*i.e.* ''upfront'' or ''non-recurring'') and recurring costs at different intervals. Future costs are estimated to reflect the time value of money, using a 7% discount rate (with 3% sensitivity case) and a base year of 2015.

Costs to Transit Providers To Implement the Requirements of the National TAM System

The costs of the rule are estimated using an incremental approach. The costs of the rule are defined as the costs of the required asset management activities *over and above* the baseline of current industry practices. Cost items include: the development and implementation of the TAM plan; coordination with group TAM plan sponsors; documentation, recordkeeping and reporting. While no specific training is required for most transit employees, at least one commenter noted that there may be additional training costs, or alternatively that contractor support would be needed. In the analysis below, that is presented as a high-cost case with contractor cost rates.

TAM implementation could also help agencies make more cost-effective investment choices with respect to asset maintenance, rehabilitation, and replacement, but FTA was not able to estimate the benefits and costs of those follow-on actions due to limited information. Of the cost items that were monetized, the specific cost estimates primarily reflect staff labor hours in the lower cost scenario and contractor support in the higher cost scenario. The costs of the TAM plan are estimated based on the costs of each component, including asset inventories, condition assessments, project lists, performance metrics, and targets.

The TAM final rule does not require transit providers to use any particular technology or software system. FTA has emphasized that transit agencies could use something as simple as an Excel spreadsheet to comply with the requirement for a multi-factor prioritization process. Some transit agencies may choose to engage consultants, purchase commercial software, or pursue other approaches that they find more cost-effective. In addition, some commercial software packages provide more sophisticated systems that integrate transit asset information with other modules, such as scheduling and crew assignment, or provide other functionalities. These packages go beyond what is required by the rule, so their costs are not necessarily indicative of the actual costs of the rule.

The overall approach in the subsections below is to estimate the labor-hours required for each TAM task and to multiply by an appropriate wage rate to generate the total cost. The labor-hour estimates are based on findings from the limited literature on transit asset management, expert judgment from FTA staff on the approximate level-of-effort required, the information from the four transit provider interviews, and information from public comments to the NPRM. In some cases, it was possible to cross-check the totals that would result from these assumed cost levels against agencies' actual expenditures on asset management programs, such as those funded through the SGR grant amounts or recent contract awards. These comparisons are discussed in more detail below.

Wage rates for transit provider labor hours are based on May 2015 Bureau of Labor Statistics (BLS) data for urban transit systems and interurban and rural bus transportation.[27] In response to comment, FTA adjusted the hourly wage rates to account for employee benefits.[28] Table 2 below describes the wage rates used and the TAM plan activities to which they relate. For simplicity, FTA applied the urban wage rates to tier I providers and rural rates to tier II providers. FTA received several comments in response to the NPRM noting that transit providers may be more likely to use contractor support to develop their TAM systems than in-house labor, and that costs would be higher in those cases. To address this comment, FTA developed a higher-cost case that assumes contractor support at costs that were roughly two times the fully loaded in-house costs as detailed above.[29] The number of hours per task

[27] *http://www.bls.gov/oes/current/naics3_485000.htm. http://www.bls.gov/oes/current/naics3_485000.htm.*

[28] Bureau of Labor Statistics News Release. Employer Costs for Employee Compensation—September 2014. Table 3, Service-providing industry group. *http://www.bls.gov/news.release/pdf/ecec.pdf.* BLS data show wages as 64.1% of total compensation, with benefits at 35.9%. Therefore, employees' wages are factored by 1.56 (100/64.1) to account for employer provided benefits.

[29] This cost factor was based on two sources of information. Federal Highway Administration collected data on the cost of developing highway asset management plans from 9 States, with preliminary findings showing the contractor support to cost in the range of 1.5 to 1.6 times as much as in-house efforts. A 2013 research report from the Project on Government Oversight study, while focused on the Federal government rather than state and local agencies, found that contractors were paid 1.8 times more than federal employees for similar work. *www.pogo.org/our-work/reports/2011/co-gp-20110913.html#Executive Summary.*

was assumed to be constant, as were IT costs.

TABLE 2—SUMMARY OF TRANSIT INDUSTRY WAGE RATES AND FRINGE BENEFITS FOR TAM ACTIVITIES

Title	Wage rate	Loaded wage rate	Relevant TAM activities
Urban Transit Systems (NAICS 485100)			
General and Operations Manager	$55.86	$87.14	Plan Strategy, Performance Measures and Targets, Data and Narrative Reporting to NTD.
Operations Specialties Manager	44.64	69.64	Asset Condition Assessment.
Business Operations Specialists	30.74	47.95	Data and Narrative Reporting to NTD.
Buyers and Purchasing Agents	28.94	45.15	Asset Condition Assessment, Analytical Processes, Prioritized Project List.
Installation, Maintenance, and Repair Occupations	24.14	37.66	Asset Condition Assessment.
Interurban and Rural Bus Transportation Systems (NAICS 485200)			
General and Operations Manager	49.35	76.99	Performance Measures and Targets, Data and Narrative Reporting to NTD.
Business Operations Specialists	26.91	41.98	Data and Narrative Reporting to NTD.
Other Office and Administrative Support Workers	13.85	21.61	Asset Condition Assessment, Analytical Processes, Prioritized Project List.
Installation, Maintenance, and Repair Occupations	22.82	35.60	Asset Condition Assessment.

Using NTD submissions and other information, FTA estimated that there are approximately 284 tier I providers and 2,714 tier II providers. These totals include subrecipients, as well as public transportation providers that are receiving 49 U.S.C. 5310 formula grant funding, and subject to this rule, but that do not currently report to the NTD.

For calculation purposes, FTA assumes, based on knowledge of the industry and the requirements of this final rule, that tier I providers and tier II direct recipient providers would develop their own TAM plans, while tier II subrecipient providers, which tend to be much smaller organizations, would participate in a group TAM plan. Participating in a group plan minimizes the burden and costs to small providers of transit services and transfers it to States.

FTA estimated the number of group TAM plans that would be developed for these subrecipients based on existing funding and reporting relationships. Specifically, it was assumed: That the 120 recipients of section 5307 funding would be covered by 10 group TAM plans; that the estimated 700 subrecipients of section 5310 funding would be covered by 200 group TAM plans; and that the 1,300 rural subrecipients of section 5311 funding and 104 American Indian tribes would be covered by 54 Group TAM plans by State DOTs or an equivalent entity. This yields an estimated total of 264 group TAM plans.

The table below shows the number of agencies impacted by the rule and also provides other relevant figures by tier based on our estimates and the 2013 NTD data.

TABLE 3—NUMBER OF AGENCIES, PLANS AND ASSETS BY TIER (2013) [30]

		Tier I agencies	Tier II agencies
	Number of Agencies	284	2,714
	Number of TAM Plans		
	Individual	284	490
	Group Plans	0	264
MAP–21 Asset Category	Number of Assets by Type		
Rolling Stock	Revenue Vehicles	116,472	62,858
Infrastructure	Way Mileage (Track)	12,746	0
	Bridges, Tunnels, & Transitions	2,563	0
Facilities	Rail & Bus Stations	4,195	822
	Maintenance Facilities	1,068	1,367
	Administrative Buildings and Parking Facilities (not part of a Station or Maintenance Facility).	Unknown	Unknown

[30] Source: National Transit Database, FTA, 2013 (This is the latest year for which data is available).

TABLE 3—NUMBER OF AGENCIES, PLANS AND ASSETS BY TIER (2013) [30]—Continued

		Tier I agencies	Tier II agencies
Equipment	Non-Revenue Vehicles [31]	Unknown	Unknown
	Equipment	Unknown	Unknown

(1) Asset Inventory

Under the final rule, transit providers are required to complete an inventory of their capital assets. The inventory needs to provide accessible, consistent, and comprehensive information about the state of good repair of a transit provider's capital assets. Depending on the provider's size, this information includes number of revenue vehicles, number of stations, number of facilities, number of equipment, and mileage of track as shown in appendix C.[32]

Based on knowledge of the transit industry and information from the transit provider interviews, FTA understands that almost all agencies have a basic inventory of assets that is used for accounting and audit purposes. This supports the intuitive conclusion that transit agencies know what assets they have. These inventories will likely be updated as new assets are purchased and others are depreciated or retired, even in the absence of the rule. Therefore, incremental costs for the asset inventory should be relatively minor. However, several agencies noted in response to the NPRM that existing asset inventories may not be in a format this is usable for TAM, and that there may be staff time and costs required for converting the inventory data to the new format and/or gathering information on non-owned assets (to the extent that they are covered by TAM).[33] For cost estimation purposes, it is assumed that each TAM plan (tier I plan, tier II individual plan, and tier II group plan) will require 96 hours of staff time in the first year, and 36 hours of staff time each year thereafter, to re-format agency asset data into a format that is usable for TAM. For tier I agencies, this labor is estimated at the rate for a purchasing agent ($45.15 per hour including benefits). For tier II agencies, labor costs are estimated using a business operations specialist ($41.98 per hour including benefits). Total costs for the asset inventory are summarized below.

The table below represents the calculations described above for tiers I and II as the low case. The high case was calculated in the same manner with the exception that labor costs were doubled as described above.

TABLE 4—INITIAL AND RECURRING COSTS FOR ASSET INVENTORY

Agency size	Low case		High case	
	Initial 2-year period	Annually recurring	Initial 2-year period	Annually recurring
Tier I	$1,229,246	$460,967	$2,458,492	$921,935
Tier II	3,038,651	1,139,494	6,077,303	2,278,989
Total	4,267,898	1,600,462	8,535,795	3,200,923

(2) Asset Condition Assessment

Under the final rule, transit providers are required to complete an assessment of capital assets for which they have direct financial responsibility. The assessment must include sufficient information to monitor and predict the performance of each capital asset identified in the asset inventory. Additionally, the process must identify unacceptable safety risks related to the condition of the capital assets. The assessment should also be used when prioritizing investments for transit asset management. While many transit providers already perform these assessments, at least for certain asset types, it is likely that additional effort will be required to meet the standards of the rule.

Estimates of the time required for assessment will vary by asset category. FTA's estimates of the time to assess particular assets are listed below. These estimates are based on FTA's experience with the asset assessment in the transit industry, including unpublished results from a pilot study.

For revenue and service vehicles, the rule calls for an age-based assessment for purposes of setting performance targets. Transit providers generally already have records of their vehicles' ages and many are already required to report this information to the NTD. To be conservative, however, FTA assumes that this information may be in a different format or database and/or require additional effort to be brought into the asset management system. For estimation purposes, FTA assumes that approximately 30 minutes per vehicle would be required. As noted above, one data limitation is that no information was available through NTD on non-revenue vehicles, but FTA does not expect this to have much impact on the overall total, as the number of service vehicles is presumed to be much smaller than the number of revenue vehicles, which is known. Nonetheless, FTA is including non-revenue vehicles in TAM because they are capital assets that can affect transit service quality, for example through maintenance calls and incident response.

For facilities, the rule calls for a condition-based assessment for purposes of setting performance targets. Costs per passenger station are estimated based on two staff members, each working a half day, for a total of eight hours per station. For maintenance facilities, costs are estimated based on two staff members working a full day, for a total of 16 hours per facility. FTA assumes that equipment and parking facilities that are part of stations or maintenance facilities would be part of the assessment for that station or maintenance facility. FTA does not have separate data on equipment,

[31] The table only includes assets reported to the NTD; therefore, it does not does not include non-revenue vehicles or equipment assets.

[32] *http://www.ntdprogram.gov/ntdprogram/assetInventory.htm.*

[33] Non-owned assets would need to be included in the asset inventory if the agency uses them for providing transit service. Asset condition assessment is only required for assets that an agency has direct capital responsibility.

administrative buildings or parking facilities. These are rough averages that reflect the wide range of assets in this category. For example, a downtown subway station may contain multiple platforms, exits, and passageways, whereas an outlying commuter railroad station may consist of little more than a platform and a shelter. It is also possible for equipment to be located at administrative facilities or parking facilities that are not reflected in these totals, though FTA believes that to constitute a small share of transit agency equipment or total facilities.

For infrastructure way mileage (*e.g.,* railroad tracks or separated BRT guideways), the rule calls for a performance-based assessment for purposes of setting performance targets. Transit providers already have some performance-related information such as speed restrictions, but again FTA assumes that some additional effort would be required to prepare this information in a way that is consistent with the rule. For estimation purposes, FTA assumes that this would require roughly 30 minutes per mile of way. However, under special circumstances such as for subway tunnels, elevated structures, and the transitions from ground level to these areas, additional time may be necessary to assess the performance and also determine the structural or tunnel integrity. In these cases, FTA assumes that this would require roughly 1 hour per mile of way.

For equipment, the rule calls for an age-based assessment for purposes of setting performance targets. Equipment is defined as an article of nonexpendable, tangible property having a useful life of at least one year. FTA lacks specific information about transit providers' ownership of equipment, this final rule clarifies that asset equipment inventory does not include third party equipment, or owned equipment under $50,000. As a result, the total size of this asset class is not known, and the cost estimates do not include TAM costs associated with equipment. In addition, FTA does not have data on the extent to which condition assessments are already routinely undertaken for these equipment assets. However, FTA believes that most equipment will be located within maintenance facilities and passenger stations, or along rail guideways, and thus the costs of condition assessments for equipment would often be included in the condition assessments for those facilities, stations, or guideways. Even in cases where they are not, the condition assessment for these assets should be relatively simple, as the rule requires only a simple, age-based assessment.

FTA assumes that the asset condition assessment would need to be performed as part of the initial plan development, and would also need to be repeated periodically in order to fully implement the other provisions, notably investment prioritization, performance measures, and reporting requirements. FTA assumes that assessments for revenue vehicles, equipment and guideway infrastructure are repeated on an annual basis, while passenger stations and exclusive use maintenance facilities are assessed every three years.

Following, is a detailed accounting of incremental costs by provider type.

Tier I Providers

Based on 2013 NTD data, tier I providers operate a total of 116,472 revenue vehicles, 4,195 stations, 1,068 maintenance facilities, 12,746 miles of standard track, and 2,563 miles of track within subway tunnels or on elevated structures (including transitions). These assets would be tracked or inspected by various employees at the transit provider. It is likely that the age-based assessment of the vehicles would be conducted by a buying or purchasing agent at a loaded wage rate of $45.15, the condition-based station and maintenance facility assessment would be conducted by an installation or maintenance repair worker at a loaded wage rate of $37.66, and the performance-based way mileage, elevated structure, and tunnel assessment would be conducted by an operations specialties manager at a loaded wage rate of $69.64. Multiplying the number of assets, by the corresponding time requirement described above, and by the corresponding wage rate leads to a total initial cost of $5.16 million. Thus, FTA's analysis finds that, on average, each tier I agency would incur an initial cost of just over $18,000 (low case) to just over $36,000 (high case) to comply with this rule's requirements for asset condition assessments.

FTA assumes that the vehicles and way mileage, elevated structures, and tunnels would be assessed annually at a total annual cost of approximately $3.25 million and the stations and maintenance facilities would be assessed triennially at a tri-annual cost of approximately $1.91 million.

Tier II Providers

Based on 2013 NTD data and our approximations for non-reporting providers, the tier II providers operate a total of 62,858 vehicles,[34] 822 stations, 1,367 maintenance facilities, and 0 miles of way mileage.[35] These assets would be tracked or inspected by various different employees of the transit provider. It is likely that the age-based assessment of the vehicles would be conducted by an office or administrative support worker at a loaded wage rate of $21.61, and the condition-based station and maintenance facility assessment would be conducted by an installation or maintenance repair worker at a loaded wage rate of $35.60. Multiplying the number of assets, by the corresponding time requirement described above, and by the corresponding wage rate leads to a total initial cost of $1.70 million.

FTA assumes that vehicles' age-based assessments would be updated annually at a total annual cost of approximately $0.68 million and the stations and maintenance facilitates would be assessed triennially at a tri-annual cost of approximately $1.01 million.

The table below represents the calculations described above for tiers I and II as the low case. The high case was calculated in the same manner with the exception that labor costs were doubled as described above. Thus, FTA's analysis finds that, on average, each tier II agency would incur an initial cost of just over $623 (low case) to $1,247 (high case) to comply with this rule's requirements for asset condition assessments.

[34] This includes the vehicle count from NTD, plus an estimated 21,000 vehicles for the roughly 700 section 5310 subrecipients who do not submit any vehicle counts or other asset data to NTD.

[35] Rural transit agencies do not submit annual reporting on their miles of right-of-way. These rural agencies typically operate buses and paratransit vehicles on public streets and generally do not own any rail systems or other transit rights-of-way. There may be a small number of exceptions that are not accounted for in this section due to the data limitation.

TABLE 5—INITIAL AND RECURRING COSTS FOR THE ASSET ASSESSMENT

	Low case			High case		
	Initial 2-year period	Annual recurring	Triennial recurring	Initial 2-year period	Annual recurring	Triennial recurring
Tier I	$5,158,711	$3,251,448	$1,907,262	$10,317,422	$6,502,897	$3,814,525
Tier II	1,691,781	679,055	1,012,726	3,383,562	1,358,110	2,025,452
Total	6,850,492	3,930,503	2,919,988	13,700,984	7,861,007	5,839,977

(3) Analytical Processes

Under the final rule, transit providers are required to present a list of analytical processes or decision-support tools that allow for capital investment needs to be estimated over time and to assist with capital asset investment prioritization. No specific format or software is mandated, but certain capabilities are required. The investment prioritization plan must identify each asset within the asset inventory that is included within an investment project over the timeframe of the TAM plan. Projects must be ranked in order of priority and the year in which they are expected to be carried out. The prioritization must account for SGR policies and strategies, as well as funding levels and the value of needed investments.

GAO's review of existing practices indicated that, at least among larger transit providers, staff already conduct some form of this analysis when making investment decisions, but to varying degrees and not necessarily in a way that conforms to the proposed requirements. Smaller transit providers may have less in the way of formal analytical tools for prioritizing projects and for incorporating asset condition information into this process. Estimates for this component generally assume that larger agencies would be expanding and strengthening their existing activities, while smaller agencies may be essentially starting from scratch or from more informal processes.

Transit providers have a number of options for developing a system that would satisfy the proposed requirements of the TAM plan. Some may choose to purchase commercial software specifically designed for enterprise asset management; these can include packages that combine asset management with software tools for other functions, such as maintenance and scheduling. Others may develop their own tools in-house, for example using a custom Excel workbook to incorporate asset-condition information and other asset-management considerations into project prioritization. The in-house development option is used here for cost-estimation purposes, though some providers may find it more cost-effective to purchase software.

There are also free and low-cost software packages available for agencies to adapt to their needs, including the TERM-Lite tool from FTA, available free of charge. The TCRP also has a free tool composed of four spreadsheet models entitled the Transit Asset Prioritization Tool (TAPT). This tool ''is designed to assist transit agencies in predicting the future conditions of their assets, and in prioritizing asset rehabilitation and replacement.'' [36] Such a tool would be particularly useful for smaller providers.

The following, is a detailed accounting of incremental costs by provider type.

Tier I Providers

The resources required to implement the analytical processes would vary significantly across transit providers, based on the size and complexity of their asset portfolios and the strength of their current practices. As an overall average based on interviews and past pilot projects, FTA estimates that a transit provider would spend the equivalent of 520 person-hours for strengthening its analytical and decision-support tools and processes (or alternatively, purchasing or learning a ready-made software tool for an equivalent sum). FTA assumes that this task would be completed by the aforementioned buyer or purchasing agent at a loaded wage rate of $45.15. Multiplying the hours required, by the number of transit providers, by the wage rate leads to a total initial cost of $6.66 million.

Once the initial investment is made in the analytical and decision-support tools and processes, maintaining and updating those processes is estimated to take the equivalent of 208 hours per year on average. The same buyer or purchasing agent is assumed to conduct these recurring updates at the $45.15 wage rate. Multiplying the recurring hours required, by the number of agencies, by the wage rate leads to a total recurring cost of $2.66 million.

Tier II Providers

Tier II providers have smaller vehicle fleets and no rail fixed-guideway service, removing some of the complexities in project prioritization that tier I providers face, but they also tend to have fewer existing formal processes in this area. In order to implement the analytical processes, FTA estimates that providers would spend the equivalent of 520 person-hours on average developing their analytical and decision-support tools or processes (or alternatively, purchasing or learning a ready-made software tool for an equivalent sum) for each individual TAM plan or group TAM plan. FTA assumes this task would be completed by a business operations specialist at a loaded wage rate of $41.98. Multiplying the hours required, by the estimated number of individual and group plans created, by the wage rate leads to a total initial cost of $16.46 million.

Once the initial system investment is made, maintaining and updating the analytical processes is estimated to take the equivalent of 104 hours per year. This is half of the assumed time needed for tier I providers because of the comparative simplicity of the systems overseen by tier II providers. The same business operations specialist is assumed to conduct these recurring updates at the $41.98 wage rate. Multiplying the recurring hours required, by the estimated number of individual and group plans created, by the wage rate leads to a total recurring cost of $3.29 million.

The table below represents the calculations described above for tiers I and II as the low case. The high case was calculated in the same manner with the exception that labor costs were doubled as described above.

[36] Schwager, Dianne. Transit Cooperative Research Program Report 172: Guidance for Developing a Transit Asset Management Program. Sponsored by the Federal Transit Administration. 2014. *http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_172.pdf.*

TABLE 6—INITIAL AND RECURRING COSTS FOR THE ANALYTICAL PROCESSES

Agency size	Low case		High case	
	Initial 2-year period	Annually recurring	Initial 2-year period	Annually recurring
Tier I	$6,658,417	$2,663,367	$13,316,834	$5,326,733
Tier II	16,459,362	3,291,872	32,918,723	6,583,745
Total	23,117,778	5,955,239	46,235,557	11,910,478

(4) Prioritized Project List

Under the final rule, transit providers are required to develop a list of projects from the investment prioritization process described above. The list must include projects for which funding would be sought under the section 5337 SGR Formula Program. While it is known that agencies generally have a method of determining which projects they would need to invest in next—and many large, multi-modal agencies often have sophisticated, multi-year planning tools—the level of detail and process involved in updating the list is unknown. Following is a detailed accounting of incremental costs by provider type.

Tier I Providers

The large tier I providers in this category tend to have existing processes for generating prioritized project lists based on scenario analysis.[37] However, for some transit providers, additional effort may be needed to develop a project list that reflects the requirements of the rule. While there is less case-study information on the practices of medium-sized tier I providers, most are believed to have existing processes for developing prioritized project lists. To align this process with the requirements of the rule, FTA estimates that transit providers would spend an average of 96 hours above their current baseline in creating the prioritized project list. FTA assumes this task would be completed by the aforementioned buyer or purchasing agent (in coordination with other staff) at a loaded wage rate of $45.15. Multiplying the hours required, by the number of agencies, by the wage rate leads to a total initial cost of $1.23 million.

Once the initial project list is created, maintaining and updating the list is estimated to take 36 hours per year. The same buyer or purchasing agent is assumed to conduct these recurring updates at the $45.15 wage rate. Multiplying the recurring hours required, by the number of agencies, by the wage rate leads to a total recurring cost of $0.46 million.

Tier II Providers

As with larger transit providers, smaller transit providers generally have some form of an existing process for developing a prioritized project plan, but are assumed to require time above their current baseline to make this process consistent with the proposed TAM requirements. FTA estimates that each tier II provider developing a TAM plan, along with each group TAM plan sponsor would spend an average of 96 hours creating their prioritized project list. FTA assumes this task would be completed by the business operations specialist (in coordination with other staff) at a loaded wage rate of $41.98. Multiplying the hours required, by the estimated number of individual and group plans, by the wage rate leads to a total initial cost of $3.04 million.

Once the initial project list is created, maintaining and updating the list is estimated to take 24 hours per year. The same business operations specialist is assumed to conduct these recurring updates at the $41.98 wage rate. Multiplying the recurring hours required, by the estimated number of individual and group TAM plans, by the wage rate leads to a total recurring cost of $0.76 million.

The table below represents the calculations described above for tiers I and II as the low case. The high case was calculated in the same manner with the exception that labor costs were doubled as described above.

TABLE 7—INITIAL AND RECURRING COSTS FOR THE PRIORITIZED PROJECT LIST

Agency size	Low case		High case	
	Initial 2-year period	Annually recurring	Initial 2-year period	Annually recurring
Tier I	$1,229,246	$460,967	$2,458,492	$921,935
Tier II	3,038,651	759,663	6,077,303	1,519,326
Total	4,267,898	1,220,630	8,535,795	2,441,260

(5) Plan Strategy

Under the final rule, tier I transit providers are required to develop TAM and SGR policies and strategies. This includes a description of key TAM activities spanning the time horizon of the plan, a specification of the resources needed to develop and implement the plan, and an outline of how the plan and related business practices would be updated over time.

These components are optional for tier II providers. Following, is a detailed accounting of incremental costs by provider type.

Tier I Providers

FTA estimates that these providers would spend an average of 96 hours developing the elements of the plan strategy above what they are currently doing in this area. Because this component deals with high level strategy, FTA assumes this planning

[37] FTA, *Transit Asset Management Practices: A National and International Review,* June 2010.

task will be completed by a general operations manager at a loaded wage rate of $87.14. Multiplying the hours required, by the number of providers, by the wage rate leads to a total initial cost of $2.37 million.

Every four years, providers would need to update their strategy document based on recent and planned activities and other developments. FTA estimates that this document update would require an average of 80 hours of incremental staff time. The same operations manager is assumed to conduct these recurring updates at the $87.14 wage rate. Multiplying the recurring hours required, by the number of providers, by the wage rate leads to a total four-year recurring cost of $1.98 million.

Tier II Providers

There are no initial or recurring costs for this aspect of the TAM plan because tier II providers may opt out of completing these requirements, whether they develop their own TAM plan or participate in a group TAM plan.

The table below represents the calculations described above for tiers I and II as the low case. The high case was calculated in the same manner with the exception that labor costs were doubled as described above.

TABLE 8—INITIAL AND RECURRING COSTS FOR THE PLAN STRATEGY

Agency size	Low case		High case	
	Initial 2-year period	Quadrennially recurring	Initial 2-year period	Quadrennially recurring
Tier I	$2,372,691	$1,977,243	$4,745,383	$3,954,486
Tier II	0	0	0	0
Total	2,372,691	1,977,243	4,745,383	3,954,486

(6) Performance Measures and Targets

In addition to the TAM plan, under the final rule transit providers are required to use performance measures to set targets for capital assets. Transit providers need to use their asset condition assessments to determine the percentage of their assets that meet specified performance standards. Based on these performance measures and available funding, transit providers are required to develop annual SGR performance targets that align with their TAM plan priorities. With the exception of a few transit providers profiled in more depth by GAO reports, it is unknown to what extent agencies are currently monitoring performance or whether their existing metrics and targets would meet the requirements of this section.

Transit providers have a number of resources to draw on in developing their measures and targets, including FTA publications [38] and TCRP Report 172.[39] Nonetheless, some compliance costs are assumed to be necessary to adapt this guidance to the details of each transit provider's assets, operating environment, and strategies. Setting performance measures and targets should be more straightforward for tier II providers, which are smaller and do not have the complexities associated with rail fixed-guideway elements. Following, is a detailed accounting of costs by provider type.

Tier I Providers

FTA's 2010 review of practices found that many large transit providers have existing performance measures for asset management. However, practices vary, and some transit providers would need additional work to comply with the proposed provisions. Compared to the largest tier I providers, medium-sized tier I providers have less complex asset portfolios, but also may have less in the way of existing activities for performance measures. Overall, based on information from interviews, FTA estimates that transit providers would spend an average of 208 hours developing their performance measures and targets. FTA assumes this task would be completed by the aforementioned operations manager at a loaded wage rate of $87.14. Multiplying the hours required, by the number of transit providers, by the wage rate leads to a total initial cost of $5.14 million.

Once the initial measures and targets are developed, FTA estimates that reviewing and updating them annually would take the equivalent of 36 hours per year on average. The same operations manager is assumed to conduct these recurring updates at the $87.14 wage rate. Multiplying the recurring hours required, by the number of transit providers, by the wage rate leads to a total recurring cost of $0.89 million.

Tier II Providers

Tier II providers do not have the complexities associated with developing performance measures for rail fixed-guideway transit. FTA estimates that tier II providers developing their own TAM plan and group TAM plan sponsors would each spend an average of 80 hours developing the performance measures and targets. FTA assumes this task would be completed by the operations manager at a loaded wage rate of $76.99. Multiplying the hours required, by the estimated number of individual and group plans, by the wage rate leads to a total initial cost of $4.64 million.

Once the initial measures and targets are developed, FTA estimates that reviewing and updating them annually would take the equivalent of 24 hours per year on average. FTA assumes the same operations manager will conduct these recurring updates at the $76.99 wage rate. Multiplying the recurring hours required, by the estimated number of individual and group plans, by the wage rate leads to a total recurring cost of $1.39 million.

The table below represents the calculations described above for tiers I and II as the low case. The high case was calculated in the same manner with the exception that labor costs were doubled as described above.

[38] *http://www.fta.dot.gov/documents/FTA_Report_No._0027.pdf.*

[39] TCRP Report 172 is available at *http://www.tcrponline.org/PDFDocuments/tcrp_rpt_172.pdf.*

TABLE 9—INITIAL AND RECURRING COSTS FOR THE PERFORMANCE MEASURES AND TARGETS

Agency size	Low case		High case	
	Initial 2-year period	Annually recurring	Initial 2-year period	Annually recurring
Tier I	$5,140,832	$889,759	$10,281,663	$1,779,519
Tier II	4,643,796	1,393,139	9,287,591	2,786,277
Total	9,784,627	2,282,898	19,569,254	4,565,796

(7) Data and Narrative Reporting to NTD

Under the final rule, transit providers are required to submit an annual data report to the NTD, which reflects the SGR performance targets for the following year and assessment of the condition of the transit provider's transit system. Additionally, transit providers are required to submit an annual narrative report to the NTD that provides a description of any change in the condition of its transit system from the previous year and describes the progress made during the year to meet the targets previously set for that year. FTA estimated costs for the new reporting to the NTD based on a pilot program with seven rail transit providers. Based on internal FTA reports, it is expected that the reporting requires a transit provider's staff time that is equivalent to 0.16 hours per revenue vehicle initial and 0.08 hours per vehicle in subsequent years. (For simplicity these figures are expressed in terms of hours per vehicle, but include time required for reporting on other assets such as stations and facilities. FTA's pilot program also used an alternative methodology based on the time required per data field submitted, which yielded nearly identical results.) These estimated labor-hour requirements have been applied in the calculations below. The calculations also include the estimated time required for the narrative report, which was not included in FTA's pilot program or earlier estimates.

Tier I Providers

With a total of 116,472 revenue vehicles and FTA's estimate of 0.16 reporting hours per vehicle, FTA estimates that these providers collectively require a total of 18,636 hours for their initial reporting to the NTD under the rule. Multiplied by the loaded wage rate of $47.95 for a Business Operations Specialist, the total cost is approximately $0.89 million for tier I providers. The narrative report is separately estimated to require 24 labor hours per provider to develop and submit, including 22 hours for a Business Operations Specialist (loaded wage rate $47.92) and 2 hours for managerial review of the document by a general operations manager (loaded wage rate $87.14). Across the 284 agencies in this group, the total cost is approximately $0.35 million.

Once the initial report and template are created, FTA estimates that updating the data reports annually would take the equivalent of 9,318 hours per year, based on FTA's estimate of 0.08 hours per revenue vehicle and 116,472 vehicles. At a loaded wage rate of $47.95 for a Business Operations Specialist, the total cost is approximately $0.45 million. Updating the narrative report is estimated to require an additional 20 hours per year (18 hours for preparation by a Business Operations Specialist and 2 hours for review by the general operations manager). Multiplying the respective hours required, by the number of transit providers, by the wage rates leads to a total recurring cost of $0.29 million.

Tier II Providers

With an estimated total of 62,858 revenue vehicles and FTA's estimate of 0.16 reporting hours per vehicle, FTA estimates that collectively these providers require a total of 10,057 hours for their initial reporting to the NTD under the rule. Multiplied by the loaded wage rate of $41.98 for a Business Operations Specialist, the total cost is approximately $0.42 million. The narrative report is separately estimated to require 16 labor hours per TAM plan (individual or group TAM plan) to develop and submit, including 14 hours for a Business Operations Specialist (loaded wage rate $41.98) and 2 hours for managerial review of the document by a general operations manager (loaded wage rate $76.99). Across the 754 individual and group tier II TAM plans, the total cost is approximately $0.56 million.

Once the initial report and template are created, FTA estimates that updating the data report annually would take the equivalent of 5,029 hours per year, based on FTA's estimate of 0.08 hours per revenue vehicle and 62,858 vehicles. At a loaded wage rate of $41.98 for a Business Operations Specialist, the total cost is approximately $0.21 million. Updating the narrative report is estimated to require an additional 8 hours per year (6 hours for preparation by a Business Operations Specialist and 2 hours for general operations manager review). Multiplying the respective hours required, by the number of transit providers, by the wage rates leads to a total recurring cost of $0.31 million.

TABLE 10—INITIAL AND RECURRING COSTS FOR THE DATA AND NARRATIVE REPORTING TO NTD

Agency size	Low case		High case	
	Initial 2-year period	Annually recurring	Initial 2-year period	Annually recurring
Tier I	$1,242,310	$741,078	$2,484,619	$1,482,156
Tier II	981,432	517,111	1,962,864	1,034,222
Total	2,223,742	1,258,189	4,447,484	2,516,378

(8) State and MPO Target Setting

Under the performance management framework established by MAP–21, States, MPOs, and transit providers must establish targets in key national performance areas to document expectations for future performance. In accordance with 49 U.S.C. 5303(h)(2)(B)(ii) and 5304(d)(2)(B)(ii), States and MPOs must coordinate the selection of their performance targets, to the maximum extent practicable, with performance targets set by transit providers under 49 U.S.C. 5326 (transit asset management) and 49 U.S.C. 5329 (safety), to ensure consistency.

In the Joint FTA and FHWA Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning (Joint Planning) NPRM, both agencies indicated that their performance-related rules would implement the basic elements of a performance management framework, including the establishment of measures and associated target setting. Because the performance-related rules implement these elements and the difficulty in estimating costs of target setting associated with unknown measures, the Joint Planning NPRM did not assess these costs. Rather, FTA and FHWA proposed that the costs associated with target setting at every level would be captured in each provider's respective ''performance management'' rules. For example, FHWA's second performance management rule NPRM, published after the joint planning NPRM, assumes that the incremental costs to States and MPOs for establishing performance targets reflect the incremental wage costs for an operations manager and a statistician to analyze performance-related data.

The RIA that accompanies the forthcoming Joint Planning final rule captures the costs of the effort by States, MPOs, and transit providers to coordinate in the setting of State and MPO transit performance targets for state of good repair and safety. FTA believes that the cost to MPOs and States to set transit performance targets is included within the costs of coordination.

(9) Other Costs

In addition to the costs estimated in the subsections above, the final rule also entails costs for FTA to provide technical assistance to support the transit industry in implementing the new requirements, and for internal costs associated with training for FTA employees who work with the new TAM system. FTA estimates that the agency could incur an annual cost of $2 million to develop and provide guidance and training, as well staff for program management. This is based on current FTA costs for research, stakeholder outreach and staffing costs since the MAP–21 Reauthorization Act. It is likely that the FTA costs may decline over time as the program matures and asset management becomes an integral part of transit agencies' project prioritization practice. FTA assumes that after the first five years, the costs would fall to $1.5 million and then $1 million after 10 years and to $0.5 million after fifteen years.

Another cost area is for coordination necessary to develop group TAM plans. For example, group TAM plan sponsors and their participating providers may need to hold meetings or conference calls to collect data, test a software tool, or more generally to coordinate efforts to develop plans for the smaller agencies. For estimation purposes, this coordination is assumed to require a mix of transit provider staff and managerial oversight. For each of the estimated 264 group TAM plans, FTA assumes that coordination would require 120 hours of staff time (business operations specialist, loaded wage rate $41.98) and 40 hours of management time (general operations manager, loaded wage rate $76.99) per transit provider. This yields a total annual coordination cost of approximately $2.1 million.

Transit providers are required to keep records of its TAM plan development for at least one cycle of plan development which covers four years. FTA assumes that the tier I providers may spend approximately 80 hours every four years to coordinate the collection and formatting of the data for record keeping purposes. Using the business operations specialists loaded wage rate, the cost of recordkeeping for tier I providers would be $1.1 million every four years. For the tier II providers, FTA assumes that the group plan developers would retain the records on behalf of the small transit agencies. The level of effort for record keeping would be lower at 40 hours per plan cycle, since the coordination cost of gathering the relevant cost is already accounted for. Using the business operations specialist loaded wage rate $41.98, the total cost for recordkeeping for tier II providers would be $1.3 million for every plan cycle. Therefore, the total cost for recordkeeping would be $2.4 million.

A final cost area is related to the information technology (IT) costs associated with establishing an asset management system. The TAM requirements are intended to be technology-neutral, and no specific hardware or software is required. However, FTA is aware that some agencies may need to make IT investments to support their implementation of TAM, such as asset management software or handheld computers. The nature and size of these expenditures will vary by agency, and some agencies may not require IT investments. An assumed figure of $5,000 per TAM plan (individual plan or group plan) is used as an overall average. This equates to approximately $1.42 million for tier I providers ($5,000 multiplied by the 284 estimated plans) and $3.77 million for tier II providers ($5,000 multiplied by the 754 estimated plans, which is 490 individual plans and 264 group plans).

Cost Summary

The costs estimated in the subsections above are based on best estimates of the required labor hours and other costs of implementing the required components of the National TAM System available to the FTA. They are inherently imprecise given the lack of consistent data on existing industry practices, and the variability in costs across agencies due to different labor rates, system sizes and complexities, and other factors. Indeed, even among agencies that have already implemented TAM plans, little information exists on the total costs of implementation due to limited recordkeeping on internal labor costs.

One means of providing an external check on the reasonableness of the cost estimates is to compare estimates from the model used here against known TAM projects. For example, for a small tier I transit provider with an asset profile of 10 revenue vehicles and one maintenance facility, the model would predict TAM implementation costs of roughly $42,535 initial (over a period of two years, and thus roughly $21,000 per year) and $9,856 per year thereafter in the lower cost (in-house) case or roughly double for the higher-cost contractor case (see Table 11 below). The figures would be lower if this agency elected to participate in a group TAM plan, as certain fixed costs could be spread across multiple agencies. In addition, the incremental cost now assumed for inventory database development is unlikely to be an issue for an agency operating 10 vehicles and they may not incur extra IT costs, as those are attributed to the group plan sponsor. Making an allowance for these costs, the small agency cost could be as low as around $21,000 upfront. By comparison, in fiscal year 2010, FTA made SGR grants to small transit providers in

California and Washington to implement asset management systems; the Federal share of these grants were in the range of $16,000 to $17,000 for agencies that were similar to, or slightly smaller than, the example used here. The general correspondence between model results and actual grant levels for asset management systems suggests that the cost model is producing results that are consistent with the limited real-world experience, at least for smaller agencies. For larger transit providers, actual versus predicted costs may vary more significantly due to differences in existing practices. Information from past grants may not provide a clear picture, and they might face little to no incremental costs from the rule because their existing practices generally meet or exceed the proposed TAM requirements.

The table below represents the calculations described above for the low case along with illustrative examples of three other agency types: A comparatively larger tier II agency with 80 revenue vehicles, a mid-size tier I agency with 500 revenue vehicles, and a large tier I agency with 2,500 revenue vehicles.

TABLE 11—ESTIMATION OF INITIAL TAM COSTS FOR ILLUSTRATIVE TRANSIT PROVIDERS

	Mid-size tier I agency	Larger tier I agency	Small tier II agency	Larger tier II agency
Revenue Vehicles	500	2,500	10	80
Number of Stations	50	200	0	2
Low Case—Initial 2-Year Period Cost	$109,312	$234,477	$42,535	$44,331
Low Case—Annually Recurring Cost	$45,979	$127,320	$9,856	$11,071
High Case—Initial 2-Year Period Cost	$213,624	$463,955	$80,070	$83,662
High Case—Annually Recurring Cost	$91,958	$254,640	$19,712	$22,141

Table 12 below shows the total estimated costs for TAM activities under the rule for the low case, aggregated by provider size and separated by initial and recurring costs. Note that TAM-related implementation costs for capital investments are unknown; this category represents the capital and maintenance projects that agencies would undertake as a result of their TAM analysis. FTA could not estimate this category due to data limitations. However, FTA believes that these implementation actions would result in zero or negative net costs over the life of the asset (*i.e.* lifecycle cost savings) compared to a baseline of actions unsupported by TAM analysis where avoided regular timely expenditures may result in higher repair or rehabilitation costs later in the life of the asset, because TAM activities provide insight into prioritization decisions. Table 13 shows the total estimated costs for TAM activities under the rule for the high cost case of contracting out the work.

TABLE 12—SUMMARY OF AGENCY COSTS BY GROUP FOR LOW CASE

Agency size	Initial 2-year period	Annually recurring	Triennially recurring	Quadrennially recurring	TAM-related capital investment costs
Tier I	$24,449,578	$8,467,587	$1,907,262	$3,065,328	Unknown.
Tier II		9,923,220	1,012,726		Unknown.
FTA Cost	4,000,000	2,000,000, then lower over time.	0	0	$0.
	62,073,251	20,390,807	2,919,988	4,331,433	Unknown.

TABLE 13—SUMMARY OF AGENCY COSTS BY GROUP FOR HIGH COST CASE

Agency size	Initial 2-year period	Annually recurring	Triennially recurring	Quadrennially recurring	TAM-related capital investment costs
Tier I	$47,481,030	$16,935,174	$3,814,525	$6,130,656	Unknown.
Tier II	63,477,346	19,846,440	2,025,452	2,532,209	Unknown.
FTA Cost	4,000,000	2,000,000, then lower over time.	0	0	$0
Total	114,958,376	38,781,614	5,839,977	8,662,866	Unknown.

Table 14 below shows the total quantified costs and the present value of the rule over the 20-year analysis period, including tier II group TAM plan coordination costs. For the purposes of this analysis, 2015 serves as the discounting base year and dollar figures appear as 2015 dollars. For the low cost case, the annualized cost of the rule is $23.2 million (at the 7% rate) and $22.8 million (at the 3% rate). For the high cost case, the annualized cost of the rule is $44.5 million (at the 7% rate) and $43.8 million (at the 3% rate).

TABLE 14—SUMMARY OF QUANTIFIED UNDISCOUNTED AND DISCOUNTED COSTS 2016–2035

[Millions]

Year	Low case			High case		
	Undiscounted	Discounted (7%)	Discounted (3%)	Undiscounted	Discounted (7%)	Discounted (3%)
2016	$31.0	$29.0	$30.1	$57.5	$53.7	$55.8
2017	31.0	27.1	29.3	57.5	50.2	54.2
2018	20.4	16.6	18.7	38.8	31.7	35.5
2019	20.4	15.6	18.1	38.8	29.6	34.5
2020	23.3	16.6	20.1	44.6	31.8	38.5
2021	24.2	16.1	20.3	46.9	31.3	39.3
2022	19.9	12.4	16.2	38.3	23.8	31.1
2023	22.8	13.3	18.0	44.1	25.7	34.8
2024	19.9	10.8	15.2	38.3	20.8	29.3
2025	24.2	12.3	18.0	46.9	23.9	34.9
2026	22.3	10.6	16.1	43.6	20.7	31.5
2027	19.4	8.6	13.6	37.8	16.8	26.5
2028	19.4	8.0	13.2	37.8	15.7	25.7
2029	26.6	10.3	17.6	52.3	20.3	34.6
2030	19.4	7.0	12.4	37.8	13.7	24.3
2031	18.9	6.4	11.8	37.3	12.6	23.2
2032	21.8	6.9	13.2	43.1	13.7	26.1
2033	23.2	6.9	13.6	45.9	13.6	27.0
2034	18.9	5.2	10.8	37.3	10.3	21.3
2035	21.8	5.6	12.1	43.1	11.1	23.9
Total	449.0	245.5	338.4	867.7	470.9	652.0

Benefits

As noted above, FTA research, the academic literature, and external reviews from organizations such as GAO have documented a strong case for the value of asset management programs for capital-intensive public agencies in general, including transit agencies. Asset management programs have been described as leading to the following outcomes and benefits:

(1) Improved transparency and accountability from the use of systematic practices in tracking asset conditions and performance measures. In turn, this can lead to improved relationships with regulators, funding agencies, taxpayers and other external stakeholders, as well as improved internal communications and decision-making. While difficult to quantify or monetize, these impacts are sometimes described as some of the most important benefits from asset management because they relate to stewardship of public resources and the effective delivery of services.

(2) Optimized capital investment and maintenance decisions, leading to overall life-cycle cost savings (or alternatively, greater value for dollars spent).

(3) More data-driven maintenance decisions, leading to greater effectiveness of maintenance spending and a reduction in unplanned mechanical breakdowns and guideway deficiencies. These impacts can be considered as two distinct benefit areas: travel time savings for passengers in terms of fewer canceled trips and fewer speed restrictions on tracks, and savings for the transit provider in unplanned maintenance and repair.

(4) Finally, potential safety benefits, in that greater effectiveness of dollars spent on maintenance can lead to improved vehicle and track condition and fewer safety hazards, and thus reduced injuries and fatalities related to incidents for which maintenance issues or poor conditions were a contributing factor.

These benefits have been presented by GAO and others almost exclusively in qualitative terms, presenting a challenge for estimating the quantitative benefits of this rule. Accordingly, a review of the academic literature in this area revealed few studies that attempted to quantify the benefits of transit asset management programs, as distinct from provider-specific implementation details or descriptions of best practices. Within the trade literature, one recent case study from the Bi-State Development Agency (St. Louis) presents results from a transit asset management program that has altered bus maintenance and replacement practices. The results include an increased ''mean time between failures'' for its bus fleet from 3,400 miles in 2000 to 22,000 in 2014, and bus lifespan targets that have gone from 12 years/600,000 miles to 15 years/825,000 miles. These outcomes are the equivalent of a roughly 85% decrease in the failure rate and a 25% increase in bus longevity (with associated capital cost savings).[40] Some of the practices that Bi-State put into place were (1) no longer performing major engine overhauls during the period right before a bus was to be retired from service, (2) making investments earlier in bus lifecycles, and (3) replacing key vehicles components proactively based on their average lifespans, rather than waiting for them to fail, which is more costly. Future plans include a condition-based (rather than mileage-based) assessment at the major component level. These actions all go beyond what is required by the TAM rule, but provide a useful real-world illustration of the point that the implementing actions associated with an asset management program are not additional costs but instead opportunities for significant lifecycle cost savings.

Case studies of this type provide compelling evidence of the benefits of transit asset management, though by their nature they make it difficult to control for exogenous factors and other initiatives implemented by the transit provider at the same time. Beyond these case studies, there is little to no hard data on the impacts of asset management on ultimate outcomes such as service quality, reliability, and ridership, which would also influence benefit estimates. Indeed, one recent

[40] Harnack, Leah. ''Transit as an Economic Driver,'' *Mass Transit,* December 2014–January 2015, 10–15.

academic review of the literature in this field noted that ''efforts to quantify benefits of transit state of good repair have generally stopped short of linking asset condition with user impacts or ridership.'' [41] This is an unsurprising result given the relatively short period of time in which transit asset management practices have been studied.

The literature on asset management for highway investments and pavement management is more mature and includes a few examples of quantified benefits. Many state DOTs use a quantitative model of highway system condition to forecast pavement deterioration. These systems allow planners to allocate funds in the most efficient way among capital and maintenance projects on the highway network to achieve the lowest overall lifecycle costs. A before-and-after study of the Iowa Department of Transportation's adoption of such a pavement management tool found that the system improved project selection, ultimately leading to benefits in the form of better pavement conditions on the roadway network for the same expenditure level. The value of the improved pavement condition was equivalent to roughly 3% of total construction spending during the 5-year ''after'' period studied.[42] A similar analysis with data from the Arizona Department of Transportation's pavement management program found that the asset management approach had improved pavement longevity by about 13.5%, with concomitant savings in the pavement budget.[43] While useful as benchmarks, the extent to which these findings are applicable to transit agencies is unclear, since transit agencies' key assets are vehicles, facilities, and guideway rather than pavement, and thus may exhibit different characteristics. However, the voluntary use of asset management programs by for-profit entities, such as utility companies and freight railroads, also strongly suggests that asset management programs allow the efficient selection of capital and maintenance projects that yield cost savings, at least over the longer term, that exceed the implementation costs of the asset management effort.[44]

Since FTA does not have a study on which to estimate the potential benefits of adopting asset management by transit providers, FTA employed a threshold analysis focused on areas where asset management is likely to have an impact by improving decision-making and targeting investments to achieve the highest return on the dollars invested. By implementing the requirements of the TAM rule, providers would develop policies and plans that direct funds toward investments to meet the goal of maximizing the lifespan of assets with timely rehabilitation and maintenance activities. These activities have the potential to reduce the rate of mechanical failures experienced by the transit industry. In 2013, transit agencies in urbanized areas reported to the NTD a total of 524,629 mechanical failures in revenue service, which collectively required an estimated 64.3 million hours of labor for inspection and maintenance.[45] At a loaded wage rate of $35.52 per hour (BLS, vehicle and equipment mechanics, interurban and rural bus transport), this equates to annual spending of just under $2.3 billion on unplanned mechanical breakdowns across the industry, in addition to the value of travel time delays that passengers experience during a breakdown.

Reducing the mechanical failures by just over 5,300 incidents (1.02 percent) through TAM-supported improvements in project selection would create maintenance cost savings that equal the subset of the rule's cost that FTA monetized ($23.2 million). (The threshold would be roughly 1.95% in the higher cost case using higher labor costs for contractor support.) In addition to the savings in maintenance expenditures, reduced mechanical failures also would reduce the delays in service, increasing reliability of transit services and yielding travel time savings.

FTA expects that the rule's requirements will significantly reduce potential safety risks, as assets are better maintained and likely to reduce safety hazards due the asset condition, as noted in the nexus between asset condition and safety in this final rule. In addition, transit asset management practices as outlined in the final rule identify list of projects that better serve the performance goals of FTA and the industry to improve safety, asset condition and system performance by allowing for improved cross-functional decision-making.

The requirements of this final rule will generate data for transit agencies to analyze over time showing trends in condition and performance, enabling them to better understand the relationship between their actions (expenditures) and outcomes (asset condition, safety, operations). Transit providers will select investments to meet their stated goals and targets. If the transit provider cannot meet the stated goals, it can explore the potential reasons for the gap between the actual performance and targeted performance. This may lead the transit provider to collect additional data, such as the cost of projects, with the intention of better understanding the underlying causes of why it is unable to attain the stated goal. Based on this analysis the transit provider may adjust the target, reprioritize its investments or make other changes in its processes to gain efficiencies. Through this asset management process of planning, executing, re-evaluating and revising, a transit provider can identify economies and best practices that result in better use of resources and improve performance. The performance targets may be achieved through increased efficiencies or shift in funding priorities. The transit asset management process can also help transit providers develop better estimates of its' systems needs to meet established targets.

In addition, the TAM plan will make a transit provider's policies, goals and performance targets, more transparent to the public and the legislative decision-makers. The performance reports required under this final rule show how well the agencies are performing against their established targets. Through increased transparency and accountability, it may be possible to make a better case for increased funding, resulting in improved performance over time and reducing the SGR backlog that has accumulated over the years.

Other Impacts

In 2012, $16.8 billion of capital expenditures were incurred by the transit agencies. As noted above, there is an estimated $85.9 billion transit SGR backlog. Given the size of capital expenditures, the size of the SGR backlog, and the potential benefits of adopting transit asset management systems and creating TAM plans, it is likely that economic impacts in excess

[41] Patterson, L. and D. Vautin. ''Evaluating User Benefits and Cost-Effectiveness for Public Transit State of Good Repair Investments,'' Transportation Research Board 94th Annual Meeting (2015).

[42] Smadi, O. ''Quantifying the Benefits of Pavement Management,'' 6th International Conference on Managing Pavements (2004).

[43] Hudson, W.R., et al. ''Measurable Benefits Obtained from Pavement Management,'' 5th International Conference on Managing Pavements (2001).

[44] See, for example, private sector case studies at *http://www.twpl.com/?page=CaseStudies.*

[45] The 2013 NTD data do not provide total hours for inspection and maintenance, only the number of mechanical failures. This analysis applies the average number of hours per failure from the most recent year for which both those data points are available (2007).

of $100 million in a year could result from this final rule. However, FTA has no information on which to estimate the size of these impacts. As noted above, FTA believes that investing funds to improve the state of good repair of capital assets have important benefits. Experience of adopting asset management systems in capital intensive industries has demonstrated that significant gains over time are possible.

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 requirements of this final rule on small entities, and has determined that the rule may have a significant economic impact on a substantial number of small entities.

The rule would impact roughly 2,700 small entities, most of whom are small government entities and small non-profit organizations that operate public transit services in non-urbanized areas. Compliance costs would vary according to provider size and complexity and the extent of current asset management practices. Costs are illustrated by an example calculation for a transit provider with 10 vehicles, for which compliance costs were estimated at $42,535 (over two years) for initial implementation and $9,816 per year for updates and reporting (from Table 11 example above). Over a period of years, this would represent a small share (less than 1%) of the operating budget that would be typical for a transit provider of that size. However, under the final rule, small entities who met the criteria for tier II designation and subrecipients under the Rural Area Formula Program, could participate in a group TAM plan sponsored by their State DOT or direct recipient. This would allow for some of the costs of implementation (such as developing analytical tools, prioritization project list, target setting and performance measures) to be borne by the group TAM plan sponsor or spread across a larger number of entities, reducing the cost for each.

Overall, while the rule would impact a substantial number of small entities, these effects would not be significant due to the low magnitude of the costs and the potential for offsetting benefits. Moreover, FTA has designed the rule to allow flexibility for small entities, including exemption from certain requirements and the option to participate in a group TAM plan. In addition, transit agencies would also see benefits from improved data-driven decision-making, including qualitative benefits to transparency and accountability and the potential for direct cost savings in maintenance and life-cycle costs of asset ownership.

Unfunded Mandates Reform Act of 1995

This rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 109 Stat. 48). Under FTA's grant programs, the development of a TAM plan is eligible for funding as a planning or administrative expense, or capital expense under the SGR Grant Program authorized at 49 U.S.C. 5337.

Executive Order 13132 (Federalism)

This rulemaking has been analyzed in accordance with the principles and criteria established by Executive Order 13132 (Aug. 4, 1999). FTA has determined that the action does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this action does 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 final rule on State and local governments and has determined that the collection and analysis of the data are eligible for Federal funding under FTA's grant programs.

Executive Order 12372 (Intergovernmental Review)

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

Executive Order 13653

Preparing the United States for the Impacts of Climate Change, declares a policy that the Federal government must build on recent progress and pursue new strategies to improve the Nation's preparedness and resilience. The executive order directs Federal agencies to support climate-resilient investment, in part by identifying ''opportunities to support and encourage smarter, more climate-resilient investments by states, local communities and tribes, including by providing incentives through agency guidance, grants, technical assistance performance measures, safety consideration and other programs.'' This rulemaking does not incorporate risk analysis as part of transit asset management. However, FTA does address the requirements of 1315(b) of MAP–21, in the Emergency Relief Program rule at 49 CFR part 602, by requiring transit agencies to evaluate reasonable alternatives, including change of location and addition of resilience/mitigation elements, for any damaged transit facility that has been previously repaired or reconstructed as a result of an emergency or major disaster. FTA also encourages transit providers to consider climate change resiliency in developing the investment prioritization in their TAM plan.

Paperwork Reduction Act (PRA)

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 final rule entails collection of information to implement the transit asset management requirements of 49 U.S.C. 5326. Specifically, a transit provider subject to the rule would do the following: (1) Develop and implement a TAM plan; (2) set performance targets; (3) submit an annual narrative and data report to the NTD; and (4) maintain required records.

Please note, the information provided below pertains to the requirements for the National TAM System final rule. This collection approval does not cover the proposed amendments to regulations for FTA's NTD at 49 CFR part 630, to conform to the reporting requirements for the National TAM System final rule. The amendments to the NTD are covered by a separate NTD Paperwork Reduction Act Justification Statement.

Respondents: Recipients and subrecipients of Chapter 53 funds that own, operate, or manage public transportation systems, including 284 tier I providers and roughly 2,714 tier II providers, or States or direct recipients that sponsor group TAM plans.

Estimated Annual Burden on Respondents

Tier I Providers—The initial costs for establishing new processes for collecting asset condition data; developing analytical processes, performance measures and targets; and reporting would be higher than the subsequent annual, triennial and quadrennial updates and would be incurred over a period of two years. The initial hours of burden for tier I providers are expected to be 431,424 hours in total for 284 transit providers, averaging to just over 1,519 hours per provider. The annual average recurring burden is 200,015 hours, averaging at 704 hours per transit provider. For the low case, the initial dollar cost of implementing the rule would be $24.45

million over two years and a recurring annual average cost of $9.87 million, averaging to $86,090 and $34,752 per provider respectively. For the high case, the initial dollar cost of implementing the rule would be $47.48 million over two years and a recurring annual average cost of $19.74 million, averaging to $167,187 and $69,505 per provider respectively. Additional costs for FTA exist but are not included here.

Tier II Providers—The initial burden for tier II providers is expected to be 679,166 hours in total for 754 plans to be developed by the direct recipients and/or group TAM plan sponsors, with an average of just over 900 hours per plan. The annual average recurring burden is 243,504 hours, averaging at 323 hours per TAM plan. For the low case, the initial dollar cost of implementing the rule would be $33.62 million over two years and a recurring annual average cost of $10.58 million, averaging to $44,594 and $14,028 per plan, respectively. For the high case, the initial dollar cost of implementing the rule would be $63.48 million over two years and a recurring annual average cost of $21.15 million, averaging to $84,187 and $28,057 per plan, respectively. Additional costs for FTA exist but are not included here.

Estimated Total Annual Burden: Tables 15 below shows the initial hours of burden and the dollar cost to the tier I and tier II transit providers to be incurred in the first two years of implementing the rule and the recurring annual average costs thereafter. The table below is based on the assumptions made for the level of effort and the loaded wage rates (wage rate adjusted to account for employer cost of benefits) [46] used for estimating the hours of burden and the cost of implementing the final rule. Hours and costs presented here are based on the assumptions detailed in the regulatory impact analysis above.

TABLE 15—ESTIMATED TOTAL ANNUAL PAPERWORK BURDEN

Agency size	Initial costs (total over two years)	Average annual recurring costs	Initial hours of burden (total over two years)	Average annual recurring hours of burden
Low Case:				
Tier I Providers	$24,449,578	$9,869,673	431,424	200,015
Tier II Providers	33,623,673	10,577,321	679,166	243,504
Total	58,073,251	20,446,994	1,110,590	443,519
High Case:				
Tier I Providers	47,481,030	19,739,346	431,424	200,015
Tier II Providers	63,477,346	21,154,643	679,166	243,504
Total	110,958,376	40,893,989	1,110,590	443,519

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 rulemaking is categorically excluded under FTA's environmental impact procedure at 23 CFR 771.118(c)(4), 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 (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (77 FR 27534) require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies and activities on minority and/or low-income populations. The DOT Order requires DOT agencies to address compliance with the Executive Order and the DOT Order in all rulemaking activities. In addition, on July 17, 2014, FTA issued a Circular to update to its EJ Policy Guidance for Federal Transit Recipients (*www.fta.dot.gov/legislation_law/12349_14740.html*), which addresses administration of the EO and DOT Order.

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

[46] BLS data show wages as 64.1% of total compensation, with benefits at 35.9%. Therefore, employees' wages are factored by 1.56 (100/64.1) to account for employer provided benefits.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this action under Executive Order 13175 (November 6, 2000), and believes that it will have substantial direct effects on one or more American Indian tribes and will impose substantial direct compliance costs on Indian tribal governments.

However, FTA has engaged in active consultation with American Indian tribes in the development of todays' rule, to the extent practicable and consistent with other FTA coordination efforts. In advance of publishing an NPRM, FTA sought comment from the transit industry, including tribes, on a wide range of topics pertaining to the new Public Transportation Safety Program and the requirements of the new transit asset management provisions authorized by MAP–21. FTA asked specific questions about how FTA should apply the new TAM and safety requirements to recipients of the section 5311 Tribal Transit Formula Program and Tribal Transit Discretionary Program. FTA did not receive any comments from American Indian tribes on the ANPRM, although several commenters argued that small transit systems operated by American Indian tribes should be subject to the same requirements as other small systems.

In addition to the ANPRM, FTA sought comment from the entire transit industry, including tribes, when it published the NPRM. During the NPRM comment period, FTA engaged with the industry through a number of outreach efforts, including a webinar for small providers held on October 27, 2015. FTA also held several listening session across the country including one at the National Rural Transit Assistance Program Annual Meeting, which historically has been well attended by a number of tribal representatives. FTA remains committed to continuing to provide outreach and technical assistance to American Indian tribes on compliance with the requirements of this rule.

FTA recognizes that developing an individual TAM plan, maintaining documentation and reporting requires that a TAM rule be flexible and scalable. This rule is scalable and flexible and provides several options to reduce the burden on small providers, including American Indian tribes.

Executive Order 13211 (Energy Effects)

FTA has analyzed this 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

Anyone is able to search the electronic form of all comments received into any of FTA's dockets by the name of the individual submitting the comment or signing the comment if submitted on behalf of an association, business, labor union, or any other entity. You may review USDOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477–8.

Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of section 20019 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), which requires the Secretary of Transportation to prescribe regulations to establish a system to monitor and manage public transportation assets to improve safety and increase reliability and performance and to establish SGR performance measures. The authority is codified at 49 U.S.C. 5326.

Regulation Identifier Number

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

List of Subjects

49 CFR Part 625

Public Transportation.

49 CFR Part 630

National Transit Database.

Issued this day of July 12, 2016, in Washington, DC, under authority delegated in 49 CFR 1.91.

Carolyn Flowers,

Acting Administrator, Federal Transit Administration.

For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5326, 5335, and the delegations of authority at 49 CFR 1.91, FTA hereby amends Chapter VI of Title 49, Code of Federal Regulations as follows:

■ 1. Add part 625 to read as follows:

PART 625—TRANSIT ASSET MANAGEMENT

Subpart A—General Provisions

Subpart B—National Transit Asset Management System

Subpart C—Transit Asset Management Plans

Subpart D—Performance Management

Subpart E—Recordkeeping and Reporting Requirements for Transit Asset Management

Authority: Sec. 20019 of Pub. L. 112–141, 126 Stat. 707, 49 U.S.C. 5326; Sec. 20025(a) of Pub. L. 112–141, 126 Stat, 718, 49 CFR 1.91.

Subpart A—General Provisions

§ 625.1 Purpose.

This part carries out the mandate of 49 U.S.C. 5326 for transit asset management. This part establishes a National Transit Asset Management (TAM) System to monitor and manage public transportation capital assets to enhance safety, reduce maintenance costs, increase reliability, and improve performance.

§ 625.3 Applicability.

This part applies to all recipients and subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53 that own, operate, or manage capital assets used for providing public transportation.

§ 625.5 Definitions.

All terms defined in 49 U.S.C. Chapter 53 are incorporated into this part by reference. The following terms also apply to this part:

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 transit asset management practices; 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.

Asset category means a grouping of asset classes, including a grouping of equipment, a grouping of rolling stock, a grouping of infrastructure, and a grouping of facilities. See Appendix A to this part.

Asset class means a subgroup of capital assets within an asset category. For example, buses, trolleys, and cutaway vans are all asset classes within the rolling stock asset category. See Appendix A to this part.

Asset inventory means a register of capital assets, and information about those assets.

Capital asset means a unit of rolling stock, a facility, a unit of equipment, or an element of infrastructure used for providing public transportation.

Decision support tool means an analytic process or methodology:

(1) To help prioritize projects to improve and maintain the state of good repair of capital assets within a public transportation system, based on available condition data and objective criteria; or

(2) To assess financial needs for asset investments over time.

Direct recipient means an entity that receives Federal financial assistance directly from the Federal Transit Administration.

Equipment means an article of nonexpendable, tangible property having a useful life of at least one year.

Exclusive-use maintenance facility means a maintenance facility that is not commercial and either owned by a transit provider or used for servicing their vehicles.

Facility means a building or structure that is used in providing public transportation.

Full level of performance means the objective standard established by FTA for determining whether a capital asset is in a state of good repair.

Group TAM plan means a single TAM plan that is developed by a sponsor on behalf of at least one tier II provider.

Horizon period means the fixed period of time within which a transit provider will evaluate the performance of its TAM plan.

Implementation strategy means a transit provider's approach to carrying out TAM practices, including establishing a schedule, accountabilities, tasks, dependencies, and roles and responsibilities.

Infrastructure means the underlying framework or structures that support a public transportation system.

Investment prioritization means a transit provider's ranking of capital projects or programs to achieve or maintain a state of good repair. An investment prioritization is based on financial resources from all sources that a transit provider reasonably anticipates will be available over the TAM plan horizon period.

Key asset management activities means a list of activities that a transit provider determines are critical to achieving its TAM goals.

Life-cycle cost means the cost of managing an asset over its whole life.

Participant means a tier II provider that participates in a group TAM plan.

Performance Measure means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets (*e.g.,* a measure for on-time performance is the percent of trains that arrive on time, and a corresponding quantifiable indicator of performance or condition is an arithmetic difference between scheduled and actual arrival time for each train).

Performance target means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the Federal Transit Administration (FTA).

Public transportation system means the entirety of a transit provider's operations, including the services provided through contractors.

Public transportation agency safety plan means a transit provider's documented comprehensive agency safety plan that is required by 49 U.S.C. 5329.

Recipient means an entity that receives Federal financial assistance under 49 U.S.C. Chapter 53, either directly from FTA or as a subrecipient.

Rolling stock means a revenue vehicle used in providing public transportation, including vehicles used for carrying passengers on fare-free services.

Service vehicle means a unit of equipment that is used primarily either to support maintenance and repair work for a public transportation system or for delivery of materials, equipment, or tools.

Sponsor means a State, a designated recipient, or a direct recipient that develops a group TAM for at least one tier II provider.

State of good repair (SGR) means the condition in which a capital asset is able to operate at a full level of performance.

Subrecipient means an entity that receives Federal transit grant funds indirectly through a State or a direct recipient.

TERM scale means the five (5) category rating system used in the Federal Transit Administration's Transit Economic Requirements Model (TERM) to describe the condition of an asset: 5.0—Excellent, 4.0—Good; 3.0—Adequate, 2.0—Marginal, and 1.0—Poor.

Tier I provider means a recipient that owns, operates, or manages either (1) one hundred and one (101) or more vehicles in revenue service during peak regular service across all fixed route modes or in any one non-fixed route mode, or (2) rail transit.

Tier II provider means a recipient that owns, operates, or manages (1) one hundred (100) or fewer vehicles in revenue service during peak regular service across all non-rail fixed route modes or in any one non-fixed route mode, (2) a subrecipient under the 5311 Rural Area Formula Program, (3) or any American Indian tribe.

Transit asset management (TAM) means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation.

Transit asset management (TAM) plan means a plan that includes an inventory of capital assets, a condition assessment of inventoried assets, a decision support tool, and a prioritization of investments.

Transit asset management (TAM) policy means a transit provider's documented commitment to achieving and maintaining a state of good repair for all of its capital assets. The TAM policy defines the transit provider's TAM objectives and defines and assigns roles and responsibilities for meeting those objectives.

Transit asset management (TAM) strategy means the approach a transit provider takes to carry out its policy for

TAM, including its objectives and performance targets.

Transit asset management system means a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively, throughout the life cycles of those assets.

Transit provider (provider) means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. chapter 53 that owns, operates, or manages capital assets used in providing public transportation.

Useful life means either the expected life cycle of a capital asset or the acceptable period of use in service determined by FTA.

Useful life benchmark (ULB) means the expected life cycle or the acceptable period of use in service for a capital asset, as determined by a transit provider, or the default benchmark provided by FTA.

Subpart B—National Transit Asset Management System

§ 625.15 Elements of the National Transit Asset Management System.

The National TAM System includes the following elements:

(a) The definition of *state of good repair,* which includes objective standards for measuring the condition of capital assets, in accordance with subpart D of this part;

(b) Performance measures for capital assets and a requirement that a provider and a group TAM plan sponsor establish performance targets for improving the condition of capital assets, in accordance with subpart D of this part;

(c) A requirement that a provider develop and carry out a TAM plan, in accordance with subpart C of this part,

(d) Reporting requirements in accordance with subpart E of this part; and

(e) Analytical processes and decision support tools developed or recommended by FTA.

§ 625.17 State of good repair principles.

(a) A capital asset is in a state of good repair if it is in a condition sufficient for the asset to operate at a full level of performance. In determining whether a capital asset is in a state of good repair, a provider must consider the state of good repair standards under subpart D of this part.

(b) An individual capital asset may operate at a full level of performance regardless of whether or not other capital assets within a public transportation system are in a state of good repair.

(c) A provider's Accountable Executive must balance transit asset management, safety, day-to-day operations, and expansion needs in approving and carrying out a TAM plan and a public transportation agency safety plan.

Subpart C—Transit Asset Management Plans

§ 625.25 Transit Asset Management Plan requirements.

(a) *General.* (1) Each tier I provider must develop and carry out a TAM plan that includes each element under paragraph (b) of this section.

(2) Each tier II provider must develop its own TAM plan or participate in a group TAM plan. A tier II provider's TAM plan and a group TAM plan only must include elements under paragraphs (b)(1) through (4) of this section.

(3) A provider's Accountable Executive is ultimately responsible for ensuring that a TAM plan is developed and carried out in accordance with this part.

(b) *Transit asset management plan elements.* Except as provided in paragraph (a)(3) of this section, a TAM plan must include the following elements:

(1) An inventory of the number and type of capital assets. The inventory must include all capital assets that a provider owns, except equipment with an acquisition value under $50,000 that is not a service vehicle. An inventory also must include third-party owned or jointly procured exclusive-use maintenance facilities, passenger station facilities, administrative facilities, rolling stock, and guideway infrastructure used by a provider in the provision of public transportation. The asset inventory must be organized at a level of detail commensurate with the level of detail in the provider's program of capital projects;

(2) A condition assessment of those inventoried assets for which a provider has direct capital responsibility. A condition assessment must generate information in a level of detail sufficient to monitor and predict the performance of the assets and to inform the investment prioritization;

(3) A description of analytical processes or decision-support tools that a provider uses to estimate capital investment needs over time and develop its investment prioritization;

(4) A provider's project-based prioritization of investments, developed in accordance with § 625.33 of this part;

(5) A provider's TAM and SGR policy;

(6) A provider's TAM plan implementation strategy;

(7) A description of key TAM activities that a provider intends to engage in over the TAM plan horizon period;

(8) A summary or list of the resources, including personnel, that a provider needs to develop and carry out the TAM plan; and

(9) An outline of how a provider will monitor, update, and evaluate, as needed, its TAM plan and related business practices, to ensure the continuous improvement of its TAM practices.

§ 625.27 Group plans for transit asset management.

(a) *Responsibilities of a group TAM plan sponsor.* (1) A sponsor must develop a group TAM plan for its tier II provider subrecipients, except those subrecipients that are also direct recipients under the 49 U.S.C. 5307 Urbanized Area Formula Grant Program. The group TAM plan must include a list of those subrecipients that are participating in the plan.

(2) A sponsor must comply with the requirements of this part for a TAM plan when developing a group TAM plan.

(3) A sponsor must coordinate the development of a group TAM plan with each participant's Accountable Executive.

(4) A sponsor must make the completed group TAM plan available to all participants in a format that is easily accessible.

(b) *Responsibilities of a group TAM plan participant.* (1) A tier II provider may participate in only one group TAM plan.

(2) A tier II provider must provide written notification to a sponsor if it chooses to opt-out of a group TAM plan. A provider that opts-out of a group TAM plan must either develop its own TAM plan or participate in another sponsor's group TAM plan.

(3) A participant must provide a sponsor with any information that is necessary and relevant to the development of a group TAM plan.

§ 625.29 Transit asset management plan: horizon period, amendments, and updates.

(a) *Horizon period.* A TAM plan must cover a horizon period of at least four (4) years.

(b) *Amendments.* A provider may update its TAM plan at any time during the TAM plan horizon period. A provider should amend its TAM plan whenever there is a significant change to the asset inventory, condition assessments, or investment prioritization that the provider did not reasonably anticipate during the development of the TAM plan.

(c) *Updates.* A provider must update its entire TAM plan at least once every

four (4) years. A provider's TAM plan update should coincide with the planning cycle for the relevant Transportation Improvement Program or Statewide Transportation Improvement Program.

§ 625.31 Implementation deadline.

(a) A provider's initial TAM plan must be completed no later than two years after October 1, 2016.

(b) A provider may submit in writing to FTA a request to extend the implementation deadline. FTA must receive an extension request before the implementation deadline and will consider all requests on a case-by-case basis.

§ 625.33 Investment prioritization.

(a) A TAM plan must include an investment prioritization that identifies a provider's programs and projects to improve or manage over the TAM plan horizon period the state of good repair of capital assets for which the provider has direct capital responsibility.

(b) A provider must rank projects to improve or manage the state of good repair of capital assets in order of priority and anticipated project year.

(c) A provider's project rankings must be consistent with its TAM policy and strategies.

(d) When developing an investment prioritization, a provider must give due consideration to those state of good repair projects to improve that pose an identified unacceptable safety risk when developing its investment prioritization.

(e) When developing an investment prioritization, a provider must take into consideration its estimation of funding levels from all available sources that it reasonably expects will be available in each fiscal year during the TAM plan horizon period.

(f) When developing its investment prioritization, a provider must take into consideration requirements under 49 CFR 37.161 and 37.163 concerning maintenance of accessible features and the requirements under 49 CFR 37.43 concerning alteration of transportation facilities.

Subpart D—Performance Management

§ 625.41 Standards for measuring the condition of capital assets.

A capital asset is in a state of good repair if it meets the following objective standards—

(a) The capital asset is able to perform its designed function;

(b) The use of the asset in its current condition does not pose an identified unacceptable safety risk; and

(c) The life-cycle investment needs of the asset have been met or recovered, including all scheduled maintenance, rehabilitation, and replacements.

§ 625.43 SGR performance measures for capital assets.

(a) *Equipment: (non-revenue) service vehicles.* The performance measure for non-revenue, support-service and maintenance vehicles equipment is the percentage of those vehicles that have either met or exceeded their ULB.

(b) *Rolling stock.* The performance measure for rolling stock is the percentage of revenue vehicles within a particular asset class that have either met or exceeded their ULB.

(c) *Infrastructure: rail fixed-guideway, track, signals, and systems.* The performance measure for rail fixed-guideway, track, signals, and systems is the percentage of track segments with performance restrictions.

(d) *Facilities.* The performance measure for facilities is the percentage of facilities within an asset class, rated below condition 3 on the TERM scale.

§ 625.45 Setting performance targets for capital assets.

(a) *General.* (1) A provider must set one or more performance targets for each applicable performance measure.

(2) A provider must set a performance target based on realistic expectations, and both the most recent data available and the financial resources from all sources that the provider reasonably expects will be available during the TAM plan horizon period.

(b) *Timeline for target setting.* (1) Within three months after the effective date of this part, a provider must set performance targets for the following fiscal year for each asset class included in its TAM plan.

(2) At least once every fiscal year after initial targets are set, a provider must set performance targets for the following fiscal year.

(c) *Role of the accountable executive.* A provider's Accountable Executive must approve each annual performance target.

(d) *Setting performance targets for group plan participants.* (1) A Sponsor must set one or more unified performance targets for each asset class reflected in the group TAM plan in accordance with paragraphs (a)(2) and (b) of this section.

(2) To the extent practicable, a Sponsor must coordinate its unified performance targets with each participant's Accountable Executive.

(e) *Coordination with metropolitan, statewide and non-metropolitan planning processes.* To the maximum extent practicable, a provider and Sponsor must coordinate with States and Metropolitan Planning Organizations in the selection of State and Metropolitan Planning Organization performance targets.

Subpart E—Recordkeeping and Reporting Requirements for Transit Asset Management

§ 625.53 Recordkeeping for transit asset management.

(a) At all times, each provider must maintain records and documents that support, and set forth in full, its TAM plan.

(b) A provider must make its TAM plan, any supporting records or documents performance targets, investment strategies, and the annual condition assessment report available to a State and Metropolitan Planning Organization that provides funding to the provider to aid in the planning process.

§ 625.55 Annual reporting for transit asset management.

(a) Each provider must submit the following reports:

(1) An annual data report to FTA's National Transit Database that reflects the SGR performance targets for the following year and condition information for the provider's public transportation system.

(2) An annual narrative report to the National Transit Database that provides a description of any change in the condition of the provider's transit system from the previous year and describes the progress made during the year to meet the performance targets set in the previous reporting year.

(b) A Sponsor must submit one consolidated annual data report and one consolidated annual narrative report, as described in paragraph (a)(1) and (2) of this section, to the National Transit Database on behalf of its participants.

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Appendix A to Part 625—Asset Categories, Asset Classes, and Individual Assets

EXAMPLE of asset categories, asset classes, and individual assets:

ASSET CATEGORY		ASSET CLASS	INDIVIDIUAL ASSET
	Equipment	Construction	Crane Prime Mover
		Maintenance	Vehicle Lift Track Geometry Car
		Non-revenue Service Vehicles	Tow Truck Emergency Response Vehicle Supervisor Car Track Maintenance Vehicle
	Rolling Stock	Buses	40 Foot Bus 60 Foot Articulated Bus
		Other Passenger Vehicles	Cutaway Van Minivan
		Railcars	Light Rail Vehicle Commuter Rail Locomotive
		Ferries	Ferry Boat
	Infrastructure	Systems	Signal Substation
		Fixed Guideway	Track Segment Ballast Segment Exclusive Bus Right-of-Way Segment
		Power	Catenary Segment Third Rail Segment
		Structures	Bridge Tunnel Elevated Structure
	Facilities	Support Facilities	Maintenance Facilities Administrative Facilities
		Passenger Facilities	Rail Terminals Bus Transfer Stations
		Parking Facilities	Parking Garages Park-and-Ride Lots

Appendix B to Part 625—Relationship Amongst SGR Performance Measures, SGR Definition, and SGR Principles

EXAMPLE Relationship amongst SGR performance measures, SGR definition, and SGR principles:

(a) A tier I provider has a TAM asset inventory containing, in total across all modes, over 150 revenue vehicles in peak revenue service, no rail fixed guideway, multiple passenger and exclusive use maintenance facilities, and various pieces of equipment over $50,000. Their asset inventory is itemized at the level of detail they use in their capital program of projects; it also includes capital assets they do not own but use. The provider conducts condition assessments on those assets in its inventory for which it has direct financial responsibility. The results of the condition assessment indicate that there is an identified unacceptable safety risk in the deteriorated condition of one of their non-revenue service vehicles, but that the non-revenue service vehicles are being used as designed. The condition assessment results show the provider that one non-revenue service vehicle is not in SGR.

(b) The condition assessment results also inform the investment prioritization process, which for this provider is a regression analysis in a spreadsheet software program. The provider's criteria, as well as their weightings, are locally determined to produce the ranked list of programs and projects in their investment prioritization. The provider batches its projects by low, medium or high priority, identifying in which funding year each project will proceed. The provider has elected to use the ULB defaults, provided by FTA, for each of their modes until such time as they have resources and expertise to develop customized ULBs.

(c) The provider separates assets within each asset category by class to determine their current performance measure metric. For example, the equipment listed in its TAM asset inventory includes HVAC equipment and service vehicles; however, the SGR performance metric for the equipment category only requires the non-revenue vehicle metrics. Thus, the provider measures only non-revenue vehicles that exceed the default ULB for the modes they own, operate, or manage. This metric is the baseline the provider uses to determine its target for the forthcoming year.

(d) The provider's equipment baseline, its investment priorities that show minimal funding for non-revenue vehicles over the next 4 years, and its TAM policies, strategies and key asset management activities are used to project its target for the equipment category. Since one of its non-revenue service vehicles indicated an unacceptable safety risk, it is elevated in the investment prioritization for maintenance or replacement. The provider's target may indicate a decline in the condition of their equipment overall, but it addresses the unacceptable safety risk as an immediate priority.

(e) The cyclic nature of investment prioritization and SGR performance target setting requires the provider to go through the process more than once to settle on the balance of priorities and targets that best reflects its local needs and funding availability from all sources. The provider's accountable executive has ultimate responsibility for accepting and approving the TAM plan and SGR targets. The targets are then submit to the NTD and shared with the provider's planning organization. The narrative report, which describes the SGR performance measure metrics, is also submitted to the NTD.

Appendix C to Part 625—Assets Included in National TAM System Provisions

Table 1—Assets Included in National TAM System Provisions

MAP-21 Asset Category	TAM Plan Element		SGR Performance Measure 625.43 (a) – (d)
	Asset inventory 625.15 (c)(1)	Condition assessment 625.15 (c)(2)	
Equipment	All non-revenue service vehicles and equipment over $50,000 used in the provision of public transit, except third-party equipment assets.	Only inventoried equipment with direct capital responsibility, no third party assets	Only non-revenue service vehicles with direct capital responsibility.
Rolling Stock	All revenue vehicles used in the provision of public transit	Only revenue vehicles with direct capital responsibility	Only revenue vehicles with direct capital responsibility, by mode
Infrastructure	All guideway infrastructure used in the provision of public transit	Only guideway infrastructure with direct capital responsibility	Only fixed rail guideway with direct capital responsibility
Facilities	All passenger stations and all exclusive-use maintenance facilities used in the provision of public transit, excluding bus shelters	Only passenger stations and exclusive-use maintenance facilities with direct capital responsibility, excluding bus shelters	1- Maintenance and Administrative facilities with direct capital responsibility, 2- Passenger stations (buildings) and Parking facilities with direct capital responsibility

Table 2—*EXAMPLE* of Multiple SGR Performance Targets for a Sample Fleet

MAP-21 Asset Category	Asset Class	Performance Targets
Equipment	one non-revenue service vehicle type (automobile)	**Total 1- Equipment Performance Target:** 1- supervisor car
Rolling Stock	3 vehicle types (cutaway, van, 30 ft. bus)	**Total 3- Rolling Stock Performance Targets:** 1- cutaway, 2- van, 3- 30 ft. bus
Infrastructure	no track	**Total 0 - Infrastructure Performance Targets:**
Facilities	2 exclusive-use maintenance garages, 1 administrative office, and 3 passenger stations	**Total - 2 Facilities Performance Target:** 1- maintenance and administrative facilities 2- passenger and parking facilities

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PART 630—NATIONAL TRANSIT DATABASE

■ 2. The authority citation for part 630 is revised to read as follows:

Authority: 49 U.S.C. 5335.

■ 3. In § 630.3, amend paragraph (c) by revising the definitions of ''Applicant'' and ''Reporting entity'' to read as follows:

§ 630.3 Definitions.

* * * * *

(c) * * *

Applicant means an entity seeking Federal financial assistance under 49 U.S.C. chapter 53.

* * * * *

Reporting entity means an entity required to provide reports as set forth in the reference documents.

* * * * *

■ 4. Amend § 630.4 by revising paragraph (a) to read as follows:

§ 630.4 Requirements.

(a) *National Transit Database Reporting System.* Each applicant for and beneficiary of Federal financial assistance under 49 U.S.C. chapter 53 must comply with the applicable requirements of 49 U.S.C. 5335, as set forth in the reference documents.

* * * * *

■ 5. Revise § 630.5 to read as follows:

§ 630.5 Failure to report data.

Failure to report data in accordance with this part may result in the noncompliant reporting entity being ineligible to receive any funding under 49 U.S.C. chapter 53, directly or indirectly, until such time as a report is filed in accordance with this part.

[FR Doc. 2016–16883 Filed 7–25–16; 8:45 am]

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APPENDIX H

Oklahoma Statutes, Title 69, Roads, Bridges, and Ferries, Section 4019, Oklahoma State Safety Oversight Program

An Act

ENROLLED HOUSE
BILL NO. 3576

By: Martinez of the House

and

Pugh of the Senate

An Act relating to transportation; creating the Oklahoma State Safety Oversight Program; designating oversight, implementation and enforcement authority; requiring the development and enforcement of certain standards; authorizing the application for, reception and expenditure of certain funds; providing for codification; providing an effective date; and declaring an emergency.

SUBJECT: Oklahoma State Safety Oversight Program

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4019 of Title 69, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Oklahoma State Safety Oversight Program. Oversight for the program shall be provided by the Oklahoma Department of Transportation. The Department shall develop and enforce the Oklahoma State Safety Oversight Program standards for all private and public rail fixed-guideway public transportation systems statewide that are not administered by the federal Railroad Administration. The Department shall have the complete authority to implement, enforce and oversee the Oklahoma State Safety Oversight Program in accordance with requirements outlined in the 49 CFR, Section 674, as amended.

B. The Department is hereby authorized to apply for, receive and expend federal State Safety Oversight Program funds in strict accordance with applicable state and federal law, rules and regulations.

SECTION 2. This act shall become effective July 1, 2018.

SECTION 3. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 12th day of March, 2018.

Presiding Officer of the House
of Representatives

Passed the Senate the 5th day of April, 2018.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 6th
day of April, 2018, at 4:11 o'clock P. M.
By: Summer Carey

Approved by the Governor of the State of Oklahoma this 12th
day of April, 2018, at 10:46 o'clock a. M.

Governor of the State of Oklahoma

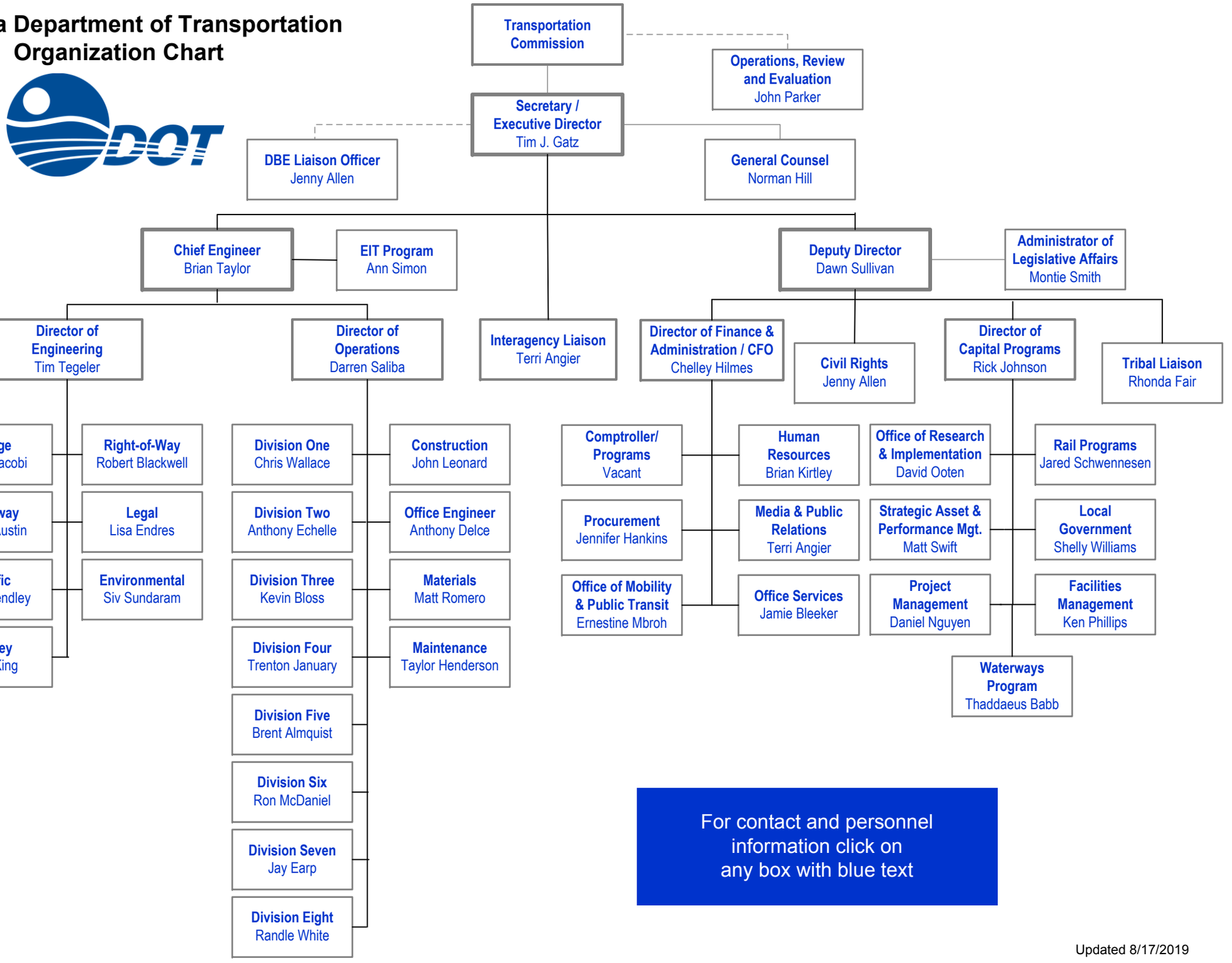
OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 12th
day of April, 2018, at 12:18 o'clock P. M.
By:

APPENDIX I

Oklahoma Department of Transportation
Office of Mobility and Public Transit
Organizational Chart

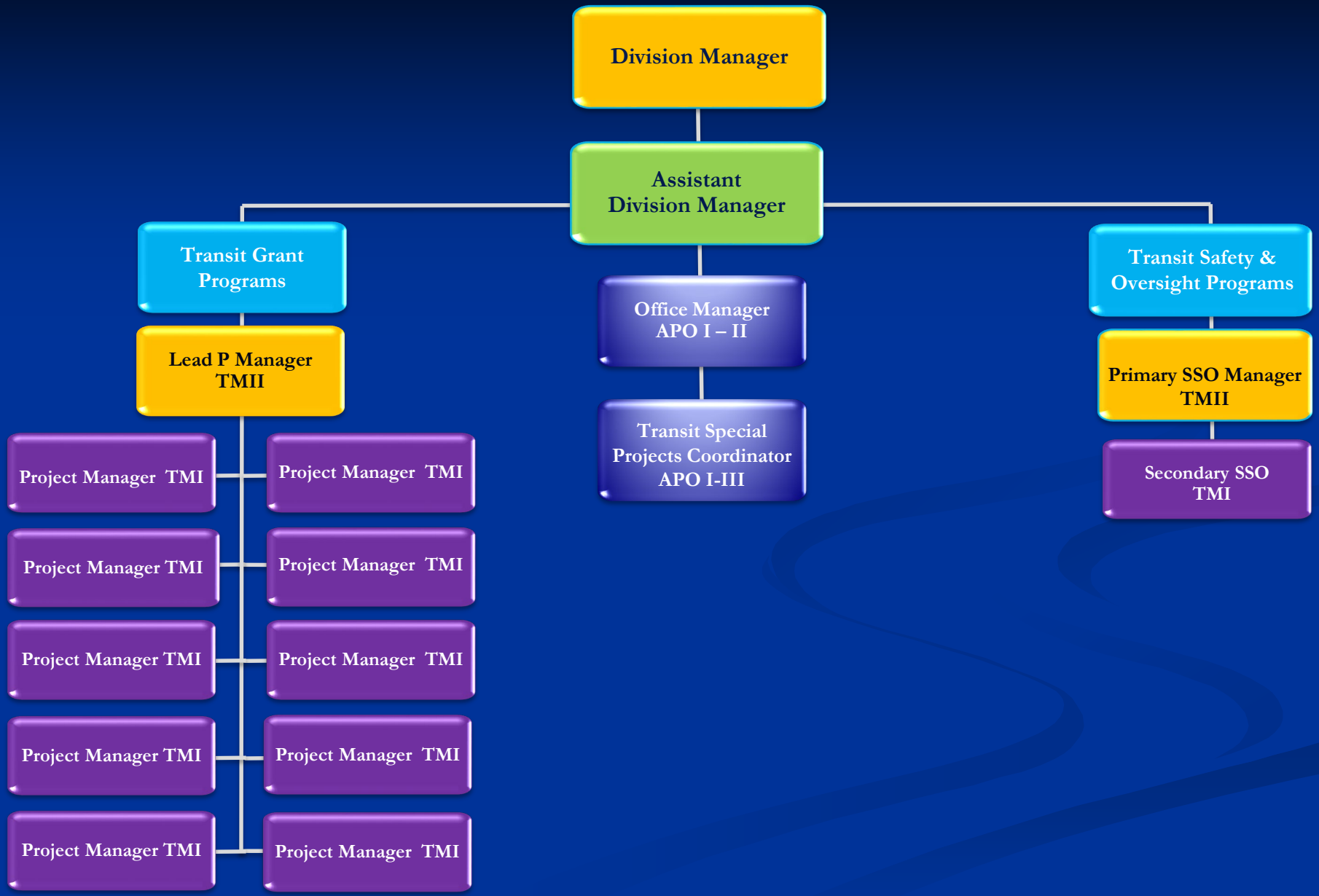
Oklahoma Department of Transportation
Organization Chart



For contact and personnel information click on any box with blue text

Updated 8/17/2019

Office of Mobility & Public Transit Organization Chart



APPENDIX J

Program Standard Acknowledgement of Receipt

Program Standard Acknowledgement of Receipt

ACKNOWLEDGEMENT:

The undersigned:

- is the [Accountable Executive or his/her designee] of [RFGPTS];
- has received a copy of the Program Standard of the State of Oklahoma;
- has read and understands the requirements contained therein;
- hereby agrees to comply with the Program Standard; and
- understands that the Oklahoma Department of Transportation, the State Safety Oversight Agency, and the [RFGPTS] are required by law to be legally and financially independent of each other and are subject to the requirements specified in:
    - 49 U.S. Code § 5329, Public Transportation Safety Program / Fixing America's Surface Transportation (FAST) Act;
    - 49 CFR Part 674, State Safety Oversight;
    - 49 CFR Part 673, Public Transportation Agency Safety Plan;
    - 49 CFR Part 672, Public Transportation Safety Certification Training Program;
    - 49 CFR Part 670, National Public Transportation Safety Program;
    - 49 CFR Part 630, National Transit Database;
    - 49 CFR Part 625, Transit Asset Management

AUTHORIZED SIGNATURE:

Signature: _____
Name / Title: _____
Date: _____

APPENDIX K

Program Requirements for the Development of a Public Transportation Agency Safety Plan (PTASP)

Required Elements for Development of a
Public Transportation Agency Safety Plan (PTASP)

Each covered RTA's Public Transportation Agency Safety Plan will include, at a minimum, the following required elements.

1. Executive Approval (Policy Statement)

- A policy statement is developed for the Public Transportation Agency Safety Plan (PTASP)
- The policy statement describes the authority that establishes the PTASP, including statutory requirements and relationship with the oversight agency.
- The policy statement is signed and endorsed by the RTA's Accountable Executive

2. Purpose, Goals and Objectives

- The purpose of the PTASP is defined.
- Goals are identified to ensure that the PTASP fulfills its purpose.
- Objectives are identified to monitor and assess the achievement of goals.
- Stated management responsibilities are identified for the safety program to ensure that goals and objectives are achieved.

3. Management Structure

- An overview of the management structure of the RTA is provided including an organization chart.
- Organizational structure is clearly defined and includes a brief description of system history and scope of service, physical characteristics, operations, and maintenance.
- A description of how the safety function is integrated into the rest of the rail transit organization is provided.
- Clear identification of the lines of authority used by the RTA to manage safety issues is provided.

4. Plan Review and Modification

- An annual assessment of whether the Public Transportation Agency Safety Plan should be updated is specified.
- The process used to control changes to the Public Transportation Agency Safety Plan is described.
- Required coordination with the oversight agency regarding plan modification, including timeframes for submission, revision, and approval, is addressed.
- Specific departments and persons responsible for initiating, developing, approving, and issuing changes to the PTASP are identified

5. PTASP Implementation

- A description of the specific activities required to implement the PTASP is included.
- Tasks to be performed by the rail transit safety function, by position and management accountability, are identified and described.
- A description of the methodologies used by the system safety function to achieve their safety responsibilities should be provided.
- Safety-related tasks to be performed by other rail transit departments, by position and management accountability, are identified and described.
- A task matrix showing: all identified safety responsibilities, interfaces among all rail transit units responsible for each task, and the key reports or actions required, should be provided (or an equivalent narrative description).

6 Hazard Management Process

- The process used by the RTA to implement its hazard management program, including the role of the oversight agency in providing on-going monitoring, is described.
- The hazard management process includes activities for: hazard identification, hazard investigation, evaluation, and analysis, hazard control and elimination, and hazard tracking.
- Requirements for on-going reporting to the oversight agency relating to hazard management activities and status are specified.

7. Safety Certification

- A description of the safety certification process required by the RTA to ensure that safety concerns and hazards are adequately addressed prior to the initiation of passenger operations for New Starts and subsequent major projects to extend, rehabilitate, or modify an existing system, or to replace vehicles and equipment.

8. Managing Safety in System Modifications

- The process used by the RTA to ensure that safety concerns are addressed in modifications to existing systems, vehicles, and equipment, which do not require formal safety certification, but which may have safety impacts, is described.

9. Safety Data Acquisition

- The process used to collect, maintain, analyze, and distribute safety data is clearly defined.
- The management process for ensuring that the safety function within the rail transit organization receives the necessary information to support implementation of the system safety program is clarified.

10. Event Notification, Investigation and Reporting

- A description is provided regarding the process used by the RTA to perform event notification, investigation and reporting.
- Criteria for determining what events require investigation, and who is responsible to conduct specific investigations are developed.
- A description of the procedures for performing investigations, including proper documentation and reporting of findings, conclusions reached, use of hazard resolution process to develop corrective action recommendations, and follow-up to verify corrective action implementation is provided.
- Notification thresholds for internal departments / functions are defined.
- Criteria are specified for notifying external agencies (NTSB, state oversight agency) of accidents and incidents.
- Procedures are established for documenting and reporting on accident investigations.
- Process used to develop, implement, and track corrective actions that address investigation findings is specified.
- Coordination with the oversight agency is specified.

11. Emergency Response Planning / Coordination / Training

- The agency’s emergency planning responsibilities and requirements are identified.
- A description of the process used by the RTA to develop an approved, coordinated schedule for emergency management program activities is provided.
- Required meetings with external agencies regarding the emergency management program are specified.
- The process used to evaluate emergency preparedness, such as annual emergency field exercises, is documented.

- After action reports and implementation of findings are required.
- The process is explained to be used by the RTA for the revision and distribution of emergency response procedures.
- The agency's responsibilities for providing employee training are identified.
- The agency's responsibilities for providing familiarization training to local public safety organizations are identified.

12. Internal Safety Audit Process

- A description of the process used by the RTA to ensure that planned and scheduled internal safety reviews are performed to evaluate compliance with the PTASP is included.
- Identification of departments and functions subject to review is performed.
- Auditors must be independent from the first line of supervision responsible for the activity being audited.
- A three-year audit schedule must be developed, reviewed, maintained and updated to ensure that all 23 PTASP elements are reviewed during the audit cycle.
- The process for conducting reviews, including the development of checklists, and procedures for conducting audits and issuing of findings is described.
- The process for resolving problems and disagreements, report distribution, and follow-up on corrective action procedures is described.
- The PTASP must describe the requirement of an annual audit report that summarizes the results of individual audits performed during the previous year and includes the status of required corrective action items. This report must be submitted to the state oversight agency for review and approval.
- The Internal Safety Audit Program (ISAP) process and reporting must be coordinated with the state oversight agency.
- The ISAP process should be comprehensive.

13. Rules Compliance / Procedures Review

- Operating and maintenance rules and procedures that affect safety are identified.
- Operating and maintenance rules and procedures that affect safety are reviewed for their effectiveness and determinations are made regarding their need to be updated.
- Description of process for developing, maintaining, and ensuring compliance with operating and maintenance rules and procedures.
- Techniques used to assess the implementation of operating and maintenance rules and procedures by employees, such as performance testing / compliance checks.
- Techniques used to assess the effectiveness of supervision relating to the implementation of operating and maintenance rules.
- Process for documenting results and incorporating them into the hazard management program.

14. Facilities and Equipment Inspections

- Identification of the facilities and equipment that are subject to regular safety related-inspection and testing is provided.
- A description of how safety-related equipment and facilities are included in a regular inspection and testing program is provided.
- Use of a written checklist for conducting facility inspections.
- Descriptions of how identified hazardous conditions are entered into the Hazard Resolution Process.

15. Maintenance Audits / Inspections

- A list of systems and facilities subject to a maintenance program, along with established maintenance cycle and required documentation of maintenance performed for each item, is provided.
- A description of the process for tracking and resolving problems identified during inspections is provided.

- Use of a written checklist for conducting maintenance audits is required.

16. Training and Certification Review / Audit

- A description of the training and certification program for employees and contractors is provided.
- Categories of safety-related work requiring training and certification are identified.
- Description of the training and certification program for employees and contractors in safety-related positions is provided.
- Description of the training and certification program for contractors is provided.
- The process used to maintain and access employee and contractor training records is described.
- The process used to assess compliance with training and certification requirements is described.

17. Configuration Management

- A description of the configuration management control process is provided and appropriate references are made to other RTA documents governing this process.
- Process for making changes is described.
- Authority to make configuration changes is described and assurances are provided for formal notification of all involved departments.

18. Compliance with Local, State and Federal Requirements

- A description of the safety program for employees and contractors that incorporates the applicable local, state, and federal requirements is provided.
- Safety requirements that employees and contractors must follow when working on, or in close proximity to, RTA controlled property.
- Processes for ensuring the employees and contractors know and follow the requirements are described.

19. Hazardous Materials

- A description of the hazardous materials program, including the process used to ensure knowledge of and compliance with program requirements is provided.

20. Drug & Alcohol Program

- A description of the drug and alcohol program and the process used to ensure knowledge of and compliance with program requirements is provided.

21. Procurement

- A description of the measures, controls, and assurances in place to ensure that safety principles, requirements, and representatives are included in the RTA's procurement process.

APPENDIX L

Public Transportation Agency Safety Plan (PTASP) Review Checklist

PART I. GENERAL

PUBLIC TRANSPORTATION AGENCY SAFETY PLAN (PTASP)	
Document Title	
Document Preparer	
Document Date / Revision	
ODOT Reviewer Name(s)	
ODOT Review Dates	
RTA Response Date	
Review Comments	***Note:*** If there are no review comments or discussion questions listed, '---' is used to indicate a description was included or a policy / procedure was referenced in the PTASP to address the required element and no further discussion is required.

PART II. REVIEW COMMENTS

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
GENERAL REQUIREMENTS							
1		Transit Agency Information	Transit agency name and address				
2		Transit Agency Information	Mode(s) of transit service covered by the PTASP				
3		Transit Agency Information	Identify an Accountable Executive who is accountable for ensuring that the agency's SMS is effectively implemented throughout the agency's transit system and action is taken to address substandard performance in the agency's SMS				
4		Transit Agency Information	Identify a Chief Safety Officer who is designated by the Accountable Executive, holds a direct line of reporting to the Accountable Executive, is adequately trained, has the authority and responsibility for day-to-day implementation and operation of the agency's SMS, and does not serve in other operation or maintenance capacities.				
5		Approval	Approval of the plan by the Accountable Executive and Board of Directors or equivalent entity.				
6		Approval	Includes signatures of the department head(s) responsible for the performance of PTASP implementation activities				
7		Approval	Certification of compliance with Part 673, including the name of the individual or entity that certifies the PTASP and date of certification.				

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
8		Approval	Certification of compliance with the Program Standard established by the SSOA, including the name of the individual or entity that certifies compliance with the Program Standard and date of certification				
9		Definitions and Acronyms	Includes applicable definitions and acronyms from Part 673, Part 674, and the SSOA Program Standard				
10		Performance Targets	Performance targets based on the safety performance measures established under the National Public Transportation Safety Plan				
11		Performance Targets	Performance targets are made available to the State and to the Metropolitan Planning Organizations (MPO) to aid in the planning process				
12		Performance Targets	Coordination with the State and MPOs in the selection of State and MPO safety performance targets				
13		National Public Transportation Safety Plan	All applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and the National Public Transportation Safety Plan				
14		Plan Review and Modification	A process and timeline for conducting an annual review and update of the PTASP				
15		Plan Review and Modification	The process used to control changes to the Public Transportation Agency Safety Plan is described.				
16		Plan Review and Modification	Specific departments and persons responsible for initiating, developing, approving, and issuing changes to the PTASP are identified.				
17		Plan Review and Modification	Required coordination with the oversight agency regarding plan modification, including timeframes for submission, revision, and approval, is addressed.				
18		Plan Implementation	A description of the specific activities required to implement the Public				

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
			Transportation Agency Safety Plan is included.				
19		Plan Implementation	The RTA's establishment and implementation of a Safety Management System				
20		Plan Implementation	The SMS is appropriately scaled to the size, scope, and complexity of the RTA and includes Safety Management Policy, Safety Risk Management, Safety Assurance, and Safety Promotion				
21		Plan Implementation	Tasks to be performed by the rail transit safety function, by position and management accountability, are identified and described.				
22		Plan Implementation	A description of the methodologies used by the system safety function to achieve their safety responsibilities should be provided.				
23		Plan Implementation	Safety-related tasks to be performed by other rail transit departments, by position and management accountability, are identified and described.				
24		Plan Implementation	A task matrix (or an equivalent narrative description) showing: all identified safety responsibilities, interfaces among all rail transit units responsible for each task, and the key reports or actions required, should be provided.				
25		Delegated Contractor Duties	A description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart				
26		Delegated Contractor Duties	A description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues				

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
27		Delegated Contractor Duties	An identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns				
28		Emergency Management Program	The emergency preparedness and response plan or procedures to address the assignment of employee responsibilities during an emergency				
29		Emergency Management Program	A description of the process used by the RTA to develop an approved, coordinated schedule for emergency management program activities is provided.				
30		Emergency Management Program	Coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the RTA's service area				
31		Emergency Management Program	Required meetings with external agencies regarding the emergency management program are specified.				
32		Emergency Management Program	The process used to evaluate emergency preparedness, such as annual emergency field exercises, is documented.				
33		Emergency Management Program	After action reports and implementation of findings are required.				
34		Emergency Management Program	The process is explained to be used by the RTA for the revision and distribution of emergency response procedures.				
35		Emergency Management Program	The RTA's responsibilities for providing employee training are identified.				
36		Emergency Management Program	The RTA's responsibilities for providing familiarization training to local public safety organizations are identified.				
37		Recordkeeping	The process to document key processes and procedures required to carry out the SMS that are not included or				

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
			referenced elsewhere in the PTASP				
38		Recordkeeping	The process to maintain documents related to implementation of the PTASP and SMS, and results of SMS processes and activities				
39		Recordkeeping	The process to maintain documents, included in whole or in reference, that describe the programs, policies, procedures used to implement the PTASP				
40		Recordkeeping	The process to make PTASP and SMS documentation available to the FTA and SSOA upon request				
41		Recordkeeping	The process to retain documents for a minimum of three years				
SAFETY MANAGEMENT POLICY							
42		Policy Statement	A safety management policy statement is developed for the PTASP				
43		Policy Statement	The policy statement describes the authority that establishes the Public Transportation Agency Safety Plan.				
44		Policy Statement	The policy statement is signed and endorsed by the RTA's Accountable Executive.				
45		Policy Statement	The process to communicate the safety management policy throughout the RTA				
46		Employee Safety Reporting Program	Description of the process that allows employees to report safety conditions to senior management				
47		Employee Safety Reporting Program	Description of the protections established for employees that report safety conditions to senior management				
48		Employee Safety Reporting Program	Description of employee behaviors that may result in disciplinary action				
49		Purpose, Goals, Objectives	The purpose of the PTASP is defined.				
50		Purpose, Goals, Objectives	Goals are identified to ensure that the PTASP fulfills its purpose.				
51		Purpose, Goals, Objectives	Objectives are identified to monitor and assess the achievement of goals.				
52		Purpose, Goals, Objectives	Stated management responsibilities are identified				

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
			for the safety program to ensure that the goals and objectives are achieved.				
53		Management Structure	An overview of the management structure of the RTA is provided including an organization chart.				
54		Management Structure	Necessary authorities, accountabilities, and responsibilities for the management of safety and the implementation of the RTA's SMS among the key safety roles within the organization including the Accountable Executive, Chief Safety Officer, Agency Leadership and Executive Management, and Key Staff.				
55		Management Structure	Adequate methods to ensure implementation of PTASP by all employees, agents, and contractors				
56		Management Structure	Organizational structure is clearly defined and includes: history and scope of service, physical characteristics, and operations and maintenance.				
57		Management Structure	A description of how the safety function is integrated into the rest of the rail transit organization is provided.				
58		Management Structure	Clear identification of the lines of authority used by the RTA to manage safety issues is provided.				
SAFETY RISK MANAGEMENT							
59		Safety Risk Management Process	The process used by the RTA to implement a Safety Risk Management Process comprised of safety hazard identification, safety risk assessment, and safety risk mitigation for all system elements				
60		Hazard Management Process	The process used by the RTA to implement its hazard management program, including the role of the oversight agency in providing on-going communication, is described.				
61		Hazard Management Process	The hazard management process includes activities for: hazard identification, hazard				

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
			investigation, evaluation and analysis including consequences of hazards, hazard control and elimination, and hazard tracking.				
62		Hazard Management Process	Process to include FTA, the SSOA, and other oversight authorities as sources for hazard information				
63		Hazard Management Process	Requirements for on-going reporting to the oversight agency relating to hazard management activities and status are specified.				
64		Hazard Management Process	Process for assessing the safety risks associated with identified safety hazards, including an assessment of the likelihood and severity of the consequences for the hazards including existing mitigations				
65		Hazard Management Process	Process to prioritize hazards based on the safety risk				
66		Hazard Management Process	Process to identify mitigations or strategies necessary as a result of safety risk assessments to reduce the likelihood and severity of the consequences of hazards				
67		Safety Data Acquisition	The process used to collect, maintain, analyze, and distribute safety data is clearly defined.				
68		Safety Data Acquisition	The management process for ensuring that the safety function within the rail transit organization receives the necessary information to support implementation of the system safety program is clarified.				
69		Event Notification, Investigation, and Reporting	A description is provided regarding the process used by the RTA to perform event notification, investigation, and reporting.				
70		Event Notification, Investigation, and Reporting	Criteria for determining what events require investigation, and who is responsible to conduct specific investigations are developed.				
71		Event Notification,	A description of the procedures for performing				

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
		Investigation, and Reporting	investigations, including proper documentation and reporting of findings, conclusions reached, use of hazard resolution process to develop corrective action recommendations, and follow-up to verify corrective action implementation is provided.				
72		Event Notification, Investigation, and Reporting	How the RTA will work with the SSOA when conducting its own internal investigation of a safety event				
73		Event Notification, Investigation, and Reporting	Notification thresholds for internal departments / functions are defined.				
74		Event Notification, Investigation, and Reporting	Criteria are specified for notifying external agencies (NTSB, state oversight agency) of accidents and incidents.				
75		Event Notification, Investigation, and Reporting	Procedures are established for documenting and reporting on accident investigations.				
76		Event Notification, Investigation, and Reporting	Process used to develop, implement, and track corrective actions that address investigation findings is specified.				
77		Event Notification, Investigation, and Reporting	Coordination with the oversight agency is specified including the process through which the RTA will review investigation reports developed by the SSOA and submit written dissent, as appropriate				
78		Event Notification, Investigation, and Reporting	Training Requirements for all personnel and contractors that conduct investigations on behalf of an SSOA in accordance with the Public Transportation Safety Certification Program				
79		Transit Asset Management	A description of the transit asset management system, which will include: • a definition of the term 'state of good repair' that includes objective standards for measuring the condition of capital assets of recipients,				

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
			including equipment, rolling stock, infrastructure, and facilities; • a requirement to develop a transit asset management plan; • a requirement to report on the condition of the system and provide a description of any change in condition since the last report; and • an analytical process or decision support tool that: allows for the estimation of capital investment needs over time; and assists with asset investment prioritization; and technical assistance				
80		Corrective Action Plans	When the RTA must develop and carry out a CAP				
81		Corrective Action Plans	How the RTA will submit CAPs to the SSOA for review and approval				
82		Corrective Action Plans	How the RTA will manage immediate or emergency corrective actions				
83		Corrective Action Plans	The required contents of a CAP, including describing the actions the RTA will take to minimize, control, correct, or eliminate the risks and hazards identified by the CAP, the schedule for taking those actions, and the individuals responsible for taking those actions				
84		Corrective Action Plans	How the RTA must periodically report to the SSOA on its progress in carrying out CAPs				
SAFETY ASSURANCE							
85		Safety Assurance	Develop and implement a Safety Assurance process covering Safety Performance Monitoring and Measurement, Management of Change, and Continuous Improvement				
86		Safety Performance Monitoring and Measurement	The process to monitor compliance with the RTA's operations and maintenance procedures				

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
87		Safety Performance Monitoring and Measurement	The process to monitor safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended				
88		Safety Performance Monitoring and Measurement	The process to monitor information reported through any internal safety reporting programs				
89		Management of Change	The process to identify and assess changes that may introduce new hazards or impact the RTA's safety performance				
90		Management of Change	The process to evaluate proposed changes that may impact safety performance through the Safety Risk Management process				
91		Continuous Improvement	The process for the RTA to assess its safety performance including notifying the SSOA before conducting any internal safety review and submitting materials regarding the conduct and results of internal safety reviews to the SSOA under the Accountable Executive's signature.				
92		Continuous Improvement	The process to develop and carry out corrective actions to address identified safety deficiencies under the signature of the Accountable Executive				
93		Safety Certification Process	A description of the safety certification process required by the RTA to ensure that safety concerns and hazards are adequately addressed prior to the initiation of passenger operations for New Starts and subsequent major projects to extend, rehabilitate, or modify an existing system, or to replace vehicles and equipment.				
94		System Modifications	The process used by the RTA to ensure that safety concerns are addressed in modifications to existing systems, vehicles, and equipment, which do not require formal safety certification, but which may				

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
			have safety impacts, is described.				
95		Internal Safety Audit Program	A description of the process used by the RTA to ensure that planned and scheduled internal safety audits are performed to evaluate compliance with the PTASP is included.				
96		Internal Safety Audit Program	Identification of departments and functions subject to audit is performed.				
97		Internal Safety Audit Program	Auditors must be independent from the first line of supervision responsible for the activity being audited.				
98		Internal Safety Audit Program	A three-year audit schedule must be developed, reviewed, maintained, and updated to ensure that all PTASP elements are reviewed during the audit cycle.				
99		Internal Safety Audit Program	The process for conducting audits, including the development of checklists, and procedures for conducting audits and issuing of findings is described.				
100		Internal Safety Audit Program	The PTASP must describe the requirement of an annual audit report that summarizes the results of individual audits performed during the previous year and includes the status of required corrective action items. This report must be submitted to the state oversight agency for review and approval.				
101		Internal Safety Audit Program	The process for resolving problems and disagreements, report distribution, and follow-up on corrective action procedures is described.				
102		Internal Safety Audit Program	The ISAP process and reporting must be coordinated with the state oversight agency.				
103		Internal Safety Audit Program	The ISAP process should be comprehensive.				
104		Rules Compliance	Operating and maintenance rules and procedures that affect safety are identified.				
105		Rules Compliance	Operating and maintenance rules and procedures that				

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
			affect safety are reviewed for their effectiveness and determinations are made regarding their need to be updated.				
106		Rules Compliance	Description of process for developing, maintaining, and ensuring compliance with operating and maintenance rules and procedures.				
107		Rules Compliance	Techniques used to assess the implementation of operating and maintenance rules and procedures by employees, such as performance testing / compliance checks.				
108		Rules Compliance	Techniques used to assess the effectiveness of supervision relating to the implementation of operating and maintenance rules.				
109		Rules Compliance	Process for documenting results and incorporating them into the hazard management program.				
110		Facilities and Equipment Inspections	Identification of the facilities and equipment that are subject to regular safety-related inspection and testing is provided.				
111		Facilities and Equipment Inspections	A description of how safety-related equipment and facilities are included in a regular inspection and testing program is provided.				
112		Facilities and Equipment Inspections	Use of a written checklist for conducting facility inspections.				
113		Facilities and Equipment Inspections	Descriptions of how identified hazardous conditions are entered into the Hazard Resolution Process.				
114		Maintenance Audit and Inspection Program	A list of systems and facilities subject to a maintenance program, along with established maintenance cycle and required documentation of maintenance performed for each item, is provided.				
115		Maintenance Audit and Inspection Program	A description of the process for tracking and resolving problems identified during inspections is provided.				

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
116		Maintenance Audit and Inspection Program	Use of a written checklist for conducting maintenance audits is required.				
117		Configuration Management Process	A description of the configuration management control process is provided and appropriate references are made to other the RTA documents governing this process.				
118		Configuration Management Process	Process for making changes is described.				
119		Configuration Management Process	Authority to make configuration changes is described and assurances are provided for formal notification of all involved departments.				
120		Procurement	A description of the measures, controls, and assurances in place to ensure that safety principles, requirements, and representatives are included in the RTA procurement process.				
SAFETY PROMOTION							
121		Competencies and Training	A description of the comprehensive safety training program for all employees and contractors directly responsible for safety				
122		Competencies and Training	A description of the refresher training program				
123		Safety Communication	A description of the program to communicate safety and safety performance information throughout the RTA, including information on hazards, safety risks, and actions taken in response to employee safety reporting program				
124		Training and Certification Program	A description of the training and certification program for employees and contractors is provided.				
125		Training and Certification Program	Categories of safety-related work requiring training and certification are identified.				
126		Training and Certification Program	The process used to maintain and access employee and contractor training records is described.				

PTASP REVIEW CHECKLIST							
#	**PTASP Section, Title, Summary**	**PTASP Required Element Title**	**PTASP Required Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Responses**	**Status**
127		Training and Certification Program	The process used to assess compliance with training and certification requirements is described.				
128		Compliance with Local, State, and Federal Safety Requirements	A description of the safety program for employees and contractors that incorporates the applicable local, state, and federal requirements is provided.				
129		Compliance with Local, State, and Federal Safety Requirements	Safety requirements that employees and contractors must follow when working on, or in close proximity to, the RTA controlled property are identified.				
130		Compliance with Local, State, and Federal Safety Requirements	Processes for ensuring the employees and contractors know and follow the requirements are described.				
131		Hazardous Materials Program	A description of the hazardous materials program, including the process used to ensure knowledge of and compliance with program requirements is provided.				
132		Drug and Alcohol	A description of the drug and alcohol program and the process used to ensure knowledge of and compliance with program requirements is provided.				
133		Review of Initial Submission (if applicable)	Any referenced materials, including procedures, checklists and training materials for system safety planning, internal safety audit program, hazard management process, accident/incident investigation, corrective action development, emergency management, coordination and training program, and rules compliance program must be submitted for review.				

PART II. ADDITIONAL QUESTIONS, COMMENTS

PART III. APPROVALS

This PTASP is:

- ☐ APPROVED
- ☐ NOT APPROVED
- ☐ PENDING / CLARIFICATION REQUIRED

Lead SSO Program Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

APPENDIX M

Program Requirements for the Development of a Security and Emergency Preparedness Plan (SEPP)

Required Elements for Development of a Security and Emergency Preparedness Plan

Each covered RTA's Security and Emergency Preparedness Plan will include at a minimum, the following required elements.

1. Introduction

- The SEPP should identify the purpose of the security program endorsed by the agency's Accountable Executive.
- The SEPP should introduce the concept of "system security."
- The SEPP should introduce the concept of "emergency preparedness."
- The SEPP should identify the goals of the SEPP program endorsed by the agency's Accountable Executive.
- Describe the scope of the SEPP.
- Describe the security and law enforcement functions that manage and support implementation of the SEPP.
- Describe the authority which oversees the operation and management of the RTA, including its security / police function
- Describe the interface with local, state, and federal authorities to ensure security and emergency preparedness for the system.
- Provide a list of acronyms and definitions used in the SEPP.

2. System Description

- A description of the agency including general overview, a brief history, and scope of rail transit services provided.
- Organizational charts showing the lines of authority and responsibility as they relate to security and emergency preparedness.
- Provide a categorization and break-down of all employees and contractors who work for / on the RTA.
- Provide a description of the RTA's ridership.
- Describe the RTA's operations and services.
- Describe the RTA's operating environment.
- Describe how the SEPP integrates with other plans and programs maintained by the RTA.
- Description of the current security conditions at the RTA and the types of security incidents experienced by the transit system and their frequency of occurrence.
- Summary description of methods and procedures, devices, and systems utilized to prevent or minimize security breaches, including passenger education, campaigns, delay, detection, and assessment devices, and others that may be applicable.

3. Management Activities

- Identification of the person(s) responsible for establishing transit system security and emergency preparedness policy and for developing and approving the SEPP
- Identification of the person(s) with overall responsibility for transit security and emergency preparedness, including day-to-day operations, SEPP related internal communications, liaison with external organizations, and identifying and resolving SEPP related concerns.
- Listing of SEPP related responsibilities of the personnel who work within the transit agency security/police function.
- Listing of SEPP related responsibilities of other departments / functions, including their relationship to the security / police function.

- Listing of security-related responsibilities for other (non-security / police) RTA employees, including their relationship to the employee's other duties.
- A SEPP Program Roles and Responsibilities Matrix should be developed showing interfaces with other transit system departments / functions and the key reports or actions required.
- The responsibilities of external agencies for supporting SEPP development and implementation should be identified.
- The committees developed by the RTA to address security issues should be identified.

4. Program Description

- Identification of SEPP activities and programs in place at the RTA to support planning for system security and emergency preparedness.
- Identification of the organization of SEPP related activities and programs and the ability to coordinate with external response agencies.
- Description of the equipment used to support implementation of the SEPP program.
- Description of SEPP related training and procedures available to ensure employee proficiency.
- Description of SEPP related activities to ensure the conduct of emergency exercises and evaluation.

5. Threat and Vulnerability Identification, Assessment, and Resolution

- Description of the RTA's activities to identify security- and terrorism-related threats and vulnerabilities.
- Description of the RTA's activities to assess the likely impacts of identified threats and vulnerabilities on the system and to identify vulnerabilities which require resolution.
- Description of how response strategies (both short- or long-term strategies) are developed for prioritized vulnerabilities, including the decision process used to determine whether to eliminate, mitigate, or accept security problems.

6. Implementation and Evaluation

- Identification of tasks to be performed to implement the goals and supporting objectives required to implement the SEPP.
- General schedule with specific milestones for implementation of the security program, threat and vulnerability analyses, staff security training, and regular program reviews during the implementation process.
- Description of the types of internal management reviews to be conducted, the frequencies of the reviews, and person(s) responsible.

7. Modification of Plan

- Description of process used to initiate revisions to the security plan, gather input for the revisions, procedures for updating the security plan, and identification of responsible person(s).
- Description of the process used to review and revise the security plan as necessary, including frequency of reviews, and responsible person(s).
- Description of process used to communicate and disseminate new and revised procedures and other elements of the security plan to appropriate transit agency staff.

APPENDIX N

Security and Emergency Preparedness Plan (SEPP) Review Checklist

PART I. GENERAL

SECURITY AND EMERGENCY PREPAREDNESS PLAN (SEPP)	
Document Title:	
Document Preparer:	
Document Date/Revision:	
ODOT Reviewer Name(s):	
ODOT Review Dates:	
RTA Response Date:	
Review Comments	***Note:*** If there are no review comments or discussion questions listed, '---' is used to indicate a description was included or a policy / procedure was referenced in the SEPP (or SEPP) to address the required element and no further discussion is required.

PART II. REVIEW COMMENTS

SEPP REVIEW CHECKLIST							
#	**SEPP Section, Title, Summary**	**SEPP Required Element Title**	**SEPP Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Response**	**Status**
1		Policy Statement	The policy statement is signed and endorsed by the RTA's Accountable Executive.				
2		Policy Statement	A policy statement should be developed for the SEPP.				
3		Policy Statement	The policy statement should describe the authority that establishes the SEPP, including statutory requirements and the RTA's relationship with the oversight agency.				
4		Responsibility for Mission Statement	Identification of the person(s) responsible for establishing transit system security and emergency preparedness policy and for developing and approving the SEPP.				
5		Purpose	The SEPP should introduce the concept of "system security."				
6		Purpose	The SEPP should introduce the concept of "emergency preparedness."				
7		Integration with Other Plans	Describe how the SEPP integrates with other plans and programs maintained by the RTA.				
8		Purpose	The SEPP should identify the purpose of the security program endorsed by the agency's Accountable Executive.				
9		Goals and Objectives	The SEPP should identify the goals of the program endorsed by the agency's Accountable Executive.				

SEPP REVIEW CHECKLIST							
#	**SEPP Section, Title, Summary**	**SEPP Required Element Title**	**SEPP Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Response**	**Status**
10		Goals and Objectives	The SEPP should identify the objectives of the program endorsed by the agency's Accountable Executive.				
11		Scope	Describe the scope of the SEPP.				
12		Management Authority and Legal Aspects	Describe the authority which oversees the operation and management of the RTA, including its security/police function.				
13		Passengers	Provide a description of the RTA's ridership.				
14		Services and Operations	Describe the RTA's operations and services.				
15		Operating Environment	Describe the RTA's operating environment.				
16		Background and History	A description of the agency including general overview, a brief history and scope of rail transit services provided.				
17		Human Resources	Provide a categorization and break-down of all employees and contractors who work for / on the RTA.				
18		Current Security Conditions	Description of the current security conditions at the RTA and the types of security incidents experienced by the transit system and their frequency of occurrence.				
19		Organizational Structure	Organizational charts showing the lines of authority and responsibility as they relate to security and emergency preparedness				
20		Division of Security Responsibility	Listing of SEPP related responsibilities of the personnel who work within the transit agency security / police function.				
21		Management of the SEPP Program	Identification of the person(s) with overall responsibility for transit security and emergency preparedness, including day-to-day operations, SEPP related internal communications, liaison with external organizations, and identifying and resolving SEPP related concerns.				

SEPP REVIEW CHECKLIST							
#	**SEPP Section, Title, Summary**	**SEPP Required Element Title**	**SEPP Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Response**	**Status**
22		Division of Security Responsibility	Listing of SEPP related responsibilities of other departments / functions, including their relationship to the security / police function.				
23		Division of Security Responsibility	Listing of security-related responsibilities for other (non-security / police) RTA employees, including their relationship to the employee's other duties.				
24		Division of Security Responsibility	An SEPP Program Roles and Responsibilities Matrix should be developed showing interfaces with other transit system departments / functions and the key reports or actions required.				
25		Division of Security Responsibility	The responsibilities of external agencies for supporting SEPP development and implementation should be identified.				
26		Division of Security Responsibility	A description of the committees developed by the RTA to address security issues				
27		Delegated Contractor Duties	A description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart				
28		Delegated Contractor Duties	A description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues				
29		Delegated Contractor Duties	An identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns				

SEPP REVIEW CHECKLIST							
#	**SEPP Section, Title, Summary**	**SEPP Required Element Title**	**SEPP Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Response**	**Status**
30		Government Involvement	Describe how the SEPP interfaces with local, state and federal authorities to ensure security and emergency preparedness for the system.				
31		Security and Law Enforcement	Describe the security and law enforcement functions that manage and support implementation of the SEPP.				
32		Planning	Identification of SEPP activities and programs in place at the RTA to support planning for system security and emergency preparedness.				
33		Organization	Identification of the organization of SEPP related activities and programs and the ability to coordinate with external response agencies.				
34		Equipment	Description of the equipment used to support implementation of the SEPP program.				
35		Training and Procedures	Description of SEPP related training and procedures available to ensure employee proficiency.				
36		Exercises and Evaluation	Description of SEPP related activities to ensure the conduct of emergency exercises and evaluation.				
37		Threat and Vulnerability Identification	Description of the RTA's activities to identify security and terrorism-related threats and vulnerabilities.				
38		Threat and Vulnerability Assessment	Description of the RTA's activities to assess the likely impacts of identified threats and vulnerabilities on the system and to identify particular vulnerabilities which require resolution.				
39		Threat and Vulnerability Resolution	Description of how response strategies (both short- or long-term strategies) are developed for prioritized vulnerabilities, including the decision process used to determine whether to eliminate, mitigate, or accept security problems.				

SEPP REVIEW CHECKLIST							
#	**SEPP Section, Title, Summary**	**SEPP Required Element Title**	**SEPP Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Response**	**Status**
40		Capabilities and Practices	Summary description of methods and procedures, devices, and systems utilized to prevent or minimize security breaches, including passenger education, campaigns, delay, detection, and assessment devices, and others that may be applicable.				
41		Required Tasks for Goals and Objectives	Identification of tasks to be performed to implement the goals and supporting objectives required to implement the SEPP.				
42		Task Schedule	General schedule with specific milestones for implementation of the security program, threat and vulnerability analyses, staff security training, and regular program reviews during the implementation process.				
43		Evaluation	Description of the types of internal management reviews to be conducted, the frequencies of the reviews, and the person(s) responsible.				
44		Initiation of SEPP Revisions	Description of process used to initiate revisions to the security plan, gather input for the revisions, procedures for updating the security plan, and identification of responsible person(s).				
45		Review Process	Description of the process used to review and revise the security plan as necessary, including frequency of reviews, and responsible person(s).				
46		Implement Modifications	Description of process used to communicate and disseminate new and revised procedures and other elements of the security plan to appropriate transit agency staff.				
47		Security Acronyms and Definitions	Provide a listing of acronyms and definitions used in the SEPP.				

SEPP REVIEW CHECKLIST							
#	**SEPP Section, Title, Summary**	**SEPP Required Element Title**	**SEPP Element Description**	**Included? Y-N**	**SSO Review Comments**	**RTA Response**	**Status**
48		Review of Initial Submission (if applicable)	Any referenced materials, including procedures, checklists and training materials for system safety planning, internal safety audit program, hazard management process, event investigation, corrective action development, emergency management, coordination and training program, and rules compliance program must be submitted for review.				

PART III. ADDITIONAL QUESTIONS, COMMENTS

PART IV. APPROVALS

This SEPP is:

- ☐ APPROVED
- ☐ NOT APPROVED
- ☐ PENDING / CLARIFICATION REQUIRED

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

APPENDIX O

Internal Audit Program Plan (IAPP) Review Checklist

PART I. GENERAL

INTERNAL AUDIT PROGRAM PLAN (IAPP)	
Document Title:	
Document Preparer:	
Document Date/Revision:	
ODOT Reviewer Name(s):	
ODOT Review Dates:	
RTA Response Date:	
Review Comments	***Note:*** If there are no review comments or discussion questions listed, '---'is used to indicate a description was included or a policy / procedure was referenced in the IAPP to address the required element and no further discussion is required.

PART II. REVIEW COMMENTS

IAPP REVIEW CHECKLIST					
#	**Internal Audit Program Plan Requirements**	**Included? Y-N**	**ODOT Review Comments**	**RTA Response**	**Status**
1	**Audit Schedule** • Does the plan / procedure include a description of the process to develop and submit an internal safety and security audit schedule to ODOT, which addresses all required elements of the Public Transportation Agency Safety Plan, and Security and Emergency Preparedness Plan, over a three-year cycle?				
2	• Does the plan / procedure include a description of the process to provide, at a minimum, annual updates of this schedule to ODOT with the annual report?				
3	**Audit Procedures and Checklists** • Does the plan / procedure include a description of the process to develop checklists and procedures for conducting the three-year audit cycle of the PTASP and / or SEPP?				
4	• Does the plan / procedure include a description of the process to ensure that these materials include sufficient criteria to determine if all audited elements are performing as intended?				
5	**Audit Notification** • Does the plan / procedure include a description of the process to notify ODOT not less than 30 calendar days prior to conduct of an internal safety or security audit?				
6	• Does the plan / procedure include a description of the process to transmit the notification in writing to the ODOT point-of-contact?				
7	• Does the plan / procedure include a description of the required notification content?				
8	• Does the plan / procedure include a description of the process to coordinate with ODOT in the event ODOT chooses to participate in an internal audit of which it is notified?				
9	• Does the plan / procedure include a description of the process to provide to ODOT, at the time of notification, the checklists and procedures relevant for the audit being conducted?				
10	• Does the plan / procedure include a description of the process established by the RTA to ensure the protection of Security-Sensitive Information (SSI) for security audits?				
11	**Audit Report**				

IAPP REVIEW CHECKLIST					
#	Internal Audit Program Plan Requirements	Included? Y-N	ODOT Review Comments	RTA Response	Status
	• Does the plan / procedure include a description of the process to prepare a written report documenting recommendations and any corrective actions identified as a result of each audit conducted?				
12	**Audit Findings Log** • Does the plan / procedure include a description of the process to prepare an Internal Safety and Security Audit Findings Log to track through to implementation all findings, recommendations, and corrective actions developed as a result of the internal safety and security audit process?				
13	• Does the plan / procedure include a description of the process to make this log available to ODOT and to be referenced during activities performed in support of the Hazard Management Process?				
14	**Audit CAPs** • Does the plan / procedure describe the requirement for submitting a formal CAP in writing to ODOT for approval within 30 calendar days after the need for the CAP was identified as a result of the internal safety or security audit finding?				
15	• Does the plan / procedure describe the requirement to identify and / or discuss the source of the CAP (i.e. findings identified from the internal safety and / or security audit process)?				
16	• Does the plan / procedure describe the requirement that the CAP identify the identified deficiency?				
17	• Does the plan / procedure describe the requirement that the CAP identify the planned activities or actions to resolve the deficiency?				
18	• Does the plan / procedure describe the requirement that the CAP identify the individual(s), department(s), task force(s), committee(s), operating or capital improvement program initiatives or other project sponsor(s) responsible for implementing the corrective actions?				
19	• Does plan / procedure describe the requirement that the CAP identify the scheduled completion dates for implementation?				
20	• Does the plan / procedure describe the requirement that the audited department submit applicable supporting documentation with the CAP?				
21	• Does the plan / procedure describe the requirement that the audited department provide the status of all open corrective actions related to the open internal audit findings?				
22	• Does the plan / procedure describe the requirements for changes? Does the plan / procedure require that, if the audited department wishes to modify an open action, the proposed alternative must be described in sufficient detail so that Safety Department can determine its acceptability as a substitute for the originally approved CAP?				
23	• Does the plan / procedure describe the requirements for close-outs? Also, when and how the Safety Department verified implementation for the closed CAP?				
24	• Does plan / procedure describe the requirement for the CAP log to include open items from internal audits?				

IAPP REVIEW CHECKLIST					
#	Internal Audit Program Plan Requirements	Included? Y-N	ODOT Review Comments	RTA Response	Status
25	• Does the plan / procedure describe the requirement for submitting applicable internal audit reports with the CAP Log in writing to ODOT for approval within 15 calendar days after the close of each quarter?				
26	• Does the plan / procedure describe the requirement for the submittal of revised policies / procedures as part of the CAP Log?				
27	**Delegated Contractor Duties** • Does the plan describe the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart?				
28	• Does the plan describe the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues?				
29	• Does the plan identify specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns?				
30	**Review of Initial Submission (if applicable)** • Are any referenced materials, including procedures, checklists and training materials for system safety planning, internal safety audit program, hazard management process, event investigation, corrective action development, emergency management, coordination and training program, and rules compliance program submitted for review?				
31	Other? (specify)				

PART III. ADDITIONAL QUESTIONS, COMMENTS

PART IV. APPROVALS

This IAPP is:
- ☐ APPROVED
- ☐ NOT APPROVED
- ☐ PENDING / CLARIFICATION REQUIRED

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

APPENDIX P

Internal Audit Annual Report Review Checklist

PART I. GENERAL INFORMATION

Rail Transit Agency:	
Audit Period:	
Date of Submittal:	
Reviewer(s):	
Date of Review:	

PART II. REVIEWER COMMENTS

IA ANNUAL REPORT REVIEW CHECKLIST			
#	**Requirement**	**Included? Y/N**	**Comments**
1	Submitted by February 1		
2	Includes a listing of the internal safety and security audits conducted for that year.		
3	Includes a discussion of where the RTA is in meeting its three-year internal audit schedule, including the identification of any obstacles in meeting the schedule and any proposed mitigation measures.		
4	Includes an updated schedule for next year's audits.		
5	Includes the status of all findings, recommendations and corrective actions resulting from the audits conducted that year.		
6	Includes any challenges or issues experienced by the RTA's system safety function or security/police function in obtaining action from and/or compliance with these findings, recommendations and corrective actions during that year.		
7	Includes formal letter of certification, signed by the RTA's Accountable Executive, stating that, based on the evaluation performed during the internal safety and security audit process during the previous year, the RTA is in compliance with its Public Transportation Agency Safety Plan and Security and Emergency Preparedness Plan.		
8	Includes signatures of the department head(s) responsible for the performance of the internal safety audits and / or internal security audits included in the report		
9	If findings from its internal safety and security audits indicate that the RTA is not in compliance with its PTASP and SEPP, includes activities identified by the Accountable Executive officer that the RTA will take to achieve compliance.		

PART III. ADDITIONAL COMMENTS, QUESTIONS OR REQUIREMENTS:

PART IV. APPROVALS

This Internal Audit Annual Report is:

- ☐ APPROVED
- ☐ NOT APPROVED
- ☐ PENDING APPROVAL

Authorized by:

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

APPENDIX Q

No Conflict of Interest Verification Annual Report Review Checklist

PART I. GENERAL INFORMATION

Rail Transit Agency:	
Period:	
Date of Submittal:	
Reviewer(s):	
Date of Review:	

PART II. REVIEWER COMMENTS

NCIV ANNUAL REPORT REVIEW CHECKLIST			
#	**Requirement**	**Included? Y/N**	**Comments**
1	Submitted by February 1		
2	Includes a listing of contracts awarded for the previous calendar year		
3	Includes a listing of key personnel servicing those contracts, with emphasis on personnel that are performing safety, security, and emergency preparedness activities on behalf of the RTA		
4	Includes a letter of certification signed by the Accountable Executive of the RTA that verifies there are no conflicts of interest in terms of: • Legal Independence • Financial Independence • Employees • Third Party Contractors		
5	Includes signatures of the department head(s) responsible for the administration of legal, contracts and procurement, human resources, and financial services for the RTA		
6	Other (Specify)		

PART III. ADDITIONAL COMMENTS, QUESTIONS OR REQUIREMENTS:

PART IV. APPROVALS

This No Conflict of Interest Verification Annual Report is:	☐	APPROVED
	☐	NOT APPROVED
	☐	PENDING APPROVAL

Authorized by:

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

APPENDIX R

Hazard Management Plan (HMP) Review Checklist

HAZARD MANAGEMENT PLAN (HMP)	
Document Title:	
Document Preparer:	
Document Date/Revision:	
ODOT Reviewer Name(s):	
ODOT Review Dates:	
RTA Response Date:	
Review Comments	***Note:*** If there are no review comments or discussion questions listed, '---' is used to indicate a description was included or a policy / procedure was referenced in the HMP to address the required element and no further discussion is required.

PART I. REVIEW COMMENTS

HMP REVIEW CHECKLIST					
#	**Hazard Management Process Requirements**	**Included? Y-N**	**ODOT Review Comments**	**RTA Response**	**Status**
1	Does the plan / procedure include an **overview** of the hazard management process developed by the RTA including activities for: hazard identification, hazard investigation, evaluation, and analysis, hazard control and elimination, and hazard tracking?				
2	Does the plan / procedure provide a detailed description of its approach for addressing each required element of the hazard management process, including activities for **hazard identification**?				
3	Does the plan / procedure provide a detailed description of its approach for addressing each required element of the hazard management process including activities for **hazard investigation**?				
4	Does the plan / procedure provide a detailed description of its process to perform a **formal, system-wide process** to identify, assess, and resolve hazards at least once every three years?				
5	Does the plan / procedure provide a detailed description of its approach for addressing each required element of the hazard management process including activities for **hazard evaluation and analysis**?				
6	Does the plan / procedure provide a detailed description of its approach for addressing each required element of the hazard management process including activities for **hazard control and elimination**?				
7	Does the plan / procedure provide a detailed description of its approach for addressing each required element of the hazard management process including activities for **hazard tracking?**				
8	Does the plan / procedure describe the role of ODOT in providing **on-going communication**?				
9	Does the plan / procedure describe the requirements for **on-going reporting** to ODOT relating to hazard management activities and status?				
10	Does the plan / procedure describe the role of ODOT in **coordinating** with the RTA regarding the **investigation** of certain categories of hazards?				
11	Does the plan / procedure describe the role of ODOT in coordinating with the RTA regarding the development, review and approval of **corrective actions plans**? • Does the procedure describe the requirement for submitting a formal CAP in writing to ODOT for approval within 30 calendar days after the need for the CAP has been identified as a result of the hazard management process? • Does the procedure describe the requirement to identify and / or discuss the source of the CAP (i.e. hazard)?				

HMP REVIEW CHECKLIST					
#	**Hazard Management Process Requirements**	**Included? Y-N**	**ODOT Review Comments**	**RTA Response**	**Status**
	• Does the procedure describe the requirement that the CAP identify / describe the hazard? • Does the procedure describe the requirement that the CAP identify the planned activities or actions to resolve the hazard? • Does the procedure describe the requirement that the CAP identify the individual(s), department(s), task force(s), committee(s), operating or capital improvement program initiatives or other project sponsor(s) responsible for implementing the corrective actions? • Does procedure describe the requirement that the CAP identify the scheduled completion dates for implementation? • Does the procedure describe the requirement to submit applicable supporting documentation with the CAP? • Does the procedure describe the requirement that to provide the status of all open corrective actions related to the open hazard? • Does the procedure describe the requirements for changes? Does the procedure require that, if the responsible department wishes to modify an open action, the proposed alternative must be described in sufficient detail so that Safety Department can determine its acceptability as a substitute for the originally approved CAP? • Does the procedure describe the requirements for close-outs? Also, when and how the Safety Department verified implementation for the closed CAP? • Does procedure describe the requirement for the CAP log to include open items from hazards? • Does the procedure describe the requirement for the submittal of revised policies / procedures as part of the CAP Log?				
12	**Delegated Contractor Duties** • Does the plan describe the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart? • Does the plan describe the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues? • Does the plan identify specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns?				
13	**Review of Initial Submission (if applicable)** • Are any referenced materials, including procedures, checklists and training materials for system safety planning, internal safety audit program, hazard management process, event investigation, corrective action development, emergency management, coordination and training program, and rules compliance program submitted for review?				
14	Other? (specify)				

PART II. ADDITIONAL QUESTIONS, COMMENTS

PART III. APPROVALS

This HMP is:

☐	APPROVED
☐	NOT APPROVED
☐	PENDING / CLARIFICATION REQUIRED

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

APPENDIX S

Accident / Incident Investigation Plan (AIP) Review Checklist

PART I. GENERAL

ACCIDENT / INCIDENT INVESTIGATION PLAN (AIP)	
Document Title:	
Document Preparer:	
Document Date/Revision:	
ODOT Reviewer Name(s):	
ODOT Review Dates:	
RTA Response Date:	
Review Comments	***Note:*** If there are no review comments or discussion questions listed, '---' is used to indicate a description was included or a policy / procedure was referenced in the AIP to address the required element and no further discussion is required.

PART II. REVIEW COMMENTS

AIP REVIEW CHECKLIST							
#	**AIP Section / Title / Summary**	**AIP Required Element Title**	**AIP Required Element Description**	**Included? Y/N**	**ODOT Review Comment**	**RTA Response**	**Status**
1		**Authority**	Describe the authority for developing and implementing event investigation procedures: • ODOT Standard requirements • FTA requirements				
2		**Acronyms / Definitions**	Provide list of acronyms and definitions of important terms used in event investigation procedures including: • Accident • Event • Hazard • Incident • Occurrence • Risk • Risk Mitigation • Safety Risk Management • Serious Injury • Threat • Vulnerability				
3		**Purpose**	Identify purpose of the event investigation procedures and introduce concepts of event investigation procedures to be utilized by transit agency including: • Notification thresholds for internal and external organizations • Accident investigation process and references to procedures • Process used to develop, implement, and track corrective actions that address investigation findings				

AIP REVIEW CHECKLIST							
#	**AIP Section / Title / Summary**	**AIP Required Element Title**	**AIP Required Element Description**	**Included? Y/N**	**ODOT Review Comment**	**RTA Response**	**Status**
			• Reporting to internal and external organizations • Coordination with the ODOT Program Manager				
4		**Scope**	Describe the scope of the event investigation procedures.				
5		**Thresholds**	Identify policies, criteria and thresholds for conducting transit agency event investigations: • Reportable Events • Non-Reportable • Joint • Independent • Service interruptions				
6		**Integration with Other Plans**	Describe how the event investigation procedures integrate with other plans and programs maintained by the transit agency, i.e. PTASP and SEPP				
7		**Responsibilities**	Identify person(s), and departments responsible for transit agency event investigations: • Safety and Security Department • Supervisors • Managers • Committee(s) • Contractors				
8		**Internal Notification Procedures**	Describe methods, including timing, of internal notification procedures and information to be provided: • Operations Control Center • Police Dispatch • Transit Management • Safety and Security Department point-of-contact				
9		**External Notification Procedures**	Describe methods, including timing, of external notification procedures and information to be provided by Operations Control Center, Police Dispatch, and transit agency point-of-contact: • Emergency Responders (medical, fire, and police) • ODOT • NTSB • FTA • FRA • Others as required				
10		**On-Site Investigation Procedures**	Describe investigative procedures utilized while performing on-site event investigation:				

AIP REVIEW CHECKLIST							
#	**AIP Section / Title / Summary**	**AIP Required Element Title**	**AIP Required Element Description**	**Included? Y/N**	**ODOT Review Comment**	**RTA Response**	**Status**
			• Method for initial reporting. • Specified transit agency personnel responsible for establishing on-site incident command and coordinating with law enforcement and other emergency responders. • Specified transit agency Investigator in Charge responsible for initiation, coordination and conduct of on-site investigation. • Method and personnel responsible for securing the site until the arrival of the designated investigators. • Method and personnel responsible for documenting current status of all known casualties. • Method and personnel responsible for documenting and estimating cost of vehicle and infrastructure damage and condition. • Method and personnel responsible for conducting and documenting interviews and other fact-finding activities. • Method and personnel responsible for creating sketches, diagrams, taking photos. • Method and personnel responsible for collecting, preserving and analyzing data. • Method and personnel responsible for determining if any employees are subject to alcohol / drug testing based on transit agency criteria. • Method and personnel responsible for securing technical assistance / expertise from support				

AIP REVIEW CHECKLIST							
#	**AIP Section / Title / Summary**	**AIP Required Element Title**	**AIP Required Element Description**	**Included? Y/N**	**ODOT Review Comment**	**RTA Response**	**Status**
			departments and independent agencies. • Designated point-of-contact to act as liaison with NTSB, ODOT and others. • Method and personnel responsible for restoring site.				
11		**Off-Site Investigation Procedures**	Describe investigation procedures utilized when performing off-site investigation: • Method and personnel responsible for obtaining applicable specifications and drawings. • Method and personnel responsible for obtaining and verifying vehicle, hardware and software systems data, and equipment maintenance history, damage and repair costs. • Method and personnel responsible for obtaining outside agency reports. • Method and personnel responsible for employee record reviews. • Method and personnel responsible for assessing compliance with rules and procedures. • Method and personnel responsible for event recorders and software downloads. • Method and personnel responsible for follow-up interviews. • Method and personnel responsible testing and special studies. • Method and personnel responsible data collection and analysis, interim research and analysis, and identification of probable cause and contributing factors.				
12		**Post-Event Procedures**	Describe post-event and hazard conditions investigation procedures:				

AIP REVIEW CHECKLIST							
#	**AIP Section / Title / Summary**	**AIP Required Element Title**	**AIP Required Element Description**	**Included? Y/N**	**ODOT Review Comment**	**RTA Response**	**Status**
			• Method and personnel responsible for conducting and documenting post-accident inspections / tests on vehicles, software, hardware, and equipment. • Method and personnel responsible for post-accident vehicle, systems, infrastructure, plant, and equipment assessments. • Method and personnel responsible for post-accident vehicle inspections and tests. • Method and personnel responsible for post-accident research and analysis and coordination with support departments and outside agencies. • Method and personnel responsible for retaining, securing, and storing post-accident evidence and documentation. • Method and personnel responsible for after action briefings and reporting.				
13		**Hazard Investigation Procedures**	Describe investigation procedures for hazard investigations: • A description of minimum thresholds for notification and reporting to ODOT. • Specified information to be provided. • ODOT investigation requirements. • A description of the RTA's maintenance of unacceptable and undesirable hazards documentation. • Coordination with ODOT.				
14		**Training**	Describe event investigation training and procedures available to ensure that the employees responsible for conducting investigations are proficient.				

AIP REVIEW CHECKLIST							
#	**AIP Section / Title / Summary**	**AIP Required Element Title**	**AIP Required Element Description**	**Included? Y/N**	**ODOT Review Comment**	**RTA Response**	**Status**
		Reporting / Investigation Reports	Describe Event / Hazard Investigation Reports: • Executive Summary • Methodology • Facts / Sequence of Events • Findings / Analysis • Probable Cause / Contributory Causes • Recommendations • Corrective Actions • Appendices				
15		**Reporting / Corrective Actions**	Describe the corrective action planning process for accidents / incidents: • Describe the requirement for submitting a formal CAP in writing to ODOT for approval within 30 calendar days after the need for the CAP has been identified as a result of the event investigation process. • Describe the requirement to identify and / or discuss the source of the CAP (i.e. accident). • Describe the requirement that the CAP identify / describe the event. • Describe the requirement that the CAP identify the planned activities or actions to ensure the event does not reoccur. • Describe the requirement that the CAP identify the individual(s), department(s), task force(s), committee(s), operating or capital improvement program initiatives or other project sponsor(s) responsible for implementing the corrective actions. • Describe the requirement that the CAP identify the scheduled completion dates for implementation. • Describe the requirement to submit applicable supporting documentation with the CAP.				

AIP REVIEW CHECKLIST							
#	**AIP Section / Title / Summary**	**AIP Required Element Title**	**AIP Required Element Description**	**Included? Y/N**	**ODOT Review Comment**	**RTA Response**	**Status**
			• Describe the requirement that to provide the status of all open corrective actions related to the open event. • Describe the requirements for changes. If the responsible department wishes to modify an open action, the proposed alternative must be described in sufficient detail so that Safety Department can determine its acceptability as a substitute for the originally approved CAP. • Describe the requirements for close-outs. Describe when and how the Safety Department verifies implementation of closed CAPs. • Describe the requirement for the CAP log to include open items from events. • Describe the requirement for the submittal of revised policies / procedures as part of the CAP Log.				
16		**SSO Coordination**	Describe coordination with ODOT: • To review and approve event investigation procedures • To participate in reportable events investigated by the RTA, ODOT, NTSB, FTA, or FRA • To review and approve investigation reports; and • Regarding ownership of event investigation materials				
17		**SSO Coordination**	Describe coordination with ODOT for the review of: • Event site, physical evidence and photographs collected at the scene • Preliminary, status, and final departmental incident reports and interview statements				

AIP REVIEW CHECKLIST							
#	**AIP Section / Title / Summary**	**AIP Required Element Title**	**AIP Required Element Description**	**Included? Y/N**	**ODOT Review Comment**	**RTA Response**	**Status**
			• Audiovisual data, including vehicle and facility cameras • Audio data from applicable Dispatch, Operations Control and Communication Centers • Reconstructed and/or reenacted event • Other relevant documents discussed in Section 6.1				
18		**Plan / Procedures Update Process**	Describe process used to review, revise and approve the accident / incident plan and related procedures.				
19		**Delegated Contractor Duties**	A description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart				
20		**Delegated Contractor Duties**	A description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues				
21		**Delegated Contractor Duties**	An identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns				
22		**Review of Initial Submission (if applicable)**	Any referenced materials, including procedures, checklists and training materials for system safety planning, internal safety audit program, hazard management process, event investigation, corrective action development, emergency management, coordination and training program, and rules compliance program must be submitted for review.				

PART III. ADDITIONAL QUESTIONS, COMMENTS

PART IV. APPROVALS

This AIP is:

☐	APPROVED
☐	NOT APPROVED
☐	PENDING / CLARIFICATION REQUIRED

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

APPENDIX T

Event Investigation Final Report Review Checklists

CONFIDENTIAL:
Warning this document may contain confidential and/or Sensitive Security Information (SSI). In keeping with the mandates found in 49 U.S.C. Section 5329(e), it is the policy of ODOT to protect confidential accident and incident investigation information from public disclosure.

Accident Investigation
Final Report Review Checklist

PART I. GENERAL INFORMATION

Rail Transit Agency	
Event No	
Event Description	
Event Date	
Final Report Date	
Review Date	
Reviewer(s)	
Synopsis of Event	
Probable Cause	

PART II. REVIEWER COMMENTS

A. Notification

#	Notification Requirements	Minimum Requirement Met?	ODOT Review Comments	Action Required?
A.1	For accidents, did the RTA notify the **ODOT** point-of-contact within **2 hours** upon determination that the accident was an SSO-reportable event?			
A.2	For accidents, did the RTA notify the **FTA** point-of-contact within **2 hours** upon determination that the accident was an FTA-reportable event?			
A.3	For accidents, did the RTA notify the ODOT point-of-contact within 6 hours upon determination that the accident was an SSO-reportable event?			
A.4	Other? (specify)			

B. Preliminary Report

#	Preliminary Report Requirements	Minimum Requirement Met?	ODOT Review Comments	Action Required?
B.1	Did the RTA report accident investigation summary information, preliminary reports from field personnel, and other available information, such as initial findings of fact; its investigation plans; NTSB or FTA involvement in the investigation; and whether an ad hoc investigation committee was convened, within **3 business days** of the reportable event?			
B.2	Other? (specify)			

C. Status Report

#	Status Report Requirements	Minimum Requirement Met?	ODOT Review Comments	Action Required?
C.1	Did the investigation take more than 30 calendar days to complete?			
C.2	Did the RTA prepare and submit a monthly status investigation report by email or regular mail?			
C.3	Did the status report include: • Minutes of any meeting held by the RTA's ad hoc reportable event investigation committee or contractor?			
C.4	Did the status report include: • Disclosure of any immediate actions the RTA has taken, planned or completed?			
C.5	Did the status report include: • Principal issues or items currently being evaluated?			
C.6	Did the status report include: • Overall progress and status of the investigation?			
C.7	Other? (specify)			

D. Final Report

#	Final Report Elements		Minimum Requirement Met?	ODOT Review Comments	Action Required?
D.1	Facts / Sequence of Events	Location of reportable accident			
D.2	Facts / Sequence of Events	Injuries to persons			
D.3	Facts / Sequence of Events	Property damage			
D.4	Facts / Sequence of Events	Personnel information			
D.5	Facts / Sequence of Events	Vehicle and equipment information			
D.6	Facts / Sequence of Events	Weather conditions			
D.7	Facts / Sequence of Events	Other environmental factors			
D.8	Facts / Sequence of Events	Fire			
D.9	Facts / Sequence of Events	Tests and research			
D.10	Facts / Sequence of Events	Other information			
D.11	Analysis	Are analytic methods and results identified, as well as a distinct statement of **probable cause**?			
D.12	Analysis	Does analysis support inferences and guide judgment by validity, consistency and logic?			

#	Final Report Elements		Minimum Requirement Met?	ODOT Review Comments	Action Required?
D.13	Analysis	Have facts, conditions, circumstance and inferences been properly reviewed and evaluated?			
D.14	Analysis	Were people, procedures, equipment, facilities, and environmental factors considered in the analysis?			
D.15	Recommendations	Are they feasible and supported by findings?			
D.16	Recommendations	Are they itemized / specific enough to facilitate corrective actions?			
D.17	Recommendations	Are they directed toward correcting a particular area and assigned to specific individuals and departments for action?			
D.18	Recommendations	Do they establish specific target dates on a schedule for implementation or completion?			
D.19	Appendices	Supporting documentation			
D.20	Appendices	Drawings, photographs			
D.21	Appendices	Interviews			
D.22	Other (specify)				

PART III. ADDITIONAL COMMENTS, QUESTIONS, OR REQUIREMENTS

PART IV. APPROVALS

This Investigation Report is:

☐	APPROVED
☐	NOT APPROVED / SSO DOES NOT CONCUR
☐	PENDING / ACTION REQUIRED

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

CONFIDENTIAL:
Warning this document may contain confidential and/or Sensitive Security Information (SSI). In keeping with the mandates found in 49 U.S.C. Section 5329(e), it is the policy of ODOT to protect confidential accident and incident investigation information from public disclosure.

Hazard Investigation
Final Report Review Checklist

PART I. GENERAL INFORMATION

Rail Transit Agency	
Event No	
Event Description	
Event Date	
Final Report Date	
Review Date	
Reviewer(s)	
Synopsis of Event	
Probable Cause	

PART II. REVIEWER COMMENTS

A. Notification

#	Notification Requirements	Minimum Requirement Met?	ODOT Review Comments	Action Required?
A.1	For unacceptable hazards, did the RTA notify the **ODOT** point-of-contact with **24** hours or by **5:00 p.m. on the next working day** upon determination of the initial risk assessment?			
A.2	Other? (specify)			

B. Preliminary Report

#	Preliminary Report Requirements	Minimum Requirement Met?	ODOT Review Comments	Action Required?
B.1	Did the RTA report hazard investigation summary information, preliminary reports from field personnel, and other available information, such as initial findings of fact; its investigation plans; NTSB or FTA involvement in the investigation; and whether an ad hoc investigation committee was convened, within **7 calendar days** of the reportable event?			
B.2	Other? (specify)			

C. Status Report

#	Status Report Requirements	Minimum Requirement Met?	ODOT Review Comments	Action Required?
C.1	Did the investigation take more than 30 calendar days to complete?			
C.2	Did the RTA prepare and submit a monthly status investigation report by email or regular mail?			
C.3	Did the status report include: • Minutes of any meeting held by the RTA's ad hoc reportable event investigation committee or contractor?			
C.4	Did the status report include: • Disclosure of any immediate actions the RTA has taken, planned or completed?			
C.5	Did the status report include: • Principal issues or items currently being evaluated?			
C.6	Did the status report include: • Overall progress and status of the investigation?			
C.7	Other? (specify)			

D. Final Report

#	Final Report Elements		Minimum Requirement Met?	ODOT Review Comments	Action Required?
D.1	Facts / Sequence of Events	Location of reportable hazard			
D.2	Facts / Sequence of Events	Injuries to persons			
D.3	Facts / Sequence of Events	Property damage			
D.4	Facts / Sequence of Events	Personnel information			
D.5	Facts / Sequence of Events	Vehicle and equipment information			
D.6	Facts / Sequence of Events	Weather conditions			
D.7	Facts / Sequence of Events	Other environmental factors			
D.8	Facts / Sequence of Events	Fire			
D.9	Facts / Sequence of Events	Tests and research			
D.10	Facts / Sequence of Events	Other information			
D.11	Analysis	Are analytic methods and results identified, as well as a distinct statement of **probable cause**?			
D.12	Analysis	Does analysis support inferences and guide judgment by validity, consistency and logic?			

#	Final Report Elements		Minimum Requirement Met?	ODOT Review Comments	Action Required?
D.13	Analysis	Have facts, conditions, circumstance and inferences been properly reviewed and evaluated?			
D.14	Analysis	Were people, procedures, equipment, facilities, and environmental factors considered in the analysis?			
D.15	Recommendations	Are they feasible and supported by findings?			
D.16	Recommendations	Are they itemized / specific enough to facilitate corrective actions?			
D.17	Recommendations	Are they directed toward correcting a particular area and assigned to specific individuals and departments for action?			
D.18	Recommendations	Do they establish specific target dates on a schedule for implementation or completion?			
D.19	Appendices	Supporting documentation			
D.20	Appendices	Drawings, photographs			
D.21	Appendices	Interviews			
D.22	Other (specify)				

PART III. ADDITIONAL COMMENTS, QUESTIONS, OR REQUIREMENTS

PART IV. APPROVALS

This Investigation Report is:

☐	APPROVED
☐	NOT APPROVED / SSO DOES NOT CONCUR
☐	PENDING / ACTION REQUIRED

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

CONFIDENTIAL:
Warning this document may contain confidential and/or Sensitive Security Information (SSI). In keeping with the mandates found in 49 U.S.C. Section 5329(e), it is the policy of ODOT to protect confidential accident and incident investigation information from public disclosure.

Rail Transit Agency
Incident / Occurrence Notification Review Checklist

PART I. GENERAL INFORMATION

Rail Transit Agency	
Incident / Occurrence No	
Incident / Occurrence Description	
Event Date	
Final Report Date (if provided)	
Review Date	
Synopsis of Incident / Occurrence	

PART II. REVIEWER COMMENTS

E. Notification

#	Notification Requirements	Yes/No	Comments/Questions
A.1	For **incidents**, did the rail transit agency report to ODOT SSO within 30 calendar days upon determination that an event was an incident?		
A.2	For **incidents and occurrences**, did the rail transit agency include this event on the appropriate tracking log?		
A.3	Other? (specify)		

PART III. ADDITIONAL QUESTIONS, COMMENTS

PART IV. REVIEWER SIGNATURE

This incident / occurrence notification is:

	COMPLETE
	INCOMPLETE

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Transit Services, ODOT Date

APPENDIX U

Corrective Action Plan (CAP) Program Review Checklist

PART I. GENERAL

CORRECTIVE ACTION PLAN (CAP) PROGRAM	
Document Title	
Document Preparer	
Document Date/Revision	
ODOT Reviewer Name(s)	
ODOT Review Dates	
RTA Response Date	
Review Comments	***Note:*** If there are no review comments or discussion questions listed, '---' is used to indicate a description was included or a policy/procedure was referenced in the CAP Program to address the required element and no further discussion is required.

PART II. REVIEWER COMMENTS

CAP PROGRAM REVIEW CHECKLIST					
#	**Corrective Action Plan Program Requirements**	**Included? Y-N**	**ODOT Review Comments**	**RTA Response**	**Status**
1	A description of the individuals, departments, and external agencies (to include ODOT, FTA, and NTSB) that have roles and responsibilities for the identification of the need for a CAP, CAP development, CAP implementation, and CAP monitoring and tracking.				
2	A description of the events and/or ongoing program activities that trigger the development of a Corrective Action Plan (CAP), including the following minimum requirements: • Internal Safety and Security Audit Program o CAPs will be developed when findings of non-compliance or partial compliance are identified from RTA internal safety and security audit final reports. • Hazards o CAPs will be developed to correct those elements or activities identified as deficient as a result of hazard investigations. In addition, ODOT may, during the course of an investigation, identify corrective actions to avoid or minimize the reoccurrence of the unsafe condition or address a related, systemic problem. CAPs will also be developed to address findings and recommendations from formal hazard analyses (Preliminary Hazard Analysis, Failure Mode and Effects Analysis, Operations Hazard Analysis, Fault Tree Analysis). • Event Investigations o CAPs will be developed when the results of RTA investigations identify causal or contributing factors that can be minimized, controlled, or corrected such that the identical or similar situations will not reoccur ("reactive") • NTSB Investigations o CAPs may be developed based on the findings and recommendations included in the NTSB final accident report, following review of the report by ODOT and RTA. • SSO On-Site Safety and Security Reviews o CAPs will be developed for deficiencies and areas of concern resulting from an ODOT SSO				

CAP PROGRAM REVIEW CHECKLIST					
#	**Corrective Action Plan Program Requirements**	**Included? Y-N**	**ODOT Review Comments**	**RTA Response**	**Status**
	On-Site Safety Review or SSO On-Site Security Review. • Other o CAPs will be developed when FTA or ODOT's various oversight activities indicate the opportunity to intervene with an identified systemic problem or other concern / deficiency before it can manifest as a reportable event ("proactive").				
3	A description of what each CAP will identify, including the following minimum requirements: • Identified hazard or deficiency, • Planned activities or actions to resolve deficiency or hazard, • Department(s) responsible for implementing corrective actions, and • Scheduled completion dates for implementation.				
4	A description of the CAP requirements: • Describe the requirement for submitting a formal CAP in writing to ODOT for approval within 30 calendar days after the need for the CAP has been identified as a result of a triggering event or process (i.e. event investigation, internal audit). • Describe the requirement to identify and / or discuss the source of the CAP (i.e., accident, hazard). • Describe the requirement that the CAP identify / describe the triggering event (i.e., accident, incident, occurrence). • Describe the requirement that the CAP identify the planned activities or actions to ensure resolution or prevent reoccurrence. • Describe the requirement that the CAP identify the individual(s), department(s), task force(s), committee(s), operating or capital improvement program initiatives, or other project sponsor(s) responsible for implementing the corrective actions. • Describe the requirement that the CAP identify the scheduled completion dates for implementation. • Describe the requirement to submit applicable supporting documentation with the CAP. • Describe the requirement that to provide the status of all open corrective actions related to open items (i.e., hazards, internal audit findings). • Describe the requirements for changes. If the responsible department wishes to modify an open action, the proposed alternative must be described in sufficient detail so that Safety Department can determine its acceptability as a substitute for the originally approved CAP. • Describe the requirements for close-outs. Describe when and how the Safety Department verifies implementation of closed CAPs. • Describe the requirement for the CAP log to include open items from accidents / incidents. • Describe the requirement for the submittal of revised policies / procedures as part of the CAP Log.				

CAP PROGRAM REVIEW CHECKLIST					
#	**Corrective Action Plan Program Requirements**	**Included? Y-N**	**ODOT Review Comments**	**RTA Response**	**Status**
5	A description of the CAP internal and external notification process, including coordination with the RTA's safety and security points-of contact and ODOT.				
6	A description of the CAP internal and external review and approval process, including coordination with the RTA's safety and security points-of contact and ODOT.				
7	A description of the CAP monitoring and tracking process, including: • a sample Corrective Action Plan (CAP) • a sample Corrective Action Plan (CAP) Monitoring Log.				
8	A description of the process to review and update the CAP Program, as required.				
9	Delegated Contractor Duties: • A description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart; • A description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues; and • An identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identified safety or security findings or concerns.				
10	Review of Initial Submission (if applicable): • Any referenced materials, including procedures, checklists and training materials for system safety planning, internal safety audit program, hazard management process, accident/incident investigation, corrective action development, emergency management, coordination and training program, and rules compliance program must be submitted for review.				

PART III. ADDITIONAL QUESTIONS, COMMENTS

PART IV. APPROVALS

This CAP Program is:

	APPROVED
	NOT APPROVED
	PENDING / CLARIFICATION REQUIRED

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

APPENDIX V

Corrective Action Plan (CAP) Log Review Checklist

Corrective Action Plan (CAP) Log Review Checklist

PART I. GENERAL INFORMATION

Rail Transit Agency	
Date Received by SSO	
Method Received by SSO	
Period Ending Date	
Review Date	
Reviewer(s)	

PART II. REVIEWER COMMENTS

CAP LOG REVIEW CHECKLIST			
#	**CAP Log Requirements**	**Yes/No**	**Comments/Questions**
1	Did the RTA transmit CAP Log via email or regular mail within the first 15 calendar days of the next quarter?		
2	Did ODOT acknowledge receipt in writing?		
3	Does CAP Log summarize the status of all open corrective actions related to the state oversight program and all actions closed since the last submittal?		
4	Does CAP Log include the following information for changes and close-outs: • If the RTA wishes to modify an open action, the proposed alternative must be described in sufficient detail so that ODOT can determine its acceptability as a substitute for the originally approved CAP? • When and how the RTA verified implementation for CAPs closed since the last submittal?		
5	Does the CAP log include open items from the following categories: • Accident investigations? • Security incident investigations? • Hazard investigations? • Internal safety and security audits? • FTA Three-Year On-Site Reviews? • ODOT SSO On-Site Reviews? • ODOT on-site monitoring exercises?		
6	Did the RTA submit the applicable completed internal audit reports with the CAP Log?		
7	Other? (specify)		

PART III. ADDITIONAL QUESTIONS, COMMENTS, REQUIREMENTS

PART IV. APPROVALS

This CAP Log is:		
		APPROVED
		NOT APPROVED
		PENDING / CLARIFICATION REQUIRED

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

APPENDIX W

Safety and Security Certification Plan (SSCP) Review Checklist

SAFETY AND SECURITY CERTIFICATION PLAN	
Document Title	
Document Preparer	
Document Date/Revision	
ODOT Reviewer Name(s)	
ODOT Review Dates	
RTA Response Date	
Review Comments	***Note:*** If there are no review comments or discussion questions listed, '---' is used to indicate a description was included or a policy / procedure was referenced in the SSCP to address the required element and no further discussion is required.

PART I. REVIEWER COMMENTS

SSCP REVIEW CHECKLIST					
#	**SSCP Requirements**	**Included? Y-N**	**ODOT Review Comments**	**RTA Response**	**Status**
1	Does the SSCP describe the process to develop a certifiable elements list, certifiable items list?				
2	Does the SSCP describe the process to develop and complete Design Criteria Conformance Checklists to verify compliance of the design with the safety and security criteria?				
3	Does the SSCP describe the process to develop safety and security design criteria to identify concerns appropriate for the project?				
4	Does the SSCP describe the process to develop and complete Construction Specification Conformance Checklists to verify that facilities and systems are constructed, manufactured, or installed according to design?				
5	Does the SSCP describe the process for the development and implementation of an Integrated Test Program for safety and security related tests?				
6	Does the SSCP describe the process to provide training classes to the RTA's field, OCC, management personnel that address safety, security, and emergency preparedness?				
7	Does the SSCP describe the process to provide or develop operations and maintenance manuals for the RTA's field, OCC, management personnel?				
8	Does the SSCP describe the process to train field, OCC, and / or management personnel on rules and procedures?				
9	Does the SSCP describe the process to train public safety personnel (i.e., fire, police, and emergency medical) to manage their activities safely and securely in the transit environment?				
10	Does the SSCP describe the process to conduct emergency drills for identified transit emergencies that may occur on the project?				
11	Does the SSCP describe the process to identify, assess, and resolve hazards? Does the SSCP also describe the process to track hazard resolutions and / or acceptance throughout the project?				
12	Does the SSCP describe the process to identify, assess, and resolve threats and vulnerabilities? Does the SSCP also describe the process to track threat / vulnerability resolutions and / or acceptance throughout the project?				
13	Does the SSCP describe the process to ensure Initial Submission requirements established by FTA and ODOT are met for the following plans: Public Transportation Agency Safety Plan, Security and Emergency Preparedness Plan, Internal Audit Program Plan, Hazard Management Plan, Accident / Incident Investigation Plan, and Corrective Action Program Plan?				
14	Does the SSCP describe the process to issue the "Certificate of Safety and Security" to verify that the RTA's project is safe and secure for revenue service?				

SSCP REVIEW CHECKLIST					
#	**SSCP Requirements**	**Included? Y-N**	**ODOT Review Comments**	**RTA Response**	**Status**
15	Does the SSCP describe the process to prepare and transmit the Safety and Security Certification Verification Report as appropriate to the RTA management and ODOT personnel?				
16	Does the SSCP describe the process to document and verify that the RTA's project successfully complies with identified safety and security requirements?				
17	Delegated Contractor Duties: a description of the roles and responsibilities of the delegated duties and responsibilities to the contractor organization, including an organizational chart;				
18	Delegated Contractor Duties: a description of the authorization to specific contractors to make notifications, to make reports, to submit corrective actions, and to speak on behalf of the RTA on safety and security issues; and				
19	Delegated Contractor Duties: an identification of specific individual(s) within each contractor organization with overarching responsibility for the delivery of contractor services and authority to resolve issues, such as non-responsiveness to ODOT identifid safety or security findings or concerns.				

PART II. ADDITIONAL QUESTIONS, COMMENTS

PART III. APPROVALS

This SSCP is:

☐	APPROVED
☐	NOT APPROVED
☐	PENDING / CLARIFICATION REQUIRED

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

APPENDIX X

Safety and Security Certification Verification Report (SSCVR) Review Checklist

SAFETY AND SECURITY CERTIFICATION VERIFICATION REPORT	
Document Title	
Document Preparer	
Document Date/Revision	
ODOT Reviewer Name(s)	
ODOT Review Dates	
RTA Response Date	

PART I. REVIEWER COMMENTS

SSCVR REVIEW CHECKLIST				
#	**Does the RTA SSCVR content include a discussion of the following?**	**Yes/No**	**RTA Reference Document**	**Date of ODOT Review**
1	A certifiable elements list and certifiable items list was developed.			
2	Safety and security design criteria were developed and documented to identify concerns appropriate for the project.			
3	A Safety and Security Certification Plan was developed and implemented.			
4	Design Criteria Conformance Checklists were developed and completed to verify compliance of design with safety and security criteria.			
5	Construction Specification Conformance Checklists were developed and completed to verify that facilities and systems are constructed, manufactured or installed according to design.			
6	Integrated tests were identified that needed to be monitored for safety and security; tests were completed; and test results were documented.			
7	Training classes were provided to transit operations and maintenance staff that address safety, security, and emergency preparedness; completion of training was documented.			
8	Operations and maintenance manuals were provided to, or developed by, transit operations and maintenance staff.			
9	Operations and maintenance staff were trained on rules and procedures; completion of training was documented. Rules and procedures were documented.			
10	Public safety personnel (i.e., fire and police) were trained to manage their activities safely in the transit environment; completion of training was documented.			
11	Emergency drills and exercises were conducted for identified transit emergencies that may occur on the project; drills and exercises were documented.			
12	Hazard identification, assessment, and resolution were performed with tracking for resolution and / or acceptance throughout the project.			
13	Threat and vulnerability identification, assessment, and resolution were performed with tracking for resolution and / or acceptance throughout the project.			
14	The “Certificate of Safety and Security” was issued to verify that the transit project is safe and secure for revenue service.			
15	The Safety and Security Certification Verification Report was prepared, and transmitted, as appropriate to management and oversight personnel.			
16	Other safety and security requirements, if any (describe).			

PART II. ADDITIONAL QUESTIONS, COMMENTS

PART III. REVIEWER SIGNATURE

This SSCVR is:
- ☐ COMPLETE
- ☐ INCOMPLETE

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

Appendix Y

Transit Asset Management Plan Review Checklist

Transit Asset Management Plan Review Checklist

PART I. GENERAL INFORMATION

TRANSIT ASSET MANAGEMENT PLAN (TAMP)	
Document Title:	
Document Preparer:	
Document Date/Revision:	
ODOT Reviewer Name(s):	
ODOT Review Dates:	
RTA Response Date:	
Review Comments	***Note:*** If there are no review comments or discussion questions listed, '---'is used to indicate a description was included or a policy/procedure was referenced in the TAMP to address the required element and no further discussion is required.

PART II. REVIEWER COMMENTS

TAMP REVIEW CHECKLIST				
#	**Requirements**	**Description**	**Minimum Required Content Included? Yes/No**	**Comments / Questions**
1	General Requirements	Does the plan include a definition of the term 'state of good repair' that includes objectives standards for measuring the condition of capital assets of recipients, including equipment, rolling stocks, infrastructure, and facilities?		
2	General Requirements	Does the plan include a requirement that recipients and subrecipients of Federal financial assistance develop a transit asset management plan?		
3	General Requirements	Does the plan include a requirement that each designated recipient of Federal financial assistance report on the condition of the system of the recipient and provide a description of any change in condition since the last report?		
4	General Requirements	Does the plan include an analytical process or decision support tool for use by public transportation systems that: • allows for the estimation of capital investment needs of such systems over time? • assists with asset investment prioritization by such systems?		
5	General Requirements	Does the plan include performance measures for capital assets and a requirement that a provider and a group TAM plan sponsor establish performance targets for improving the condition of capital assets?		
6	General Requirements	Does the plan, as specified in **§ 625.17**, adhere to the following principles for the state of good repair when implementing its Transit Asset Management Plan? • A capital asset is in a state of good repair if it is in a condition sufficient for the asset to operate at a full level of performance. In determining whether a capital asset is in a state of good repair, and RTA must consider the state of good repair standards under subpart D of 49 CFR Part 625.		

TAMP REVIEW CHECKLIST				
#	**Requirements**	**Description**	**Minimum Required Content Included? Yes/No**	**Comments / Questions**
		• An individual capital asset may operate at a full level of performance regardless of whether or not other capital assets within a public transportation system are in a state of good repair. • A provider's Accountable Executive must balance transit asset management, safety, day-to-day operations, and expansion needs in approving and carrying out a TAMP and the PTASP and SEPP.		
7	Applicability	Does the plan identify the Tier 1 agency that is subject to the requirements for Transit Asset Management as defined in **§625.5**?		
8	Tier 1 – Minimum Plan Requirements	Does the plan include the following element: • **Inventory of Capital Assets?** o An inventory of the number and type of capital assets. The inventory must include all capital assets that a provider owns, except equipment with an acquisition value under $50,000 that is not a service vehicle. o An inventory also must include third-party owned or jointly procured exclusive-use maintenance facilities, passenger station facilities, administrative facilities, rolling stock, and guideway infrastructure used by a provider in the provision of public transportation. o The asset inventory must be organized at a level of detail commensurate with the level of detail in the RTA's program of capital projects.		
9	Tier 1 – Minimum Plan Requirements	Does the plan include the following element: • **Condition Assessment?** o A condition assessment of those inventoried assets for which an RTA has direct capital responsibility. A condition assessment must generate information in a level of detail sufficient to monitor and predict the performance of the assets and to inform the investment prioritization. o As specified in **§ 625.41**, standards for measuring the condition of capital assets, the TAMP must address the following standards: o A capital asset is in a state of good repair if it meets the following objective standards— a. The capital asset is able to perform its designed function; b. The use of the asset in its current condition does not pose an identified unacceptable safety risk; and c. The life-cycle investment needs of the asset have been met or recovered, including all scheduled maintenance, rehabilitation, and replacements		
10	Tier 1 – Minimum Plan Requirements	Does the plan include the following element: • **Decision Support Tool?**		

TAMP REVIEW CHECKLIST				
#	**Requirements**	**Description**	**Minimum Required Content Included? Yes/No**	**Comments / Questions**
		o A description of analytical processes or decision-support tools that an RTA uses to estimate capital investment needs over time and develop its investment prioritization.		
11	Tier 1 – Minimum Plan Requirements	Does the plan include the following element: • **Inventory Prioritization** o An RTA's project-based prioritization of investments, developed in accordance with **§ 625.33**. o Specifically, the TAMP must describe the processes for investment prioritization that result in the following: a. An investment prioritization that identifies a provider's programs and projects to improve or manage, over the TAMP horizon period, the state of good repair of capital assets for which the provider has direct capital responsibility. b. A ranking of projects to improve or manage the state of good repair of capital assets in order of priority and anticipated project year. c. A ranking of projects that is consistent with the provider's TAM policy and strategies. d. Due consideration given to those state of good repair projects to improve, that pose an identified unacceptable safety risk, when developing the provider's investment prioritization. In other words, the provider is expected to give greater priority to those projects that address unacceptable safety risks. e. Due consideration given to the estimation of funding levels from all available sources that the provider reasonably expects will be available in each fiscal year during the TAMP horizon period. f. Due consideration given to the requirements under 49 CFR 37.161 and 37.163 concerning maintenance of accessible features and the requirements under 49 CFR 37.43 concerning alteration of transportation facilities.		
12	Tier 1 – Minimum Plan Requirements	Does the plan include the following element: • **Transit Asset Management or State of Good Repair Policy?** o An RTA's transit asset management or state of good repair policy.		

TAMP REVIEW CHECKLIST				
#	**Requirements**	**Description**	**Minimum Required Content Included? Yes/No**	**Comments / Questions**
13	Tier 1 – Minimum Plan Requirements	Does the plan include the following element: • **Implementation Strategy?** o A provider's TAMP implementation strategy.		
14	Tier 1 – Minimum Plan Requirements	Does the plan include the following element: • **List of Key Annual Activities?** o A description of key TAM activities that a provider intends to engage in over the TAM plan horizon period.		
15	Tier 1 – Minimum Plan Requirements	Does the plan include the following element: • **Identification of Resources**? o A summary or list of the resources, including personnel, that an RTA needs to develop and carry out the TAMP.		
16	Tier 1 – Minimum Plan Requirements	Does the plan include the following element: • **Evaluation Plan?** o An outline of how an RTA will monitor, update, and evaluate, as needed, its TAMP and related business practices, to ensure the continuous improvement of its transit asset management practices.		
17	Tier 1 – Minimum Plan Requirements	Does the plan include the following: • **Horizon Period?** o The plan must describe the process to ensure the TAMP covers a horizon period of at least four years.		
18	Tier 1 – Minimum Plan Requirements	Does the plan include the following: • **Amendments?** o The plan must describe the process to ensure the RTA has the capability and resources to update its TAMP at any time during the TAMP horizon period. At a minimum, the RTA should amend its TAMP whenever there is a significant change to the asset inventory, condition assessments, or investment prioritization that the RTA did not reasonably anticipate during the development of the initial TAMP.		
19	Tier 1 – Minimum Plan Requirements	Does the plan include the following: • **Updates?** o The plan must describe the process that the RTA follows to update its entire TAMP at least once every four (4) years.		
20	Performance Measures	Does the plan include performance measures for the following asset: • **Equipment: (non-revenue) service vehicles?** o The performance measure for non-revenue, support-service and maintenance vehicles equipment is the percentage of those vehicles that have either met or exceeded their ULB.		
21	Performance Measures	Does the plan include performance measures for the following asset: • **Rolling Stock?** o The performance measure for rolling stock is the percentage of revenue vehicles within a particular		

TAMP REVIEW CHECKLIST				
#	**Requirements**	**Description**	**Minimum Required Content Included? Yes/No**	**Comments / Questions**
		asset class that have either met or exceeded their ULB.		
22	Performance Measures	Does the plan include performance measures for the following asset: • **Infrastructure?** o Rail fixed-guideway, track, signals, and systems. The performance measure for rail fixed-guideway, track, signals, and systems is the percentage of track segments with performance restrictions.		
23	Performance Measures	Does the plan include performance measures for the following asset: • **Facilities?** o The performance measure for facilities is the percentage of facilities within an asset class, rated below condition 3 on the TERM scale.		
24	Performance Targets	Does the plan include performance targets that satisfy the following requirement: • **Performance Target?** o RTA must set a performance target based on realistic expectations, and both the most recent data available and the financial resources from all sources that the provider reasonably expects will be available during the TAMP horizon period.		
25	Performance Targets	Does the plan include performance targets that satisfy the following requirement: • **Timeline?** o RTA must set a timeline for target setting. 1. Within three months after the effective date of 49 CFR Part 625, a provider must set performance targets for the following fiscal year for each asset class included in its TAMP. 2. At least once every fiscal year after initial targets are set, a provider must set performance targets for the following fiscal year.		
26	Performance Targets	Does the plan include performance targets that satisfy the following requirement: • **Annual Performance Target?** o A provider must ensure that the provider's Accountable Executive approves each annual performance target.		
27	Performance Targets	Does the plan include performance targets that satisfy the following requirement: • **Group Plan Participants?** o A Sponsor must set performance targets for group plan participants. 1. A Sponsor must set one or more unified performance targets for each asset class reflected in the group TAMP in accordance with paragraphs (a)(2) and (b) of **§ 625.45**.		

TAMP REVIEW CHECKLIST				
#	**Requirements**	**Description**	**Minimum Required Content Included? Yes/No**	**Comments / Questions**
		2. To the extent practicable, a Sponsor must coordinate its unified performance targets with each participant's Accountable Executive.		
28	Performance Targets	Does the plan include performance targets that satisfy the following requirement: • **Coordination?** o RTA must coordinate with the State of Oklahoma and the Metropolitan Planning Organizations in the State of Oklahoma and Metropolitan Planning Organization performance targets.		
29	Annual Review	Does the plan require the RTA to conduct an annual review of the TAMP to ensure that the TAMP is current at all times?		
30	Annual Review	Does the plan include the requirement for the RTA to prepare and submit by **January 1**, a formal correspondence notifying the ODOT point-of-contact of this determination that an update is not necessary for the year?		
31	Annual Review	Does the plan include the requirement for the RTA to submit a revised TAMP to the ODOT SSO Program Manager by **January 31** when the agency determines that an update is necessary?		
32	Record Keeping	Does the plan include the requirement for the RTA to perform the following record keeping duties to maintain the TAMP? • Maintain records and documents that support, and set forth in full, its TAMP. • Make its TAMP, any supporting records or documents performance targets, investment strategies, and the annual condition assessment report available to ODOT to aid in the planning process?		

PART II. ADDITIONAL QUESTIONS, COMMENTS

PART III. REVIEWER SIGNATURE

This TAMP is:

☐	APPROVED
☐	NOT APPROVED
☐	PENDING / CLARIFICATION REQUIRED

Lead SSO Project Manager, ODOT Date

Manager, Office of Mobility and Public Transit, ODOT Date

Appendix Z

Six (6) Hour State Safety Oversight Agency Rail Safety Event Notification Form

SIX (6) HOUR
STATE SAFETY OVERSIGHT AGENCY
RAIL SAFETY EVENT NOTIFICATION FORM

SIX (6) HOUR RAIL SAFETY EVENT NOTIFICATION FORM				
RAIL TRANSIT AGENCY				
1	RAIL TRANSIT AGENCY			
2	MODE	☐ HEAVY RAIL	☐ LIGHT RAIL	☐ STREETCAR
PRIMARY INVESTIGATOR / NOTIFIER				
3	NAME, TITLE			
4	DEPARTMENT			
5	OFFICE PHONE			
6	CELL PHONE			
7	EMAIL			
STATE NOTIFICATION				
8	TIME OF NOTIFICATION (HH:MM XM)			
9	DATE OF NOTIFICATION (MM/DD/YYYY)			
10	METHOD OF NOTIFICATION	☐ TELEPHONE	☐ EMAIL	☐ OTHER:
11	SSOA PERSONNEL NOTIFIED (NAME, TITLE)			
12	DUE DATE FOR 30-DAY STATUS REPORT			
FTA NOTIFICATION				
13	FTA NOTIFICATION REQUIRED?	☐ YES	☐ NO	
14	TIME OF NOTIFICATION (HH:MM XM)			
15	DATE OF NOTIFICATION (MM/DD/YYYY)			
16	METHOD OF NOTIFICATION	☐ TELEPHONE	☐ EMAIL	☐ OTHER:
17	FTA PERSONNEL NOTIFIED (NAME, TITLE)			☐ NOT APPLICABLE
18	FTA REPORT NUMBER			
19	WILL FTA INVESTIGATE?	☐ YES	☐ IF YES, ON SITE DATE:	☐ NO
NTSB NOTIFICATION				
20	NTSB NOTIFICATION REQUIRED?	☐ YES	☐ NO	
21	TIME OF NOTIFICATION (HH:MM XM)			
22	DATE OF NOTIFICATION (MM/DD/YYYY)			
23	METHOD OF NOTIFICATION			
24	NTSB PERSONNEL NOTIFIED (NAME, TITLE)			☐ NOT APPLICABLE
25	WILL NTSB INVESTIGATE?	☐ YES	☐ IF YES, ON SITE DATE:	☐ NO
FRA NOTIFICATION				
26	FRA NOTIFICATION REQUIRED?	☐ YES	☐ NO	

SIX (6) HOUR RAIL SAFETY EVENT NOTIFICATION FORM				
27	TIME OF NOTIFICATION (HH:MM XM)			
28	DATE OF NOTIFICATION (MM/DD/YYYY)			
29	METHOD OF NOTIFICATION			
30	FRA PERSONNEL NOTIFIED (NAME, TITLE)			☐ NOT APPLICABLE
31	WILL FRA INVESTIGATE?	☐ YES	☐ IF YES, ON SITE DATE:	☐ NO
EVENT DETAILS				
32	EVENT ID NUMBER			
33	EVENT TIME (HH:MM XM)			
34	EVENT DATE (MM/DD//YYYY)			
35	EVENT LOCATION - GENERAL	☐ TRACKWAY ☐ REVENUE FACILITY ☐ NON-REVENUE FACILITY	☐ YARD ☐ OTHER	
36	EVENT LOCATION - SPECIFIC			
37	EVENT REPORTING THRESHOLD	☐ FATALITY AT THE SCENE ☐ SERIOUS INJURY (ONE OR MORE PERSONS) ☐ EVENT CAUSING SUBSTANTIAL DAMAGE ☐ EVACUATION DUE TO LIFE SAFETY REASONS ☐ DERAILMENT - MAIN LINE ☐ DERAILMENT - YARD ☐ COLLISION INVOLVING A RAIL TRANSIT VEHICLE ☐ RUNAWAY TRAIN ☐ FIRE OR SMOKE CONDITION		
38	EVENT DESCRIPTION			
39	NUMBER OF FATALITIES		☐ NOT APPLICABLE	
40	NUMBER OF SERIOUS INJURIES		☐ NOT APPLICABLE	
41	SUBSTANTIAL DAMAGE	☐ YES	☐ NO	
42	TOW AWAY REQUIRED	☐ YES	☐ NO	
43	RAIL TRANSIT VEHICLE	TRAIN #:	CAR #:	☐ NOT APPLICABLE
44	OTHER VEHICLES INVOLVED			
45	ON-TRACK-EQUIPMENT	OTE #:	☐ NOT APPLICABLE	
46	FACILITY / STRUCTURE		☐ NOT APPLICABLE	
CORRECTIVE ACTIONS				
47	IMMEDIATE CORRECTIVE ACTIONS TAKEN			
48	PLANNED CORRECTIVE ACTIONS			
ONGOING INVESTIGATION ACTIVITIES				
49				

END OF PROGRAM STANDARD