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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 This final rule replaces the current State Safety Oversight (SSO) rule, which will be rescinded no later than three years following the effective date of this rule.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.

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**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 develop 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 checklist 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 its 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 statute, 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 CWP's 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](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 breakdown 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<sup>1</sup> 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:		

<sup>1</sup> 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
<i>Total Recurring Hours and Costs</i>	<i>105,684</i>	<i>7,700,586</i>
<i>Total Non-recurring Hours and Costs</i>	<i>2,800</i>	<i>\$194,245</i>

\* 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
<i>Total Recurring Hours and Costs</i>	<i>156,668</i>	<i>11,829,364</i>
<i>Total Non-recurring Hours and Costs</i>	<i>0</i>	<i>0</i>

### *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
<i>Total Recurring Hours and Costs</i> .....	<i>105,684</i>	<i>7,700,586</i>	<i>294,443</i>	<i>21,208,607</i>
<i>Total Non-recurring Hours and Costs</i> .....	<i>2,800</i>	<i>194,245</i>	<i>127,200</i>	<i>8,824,271</i>

\* Non-recurring cost.

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

As discussed above, this NPRM implements the framework and principles of 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
<i>Total Recurring Hours and Costs</i> .....	<i>156,668</i>	<i>11,829,364</i>	<i>249,600</i> .....	<i>18,532,569</i>
<i>Total Non-recurring Hours and Costs</i> .....	<i>0</i>	<i>0</i>	<i>0</i> .....	<i>0</i>

\* 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 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 SSOs 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.<sup>2</sup> 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

<sup>2</sup> See FRA's SSP NPRM (77 FR 55371, Sept. 7, 2012) and RRP NPRM (80 FR 10949, Feb. 27, 2015).

fatalities and injuries,<sup>3</sup> 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,<sup>4</sup> 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

<sup>3</sup> 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.*

<sup>4</sup> *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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

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

This rulemaking is issued under the authority of section 20021(a) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), 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**

Sec.

- 674.1 Purpose.
- 674.3 Applicability.
- 674.5 Policy.
- 674.7 Definitions.
- 674.9 Transition from previous requirements for State safety oversight.

#### **Subpart B—Role of the State**

- 674.11 State Safety Oversight Program.
- 674.13 Designation of oversight agency.
- 674.15 Designation of oversight agency for multi-state system.
- 674.17 Use of Federal financial assistance.
- 674.19 Certification of a State Safety Oversight Program.
- 674.21 Withholding of Federal financial assistance for noncompliance.

674.23 Confidentiality of information.

#### **Subpart C—State Safety Oversight Agencies**

- 674.25 Role of the State safety oversight agency.
- 674.27 State safety oversight program standards.
- 674.29 Public Transportation Agency Safety Plans: general requirements.
- 674.31 Triennial audits: general requirements.
- 674.33 Notifications of accidents.
- 674.35 Investigations.
- 674.37 Corrective action plans.
- 674.39 State Safety Oversight Agency annual reporting to FTA.
- 674.41 Conflicts of interest.

#### **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
<p>Accident: Rail Transit Agency (RTA) to Notify State Safety Oversight Agency (SSOA) SSO and Federal Transit Administration (FTA) within two hours.</p>	<ul style="list-style-type: none"> <li>—Fatality (occurring at the scene or within 30 days following the accident).</li> <li>—One or more persons suffering serious injury (<i>Serious injury</i> 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.).</li> </ul>	<ul style="list-style-type: none"> <li>—Property damage resulting from a collision involving a rail transit vehicle; or any derailment of a rail transit vehicle.</li> </ul>	<ul style="list-style-type: none"> <li>—A collision between a rail transit vehicle and another rail transit vehicle.</li> <li>—A collision at a grade crossing resulting in serious injury or fatality.</li> <li>—A collision with a person resulting in serious injury or fatality.</li> <li>—A collision with an object resulting in serious injury or fatality.</li> <li>—A runaway train.</li> <li>—Evacuation due to life safety reasons.</li> <li>—A derailment (mainline or yard).</li> <li>—Fires resulting in a serious injury or fatality.</li> </ul>	<ul style="list-style-type: none"> <li>—RTA to notify SSOA and FTA within 2 hours; Investigation required.</li> <li>—RTA to report to FTA within 30 days via the National Transit Database (NTD).</li> <li>—RTA to record for SMS Analysis.</li> </ul>
<p>Incident: RTA to Report to FTA (NTD) within 30 days.</p>	<ul style="list-style-type: none"> <li>—A personal injury that is not a serious injury.</li> <li>—One or more injuries requiring medical transportation away from the event.</li> </ul>	<ul style="list-style-type: none"> <li>—Non-collision-related damage to equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.</li> </ul>	<ul style="list-style-type: none"> <li>—Evacuation of a train into the right-of-way or onto adjacent track; or customer self-evacuation.</li> <li>—Certain low-speed collisions involving a rail transit vehicle that result in a non-serious injury or property damage.</li> <li>—Damage to catenary or third-rail equipment that disrupts transit operations.</li> <li>—Fires that result in a non-serious injury or property damage.</li> <li>—A train stopping due to an obstruction in the tracks/“hard stops”.</li> <li>—Most hazardous material spills.</li> <li>—Close Calls/Near Misses .....</li> <li>—Safety rule violations.</li> <li>—Violations of safety policies.</li> <li>—Damage to catenary or third-rail equipment that do not disrupt operations.</li> <li>—Vandalism or theft.</li> </ul>	<ul style="list-style-type: none"> <li>—RTA to report to FTA within 30 days via the National Transit Database (NTD).</li> <li>—RTA to record for SMS Analysis.</li> </ul>
<p>Occurrence: RTA to record data and make available for SSO and/or FTA review.</p>	<ul style="list-style-type: none"> <li>—No personal injury .....</li> </ul>	<ul style="list-style-type: none"> <li>—Non-collision-related damage to equipment, rolling stock, or infrastructure that does not disrupt the operations of a transit agency.</li> </ul>	<ul style="list-style-type: none"> <li>—Close Calls/Near Misses .....</li> <li>—Safety rule violations.</li> <li>—Violations of safety policies.</li> <li>—Damage to catenary or third-rail equipment that do not disrupt operations.</li> <li>—Vandalism or theft.</li> </ul>	<ul style="list-style-type: none"> <li>—RTA will collect, track and analyze data on Occurrences to reduce the likelihood of recurrence and inform the practice of SMS.</li> </ul>

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