

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 674

[Docket No. FTA–2023–0008]

RIN 2132–AB42

State Safety Oversight

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

ACTION: Final rule.

SUMMARY: The Federal Transit Administration (FTA) is publishing a final rule for State Safety Oversight (SSO). This final rule implements new requirements of the Bipartisan Infrastructure Law (enacted as the Infrastructure Investment and Jobs Act (IIJA)), removes outdated references, and simplifies notification requirements.

DATES: The effective date of this rule is January 1, 2025.

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I. Executive Summary

A. Purpose of Regulatory Action

This final rule updates the existing regulations for state safety oversight of rail fixed guideway public transportation systems. In the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, July 6, 2012), Congress directed FTA to establish a comprehensive public transportation safety program, one element of which is the State Safety Oversight (SSO) Program. (See 49 U.S.C. 5329). Section 30012 of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, November 15, 2021), amended 49 U.S.C. 5329 and established new requirements for FTA’s Public Transportation Safety Program. Consequently, FTA is revising 49 CFR part 674 to address requirements related to the BIL, remove requirements related to the initial establishment of this part,

and clarify requirements of the existing part.

B. Statutory Authority

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

C. Summary of Major Provisions

This final rule makes the following changes to strengthen the existing SSO program:

- Updates terminology to reflect current use across programs.
- Clarifies existing requirements consistent with FTA expectations.
- Removes language relating to the period of transition from 49 CFR part 659, FTA’s previous SSO regulation, to 49 CFR part 674, the current SSO regulation.
- Addresses BIL requirements.

D. Benefits and Costs

The final rule requires additional oversight of safety-related activities of rail transit agencies (RTAs) by state safety oversight agencies (SSOAs). The rule also has additional costs for SSOAs and RTAs to comply with the requirements.

Table 1 summarizes the economic effects of the rule over the first ten years of the rule (2025 to 2034) in 2022 dollars. The benefits of the increased oversight are unknown and unquantified. On an annualized basis, the rule will have costs of \$11.0 million at a 7 percent discount rate (discounted to 2024), \$10.9 million at 3 percent, and \$10.9 million at 2 percent.

TABLE 1—SUMMARY OF ECONOMIC EFFECTS, 2025–2034
[2022, discounted to 2024]

Item	Total (undiscounted)	Annualized (7%)	Annualized (3%)	Annualized (2%)
Benefits	Unquantified	.....	.....	.....
Costs:				
SSOA documentation of enforcement authority	\$118,140	\$16,820	\$13,446	\$12,894
SSOA oversight	80,338,058	8,093,373	8,058,697	8,050,279
SSOA safety event tracking	183,879	18,388	18,388	18,388
SSOA investigations	7,355,168	735,517	735,517	735,517
SSOA annual reporting to FTA	609,755	60,975	60,975	60,975
RTA investigations and reporting	20,456,560	2,045,656	2,045,656	2,045,656
Total costs	109,061,560	10,970,730	10,932,680	10,923,710

TABLE 1—SUMMARY OF ECONOMIC EFFECTS, 2025–2034—Continued
 [\$2022, discounted to 2024]

Item	Total (undiscounted)	Annualized (7%)	Annualized (3%)	Annualized (2%)
Net benefits	Unquantified	.....	.....	.....

Note: Totals may not sum due to rounding.

II. Notice of Proposed Rulemaking and Response to Comments

FTA published the State Safety Oversight NPRM on November 15, 2023 (88 FR 78269), with the public comment period closing on February 15, 2024. During this time, FTA received 27 unique and substantive comment submissions to the rulemaking docket. Commenters included SSOAs, RTAs, labor organizations, trade associations, and individuals. FTA has considered these comments and addresses them in the corresponding sections below. Some comments expressed support for the NPRM without advocating for specific changes, and FTA acknowledges those comments were received and considered.

FTA reviewed all relevant comments and took them into consideration when developing the final rule. Below, the NPRM comments and responses are subdivided by their corresponding sections of the proposed rule and subject matter.

A. Section 674.5—Policy

Comments: FTA received comments from two SSOA commenters regarding § 674.5. One commenter questioned how FTA defines the terms “resources,” “qualified personnel,” and “complexity” and asked FTA to clearly define its expectations for SSOAs. Another commenter asked why FTA removed the first sentence in 674.5(b) related to funding of SSOAs.

FTA Response: FTA notes that these terms originate in statute and defining the terms is not necessary to carry out the statute, as evidenced by their use in the rule since 2016. As with previous regulatory action, FTA declines to establish formal definitions for these terms to avoid conflicts in instances where associated statutes or regulations are revised. FTA notes that SSOAs have differing levels of State-based authority and resources to oversee the safety of the rail fixed guideway public transportation systems in their State. Further, FTA notes that the number, size, and complexity of rail fixed guideway public transportation systems that SSOAs oversee vary across States. The language in § 674.5(a) ensures the SSO program is not a “one size fits all”

program and instead provides States the flexibility to establish an SSOA sized and resourced to meet the State’s oversight needs. Ultimately, as defined at § 674.19, the FTA Administrator may issue or deny certification of an SSOA based on an assessment of whether the SSOA has the authority, resources, and expertise to oversee the number, size, and complexity of the rail fixed guideway public transportation systems that operate within the State.

In response to the comment regarding the proposed removal of the first sentence in § 674.5(b), FTA removed the first sentence in subsection (b) because the availability of funding is addressed in § 674.17(a) and is not necessary to repeat here.

B. Section 674.7—Definitions

FTA received submissions from 14 commenters that included specific comments related to § 674.7 and proposed definitions.

1. Accountable Executive

Comments: Two SSOA commenters suggested FTA revise the definition of Accountable Executive to include language that specifies a rail transit agency’s Agency Safety Plan (ASP) is “designed and approved by the transit agency’s board [of directors].”

FTA Response: FTA declines to revise the definition of “Accountable Executive” to describe the role of a transit agency’s board of directors or equivalent entity. FTA notes that it may be inaccurate to state that a transit agency’s board of directors designs the transit agency’s ASP.

2. Collision

Comments: Three SSOA commenters and one RTA commenter submitted comments related to FTA’s proposed definition of “collision.” The RTA commenter recommended definitional alignment with the NTD program. One SSOA suggested that without additional clarification regarding the terms “impact” and “object” used in the definition of “collision,” FTA would see a significant increase in the number of events that would require reporting, resulting in an increased burden for transit agencies. Both SSOA commenters recommended that FTA

replace the word “impact” with “contact,” asserting that “contact” simply means touching, while “impact” implies a certain level of force, which could be confusing to SSOAs and RTAs. One SSOA commenter requested that FTA clarify whether this definition means that some collisions do not require two-hour notification.

FTA Response: FTA appreciates the recommendation that definitions align with the NTD and notes that FTA has coordinated terminology to ensure consistency across programs. As for the use of the terms “impact” and “object,” FTA notes that for consistency, the definition of “collision” in the final rule uses the same terms as the NTD, including both “impact” and “object.” FTA disagrees that the term “impact” is confusing to RTAs and SSOAs and notes the NTD has used this term in its definition of “collision” for many years. FTA also disagrees that interpretations of the definition will result in an increase in collision events that require notification. FTA notes that all notification criteria are described at § 674.33 and include thresholds for collisions, such as injuries, fatalities, and disabling damage, that define the set of collisions that require two-hour notification. Finally, FTA confirms that not all collisions require two-hour notification. Two-hour notifications are required for any safety event meeting the notification criteria at § 674.33, including any collision between two rail transit vehicles and any collision resulting in one or more injuries, a fatality, or disabling damage to a rail transit vehicle.

3. Corrective Action Plan

Comments: Two SSOA commenters recommended FTA revise the proposed definition of “corrective action plan” and add a definition of “safety risk mitigation” to help distinguish between corrective action plans and safety risk mitigations. The commenters pointed out the relationship between corrective action plans and safety risk mitigations and noted that corrective action plans address compliance with requirements and that safety risk mitigations address actual performance to ensure an RTA meets the safety intent behind the corrective action plan requirements.

FTA Response: The proposed rule included a definition of “safety risk mitigation” and FTA retains that definition in the final rule. FTA agrees with the suggestion that FTA revise the definition of corrective action plan to support the distinction between safety risk mitigations and corrective action plans more clearly. FTA generally agrees with the commenter’s description that corrective action plans focus more on resolving issues related to compliance, whereas safety risk mitigations result from safety risk assessments and focus on addressing safety risk by reducing the likelihood and/or severity of a hazard’s potential consequence. FTA has revised the definition of corrective action plan in this final rule to reflect this distinction by removing the phrase “minimize, control, correct, or eliminate risks and hazards” and replacing it with “address an identified deficiency or safety concern.” This change removes language more closely related to safety risk mitigations from the definition of corrective action plan and adds language that more appropriately describes corrective action plans.

4. Derailment

Comments: Two SSOA commenters suggested clarifications to the definition of “derailment” and use of the term “event” within the definition. One of the SSOA commenters suggested the proposed definition was insufficient and there was a risk of events not being reported that should be (e.g., split switch, run-throughs, etc.). The commenter offered an alternative definition that explicitly identified and included split switches, switch run-throughs, wheel lifts, wheel climbs, flange running, and web running. One transit agency requested that the definition of “derailment” apply the NTD exclusion for events that occur during the engineering or construction phases of a new rail transit system or the extension of an existing rail transit system unless they involve transit-related activities such as operations, testing, simulated service or pre-revenue service, or a transit-related maintenance activity.

FTA Response: On the use of the word “event” within the definition of “derailment,” FTA agrees that, given removal of the definition of “event” from the rule, use of the term “safety event” is appropriate, and has made that change for the definition of “derailment” for the purposes of the two-hour notification requirements in § 674.33. FTA appreciates the commenter’s request for clarification regarding the NTD program’s exclusion

of events that occur during the engineering or construction phases of a new rail transit system or the extension of an existing rail transit system, unless they involve transit-related activities such as operations, testing, simulated service or pre-revenue service, or a transit-related maintenance activity. FTA confirms that the SSO program applies this same exclusion for purposes of safety event notification and investigation criteria and notes that FTA has added language at subsection § 674.25(c) that establishes, for the purposes of §§ 674.33 and 674.35, notification criteria are limited to safety events that involve transit-related activities such as operations, testing, simulated service or pre-revenue service, or a transit-related maintenance activity.

5. Designated Personnel

Comments: Two SSOA commenters suggested non-substantive edits to the definition of “designated personnel” to match the definition in the Public Transportation Safety Certification Training Program (PTSCPT) NPRM.

FTA Response: FTA has ensured the “designated personnel” definition at § 674.7 matches the definition from part 672.

6. Disabling Damage

Comments: FTA received comments from two RTA commenters and two SSOA commenters regarding the new term “disabling damaged” used to support safety event notification criteria. One RTA commenter expressed support for the new term and the fact that it is limited to damage that physically prevents a rail transit vehicle or train from operating under its own power. One RTA commenter suggested FTA modify the proposed definition to specify the physical prevention of movement. Two SSOA commenters suggested that the definition include additional clarification to exclude mechanical failures or other malfunctions that may impact operations. One SSOA commenter suggested that FTA modify the definition to replace “preventing the vehicle from operating under its own power” to “towed from the scene.”

FTA Response: After consideration of the comments, FTA declines to revise the definition. FTA notes the term “disabling damage” is referring to physical damage preventing operation. For some collision examples like mirror strikes, a rail transit vehicle could still operate on its own power, and FTA does not consider this disabling damage. FTA notes that even in such an example, local policy may require taking the rail

transit vehicle out of service, but this decision could vary agency to agency. It is disabling damage only if the damage itself prevents the vehicle from operating under its own power. Further, modifying the definition to replace “preventing the vehicle from operating under its own power” with “towed from the scene” could include certain collisions that do not result in damage that physically prevents rail transit vehicle movement. FTA confirms that disabling damage includes damage from a collision that requires towing for the rail transit vehicle.

7. Evacuation for Life Safety Reasons

Comments: FTA received comments from two SSOAs and two RTAs about the definition of “evacuation for life safety reasons.” One SSOA suggested the definition should not include all evacuations of passengers into the rail right of way, including for events such as mechanical failures, because this would “skew the data.” Another SSOA requested clarification regarding self-evacuations when the RTA may not be aware of certain self-evacuations and the circumstances that prompted them. One RTA commenter recommended FTA ensure this definition aligns with the definition used by the NTD, specifically relating to passenger self-evacuations into the right of way. Finally, one RTA commenter requested FTA state these evacuations are not due to preceding events, such as collisions, as this could distort data.

FTA Response: Existing SSO program and NTD reporting policy support retaining in the definition the concept that any evacuation into the rail right of way is an evacuation for life safety reasons, and thus FTA does not believe the definition will skew existing data sets or trending. FTA appreciates the opportunity to clarify self-evacuations and notes that RTAs cannot notify SSOAs and FTA of events of which they are not aware. The inclusion of self-evacuations ensures that evacuations resulting from hazards still trigger notification, even if the evacuation was not directed by the RTA. FTA agrees with the recommendation for alignment with the NTD definition of “evacuation for life safety reasons” and the treatment of self-evacuations and confirms the definition aligns with the NTD definition and treatment of self-evacuations. FTA disagrees with the suggestion that evacuations for life safety reasons should exclude those evacuations that result from preceding events, as evacuations commonly follow preceding events. An evacuation for life safety reasons is one of the notification criteria described in § 674.33. Further,

FTA notes that a single safety event may meet multiple notification criteria. For example, a single event may involve a collision, injuries, fatalities, an evacuation for life safety reasons, and disabling damage. This is still considered a single safety event that requires notification because it meets at least one of the safety event notification criteria described in § 674.33.

8. Fatality

Comments: FTA received comments from three SSOAs and one RTA regarding the definition of “fatality.” Two SSOAs expressed concern over the 30-day window for confirmation of death, suggesting the word “confirmed” should be replaced with the word “determined” because confirmation implies that an answer exists, whereas determination implies that follow-up is required. The two SSOAs also suggested that the 30-day window requires SSOAs and RTAs to solicit information protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). One SSOA commenter and one RTA commenter requested clarification on the inclusion of homicides in the definition of “fatality,” noting that homicides are considered security events and should be excluded from notification and investigation requirements.

FTA Response: FTA declines to revise the definition of “fatality” as suggested. FTA confirms that the definition of fatality used by both the NTD and part 674 are consistent. Further, FTA notes that it has not substantively changed the definition of “fatality” that has been used by both the SSO and NTD programs for many years and is not aware of any situation where the current definition has prevented an SSOA or RTA from complying with SSO program notification requirements. Further, FTA notes that part 674 does not establish any requirement to solicit HIPAA-protected information and reiterates that RTAs are not required to notify SSOAs and FTA of events of which they are not aware. However, if an RTA becomes aware that a safety event resulted in a fatality as defined at § 674.7, the RTA is required to notify the SSOA and FTA within two hours of being made aware of the fatality. FTA confirms the notification requirements of § 674.33 exclude criminal actions such as homicides. These events are excluded from the safety events requiring SSOA investigation. Accordingly, the final rule does not require RTAs to notify SSOAs and FTA of homicides. FTA notes that the final rule does not preclude an SSOA from establishing notification requirements in addition to those

established at § 674.33. Finally, given removal of the definition of “event” from the rule, FTA has replaced the term “event” with “safety event” in the definition of “fatality” for purposes of the two-hour notification requirements in § 674.33.

9. Hazard

Comments: FTA received comments from two SSOAs and one RTA regarding the definition of “hazard.” The RTA commenter recommended changing the term “hazard” to “safety hazard” to parallel the change from “risk” to “safety risk.” The two SSOA commenters recommended adding the phrase “of a public transportation system” to match the definition published in 49 CFR part 673.

FTA Response: FTA declines to change the term “hazard” to “safety hazard” and instead chooses to maintain definitional consistency with 49 CFR part 673. FTA agrees with the commenters who recommended FTA revise the definition of “hazard” proposed in the NPRM to match the definition of “hazard” published in the final 49 CFR part 673. FTA has included the phrase “of a public transportation system” in the definition of “hazard” at § 674.7 to mirror the definition of “hazard” published in 49 CFR 673.5.

10. Injury

Comments: FTA received comments from three SSOAs, two RTAs, and one industry association regarding the definition of “injury.” One RTA expressed support for the definition of “injury,” noting that it will help simplify notifications. One RTA commenter requested that FTA clarify why the definition uses the words “medical attention” instead of “medical transport” and asked FTA to define the timeframe for “immediate” medical attention. Two SSOAs and an industry association asked if “event” should be changed to “safety event.” One SSOA requested an explicit definitional exclusion of injuries resulting from security events. Another SSOA suggested that FTA move toward a methodology like the one created by the Association of Transportation Safety Information Professionals and an approved American National Standard via the Manual on Classification of Motor Vehicle Traffic Crashes to help promote reporting uniformity. Additionally, the commenter suggested that FTA replace “requires” with “results in” to ensure consistent reporting.

FTA Response: FTA appreciates the support received regarding the definition of “injury” and agrees that it

provides a simpler criterion to support safety event notifications. FTA confirms that the term “immediate medical attention” as used in the definition of “injury” serves to exclude first aid received onsite and to include physical harm that results in medical transport from the safety event scene. This excludes medical attention sought by an individual at a later time. The definition of “injury” used in this rulemaking is consistent with the definition of “injury” in the NTD. Given that FTA removed the definition of “event” and instead uses “safety event,” FTA has made this edit in the final rule, but otherwise retains the definition in the NPRM. With respect to the requested clarification regarding the definition’s application to security events versus safety events, FTA declines to revise the definition of “injury” to exclude those resulting from security events. FTA notes, as stated in other comment responses, that criminal actions such as homicides and assaults are excluded from RTA notification requirements and SSOA investigation requirements. FTA believes it is appropriate to preserve definitional alignment with the NTD for the term “injury” and to establish security event exclusions in the requirements for RTA notification and SSOA investigation. FTA notes that the final rule does not preclude an SSOA from establishing notification requirements in addition to those established at § 674.33.

FTA appreciates the recommendations regarding crash data classifications and will consider these methodologies when evaluating data management changes in the future. Finally, FTA appreciates the comments suggesting minor changes to the injury definition, including replacing “requires” with “results in” but declines to revise the definition, to ensure consistency with the other FTA programs.

Finally, given removal of the definition of “event” from the rule, FTA has replaced the term “event” with “safety event” in the definition of “injury” for purposes of the two-hour notification requirements in § 674.33.

11. Inspection

Comments: FTA received comments from three SSOAs and one RTA regarding the definition of “inspection.” One SSOA expressed concern that the definition of “inspection” did not include personnel. The RTA and two SSOAs requested clarification of what is meant by “physical observation,” with two commenters noting inspections may include non-invasive inspection methods (ultrasonic, leak tests, video

review, other inspection methods, etc.) that may be conducted via other means that do not require the physical onsite presence of the person conducting the inspection.

FTA Response: The definition of “inspection” does not include personnel in the list of items observed during an inspection. FTA agrees with this commenter and has added the term “personnel” within the definition of “inspection,” which would include the inspection of training records and the observation of an RTA’s designated personnel. FTA appreciates the request for clarification on the use of “physical observation” in the definition of “inspection” and notes this term is intended to distinguish an inspection, which would involve observation of physical system elements, from other types of activities that do not rely on physical observations, such as a document review. Physical observation, therefore, may include virtual observation or other observation of system elements.

12. Investigation

Comments: An SSOA asserted the proposed definition of “investigation” is too limited and conflicts with the use of the term in § 674.25(e), specifically the investigation of allegations of noncompliance with an RTA’s ASP.

FTA Response: FTA first notes the definition is the same as the 2016 definition, except FTA has replaced “accident, incident, or hazard” with “safety event.” Further, § 674.25(e) is the same as § 674.25(d) in the 2016 rule. Thus, FTA disagrees the purpose is too narrow or that the definition would not encompass investigations of noncompliance required by § 674.25(e). FTA notes that hazards may include procedural noncompliance, which are within the purpose of an investigation, so FTA declines to amend the definition.

13. Person

Comments: Two SSOAs requested that FTA define the terms “volunteer,” “official worker,” and “associated infrastructure” used in the definition of “person.”

FTA Response: FTA does not believe it is necessary to define commonly understood terms such as “volunteer,” “official worker,” and “associated infrastructure” to ensure understanding of the rule.

14. Potential Consequence

Comments: Two SSOAs asserted the definition of “potential consequence” was confusing and recommended that FTA restate the definition.

FTA Response: FTA disagrees that the definition requires revision. Further, FTA notes that the definition of “potential consequence” at § 674.7 mirrors the definition of “potential consequence” published in 49 CFR 673.5.

15. Rail Fixed Guideway Public Transportation System

Comments: FTA received comments from one RTA, one SSOA, and one industry association about the definition of “rail fixed guideway public transportation system.” The RTA commented that including the phrase “or any such system in engineering or construction” may cause conflict with State occupational safety regulators. The industry association and SSOA recommended that FTA edit the definition to explicitly refer to streetcar systems.

FTA Response: The phrase “or any such system in engineering or construction” has been a part of the definition since the original part 674 was published in 2016, and FTA is not aware of any conflict this definition has for the purposes of State safety regulators. As for the inclusion of streetcar in the definition, the list of transit modes in the definition is not exhaustive and includes the text, “. . . include but are not limited to . . .” Further, FTA notes this definition mirrors FTA’s definition of “rail fixed guideway public transportation system” published in 49 CFR 673.5.

16. Safety Committee

Comments: FTA received comments from two SSOAs, one RTA, and one industry association related to the definition of “safety committee.” The RTA commenter suggested that FTA provide more clarity in the definition because their agency includes different safety committees. The two SSOAs and industry association suggested that FTA use the term “Joint Labor-Management Committee” instead of “Safety Committee” to provide additional specificity.

FTA Response: FTA understands RTAs may have a variety of safety-related committees. FTA notes that the term “safety committee” is not used in this final rule and has been removed from § 674.7.

17. Safety Event

Comments: FTA received comments from four RTAs, four SSOAs, and two industry associations related to the proposed definition of “safety event.” Several commenters, including one RTA and the two industry associations,

commented on FTA’s simplification of event categorization and the elimination of the terms “accident,” “incident,” and “occurrence,” which were used by FTA in the previous rule to establish criteria for event notification and investigation. Two SSOAs and one industry association expressed support for the simplification of existing terminology related to safety events. The two industry associations and one RTA commenter noted that the previous event tiers can be useful for analysis and trending purposes. Two RTAs and an industry association commented that FTA should not remove the three event subcategories from the rule and asserted that agencies are accustomed to using these terms to support existing SSOA notification activities and that the proposed definition of “safety event” is insufficient to determine which events require notification to FTA and the SSOA. One SSOA recommended that FTA retain the definition of the word “incident” because the word is used in 49 U.S.C. 5329.

One RTA requested additional clarity on whether the definition was intended to be limited to events related to or affecting transit operations. One SSOA commented that the use of the term “damage to the environment” would result in the need for additional SSOA personnel with very specific expertise. Two RTAs and one industry association commented that FTA should ensure the definitions in part 674 align with NTD definitions to reduce confusion and to avoid the underreporting of events.

One RTA and one SSOA commented on the use of the term “unexpected” in the “safety event” definition. The RTA suggested replacing the term “unexpected” with “unintentional.” The SSOA requested clarification on FTA’s use of the phrases “unexpected outcome” and “general criminal action” and questioned whether it was the responsibility of the RTA to determine intent when applying this definition. One SSOA commented that FTA’s focus should be on the reduction of safety events that can be realistically prevented by an RTA and asserted FTA should not use data that includes safety events that could not realistically be prevented by an RTA as the sole determination of the safety of an RTA or the effectiveness of an SSOA.

FTA Response: FTA agrees with the commenters that noted safety event stratification can be useful to support safety performance analysis and encourages RTAs and SSOAs to conduct data analysis to support safety performance monitoring and safety oversight activities as necessary but notes the final rule does not establish

any requirement that necessitates the definition of additional safety event tiers. As to the sufficiency of the “safety event” definition to define events requiring notification, FTA notes the definition of “safety event” in § 674.7 does not establish criteria for SSOA and FTA two-hour notifications or SSOA investigations. Instead, FTA describes safety event notification criteria at § 674.33. FTA does not believe the statutory usage of the term “incident” warrants a severity-based stratification of safety events, nor does it require FTA to define the term in part 674.

FTA confirms that safety events generally are related to or affect operations. Further, FTA notes that neither the definition of safety event nor the notification criteria at § 674.33 would necessitate SSOA staff to obtain specialized skills related to assessing environmental damage. FTA has coordinated terminology to ensure consistency across programs.

FTA considered the suggestion to replace the word “unexpected” with “unintentional,” and declines to make the suggested revision. The word “unexpected” is used to distinguish planned outcomes from unexpected outcomes. FTA notes the definition in § 674.7 mirrors the definition of “safety event” published in 49 CFR part 673. FTA confirms the exclusion of criminal actions such as homicides and assaults from the two-hour notification requirements in § 674.33 and notes that the final rule does not preclude an SSOA from establishing notification requirements in addition to those established at § 674.33. FTA confirms the RTA is responsible for making this determination as well as determinations regarding all notification criteria established at § 674.33. FTA agrees the determination of the effectiveness of an RTA or an SSOA should not be made solely on the use of data related to safety events that could not “realistically be prevented by an RTA.”

18. Unintended Train Movement

Comments: FTA received comments from six commenters regarding the proposed definition of “unintended train movement,” including three SSOAs, two RTAs, and one industry association. One RTA recommended that FTA align this definition with the NTD definition of “Runaway Train.” Two SSOAs, one RTA, and one industry association recommended that FTA replace the word “driver” in the definition with the word “operator,” noting that the definition excludes non-revenue vehicles, so the term “operator” would be more appropriate. One SSOA recommended that FTA not exclude

non-revenue vehicles from the definition. One RTA asked for clarification on whether a runaway train would still meet the two-hour notification criteria. Two SSOAs requested clarification on the application of unintended train movement to the automated guideway mode.

FTA Response: FTA declines to change “driver” to “operator” or to broaden the definition to include non-revenue vehicles as the definition is consistent with the 2024 NTD Safety & Security Policy Manual definition of runaway train. FTA confirms that under this final rule, the term “runaway train” has effectively been replaced by the term “unintended train movement.” This means that an event involving a runaway train according to past terminology would now be said to involve an unintended train movement and would trigger the two-hour notification requirements at § 674.33. Further, the definition of “unintended train movement” applies to automated guideway systems when a revenue vehicle of the automated guideway system experiences uncontrolled movement and is no longer under the control of the automated control system.

19. Additional Comments

Comments: In addition to comments related to specific definitions, described above, FTA received general comments related to definitions. Several comments were related to part 672, including requests for additional definitions or text in part 672. Other commenters asked whether definitions amended by this rulemaking would be amended in the NTD. Those comments are outside the scope of this rulemaking and are not addressed. Commenters generally recommended that definitions align with the NTD and other safety rulemakings and FTA has aligned definitions where needed.

Some commenters requested that additional terms be defined, including “project,” “State Safety Oversight Program,” and “audit.” FTA declines to define “project” as it is a commonly understood term. FTA believes it is unnecessary to add a definition for “State Safety Oversight Program” and notes the final rule describes the scope of and requirements for a State Safety Oversight program, including the minimum expectations for a State Safety Oversight program. Similarly, the term “audit” does not need to be defined as § 674.31 describes requirements for SSOA triennial audits of rail transit agencies.

C. Section 674.11—State Safety Oversight Program

Comments: FTA received comments from two SSOAs related to § 674.11. One commenter asked FTA to clarify in this section that only rail fixed guideway public transit systems that receive Federal funding must have an SSOP. Both commenters asked for clarification regarding whether FTA can evaluate an SSOA’s staffing level after FTA has issued an initial certification. The commenters also requested that FTA define its process and criteria for auditing an SSOA. One SSOA commenter requested clarification on FTA SSOA audits, including State Management Reviews and the FTA SSO Audit Program, asking what the difference is between these audits/reviews and what the specific requirements are that must be met for compliance. Further, the SSOA noted that State leadership, not the SSOA, should be FTA’s point of contact because the SSOA does not have the authority to change State law.

FTA Response: Section 674.3 describes the entities to which this rule applies, and FTA declines to restate part 674 applicability criteria within § 674.11. With respect to SSOA staffing levels, FTA certified the compliance of every SSOA in 2018. FTA notes that 49 U.S.C. 5329(e)(9) requires FTA to continually evaluate an SSOA’s implementation of its State Safety Oversight program, which is not limited to staffing levels, but how effectively those staff resources are used. The NTSB, through their investigations, has also identified SSOA staffing levels as a potential concern. Therefore, FTA will continue to conduct audits to confirm SSOAs are staffed at appropriate levels. If FTA identifies a pattern of SSOA noncompliance, it will consider the impact of SSOA resourcing on the agency’s noncompliant status.

The rule does not define FTA audit procedures for the SSO program or other programs identified by the commenter, such as State Management Reviews. FTA believes it is not practicable to publish criteria that would govern the audit or evaluation process, given the diversity of the 31 SSOAs currently under the program, and the number, size, and complexity of the fixed guideway systems under their oversight. FTA notes that FTA SSO program audits are performed to confirm compliance with 49 CFR part 674, and each SSOA is evaluated on a case-by-case basis. Finally, FTA appreciates the comment received regarding FTA SSO audit points of contact and will consider this

recommendation during future SSO audit program updates.

D. Section 674.17—Use of Federal Financial Assistance

Comments: FTA received comments from three SSOAs, three individuals, and one industry association regarding the use of Federal financial assistance. Three individuals recommended FTA establish additional requirements that limit the amount of Federal financial assistance SSOAs can use to procure contractor support and encouraged strengthening SSOA internal capabilities. Two of these commenters suggested that FTA require that no more than 10% of annual SSO grant funding should be used for contractor support. The third commenter suggested FTA require that no more than 15% be used for contractor support. Four commenters, including two SSOAs, one industry association, and one individual commented on the revised, broader reference to 49 U.S.C. 5329 generally instead of the specific reference to section 5329(e)(4) and sought clarification on whether this change means that SSO funds are now eligible for States to expend on PTASP-related activities that were previously prohibited, such as drafting ASPs for small public transportation providers. One SSOA recommended that FTA adjust the Federal share of 80% to 85% to help SSOAs implement SSO programs at a faster rate. Finally, one SSOA recommended that FTA's apportionment for 49 U.S.C. 5329 take into consideration the number, size, and complexity of the rail fixed guideway public transportation systems in the State to ensure adequate funding is available to the State to best meet the Federal requirements.

FTA Response: FTA does not have the authority to place restrictions on the percentage of SSOA grant funds that can be used for contractor support and FTA encourages the professional development of internal SSOA staff. FTA confirms the reference to 49 U.S.C. 5329 is no longer limited to subsection (e) as the Bipartisan Infrastructure Law amended section 5329 and established additional SSOA-related requirements at 49 U.S.C. 5329(k). The revised reference incorporates the requirements at both 49 U.S.C. 5329(e) and (k), and ensures the rule remains valid even if Congress further amends the law. This change does not mean that SSO grant funds are now eligible for States to expend on PTASP-related activities that were previously, and remain, prohibited (e.g., drafting ASPs for small public transportation agencies). FTA does not have the authority to increase the

Federal share for SSOA grants, as that is established by statute (49 U.S.C. 5329(e)(6)(C)). Finally, the apportionment formula in 49 U.S.C. 5329(e)(6)(B) specifically takes into consideration the number, size, and complexity of the rail fixed guideway public transportation systems in the State to ensure adequate funding is available to the State to best meet the Federal requirements. FTA published an explanation of the formula and basis of calculation in a March 10, 2014, **Federal Register** Notice (79 FR 13380).

E. Section 674.19—Certification of a State Safety Oversight Program

FTA received comments from four commenters regarding certification of a State Safety Oversight program, including three SSOAs and one industry association.

1. Section 674.19(a)—Administrator's Determination

Comments: One SSOA commenter asked for clarification regarding FTA's National Public Transportation Safety Plan (National Safety Plan). Specifically, the commenter asked if the National Safety Plan established a ceiling for requirements that an SSOA can establish. The commenter expressed concerns over potential situations where information in the National Safety Plan conflicts with a State's SSO program. The commenter requested clarification on what elements within the SSO program and an RTA's ASP require consistency with the National Safety Plan. Further, the commenter asked if a State's SSO program would require recertification in light of the updates to the National Safety Plan. Finally, the commenter asked about any timelines that FTA has defined related to updating program documentation to address the updated NSP. The SSOA also asked for clarification on certification in relation to the RTA development process and at which phase of RTA development a State needs to have an approved State Safety Oversight program.

FTA Response: In response to comments regarding the National Safety Plan, FTA confirms that § 674.19(a) states, "the Administrator must determine whether an 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." The National Safety Plan presents (1) safety performance criteria for all recipients that must develop ASPs under 49 CFR part 673, including

safety performance measures related to the safety risk reduction program, and (2) voluntary minimum safety standards and recommended practices to support mitigation of safety risk and to improve safety performance. FTA confirms the National Safety Plan does not establish a ceiling related to a State's SSO program requirements and reiterates that the standards and recommended practices presented in Chapter III of the National Safety Plan are voluntary in nature. In terms of standards with which an SSO program must be consistent, FTA notes Chapter II of the National Safety Plan outlines the safety performance measures required of all agencies subject to the PTASP regulation for which each RTA must set safety performance targets and document them in their ASP. Finally, if any changes are needed to program documentation, FTA expects SSOAs and RTAs to make any needed changes to program documentation through the organizations' next review and update cycles based on existing SSO and ASP review processes. FTA confirms that the publication of a revised National Safety Plan does not require a new certification for each State. A State must have a certified State Safety Oversight Program by the time a rail fixed guideway public transit system reaches the engineering or construction phase.

2. Section 674.19(c) and (d)—Issuance of Denial

Comments: An industry association requested that FTA provide criteria in the rule for how FTA or the FTA Administrator would make a determination regarding certification, including a determination of whether an SSOA is "inadequate" or "incapable," as described in statute at 49 U.S.C. 5329(e)(8)(A). Two SSOAs requested clarification on the timeframe for certification or denial of certification and any related follow-up timeframes. One SSOA expressed support for the regulatory language that accommodates an SSOA developmental plan and schedule to support the FTA Administrator's evaluation of the SSOA. The commenter recommended that such a plan and schedule should be able to accommodate related processes such as hiring that may involve a different group and/or agency. Two SSOAs asked for clarification on the term "cognizant."

Two SSOAs expressed concern that withholding of funds for SSOAs that are unable to meet the requirements for certification may be counterproductive. One SSOA commenter expressed the need for clarification regarding the distinction between the terms SSO

program, SSOA, and State as they relate to the requirements of § 674.19(d) and 49 U.S.C. 5329.

FTA Response: FTA first notes § 674.19 of this rule is substantially similar to the 2016 rule. With respect to the request to define criteria in part 674 that FTA would use to evaluate SSO agency capabilities, FTA declines to establish additional criteria beyond the requirements established in this final rule. In an instance where an SSO program does not meet the requirements of 49 U.S.C. 5329, the Administrator will provide a written explanation and allow the State an opportunity to modify and resubmit SSO program documentation for the Administrator's approval. FTA has not defined a set timeframe for issuing a certification or denial of certification or deadlines for any necessary follow-up activity. FTA appreciates the support for the regulatory language addressing the developmental plan and schedule to support the FTA Administrator's evaluation of an SSOA and notes that the developmental plan and schedule should include and address the issues identified by the commenter, including hiring and interagency communications. The term "cognizant SSOA" is used to refer to the relevant or recognized SSOA and means the entity is aware of its role as an SSOA for the State. Further, FTA notes that this language has been used in part 674 since its promulgation in 2016.

In response to the comments received regarding the effectiveness of withholding funds, FTA confirms that the withholding of funds is an option available to the Administrator under 49 U.S.C. 5329(e)(7)(D)(ii), 5329(e)(8)(C), and 5329(g). Further, FTA notes that statutory and regulatory language does not require the Administrator to withhold funds but states that the Administrator "may" withhold funds.

As to the relationship between a State, SSOA Program, and SSOA, the SSOA is the agency within a State that carries out the State's SSO Program. Necessarily, FTA monitors SSOA compliance with regulatory requirements in addition to other inputs to ensure a State is meeting its statutory requirements to establish an SSO Program that is adequate to promote the purposes of 49 U.S.C. 5329.

F. Section 674.21—Withholding of Federal Financial Assistance for Noncompliance

Comments: FTA received comment submissions from two SSOAs and one industry association regarding the withholding of funds for non-compliance and the requirement for an

SSO program to be approved by the FTA Administrator prior to a rail fixed guideway public transportation system entering the engineering or construction phase in a State without any rail fixed guideway public transit systems (new entrants). All three commenters noted that with the previous transition from part 659 to part 674, States were afforded three years to develop compliant programs and achieve certification. The commenters asserted the proposed change to base the timeline on the developmental progress of an RTA does not afford a new SSOA sufficient time to achieve SSO program certification. The commenters recommended FTA establish a three-year timeframe for a new State to establish a compliant SSO program.

FTA Response: The statute at 49 U.S.C. 5329(e)(2) requires States to provide safety oversight for any rail fixed guideway public transportation system in the engineering or construction phase of development within the jurisdiction of the State that will not be subject to regulation by the Federal Railroad Administration (FRA). This is not new. Therefore, a State without any rail transit systems is obligated to stand up an SSO program before a new rail transit system enters the engineering or construction phase of development. FTA notes the three-year timeframe defined in the previous part 674 was established by statute to support the transition of existing SSO programs to a new rule (from part 659 to part 674). To ensure a State meets its statutory requirement to provide safety oversight for any rail fixed guideway public transportation system in the engineering or construction phase of development, a three-year certification process is not feasible. FTA encourages States without an SSOA and with a new rail transit project in the planning stage to coordinate with FTA and the rail transit project sponsor early in the project development process to support the development of compliant SSO programs.

G. Section 674.23—Confidentiality of Information

Comments: One SSOA commenter requested clarification on the criteria that a State or RTA should use to withhold a report from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report. The commenter also asked for clarification on the use of the term "security" in § 674.23(b).

FTA Response: Section 674.23(b) provides that part 674 does not require security-sensitive information to be

publicly available. This language is unchanged from the previous version of part 674 and stems from FTA's relationship with the Transportation Security Administration (TSA) and the elimination of requirements for System Security Plans previously required under 49 CFR part 659. As FTA noted in the publication of the original part 674 in 2016, 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), 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, such as the steps an agency takes that are part of a threat and vulnerability assessment.

H. Section 674.25—Role of the State Safety Oversight Agency

FTA received comments from twelve commenters regarding § 674.25, including seven SSOAs, two RTAs, one industry association, one individual, and one contractor.

1. General

Comments: One RTA commenter recommended that FTA consider acknowledging the role of the SSOA engaging in active assistance of the RTA. The commenter noted that FTA's transition away from the "system safety" approach codified within the former part 659 to the current SMS approach of part 674 relies on the design of workable and effective processes to manage safety risk and evaluate the results of those efforts. To achieve success, the commenter asserted, SSO programs should not only entail compliance-based processes but should include engagement in continuous improvement processes, best practices, and other assistance.

FTA Response: FTA agrees that effective SSO programs will focus on more than just compliance. FTA encourages SSOAs to develop and implement oversight practices that support an SMS and that apply continuous improvement principles and best practices. FTA notes that new SSOA requirements related to risk-based inspections, oversight of safety risk mitigations, and data to support oversight of safety risk management activity align with this focus.

2. Section 674.25(a)—Minimum Standards

Comments: Two SSOAs and one industry association requested that FTA clarify the meaning of the term “minimum standards for safety” in § 674.25(a), asserting that without a clear understanding of this term, SSOAs would not know what baseline or criteria FTA would use to audit SSOA compliance. One SSOA commenter requested clarification on whether the National Safety Plan reference in § 674.25(a) means that SSO program standards cannot go beyond the requirements established within FTA’s National Safety Plan. Further, the commenter expressed concerns over potential situations where information in the National Safety Plan conflicts with a State’s SSO program. The commenter requested clarification on what elements within the National Safety Plan require consistency with the SSO program and an RTA’s ASP.

FTA Response: Subsection 674.25(a) remains unchanged from the 2016 rule and FTA is not aware of any difficulties in SSOAs implementing the rule. FTA defines the requirements for SSO programs and SSO program standards in this final rule, with § 674.27 describing the required components of an SSO program standard. FTA notes that in this way the regulation establishes minimum safety requirements and confirms that an SSOA may establish standards and requirements beyond the minimum requirements of part 674 in their SSO program standard. FTA will audit SSOAs to ensure that the SSO program standard meets the requirements of part 674 and that the SSO program standard is being carried out as written.

FTA confirms that § 674.25(a) requires an SSOA to establish minimum standards for the safety of all rail fixed guideway public transportation systems within its oversight that are consistent with the National Safety Plan. As noted in section E.1 of this preamble, the National Safety Plan presents (1) safety performance criteria for all recipients that must develop ASPs under 49 CFR

part 673, including safety performance measures related to the safety risk reduction program and (2) voluntary minimum safety standards and recommended practices to support mitigation of safety risk and to improve safety performance. The National Safety Plan does not establish a limit or ceiling related to a State’s SSO program requirements and the standards and recommended practices presented in Chapter III of the National Safety Plan are voluntary in nature. FTA notes that Chapter II of the National Safety Plan outlines the safety performance measures required of all agencies subject to the PTASP regulation for which each RTA must set safety performance targets and document them in their ASP.

3. Section 674.25(b)—Agency Safety Plan Review and Approval

Comments: One RTA commenter asked if § 674.25(b) establishes a requirement for an annual ASP review and approval. One SSOA commenter recommended that FTA revise regulatory text to include a reference to a State’s “SSO program” and suggested that the use of general terms makes compliance difficult if not impossible. Further, the commenter recommended that FTA revise the existing regulatory text in § 674.25(b) from “enforce the execution” to “enforce the compliance,” asserting that execution is the responsibility of the RTA’s Accountable Executive and the SSOA is responsible for compliance.

FTA Response: Subsection 674.25(b) is substantially unchanged from the 2016 rule. Subsection 673.25(b) does not establish timeframe requirements for an RTA’s ASP review process. FTA notes that the PTASP regulation at § 673.11(a)(5) requires each transit agency to conduct an annual review of its ASP. Subsection 673.25(b) requires an SSOA to review and approve an RTA’s ASP and subsequent updates to the ASP that may result from the required annual review. FTA disagrees with the commenter who suggested the language in § 673.25(b) makes compliance difficult if not impossible and notes the language at § 673.25(b) remains unchanged from the original publication in 2016 and to date has not resulted in compliance issues. Further, FTA declines to replace the word “execution” with “compliance” and notes SSOAs are charged with overseeing compliance, which means ensuring that an RTA executes its ASP. Subsection 673.25(b) suggests that SSOAs can do this through a CAP or other enforcement means based on which type of enforcement tool would

be appropriate or necessary given the specifics of the compliance issue.

4. Section 674.25(c)—Engineering and Construction

Comments: Six SSOAs, one RTA, and one contractor submitted comments related to § 674.25(c) and the requirement for SSOAs to provide oversight of an RTA’s project(s) in the engineering and construction phase to verify compliance with Federal and State safety requirements.

Two SSOA commenters requested that FTA develop guidance on the SSOA’s role in oversight of major capital projects, including instances where FTA is utilizing its Project Management Oversight (PMO) program. One contractor commented that the project phase terminology used in the rule is not the same as the project phases of the PMO program.

One SSOA commenter requested clarification on the SSOA’s responsibilities to ensure proper compliance during engineering and construction and whether the SSOA is responsible for overseeing all aspects of a capital project. One contractor and one SSOA commenter asserted the phrase “applicable Federal and State safety requirements” is very broad. These commenters and an additional SSOA commenter sought clarification on the scope of oversight, including clarification that FTA does not intend for SSOAs to perform the oversight functions of FTA’s PMO contractors for certain rail projects, including things that are normally outside of the purview of the SSOA, such as budgeting, financial planning, social and economic equity, and environmental protection. Three SSOA commenters recommended that there be a clear distinction between the roles and responsibilities of FTA’s PMO contractors and the SSOA and clarity regarding SSOA responsibility.

Two SSOA commenters recommended that FTA extend oversight responsibility earlier in the life of an RTA project, to the planning phase. One SSOA commenter and one individual objected to the requirements for oversight of projects in the engineering or construction phase. The SSOA commenter asserted the language of § 674.25(c) is too vague, impractical, and duplicative of existing processes, including FTA’s PMO program. The SSOA commenter recommended FTA convene an industry working group to evaluate the provision before implementation. The SSOA commenter requested FTA provide additional clarification regarding applicable projects, scope for compliance, and relationship with existing oversight

programs. Further, the SSOA commenter disagreed with FTA's assertion that the language in this subsection parallels the statutory language in 49 U.S.C. 5329(e)(2)(B) and clarifies FTA's intent that SSOAs take an active oversight role during a project's pre-revenue phases. Instead, the commenter suggested, the terminology is used in statute only to define "eligible states" and should not be interpreted by FTA to define the scope of safety oversight.

One RTA commenter requested revising the language of § 674.25(c) to add "on a rail fixed guideway public transportation system" to add additional qualifying language for the term "RTA project."

FTA Response: FTA appreciates the request for additional guidance related to the SSOA's role in oversight of engineering and construction of major capital projects, including instances where FTA is utilizing its PMO program, and will consider this topic for future guidance and technical assistance. FTA confirms that the terminology "engineering or construction phase" is not the same as the terminology used in FTA's PMO program. The terminology at § 674.25(c) comes from 49 U.S.C. 5329(e)(2)(B) whereas the PMO phases are based on project development standards. FTA is not establishing a new interpretation but is using existing statutory language. Under the original 49 CFR part 659, FTA established revenue service as the start of State safety oversight. Under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, Pub. L. 102-240), Congress moved the start of State oversight to planning and design phases. Under Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141), Congress moved the start of State oversight to the construction or engineering phase where it remains today. FTA's understanding of Congressional intent establishes the engineering or construction phase as the start of required safety oversight responsibility for States. However, States may choose to oversee the safety of rail projects earlier in the process at their discretion. FTA notes § 674.25(c) provides SSOAs flexibility, and SSOAs should address the determination of "engineering or construction phase" in the SSO program standard. Criteria examples may include triggering events such as project groundbreaking, solicitation of bids for construction activity, a finding of no significant impact under the National Environmental Policy Act (NEPA), etc.

FTA confirms that an SSOA is not responsible for overseeing aspects of a

project that are traditionally addressed through FTA's PMO program, including areas such as budgeting, financial planning, social and economic equity, and environmental protection, and notes the SSOAs oversight responsibilities are limited to safety. FTA agrees with commenters who recommended a clear distinction between the roles and responsibilities of FTA's PMO contractors and the SSOA and notes that SSOAs are not expected to conduct PMO reviews of grantees or recreate such processes. Instead, FTA expects SSOAs to work with RTAs to ensure the development of necessary program elements, processes, and documentation that address the requirements of 49 CFR part 673, 49 CFR part 674, and the State's SSO program standard.

As for the comments that recommended extending a State's oversight responsibility to earlier in the life of an RTA project, to the planning phase, FTA declines to make this change and notes that, as mentioned above, ISTEA provided SSOAs with this authority, but under MAP-21, Congress moved the start of oversight from the design phase to the construction or engineering phase where it remains today. Further, FTA notes that mandating an earlier involvement would represent a significant change from existing requirements and would require additional notice and comment.

FTA declines to remove of the requirement for States to ensure the safety oversight of projects in the engineering or construction phase and notes the requirements and language of § 674.25(c) are established in statute and are not new. Further, FTA reiterates the requirement for a State to oversee safety of a rail project during the engineering or construction phase is not duplicative of the PMO process and is not intended to recreate PMO-related processes. FTA does not believe it is necessary to establish an industry working group to evaluate the provision before implementation. As mentioned earlier in this section, FTA will consider the topic of the SSOA's role in oversight of major capital projects and the relationship to the PMO program for future guidance and technical assistance. Further, FTA disagrees with the commenter's assessment that the statutory language should not be used to establish the scope of safety oversight. FTA notes that this interpretation has been applied by FTA since the publication of the first Section 5329 apportionment on March 10, 2014 (79 FR 13380) and this was reiterated in the publication of the original 49 CFR part 674 in 2016 (81 FR 14256).

Finally, declines to add the phrase "on a rail fixed guideway public transportation system" to § 674.25(c) as FTA does not believe such a change serves to clarify the existing requirement.

5. Section 674.25(d)—Agency Safety Plan Requirements

Comments: One SSOA commenter recommended FTA amend § 674.25(d) to reflect the requirements in 49 U.S.C. 5329(k) for SSOAs to conduct risk-based inspections, asserting that ASPs should address an SSOA's risk-based inspection program. One SSOA commenter requested clarification on SSOA jurisdiction over transit systems and projects that are not related to rail transit, noting that currently SSOAs have no such jurisdiction unless they are granted that authority on a State level.

FTA Response: This provision is in § 675.25(b) of the 2016 rule. The intent of § 674.25(d) is to address the SSOA's obligation to assure the RTA is in compliance with PTASP provisions at 49 U.S.C. 5329(d) and the PTASP rule at 49 CFR part 673. Part 673, at § 673.11(a)(6) addresses the new requirement in 49 U.S.C. 5329(k) so is already captured in regulatory text. Further, FTA has revised the definition of "State Safety Oversight Agency" at § 674.7 to include the reference to 49 U.S.C. 5329(k) to incorporate the risk-based inspection requirements established by the BIL. FTA confirms that part 674 does not establish any requirement for SSOAs to oversee the safety of bus systems, even bus services operated by transit agencies that also provide rail service applicable under part 674. SSOAs are responsible for overseeing an RTA and ensuring its ASP meets the requirements for part 673. FTA notes that some ASPs address both rail and bus operations. Part 674 does not require SSOAs to evaluate part 673 compliance for bus services. However, this final rule does not prevent SSOAs from performing additional oversight activities at their discretion pursuant to their State laws.

6. Section 674.25(e)—Allegations of Noncompliance

Comments: One SSOA commenter expressed concern at the language within § 674.25(e) that assigns the SSOA with the primary responsibility for investigating "any allegation of noncompliance," asserting this puts undue responsibility on an SSOA and fails to address the RTA's responsibility to address and respond. The commenter also noted there is no SSOA notification or reporting requirement in the

proposed rule or other FTA regulations for allegations of noncompliance. One individual requested that FTA add a reference to 49 U.S.C. 5330 when describing the Administrator's authority.

FTA Response: This subsection is identical to § 675.25(d) of the 2016 rule. The final rule continues to require SSOAs to investigate allegations of noncompliance when those allegations are brought to the attention of the SSOA. Further, FTA does not believe that the requirement for SSOAs to investigate allegations of noncompliance absolves an RTA for carrying out its own processes to address such safety concerns according to processes defined in the RTA's ASP. FTA declines to add a reference to 49 U.S.C. 5330, noting the statute was repealed in 2019 in accordance with section 20030(e) of MAP-21, and 49 U.S.C. 5329(f) provides the Administrator's authority.

7. Section 674.25(f)—Investigations

Comments: Two SSOA commenters suggested that § 674.25(f) include additional language explicitly authorizing the SSOA to delegate investigation authority to the RTA. One individual commenter suggested FTA include an additional requirement in § 674.25(f) for investigation reports to clarify corrective actions to prevent recurrence and assign a corrective action plan identification number.

FTA Response: FTA declines to add additional language to § 674.25(f) regarding the delegation of investigation responsibility to the RTA and notes this is addressed at § 674.35(b). FTA declines to require CAPS to be included in investigation reports and notes FTA has established requirements for CAPs at § 674.35. Further, nothing in the rule prevents an SSOA from requiring the documentation of CAPs within a final investigation report.

8. Section 674.25(g)—Contractor Investigation Support

Comments: One individual commenter suggested FTA add additional text to § 674.25(g) to reference incidents and occurrences and to note that the SSOA is responsible for the investigations.

FTA Response: FTA declines to revise § 674.25(g) and notes that part 674 has eliminated references to incidents and occurrences with the transition to the new definition of "safety event" in parts 673 and 674. Further, FTA it is not necessary to restate the SSOA's primary responsibility for investigation, as that is stated in § 674.25(f).

9. Section 674.25(h)—SSOA Compliance With PTSCTP

Comments: One commenter noted that FTA has removed the PTSCTP curriculum in the proposed revisions to 49 CFR part 672 (88 FR 73573). The commenter asked where they could find guidance on PTSCTP to ensure minimum standards are developed consistent with PTSCTP. The commenter also recommended FTA revise the language of § 674.25(h) to include the term "designated personnel" or simply state, "SSOAs must comply with Part 672."

FTA Response: FTA notes that information on PTSCTP can be found at FTA's safety training website: <https://www.transit.dot.gov/regulations-and-guidance/safety/safety-training>. FTA has revised § 674.25(h) to include the term "designated personnel."

I. Section 674.27—State Safety Oversight Program Standards

1. Section 674.27(a)(3)—Disposition of RTA Comments

Comments: FTA received comments from three SSOAs, two RTAs, and one individual related to § 674.27(a)(3). The three SSOA commenters generally agreed with FTA's proposal. Two of these SSOA commenters requested clarification that SSOAs would not be required to accept all suggestions made by the RTA. The other SSOA commenter noted that the process described in § 674.27(a)(3) is already being implemented and documented in SSO program standards. One RTA commenter requested FTA define additional minimum requirements for this process, including specifically how comments are submitted, request and response timeframes, expectations, and approval processes. One RTA commenter supported the proposed requirement and urged FTA to formalize its role in settling jurisdictional questions and interpretations of FTA regulations by establishing a process for SSOAs and RTAs to bring matters of disagreement before a hearing with FTA. Similarly, one individual commenter suggested FTA needs to collaborate with SSOAs to develop and formalize a conflict resolution and escalation process for FTA and SSOAs.

FTA Response: FTA appreciates commenters' support for the provisions at § 674.27(a)(3) and thanks those SSOAs and RTAs that are already implementing this process. FTA confirms the requirement at § 674.27(a)(3) does not require the SSOA to accept all suggestions made by the RTA. FTA declines to establish additional minimum requirements

related to this process and preserves the flexibility of SSOAs to define these aspects but notes that an SSOA is responsible for defining how it will address the requirements and documenting this in the SSO program standard. FTA declines to establish a hearing process for conflicts between SSOAs and RTAs, noting that is outside the scope of this regulation. Further, FTA notes that it does not serve in a mediator role between RTAs and SSOAs and can use existing mechanisms to support intervention with RTAs and SSOAs if necessary. Similarly, developing a conflict resolution process is outside the scope of this current regulatory effort. However, FTA will consider these suggestions for SSOAs and RTAs as topics for future rulemakings.

2. Section 674.27(a)(5)—Oversight of RTA Public Transportation Agency Safety Plans and Internal Safety Reviews

Comments: FTA received comments from three SSOAs and one contractor related to § 674.27(a)(5). One SSOA commenter noted that SSOAs are already implementing the activities required in the proposed rule. Two SSOA commenters requested clarification on the use of the term "internal safety review" and noted that in the past, FTA had referred to these activities as "internal audits." Further, the two commenters noted that State Safety Oversight Reporting Tool (SSOR) uses the phrase "internal audit" and that other programs, such as PTSCTP, refer to "audits and examinations," and pointed out that the Transportation Safety Institute (TSI) delivers courses titled "Transit Safety and Security Audits." The commenters sought clarification on whether the terminology change in the rule is intended to "lower the bar" for internal safety reviews. One contractor suggested the phrase "the SSOA will receive and evaluate all material submitted under the signature of an RTA's Accountable Executive" was too broad and, taken literally, could mean any document the Accountable Executive signs. The contractor also commented that 49 CFR part 673 does not include the specific internal safety review requirements established in § 674.27(a)(5)(i-iv) and that FTA should require RTAs to document the associated processes in their ASP.

FTA Response: Paragraph 675.27(a)(5) is substantially similar to paragraph 675.27(a)(4) of the 2016 rule, so FTA is encouraged to know SSOAs and RTAs are complying with the 2016 rule. FTA notes that under part 659, FTA referred to this activity as "internal safety and

security audits.” With the transition to 49 CFR part 674 in 2016, FTA used the term “internal safety reviews” to describe this activity at § 674.27(a)(4). With this final rule, FTA continues to use the term “internal safety review,” and the terminology does not “lower the bar” for this RTA function. To the contrary, FTA has defined explicit requirements for internal safety reviews at §§ 674.27(a)(5)(i–iv). FTA confirms the SSOR uses the terminology “internal safety review.” Finally, FTA confirms that § 674.27(a)(5) does not require the SSOA to evaluate all material that an Accountable Executive may sign. Instead, in alignment with the title of the paragraph, the requirement at § 674.27(a)(5) applies to the oversight of RTA ASPs and internal safety reviews and includes documents the RTA submits to the SSOA under signature of the Accountable Executive to address SSO program requirements, such as an RTA’s ASP and the RTA’s annual report on internal safety reviews. Further, FTA confirms that § 673.27(d)(1)(iii) requires RTAs to address any specific internal safety review requirements established by their SSOA in the ASP.

3. Section 674.27(a)(6)—Oversight of Safety Risk Mitigations

Comments: FTA received comments from three SSOAs and one RTA related to § 674.27(a)(6) and the requirements for the oversight of RTA safety risk mitigations. One SSOA commenter noted that SSOAs are already implementing the activities required in the proposed § 674.27(a)(6). Two SSOA commenters noted that under the requirements of 49 CFR part 673, RTAs determine mitigation effectiveness through their safety assurance processes. Further, the commenters noted the SSOA receives and reviews information on RTA safety risk mitigations for oversight of compliance, but the RTA Accountable Executive and Chief Safety Officer are empowered to dictate the action of the RTA. One RTA commenter noted their safety risk mitigation processes have been documented, approved by the SSOA, and implemented since 2020, but if the SSOA were to establish new requirements related to safety risk mitigations, it could be disruptive to the maturation of the RTA’s SMS and burdensome. The commenter recommended FTA encourage SSOAs to review existing mitigation processes instead of establishing completely new requirements. One SSOA commenter asked for confirmation that the requirements of § 674.27(a)(6) were considered in the rule’s cost estimate.

FTA Response: FTA appreciates the support for this provision and thanks SSOAs that currently oversee the safety risk mitigations of an RTA as required at § 674.27(a)(6). FTA generally agrees with the statement that while an SSOA receives information regarding safety risk mitigations, it is RTA’s Accountable Executive and Chief Safety Officer that are empowered to direct the action of the RTA, and notes it is not in conflict with the requirements at § 674.27(a)(6). FTA notes that these requirements do not charge SSOAs with monitoring the effectiveness of safety risk mitigations but instead require SSOAs to define a process in the SSO program standard for reviewing information and data related to safety risk mitigations to ensure that the RTA is developing, implementing, and monitoring safety risk mitigations according to the documented and approved processes in their ASP. FTA confirms that nothing in this final rule establishes new requirements for how an RTA identifies, implements, and monitors safety risk mitigations, nor does the rule require SSOAs to establish new requirements for how an RTA identifies, implements, and monitors safety risk mitigations. Finally, FTA confirms that § 674.27(a)(6) was considered when developing the rule’s cost estimate. FTA notes that § 674.27(a)(6) does not establish a new oversight requirement but explicitly identifies existing oversight responsibility. Safety risk mitigations are an existing required element of an SMS that must be addressed in an ASP and are included in SSOA oversight responsibilities. As such, this provision does not create additional oversight burdens.

4. Section 674.27(a)(7)—Oversight of RTA Compliance With the Public Transportation Safety Certification Training Program

Comments: FTA received comments from five SSOAs, one RTA, one industry association, and one contractor related to § 674.27(a)(7) and the requirements for the oversight of RTA compliance with the PTSCPT. One SSOA commenter noted that SSOAs are, for the most part, already implementing the activities required in § 674.27(a)(7). The remaining four SSOAs, one RTA, and one industry association expressed concern with language that seems to require the SSOAs to formally review and approve each RTA designation for the purposes of PTSCPT designated personnel and to formally review and approve each refresher training administered by the RTA. Three SSOA commenters and one industry association commenter disagreed that

SSOAs should be approving these PTSCPT designations and trainings, noting that this should be the responsibility of the RTA. One RTA commenter noted that under part 672, this responsibility is given to the RTA. Several commenters also noted that this would place an additional burden on SSOAs and would be duplicative of existing efforts, and one SSOA asked for confirmation that required approvals were considered in the estimate of burden.

FTA Response: FTA appreciates the support for this provision and acknowledges those SSOAs that currently oversee the RTA compliance with the PTSCPT consistent with § 674.27(a)(7). FTA appreciates the concerns raised by commenters regarding the proposed language that seemed to require the SSOAs to formally review and approve each RTA designation for the purposes of PTSCPT designated personnel and to formally review and approve each refresher training administered by the RTA. FTA has revised the language in this final rule to address the concerns raised by these commenters. FTA clarifies that § 674.27(a)(7) requires SSOAs to oversee RTA compliance with PTSCPT requirements and that SSOAs may define in their SSO program standard how they will oversee RTA compliance. FTA confirms that the rule’s cost estimate does not include costs associated with formal SSOA approval of designations and refresher training development because the final rule does not require these approvals.

5. Section 674.27(a)(8)—Triennial SSOA Audits of RTA Public Transportation Agency Safety Plans

Comments: One SSOA commenter requested clarification on the use of the term “agree” and whether that meant if an RTA does not agree to an ongoing review over the three-year period, would the SSOA be forced to perform one triennial audit, or could the SSOA determine, at its own discretion, to do audits on an ongoing basis.

FTA Response: The language in paragraph 674.27(a)(8) is identical to § 674.27(a)(5) of the 2016 rule and FTA believes this language is sufficient to support SSOA audit scheduling with RTAs. The scheduling of the SSOA’s triennial audit is expected to be cooperative between the SSOA and RTA while recognizing the SSOA is responsible for conducting triennial audits in compliance with part 674 and as specified in the SSO program standard. If an RTA takes issue with the triennial audit schedule as outlined in the SSO program standard, the RTA

may provide a comment or suggestion to the SSOA as permitted under § 674.27(a)(3).

6. Section 674.27(a)(9)—Safety Event Notifications

Comments: Two SSOA commenters requested clarification on the notifications referenced in § 674.27(a)(9) and suggested that FTA not require the notification of events that do not meet the notification criteria in § 674.33.

FTA Response: Except for changing “accident” to “safety event” and adding FTA as an entity the RTA needs to report to, this provision is the same as the provision at § 674.27(a)(6) of the 2016 rule. FTA has designated safety events in § 674.33 as minimum requirements and does not want to limit SSOAs if they wish to have RTAs report on safety events that do not appear in § 674.33.

7. Section 674.27(a)(10)—Investigations

Comments: Two SSOA commenters requested FTA clarify that an SSOA may delegate investigation responsibility to the RTA and adopt the final report as its own. One of the SSOA commenters noted that it may be difficult to detail the role of the SSOA in supporting any safety event investigation conducted by the NTSB or FTA as those entities will be leading the safety event investigation and utilize the resources of the SSOA on a case-by-case basis.

FTA Response: More detail on this requirement is in § 674.35(b), “The SSOA is ultimately responsible for the sufficiency and thoroughness of all investigations, whether conducted by the SSOA or RTA. If the SSOA requires an RTA to investigate a safety event, the SSOA must conduct an independent review of the RTA’s findings of causation.” Further, § 674.35(b) states, “The SSOA must formally adopt the report of a safety event . . .”

FTA recognizes the involvement of the NTSB and FTA in safety event investigations processes may vary based on the investigating body and defining the role of the SSOA may be difficult. Given this circumstance, the regulation deliberately does not define the SSOA’s role and processes in the regulation with respect to the NTSB or FTA role in leading safety event investigations. Safety event investigations are not always routine, and agencies, particularly the SSOA and RTA, may need to be flexible during the investigation process when the NTSB and FTA are involved.

8. Section 674.27(a)(11)—Corrective Actions

Comments: One SSOA questioned FTA’s use of the word “order” and recommended that SSOAs use wording within their SSOA’s authority to outline how an RTA must develop and carry out a CAP. Further, the commenter noted the conflict management language proposed in § 674.27(a)(11) would also be useful for other required SSO program activity.

FTA Response: FTA acknowledges the commenter’s concern with the use of the phrase “the SSOA must order the RTA to develop and carry out a CAP.” In this case, the term “order” is a synonym used in place of the word “require.” Moreover, this language is identical to that found in the 2016 rule at § 674.37(b).

9. Section 674.27(a)(12)—Inspections

Comments: The NTSB, one SSOA, two RTAs, and two individuals commented on the proposed requirements at § 674.27(a)(12). The NTSB commented that effective risk-based inspection programs rely on adequate staffing and noted that it is reviewing whether staffing shortages at an SSOA may have played a role in a 2023 rail safety event in Chicago. Further, the NTSB expressed support for the proposal for a risk-based inspections program but noted that FTA should develop and issue minimum inspection requirements for a basic list of safety topics that SSOAs should have in their risk-based inspection programs, which would include required topics such as roadway worker protection, hours of service, and fatigue risk management.

One SSOA commenter suggested FTA retitle this paragraph from “Inspections” to “Risk-Based Inspections” because the specific requirements are associated with risk-based inspections programs. One RTA commented that an SSOA’s risk-based inspection program should follow the principles of SMS in utilizing safety risk information to prioritize oversight action and stated that an SSOA’s risk-based inspection program procedures should include presenting the transit agency with the SSOA’s basis for conducting any given inspection, and this basis should be expressed in safety risk terms. The RTA noted that focus on areas that are not risk-based or not associated with the highest levels of safety risk can result in an inappropriate allocation of transit agency resources as the agency pursues corrective actions or other responses that may not effectively mitigate safety risk.

One SSOA commenter asked for FTA to define the terms “resources,” “qualified personnel,” and “complexity,” asserting FTA will evaluate SSOAs based on these criteria and SSOAs need to understand these terms to ensure compliance. One individual commented that SSOAs should have the authority to enter rail transit facilities without prior notice to perform safety inspections to show “normal” conditions, that inspections should be proactive to confirm or improve safety, and that there should be no punitive consequence for the transit agency unless inspections show little or no improvement.

One RTA commenter requested that FTA add language in § 674.27(a)(12)(iii) requiring SSOAs to design risk-based inspections programs in consultation with the RTA to parallel language at 49 U.S.C. 5329(k)(1)(B). One SSOA commenter asked FTA to consider adding language to § 674.27(a)(12)(iii) that addresses announced inspections. The SSOA commenter also asked FTA to consider additional language requiring RTAs to grant SSOA personnel access for inspections. One individual commented that while the proposed rule ensures that SSOAs have the authority to enter rail transit facilities without prior notice to perform safety inspections, FTA should also develop consequences for RTAs that refuse to allow FTA officials to enter their right of way that include fines to individuals and the RTA. In addition, FTA should require RTAs to share track charts to provide FTA with an understanding of the right of way they are accessing and require FTA officials to carry a radio compatible with the RTAs they inspect to communicate with dispatchers regarding their presence and itinerary.

FTA Response: FTA agrees that adequate staffing is critical to ensuring the effectiveness of an inspection program. Proper staffing for SSOA programs, including inspection responsibilities, is also covered at § 674.11(d) and is examined during initial certification and regular audits of the SSOAs. In the instance an SSOA is discovered to be short of staffing or in need of increased resources, FTA may address this through issuing special directives. With respect to the comment asking for clarity of defining and setting expectations on appropriate SSOA staffing levels and resources, FTA recognizes that all SSOA programs are unique and face different challenges. Additionally, SSOA oversight responsibilities may change over time, requiring a modification in staffing resources. For instance, the opening of

a new rail transit system, major extension of a system, or significant safety challenges at a system may require additional SSOA staffing resources to support more oversight. Further, the closing of a rail transit system may require less SSOA staffing resources. FTA declines to amend the regulatory text, to ensure the regulation can accommodate everchanging circumstances at rail transit agencies and allow the SSOA programs to adjust staffing resources and oversight responsibilities as necessary.

FTA appreciates the request for more specific and/or minimum SSOA risk-based inspection requirements, such as roadway worker protection, hours of service, and fatigue management. FTA will maintain the risk-based inspection program as practice driven and prioritized by SSOA and RTA risk management rather than prescribing areas for the inspection program to regularly examine. However, FTA will keep this comment in mind as safety programs continue to be developed, including current and future rulemakings (see, e.g., 88 FR 74107 and 89 FR 20605).

FTA declines to change the heading from “Inspections” to “Risk-based Inspections” in order to recognize other types of inspections that may be appropriate for oversight, such as CAP verification inspections, field inspections for audits, and others. FTA notes that SSO program standards should document or incorporate by reference risk-based inspection processes.

FTA agrees with the comment that risk-based inspections should follow the principles of SMS. FTA expects risk-based inspection activities to synchronize and be built into an RTA’s existing SMS activities. This information will be considered as a topic for FTA guidance and workshops. FTA has determined it is unnecessary to revisit the definition of “risk-based inspections,” “SMS,” or “safety risk management” in this section of the regulation.

The importance of cooperation between the SSOA and RTAs with respect to facility and location access will be defined in the SSO program standard and, as required at § 674.27(a)(3), the RTA is provided the opportunity to comment on the SSO program standard through the comment disposition process.

FTA appreciates the several comments received related to facility access and inspection activities and agrees that these inspections are designed to improve a rail transit agency’s safety. Actions taken by the

SSOA in response to RTA non-compliance are not prescribed by this rule and such actions will be determined by the SSOA. As a matter of defining when or how the RTA will grant access to the SSOA for inspection, this detail shall be developed by the SSOA in concert with what is appropriate for each rail transit agency and memorialized in the SSO program standard or related procedure. In response to the commenter that suggested FTA add language requiring RTAs to grant SSOA personnel access for inspections, FTA notes this is included in the regulation and referenced as “unannounced” inspections.

FTA recognizes that each RTA has developed track right-of-way access protocols for their systems to ensure the safety of personnel and transit operations. SSOA and FTA officials must adhere to the rail transit agency’s access protocols, including radio practices and specialized training as determined by the rail transit agency. FTA will address access restrictions faced specifically by FTA officials on a case-by-case basis. FTA will not issue citations directly to an RTA if violations are found while FTA officials are on-site. However, FTA shall enforce authority granted in 49 U.S.C. 5329 and 49 CFR part 670 when appropriate.

10. Section 674.27(a)(13)—Vehicle Maintenance and Testing

Comments: Four SSOAs, two RTAs, one contractor, and the NTSB commented on the proposed requirements of § 674.27(a)(13) related to vehicle maintenance and testing requirements. Two SSOA commenters and one RTA commenter sought clarification on who is being required to perform the periodic testing of rail transit vehicle braking systems, the RTA or the SSOA. Two RTA commenters expressed serious concerns if the new requirements mean that the SSOA will direct the RTA to undertake a new vehicle maintenance or brake testing regime or change the frequency of its testing instead of following manufacturer recommendations and established RTA procedure (unless or until the need for such changes is demonstrated through the agency’s own testing or the oversight process). One commenter requested that FTA consider developing additional guidance to support SSOA compliance with this new requirement, issuing a Safety Advisory that addresses the NTSB recommendation R-17-04 and providing additional detail to support RTA and SSOA compliance. Further, the contractor suggested the proposed

requirement appears to go beyond rail vehicle braking system testing to address the entire RTA vehicle maintenance program. Two SSOA commenters recommended against FTA establishing vehicle maintenance inspections as a distinct program area for the SSOA’s program standard. Both SSOA commenters recommended allowing the SSOA the flexibility to determine how often and to what depth it reviews these aspects of the RTAs it oversees. One of these SSOA commenters recommended that FTA remove this proposed requirement from the SSO program standard and instead allow SSOAs to address this issue through the risk-based inspections program because of the burden associated with conducting such inspections.

The NTSB urged FTA to develop minimum brake system test and inspection criteria and require SSOAs to perform rail transit vehicle brake system tests and inspections.

FTA Response: To clarify, the rail vehicle brake system maintenance and testing program is established and implemented by the RTA, not the SSOA. It is the SSOA’s responsibility to oversee that the RTA brake system maintenance and testing program is effectively established and implemented as written.

FTA appreciates the suggestion to develop guidance or issue a Safety Advisory to better inform SSOAs and RTAs of the scope and expectations for this new requirement. FTA will take this suggestion under consideration.

This requirement does not change oversight responsibilities but specifies that RTAs are required to perform periodic brake system testing and maintenance activities. It is the SSOA’s purview, now as it has been in the past, to verify that the RTA is implementing these activities. It is not the SSOA’s responsibility to perform the brake system testing. Further, FTA notes that SSOAs may incorporate vehicle brake system maintenance into their risk-based inspection program.

Regarding NTSB’s suggestion that FTA provide minimum inspection standards for braking system maintenance and testing, this is outside the scope of this regulation, but FTA will consider this suggestion in future action.

11. Section 674.27(a)(14)—Data Collection

Comments: FTA received comments from two SSOAs, two RTAs, and one individual in response to the proposed requirements at § 674.27(a)(14). One SSOA commenter recommended against

FTA establishing data collection as a distinct program area for the SSOA's SSO program standard and asserted the SSOA should be allowed the flexibility to determine how often and to what depth it reviews these aspects of the RTAs it oversees. One RTA requested that FTA add language to § 674.27(a)(14) that specifies that data collection policies and procedures will be developed in consultation with the RTA. One individual commenter recommended that SSOAs should be allowed to collect data from RTAs with safeguards to protect personal information and rules similar to FRA's 49 CFR part 225. One SSOA commenter asked FTA if data access requirements should be included in the SSO program standard with consideration for cyber security precautions. One RTA commenter recommended revisions to the proposed requirement, suggesting the SSO program standard define how the SSOA will use RTA data to support the SSOA's oversight of the RTA's safety risk management activities.

FTA Response: The regulation does not require any particular data collection. Instead, the regulation requires "policies and procedures for collecting and reviewing data that the RTA uses when identifying hazards and assessing safety risk". The regulation does not detail "how" (scaling, frequency, depth) the SSOA is to conduct these activities. This will be left to the SSOA to determine and memorialize in policies and procedures as applicable.

FTA acknowledges the importance of cooperation between the SSOA and RTAs with respect to data sharing and access. This practice will be defined in the SSO program standard and, as required in § 674.27(a)(3), the RTA is provided the opportunity to comment on the SSO program standard through the comment disposition process.

FTA agrees the protection of sensitive SSOA and RTA information and employee personal information is important. Section 674.23(b) provides protections for SSOA and RTA security-sensitive information. FTA expects SSOAs and RTAs to follow and apply existing laws that protect personal information for employees and contractors.

FTA agrees with the commenter that suggested the SSOA should define how the SSOA will use RTA data to support the SSOA's oversight activities. FTA has added the following language, shown italicized, to the final rule to address this comment: "The program standard must include policies and procedures for collecting and reviewing data that the RTA uses when identifying hazards

and assessing safety risk *and explain how the SSOA uses collected data to support oversight of the RTA's safety risk management process.*"

FTA recognizes data access and cyber security practices will be different for each SSOA and respective RTAs. The regulation purposely does not specify nor prescribe methods for data sharing and cyber security. Each SSOA and respective RTA are to define policies and practices that work amongst the agencies for ensuring secure data access and sharing.

J. Section 674.29—Public Transportation Agency Safety Plans: General Requirements

Comments: Two SSOA commenters expressed confusion regarding the language at § 674.29 related to the National Safety Plan. Both commenters requested clarification on what elements within the National Safety Plan require consistency with the RTA's ASP. Both SSOA commenters also requested clarification on the removal of subsection (b), which is in the 2016 rule.

FTA Response: As clarified in section E.1 above, the National Safety Plan presents (1) safety performance criteria for all recipients that must develop ASPs under 49 CFR part 673, including safety performance measures related to the safety risk reduction program, and (2) voluntary minimum safety standards and recommended practices to support mitigation of safety risk and to improve safety performance. The National Safety Plan does not establish a ceiling related to a State's SSO program requirements and the standards and recommended practices presented in Chapter III of the National Safety Plan are voluntary in nature. In terms of requirements defined in the National Safety Plan, FTA notes that Chapter II of the National Safety Plan outlines the safety performance measures required of all agencies subject to the PTASP regulation for which each RTA must set safety performance targets and document them in their ASP. With respect to the removal of subsection (b), FTA notes that because the 2016 version of part 674 was published prior to part 673, FTA provided a list of the expected PTASP elements in subsection (b) as an interim measure to guide SSOAs. With the publication of part 673 in 2018, the list is no longer necessary.

K. Section 674.31—Triennial Audits: General Requirements

Comments: FTA received comments from two SSOAs and one RTA related to the requirements for triennial audits proposed at § 674.31. Two SSOA

commenters recommended FTA add language to this section regarding the SSOA and RTA agreeing to schedule ongoing audits. One SSOA commenter requested guidance to support the SSOA's analysis of the effectiveness of an RTA's ASP. The SSOA commenter also asserted that it is the RTA's job to monitor effectiveness and it is the SSOAs job to monitor compliance. One SSOA commenter also asked if FTA is defining requirements for what should be included in the annual audit report in situations where an SSOA conducts triennial audits in an ongoing fashion over the three-year period.

An SSOA commenter and an RTA commenter requested clarifications related to the requirement for the SSOA to allow the RTA to comment on the findings and recommendations in the report. The RTA recommended that FTA require the SSOA to provide written response to the RTA's comments. The SSOA commenter questioned whether the RTA could comment on the audit report or only on the findings and recommendations within the report.

FTA Response: This section omits language included in § 674.27(a)(8) regarding the SSOA and RTA "agreeing" to conduct an on-going rather than an audit once every three years as repetitious and notes the § 674.31 language does not conflict with § 674.27(a)(8). Further, FTA expects SSOAs and RTAs to cooperate on the scheduling of the SSOA's triennial audit while recognizing the SSOA is responsible for conducting triennial audits in compliance with part 674 and as specified in the SSO program standard.

In response to the commenter seeking guidance for analysis of the effectiveness of an RTA's ASP, given the diversity of SSO programs, SSO program standards, and ASPs, this language is purposely not prescriptive. The SSOA shall design a triennial audit program so that it complies with the regulation and examines the RTA's implementation of its ASP to identify corrections or improvements.

As detailed in the § 674.31 language, the audit report shall include the following: (1) analysis of the effectiveness of the RTA's efforts to implement the ASP; (2) findings and recommendations resulting from this analysis; and (3) recommendations for improvement and/or a corrective action plan(s), if necessary. At a minimum, the SSOA shall issue provisional triennial audit reports annually if it is auditing on an ongoing basis.

FTA acknowledges the importance of outlining and administering a process

for RTAs to comment on the SSOA triennial audit report, findings, and recommendations. RTA comments may be made to both the report language and the resulting findings and recommendations. RTA comments are expected to be resolved through formal or informal communications between the agencies. This regulatory language is purposely not prescriptive, allowing the SSOA to include in the SSO program standard a review and comment process for collaborating with each audited RTA. An RTA may identify issues with the SSO program standard, including the comment resolution practice for triennial audits, per § 674.27(a)(3).

L. Section 674.33—Safety Event Notifications

1. General

Comments: FTA received comments from seven commenters regarding FTA's proposed notification criteria at § 674.33, including one SSOA, four RTAs, one industry association, and one anonymous commenter. One RTA commenter recommended that FTA eliminate the requirement for RTAs to notify FTA directly of safety events, asserting that ideally RTAs would only have one set of reporting requirements and one entity to whom they report.

One RTA commenter and one industry association commenter recommended FTA extend the two-hour notification requirement to provide RTAs with more time to make the required notification to the SSOA and FTA. The RTA commenter recommended extending the timeframe to at least four hours to provide the RTA with sufficient time for an RTA investigator to arrive on the scene and assess the situation. The industry association commenter recommended FTA extend the notification window to four or six hours after the event occurs. The commenter noted that SSOAs rarely dispatch to the scene and that the notification timeframe would make sense if the SSOAs would commit to being on-site within two hours of the event's occurrence. An individual commenter suggested that the two-hour requirement did not ensure timely notifications and recommended that FTA require RTAs to notify the FTA and the SSOA as soon as possible as opposed to two hours so FTA and the SSOA can evaluate the response needed.

One RTA commenter and one SSOA commenter expressed concern at the potential burden associated with changes in notification criteria. The RTA commented that the number of events requiring notification may

increase to near the levels required under part 659 and increase agency burden. One SSOA commenter noted that by using the same injury definition as the NTD, which is based on individuals receiving immediate medical transport away from the scene, the number of events requiring SSOA and FTA two-hour notification may increase.

One RTA commenter requested that FTA provide a grace period for the industry to address the criteria changes through the necessary updates to policies, procedures (across multiple departments), and intergovernmental agreements/contracts, and to provide time to execute configuration changes to internal databases and other tools used to track and manage event records, such as computer-aided dispatch (CAD) systems. The commenter also recommended that FTA work to develop a single comprehensive safety and security glossary.

FTA Response: FTA is authorized to oversee and, when necessary, investigate rail transit agency safety events. To uphold this authority and activate investigations, FTA must be informed of events as they occur.

FTA declines to lengthen the minimum notification timeframe as it ensures that FTA and SSOAs receive timely information upon which they may base their decisions regarding response. RTAs should be able to easily determine if a safety event meets the notification criteria defined at § 674.33. FTA declines to shorten the notification timeframe from two-hours to "as soon as possible," as the change would fail to establish a defined expectation for notification timelines.

As to whether the reporting criteria may result in an increase in notifications and burden to reporting agencies, FTA expects the revised criteria will simplify and ease the burden on reporting agencies in comparison to past regulation notification requirements. For example, the elimination of the "serious injury" criteria in the previous regulation will eliminate the need to assess the condition of injured passengers before recognizing when and what meets reporting criteria and therefore lessen the burden of safety event notifications as compared to the previous rule.

FTA recognizes that notifications will likely increase due to the definition of "injury" to include "harm to persons as a result of an event that requires immediate medical attention away from the scene." FTA revised this term and definition for several reasons, including to clarify reporting criteria and lessen the burden of reportable event

notifications as previously mentioned. FTA is aware the reportable events may increase with this revised definition, and this has been factored into workload estimates.

FTA agrees that changes to terms and definitions in the regulation language have a broad impact and will need a grace period for SSOAs and RTAs to realign policies and practices. FTA designates January 1, 2025, as the effective date for the final rule. This date allows SSOAs and RTAs time to modify processes and inform employees and contractors. Further, this date aligns with the launch of the 2025 NTD reporting year and the associated NTD Safety & Security Policy Manual. FTA appreciates the comment regarding a comprehensive glossary and will take this recommendation into consideration for future data management efforts.

2. Notification Criteria

Two RTA commenters, one SSOA commenter, and one industry association commenter requested confirmation regarding their understanding of the proposed notification criteria and associated requirements or suggested changes to the proposed criteria.

An RTA commenter asked about the collision damage threshold and requested confirmation that a rail transit vehicle collision occurring at a grade crossing or intersection would no longer be reportable to FTA and SSOA within two hours unless the rail transit vehicle suffered disabling damage regardless of the damage suffered by the privately operated vehicle. Similarly, an SSOA commenter requested confirmation that collisions that result in disabling damage to a privately owned vehicle but that do not result in a fatality, injury, or disabling damage to the rail transit vehicle do not require two-hour notification under the proposed thresholds.

An SSOA commenter asked for confirmation that under the proposed criteria, notification is required for two or more injuries except for collisions which require notification if there is one or more injury. An industry association commenter recommended changing the collision injury criteria from one or more to two or more, asserting the proposed criteria would cause confusion and potentially misreporting. An SSOA commenter asked for FTA to confirm that "serious injury" is no longer relevant for purposes of safety event notifications as required by the proposed criteria. An RTA commenter asked FTA to confirm if the notification of safety events includes fatalities and injuries resulting from illness and/or

other natural causes and whether notifications include criminal assaults that are not related to a collision with a rail transit vehicle.

An SSOA asked for confirmation from FTA regarding the notification requirement when a single safety event meets more than one of the notification criteria defined in § 674.33.

FTA Response: Under the revised regulation, a rail transit vehicle collision occurring at a grade crossing or intersection with a privately owned vehicle requires notification if the rail transit vehicle suffers from disabling damage, regardless of the damage suffered by the privately owned vehicle. A collision between a rail transit vehicle and a privately owned vehicle which results in disabling damage to only the privately owned vehicle, yet no fatalities or injuries, does not require notification.

There is no longer a distinct definition for “serious injury.” Injuries and fatalities resulting from illness or natural causes do not trigger the two-hour notification requirements of § 674.33. Further, injuries or fatalities from criminal assaults and homicides do not trigger the two-hour notification requirements of § 674.33, even if the homicide or assault involved a collision with a rail transit vehicle. FTA notes the final rule does not preclude an SSOA from establishing notification requirements in addition to those established at § 674.33.

In circumstances where a single safety event meets more than one reporting criteria, the notification should share all the reporting criteria met, given the information available at the time of notification. For instance, if is the RTA knows at the time the notification is made that a collision between two rail transit vehicles resulted in a derailment and three injuries, all this information is expected to be shared with the SSOA and FTA. All three of these consequences meet the two-hour notification threshold and must be communicated.

A safety event with two or more injuries is reportable and a rail transit vehicle collision that results in one or more injuries (instead of two or more) is also reportable. A commenter requested the latter situation match the two or more injuries threshold for uniformity. However, FTA is interested in any rail transit vehicle collisions resulting in injuries. With the injuries metric alone, setting the threshold to two or more will eliminate isolated safety events resulting in injuries, like slips and falls.

M. Section 674.35—Investigations

Comments: One SSOA provided four unique comments. The SSOA commenter requested that FTA revise the language at § 674.35(b) to reiterate that SSOAs can give authority to perform investigations to an RTA because the rule does not explicitly state it. Further, the commenter disagreed with the word “coordinate” when describing situations where the SSOA is investigating. The commenter asked FTA to clarify if the language at § 674.35(c) requires an SSOA to issue a separate investigation report from the adopted RTA investigation report and asked FTA to clarify how the review must be conducted. The commenter also asked for clarification on the PTSCTP requirements for investigators, including SSOA investigators and RTA investigators conducting investigations on behalf of the SSOA. Finally, the commenter asked if the impact of the requirements of § 674.35 were included in the regulation’s cost estimates.

FTA Response: FTA first notes that FTA proposed no substantive changes to the 2016 version of § 674.35. When an RTA investigates safety events that meet the criteria of § 674.33, the RTA must conduct these investigations in accordance with the SSO program standard and any subsequent procedure developed or adopted by the SSOA. Any issues or concerns identified with the SSOA investigation practices and RTA roles and responsibilities may be shared during the SSO program standard comment disposition process per § 674.27(a)(3).

FTA expects the SSOA to document the adoption of an RTA’s investigation report in a manner that works for both agencies and satisfies the requirements of § 674.35.

Stakeholders interested in training requirements for investigators should review part 672 for more information. Further, nothing precludes the SSOA from establishing unique requirements for SSOA and RTA investigators for technical experts and subject matter experts.

As to the impact of these requirements to cost estimates, FTA does include activities associated with § 674.35 in the regulation cost estimate and notes again this is not a new requirement.

N. Section 674.37—Corrective Action Plans

Comments: FTA received comments from one SSOA and three RTAs regarding the requirements in the proposed § 674.37. Two RTA commenters expressed concern at the

inclusion of findings of non-compliance from internal safety reviews in the list of items for which the SSOA must require the development of a CAP. One RTA commenter asked FTA to clarify if it is requiring the SSOA to approve CAPs from internal safety reviews and conduct spot checks on the implementation and effectiveness of the internal safety review CAPs. Further, the commenter contended that this would be inappropriate for RTA internal reviews and would slow down the process of developing and implementing CAPs. The RTA further asserted that the SSOA triennial audit cycle is the appropriate venue to review CAPs related to an RTA’s internal safety reviews. Another RTA commenter asserted that requiring the development of a CAP for findings of non-compliance from internal safety reviews is a significant expansion to the scope of CAPs. The RTA commenter suggested that internal safety review CAP development and monitoring responsibility rests with the RTA and these processes are managed independently from SSOA oversight activities. Further, the RTA commenter expressed concern that this requirement focuses more on compliance and less on a scalable, performance-driven methodology, and that it could have a negative impact on RTA safety culture. The RTA commenter also recommended FTA use the term “non-conformance” instead of “non-compliance” because the latter is potentially misleading.

One SSOA commenter noted § 674.37(a)(2) requires CAPs to address findings of non-compliance from safety reviews and inspections performed by the SSOA but does not use the word “audit.” The commenter also recommended that CAPs should also address longer-term monitoring of the corrective actions. Finally, the RTA commenter expressed concern about use of the word “order” in § 674.37(d) and recommended that SSOAs use wording within their SSOA’s authority to outline how an RTA must develop and carryout a CAP.

An SSOA commenter recommended that the rule should clearly outline how the Administrator will conduct independent investigations of any safety events and under what general circumstances they would review an SSOA’s or RTA’s findings of causations of a safety event. An RTA commenter noted that § 674.37(d) requires the SSOA to evaluate whether FTA investigation findings require a CAP by the RTA. The commenter suggested that if FTA recommendations must be considered for determining CAPs, then other sources should be as well, such as

recommendations from the Safety Committee.

FTA Response: Except for subsection (a), which outlines when an SSOA must require the RTA to develop a CAP, the language in this section is identical to the 2016 version of the rule. One of the items in subsection (a) is, “Results from investigations, in which the RTA or SSOA determined that causal or contributing factors require corrective action.” SSOA oversight does not distinguish between CAPs developed to address issues identified through RTA internal processes as opposed to SSOA processes. The SSOA continues, as in the past, to have the authority to require the development of, review, approve, and monitor CAPs to address a deficiency identified from activities described in the regulation and the SSO program standard, regardless of whether the source is RTA or SSOA reviews. Any conflicts in CAPs should follow the documented conflict resolution process. Further, the RTA may raise concerns with or make suggestions to revise the SSOA CAP requirements and process upon review of the SSO program standard as described in § 674.27(a)(3).

FTA understands an SSOA will use the triennial audit as a forum to verify an RTA’s internal audit program is being implemented in accordance with the ASP. Recommendations for improvements and CAPs, if necessary, will be issued out of triennial audits per § 674.31.

FTA recognizes a concern with terminology, particularly the use of “non-compliance” instead of “conformance” or “non-conformance” as related to internal safety reviews. For purpose here, “non-compliance” refers to instances where the SSOA identifies areas of non-conformance with processes outlined in the ASP.

With respect to the assertion that a focus on compliance-based activities may degrade an RTA’s safety culture, the application of the Safety Management System for rail transit systems is focused on safety performance to support agency safety improvements and risk reduction. The implementation of SMS does not negate the usefulness of compliance focused activities. An effective SMS will incorporate compliance-based programs and support overall risk management to strengthen the agency’s safety culture. CAPs may be generated, as needed, from performance-based and compliance-based activities.

CAPs may be generated from audits, safety reviews, and inspections. The list in § 674.37(a) represents a minimum and is not exhaustive.

FTA appreciates the comment to support the monitoring of longer-term CAPs implementation. The regulation does not distinguish the length of time for monitoring of CAPs but is focused on the progress to carry out the CAP to completion. As written, the regulation includes the monitoring of longer-term CAPs.

As for the concern with the use of the phrase “the SSOA must order the RTA to develop and carry out a CAP,” the term “order” is a synonym used in place of the word “require” and is in the 2016 version of the rule.

FTA acknowledges the suggestion to outline how FTA may conduct an investigation and separately the circumstances for occasions when FTA may conduct an independent review of safety event causations and findings revealed through SSOA and RTA investigations. FTA will consider the suggestion on FTA safety event investigation practices while developing future guidance and workshops for training and sharing information with SSOAs and RTAs. FTA may review safety event investigations and findings of causations at any time per § 674.33(e).

As to whether the regulation should include FTA as an entity that may conduct investigations which may result in CAPs for the SSOA or RTA, FTA has the statutory authority under 49 U.S.C. 5329 to perform independent investigations to determine causal and contributing factors as stated in § 674.35(e). Out of FTA’s investigations, like other investigations, findings may necessitate the development of CAPs.

As for the recommendation to incorporate in the regulation, language that considers recommendations from other sources, such as the Safety Committee, to be considered for CAP development, FTA again notes the list in § 674.37(a) is a minimum and is not exhaustive. The SSOA may require the development of a CAP from investigations conducted by the RTA and SSOA, which includes the review of hazards for causal and contributing factors. Hazards may be identified by any number of sources within an SSOA and RTA, such as the Safety Committee.

O. Section 674.39—State Safety Oversight Agency Annual Reporting to FTA

Comments: FTA received comments from two SSOAs and one industry association regarding the annual reporting requirements of the proposed § 674.39. Two SSOA commenters recommended that FTA redesign SSOR so that it is organized according to the subsections of § 674.39. One industry association commenter recommended

that FTA remove requirements associated with technical training plans (TTP) from 49 CFR part 672 and incorporate them into this rule. The commenter asserted that since TTPs are associated with SSOAs, the related requirements belong in 49 CFR part 674. The industry association commenter also requested clarification on the “publicly available report” required under § 674.39(a)(3) and specifically requested clarification to differentiate between the safety status report that the SSOA is required to send to the Governor, FTA Administrator, and RTA board of directors and the annual reporting submission that the SSOA makes through the SSOA and clarify the expected level of effort for this requirement. One SSOA commenter asked for clarification from FTA if it requires the publicly available report required at § 674.39(a)(3) to include causal factors of events in totality or if trending sufficient.

One industry association commenter recommended against the requirement for SSOAs to submit final investigation reports to FTA, asserting this requirement would be burdensome. The commenter also questioned the usefulness of such reports in supporting FTA analyses. One SSOA commenter asked for clarification on the certification requirement at § 674.39(a)(8) and confirmation on whether the requirement is for submission of a self-certification or the submission of a certification from FTA that the SSOA is compliant with part 674.

FTA Response: FTA appreciates the suggestions for improving the SSOR and encourages SSOAs to provide feedback to their assigned FTA PM regarding suggested enhancements to the SSOR. Further, FTA notes that the SSOR data collection forms are currently designed to meet all the annual reporting submission requirements of part 674. However, to support the most efficient and accurate collection of Annual Reporting data, SSOR uses categories and collection sequencing that may vary from the regulatory text organization while ensuring comprehensive collection of required data.

FTA recognizes the comment to incorporate training requirements currently found in 49 CFR part 672 into the revised 49 CFR part 674. However, FTA notes that 49 CFR part 672 does include SSOA-specific requirements and disagrees that removing TTP-related requirements from part 672 is advantageous for the industry.

The “publicly available report” required under § 674.39(a)(3)—a requirement since 2016—refers to the

safety status report the SSOA is required to send to the Governor, FTA Administrator, and RTA board of directors. The language at § 674.39(a)(3) does not establish any new submission requirement that was not already in place under existing reporting requirements and therefore confirms that no additional level of effort is required to address the requirements of § 674.39(a)(3) in this final rule. FTA has not established specific requirements for the details of the report required at § 674.39(a)(3) beyond the elements identified in the rule and offers flexibility to the SSOA to determine how it may best present “causal factors of safety events identified through investigation,” be it trending or other methods.

SSOAs are already required to submit final investigation reports to FTA through SSOR and § 674.39(a)(4) does not establish any new programmatic requirement or new burden. Further, final investigation reports submitted by SSOAs have been instrumental in FTA safety risk assessments and other safety analyses routinely performed by FTA. FTA confirms that § 674.39(a)(8) requires an SSOA to submit a certification attesting that the SSOA has complied with the requirements of 49 CFR part 674. This is not a certification issued by FTA.

P. Section 674.41—Conflicts of Interest

Comments: Two labor union commenters, one SSOA commenter, and one industry association submitted comments related to the conflicts of interest provisions proposed at § 674.41. Two labor union commenters submitted a recommendation that FTA add a requirement that explicitly prohibits an SSOA from including, as executive or governing personnel, any appointees from a political office also responsible for appointing executive or governing personnel to any transit provider overseen by the SSOA.

One industry association commenter voiced concern that some former employees of RTAs now work for the SSOA that oversees their past employer and now oversee many of the areas of their previous employment. The commenter recommended that FTA should require a “cooling-off period” of at least 12 months between when an employee leaves or retires from an RTA and then oversees the exact same area in which they previously worked in at an RTA to preserve integrity and to avoid conflicts of interest.

One SSOA commenter expressed concerns about FTA’s conflict of interest provisions at § 674.41(c) that preventing a contractor from providing services to

both an RTA and the SSOA that oversees the RTA, unless granted an exemption by FTA. The SSOA commenter noted that their SSOA struggles to compete with an overseen RTA for contractors because the RTA is large and can provide more lucrative business opportunities for the contractors, limiting the availability of contractor expertise for the SSOA. The commenter recommended that FTA revise the proposed § 674.41(c) to allow RTAs and SSOAs to determine appropriate mitigations of conflicts of interest, such as organizational firewalls, so that SSOAs can work with the contractors of their choice, rather than whatever contractors remain following RTA contracting.

FTA Response: Regarding the recommendation to add a provision that would prohibit an SSOA from including, as executive or governing personnel, any appointees from a political office also responsible for appointing executive or governing personnel to any transit provider overseen by the SSOA, FTA believes a prescriptive ban is not necessary at this time, as FTA believes §§ 674.11 and 674.13 of the regulation provide sufficient financial and legal independence between an SSOA and the RTAs it oversees.

Regarding the recommendation for cooling-off period, although Federal post-employment laws establish post-employment restrictions on former Federal employees (18 U.S.C. 207), these restrictions do not extend to local employees of rail transit agencies and SSOAs who are more appropriately covered under State employment laws. Former employees of an RTA transferring to work for an SSOA should also be aware that employment contracts may contain post-employment restrictions.

Regarding the proposal by the SSOA who sought the authority to determine whether a conflict of interest existed between itself and the RTAs it oversees in the hiring of support contractors, FTA believes that the conflict of interest provision at § 674.41(c) that prevents an SSOA from hiring a contractor that also provides services to an RTA overseen by the same SSOA is essential to maintain the independence between the entity preparing and implementing the PTASP and the SSOA overseeing that entity. FTA notes that § 674.41(c) includes an opportunity for an SSOA to petition FTA for a waiver from this prohibition if FTA is persuaded that any potential conflict of interest has been adequately mitigated. Because the current prohibition is an essential safeguard, FTA declines to revise the provision.

FTA believes a sufficient number of contractors with qualified personnel available exist regardless of compensation competition; moreover, FTA has not received a request to waive this provision during the past eight years when the waiver provision has been available.

Q. Regulatory Burden

Comments: Two SSOA commenters submitted comments related to the burden estimates published in the NPRM. One SSOA commenter noted that oversight requirements related to engineering and construction phases, RTA compliance with the PTSCPT, vehicle maintenance and testing, data collection, and annual reporting may increase the regulatory burden.

Another SSOA commenter requested clarification if FTA had quantified the impacts of the proposed rule on RTAs and SSOAs. The same SSOA commenter asked how FTA calculated the estimated number of events used to support burden estimates, asking for clarification on the occupation groups, codes, and titles that were used in conducting FTA’s burden analysis.

FTA Response: Some SSOAs have been providing oversight of rail fixed guideway public transportation systems in engineering or construction phases when they were directed to do so in section 20021 of MAP–21 (Pub. L. 112–141) and this final rule does not establish an additional responsibility. Further, where there are new requirements related to RTA compliance with the PTSCPT, vehicle maintenance and testing, data collection, and annual reporting, FTA has analyzed those costs to SSOAs and RTAs.

In the NPRM, FTA estimated the economic impacts of the proposed rule on the industry as described in “Regulatory Analyses and Notices.” Table 4 and the accompanying discussion identify the Bureau of Labor Statistics occupational categories and codes used. To quantify the impact of the notification criteria change on RTAs and SSOAs, FTA analyzed safety event data reported to the NTD from 2017 to 2021 and identified events that would become reportable under the new criteria.

R. Other Safety Topics

Comments: FTA received comments from the NTSB related to safety concerns affecting the transit industry, including fatigue, fitness for duty, and roadway worker protection. The NTSB recommended that FTA establish roadway worker protection (RWP) rules including requirements for job briefings; establish a national inspection program

that specifically includes roadway worker activities; develop a work scheduling program for RTAs that incorporates fatigue science, provides for the management of personnel fatigue risks, and is implemented through the state safety oversight program; establish hours-of-service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements; identify the necessary training and certification needs for work schedulers in the rail transit industry and require the transit agencies to provide additional training or certification for their work schedulers; and require rail transit employees who develop work schedules to complete initial and recurrent training based on current fatigue science to identify and mitigate work schedule risks that contribute to operator fatigue.

FTA Response: FTA appreciates the comments received from the NTSB and notes that FTA is currently engaged in a rulemaking addressing rail transit roadway worker protection (RIN 2132-AB41). On March 25, 2024, FTA published a notice of proposed rulemaking that would establish minimum safety standards for rail transit RWP to ensure the safe operation of public transportation systems and to prevent accidents, incidents, fatalities, and injuries to transit workers who may access the roadway in the performance of work (89 FR 20605). FTA is currently reviewing public comments received in response to the publication of the proposed rule.

On October 30, 2023, FTA published an advanced notice of proposed rulemaking (ANPRM) addressing transit worker hours of service and fatigue safety risk management (88 FR 74107). FTA is considering proposing minimum safety standards to provide protections for transit workers to obtain adequate rest thereby reducing the risk of fatigue-related safety incidents and sought public input in two areas: hours of service; and fatigue risk management programs. FTA is reviewing collected information to better understand current industry practices, priorities, requirements, and the costs and benefits of Federal requirements to assist FTA as it considers potential regulatory requirements.

III. Section-by-Section Analysis

Subpart A—General Provisions

674.1—Purpose

This section explains that the purpose of this regulation is to carry out the mandate of 49 U.S.C. 5329 for States to

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

674.3—Applicability

FTA has not changed this section.

674.5—Policy

This section removes the term “sufficient” in subsection (a) to eliminate subjectivity regarding the requirements for State Safety Oversight Agency (SSOA) authorities. FTA also removes the first sentence in subsection (b), as the availability of funding is addressed in the existing language in § 674.17(a).

674.7—Definitions

This section replaces the terms “accident,” “incident,” “occurrence,” and “event” with the inclusive term “safety event,” which includes events such as collisions, derailments, fires, and unintended train movements for purposes of meeting the two-hour notification requirement in § 674.33. The “safety event” notification requirements of § 674.33 exclude criminal actions.

FTA also removes the definition of “serious injury.” These revisions are consistent with changes that FTA published in the Public Transportation Agency Safety Plans (PTASP) final rule (89 FR 25694) and are intended to simplify requirements related to safety event notifications and investigations.

This section establishes new terms and definitions for “collision,” “derailment,” “evacuation for life safety reasons,” “fatality,” “injury,” “public transportation,” “rail transit vehicle,” “revenue vehicle,” and “unintended train movement,” and removes the general term “vehicle” in recognition of these new definitions, which will be consistent with FTA’s National Transit Database (NTD) reporting manuals and support the notification and investigation thresholds defined in §§ 674.33 and 674.35. FTA’s definition of “injury” restores the threshold under FTA’s previous part 659 regulation and is consistent with the NTD reporting manuals. The definition of “injury” includes damage or harm to persons that requires immediate medical attention away from the scene. An individual

who declines transportation away from the scene for medical attention should not be counted as an “injury” for two-hour notification purposes. This definition allows for an immediate, on scene determination of injuries by the RTA without the need to await a formal diagnosis or determination from an off-site medical professional.

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

FTA established new terms and definitions for “potential consequence,” “safety committee,” “safety risk,” and “safety risk mitigation” as well as revised definitions of “Accountable Executive” and “safety risk management” for consistency with definitions 49 CFR part 673.

This section revises the definition of “corrective action plan” to help distinguish corrective action plans from safety risk mitigations.

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

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

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

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

This section reorders the clauses in the definition of “rail fixed guideway public transportation system” for clarity. This change aligns with the

definition that the PTASP regulation and does not reflect a change in FTA's implementation or interpretation.

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

674.9—[Reserved]

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

Subpart B—Role of the State

674.11—State Safety Oversight Program

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

674.13—Designation of Oversight Agency

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

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

674.15—Designation of Oversight Agency for Multi-State System

FTA has not changed this section.

674.17—Use of Federal Financial Assistance

FTA deletes the term "parts" as superfluous.

674.19—Certification of a State Safety Oversight Program

FTA removes "(e)" from "5329(e)" in this section for the reasons mentioned

above and adds language in § 674.19(d) to clarify the Administrator's determination to issue a certification or a denial of certification for an SSO program. This does not reflect a change in FTA's application of the statutory and regulatory criteria.

674.21—Withholding of Federal Financial Assistance for Noncompliance

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

674.23—Confidentiality of Information

FTA has not changed this section.

Subpart C—State Safety Oversight Agencies

674.25—Role of the State Safety Oversight Agency

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

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

674.27—State Safety Oversight Program Standards

In § 674.27, FTA adds a new paragraph (a)(3) to require an SSOA to develop a process to address comments from an RTA regarding an SSO program standard. This reflects industry concerns that some SSOAs do not

formally respond to RTA comments. This addition requires SSOAs to establish a process by which SSOAs will address RTA comments regarding the SSO program standard. Because of the addition of paragraph (a)(3), the remaining paragraphs are renumbered.

FTA expands the renumbered § 674.27(a)(5) to include specific requirements for SSOA oversight of RTA internal safety reviews. Internal safety reviews are distinct from the existing annual review and update requirement in 49 CFR 673.11(a)(5). Internal safety reviews monitor the actual implementation of the ASP. However, the results of the internal safety reviews may inform the RTA's annual ASP document review and update process. The previous 49 CFR 659.19 included explicit requirements for these internal safety reviews; however, part 674 removed the prescriptive requirements in § 659.19 with the expectation that they would be addressed in the PTASP final rule. The PTASP final rule did not address internal safety reviews, prompting some RTAs to ask whether they were no longer required by FTA, even though SSOAs continued to require them under their SSO program standards. To provide clarity, the language confirms the requirement that the SSO program standard must define internal safety review requirements, which are addressed in § 673.27(d)(1)(iii). The language establishes minimum requirements for internal safety reviews, including the requirement that RTAs must verify the implementation of all elements of the ASP over a three-year period, with the expectation that RTAs will be conducting internal safety reviews on an ongoing basis. Further, the RTA must notify the SSOA thirty days before it conducts an internal safety review of any aspect of the rail fixed guideway public transportation system and provide any checklists or procedures it will use during the review. Finally, the RTA must submit a report to the SSOA annually documenting the internal safety review activities and the status of subsequent findings and corrective actions.

A new § 674.27(a)(6) relating to the oversight of safety risk mitigations establishes requirements for the SSOA to define the process it will use to oversee an RTA's development, implementation, and monitoring of safety risk mitigations. The SSO program standard must specify the frequency and format for how the SSOA will receive and review information about an RTA's safety risk mitigation status and effectiveness.

Although 49 CFR part 673 established specific requirements for safety management, including the development, implementation and monitoring of safety risk mitigations, part 674 was published prior to part 673 and did not include specific oversight requirements related to safety risk mitigation. Therefore, FTA is including these requirements in part 674 to ensure that SSOAs have a documented process to oversee the safety risk mitigation processes required of RTAs.

A new § 674.27(a)(7) regarding oversight of the safety certification training program requires an SSOA to oversee the RTA's compliance with the Public Safety Certification Training Program regulation (49 CFR part 672). This role was not made explicit in the previous part 674 and this new language clarifies FTA's expectation that SSOAs oversee RTA compliance with 49 CFR part 672 requirements.

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

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

FTA adds a new § 674.27(a)(12), "Inspections," to incorporate the requirement that SSOAs conduct risk-based inspections of the RTAs they oversee. On October 21, 2022, FTA issued Special Directives to each SSOA directing them to develop and implement a risk-based inspection program as required by the BIL. The Special Directives require SSOAs to include policies and procedures for Risk-Based Inspection in their SSO program standards and develop and begin implementing their Risk-Based Inspection program by October 21, 2024.

FTA adding a new § 674.27(a)(13), "Vehicle Maintenance and Testing," requiring SSOAs to amend their SSO

program standard to include a new requirement that SSOAs ensure that rail transit agencies conduct maintenance and testing procedures of braking systems, consistent with NTSB Recommendation R-17-004 (<https://data.nts.gov/carol-main-public/sr-details/R-17-004>).

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

674.29—Public Transportation Agency Safety Plans: General Requirements

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

674.31—Triennial Audits: General Requirements

Section 674.31 clarifies that SSOAs who elect to audit an RTA's compliance with its ASP on an ongoing basis must issue interim audit reports at least annually. This clarification does not reflect a change in FTA's current implementation of this requirement.

674.33—Notifications of Safety Events

This section replaces the term "accident" with "safety event." This replacement streamlines definitions used in requirements related to event notification and investigation.

This section establishes specific notification criteria that replace the Appendix in the current part 674. This replacement text clarifies FTA's minimum requirements for two-hour notifications to FTA and SSOAs and reflects changes to reporting thresholds suggested by SSOAs and RTAs, who found it difficult to quickly determine the scope of one's "serious injuries" as defined in the Appendix within two hours of a safety event, specifically,

injuries resulting in bone fractures, nerve or muscle damage, injuries to internal organs, or hospitalizations exceeding 48 hours. Additionally, FTA removes the requirement in subsection (b) that required RTAs to notify FTA and SSOAs of safety events triggering FRA's notification requirements under 49 CFR part 225, as notification on FRA-regulated trackage is already reported to the USDOT and received by FTA via the National Response Center. In subsection (b) FTA has added an exclusion to the notification requirement for criminal actions such as assaults or homicides.

674.35—Investigations

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

674.37—Corrective Action Plans

In § 674.37, FTA includes a new subsection (a) and redesignates subsections (a) through (c) as subsections (b) through (d).

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

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

674.39—State Safety Oversight Agency Annual Reporting to FTA

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

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

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

674.41—Conflicts of Interest

FTA has not changed this section.

Removed—Appendix to Part 674—Notification and Reporting of Accidents, Incidents, and Occurrences

FTA removes the table addressing the notification and reporting requirements for accidents, incidents, and occurrences, as FTA addresses this requirement in § 674.33, Notifications of safety events.

IV. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review)

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

Overview

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

Updates From the NPRM

The analysis for the final rule adds calculations using a discount rate of 2 percent, following guidance in the November 2023 update to OMB Circular A–4.¹

To give RTAs time to modify safety event notification and investigation processes and SSOAs time to review those changes, FTA is setting an effective date of January 1, 2025, for RTAs and SSOAs to comply with new notification criteria. The analysis uses 2025 to 2034 as the updated ten-year analysis period for the rule.

Benefits

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

Costs

SSOAs and RTAs will incur economic costs to meet the new oversight and increased reporting requirements of the final rule. The 31 SSOAs in operation as of March 1, 2024, will be required to document their enforcement authority, adjust their SSO program standards, and to comply with new oversight and reporting requirements beginning on January 1, 2025. To estimate the costs of meeting the requirements, FTA estimated the number of entities affected, the number and type of staff involved, and the time needed for the first year and subsequent years (Table 2).²

TABLE 2—STAFF AND HOURS NEEDED FOR SSOAs TO MEET OVERSIGHT REQUIREMENTS

Requirement	Staff	Annual hours	Total hours
SSOA documentation of enforcement authority (first year only)	31 SSOA staff	40	1,240
SSOA oversight (first year)			
Establish disposition process	31 SSOA staff	80	2,480
Define requirements for internal safety reviews	31 SSOA staff	80	2,480
Document oversight of safety risk mitigations	31 SSOA staff	80	2,480
Document oversight of RTA training compliance	31 SSOA staff	20	620
Develop risk-based inspection programs	62 SSOA staff (2 staff per SSOA) ..	160	9,920
Establish thresholds for safety event notifications	31 SSOA staff	10	310
Document data collection procedures with RTAs	31 SSOA staff	20	620
SSOA oversight (later years)			
Oversee safety risk mitigations	31 SSOA staff	500	15,500
Oversee RTA training compliance	31 SSOA staff	20	620

Source: FTA analysis.

Under the current thresholds for reporting safety events, RTAs had an

average of 618 reportable events per year from 2017 to 2021.³ Under the new

thresholds, RTAs would have had an average of 811 reportable events per

¹ Office of Management and Budget (2023). “Circular No. A–4.” <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>.

² Federal Transit Administration. August 3, 2022. “State Safety Oversight Contacts.” <https://www.transit.dot.gov/regulations-and-guidance/>

safety/state-safety-oversight-contacts. P≤³ Average events calculated using FTA’s State Safety Oversight Reporting system.

year for an increase of 193 reports, resulting in additional reporting costs for SSOA and RTA employees (Table 3).

TABLE 3—ANNUAL STAFF AND HOURS NEEDED FOR SSOAs AND RTAs TO MEET REPORTING REQUIREMENTS

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

Source: FTA analysis.

To estimate the value of staff time spent on the requirements, FTA used occupational wage data from the Bureau of Labor Statistics as of May 2021 (Table 2).⁴ For general SSOA and trail transit agency staff, the closest occupational category is “General and Operations

Managers” (code 11–1021) in the “Transit and Ground Passenger Transportation” industry (North American Industry Classification System code 485000). FTA used median hourly wages as a basis for the estimates, multiplied by 1.62 to account

for employer benefits, for a cost estimate of \$95.27 per hour.⁵ For safety event investigators, who do not have a close analogue in the occupational wage data, FTA assumed a 25 percent wage and benefit premium for a cost estimate of \$119.09 per hour.

TABLE 4—OCCUPATIONAL CATEGORIES AND WAGES USED TO VALUE STAFF TIME [2022]

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

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

The requirements of the final rule have estimated costs of \$9.8 million (in 2022 dollars) for the first year and

annual costs of \$10.7 million for later years (Table 5). The largest annual costs

are for SSOA oversight (\$7.9 million) and RTA activities (\$2.0 million).

TABLE 5—FIRST-YEAR COSTS AND ANNUAL COSTS FOR RULE REQUIREMENTS [2022]

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

Note: Totals may not sum due to rounding.

Summary

Table 6 summarizes the economic effects of the final rule over the first ten years of the rule (2025 to 2034) in 2022

dollars. On an annualized basis, the rule will have net costs of \$11.0 million at a 7 percent discount rate (discounted to

2024), \$10.9 million at 3 percent, and \$10.9 million at 2 percent.

⁴ Bureau of Labor Statistics. 2024. “May 2022 National Occupational Employment and Wage Estimates: United States.” https://www.bls.gov/oes/2022/may/oes_nat.htm.

⁵ Multiplier derived using Bureau of Labor Statistics data on employer costs for employee compensation in December 22 (<https://www.bls.gov/news.release/ecec.htm>). Employer costs for state

and local government workers averaged \$57.60 an hour, with \$35.69 for wages and \$21.95 for benefit costs. To estimate full costs from wages, one will use a multiplier of \$57.60/\$21.95, or 1.62.

TABLE 6—SUMMARY OF ECONOMIC EFFECTS, 2025–2034
[\$2022, discounted to 2024]

Item	Total (undiscounted)	Annualized (7%)	Annualized (3%)	Annualized (2%)
Benefits Costs	Unquantified .....	.....	.....	.....
SSOA documentation of enforcement authority	\$118,140	\$16,820	\$13,446	\$12,894
SSOA oversight	80,338,058	8,093,373	8,058,697	8,050,279
SSOA safety event tracking	183,879	18,388	18,388	18,388
SSOA investigations	7,355,168	735,517	735,517	735,517
SSOA annual reporting to FTA	609,755	60,975	60,975	60,975
RTA investigations and reporting	20,456,560	2,045,656	2,045,656	2,045,656
Total costs	109,061,560	10,970,730	10,932,680	10,923,710
Net benefits	Unquantified .....	.....	.....	.....

Note: Totals may not sum due to rounding.

Regulatory Flexibility Act

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

The rule will require SSOAs and rail transit agencies to meet additional administrative requirements. Under the Regulatory Flexibility Act, local governments and other public-sector organizations qualify as small entities if they serve a population of less than 50,000. State agencies do not qualify, and no rail transit agency serves an urbanized area with a population of less than 50,000. FTA has therefore determined that the rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

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

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3)

those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rule will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, and believes that it will not have substantial direct effects on one or more Indian Tribes; will not impose substantial direct compliance costs on Indian Tribal

governments; and will not preempt Tribal laws. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

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

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

Regulation Identifier Number

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

List of Subjects in 49 CFR Part 674

Grant program—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety.

Veronica Vanterpool,
Deputy Administrator.

■ In consideration of the foregoing, and under the authority of 49 U.S.C. 5329, the Federal Transit Administration revises and republishes 49 CFR 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 [Reserved].

Subpart B—Role of the State

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

Subpart 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 safety events.
- 674.35 Investigations.
- 674.37 Corrective action plans.
- 674.39 State Safety Oversight Agency annual reporting to FTA.
- 674.41 Conflicts of interest.

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

49 CFR Part 674

Subpart A—General Provisions

§ 674.1 Purpose.

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

§ 674.3 Applicability.

This part applies to States with rail fixed guideway public transportation systems; State safety oversight agencies that oversee the safety of rail fixed guideway public transportation systems; and entities that own or operate rail fixed guideway public transportation

systems with Federal financial assistance authorized under 49 U.S.C. Chapter 53.

§ 674.5 Policy.

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

(b) FTA will certify whether a State safety oversight program meets the requirements of 49 U.S.C. 5329 and is adequate to promote the purposes of the public transportation safety programs codified at 49 U.S.C. 5329.

§ 674.7 Definitions.

As used in this part:

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

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

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

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

Corrective action plan means a plan developed by a rail transit agency that describes the actions the rail transit agency will take to address an identified deficiency or safety concern, and the schedule for taking those actions. Either a State Safety Oversight Agency or FTA may require a rail transit agency to develop and carry out a corrective action plan.

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

Designated personnel means:

- (1) Employees and contractors identified by a recipient whose job

functions are directly responsible for safety oversight of the public transportation system of the public transportation agency; or

(2) Employees and contractors of a State Safety Oversight Agency whose job functions require them to conduct reviews, inspections, examinations, and other safety oversight activities of the rail fixed guideway public transportation systems subject to the jurisdiction of the agency.

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

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

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

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

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

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

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

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

Investigation means the process of determining the causal and contributing factors of a safety event or hazard, for

the purpose of preventing recurrence and mitigating safety risk.

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

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

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

Potential consequence means the effect of a hazard.

Public transportation has the meaning found in 49 U.S.C. 5302.

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

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

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

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

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

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

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

Safety event means an unexpected outcome resulting in injury or death; damage to or loss of the facilities, equipment, rolling stock, or

infrastructure of a public transportation system; or damage to the environment.

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

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

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

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

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

§ 674.9 [Reserved]

Subpart B—Role of the State

§ 674.11 State Safety Oversight Program.

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

(a) Explicitly acknowledge the State's responsibility for overseeing the safety of the rail fixed guideway public transportation systems within the State;

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

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

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

(e) Demonstrate that the employees and other personnel of the State safety oversight agency who are responsible for the oversight of rail fixed guideway public transportation systems are qualified to perform their functions,

based on appropriate training, including substantial progress toward or completion of the Public Transportation Safety Certification Training Program; and

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

§ 674.13 Designation of oversight agency.

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

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

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

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

(4) The SSOA has authority to review, approve, oversee, and enforce the Public Transportation Agency Safety Plan for a rail fixed guideway public transportation system required by 49 U.S.C. 5329(d) and part 673 of this chapter;

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

(6) At least once every three years, the SSOA audits every rail fixed guideway public transportation system's compliance with the Public Transportation Agency Safety Plan required by 49 U.S.C. 5329(d) and part 673 of this chapter; 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 conflicts 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 an SSOA in compliance with 49 U.S.C. 5329.

(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. Also, the Administrator must determine whether an 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. 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.

(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, the Administrator must provide a written explanation, and allow the State an opportunity to modify and resubmit its SSO program for the Administrator's approval. In the event the State is unable to modify its SSO program to merit the Administrator's issuance of a certification, the Administrator must notify the Governor of that fact, and must ask the Governor to take all possible actions to correct the deficiencies that are precluding the issuance of a certification for the SSO program. In his or her discretion, the Administrator may also impose

financial penalties as authorized by 49 U.S.C. 5329(e), which may include:

(1) Withholding SSO grant funds from the State;

(2) Withholding up to five percent of the 49 U.S.C. 5307 Urbanized Area formula funds appropriated for use in the State or urbanized area in the State, until such time as the SSO program can be certified; or

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

(d) When determining whether to issue a certification or a denial of certification for an SSO program, the Administrator must evaluate whether the cognizant SSOA has the authority, resources, and expertise to oversee the number, size, and complexity of the rail fixed guideway public transportation systems that operate within the State, or will attain the necessary authority, resources, and expertise in accordance with a developmental plan and schedule.

§ 674.21 Withholding of Federal financial assistance for noncompliance.

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

(b) If a State fails to establish an SSO program that has been approved by the Administrator prior to a rail fixed guideway public transportation system entering the engineering or construction phase of development, FTA will be prohibited from obligating Federal financial assistance authorized under 49 U.S.C. 5338 to any entity in the State that is otherwise eligible to receive that Federal financial assistance, in accordance with 49 U.S.C. 5329(e)(3).

§ 674.23 Confidentiality of information.

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

(b) This part does not require public availability of any data, information, or

procedures pertaining to the security of a rail fixed guideway public transportation system or its passenger operations.

Subpart C—State Safety Oversight Agencies

§ 674.25 Role of the State safety oversight agency.

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

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

(c) An SSOA has the responsibility to provide safety oversight of an RTA's project(s) in the engineering or construction phase to verify compliance with all applicable Federal and State safety requirements. For purposes of §§ 674.33 and 674.35, this is limited to safety events that involve transit-related activities such as operations, testing, simulated service or pre-revenue service, or a transit-related maintenance activity.

(d) An SSOA must ensure that a Public Transportation Agency Safety Plan meets the requirements at 49 U.S.C. 5329(d) and part 673 of this chapter.

(e) An SSOA has primary responsibility for the investigation of any allegation of noncompliance with a Public Transportation Agency Safety Plan. These responsibilities do not preclude the Administrator from exercising their authority under 49 U.S.C. 5329(f).

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

(g) An SSOA may enter into an agreement with a contractor for assistance in overseeing safety event investigations and performing

independent safety event investigations; and for expertise the SSOA does not have within its own organization.

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

§ 674.27 State safety oversight program standards.

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

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

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

(3) *Disposition of RTA comments.* The SSO program standard must establish a disposition process that defines how the SSOA will address any comments the RTA makes with respect to the SSO program standard.

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

(5) *Oversight of RTA Public Transportation Agency Safety Plans and internal safety reviews.* The SSO program standard must explain the role of the SSOA in overseeing an RTA's execution of its Public Transportation Agency Safety Plan and any related safety reviews of the RTA's fixed guideway public transportation system. The SSO program standard must

describe the process whereby the SSOA will receive and evaluate all material submitted under the signature of an RTA's Accountable Executive. The SSO program standard must define baseline RTA internal safety review requirements including, at a minimum, the following requirements:

(i) The RTA must develop and document an ongoing internal safety review process to ensure that all elements of an RTA's Public Transportation Agency Safety Plan are performing and being implemented as intended.

(ii) The RTA's internal safety review process must ensure that the implementation of all elements of its Public Transportation Agency Safety Plan are reviewed within a three-year period.

(iii) The RTA must notify the SSOA at least thirty (30) days before the RTA conducts an internal safety review of any aspect of the rail fixed guideway public transportation system and provide any checklists or procedures it will use during the review.

(iv) The RTA must submit a report to the SSOA annually documenting the internal safety review activities and the status of subsequent findings and corrective actions.

(6) *Oversight of safety risk mitigations.* The SSO program standard must explain the role of the SSOA in overseeing an RTA's development, implementation, and monitoring of safety risk mitigations related to rail fixed guideway transportation, including how the SSOA will track RTA safety risk mitigations. The SSO program standard must specify the frequency and format whereby the SSOA will receive and review information on RTA safety risk mitigation status and effectiveness.

(7) *Oversight of RTA compliance with the Public Transportation Safety Certification Training Program.* The SSO program standard must explain how the SSOA will ensure that the RTA satisfies the requirements of the *Public Transportation Safety Certification Training Program*, including the RTA's designation of personnel and the RTA's identification of refresher training.

(8) *Triennial SSOA audits of RTA Public Transportation Agency Safety Plans.* The SSO program standard must explain the process the SSOA will follow and the criteria the SSOA will apply in conducting a complete audit of the RTA's compliance with its Public Transportation Agency Safety Plan at least once every three years, in accordance with 49 U.S.C. 5329. Alternatively, the SSOA and RTA may agree that the SSOA will conduct its

audit on an on-going basis over the three-year timeframe. The program standard must establish a procedure the SSOA and RTA will follow to manage findings and recommendations arising from the triennial audit.

(9) *Safety event notifications.* The SSO program standard must establish requirements for RTA notifications of safety events occurring on the RTA's rail fixed guideway public transportation system, including notifications to the SSOA and to FTA. SSOA safety event notification requirements must address, specifically, the time limits for notification, methods of notification, and the nature of the information the RTA must submit to the SSOA.

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

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

(12) *Inspections.* The SSO program standard must include or incorporate by reference a risk-based inspection program that:

(i) Is commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems that the State safety oversight agency oversees;

(ii) Provides the SSOA with the authority and capability to enter the facilities of each rail fixed guideway public transportation system that the SSOA oversees to inspect infrastructure, equipment, records, personnel, and data, including the data that the RTA collects when identifying and evaluating safety risks; and

(iii) Include policies and procedures regarding the access of the SSOA to conduct inspections of the rail fixed guideway public transportation system, including access for inspections that

occur without advance notice to the RTA.

(13) *Vehicle maintenance and testing.* The SSO program standard must include the process by which the SSOA will review an RTA's rail transit vehicle maintenance program, including the RTA's periodic testing of rail transit vehicle braking systems to ensure performance and to detect potential latent system failures.

(14) *Data collection.* The program standard must include policies and procedures for collecting and reviewing data that the RTA uses when identifying hazards and assessing safety risk and explain how the SSOA uses collected data to support oversight of the RTA's safety risk management process. The frequency of collection shall be commensurate with the size and complexity of the rail fixed guideway public transportation system.

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

§ 674.29 Public Transportation Agency Safety Plans: general requirements.

(a) In determining whether to approve a Public Transportation Agency Safety Plan for a rail fixed guideway public transportation system, an SSOA must evaluate whether the Public Transportation Agency Safety Plan is compliant with 49 U.S.C. 5329(d) and part 673 of this chapter; is consistent with the National Public Transportation Safety Plan; and is in compliance with the SSO program standard set by the SSOA.

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

§ 674.31 Triennial audits: general requirements.

At least once every three years, an SSOA must conduct a complete audit of an RTA's compliance with its Public Transportation Agency Safety Plan. Alternatively, an SSOA may conduct the audit on an on-going basis over the three-year timeframe. If an SSOA audits

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

§ 674.33 Notifications of safety events.

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

- (1) Fatality
- (2) Two or more injuries
- (3) Derailment
- (4) Collision resulting in one or more injuries
- (5) Collision between two rail transit vehicles
- (6) Collision resulting in disabling damage to a rail transit vehicle
- (7) Evacuation for life safety reasons
- (8) Unintended train movement.

(b) The two-hour notification requirement excludes criminal actions that result in fatalities or injuries, such as homicides and assaults.

§ 674.35 Investigations.

(a) An SSOA must investigate or require an investigation of any safety event that requires notification under § 674.33.

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

(c) Within a reasonable time, an SSOA must issue a written report on its investigation of a safety event or review of an RTA's safety event investigation in accordance with the reporting requirements established by the SSOA.

The report must describe the investigation activities; identify the factors that caused or contributed to the safety event; and set forth a corrective action plan, as necessary or appropriate. The SSOA must formally adopt the report of a safety event and transmit that report to the RTA for review and concurrence. If the RTA does not concur with an SSOA's report, the SSOA may allow the RTA to submit a written dissent from the report, which may be included in the report, at the discretion of the SSOA.

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

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

§ 674.37 Corrective action plans.

(a) The SSOA must, at a minimum, require the development of a CAP for the following:

- (1) Results from investigations, in which the RTA or SSOA determined that causal or contributing factors require corrective action;
- (2) Findings of non-compliance from safety reviews and inspections performed by the SSOA; or
- (3) Findings of non-compliance from internal safety reviews performed by the RTA.

(b) In any instance in which an RTA must develop and carry out a CAP, the SSOA must review and approve the CAP before the RTA carries out the plan. However, an exception may be made for immediate or emergency corrective actions that must be taken to ensure immediate safety, provided that the SSOA has been given timely notification, and the SSOA provides subsequent review and approval.

(c) A CAP must describe, specifically, the actions the RTA will take to correct the deficiency identified by the CAP, the schedule for taking those actions, and the individuals responsible for taking those actions. The RTA must periodically report to the SSOA on its progress in carrying out the CAP. The SSOA may monitor the RTA's progress in carrying out the CAP through unannounced, on-site inspections, or any other means the SSOA deems necessary or appropriate.

(d) In any instance in which a safety event on the RTA's rail fixed guideway public transportation system is the subject of an investigation by the NTSB or FTA, the SSOA must evaluate whether the findings or recommendations by the NTSB or FTA require a CAP by the RTA, and if so, the SSOA must order the RTA to develop and carry out a CAP.

§ 674.39 State Safety Oversight Agency annual reporting to FTA.

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

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

(2) Evidence that its designated personnel have completed the requirements of the Public Transportation Safety Certification Training Program, or, if in progress, the anticipated completion date of the training;

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

(4) Final investigation reports for all safety events meeting one or more of the criteria specified at § 674.33;

(5) A summary of the internal safety reviews conducted by RTAs during the previous twelve months, and the RTA's progress in carrying out CAPs arising under § 674.37(a)(3);

(6) A summary of the triennial audits completed during the preceding twelve months, and the RTAs' progress in carrying out CAPs arising from triennial audits conducted in accordance with § 674.31;

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

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

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

§ 674.41 Conflicts of interest.

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

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

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

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