

related to the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from the covered employee. Subsequent disclosure by the employer is permitted only as expressly authorized by the terms of the covered employee's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug or alcohol test under this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee.)

(h) An employer shall release information regarding a covered employee's record as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

(i) An employer may disclose drug and alcohol testing information required to be maintained under this part, pertaining to a covered employee, to the State oversight agency or grantee required to certify to FTA compliance with the drug and alcohol testing procedures of 49 CFR parts 40 and 655.

§§ 655.74–655.80 [Reserved]

Subpart I—Certifying Compliance

§ 655.81 Grantee oversight responsibility.

A grantee shall ensure that the recipients of funds under 49 U.S.C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) comply with this part.

§ 655.82 Compliance as a condition of financial assistance.

(a) *General.* A recipient may not be eligible for Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 or under 23 U.S.C. 103(e)(4), if a recipient fails to establish and implement an anti-drug and alcohol misuse program as required by this part. Failure to certify compliance with these requirements, as specified in § 655.83, may re-

sult in the suspension of a grantee's eligibility for Federal funding.

(b) *Criminal violation.* A recipient is subject to criminal sanctions and fines for false statements or misrepresentations under 18 U.S.C. 1001.

(c) *State's role.* Each State shall certify compliance on behalf of its 49 U.S.C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) subrecipients, as applicable. In so certifying, the State shall ensure that each subrecipient is complying with the requirements of this part. A section 5307, 5309, 5311 or 103(e)(4) subrecipient, through the administering State, is subject to suspension of funding from the State if such subrecipient is not in compliance with this part.

§ 655.83 Requirement to certify compliance.

(a) A recipient of FTA financial assistance shall annually certify compliance, as set forth in § 655.82, to the applicable FTA Regional Office.

(b) A certification must be authorized by the organization's governing board or other authorizing official, and must be signed by a party specifically authorized to do so.

(c) A recipient will be ineligible for further FTA financial assistance if the recipient fails to establish and implement an anti-drug and alcohol misuse program in accordance with this part.

(d) FTA may determine that a recipient, who fails to comply with the USCG chemical and alcohol testing requirements, shall be in noncompliance with the alcohol misuse and controlled substances testing requirements of this part. A finding of noncompliance by FTA may lead to the suspension of eligibility for Federal public transportation funding.

[66 FR 42002, Aug. 9, 2001, as amended at 71 FR 69198, Nov. 30, 2006]

PART 659—RAIL FIXED GUIDEWAY SYSTEMS; STATE SAFETY OVERSIGHT

Subpart A—General Provisions

Sec.

659.1 Purpose.

659.3 Scope.

659.5 Definitions.

Subpart B—Role of the State

- 659.7 Withholding of funds for noncompliance.
- 659.9 Designation of oversight agency.
- 659.11 Confidentiality of investigation reports and security plans.

Subpart C—Role of the State Oversight Agency

- 659.13 Overview.
- 659.15 System safety program standard.
- 659.17 System safety program plan: general requirements.
- 659.19 System safety program plan: contents.
- 659.21 System security plan: general requirements.
- 659.23 System security plan: contents.
- 659.25 Annual review of system safety program plan and system security plan.
- 659.27 Internal safety and security reviews.
- 659.29 Oversight agency safety and security reviews.
- 659.31 Hazard management process.
- 659.33 Accident notification.
- 659.35 Investigations.
- 659.37 Corrective action plans.
- 659.39 Oversight agency reporting to the Federal Transit Administration.
- 659.41 Conflict of interest.
- 659.43 Certification of compliance.

AUTHORITY: 49 U.S.C. 5330.

SOURCE: 70 FR 22578, Apr. 29, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 659.1 Purpose.

This part implements 49 U.S.C. 5330 by requiring a state to oversee the safety and security of rail fixed guideway systems through a designated oversight agency.

§ 659.3 Scope.

This part applies only to states with rail fixed guideway systems, as defined in this part.

§ 659.5 Definitions.

Contractor means an entity that performs tasks required on behalf of the oversight or rail transit agency. The rail transit agency may not be a contractor for the oversight agency.

Corrective action plan means a plan developed by the rail transit agency that describes the actions the rail transit agency will take to minimize, control, correct, or eliminate hazards, and

the schedule for implementing those actions.

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

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

Hazard means any real or potential condition (as defined in the rail transit agency’s hazard management process) that can cause injury, illness, or death; damage to or loss of a system, equipment or property; or damage to the environment.

Individual means a passenger; employee; contractor; other rail transit facility worker; pedestrian; trespasser; or any person on rail transit-controlled property.

Investigation means the process used to determine the causal and contributing factors of an accident or hazard, so that actions can be identified to prevent recurrence.

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

Oversight Agency means the entity, other than the rail transit agency, designated by the state or several states to implement this part.

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

Passenger Operations means the period of time when any aspect of rail transit agency operations are initiated with the intent to carry passengers.

Program Standard means a written document developed and adopted by the oversight agency, that describes the policies, objectives, responsibilities, and procedures used to provide rail transit agency safety and security oversight.

Rail Fixed Guideway System means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that:

- (1) Is not regulated by the Federal Railroad Administration; and
- (2) Is included in FTA’s calculation of fixed guideway route miles or receives funding under FTA’s formula program for urbanized areas (49 U.S.C. 5336); or

(3) Has submitted documentation to FTA indicating its intent to be included in FTA's calculation of fixed guideway route miles to receive funding under FTA's formula program for urbanized areas (49 U.S.C. 5336).

Rail Transit Agency means an entity that operates a rail fixed guideway system.

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

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

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

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

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.

System Safety Program Plan means a document developed and adopted by the rail transit agency, describing its safety policies, objectives, responsibilities, and procedures.

System Security Plan means a document developed and adopted by the rail transit agency describing its security policies, objectives, responsibilities, and procedures.

Subpart B—Role of the State

§ 659.7 Withholding of funds for non-compliance.

(a) The Administrator of the FTA may withhold up to five percent of the amount required to be distributed to any state or affected urbanized area in such state under FTA's formula program for urbanized areas, if:

(1) The state in the previous fiscal year has not met the requirements of this part; and

(2) The Administrator determines that the state is not making adequate efforts to comply with this part.

(b) The Administrator may agree to restore withheld formula funds, if compliance is achieved within two years (See 49 U.S.C. 5330).

§ 659.9 Designation of oversight agency.

(a) *General requirement.* Each state with an existing or anticipated rail fixed guideway system regulated by this part shall designate an oversight agency consistent with the provisions of this section. For a rail fixed guideway system that will operate in only one state, the state must designate an agency of the state, other than the rail transit agency, as the oversight agency to implement the requirements in this part. The state's designation or re-designation of its oversight agency and submission of required information as specified in this section, are subject to review by FTA.

(b) *Exception.* States which have designated oversight agencies for purposes of this part before May 31, 2005 are not required to re-designate to FTA.

(c) *Timing.* The state designation of the oversight agency shall:

(1) Coincide with the execution of any grant agreement for a New Starts project between FTA and a rail transit agency within the state's jurisdiction; or

(2) Occur before the application by a rail transit agency for funding under FTA's formula program for urbanized areas (49 U.S.C. 5336).

(d) *Notification to FTA.* Within (60) days of designation of the oversight agency, the state must submit to FTA the following:

(1) The name of the oversight agency designated to implement requirements in this part;

(2) Documentation of the oversight agency's authority to provide state oversight;

(3) Contact information for the representative identified by the designated oversight agency with responsibility for oversight activities;

(4) A description of the organizational and financial relationship between the designated oversight agency and the rail transit agency; and

(5) A schedule for the designated agency's development of its State Safety Oversight Program, including the projected date of its initial submission, as required in § 659.39(a).

§ 659.11

(e) *Multiple states.* In cases of a rail fixed guideway system that will operate in more than one state, each affected state must designate an agency of the state, other than the rail transit agency, as the oversight agency to implement the requirements in this part. To fulfill this requirement, the affected states:

(1) May agree to designate one agency of one state, or an agency representative of all states, to implement the requirements in this part; and

(2) In the event multiple states share oversight responsibility for a rail fixed guideway system, the states must ensure that the rail fixed guideway system is subject to a single program standard, adopted by all affected states.

(f) *Change of designation.* Should a state change its designated oversight agency, it shall submit the information required under paragraph (d) of this section to FTA within (30) days of its change. In addition, the new oversight agency must submit a new initial submission, consistent with § 659.39(b), within (30) days of its designation.

§ 659.11 Confidentiality of investigation reports and security plans.

(a) A state may withhold an investigation report that may have been prepared or adopted by the oversight agency from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report.

(b) This part does not require public availability of the rail transit agency's security plan and any referenced procedures.

Subpart C—Role of the State Oversight Agency

§ 659.13 Overview.

The state oversight agency is responsible for establishing standards for rail safety and security practices and procedures to be used by rail transit agencies within its purview. In addition, the state oversight agency must oversee the execution of these practices and procedures, to ensure compliance with the provisions of this part. This subpart identifies and describes the var-

49 CFR Ch. VI (10–1–10 Edition)

ious requirements for the state oversight agency.

§ 659.15 System safety program standard.

(a) *General requirement.* Each state oversight agency shall develop and distribute a program standard. The program standard is a compilation of processes and procedures that governs the conduct of the oversight program at the state oversight agency level, and provides guidance to the regulated rail transit properties concerning processes and procedures they must have in place to be in compliance with the state safety oversight program. The program standard and any referenced program procedures must be submitted to FTA as part of the initial submission. Subsequent revisions and updates must be submitted to FTA as part of the oversight agency's annual submission.

(b) *Contents.* Each oversight agency shall develop a written program standard that meets the requirements specified in this part and includes, at a minimum, the areas identified in this section.

(1) *Program management section.* This section shall include an explanation of the oversight agency's authority, policies, and roles and responsibilities for providing safety and security oversight of the rail transit agencies within its jurisdiction. This section shall provide an overview of planned activities to ensure on-going communication with each affected rail transit agency relating to safety and security information, as well as FTA reporting requirements, including initial, annual and periodic submissions.

(2) *Program standard development section.* This section shall include a description of the oversight agency's process for the development, review, and adoption of the program standard, the modification and/or update of the program standard, and the process by which the program standard and any subsequent revisions are distributed to each affected rail transit agency.

(3) *Oversight of rail transit agency internal safety and security reviews.* This section shall specify the role of the oversight agency in overseeing the rail transit agency internal safety and security review process. This includes a

description of the process used by the oversight agency to receive rail transit agency checklists and procedures and approve the rail transit agency's annual reports on findings, which must be submitted under the signature of the rail transit agency's top management.

(4) *Oversight agency safety and security review section.* This section shall lay out the process and criteria to be used at least every three years in conducting a complete review of each affected rail transit agency's implementation of its system safety program plan and system security plan. This section includes the process to be used by the affected rail transit agency and the oversight agency to manage findings and recommendations from this review. This also includes procedures for notifying the oversight agency before the rail transit agency conducts an internal review.

(5) *Accident notification section.* This section shall include the specific requirements for the rail transit agency to notify the oversight agency of accidents. This section shall also include required timeframes, methods of notification, and the information to be submitted by the rail transit agency. Additional detail on this portion is included in § 659.33 of this part.

(6) *Investigations section.* This section contains the oversight agency identification of the thresholds for incidents that require an oversight agency investigation. The roles and responsibilities for conducting investigations shall include: coordination with the rail transit agency investigation process, the role of the oversight agency in supporting investigations and findings conducted by the NTSB, review and concurrence of investigation report findings, and procedures for protecting the confidentiality of investigation reports.

(7) *Corrective actions section.* This section shall specify oversight agency criteria for the development of corrective action plan(s) and the process for the review and approval of a corrective action plan developed by the rail transit agency. This section shall also identify the oversight agency's policies for the verification and tracking of corrective action plan implementation, and its process for managing conflicts with the

rail transit agency relating to investigation findings and corrective action plan development.

(8) *System safety program plan section.* This section shall specify the minimum requirements to be contained in the rail transit agency's system safety program plan. The contents of the system safety plan are discussed in more detail in § 659.19 of this part. This section shall also specify information to be included in the affected rail transit agency's system safety program plan relating to the hazard management process, including requirements for on-going communication and coordination relating to the identification, categorization, resolution, and reporting of hazards to the oversight agency. More details on the hazard management process are contained in § 659.31 of this part. This section shall also describe the process and timeframe through which the oversight agency must receive, review, and approve the rail transit agency system safety program plan.

(9) *System security plan section.* This section shall specify the minimum requirements to be included in the rail transit agency's system security plan. More details about the system security plan are contained in §§ 659.21 through 659.23 of this part. This section shall also describe the process by which the oversight agency will review and approve the rail transit agency system security program plan. This section also shall identify how the state will prevent the system security plan from public disclosure.

§ 659.17 System safety program plan: general requirements.

(a) The oversight agency shall require the rail transit agency to develop and implement a written system safety program plan that complies with requirements in this part and the oversight agency's program standard.

(b) The oversight agency shall review and approve the rail transit agency system safety program plan.

(c) After approval, the oversight agency shall issue a formal letter of approval to the rail transit agency, including the checklist used to conduct the review.

§ 659.19 System safety program plan: contents.

The system safety plan shall include, at a minimum:

(a) A policy statement signed by the agency's chief executive that endorses the safety program and describes the authority that establishes the system safety program plan.

(b) A clear definition of the goals and objectives for the safety program and stated management responsibilities to ensure they are achieved.

(c) An overview of the management structure of the rail transit agency, including:

- (1) An organization chart;
- (2) A description of how the safety function is integrated into the rest of the rail transit organization; and

(3) Clear identification of the lines of authority used by the rail transit agency to manage safety issues.

(d) The process used to control changes to the system safety program plan, including:

(1) Specifying an annual assessment of whether the system safety program plan should be updated; and

(2) Required coordination with the oversight agency, including timeframes for submission, revision, and approval.

(e) A description of the specific activities required to implement the system safety program, including:

(1) Tasks to be performed by the rail transit safety function, by position and management accountability, specified in matrices and/or narrative format; and

(2) Safety-related tasks to be performed by other rail transit departments, by position and management accountability, specified in matrices and/or narrative format.

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

(1) Hazard identification;

(2) Hazard investigation, evaluation and analysis;

(3) Hazard control and elimination;

(4) Hazard tracking; and

(5) Requirements for on-going reporting to the oversight agency relating to hazard management activities and status.

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

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

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

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

(1) Notification thresholds for internal and external organizations;

(2) Accident investigation process and references to procedures;

(3) The process used to develop, implement, and track corrective actions that address investigation findings;

(4) Reporting to internal and external organizations; and

(5) Coordination with the oversight agency.

(k) A description of the process used by the rail transit agency to develop an approved, coordinated schedule for all emergency management program activities, which include:

(1) Meetings with external agencies;

(2) Emergency planning responsibilities and requirements;

(3) Process used to evaluate emergency preparedness, such as annual emergency field exercises;

(4) After action reports and implementation of findings;

(5) Revision and distribution of emergency response procedures;

(6) Familiarization training for public safety organizations; and

(7) Employee training.

(l) A description of the process used by the rail transit agency to ensure

that planned and scheduled internal safety reviews are performed to evaluate compliance with the system safety program plan, including:

- (1) Identification of departments and functions subject to review;
- (2) Responsibility for scheduling reviews;
- (3) Process for conducting reviews, including the development of checklists and procedures and the issuing of findings;
- (4) Review of reporting requirements;
- (5) Tracking the status of implemented recommendations; and
- (6) Coordination with the oversight agency.

(m) A description of the process used by the rail transit agency to develop, maintain, and ensure compliance with rules and procedures having a safety impact, including:

- (1) Identification of operating and maintenance rules and procedures subject to review;
- (2) Techniques used to assess the implementation of operating and maintenance rules and procedures by employees, such as performance testing;
- (3) Techniques used to assess the effectiveness of supervision relating to the implementation of operating and maintenance rules; and
- (4) Process for documenting results and incorporating them into the hazard management program.

(n) A description of the process used for facilities and equipment safety inspections, including:

- (1) Identification of the facilities and equipment subject to regular safety-related inspection and testing;
- (2) Techniques used to conduct inspections and testing;
- (3) Inspection schedules and procedures; and
- (4) Description of how results are entered into the hazard management process.

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

(p) A description of the training and certification program for employees and contractors, including:

- (1) Categories of safety-related work requiring training and certification;
- (2) A description of the training and certification program for employees and contractors in safety-related positions;
- (3) Process used to maintain and access employee and contractor training records; and
- (4) Process used to assess compliance with training and certification requirements.

(q) A description of the configuration management control process, including:

- (1) The authority to make configuration changes;
- (2) Process for making changes; and
- (3) Assurances necessary for formally notifying all involved departments.

(r) A description of the safety program for employees and contractors that incorporates the applicable local, state, and federal requirements, including:

- (1) Safety requirements that employees and contractors must follow when working on, or in close proximity to, rail transit agency property; and
- (2) Processes for ensuring the employees and contractors know and follow the requirements.

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

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

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

§ 659.21 System security plan: general requirements.

(a) The oversight agency shall require the rail transit agency to implement a system security plan that, at a minimum, complies with requirements in this part and the oversight agency's program standard. The system security

§ 659.23

plan must be developed and maintained as a separate document and may not be part of the rail transit agency's system safety program plan.

(b) The oversight agency may prohibit a rail transit agency from publicly disclosing the system security plan.

(c) After approving the system security plan, the oversight agency shall issue a formal letter of approval, including the checklist used to conduct the review, to the rail transit agency.

§ 659.23 System security plan: contents.

The system security plan must, at a minimum address the following:

(a) Identify the policies, goals, and objectives for the security program endorsed by the agency's chief executive.

(b) Document the rail transit agency's process for managing threats and vulnerabilities during operations, and for major projects, extensions, new vehicles and equipment, including integration with the safety certification process;

(c) Identify controls in place that address the personal security of passengers and employees;

(d) Document the rail transit agency's process for conducting internal security reviews to evaluate compliance and measure the effectiveness of the system security plan; and

(e) Document the rail transit agency's process for making its system security plan and accompanying procedures available to the oversight agency for review and approval.

§ 659.25 Annual review of system safety program plan and system security plan.

(a) The oversight agency shall require the rail transit agency to conduct an annual review of its system safety program plan and system security plan.

(b) In the event the rail transit agency's system safety program plan is modified, the rail transit agency must submit the modified plan and any subsequently modified procedures to the oversight agency for review and approval. After the plan is approved, the oversight agency must issue a formal

49 CFR Ch. VI (10–1–10 Edition)

letter of approval to the rail transit agency.

(c) In the event the rail transit agency's system security plan is modified, the rail transit agency must make the modified system security plan and accompanying procedures available to the oversight agency for review, consistent with requirements specified in § 659.23(e) of this part. After the plan is approved, the oversight agency shall issue a formal letter of approval to the rail transit agency.

§ 659.27 Internal safety and security reviews.

(a) The oversight agency shall require the rail transit agency to develop and document a process for the performance of on-going internal safety and security reviews in its system safety program plan.

(b) The internal safety and security review process must, at a minimum:

(1) Describe the process used by the rail transit agency to determine if all identified elements of its system safety program plan and system security plan are performing as intended; and

(2) Ensure that all elements of the system safety program plan and system security plan are reviewed in an on-going manner and completed over a three-year cycle.

(c) The rail transit agency must notify the oversight agency at least thirty (30) days before the conduct of scheduled internal safety and security reviews.

(d) The rail transit agency shall submit to the oversight agency any checklists or procedures it will use during the safety portion of its review.

(e) The rail transit agency shall make available to the oversight agency any checklists or procedures subject to the security portion of its review, consistent with § 659.23(e).

(f) The oversight agency shall require the rail transit agency to annually submit a report documenting internal safety and security review activities and the status of subsequent findings and corrective actions. The security part of this report must be made available for oversight agency review, consistent with § 659.23(e).

(g) The annual report must be accompanied by a formal letter of certification signed by the rail transit agency's chief executive, indicating that the rail transit agency is in compliance with its system safety program plan and system security plan.

(h) If the rail transit agency determines that findings from its internal safety and security reviews indicate that the rail transit agency is not in compliance with its system safety program plan or system security plan, the chief executive must identify the activities the rail transit agency will take to achieve compliance.

(i) The oversight agency must formally review and approve the annual report.

§ 659.29 Oversight agency safety and security reviews.

At least every three (3) years, beginning with the initiation of rail transit agency passenger operations, the oversight agency must conduct an on-site review of the rail transit agency's implementation of its system safety program plan and system security plan. Alternatively, the on-site review may be conducted in an on-going manner over the three year timeframe. At the conclusion of the review cycle, the oversight agency must prepare and issue a report containing findings and recommendations resulting from that review, which, at a minimum, must include an analysis of the effectiveness of the system safety program plan and the security plan and a determination of whether either should be updated.

§ 659.31 Hazard management process.

(a) The oversight agency must require the rail transit agency to develop and document in its system safety program plan a process to identify and resolve hazards during its operation, including any hazards resulting from subsequent system extensions or modifications, operational changes, or other changes within the rail transit environment.

(b) The hazard management process must, at a minimum:

(1) Define the rail transit agency's approach to hazard management and the implementation of an integrated system-wide hazard resolution process;

(2) Specify the sources of, and the mechanisms to support, the on-going identification of hazards;

(3) Define the process by which identified hazards will be evaluated and prioritized for elimination or control;

(4) Identify the mechanism used to track through resolution the identified hazard(s);

(5) Define minimum thresholds for the notification and reporting of hazard(s) to oversight agencies; and

(6) Specify the process by which the rail transit agency will provide on-going reporting of hazard resolution activities to the oversight agency.

§ 659.33 Accident notification.

(a) The oversight agency must require the rail transit agency to notify the oversight agency within two (2) hours of any incident involving a rail transit vehicle or taking place on rail transit-controlled property where one or more of the following occurs:

(1) A fatality at the scene; or where an individual is confirmed dead within thirty (30) days of a rail transit-related incident;

(2) Injuries requiring immediate medical attention away from the scene for two or more individuals;

(3) Property damage to rail transit vehicles, non-rail transit vehicles, other rail transit property or facilities and non-transit property that equals or exceeds \$25,000;

(4) An evacuation due to life safety reasons;

(5) A collision at a grade crossing;

(6) A main-line derailment;

(7) A collision with an individual on a rail right of way; or

(8) A collision between a rail transit vehicle and a second rail transit vehicle, or a rail transit non-revenue vehicle.

(b) The oversight agency shall require rail transit agencies that share track with the general railroad system and are subject to the Federal Railroad Administration notification requirements, to notify the oversight agency within two (2) hours of an incident for which the rail transit agency must also notify the Federal Railroad Administration.

§ 659.35

(c) The oversight agency shall identify in its program standard the method of notification and the information to be provided by the rail transit agency

§ 659.35 Investigations.

(a) The oversight agency must investigate, or cause to be investigated, at a minimum, any incident involving a rail transit vehicle or taking place on rail transit-controlled property meeting the notification thresholds identified in § 659.33(a).

(b) The oversight agency must use its own investigation procedures or those that have been formally adopted from the rail transit agency and that have been submitted to FTA.

(c) In the event the oversight agency authorizes the rail transit agency to conduct investigations on its behalf, it must do so formally and require the rail transit agency to use investigation procedures that have been formally approved by the oversight agency.

(d) Each investigation must be documented in a final report that includes a description of investigation activities, identified causal and contributing factors, and a corrective action plan.

(e) A final investigation report must be formally adopted by the oversight agency for each accident investigation.

(1) If the oversight agency has conducted the investigation, it must formally transmit its final investigation report to the rail transit agency.

(2) If the oversight agency has authorized an entity other than itself (including the rail transit agency) to conduct the accident investigation on its behalf, the oversight agency must review and formally adopt the final investigation report.

(3) If the oversight agency does not concur with the findings of the rail transit agency investigation report, it must either:

(i) Conduct its own investigation according to paragraphs (b), (d) and (e)(1) of this section; or

(ii) Formally transmit its dissent to the findings of the accident investigation, report its dissent to the rail transit agency, and negotiate with the rail transit agency until a resolution on the findings is reached.

49 CFR Ch. VI (10–1–10 Edition)

(f) The oversight agency shall have the authority to require periodic status reports that document investigation activities and findings in a time frame determined by the oversight agency.

§ 659.37 Corrective action plans.

(a) The oversight agency must, at a minimum, require the development of a corrective action plan for the following:

(1) Results from investigations, in which identified causal and contributing factors are determined by the rail transit agency or oversight agency as requiring corrective actions; and

(2) Findings from safety and security reviews performed by the oversight agency.

(b) Each corrective action plan should identify the action to be taken by the rail transit agency, an implementation schedule, and the individual or department responsible for the implementation.

(c) The corrective action plan must be reviewed and formally approved by the oversight agency.

(d) The oversight agency must establish a process to resolve disputes between itself and the rail transit agency resulting from the development or enforcement of a corrective action plan.

(e) The oversight agency must identify the process by which findings from an NTSB accident investigation will be evaluated to determine whether or not a corrective action plan should be developed by either the oversight agency or rail transit agency to address NTSB findings.

(f) The rail transit agency must provide the oversight agency:

(1) Verification that the corrective action(s) has been implemented as described in the corrective action plan, or that a proposed alternate action(s) has been implemented subject to oversight agency review and approval; and

(2) Periodic reports requested by the oversight agency, describing the status of each corrective action(s) not completely implemented, as described in the corrective action plan.

(g) The oversight agency must monitor and track the implementation of each approved corrective action plan.

§ 659.39 Oversight agency reporting to the Federal Transit Administration.

(a) *Initial submission.* Each designated oversight agency with a rail fixed guideway system that is in passenger operations as of April 29, 2005 or will begin passenger operations by May 1, 2006, must make its initial submission to FTA by May 1, 2006. In states with rail fixed guideway systems initiating passenger operations after May 1, 2006, the designated oversight agency must make its initial submission within the time frame specified by the state in its designation submission, but not later than at least sixty (60) days prior to initiation of passenger operations. Any time a state changes its designated oversight agency to carry out the requirements identified in this part, the new oversight agency must make a new initial submission to FTA within thirty (30) days of the designation.

(b) An initial submission must include the following:

(1) Oversight agency program standard and referenced procedures; and

(2) Certification that the system safety program plan and the system security plan have been developed, reviewed, and approved.

(c) *Annual submission.* Before March 15 of each year, the oversight agency must submit the following to FTA:

(1) A publicly available annual report summarizing its oversight activities for the preceding twelve months, including a description of the causal factors of investigated accidents, status of corrective actions, updates and modifications to rail transit agency program documentation, and the level of effort used by the oversight agency to carry out its oversight activities.

(2) A report documenting and tracking findings from three-year safety review activities, and whether a three-year safety review has been completed since the last annual report was submitted.

(3) Program standard and supporting procedures that have changed during the preceding year.

(4) Certification that any changes or modifications to the rail transit agency system safety program plan or system security plan have been reviewed and approved by the oversight agency.

(d) *Periodic submission.* FTA retains the authority to periodically request program information.

(e) *Electronic reporting.* All submissions to FTA required in this part must be submitted electronically using a reporting system specified by FTA.

§ 659.41 Conflict of interest.

The oversight agency shall prohibit a party or entity from providing services to both the oversight agency and rail transit agency when there is a conflict of interest, as defined by the state.

§ 659.43 Certification of compliance.

(a) Annually, the oversight agency must certify to the FTA that it has complied with the requirements of this part.

(b) The oversight agency must submit each certification electronically to FTA using a reporting system specified by FTA.

(c) The oversight agency must maintain a signed copy of each annual certification to FTA, subject to audit by FTA.

PART 661—BUY AMERICA REQUIREMENTS

Sec.

661.1 Applicability.

661.3 Definitions.

661.5 General requirements.

661.6 Certification requirements for procurement of steel or manufactured products.

661.7 Waivers.

661.9 Application for waivers.

661.11 Rolling stock procurements.

661.12 Certification requirement for procurement of buses, other rolling stock and associated equipment.

661.13 Grantee responsibility.

661.15 Investigation procedures.

661.17 Failure to comply with certification.

661.18 Intentional violations.

661.19 Sanctions.

661.20 Rights of parties.

661.21 State Buy America provisions.

AUTHORITY: 49 U.S.C. 5323(j) (formerly sec. 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424); as amended by sec. 337, Pub. L. 100-17; sec. 1048, Pub. L. 102-240; sec. 3020(b), Pub. L. 105-178; and sec. 3023(i) and (k), Pub. L. 109-59); 49 CFR 1.51.

SOURCE: 56 FR 932, Jan. 9, 1991, unless otherwise noted.