**Work Plan Template – Technical Assistance Tabs**

**State Safety Oversight (SSO) Program**

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Please see <http://www.fta.dot.gov/tso.html> for more information.

**TAB 1:**

**Sample Memorandum of Intent**

**MEMORANDUM OF INTENT**

SUBJECT: Statement of Intent regarding Implementation of Explicit Mandates Specified in 49 U.S.C. Section 5329(e)

TO: Thomas Littleton, Associate Administrator, Office of Transit Safety and Oversight, Federal Transit Administration

FROM: [First Name / Last Name], Highest Ranking Official in State Safety Oversight Agency

PREPARED

BY: [First Name / Last Name], State Safety Oversight Program Manager

DATE: Month, Day, Year

The State of [insert name of State] and the [insert name of State Safety Oversight Agency (SSOA)] are committed to achieving compliance with the statutory requirements specified in Section 20021(a) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), adopted in its entirety as 49 U.S.C. 5329 (or “Section 5329”).

The State of [insert name of State] and the [insert name of SSOA] have prepared this Memorandum of Intent to outline our primary objectives in moving forward to address the explicit mandates found in 49 U.S.C. Section 5329(e), State Safety Oversight Program.

**Attributes of the SSOA**

The State of [insert name of State] is committed to establishing a State Safety Oversight Program (SSOP) administered by a State Safety Oversight Agency with the following authorities, competencies and capabilities:

1. The SSOA is financially and legally independent from any rail fixed guideway public transportation system (RFGPTS) that it oversees.
   1. The SSOA thoroughly reviews, identifies and discloses to the Federal Transit Administration (FTA) in annual certifications any legal or financial connection to any RFGPTS in [insert name of State]’s SSOP.
   2. The SSOA takes measures to manage any identified legal or financial connection to the RFGPTS in the State of [insert name of State]’s SSOP through disclosure of connection, elimination or mitigation of the connection, or through self-certification and periodically occurring independent reviews.
   3. The SSOA is committed to maintaining its legal and financial independence from the RFGPTS in the SSOP, so that the opinions, findings, conclusions, judgments, and recommendations made by the SSOA will be impartial and viewed as impartial by objective third parties with knowledge of the relevant information, such as the FTA.
2. The SSOA is able to receive Federal financial assistance, subject to uniform administrative requirements for grants and cooperative agreements to State and local governments under 49 C.F.R. part 18, as determined applicable by the Administrator, on behalf of the Secretary, and be responsible for the non-Government share of the cost of the SSOP that meet the requirements of 49 U.S.C. 5329 (e)(6)(C)(iii).
3. The SSOA is able to allocate adequate funds for the administration of the SSOP, including the enforcement of Federal rules or regulations or compatible State laws or regulations.
4. The SSOA does not directly provide public transportation services in an area with a rail fixed guideway public transportation system subject to the requirements of this section.
5. The SSOA does not employ any individual who is also responsible for the administration of rail fixed guideway public transportation programs subject to the requirements of this section.
6. The SSOA has, or will be able to obtain by [insert date proposed by State], the authority to require, review, approve, oversee, and enforce the implementation of the public transportation agency safety plan required under 49 U.S.C. 5329(d) by each rail fixed guideway public transportation agency in the State, including the authority to:
   1. Require the development and maintenance of a safety surveillance capability at the rail fixed guideway system, to verify the implementation of the agency safety plan, to validate the effectiveness of safety risk controls used by the rail fixed guideway system, and to assess the rail fixed guideway system’s safety performance.
   2. Require SSOA access to the rail fixed guideway system surveillance capability, and that, at a minimum, this capability provides safety performance indicators, safety performance targets, and safety alerts, supported by follow-on assessments and investigations as warranted, tied to the agency safety plan and the State’s SSOP.
   3. Require, for all State employees and other individuals who work on the SSOP, specific capabilities, qualifications, and certification through the Federal Transit Administration public transportation safety certification training program, as described in 49 U.S.C. 5329(c).
   4. Require, for personnel supporting the safety function at the rail fixed guideway system, specific resources, training, and qualifications and reporting relationships with executive leadership.
   5. Require a program of internal audits, inspections, reviews, and certification at each rail fixed guideway system within the State regarding the implementation of the agency safety plans and the verification of corrective action implementation.
   6. Regularly address each rail fixed guideway system’s chief executives and board of directors to review safety performance and the implementation and functioning of safety risk management and safety assurance processes.
   7. Certify the safety of the rail fixed guideway system and its components, including extensions, modifications, rehabilitations, replacements and upgrades, for passenger operations,
7. The SSOA has, or will be able to obtain by [insert date proposed by State], investigative and enforcement authority with respect to the safety of rail fixed guideway public transportation systems in the State, including the authority to:
   1. Require the notification, reporting, investigation, and resolution through corrective action of accidents, incidents, hazards, and conditions of concern by the rail fixed guideway public transportation agency.
   2. Conduct, and require to be conducted on the State’s behalf, investigations into any incidents, circumstances or concerns affecting the safety of the rail fixed guideway system.
   3. Require creation of a voluntary hazard reporting system by each rail fixed guideway system and procedures to investigate, evaluate and resolve identified hazards and concerns.
   4. At reasonable times, and in a reasonable manner, enter and inspect rail transit property, equipment, infrastructure, facilities, vehicles, operations and maintenance activities following all safety rules and requirements established by the rail fixed guideway system.
   5. Require, review, approve, monitor and verify implementation of corrective actions plans developed to address hazards and concerns.
   6. Issue emergency orders regarding the immediate resolution of serious safety deficiencies.
   7. Remove a specific vehicle, infrastructure element, employee, contractor, or condition from rail transit operations based on serious safety deficiencies.
   8. Suspend rail transit service through a specific location based on the presence of serious safety deficiencies.
8. The SSOA has, or will be able to obtain, the authority to protect confidential accident and hazard investigation information from public disclosure.
9. The SSOA has, or will be able to obtain, the authority to receive and investigate complaints regarding the safety performance of each rail fixed guideway system in the State.
10. The SSOA has authority to audit, at least once triennially, the compliance of the rail fixed guideway public transportation systems in the State subject to this subsection with the public transportation agency safety plan required under Section 5329(d).
11. The SSOA will provide at least once annually, a status report on the safety of the rail fixed guideway public transportation systems the State safety oversight agency oversees to the Federal Transit Administration, the Governor of the State; and the board of directors, or equivalent entity, of any rail fixed guideway public transportation system that the State safety oversight agency oversees.
12. The SSOA has the authority to prepare and submit to the Federal Transit Administration, upon request, all reports required in connection with the SSOP or other conditions of the grant.
13. The SSOA has the authority to coordinate the SSOP with the Federal Transit Administration data collection and information systems established to implement 49 U.S.C. Section 5329, including the having the authority to:
    1. Adopt and use the reporting standards, systems, and forms required by the Federal Transit Administration to record work activities performed under the SSOP.
    2. Establish a program to ensure that accurate, complete, and timely safety data are collected and reported.
    3. Verify submitted data through an audit program.

**TAB 2:**

**Proposed Policy for Ensuring Legal and Financial Independence**

**JOINT CONFLICTS OF INTEREST POLICY FOR**

**[STATE SAFETY OVERSIGHT AGENCY] AND [RAIL FIXED GUIDEWAY PUBLIC TRANSPORTATION SYSTEM]**

1. **PURPOSE**

The purpose of this Joint Conflicts of Interest Policy (this “Policy”) for [State Safety Oversight Agency (“SSOA”)] and [Rail Fixed Guideway Public Transportation System (the “RFGPTS”)] is to set forth policies and procedures for identifying, documenting, eliminating or sufficiently mitigating any instances where the SSOA and the RFGPTS are not legally or financially independent as required by the Moving Ahead for Progress in the 21st Century Act (MAP-21). This Policy is intended to supplement, but not replace, MAP-21 and any other applicable state and federal conflict of interest laws applicable to the SSOA and the RFGPTS.

1. **GENERAL APPROACH**

The SSOA and the RFGPTS recognize the absolute importance of integrity (and the appearance of integrity) in all matters relating to safety and security of public transportation. It is the goal of the SSOA and the RFGPTS (collectively, the “Parties”) to identify, document and eliminate any instances of legal or financial conflicts of interest. In those instances where such conflicts cannot be entirely eliminated (in the short- or long-term), it is the goal of the Parties to mitigate such conflicts as much as possible.

Each of the Parties recognize that the activities described herein (identifying and taking action on conflicts of interest) must involve the professional judgment of all executives, managers, directors, and other persons within the SSOA and the RFGPTS with decision-making authority (the “Involved Persons”). This means that the Involved Persons must exercise reasonable care and professional skepticism. Reasonable care involves acting diligently in accordance with applicable professional standards and ethical principles. Professional skepticism is an attitude that includes a questioning mind and a critical assessment of all evidence, including actions and documentation.

Using professional knowledge, skills, and experience to diligently perform, in good faith and with integrity, the gathering of information and the objective evaluation of the sufficiency and appropriateness of evidence is a critical component of considering conflicts of interest. Professional judgment represents the application of the collective knowledge, skills, and experiences of all the Involved Persons, as well as the professional judgment of each individual person. In addition to the Involved Persons directly involved in the conflicts of interest examination, professional judgment may involve collaboration with other stakeholders, outside experts, and management within the SSOA and RFGPTS.

Using professional judgment in all aspects of considering conflicts of interest issues, including following the independence standards promulgated by FTA, maintaining objectivity and credibility, assigning competent staff to all decisions affected by the conflict of interest, defining the scope of decisions, evaluating and reporting the results of the decisions, and maintaining appropriate quality control over the assignment process is essential to considering a conflict of interest.

Involved Persons should document significant decisions relating to the conflict of interest, findings; conclusions; and recommendations resulting from professional judgment. While this standard places responsibility on each Involved Person and the Parties to exercise professional judgment in dealing with conflicts of interest, it does not imply unlimited responsibility, nor does it imply infallibility on the part of either the Involved Persons or the Parties. Absolute assurance is not attainable because of the nature of evidence and the characteristics of fraud. Professional judgment does not mean eliminating all possible limitations or weaknesses associated with a conflict of interest, but rather identifying, considering, minimizing, mitigating, and explaining them.

1. **IDENTIFYING CONFLICTS OF INTEREST**

It is the responsibility of each of the Parties, individually, and the Parties collectively, to identify any legal or financial conflicts of interest. The Parties agree that they and all Involved Persons must constantly be vigilant in determining when a conflict exists or may exist. This is not a question that needs only to be considered once during the adoption of this Policy, but something that the Parties, which include the Involved Persons, must be mindful of at all times, and will be formally considered, at a minimum, on an annual basis.

1. Conflicts Involving Legal Independence

Legal independence ensures freedom from outside control or influence and also fosters autonomy in day-to-day decision-making. Legal independence is important because Involved Persons within the SSOA cannot act independently for safety if there are conflicting accountabilities or responsibilities for the performance, budget or reputation of the RFGPTS.

The SSOA and RFGPTS recognize that they may encounter many different circumstances or combinations of circumstances that could create a conflict of interest involving legal independence of the Parties. Although it may be difficult to identify every situation that could result in legal conflicts of interest, the following questions can help identify potential legal conflicts of interest:

* Are the SSOA and RFGPTS separate legal agencies?
* Do the SSOA and RFGPTS have separate reporting relationships?
* Do the SSOA and RFGPTS have shared board members, shared activities or shared reporting streams?
* Does the SSOA have a vested legal or organizational interest in the success of the RFGPTS or any of its activities, events or projects?

1. Conflicts Involving Financial Independence

Financial independence means that there are no monetary dependencies or connections between the SSOA and the RFGPTS. The SSOA is not financially vested in the RFGPTS and its success, and the RFGPTS does not fund the SSOA or direct its budget or activities in any way.

Financial independence means that Involved Persons and their actions cannot be controlled or limited by the financial resources supplied by the RFGPTS or by pressures emanating from the SSOA’s vested interest in the success of the RFGPTS or its projects or activities. Financial independence also means that the SSO program budget and other resources cannot be subverted or re-directed toward programs designed to fund, support or enhance public transportation in the State.

The SSOA and RFGPTS recognize that they may encounter many different circumstances or combinations of circumstances that could create a financial conflict of interest between the Parties. Although it may be difficult to identify every situation that could result in a financial conflict of interest, the following questions can help identify potential financial conflicts of interest:

* Does the SSOA receive funding from the RFGPTS to conduct the SSO program?
* Does the SSO program office, or the State agency within which the SSO program office is housed, fund the RFGPTS through grants, assistance, subsidies or other programs or activities?
* Does the SSO program office, or the State agency within which the SSO program office is housed, fund public transportation in the State, including non-rail modes, such as bus, community transportation, and other forms of public transportation?
* Does the SSO program office or the larger State agency approve the budget or capital projects for the RFGPTS in its program, or for public transportation agencies in the State?
* Does the SSO program office share funding streams and reporting relationships with other offices or divisions within the larger State agency that fund the RFGPTS or support public transportation in the State?

1. **PROCEDURES FOR DEALING WITH CONFLICTS**
2. Disclosure of Conflict

In connection with any actual or possible conflict of interest that has been identified, the Parties and all Involved Persons agree to formally document and disclose (through formal written letters or memorandum or notices to the public) the existence of the conflict of interest to FTA, any other governing authorities that are involved (such as funding sources, regulatory authorities, or the Governor of the State), and any other stakeholders or constituents. An example of such disclosure is included hereto as Attachment A. In connection with such disclosure, the Parties will disclose all material facts about the real or perceived conflict of interest, and how safety issues could, in theory, be affected by such conflict of interest. Such disclosure of conflicts will not be postponed until actions to eliminate or mitigate the conflict have been taken or completed, but may reference planned actions.

1. Elimination of Conflict

After a real or perceived conflict of interest has been identified and disclosed, the Parties, which all Involved Persons, will consider whether action can be taken to entirely eliminate the conflict either immediately or in the long-term. Because all possible instances of legal and financial conflict of interest cannot be feasibly identified, it is not possible to document here all possible methods of eliminating such conflicts. However, two examples of how a conflict may be eliminated are set forth below.

1. Resignation. One example of how a legal independence conflict can be immediately eliminated is where the SSOA and the RFGPTS share a common Board member. This common Board member can resign from his or her position as a Board member for one of the Parties. This would entirely eliminate the legal conflict of interest.
2. Re-Organization. One example of how a legal independence conflict can be eliminated in the long-term is where the SSOA and RFGPTS have common reporting relationships. In such an instance, the Parties could appeal to the State to re-organize the reporting structure so that the Parties do not report to common personnel.
3. Change of Personnel or Responsibilities. In certain situations, it may be possible to change the responsibilities of personnel to eliminate a conflict.

Because all conflicts cannot be stated in this Policy, the Parties agree to be proactive and creative in their attempts to eliminate identified conflicts of interest. Where potential methods of elimination of conflicts have been identified, but rely on outside parties or authorities for full implementation, the Parties agree to take any means they can to request and encourage participation and action from such outside sources.

Where the Parties have identified a longer-term goal for eliminating a real or perceived conflict of interest, the Parties will continue to make efforts to mitigate the conflict during the interim period until the conflict has been fully eliminated.

1. Mitigation of Conflict

The preferred action with respect to conflicts is to eliminate the conflict immediately. Where this cannot be done, the Parties agree to develop longer term plans for eliminating the conflict. Where conflicts of interest cannot be fully eliminated, or during an interim period where longer-term plans to eliminate conflicts are being implemented, the Parties agree to take **all possible actions** to mitigate such existing conflicts. Because all possible instances of legal and financial conflict of interest cannot be feasibly identified, it is not possible to document here all possible methods of mitigating such conflicts. However, examples of how a conflict may be mitigated are set forth below.

1. Recusal. Where the Parties have a shared Board member that cannot be removed from such conflicting situation (due to requirements of other applicable laws or otherwise) either in the short- or long-term OR where the conflict of interest involves one or more Involved Persons in particular, such Board member or Involved Person should be recused from all discussions or decisions where the real or perceived conflict of interest might apply. For example, if the Board of the RFGPTS is determining [whether to purchase new or repair old rail cars for fiscal year 2014] and the CEO of the SSOA has a conflicting interest [due to needing to finalize the 2014 budget], then the CEO of the SSOA must recuse himself from all discussions and decisions regarding [the RFGPTS’s purchase of new vehicles].
2. Use of (and Weight Given To) Outside Experts. Where conflicts of interest exist, the Parties agree that consultation with outside, independent parties must be solicited or engaged. While Involved Persons, by definition, have to be the ultimate decision makers for the Parties, when conflicts of interest exist, the recommendations of outside subject-matter experts should be considered in making ultimate decisions. For example, if an outside safety technical expert recommends that a more expensive option be taken, such as purchasing new vehicles instead of repairing old ones, failure to consider the outside expert’s recommendation when the Parties are financially intertwined and there may be budget pressures could result in a violation of legal or financial independence. The Parties are encouraged to solicit input from multiple outside sources, but are discouraged from doing so with the sole purpose of obtaining an opinion that is consistent with the decision that would be implied due to the conflict of interest. In addition, the use of outside experts shall not relieve the Parties of their duty to ensure that the best course of action has been taken in the interests of safety and despite a conflict.
3. Self-Certification. While certifications relating to real or perceived conflicts of interest will not remove an issue, they can encourage and promote integrity in the matter. Where a conflict of interest has been identified, the Involved Persons and the Parties should prepare, execute and publish self-certifications stating that they have maintained professional judgment, honesty and integrity in all actions and decisions involving the conflict and have taken all actions as though the conflict did not exist. See Attachment B for an example of such a self-certification. Self-certification should be provided in conjunction with another remedial action taken by the Parties.
4. Restructuring. In certain circumstances, the Parties may be able to restructure, reorganize or re-allocate responsibilities in order to mitigate a conflict of interest. For example, the SSOA may grant funds to the RFGPTS that include specific criteria for how these funds must be used. The SSOA may be able to restructure such grant agreements to eliminate or remove certain of those use restrictions that could create or be perceived as a conflict. Another example would be where both the SSOA and the RFGPTS report to one person. In such a situation, the Parties would need to appeal to such overseeing person and the relevant State to restructure the responsibilities of applicable personnel so that both organizations do not report to the same person.

Because all conflicts cannot be stated in this Policy, the Parties agree to be proactive and creative in their attempts to mitigate identified conflicts of interest. Where potential methods of mitigation of conflicts have been identified, but rely on outside parties or authorities for full implementation, the Parties agree to take any means they can to request and encourage participation and action from such outside sources.

1. **DOCUMENTATION**

Where conflicts of interest are involved, the Parties agree to diligently document all decisions, actions and inactions. As with self-certification above, the Parties recognize that documentation encourages honesty, integrity, creativity and engagement on the issues. Accordingly, any and all discussions, determinations (such as the inability to eliminate a conflict, recusals, weight given to outside experts, etc.), actions taken or not taken, and explanations will be fully documented and stored in a formal, convenient location where they can be viewed by FTA or other interested parties. Such documentation shall include the names of the persons who were involved in the discussions or decisions, the nature of the conflict of interest, any action taken to determine whether a conflict of interest was present, actions taken to eliminate or mitigate the conflict, any alternatives considered, any other decisions made in connection with the conflict, and a record of any votes taken in connection with the discussions or decisions.

1. **ANNUAL REVIEWS**

On no less than an annual basis, the Parties will conduct a formal review of this policy and other FTA guidance materials regarding legal and financial conflicts of interest to consider whether any new conflicts exist or whether any action can or should be taken with respect to conflicts that had already been identified. These formal reviews will be documented as shown in Attachment C.

1. **ADOPTION OF THIS POLICY AND ANNUAL STATEMENT**

Each Board Director, committee member, manager, and employee of either Party with Board-delegated powers shall initially (upon adoption of this Policy or upon hire, appointment, or grant of such decision-making powers), and annually thereafter, sign a statement that affirms that such person:

* Has received a copy of this Policy,
* Has read and understands the policy,
* Has agreed to comply with the policy, and
* Understands that the SSOA and the RFPGTS are subject to MAP-21 and required by law to be legally and financially independent of each other.

An example of such statement is provided as Attachment D.

List of Attachments

Attachment A: Example Disclosures of Conflict

[Form of Letter to FTA and Governor, Form of Notice to Public]

Attachment B: Self-Certification

Attachment C: Documentation of Quarterly Reviews

Attachment D: Form of Statement

Attachment A

Example Disclosures of Conflict

Form of Letter to FTA and Governor

[Letterhead]

[Date]

Governor of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Address]

Ms. Angela Dluger

Deputy Associate Administrator

Office of Safety and Oversight

Federal Transit Administration

1200 New Jersey Avenue, SE

Washington, DC 20590

Re: Notice Regarding Financial Conflict of Interest of SSOA and RFGPTS

Dear Mr./Ms. \_\_\_\_\_\_\_\_\_\_\_\_ and Ms. Dluger:

The Moving Ahead for Progress in the 21st Century Act requires that [SSOA] and [RFGPTS] be financially independent. SSOA and RFGPTS both receive budgets and grant funds from the [State of \_\_\_\_\_\_\_\_\_\_] and both report directly to the [State Bureau of Public Transportation]. This structure creates a financial conflict of interest whereby the SSOA may have conflicting goals when making decisions relating to the safety and security of RFGPTS. For example, [what is an example scenario where the SSOA would have conflict?]

The SSOA and RFGPTS are aware of the conflict of interest inherent in the current structure of the two organizations, and understand the implications for safety of public transportation. We are currently considering its options for eliminating or mitigating this risk. We will provide notice of any action taken by the SSOA and RFGPTS to remedy the situation. We welcome any feedback you may have on the best course of action to take forward.

Sincerely,

[SSOA]

[RFGPTS]

Attachment A

Example Disclosures of Conflict

Form of Notice to Public

NOTICE

To: All Interested Parties

From: [SSOA and RFGPTS]

Date:

Subject: Notice Regarding Financial Conflict of Interest of SSOA and RFGPTS

The Moving Ahead for Progress in the 21st Century Act requires that [SSOA] and [RFGPTS] be financially independent. SSOA and RFGPTS both receive budgets and grant funds from the [State of \_\_\_\_\_\_\_\_\_\_] and both report directly to the [State Bureau of Public Transportation]. This structure creates a financial conflict of interest whereby the SSOA may have conflicting goals when making decisions relating to the safety and security of RFGPTS. For example, [what is an example scenario where the SSOA would have conflict?]

The SSOA and RFGPTS are aware of the conflict of interest inherent in the current structure of the two organizations, and understand the implications for safety of public transportation. We are currently considering its options for eliminating or mitigating this risk. We will provide notice of any action taken by the SSOA and RFGPTS to remedy the situation. We welcome any feedback you may have on the best course of action to take forward.

Attachment B

Self-Certification

The Moving Ahead for Progress in the 21st Century Act requires that [SSOA] and [RFGPTS] be financially independent. SSOA and RFGPTS both receive budgets and grant funds from the [State of \_\_\_\_\_\_\_\_\_\_] and both report directly to the [State Bureau of Public Transportation]. This structure creates a financial conflict of interest whereby the SSOA may have conflicting goals when making decisions relating to the safety and security of RFGPTS. For example, [what is an example scenario where the SSOA would have conflict?]

The undersigned hereby certifies that:

1. He/she is a member of the Board of Directors of the SSOA;
2. He/she has maintained professional judgment, honesty and integrity in all actions and decisions involving the abovementioned conflict; and
3. He/she has taken all actions with respect to the RFGPTS without consideration of the conflicting goals and interests created by such structure (as though the decision had been made by an entirely independent third party concerned only with the needs of RFGPTS and its passengers).

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attachment C

Documentation of Quarterly Review

Meeting of the [SSOA] and [RFGPTS] Regarding Conflicts of Interest

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Time: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Location: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Persons in Attendance:

The Moving Ahead for Progress in the 21st Century Act requires that [SSOA] and [RFGPTS] be financially independent.

SSOA and RFGPTS have previously identified a financial conflict of interest due to the fact that SSOA and RFGPTS both receive budgets and grant funds from the [State of \_\_\_\_\_\_\_\_\_\_] and both report directly to the [State Bureau of Public Transportation]. This structure creates a financial conflict of interest whereby the SSOA may have conflicting goals when making decisions relating to the safety and security of RFGPTS. For example, [what is an example scenario where the SSOA would have conflict?] SSOA and RFGPTS are taking actions to eliminate or mitigate the effects of such conflict.

After discussion amongst the persons in attendance, SSOA and RFGPTS have not identified further legal or financial conflicts of interest at this time.

Attachment D

Form of Statement

The undersigned:

* is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of [SSOA/RFGPTS];
* has received a copy of the Joint Conflicts of Interest Policy of [SSOA] and [RFGPTS];
* has read and understands the policy;
* hereby agrees to comply with the policy; and
* understands that the SSOA and the RFPGTS are subject to MAP-21 and required by law to be legally and financially independent of each other.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**TAB 3:**

**General Statement on Enforcement Authority**

**General Statement on Enforcement Authority**

The Moving Ahead for Progress in the 21st Century Act (MAP-21) creates a new regulatory role for the Federal Transit Administration (FTA) and the States implementing State Safety Oversight Programs (SSOPs) for the rail fixed guideway public transportation systems (RFGPTS) in their jurisdictions.

Congress designed MAP-21’s new public transportation safety program to respond to gaps in oversight and safety performance identified through National Transportation Safety Board (NTSB) investigations, U.S. Government Accountability Office (GAO) audits and reviews, USDOT Office of the Inspector General (OIG) assessments, and FTA’s State Safety Oversight (SSO) program audits and safety studies. Prior to MAP-21, FTA and many State Safety Oversight Agencies (SSOAs) lacked sufficient enforcement authority to compel specific action from the RFGPTS to resolve identified safety deficiencies in a timely manner.

In 49 U.S.C. 5329(e)(3), Congress mandates that if FTA cannot certify a State’s SSO program by no later than 3 years after the date on which a final rule implementing 49 U.S.C. Section 5329(e) becomes effective, then FTA is prohibited from providing even a single dollar of Federal grant funding to that State or any public transportation agencies within the State. This prohibition is unprecedented in FTA’s regulatory history. Therefore, FTA and the States are working diligently to develop MAP-21 compliant programs now to avoid circumstances that result in penalties for each State and its public transportation agencies.

Explicit mandates in 49 U.S.C. 5329(e)(3) and 5329(e)(4) now require a State to obtain enforcement authority for its SSOA that administer SSOPs for the RFGPTS in that State. States must provide their SSOAs with this authority as a condition of the receipt of Federal grant funds apportioned under 49 U.S.C. chapter 53. In addition, each State must identify the specific authorities and capabilities that it will use to enforce 49 U.S.C. Section 5329(e) provisions in order to maintain its eligibility for Federal public transportation funding. FTA will evaluate each State’s approach and determine its sufficiency.

FTA has determined that most States require additional enforcement authority to meet 49 U.S.C. 5329(e) provisions. FTA encourages each State to use its SSO formula grant program funds provided under 49 U.S.C. 5329(e)(6) to conduct an assessment to review alternatives and options for enforcement authority. FTA appreciates that meeting this new MAP-21 bar regarding enforcement authority will be challenging for many States.

FTA recommends that each State consider all of the actions and authorities its program will need to compel action from the rail transit agencies across a variety of scenarios and circumstances. The State should assess what types of authority would be needed to assure the safety of the rail transit system and the implementation of the agency safety plan, to require compliance with adopted Federal and State laws, and to resolve deficiencies identified through investigations and audits in a timely manner.

FTA SSO formula program grant funding can be used to support this evaluation, and also to develop legislation or administrative regulations or orders, update program standards, and develop executive policy to strengthen enforcement capabilities. FTA safety and legal staff also will support reviews of proposals and evaluations from SSO agencies regarding how to approach MAP-21 enforcement authority provisions.

FTA urges States to establish a combination of authorities and capabilities that will enable the SSOA to compel the rail fixed guideway public transportation system to take action to address identified safety concerns and deficiencies in implementation of the agency safety plan. These authorities may be enforced in a variety of ways, including through orders issued by commissions, decisions issued by administrative law judges, penalties enforced by State offices of the attorney general, citations and warrants served by law enforcement, or the enforcement of administrative practices governing the terms of grant agreements.

To address the MAP-21 statutory requirements, each State will need to determine and implement enforcement authority that is appropriate to the State. In reviewing State programs, FTA looks for:

* Evidence that the State and its designated SSOA has enforcement and investigative authority over rail transit agencies in engineering, construction and revenue service (not just revenue service as with Part 659).
* Evidence that the State and its designated SSOA has authority to enforce safety requirements at the rail transit agency.
* Evidence that the State and its designated SSOA can oversee and enforce implementation of the rail transit agency Safety Plan.
* Evidence that the State and its designated SSOA has the authority or capabilities to adopt and enforce Federal and relevant State laws on rail transit safety, including regulations promulgated by FTA to implement MAP-21.
* Evidence that the State and its designated SSOA has the authority to compel the rail transit agency to address serious deficiencies and concerns identified through investigation and audits in a timely manner.

Examples of typical enforcement authority include the authority to issue directives or emergency orders, suspend service, withhold State financial assistance, impose civil or criminal penalties, conduct hearings, inspect and pull deficient equipment from service, or issue a citation, ticket or warning.

While ultimately it is up to the State to determine the best course of action for its program and the rail transit agencies in its jurisdiction, FTA recommends that each State consider a series of escalating authorities that work together to reinforce the State's overall position as the oversight agency and ensure that identified safety deficiencies are addressed by the rail transit agency as necessary.

For example, some combination of the ability to issue emergency orders or directives to address specific deficiencies in program implementation or hazards or other safety concerns, combined with the ability to remove specific vehicles or equipment from service when deficiencies are not addressed by the rail transit agency and/or the ability to suspend operations, as well as the ability to conduct public hearings and withhold funding, would enable the State to exercise immediate, mid-term and long-term options for compelling a rail transit agency to address a safety concern.

FTA will be working with the States to avoid a patchwork of inconsistent authorities and capabilities across the nation. Toward that end, please review the safety authorities provided to the SSO programs in the following States: California, Massachusetts, Tennessee and Pennsylvania.

**TAB 4:**

**Examples of Enforcement Authority**

Tennessee

California

Massachusetts

Pennsylvania

To provide an example of authorities available to support safety enforcement, please look at <http://law.justia.com/codes/tennessee/2010/title-13/chapter-10>, which links to Tennessee Code Annotated § 13-10-104. Based on this code, the Tennessee Department of Transportation (TDOT) has the authority to suspend service due to unsafe conditions stemming from an accident/incident, maintenance or construction project. Tenn. Code Ann. 13-10-104 also provides that TDOT may inspect property and books pertaining to those operating a public mass transportation facility or system; and conduct investigations or hearings pertaining to such. Finally, TDOT may withhold state funds from the rail transit agency in the event of noncompliance. FTA finds that this combination of authorities passes muster with the explicit mandates identified in 49 U.S.C. Section 5329(e)(3) and (4).

California has one of the strongest enforcement authorities of any State in the SSO program. The enforcement authority exercised by the California Public Utilities Commission is documented in the Public Utilities Code Section 301-327 and Section 761-788 available at: <http://statutes.laws.com/california/puc/301-327> and <http://statutes.laws.com/california/puc/761-788>. Please pay special attention to Public Utilities Code § 309.7 (inspection, surveillance and investigation authorities), § 312 (writs of summons, subpoenas, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt), § 315 (accident investigation and reports), as well as § 761 (authority to order that safety deficiencies be fixed).

Massachusetts administers another program that passes muster with MAP-21 enforcement authority provisions. The authority for the SSO program administered by the Massachusetts Department of Public Utilities is specified in the Code of Massachusetts Regulations (CMR), and is available at: <http://www.mass.gov/eea/docs/dpu/cmr/220cmr151.pdf>. Pages 1-2 and Pages 18-23 highlight the MDPU’s key authorities to specify and enforce safety standards.

One element of the program administered by the Pennsylvania Department of Transportation (PennDOT) that FTA determined meets MAP-21 requirements is the vehicle inspection program. The Pennsylvania DOT vehicle inspection program is available at 67 Pennsylvania Code Chapter 257. Please see: <http://www.pacode.com/secure/data/067/chapter257/067_0257.pdf>. In addition, Section 4704 of the Pennsylvania Vehicle Code, 75 Pa. C.S. §4704 provides Pennsylvania State Police or qualified Pennsylvania Commonwealth employees with the authority to halt operation of equipment if continued operation would be hazardous.

FTA’s Safety and Legal teams are available to schedule a teleconference call with any State to discuss options for enforcement authority.

**TAB 5:**

**SAMPLE**

**State Safety Oversight Program**

**Major Implementation Activities Checklist**

**State Safety Oversight Program –**

**Major Implementation Activities Checklist**

*This checklist identifies the major activities to be performed by each State and its State Safety Oversight Agency to develop and implement a State Safety Oversight Program in conformance with the explicit mandates identified in Section 20021(a) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), now codified at 49 U.S.C. § 5329.*

**Develop State Safety Oversight Program**

* Explicit acknowledgement of State responsibility to oversee safety of Rail Fixed Guideway Public Transportation Systems (Rail Transit Systems or RFGPTS)
* Determine rail transit systems in engineering, construction and operations
* Demonstrate authority to adopt and enforce State and Federal regulations
* Establish State Safety Oversight Agency (SSOA)
* Demonstrate adequate and appropriate staffing level of the SSOA
* Demonstrate qualification(s) and certification(s) of SSOA staff
* Demonstrate that the established or designated SSOA is prohibited against receiving funding from rail transit agency as required by law

**Designation of Oversight Agency**

* Legal and financial independence procedures and disclosures
* Annual updates and legal and financial independence disclosures
* Documentation of no provision of transit service near a rail transit system
* Documentation of no employment of personnel administering rail transit programs
* Establish and document authority to review, approve, oversee, and enforce Agency Safety Plan for each rail transit system
* Establish and document investigative and enforcement authority for safety of rail transit agency
* Establish and document authority for triennial audit of rail transit system Agency Safety Plan
* Establish and document authority to report on SSO Program

**State Safety Oversight Agency Reporting to FTA**

* Report to FTA annually and periodically as requested

**Use of Federal Financial Assistance**

* Identify and provide appropriate match for grant program
* SSO grant management and reporting activities

**Certification of State Safety Oversight Program**

* Certification Pre-Submittal Documentation to FTA
* Work Plan and Quarterly Updates to FTA
* Initial Certification Documentation
* Final Certification Documentation
* Maintenance of Annual Certification

**Confidentiality of Information**

* Develop and adopt laws, regulations, or procedures to withhold an investigation report from being admitted as evidence or used in a civil action

**Perform State Safety Oversight**

* Establish minimum standards for the safety of rail transit agencies:
  + Consistent with the National Public Transportation Safety Plan
  + Consistent with the Public Transportation Safety Certification Training Program
  + Consistent with the principles and methods of Safety Management Systems
  + Consistent with all applicable Federal and State law
* Update minimum standards as needed or required
* Review and approve Rail Transit Agency Safety Plan
* Review and approve supporting and referenced procedures
* Review and approve annual updates to rail transit Agency Safety Plan and supporting and/or referenced procedures
* Oversee the rail transit agency’s execution of its Rail Transit Agency Safety Plan
* Enforce the execution of a Rail Transit Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate
* Investigate any hazard or risk that threatens the safety of a Rail Transit Agency
* Investigate any allegation of noncompliance with a Rail Transit Agency Safety Plan
* Exert primary responsibility to investigate Rail Transit Agency accidents
* Enter into agreements with contractors
* Comply with the requirements of FTA’s Public Transportation Agency Safety Certification Training Program

**Develop State Safety Program Standard**

* Develop and adopt revised program standard
* Extend program standard to include activities to require, oversee and accept safety in projects in engineering and construction, including safety certification
* Develop and adopt program procedures
* Develop and adopt Safety Management Systems oversight principles and oversight methods
* Review and update program standard and procedures

**Conduct Triennial Audits**

* Conduct Three Year Audit at each RFGPTS in State jurisdiction
* Develop Sampling Plan to Guide Inspections, Testing and Observations
* Develop Work Plan to Guide Records Reviews, Interviews and On-site Activities
* Document Results and Findings

**Conduct Investigations**

* Receive and track notification of accidents
* Conduct investigations
* Prepare Accident Investigation Report
* Review, Approve and/or Adopt Accident Investigation Reports

**Oversee and Enforce Hazard Management**

* Establish formal procedure and system with each RFGPTS regarding the collection and analysis of safety, operations and maintenance data and information to identify hazards and monitor safety performance
* Identify, investigate, resolve and track through to closure RFGTS actions to address hazards and mitigate risks

**Oversee and Enforce Corrective Action**

* Require, review, approve, oversee, and enforce implementation of corrective actions plans at the RFGPTS to address safety concerns, deficiencies, and non-compliance with the Agency Safety plan

**TAB 6:**

**GUIDANCE AND HANDBOOKS TO ENHANCE SSO PROGRAM IMPLEMENTATION**

**Accident Investigation**

**Auditing and Safety Assurance**

**Corrective Action Plan Management**

**Safety Management Systems**

**Accident Investigation Manuals:**

UPDATED -- American Public Transportation Association (APTA):

* <http://www.apta.com/resources/standards/Documents/APTA-RT-OP-S-002-02.pdf>

Rail Safety and Standards Board (RSSB) Handbook Series:

* <http://www.rssb.co.uk/NP/SMS/Pages/AccidentInvestigationGuidance.aspx>

National Transportation Safety Board (NTSB):

* <https://www.ntsb.gov/doclib/manuals/MajorInvestigationsManual.pdf>
* <https://www.ntsb.gov/doclib/manuals/MajorInvestigationsManualApp.pdf>
* <https://www.ntsb.gov/doclib/manuals/fatigue_checklist_V%202_0.pdf>
* <http://www.wilsonelser.com/writable/files/Legal_Analysis/anatomy_of_an_ntsb_accident_investigation_tobin_tochen_april_2013_.pdf.pdf>

Federal Railroad Administration (FRA):

* <http://safetydata.fra.dot.gov/officeofsafety/default.aspx> (See Section 9 -- FRA Safety Reporting)
* <http://skywallnet.com/data_server/INV/AIG_FRA.pdf>
* <http://www.fra.dot.gov/Elib/Details/L03191>
* <http://www.fra.dot.gov/Elib/Details/L04404>
* <http://www.fra.dot.gov/Elib/Details/L03531>

**Auditing and Safety Assurance:**

Federal Transit Administration:

* <http://www.fta.dot.gov/documents/SSO_Three_Year_Review_RBP_3-26-09-final.pdf>

Rail Safety and Standards Board (RSSB) Handbook Series:

* <http://www.rssb.co.uk/NP/SMS/Documents/2013-safety-assurance-guidance-summary-and-the-role-of-the-senior-manager.pdf>
* <http://www.rssb.co.uk/NP/SMS/Documents/50817%20Safety%20Assurance%20Guide%20HARDCOPY%20V12%20WEB.PDF>

**Corrective Action Plan (CAP) Management**

The Table below contains the minimum CAP requirements specified in 49 CFR Part 659 and most existing rail transit agency System Safety Program Plans (SSPPs), as well as potential enhancements for States to include in their SSO programs now while they are working toward full enforcement authority under the new Moving Ahead for Progress in the 21st Century Act (MAP-21) program.

|  |  |  |
| --- | --- | --- |
| **SAMPLE Enhancements to SSO Program Corrective Action Plan Management** | | |
| **Plan Specifications** | **49 CFR Part 659**  **Minimum Requirements** | ***MAP-21 INTERIM ENHANCEMENTS***  **(In Addition to the Minimum Requirements)** |
| **CAP criteria (Specify CAPs to track)** | * Factors of Investigations (Accident and Hazards) * Three-year State Oversight Agency (SOA) Reviews * NTSB recommendations | * CAPs required and tracked for all findings from Internal Safety Reviews conducted by the RTA * SOA recommendations resulting from inspections require CAPs * Complaints (internally, externally, general public) are closed through formal CAPs * Major capital projects (PHA, TVA) items are addressed through formal CAPs * FTA/SSO reviews and audit findings (as applicable) * Data / trend analysis (accidents, hazards, etc.) |
| **Specify SOA CAP review and approval process** | * SOA must review and formally approve of CAPs | * Timeframe for SOA approval of new CAPs (30-days) * Routine RTA submittal of open CAPs (30-days, specify a submittal due date) * CAP related meetings (standing agenda item of coordination meetings) * Rail transit agency verification activities |
| **Sample CAP forms** | * N/A | * Standard SOA CAP approval letter and checklist template * Standard CAP tracking matrix |
| **CAP tracking elements**  **(CAP Matrix)** | * Action to be taken by the rail transit system * Implementation schedule * Individual or department responsible for the implementation | * Dates: Open, expected closed, actual closed, approval/verification Dates * Hazard analysis ensuring additional hazards are not introduced with CAP implementation * Activity resulting in CAP (accident, hazard) * Descriptions: RTA actions planned, verification activities of the RTA and SOA (inspections, tests) * Temporary measures / interim activities * Current budget / projected budget |
| **Specify the process for addressing NTSB Findings** | * Identify the process by which NTSB investigation findings be evaluated | * SOA leads the evaluation regarding whether NTSB findings require a CAP from the RTA |
| **Specify the process for resolving disputes** | * Process for resolving disputes between the SOA and RTA for development or enforcement of a CAP | * Specify an independent Panel or Board to review CAP arguments and decide on the final CAP implementation |

The table below provides additional information for States working to enhance the management of corrective action plans in their SSO programs while waiting for new enforcement authority.

|  |  |
| --- | --- |
| **SSO Minimum Requirements and MAP-21 Interim Enhancements** | |
| Part 659 Minimum Requirements | MAP-21 Interim Enhancement |
| * CAPS are required to be developed from the SOA’s three-year safety and security review findings. | * CAPs should also be developed from the RTA’s internal safety and security review findings. |
| **SSO CAP Reviews Minimum Requirements and Enhancements** | |
| Part 659 Minimum Requirements | MAP-21 Interim Enhancement |
| * CAPS are required to be developed for identified causal **and** contributing factors. | * Consider employing a root cause analysis technique for investigation’s primary and contributing causes. * Subject CAPs to committee reviews to ensure that the CAP’s implementation does not introduce new hazards into the system. * SOA should participate in the CAP review committee. |
| **SSO CAP Approval Minimum Requirements and Enhancements** | |
| Part 659 Minimum Requirements | MAP-21 Interim Enhancement |
| * SOA is required to ***formally*** approve of the RTA’s CAPs. * The SOA must identify the mechanisms for conveying its formal approval. * The SOA must identify the timeframe during which it must review and formally approve the CAP. * SOA must specify CAP development criteria and the process for the review and approval. | * The SOA approval can be provided at two (2) separate junctures in the CAP process, including the initial CAP submittal and after final verification * SOA should provide formal CAP approval is with a formal letter detailing the approved CAP actions and signed by the SOA * The SOA can specify the timeframe needed for initial approval, however, FTA recommends that the final approval / closeout time period is not specified in its Program Standard. * SOA should require a complete report for critical CAPs. * The SOA must ensure that budget limitations do not obstruct the CAP’s development effort. However budget constraints may require creativity to develop inexpensive mitigations, such as procedure changes, improved communication methods, etc. * Consider remedial action while the CAP’s permanent measures are developed and implemented. |
| **CAP Tracking Minimum Requirements and Enhancements** | |
| Part 659 Minimum Requirements | MAP-21 Interim Enhancement |
| * The SOA is required to monitor and track the implementation of each approved CAP. * The CAP must include the RTA’s action, schedule and individual or department responsible for implementation. * The RTA is required to provide periodic reports as requested by the SOA. | * The SOA should specify the mechanism for documenting the CAP activities during implementation. * The SOA should consider taking ownership and maintaining the CAP tracking mechanism. * SOA should specify the meeting frequency in its Program Standard. |
| **CAP Verification Minimum Requirements and Enhancements** | |
| Part 659 Minimum Requirements | MAP-21 Interim Enhancement |
| * The RTA must provide verification of the CAPs implementation. * The SOA is required to describe the process for managing conflicts relating to CAP development. | * The SOA should coordinate with the RTA to develop and specify the activities that ensure the CAP is properly implemented. * The SOA should independently conduct CAP verification activities. * The SOA may consider using a panel or board to manage potential conflicts and disputes. |

**Safety Management Systems (SMS):**

Federal Transit Administration

* <http://www.fta.dot.gov/tso_15176.html>

Federal Aviation Administration

* <https://www.faa.gov/about/initiatives/sms/>
* <https://www.faa.gov/about/initiatives/sms/reference_library/policy_and_requirements/>

National Transportation Safety Board – Hearing Transcript from February 25, 2010 Session on High Reliability Organizations (Document 12)

* <http://dms.ntsb.gov/pubdms/search/hitlist.cfm?docketID=47789&CFID=227438&CFTOKEN=45064142>

Transport Canada

* <http://www.tc.gc.ca/eng/civilaviation/standards/sms-menu-618.htm>

Civil Aviation Authority -- United Kingdom

* <http://www.caa.co.uk/default.aspx?catid=872&pagetype=90&pageid=9953>

Australian Government Civil Aviation Safety Authority

* <http://www.casa.gov.au/scripts/nc.dll?WCMS:STANDARD::pc=PC_91430>

Australian Government Aviation State Safety Program

* <http://www.infrastructure.gov.au/aviation/safety/ssp/index.aspx>

**TAB 7:**

**SAMPLE**

**State Safety Oversight Program (SSOP)**

**Safety Management Systems (SMS) Program Standard**

**State Safety Oversight Program (SSOP)**

**Safety Management Systems Program Standard Section**

The Rail Transit Agency (RTA) implements the Safety Management Systems (SMS) framework. The State Safety Oversight Agency (SSOA) and the Federal Transit Administration (FTA) oversee the proper functioning and effectiveness of the SMS at each RTA.

Each SSOA should develop and document a specific program to direct its oversight of the SMS activities and the requirements specified in FTA’s SMS Framework. This program should be coordinated with FTA.

To support States in initiating this process, the template below provides an example of one way to integrate SMS principles and oversight into an existing State Safety Oversight Program (SSOP).

The template is organized into four sections and 12 elements:

1. Section 1: State safety policy and objectives

Element 1.1 State safety oversight framework and authority

Element 1.2 State safety responsibilities and accountabilities

Element 1.3 Safety investigation

Element 1.4 Enforcement authority

2. Section 2: State safety risk management

Element 2.1 Requirements for Agency Safety Plan and the SMS

Element 2.2 Agreement on safety performance

3. Section 3: State safety assurance

Element 3.1 Safety oversight audits and internal reviews

Element 3.2 Safety oversight monitoring program

Element 3.3 Safety data collection, analysis and exchange

Element 3.4 Safety-data-driven targeting for areas of greater concern

4. Section 4: State safety promotion

Element 4.1 Internal activities

Element 4.2 External activities

This template can be prepared an as appendix to each State’s existing Program Standard or as a stand-alone document. Specific content for each section and element of the program standard includes:

**Section 1: State Safety Policies and Objectives.** This section must explain the authority of the SSOA to oversee the safety of each RTA in its jurisdiction; the policies that govern the activities of the SSOA; the reporting requirements established for each RTA and the SSOA; and the steps the SSOA will take to ensure open, on-going communication between the SSOA and every RTA within its oversight.

* *Element 1.1 - State safety oversight framework and authority*: This element must include a description of the oversight framework established by the State and the specific regulations that define how the State will oversee RTA safety. This element also must include the process available for each RTA to review and provide comment on the oversight framework and authorities established by the State.
* *Element 1-2 -State safety responsibilities and accountabilities*: This element must demonstrate how the State has identified, defined and documented the requirements, responsibilities and accountabilities regarding the establishment and maintenance of the State Safety Oversight Program (SSOP) in conformance with State and FTA requirements. This element also must identify the executive leadership positions at the State and the supporting organization of the SSOA responsible for developing and carrying out the SSOP.
* *Element 1-3 –Safety investigation*: This element must describe the specific procedures to be used by the SSOA in conducting investigations and in overseeing the investigations conducted by each RTA. This element must include any requirements established by the SSOA for: (1) training and certification of SSOA and RTA personnel conducting investigations; (2) reporting thresholds to be used by the RTA for accidents, incidents and hazards or conditions of concern; (3) notification requirements; (4) investigation, information collection and analysis processes; (5) methods and processes for determining, reviewing and approving findings of probable cause and contributing factors; (6) approach to requiring and approving corrective actions designed to prevent recurrence; (7) process for coordinating with the National Transportation Safety Board; and (8) approach to protecting the confidentiality of investigation information and reports. Specific thresholds for when the SSOA must conduct its own “independent” investigation of accidents, incident, hazards or conditions of concern to occur at the RTA must also be included in this element.
* *Element 1-4 -Enforcement authority*: This element must describe the enforcement authority available to the SSOA and the State, including provisions for requiring immediate and milestone-based corrective action to resolve identified deficiencies in the RTA’s implementation of the Agency Safety Plan and the SMS, and to address identified hazards and safety concerns that require mitigation. This element must specify the criteria for the development of immediate and milestone-based corrective action plan(s) by the RTA and the process for the review and approval of these corrective action plans by the SSOA, including timelines and follow-up reporting requirements. This element must also identify the SSOA's policies for the verification and tracking of corrective action plan implementation at the RTAs. Finally, this element must specify ongoing reporting and data exchange regarding the tracking of corrective actions taken by the RTA to address identified safety deficiencies and concerns.

**Section 2: State Safety Risk Management.** This section includes requirements for the Agency Safety Plan, and the establishment of the SMS, for each RTA in the State consistent with FTA’s Public Transportation Safety Program and 49 U.S.C. 5329. In addition, this section requires a mechanism for agreement between the SSOA and each RTA regarding acceptable safety performance levels to be achieved through the SMS.

* *Element 2-1 -* *Requirements for Agency Safety Plan and the SMS*: This element must specify the minimum requirements for the Agency Safety Plan to be developed by each RTA in conformance with the regulations promulgated by FTA to address 49 U.S.C. 5329. This element must also include the process and timeframe through which the SSOA must receive, review, and approve the Agency Safety Plan and the process for managing annual updates. To support oversight of the SMS, this element must also detail the State’s specific requirements related to the safety risk management processes to be implemented by the RTA and coordinated with the SSOA.
* *Element 2-2 - Agreement on safety performance*. This element must explain that, as part of the Agency Safety Plan acceptance process, the SSOA will review and approve the RTA's proposed safety performance, using indicators, data and analysis. Full acceptance of the rail fixed guideway system’s Agency Safety Plan requires that the SSOA be satisfied that the proposed safety performance indicators are appropriate and pertinent to the RTA's activities and also address safety performance criteria established by the National Public Transportation Safety Plan and authorized by 49 U.S.C. 5329.

**Section 3: State Safety Assurance.** This section details the specific mechanisms and requirements through which the State and the SSOA ensure the implementation of the Agency Safety Plan and the performance of the SMS at each RTA.

* *Element 3-1 - Safety oversight audits and internal reviews.* This element must explain the activities to be conducted by the SSOA to perform specific oversight and monitoring activities at RTAs as required by the Federal Transit Administration under 49 U.S.C. 5329. These activities must include the audit, at least once every three years, of the RTA's compliance with its Agency Safety Plan. Also included in this element is the State's requirement for the RTA to conduct internal safety reviews and internal safety assurance activities to actively, comprehensively, and in an ongoing manner, assess its own implementation of its Agency Safety Plan and the SMS.
* *Element 3-2 - Safety oversight monitoring program.* This element must describe the monitoring program to be required by the SSOA to provide the SSOA with on-going verification regarding the implementation of the Agency Safety Plan and the SMS. This monitoring program must generate a report, checklist or scorecard that is signed by the accountable executive of the RTA and transmitted to the SSOA on a monthly or quarterly basis, depending on the size and complexity of the RTA. The monitoring program also must include information on the implementation of the RTA’s internal safety review and safety assurance program. The monitoring program must be coordinated with Program Standard Element 2-2 - Agreement on safety performance.
* *Element 3-3 - Safety data collection, analysis and exchange*. This element must demonstrate that the State has established mechanisms to ensure the capture and storage of information and data on hazards, safety risks, risk controls, and corrective action plans at the RTA. This element will also show that the State has required mechanisms to be in place to support the active exchange safety information with the RTA and FTA as appropriate.
* *Element 3-4 - Safety-data-driven targeting of areas of greater concern or need*. This element must demonstrate that the State has established procedures to prioritize assessments, reviews, activities, inspections, audits and surveys towards those areas of greater safety concern or need, as identified by the analysis of data on hazards, their consequences in operations, and the assessed safety risks.

**Section 4: State Safety Promotion.** This section requires the State to explain how it ensures the training, certification and professionalism of its SSOP and SSOA personnel and contractors. The section also must highlight the State’s commitment to the promotion of safety communication and culture with the RTAs and FTA.

* *Element 4-1 - Internal activities.* This element must describe the State’s authority and process to ensure that personnel implementing the SSOP, including SSOA employees and contractors, meet the minimum Federal standards set forth by FTA under 49 U.S.C. 5329 for training and certification. This element must also document the professional development program established for SSOA personnel to foster an effective and efficient SSOP and to ensure the high standards in managing oversight at the RTA.
* *Element 4-2 - External activities*. This element must describe how the SSOA provides education and promotes awareness about the importance of communication regarding safety issues and concerns with the RTA and FTA.

**TAB 8:**

**SAMPLE**

**State Safety Oversight Program (SSOP)**

**Workload Assessment Table and Budget**

**(*for States while they are transitioning to the new MAP-21 SSO Program*)**

**SAMPLE Workload Assessment Table**

**Directions**: Completion of this table will support each State in estimating labor hours and budgets for SSO program work plans and grant applications. To complete this table:

* Specify the period to be addressed by the Workload Assessment Table (calendar year, fiscal year, multi-year period), and input that information into the top row of the table, along with the full name of the SSO agency.

| Workload Assessment Table for [insert name of SSO agency] Covering the period: [insert period covered] | | | | |
| --- | --- | --- | --- | --- |
| COLUMN 1: SSO Program Major Responsibility Activity (while transitioning to new MAP-21 SSO program) | COLUMN 2: Frequency of Activity | COLUMN 3: Estimated Hours | COLUMN 4: Total Estimated Hours | COLUMN 5: Notes |
| Develop, revise, update and distribute SSO Program Standard for evolving MAP-21 duties, rule changes, new activities and anticipated requirements |  |  |  |  |

* Identify activities from COLUMN 1 entitled “SSO Program Major Responsibility Activity (while transitioning to new MAP-21 SSO program)” that will be performed by the SSO Agency to implement MA-21 requirements.
* As necessary, add rows to the Workload Assessment Table:
  + To include additional activities to be performed by the SSO agency, or
  + To break an activity into smaller tasks to provide a greater level of specificity.
* In COLUMN 2, identify the frequency of each activity to be performed in COLUMN 1, for example, monthly meetings at the rail transit agency (12) or participation in quarterly safety reviews (4) or annual reporting programs (1).
* In COLUMN 3, provide the estimated hours required to complete the activity identified in COLUMN 1.
* In COLUMN 4, multiply the estimated hours for the specific activity provided in COLUMN 3 by the frequency of the activity identified in COLUMN 2, and enter the total.
* In COLUMN 5, provide notes regarding how the activity will be carried out by the SSO agency. For example, identify the expertise that might be required to perform the specific activity, and whether the specific activity would be contracted out or performed by State employees.

In the TOTAL row at the end of the Workload Assessment, sum the estimated hours, from COLUMN 4 to indicate the number of hours likely required to implement the identified SSO program activities. Use the notes in COLUMN 5 to help identify how these hours will be allocated among existing and new SSO agency personnel, and contractors.

**SAMPLE Workload Assessment Table**

| Workload Assessment Table for [insert name of SSO agency] Covering the period: [insert period covered] | | | | |
| --- | --- | --- | --- | --- |
| SSO Program Major Responsibility Activity (while transitioning to new MAP-21 SSO program) | Frequency of Activity | Estimated Hours | Total Estimated Hours | Notes |
| SSO PROGRAM PLANNING | | | | |
| Develop, revise, update and distribute SSO Program Standard for evolving MAP-21 duties, rule changes, new activities and anticipated requirements |  |  |  |  |
| Conduct workshops with Rail Transit Agencies to discuss new and evolving SSO program requirements |  |  |  |  |
| Review and formally approve Agency Safety Plan (System Safety Program Plan) for all rail transit systems, including transmittal to FTA |  |  |  |  |
| OVERSEE RAIL TRANSIT AGENCY IMPLEMENTATION OF AGENCY SAFETY PLAN | | | | |
| Review RTA audit announcements, schedules, procedures, and checklists used to conduct internal safety reviews, encourage additional inspections and testing, measurements and field observations. |  |  |  |  |
| Review and formally approve each RTA’s Annual Safety Report and Annual Internal Safety Review Report. |  |  |  |  |
| Review, formally approve and participate in internal audit reports and completed checklists for each element of the Agency Safety Plan. |  |  |  |  |
| Formalize corrective action plans (CAPs) to address findings from the internal safety review process. |  |  |  |  |
| Develop a monthly or quarterly monitoring program to provide the SSOA with on-going verification regarding the implementation of the Agency Safety Plan, including the performance of required inspections and activities, the correction of identified deficiencies, the condition of critical infrastructure, and budgeting and resource allocation for maintenance activities. |  |  |  |  |
| Attend and participate in scheduled ongoing and special RTA safety, operations and maintenance committee meetings, following up as required on critical issues. |  |  |  |  |
| Participate in discussions and reviews regarding new capital projects and rehabilitation activities planned for the rail transit agency. |  |  |  |  |
| Conduct safety certification program adherence reviews for RTA major capital projects and rehabilitation projects |  |  |  |  |
| Observe RTA emergency preparedness and safety & security drills and exercises |  |  |  |  |
| Review and monitor RTA compliance with their own hours of service and fatigue management program; follow up on and further investigate hours of service violations |  |  |  |  |
| Review and monitor RTA implementation of their medical qualification programs, including specific programs developed to address sleep apnea; follow up on and further investigate as warranted |  |  |  |  |
| Review and monitor RTA implementation of their roadway worker protection programs, follow up on and further investigate as warranted |  |  |  |  |
| HAZARD MANAGEMENT PROGRAM AND ACCIDENT INVESTIGATION | | | | |
| Develop formal hazard management procedure to begin collecting and analyzing data now with the RTA. Monitor identified hazards; receive and review reports; review and track hazard corrective plans to completion |  |  |  |  |
| Develop monthly monitoring program tracking program for hazards, incidents and unusual occurrences; begin briefing RTA CEO and Board of Directors |  |  |  |  |
| Update SSO program accident investigation procedures |  |  |  |  |
| Organize, lead, & conduct investigations of accidents, incidents and hazards at the RTA; coordinate activities & reports of field personnel. |  |  |  |  |
| Draft and compile final report from field. |  |  |  |  |
| Review and approve RTA accidents or incident investigation reports. |  |  |  |  |
| CORRECTIVE ACTION PLANS | | | | |
| Review and formally approve all RTA corrective action plans (CAPs). |  |  |  |  |
| Monitor and track the implementation of each approved CAP. Follow-up with meetings and correspondence as required. |  |  |  |  |
| Physically verify implementation of each CAP before closure. |  |  |  |  |
| ON-GOING SAFETY OVERSIGHT | | | | |
| Establish, update, maintain, & analyze tracking and logging system for RTA incident reports, accidents, unusual occurrences, and special areas of focus, such as hours of service, medical qualification, roadway worker protection. Determine patterns, trends, and issues. |  |  |  |  |
| Attend FTA Quarterly Review Meetings and participate with PMOC during monthly site visits. |  |  |  |  |
| Ride all systems regularly; evaluate RTA program safety; operations; & condition of vehicle, tracks, & stations. Complete inspection reports. |  |  |  |  |
| Attend and participate in project safety and security planning, fire and life safety meetings, and pre-revenue safety certification and readiness assessment for existing and new service expansion projects. |  |  |  |  |
| REVIEWS AND REPORTS | | | | |
| Conduct the three-year on-site safety and security review of RTAs implementation of their System Safety Program Plan and System Security Plan, with additional inspections identified as part of a sampling plan |  |  |  |  |
| Submit Annual Report to the FTA by designated due date each year, summarizing oversight activities for the preceding twelve months |  |  |  |  |
| Conduct and complete pre-revenue reviews of RTAs new line extensions, system modifications, and new route alignments. Follow up with meetings and correspondence as required |  |  |  |  |
| Conduct rail grade crossing safety project oversight and regular inspections |  |  |  |  |
| Review and investigate citizen, department, or legislative inquiries or referred complaints regarding RTA operations or personnel, prepare written reports of findings as required. |  |  |  |  |
| MAP-21 IMPLEMENTATION | | | | |
| Develop, update & maintain implementation plans and procedures for new safety duties related to MAP-21. |  |  |  |  |
| Ongoing study and review of all program statutory guidance. Evaluate new legislation and regulatory changes in FTA requirements; research laws; draft comments on new legislation; develop reports and procedures, and provide technical support, advice, and guidance to RTAs by email, phone, and in-person. |  |  |  |  |
| Attend FTA-mandated SSO professional certification training for SMS, accident investigation; agency safety plan development; rail transit operations and maintenance; and industry best operating safety practices. |  |  |  |  |
| Review & revise program policies and procedures as required to reflect training guidance. |  |  |  |  |
| Assist with RFP preparation; contractor selection; contract development; and preparing scope of work statements for technical contractors to support the work of the SSO program. |  |  |  |  |
| Assist with RFP preparation; contractor selection; contract development; and preparing scope of work statements for technical contractors to support the work of the SSO program. |  |  |  |  |
| Attend and represent SSO in meetings and correspondence with local agencies, state & federal officials and policy-makers, other units of Sate government; private sector firms & citizens; and State meetings & functions; serving as the department’s technical expert on the rail transit safety and security oversight program. |  |  |  |  |
| Attend or conduct weekly SSO staff and other administrative meetings. |  |  |  |  |
| Prepare or approve time and mileage reports; training reports and trip reports. |  |  |  |  |
| Attend State agency division and department internal meetings; |  |  |  |  |
| Perform required supervisory tasks and duties and other administrative functions as required. |  |  |  |  |
| Provide on-going updates to FTA regarding Work Plan status |  |  |  |  |
| SSO Grant Management and Reporting Activities |  |  |  |  |
| TOTAL |  |  |  |  |

**SAMPLE Budget**

**SAMPLE BUDGET FOR SSO PROGRAM**

The State’s budget for its State Safety Oversight Program (SSOP) should include labor costs for the wages paid to employees staffing the SSO program at an appropriate level as determined in consultation with FTA. All labor must be identified in a staffing plan shared with FTA, and may include:

* Full or partial wages for all personnel identified in the SSO agency staffing plan submitted to FTA.
  + Examples of typical staff positions include the following:
    - SSO Program Administrator
    - SSO Investigator
    - SSO Auditor
    - SSO Inspector
    - SSO Engineer
    - SSO Analyst
    - SSO Administrative Support
* Overtime wages for specific employees performing activities identified in the staffing plan submitted to FTA, such as accident investigation or corrective action plan verification
* Partial wages for State employees who are dedicated primarily to other programs, but who support the SSO program, as identified in the SSO agency staffing plan, for specific activities, such as inspections, investigations, or legal or administrative support

FRINGE BENEFITS. Allowances and services provided by the employer to their employees as compensation in addition to regular salaries and wages. These may include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans.

Fringe benefits may be paid to employees who support the SSO program on a part-time basis, but the fringe benefits provided must be consistent with the work provided to support the SSO program and the requirements established at the SSO agency.

CONTRACTS. A mutually binding legal relationship between the SSOA and another party (third party) other than an employee that obligates the third party to provide supplies or services, including technical and support services, and the SSOA to pay for them. Contracting must also be identified in the staffing plan shared with FTA. FTA may request additional information regarding contractor qualifications.

Contracted services typically include:

* Technical specialists to support specific SSO activities, such as performing or reviewing accident investigations, conducting Three-Year Safety Reviews, verifying implementation of corrective action plans, or performing field observations and inspections.
* Technical services to provide laboratory testing, metallurgical testing, accident recreation or modeling, or other activities to support the SSO agency in conducting investigations.
* Independent contractors who provide specific expertise on-call or as needed to support SSO activities.
* Information technology services that support websites, technology or management information systems used by the SSO agency to collect and store information and administer its program or to communicate with the public.

FACILITIES AND EQUIPMENT LEASE AND RENTAL. Payments for the use of equipment or facilities owned by other organizations.

Items typically leased or rented include vehicles, two-way radio equipment, computer equipment, office space and furniture, and vehicle storage space.

PURCHASE OF EQUIPMENT. Purchase of equipment needed to carry out SSO activities.

Equipment purchased to carry out SSO activities typically include vehicles, two-way radio equipment, cellular phones, digital cameras, accident investigation kits, electronic tablets, personal protective equipment, as well as office equipment, including computers, servers, printers, and other durable goods or equipment.

If equipment is shared with non-SSO functions, then only that part of the equipment’s cost, which is proportional to its use in support of SSO activities, is eligible.

PURCHASE OF FURNITURE. Purchase of furniture needed to support SSO activities.

Furniture includes desks, chairs, sofas, trash cans, lighting, equipment stands, file cabinets, and tables.

MATERIALS AND SUPPLIES. The cost of materials or supplies purchased for immediate use.

Materials and supplies include tangible products, such as fuel, replacement parts to maintain vehicles and equipment in good repair, office supplies, flash drives, batteries, notebooks, paper, printer cartridges, and cleaning products. Materials and supplies also include software.

UTILITIES. Payments to utility companies for their resources provided to the SSOA.

Payments to utilities are made for such resources as gas, water, sewer, electricity, radio repeater service, telephone service, Internet service, etc.

LIABILITY AND CASUALTY COSTS. Payments for insurance programs that protect the State agency from losses incurred or caused by the SSO program; payments to others for their losses attributed to the SSO program.

TAXES. Freight charges and sales tax (unless purchasing agency is tax exempt).

OTHER PURCHASED SERVICES. Payments made to other organizations for services that support the SSO agency.

Other purchased services could include maintenance of vehicles or other related equipment; professional and technical services such as legal services, printing, custodial services, temporary help, and accounting and auditing.

TRAINING EXPENSES. This cost includes expenses for approved training.

Training expenses include supplies, tuition, and other costs associated with training identified in Individual Training Plans (ITPs) approved by FTA for SSO employees.

TRAVEL. This cost includes the expenses of transportation, meals, out-of-town lodging and related expenses, such as parking and mileage placed on personal vehicles, which are incurred by employees and other designated individuals as authorized by the SSO agency.

Travel is allowed for: training and conferences identified in Individual Training Plans (ITPs) approved by FTA for SSO employees, official SSO activities conducted onsite at the Rail Fixed Guideway Public Transportation System (RFGPTS) or FTA Regional Office or Headquarters Office, participation in FTA-sponsored or recommended events, and official SSO activities conducted in partnership with other Federal, State or Local partners, such as investigations, hearings or the presentation of testimony.

INTEREST. Interest on money borrowed over a short term (one year or less) for operating expenses or over a long term (more than one year) for equipment pur­chases used to support the Federal (SSO) project.

ADVERTISING. Cost of media such as newspapers, magazines, newsletters, radio, television, direct mailing, posters, handouts, etc. The subject of adver­tising may include the recruitment of personnel, solicita­tion of bids for goods and services, announcement of public hearings or findings, and contact persons for communication with the public regarding rail transit safety issues.

HONORARIUMS AND RECOGNITION EVENTS. Costs of gifts, mementos, dinners and ceremonies in recognition of service.

SUBSCRIPTIONS AND MEETINGS. The cost of books and periodicals are allowable if they directly pertain to the management, planning and operation of SSO agency. Such items must be procured for agency, and not individual, use. Meeting or conference fees are allowable when the primary purpose of the meeting is the dissemination of technical information. Subscription fees to software programs and technical assistance helplines are also generally allowable to support the Federal (SSO) project.

|  |  |  |
| --- | --- | --- |
| **SAMPLE SSO Program Budget** | | |
| ***Expense Category*** | ***Explanation*** | ***Amount*** |
| Personnel Services  SSO Program Manager SSO Accident Investigator SSO Auditor SSO Data Analyst  State DOT Supervisor Overtime Expense  Operating Expenses  General Services & Supplies  SSO Vehicles  Mandated Training Expense  Personal Protective Equipment  DOJ Legal Services  Computer Equipment  Vehicle Fuel & Maintenance  Outside Contractor Expense Contracted Internal Support  Financing Sources  Estimated FTA Section 5329 SSO Program Allocation  State Matching Funds | Fully loaded rates including salaries, fringe benefits costs, and 44.69% overhead rate as determined by State DOT Finance Department  50% FTE for State DOT Supervisor Estimated @ 300 hours total  Covered in 44.69% overhead rate  Two vehicles required for travel  Mandated SSO Certification training  For fieldwork safety for SSO staff  Required legal review services  Upgrade of SSO unit computers  Motor Pool costs for required travel  For expert contractor resources as identified in workload assessment  For contracted Rail Safety & Crossing inspection services  **TOTAL RESOURCE REQUIREMENTS:**  80% Federal Funding  Required 20% Local Match Contribution  **TOTAL FINANCING SOURCES:** | $162,777 $162,777 $137,896 $127,157  $90,507 $16,300  $-0–  $50,000  $21,600  $2,000  $120,000  $4,000  $15,000  $100,000 $23,998  **$1,034,012**  $827,210  $206,802 \_\_\_\_\_\_\_\_\_\_\_\_ **$1,034,012** |

**TAB 9:**

**SAMPLE**

**State Safety Oversight Program (SSOP)**

**Job Descriptions**

Please see the range of management and technical specialty job descriptions provided in the FRA State Managers Handbook, available at:

<http://www.railsafety.idaho.gov/Docs/managers%20hand%20book.pdf>

For additional information on sample job descriptions, please contact Ms. Maria Wright with FTA’s Office of Safety and Oversight:

Maria Wright

Senior Transit Safety Oversight Analyst

Office of Transit Safety and Oversight

Federal Transit Administration

Office: 202-366-5922

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E-mail: maria1.wright@dot.gov

Please courtesy copy FTA’s SSO contractor on your requests: Ms. Annabelle Boyd ([aboyd@bcgtrans.com](mailto:aboyd@bcgtrans.com)) and Ms. Rachael Wenger (rwenger@bcgtrans.

**[END OF DOCUMENT]**