

Frequently Asked Questions

MAP-21 State Safety Oversight (SSO) Program Pre-Certification

The Federal Transit Administration (FTA) prepared these Frequently Asked Questions (FAQs) to provide additional background and information regarding the State Safety Oversight (SSO) pre-certification submittal review process. This process, authorized in Section 20021(a) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), adopted in its entirety as section 5329 (in Chapter 53) of U.S.C. Title 49, required FTA to evaluate each State's submitted SSO program against the explicit statutory mandates set forth in 49 U.S.C. Section 5329(e). As required in 49 U.S.C. Section 5329(e)(7), FTA provided the States with the results of this evaluation by October 1, 2013. FTA intends for States to use these results to develop work plans to guide their applications to FTA's new SSO grant program.

This FAQ is organized into the following categories:

- General
- Rulemaking
- SSO Pre-Certification Submittal Review Process Results
- Legal and Financial Independence
- Provision of Transportation Service
- Enforcement Authority
- Investigations and Audits
- Staffing and Qualifications
- SSO Grant Readiness
- Follow-up

GENERAL

Q1. Please provide an overview of the new MAP-21 SSO program requirements.

A1. MAP-21 creates a new regulatory role for FTA and the States that responds to known 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 SSO program audits and safety studies.

To address noted FTA and NTSB concerns regarding conflicts of interest and the ability of SSO agencies to act independently in the interest of public safety, 49 U.S.C. Section 5329(e)(4)(i) specifies that each SSO agency must have financial and legal independence from each of the rail fixed guideway public transportation systems (RFGPTS) in its jurisdiction.



To address the need for an enhanced safety regulatory program, 49 U.S.C. Section 5329(e)(2)(A-B) directs States to assume oversight responsibility for rail transit agencies in engineering and construction, as well as in revenue service. This requirement increases the number of States in the SSO program from 27 to up to 30, and increases the number of RFGPTS in the SSO program from 47 to 60 nationwide.

To overcome a long-standing weakness in the SSO program that allows corrective action plans to remain open for long periods of time (and for serious safety concerns to go potentially unaddressed), 49 U.S.C. Section 5329(e)(3)(A-B) and 49 U.S.C. Section 5329(e)(4)(A)(iv-vi) require that each State provide its SSO program and SSO agency with enforcement authority to ensure 1) the safety of each rail transit agency in its program, and 2) the implementation of each agency's Safety Plan. States also must empower their SSO programs with investigative authorities. These requirements will enable States to compel action from the RFGPTS to address identified deficiencies.

To resolve challenges with an inadequate number of qualified personnel devoted by the States to develop and carry out SSO programs, 49 U.S.C. Section 5329(e)(3)(D-E) specifies that each State must ensure that its SSO program is managed by an SSO agency with staffing levels and qualifications commensurate with the number, size and complexity of the rail transit agencies in the program and that SSO program staff and contractors receive training and certification through FTA. FTA will now provide grant funding to support the staffing and professional development of State SSO programs.

Finally, Section 5329(e)(4)(A)(vi) replaces the current Three-Year Review requirement with new language that specifies that the SSO program must audit each rail transit agency's implementation of its agency Safety Plan at least once every three years and provide an Annual Report to FTA, the Governor of the State and the Board of Directors of the rail transit agency. These new requirements significantly increase the State's responsibility for field verification of Agency Plan implementation and coordination and communication regarding the rail transit agency's safety performance and deficiencies at the highest levels within the State and the rail transit agency.

Q2. What is most important to understand about the new State Safety Oversight (SSO) program specified in the Moving Ahead for Progress in the 21st Century Act (MAP-21)?

A2. The current rules for the SSO program, 49 CFR Part 659, are based on a statute, 49 U.S.C. § 5330, that is much weaker and less specific than 49 U.S.C. § 5329. In enacting MAP-21, Congress dramatically "raised the bar" on both States and their SSO agencies through the many explicit mandates in 49 U.S.C. § 5329.

In practical terms, this means that an SSO program that complies with the minimum 49 CFR Part 659 elements today most likely does not address the statutory mandates of 49 U.S.C. § 5329. For example, SSO programs implementing 49 CFR Part 659 typically do not meet explicit MAP-21 statutory mandates for enforcement and investigative authority, financial and legal independence, and adequate staffing and qualification.

Q3. What specific MAP-21 requirements direct FTA'S SSO pre-certification review process?

A3. 49 U.S.C. Section 5329(e)(7)(A) requires FTA, by October 1, 2013, to determine "whether or not each State safety oversight program meets the requirements of this subsection and the State safety oversight program is adequate to promote the purposes of this section." FTA devised the SSO pre-certification submittal review process to meet this requirement.

Q4. How can FTA evaluate the State submittals against the 49 U.S.C. Section 5329(e) requirements when FTA has not completed rulemaking?

A4. Many States have asked how FTA can use the MAP-21 statute to evaluate their SSO program submittals, when the statute has not yet been fully implemented in a rulemaking.

After the effective date of October 1, 2012, the statutory requirements in 49 U.S.C. Section 5329(e) became "the law of the land," regardless of whether or not FTA issues rules to carry them out. Unlike the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which created the SSO program with just a few sentences, the statutory mandates in 49 U.S.C. Section 5329(e) are sufficiently clear on their face that they do not require rulemaking to be administered or enforced, thus, they are effective immediately upon enactment.

Congress unambiguously expressed its intent for FTA to evaluate the submitted State SSO programs against the explicit mandates found in 49 U.S.C. Section 5329(e) by requiring FTA to complete this process as specified in 49 U.S.C. Section 5329(e)(7)(A). Further, in 49 U.S.C. Section 5329(e)(6), Congress authorized FTA to allocate over \$44 million in fiscal year 2013 and 2014 grant funding to help the States address the results of FTA's SSO pre-certification process and develop MAP-21 compliant SSO programs.

Q5. Why did FTA tell the States that they could submit their existing 49 CFR Part 659 programs for the SSO pre-certification submittal review process if these programs do not generally meet the new MAP-21 statutory requirements?

A5. The MAP-21 statute leaves the existing 49 CFR Part 659 program in place until the final rule implementing 49 U.S.C. Section 5329(e) takes effect. Therefore, FTA determined that it was fair and reasonable to allow States to take their existing 49 CFR Part 659 programs as a "starting point" in working to meet the new MAP-21 requirements.

FTA recognizes that it may require several years for some States to fully implement the new MAP-21 provisions. During this period, MAP-21 provides grant funding to States to address the findings from FTA's SSO pre-certification process.



Q6. My State's SSO program did not receive pre-certification from FTA on October 1, 2013. What is my State's standing with FTA?

A6. Your State remains in good standing with FTA. FTA used the SSO pre-certification submittal process to review each State's proposed SSO agency and its planned approach for meeting MAP-21's explicit mandates. While FTA found that most States are not currently implementing SSO programs that pass muster with the MAP-21 minimum provisions, FTA also determined that the proposals made by the States generally were sound. Therefore, FTA was able to authorize most of the States to submit an application for FTA's SSO grant program. This grant program will provide hundreds of thousands of dollars in Federal funds to support enhancements and activities proposed by the States to address 49 U.S.C. Section 5329(e) explicit mandates. While most States were able to receive this authorization, there were a few cases where FTA requested additional information or scoping sessions to clarify proposed elements and to further assess how well the State's proposed SSO agency addresses the MAP-21 statutes.

Q7. Why the rush? Why is this process being conducted in advance of final rulemaking for 49 U.S.C. Section 5329(e)?

A7. Through the SSO pre-certification submittal review process and the new SSO grant program, Congress directs FTA to support States in strengthening safety oversight for rail fixed guideway public transportation systems (RFGPTS) now. Congress included these requirements to ensure that States would have the time they needed to implement MAP-21 compliant programs.

In 49 U.S.C. Section 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.

Clearly, under this deadline, FTA and the States have every incentive to begin longer-term actions required to develop MAP-21 compliant programs now to avoid this ultimate penalty for the State and its public transportation agencies.

Q8. What criteria did FTA use to evaluate each State's SSO pre-certification submittal?

A8. As specified in FTA's May 13, 2013 *Federal Register* notice, in the contents of the SSO Pre-Certification Submittal Worksheet itself, and in Administrator Rogoff's letters of February 7, 2013 and August 22, 2013, FTA evaluated the State's SSO program pre-certification submittal packages against the statutory requirements of 49 U.S.C. Section 5329(e). The "Information to Be Provided" column of the SSO pre-certification submittal worksheet (see Pre-Certification Self-Assessment and Gap Analysis Worksheet, at <http://www.fta.dot.gov/tso.html>) identified the specific MAP-21 requirements that FTA assessed.

FTA focused the greatest attention on 49 U.S.C. Section 5329(e)(3)(A-F) and 49 U.S.C. Section 5329(e)(4)(A)(i-vii), which identify the legal, financial, organizational, investigative, audit and enforcement requirements and authorities that each SSO program must address to meet MAP-21 minimum requirements. FTA also assessed each State's readiness to participate in FTA's new SSO grant program, including the ability to secure the independent 20 percent funding match.

FTA's SSO pre-certification submittal worksheet asked questions and provided examples of issues to be assessed by the States in evaluating their legal and financial independence from the rail transit agencies in their jurisdictions; their enforcement authority over rail transit engineering, construction and revenue operations; their staffing level and qualifications; and their ability to audit, investigate, and compel action to address safety deficiencies and ensure safety of the rail transit agencies in their jurisdiction.

Q9. Where can I find FTA guidance regarding the SSO pre-certification process?

A9. Information regarding FTA's SSO pre-certification process is available as follows:

- FTA's Office of Transit Safety and Oversight website: <http://www.fta.dot.gov/tso.html>
- Secretary Lahood Letter to State Governors, August 28, 2012, http://www.fta.dot.gov/newsroom/12910_14805.html
- Administrator Rogoff Letter to State Transportation Officials, February 7, 2013, http://www.fta.dot.gov/newsroom/12910_15057.html
- May 13, 2013 *Federal Register* Notice regarding SSO Program Certification and Proposed Grant Program Funding Allocation, especially Section C, <http://www.gpo.gov/fdsys/pkg/FR-2013-05-13/pdf/2013-11258.pdf>

In addition, during the summer of 2013, FTA's Office of Transit Safety and Oversight (TSO) engaged in email correspondence with the SSO community regarding the SSO Pre-Certification Gap Analysis and Self-Assessment Worksheet, referenced in FTA's May 13, 2013 *Federal Register* notice and posted on TSO's website. On August 19, 2013, TSO sent an email alerting each State that FTA would be establishing a due date of September 6, 2013 for this worksheet. Administrator Rogoff formally transmitted this request to each State's top transportation official by August 22, 2013, along with a set of submittal instructions. On August 31, 2013, FTA emailed a sample completed submittal package and transmittal letter to the States for reference. Copies of these emails and materials are available from TSO on request.

RULEMAKING

Q10. How will FTA manage rulemaking for the MAP-21 SSO program regulation?

A10. FTA will follow the same process for rulemaking that other Federal agencies use to implement safety regulations, specified in the Federal Register Act and the Administrative

Procedure Act. The Federal Register and the Congressional Research Service have developed websites that explain this process in some detail:

- <http://www.archives.gov/federal-register/tutorial/online-html.html>
- https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf
- <http://www.fas.org/sgp/crs/misc/RL32240.pdf>

Since 49 U.S.C. Section 5329(e) relates to an existing SSO rule, 49 CFR Part 659, FTA has elected to develop a Notice of Proposed Rulemaking (NPRM) to implement the new SSO MAP-21 regulatory provisions. FTA is working to develop the NPRM now.

For the new MAP-21 SSO program, FTA's draft NPRM will go through several internal FTA, U.S. Department of Transportation and Office of Management and Budget (OMB) reviews, before being published in the *Federal Register* for public comment. These reviews look at the cost of implementing the proposed rule, the proposed rule's conformance to the authorities conferred by Congress, and the extent of the burdens associated with implementing the proposed rule.

Public comment will be sought on the NPRM through formal submissions in writing, following submittal instructions provided in the *Federal Register*. Listening sessions, webinars, or other events may also be conducted, with the results documented and submitted to the *Federal Register* docket for the new SSO rule. At the conclusion of the comment period, FTA will review and analyze the comments and develop responses, and revise proposed rule content as necessary.

FTA will then draft the Final Rule and additional internal and USDOT reviews will be conducted, as well as another OMB review. The Final Rule will be published in *Federal Register*. It will include text that summarizes and responds to comments on the NPRM, as well as the text of the Final Rule and its effective date. The Final Rule will also be submitted to Congress and the Government Accountability Office for final review.

Q11. How long will it take FTA to issue the final rule for the new MAP-21 SSO Program?

A11. Timeframes are difficult to estimate. Based on the results of the internal and external reviews described in response to the question above, FTA plans to publish the NPRM in the *Federal Register* for public notice and comment in early 2014. Depending on the nature and extent of the comments received on the NPRM, the Final Rule could require anywhere from 6 to 18 months to develop and issue after the close of NPRM comment period. FTA's best guess is that the final rule will be issued in 2015.

SSO PRE-CERTIFICATION SUBMITTAL REVIEW RESULTS

Q12. What were the results of FTA's SSO pre-certification submittal review process?

A12. FTA received submittals from 30 States with rail fixed guideway public transportation systems. FTA's evaluation resulted in the following initial determinations as of October 1, 2013:

- Two (2) States received "pre-certification" status and were authorized to submit applications to FTA's SSO Grant Program.
- 21 States were authorized to submit applications to FTA's SSO Grant Program and will be required to resubmit in order to receive "pre-certification" status when they have taken further action to address MAP-21 statutory requirements.
- Seven (7) States received requests for additional information and/or formal scoping sessions before FTA can authorize them to enter SSO grant program. They will also be required to resubmit in order to receive "pre-certification" status.

Since October 1, some states have provided the additional information requested and have been authorized to submit applications for FTA's SSO Grant Program.

Q13. Why did only two States receive "pre-certification" status in FTA's review process?

A13. Based on the responses provided by the States, FTA could only clearly determine that two States met the more rigorous MAP-21 requirements. Submittals from these two States demonstrated financial and legal independence from the RFGPTS in their jurisdictions; oversight authority for all aspects of RFGPTS safety, including engineering and construction; sufficient enforcement authority to compel immediate action from each RFGPTS in their jurisdiction to address a safety deficiency or deficiency in implementation of the agency's Safety Plan; strong investigative and audit authority clearly documented in legislation; and a demonstrated commitment to the SSO program with a qualified and adequately trained staff and clear staffing plan.

Q14. My State submitted our existing 49 CFR Part 659 program, which FTA recently audited and found in good standing. Why did my State not receive "pre-certification" status?

A14. As FTA noted in earlier correspondence and the May 13, 2013 *Federal Register* notice, an eligible State currently in compliance with FTA's regulations at 49 CFR Part 659 may use its existing SSO program as a basis for seeking MAP-21 pre-certification. However, as FTA also conveyed previously, it is the sole prerogative of FTA to determine whether that program will suffice for purposes of meeting the new and more rigorous requirements of 49 U.S.C. 5329(e).



In our review process, FTA found that most States who submitted their existing 49 CFR Part 659 programs could not be pre-certified because their 49 CFR Part 659 programs do not have sufficient enforcement and investigative authority, personnel resources, and financial and legal independence from the RFGPTS to meet MAP-21 statutory requirements.

In most cases, however, States submitting SSO programs in compliance with 49 CFR Part 659 programs were authorized to submit grant applications to FTA's new SSO grant program and to use Federal funds to carry out work plans and schedules to bring their existing programs into compliance with MAP-21 statutory requirements.

Q15. Why is FTA's State Safety Oversight (SSO) pre-certification correspondence addressed to my State's senior transportation executive (Secretary, Commissioner, Director, etc.) instead of my State's current SSO program manager?

A15. The certification relationship specified in 49 U.S.C. Section 5329(e) is between USDOT/FTA and the Governor of each State with a rail fixed guideway public transportation system. 49 U.S.C. Section 5329(e)(7)(D) requires the Governor of each eligible State to "take all possible actions" to ensure the certification of the State's program. In keeping with this responsibility, FTA's correspondence is directed to the Governor's representative on transportation issues, the highest-ranking transportation official in the State.

LEGAL AND FINANCIAL INDEPENDENCE

Q16. How did FTA assess my State for compliance with MAP-21 provisions related to legal independence?

A16. 49 U.S.C. Section 5329(e)(4)(A)(i) specifies that the SSO agency must be "legally independent" from the rail fixed guideway public transportation systems in its jurisdiction.

Legal independence ensures freedom from outside control or influence and also fosters autonomy in day-to-day decision-making. Legal independence is important because executives and program managers in SSO agencies cannot act independently for safety if there are conflicting accountabilities or responsibilities for the performance, budget or reputation of the rail transit agency.

In evaluating State submittals for legal independence, FTA looked at the following types of issues:

Legal Independence [5329(e)(4)(A)(i)]

- Are the SSO agency and RFGPTS separate legal agencies?
- Do the SSO agency and RFGPTS have separate reporting relationships?
- Do the SSO agency and RFGPTS have shared board members, shared activities or shared reporting streams?



- Does the SSO agency have a vested legal or organizational interest in the success of the RFGPTS or any of its activities, events or projects?

If FTA's SSO pre-certification submittal review process identified some type of legal connection between the SSO agency and the RFGPTS, such as a shared board member or activity, then FTA requested that the SSO agency examine the connection and propose appropriate barriers, recusals, changes in reporting relationships or other potential actions to ensure legal independence.

FTA encourages any State with a legal connection to the RFGPTS to use its SSO grant program funds to conduct an assessment to review the situation and to evaluate and develop alternatives for ensuring legal independence.

Q17. How did FTA assess my State for compliance with MAP-21 provisions related to financial independence?

A17. Financial independence is addressed in two explicit statutory mandates:

- 49 U.S.C. Section 5329(e)(3)(F) prohibits any public transportation agency from providing funds to the State safety oversight agency or an entity designated by the eligible State as the State safety oversight agency.
- 49 U.S.C. Section 5329(e)(4)(A)(i) requires that each SSO agency "is financially and legally independent from any public transportation entity that the State safety oversight agency oversees."

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

Financial independence means that SSO agency personnel and actions cannot be controlled or limited by the financial resources supplied by the rail transit agency or by pressures emanating from the SSO agency's vested interest in the success of the rail transit agency or its projects or activities. Financial independence also means that the SSO program budget and/or resources cannot be subverted or re-directed toward programs designed to fund, support or enhance public transportation in the State.

In evaluating State submittals for financial independence, FTA looked at the following to identify financial connections between the SSO agencies and the RFGPTS:

Financial Independence [5329(e)(4)(A)(i)] / [5329(e)(3)(F)]

- Does the State agency receive funding from the rail fixed guideway public transportation system or RFGPTS to conduct the SSO program?
- Does the SSO program office or the larger State agency fund the RFGPTS through grants, assistance, subsidies or other programs or activities?



- Does the SSO program office or the larger State agency fund public transportation more generally in the State?
- 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 rail transit agency or support public transportation in the State?

For most States, FTA identified at least one financial connection with the RFGPTS. In many cases, FTA found that the larger State agency, which houses the SSO program office, also funded the RFGPTS in the State's SSO program through grant or assistance programs.

The existence of these financial connections does not mean that the State cannot be financially independent from the RFGPTS, but the presence of these connections does require further review and evaluation. FTA encourages any State with a financial connection to the RFGPTS to use its SSO grant program funds to conduct an assessment to review the situation and to evaluate and develop alternatives for ensuring financial independence.

PROVISION OF TRANSPORTATION SERVICE

Q18. How does FTA evaluate the situation where a State DOT provides transportation service near, adjacent to, or overlapping with the RFGPTS?

A18. Section 5329(e)(4)(A)(ii) specifies that the SSO agency cannot directly provide public transportation services in an area with a rail transit agency subject to 49 U.S.C. 5329(e).

In cases where a State DOT provides public transportation service, FTA has requested an assessment regarding the exact details of the public transportation service and the nature of both the overlap/interface with the rail transit service and whether independent oversight is provided, such as the U.S. Coast Guard for ferry service.

FTA is inclined to view single point interfaces, such as a ferry terminal or commuter bus station operated by a State DOT that happens to be located in the rail transit agency's service area as not triggering this requirement.

If the State DOT-supplied service connects to the RFGPTS or actively competes with it for passengers and revenue within the service area, then FTA will be required to examine the situation in much greater detail.

ENFORCEMENT AUTHORITY

Q19. How did FTA evaluate my State's enforcement authority?

A19. FTA first looked closely at the explicit mandates in the MAP-21 statute. 49 U.S.C. Section 5329(e)(3) directs each State to: (1) assume responsibility for overseeing the safety of its RFGPTS; and (2) adopt and enforce Federal and relevant State laws on rail transit agencies in its jurisdiction. As required in 49 U.S.C. Section 5329(e)(2)(B), this includes rail transit agencies in engineering and construction. Further, as indicated in 49 U.S.C. Section 5329(e)(4)(A)(iv), the State must have the authority to enforce the implementation of the RFGPTS safety plan.

Combined, these explicit mandates require the State to have sufficient enforcement authority to compel the rail fixed guideway public transportation system to take action to address safety concerns and deficiencies in implementation of the agency safety plan.

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 how each State submittal addressed enforcement authority, FTA looked for:

- Evidence that the State 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 eligible State currently has authority to enforce safety requirements at the rail transit agency.
- Evidence that the State can oversee and enforce implementation of the rail transit agency Safety Plan.
- Evidence that the State has the authority or capabilities to adopt and enforce Federal and relevant State laws on rail transit safety, including laws promulgated by FTA to address MAP-21.
- Evidence that the State has the authority to compel the rail transit agency to address serious deficiencies and concerns identified through investigation and audits in a timely manner.

As has been demonstrated by NTSB investigations and findings from FTA SSO audits, enforcement authority limited to the existing 49 CFR Part 659 program is not sufficient to compel the rail transit agency to take action.

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.

FTA determined that most States require additional enforcement authority to meet 49 U.S.C. Section 5329(e) provisions. FTA encourages each State to use its SSO grant program funds 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 grant funding can be used to support this evaluation, and also to develop legislation or administrative code, 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.

INVESTIGATIONS AND AUDITS

Q20. How did FTA assess my State in meeting MAP-21 requirements related to investigations and audits?

A20. In MAP-21, Congress specifies explicit mandates for accident and hazard investigation, auditing and the enforcement of findings that affect the safety of the RFGPTS or its compliance with its safety plan.

49 U.S.C. Section 5329(e)(4)(A)(v) requires each SSO program to have “investigative and enforcement authority with respect to the safety of rail fixed guideway public transportation systems of the eligible State.”

49 U.S.C. Section 5329(e)(4)(A)(vi) requires the SSO agency to “audit, at least once triennially, the compliance of the rail fixed guideway public transportation systems in the eligible State subject to this subsection with the public transportation agency safety plan.”

It is up to the State to design the program that best meets these explicit MAP-21 mandates for the State.

FTA reviewed State proposals for evidence that the State has specific investigative and audit authorities, including items such as the right to enter rail transit property to conduct announced and unannounced inspections; the right to review records and interview employees; the right to review camera footage, audio recordings and data downloaded from electronic devices and recorders; the right to take measurements and independently inspect equipment and facilities; the right to observe employees in the performance of work; and the right to conduct independent assessments and evaluations, including laboratory tests and modeling.

In the SSO pre-certification submittal review summary checklists, FTA encourages SSO agencies to use their SSO grant program funds to enhance the scope of their current investigation activities to build skills and readiness for full MAP-21 implementation.

STAFFING AND QUALIFICATIONS

Q21. What specific MAP-21 staffing and training requirements must my State address?

A21. MAP-21 sets out to significantly strengthen the SSO program and enhance the level and qualification of the personnel resources overseeing and enforcing RFGPTS safety. In coordination with FTA, as mandated in 49 U.S.C. Section 5329(e)(3)(D), your State must develop and submit a formal plan for organizing and staffing its SSO program commensurate with safety requirements of MAP-21 and the number, size and complexity of the RFGPTS in your State's program. As identified in 49 U.S.C. Section 5329(e)(3)(E), this plan must also include requirements to ensure the qualification of the personnel designated to implement the SSO program on behalf of the eligible State, including completion of the public transportation safety certification training program specified by FTA.

Due to the variety of approaches used in the SSO program, FTA does not have a specific mandate for staffing minimums or requirements, but FTA in the May 13, 2013 *Federal Register*, FTA published Table 13: FY 2013 Section 5329(e) State Safety Oversight Program Illustrative Apportionments¹, which clearly indicates the approximate size of the minimum, annual SSO program budget that FTA would expect for your State.

This illustrative apportionment is based on the approximately \$22 million that Congress provided to FTA to disperse to the States specifically for oversight purposes for each year (FY 2013 and FY 2014). Congress decided on this amount, which equals one-half of one percent of the total Section 5307 urbanized area formula funding.

This funding is critical to support the enhancement of the existing SSO program and its transition to full compliance with the new statutory requirements under 5329. FTA anticipates that most of this funding will go to support staff and contractor costs.

FTA wants to partner with your State to establish a staffing level and qualification level that works for your program. We want to see your agency's vision for SSO staff and program capabilities.

In evaluating the State SSO pre-certification submittals, FTA noted that many States provided a single "SSO Program Manager" job description or contractor Statement of Work with their submittals, and did not discuss the overall composition of their programs or their perceived staffing needs for the program.

¹ Reference: <http://www.fta.dot.gov/grants/12853.html>



FTA anticipates that States will look to staff their programs with personnel skilled in accident and hazard investigation, safety data analysis, rail transit auditing and inspection disciplines, program administration, and perhaps engineering or capital projects management. Larger SSO agencies may hire full-time positions; smaller agencies may solicit part-time support.

Whatever the size of its SSO program, every State may also use their funding for contractors or to cover the costs of other State resources, such as State Participation Program Inspectors qualified through the Federal Railroad Administration or Occupational Safety and Health Administration (OSHA) inspectors qualified through the State's OSHA program to support specific activities or reviews.

SSO GRANT PROGRAM READINESS

Q22. Is the funding allocation referenced in Table 13 in the May 13, 2013 Federal Register notice still accurate for my State²?

A22. FTA received several comments on the May 13, 2013 *Federal Register* notice, and is currently reviewing the State funding formula and final allocations. FTA anticipates releasing the final State funding allocation by the end of the year.

Until that time, FTA recommends that States continue referencing the May 13, 2013 *Federal Register* notice allocation amounts for evaluation purposes and to determine their likely SSO matching funds.

Q23. How do I calculate the 20 percent match based on the illustrative apportionment in Table 13 as published the May 13, 2013 Federal Register notice?

A23. FTA grant funding must be matched in an 80-20 format as your State draws down funds. For example, if FTA provides \$100,000 as the first installment on your grant, then your State must demonstrate that it can provide a matching 20 percent (\$20,000) in appropriate State funding.

FOLLOW-UP

Q24. The FTA pre-certification status submittal sent to my State on October 1, 2013 also stated that we would need to coordinate with FTA to conduct a teleconference call to review the submittal. Who needs to participate in the call from my State, and who will participate from FTA?

A24. FTA anticipates conference call participants from the State will include the proposed SSO program manager, division director/manager and State executives, if warranted.

² Reference: <http://www.fta.dot.gov/grants/12853.html>

FTA conference call participants will include FTA staff from the Office of Safety and Oversight, Office of Chief Counsel, and Region Office and FTA's contract support.

Q25. What are the next steps and schedule for MAP-21 pre-certification for my State?

A25. FTA will coordinate with your State to schedule a teleconference call as discussed above, to discuss work plans and activities for resolving MAP-21 conflicts.

FTA will issue a *Federal Register* notice with final funding formula for the SSO grant program

Your State will enter FTA's SSO grant program, and FTA will formally approve and track your work plan and progress in addressing MAP-21 criteria.

Once your State is ready, FTA will request resubmittal, and provide your State with pre-certification.

FTA will also publish a Notice of Proposed Rulemaking (NPRM) for the SSO program under MAP-21.

Q26. Where can I direct any questions my State may have regarding MAP-21 and the State Certification Process.

A26: Ms. Maria Wright will be the primary contact for questions regarding the State certification process. Her contact information is:

Maria Wright
Acting SSO Program Manager, Office of Safety and Oversight
Federal Transit Administration
1200 New Jersey Avenue, SE
TSO-20 | E45-107
Washington, DC 20590
Office (202) 366-5922
Maria1.Wright@dot.gov

The Associate Administrator for the Office of Transit Safety and Oversight at the Federal Transit Administration is Mr. Thomas Littleton. His contact information is:

Thomas Littleton
Associate Administrator for Safety and Oversight
Federal Transit Administration
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