

# **Title 11 DEPARTMENT OF TRANSPORTATION**

## **Subtitle 24 STATE RAIL SAFETY OVERSIGHT**

### **Chapter 01 Federal Transit Administration Regulations**

Authority: Transportation Article § 2-102(c)(5), 7-203.1; Annotated Code of Maryland; 49 U.S.C. § 5329 and 49 C.F.R. Part 674

#### **.01 Authority Under 49 U.S.C. § 5329 and 49 C.F.R. Part 674**

A. State of Maryland has designated the Maryland Department of Transportation (MDOT) as the Rail Safety Oversight Agency, the agency responsible for rail transit safety oversight in the state. These regulations establish the system safety requirements for the Maryland Transit Administration (MTA) to comply with the provisions of the Rail Safety Oversight Program.

### **Chapter 02 State Safety Oversight Authority**

#### **.01 Established**

A. Pursuant to Transportation Article 7-203.1 there is hereby created the State Safety Oversight Agency (SSOA) for the Maryland Transit Administration, hereafter referred to as the Rail Transit Agency (RTA) and any other fixed guideway rail public transportation system solely within the State of Maryland.

#### **.02 Purposes**

A. In carrying out its purposes, the SSOA, through its designated employees, shall, as required by 49 U.S.C. 5329, as amended, and any federal regulations promulgated thereunder:

- (1) Adopt, revise and distribute a written Rail Safety Oversight Program (RSOP);
- (2) Review, approve, oversee, and enforce the adoption and implementation of the RTA Public Transportation Agency Safety Plan;
- (3) Require, review, approve, and enforce the adoption and implementation of any Corrective Action Plans (CAPs) the SSOA deems appropriate;
- (4) Enforce relevant federal and State laws and regulations relating to safety of the RTA rail systems; and

#### **.03 Powers**

A. In performing its duties, the SSOA, through its designated employees, may:

- (1) Conduct, or cause to be conducted, inspections, investigations, examinations, and testing of the property, equipment, facilities, rolling stock, and operations of the RTA rail systems, including, without limitation, electronic information and databases;
- (2) Enter upon the RTA rail systems and, upon reasonable notice and a finding by the SSOA employee(s) that a need exists, upon any lands, waters, and premises adjacent to the RTA rail systems for making inspections, investigations, examinations and testing as the SSOA may deem necessary to carry out the purposes of this regulation, and such entry shall not be deemed a trespass. The SSOA shall make reasonable reimbursement for any actual damage resulting to any such adjacent lands, waters, and premises because of such activities;
- (3) Compel compliance by an RTA with any Corrective Action Plan or order of the SSOA by such means as the SSOA deems appropriate, including, but not limited to:
  - (a) Issuing subpoenas;
  - (b) Directing the RTA to prioritize spending on safety-critical items to the extent consistent with the law;
  - (c) Removing a specific vehicle, infrastructure element, or hazard from the RTA rail systems; and
  - (d) Restricting, suspending or prohibiting rail service, with appropriate notice, on all or part of the RTA rail systems;
- (4) Direct an RTA to suspend or disqualify from performing in a safety sensitive position an individual who has violated safety rules, regulations, policies, procedures, or laws in a manner that the SSOA determines make that individual unfit for the performance in such a position; and
- (5) Take such other actions as the SSOA may deem appropriate consistent with its purposes and powers.

B. The SSOA shall coordinate its enforcement activities with appropriate federal and State governmental authorities as appropriate.

#### **.04 Duties**

A. Role of the State safety oversight agency

(1) The SSOA shall establish minimum standards for the safety of all rail fixed guideway public transportation systems within its oversight. The safety plan shall be consistent with the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, the rules for Public Transportation Agency Safety Plans and all applicable federal and State laws.

(2) The SSOA shall review and approve the Public Transportation Agency Safety Plan for every rail fixed guideway public transportation system within its oversight. The SSOA shall oversee an RTA's execution of its Public Transportation Agency Safety Plan. The SSOA shall enforce the execution of a Public Transportation Agency Safety

Plan, through an order of a corrective action plan or any other means, as necessary or appropriate. The SSOA shall ensure that a Public Transportation Agency Safety Plan meets the requirements at 49 U.S.C. 5329(d).

(3) If the SSOA does not approve a Public Transportation Safety Plan, the SSOA shall provide a written explanation and allow an RTA an opportunity to modify and resubmit its Public Transportation Agency Safety Plan for the SSOA's approval.

(4) The SSOA shall have primary responsibility for the investigation of any allegation of noncompliance with a Public Transportation Agency Safety Plan.

(5) The SSOA shall have primary responsibility for the investigation of an accident on a rail fixed guideway public transportation system.

(6) The SSOA may enter into an agreement with a contractor for assistance in overseeing accident investigations; performing independent accident investigations; and reviewing incidents and occurrences; and for expertise the SSOA does not have within its own organization.

(7) All personnel and contractors employed by the SSOA shall comply with the requirements of the Public Transportation Safety Certification Training Program as applicable.

#### B. State safety oversight program standards

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

#### C. Triennial audits

(1) At least once every three years, the SSOA shall conduct a complete audit of an RTA's compliance with its Public Transportation Agency Safety Plan. Alternatively, an SSOA may conduct the audit on an on-going basis over the three-year timeframe. After the three-year audit cycle, the SSOA shall issue a report with findings and recommendations arising from the audit, which shall include, at minimum, an analysis of the effectiveness of the Public Transportation Agency Safety Plan, recommendations for improvements, and a corrective action plan, if necessary or appropriate. The RTA shall be given an opportunity to comment on the findings and recommendations.

#### D. Notifications of accidents

(1) Two-hour notification. In addition to the requirements for accident notification set forth in an SSO program standard, an RTA must notify both the SSOA and the Federal Transit Agency (FTA) within two hours of any accident occurring on a rail fixed guideway public transportation system, as defined by the FTA.

(2) Federal Rail Administration (FRA) notification. In any instance in which an RTA must notify the FRA of an accident as defined by 49 C.F.R. § 225.5, the RTA must also notify the SSOA and the FTA of the accident within the same time frame as required by FRA.

#### E. Investigations

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

(2) Within a reasonable time, the SSOA shall issue a written report on its investigation of an accident or review of an RTA's accident investigation in accordance with the reporting requirements established by the SSOA. The report shall describe the investigation activities; identify the factors that caused or contributed to the accident; and set forth a corrective action plan, as necessary or appropriate. The SSOA shall formally adopt the report of an accident and transmit that report to the RTA for review and concurrence. If the RTA does not concur with an SSOA's report, the SSOA may allow the RTA to submit a written dissent from the report, which may be included in the report, at the discretion of the SSOA.

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

(4) The FTA Administrator may conduct an independent investigation of any accident or an independent review of an SSOA's or an RTA's findings of causation of an accident.

#### F. Corrective Action Plans

(1) In any instance in which an RTA must develop and carry out a Corrective Action Plan (CAP), the SSOA shall review and approve the CAP before the RTA carries out the plan; however, an exception may be made for immediate or emergency corrective actions that must be taken to ensure immediate safety, provided that the SSOA has been given timely notification, and the SSOA provides subsequent review and approval. A CAP shall describe, specifically, the actions the RTA will take to minimize, control, correct, or eliminate the risks and hazards identified by the CAP, the schedule for taking those actions, and the individuals responsible for taking those actions. The RTA shall periodically report to the SSOA on its progress in carrying out the CAP. The SSOA may monitor the RTA's progress in carrying out the CAP through unannounced, on-site inspections, or any other means the SSOA deems necessary or appropriate.

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

G. State Safety Oversight Agency annual reporting to FTA

(1) On or before March 15 of each year, the SSOA shall submit the following material to FTA:

(a) The SSO program standard adopted in accordance with 49 C.F.R. § 674.27, with an indication of any changes to the SSO program standard during the preceding twelve months;

(b) Evidence that each of its employees and contractors has completed the requirements of the Public Transportation Safety Certification Training Program, or, if in progress, the anticipated completion date of the training;

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

(d) A summary of the triennial audits completed during the preceding twelve months, and the RTAs' progress in carrying out CAPs arising from triennial audits conducted in accordance with 49 C.F.R. § 674.31;

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

(f) A certification that the SSOA follows the requirements of this part.

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

## **Chapter 03 Inspections and Audits**

### **.01 Compliance Inspections and Triennial Safety Audits**

A. The State Safety Oversight Agency (SSOA) shall conduct compliance inspections and triennial safety audits in accordance with the MDOT Rail Safety Oversight Program Standard and the RTA System Safety Program Plan /Agency Safety Plan and in accordance to the requirements of 49 U.S.C. § 5329(e).

## **Chapter 04 Rules Compliance Violations**

### **.01 State Safety Oversight Agency Investigative Authority**

A. To carry out this title the MDOT Deputy Secretary of Operations or designee, may administer an oath, certify an official act, take or cause to be taken a deposition of a witness, or issue a subpoena for the attendance of a witness to testify and/or produce papers, books, documents, records, and testimony.

B. If a person fails to comply with a lawfully issued subpoena, on application of the MDOT Deputy Secretary of Operations or designee in a contempt proceeding, a court of competent jurisdiction may compel the person to comply.

### **.02 Event/Threshold**

A. The SSOA will investigate and take actions in accordance with Chapter 02, section .03 of this subtitle, to compel compliance by the RTA with any Corrective Action Plan or order stemming from the investigation of accidents, incidents, and occurrences as listed in Appendix A to 49 C.F.R. 674 – Notification and Reporting of Accidents, Incidents, and Occurrences.

B. Nothing in this section shall be deemed to alter a rail transit vehicle or high-rail vehicle operator's or any safety-sensitive employee's duty to comply with any other provisions of the RTA concerning rail safety.

### **.03 Suspension of Safety-Sensitive Certification**

A. An employee may have his or her safety-sensitive certification suspended by the SSOA in accordance with to the following standards:

(1) In the case of a single incident (as defined in 49 C.F.R. § 674.7) that is deemed to be a safety violation, the employee may have his or her safety-sensitive certification suspended for up to one month.

(2) In the case of two separate incidents that occurred within 24 months of each other, the employee may have his or her safety-sensitive certification suspended for up to six months.

(3) In the case of three separate incidents that occurred within 36 months of each other, the employee may have his or her safety-sensitive certification suspended for up to one year.

(4) In the case of four separate incidents that occurred within 36 months of each other, the employee may have his or her safety-sensitive certification suspended indefinitely.

(5) If a safety violation is egregious or results in bodily injury or death, the suspension period may be raised to a higher level.

(6) If an employee is not on full duty at the time a suspension is to be issued, the suspension period will commence the first day the employee would otherwise return to full duty.

B. The actions described in this section do not replace or otherwise affect any disciplinary action that may be taken against an employee by the RTA about a safety violation.

### **.04 Reinstatement of Safety-Sensitive Eligibility**

A. An employee whose safety-sensitive certification has been suspended may be eligible for reinstatement prior to the expiration of the initial period of suspension if:

- (1) The suspension imposed is for a period of one year or less;
  - (2) The suspension was for reasons other than noncompliance with the drug and alcohol policy;
  - (3) The employee has been evaluated by a qualified supervisor of the specific safety-sensitive position and determined to have received adequate remedial training;
  - (4) The employee has successfully completed any mandatory training program or retraining, deemed necessary by the RTA prior to return to service; and
  - (5) At least one half of the imposed period of suspension has elapsed.
- B. An employee requesting reinstatement, must do so formally in writing to the MDOT Deputy Secretary of Operations, or designee.
- C. The Deputy Secretary of Operations or designee will conduct an evaluation and advise the employee of the determination within 30 calendar days.

**.05 Administrative Hearing**

- A. An employee wishing to file an appeal must notify the SSOA within 15 calendar days of receiving the notice of the suspension, to request an administrative hearing.
- B. When a suspension is contested, the SSOA will forward the matter to Maryland Office of Administrative Hearings (OAH) to set in for a hearing.
- C. The hearing will be conducted in accordance with Title 28 of the Code of Maryland Regulations (COMAR 28.02.01).
- D. The administrative law judge's decision is the final order of the MDOT Deputy Secretary of Policy, Planning, and Enterprise Services.