

Title 11

DEPARTMENT OF TRANSPORTATION

Subtitle 08 STATE RAIL SAFETY OVERSIGHT

11.08.01 Federal Transit Administration Regulations

11.08.02 State Safety Oversight Authority

11.08.03 Inspections and Audits

11.08.04 Rules Compliance Violations

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

Notice of Proposed Action

[25-181-P]

The Secretary of the Maryland Department of Transportation proposes to:
amend Regulations .01 - .04 under COMAR 11.08.01 State Rail Safety Oversight.

Statement of Purpose

The purpose of this action is to update state rail safety oversight to reflect federal regulatory updates, and to clarify and improve existing provisions and practices.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Max Smith, TSSP, PTSCTP Office of Audits & Rail Safety, The Secretary's Office, 7201 Corporate Center Dr., Hanover, MD 21076, or call 410-865-1398, or email to MSmith50@mdot.maryland.gov. Comments will be accepted through December 1, 2025. A public hearing has not been scheduled.

(download October 23, 2024)

Title 11 DEPARTMENT OF TRANSPORTATION

Subtitle 08 STATE RAIL *TRANSIT* SAFETY OVERSIGHT

01 Federal Transit Administration Regulations

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

.01 Authority Under 49 U.S.C. §5329 and 49 CFR Part 674.

The State of Maryland has designated the Maryland Department of Transportation (MDOT) as the [Rail] State Safety Oversight Agency, the agency responsible for rail transit safety oversight in the state. These regulations establish the system safety requirements for each [the Maryland Transit Administration (MTA)] rail fixed guideway public transportation system solely within the State of Maryland, including those systems and parts of systems in engineering and construction, to comply with the provisions of the Rail Safety Oversight Program.

11.08.02 State Safety Oversight Authority

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

.01 Established.

Pursuant to Transportation Article, §7-203.1, Annotated Code of Maryland, 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] each fixed guideway rail public transportation system solely within the State of Maryland *hereafter referred to as a Rail Transit Agency (RTA)*

.02 Purposes.

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

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

.03 Definitions

- A. *"Personnel" includes state employees, contractors, and any other individual functioning in that role.*
- B. *"Safety event" means an unexpected outcome resulting in injury or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.*

[.03] .04 Powers.

A. In performing its duties, the SSOA, through its designated [employees] *personnel*, may for each rail fixed guideway public transportation system, including those with elements in engineering and construction:

- (1) Conduct, or cause to be conducted, inspections, investigations, examinations, and testing of the property, equipment, facilities, rolling stock, *personnel*, 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)] *personnel* 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, directive, 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 or *directed others to violate* safety rules, regulations, policies, procedures, or laws in a manner that the SSOA determines make that individual unfit for the performance [in] *of* such a [position] *function*; 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. These [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) and 49 CFR Part 673.
- (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 has the responsibility to provide safety oversight of an RTA's project(s) in the engineering or construction phase to verify compliance with all applicable Federal and State safety requirements, safety procedures, and other safety management system practices such as safety event investigation. This includes operations, testing, simulated service or pre-revenue service, and transit-related maintenance activity. The SSOA may set additional reporting and investigation requirements for the RTA beyond those required by FTA.*

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

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

[(6)] (7) The SSOA may enter into an agreement with a contractor for assistance, *including* [in] overseeing [accident] *safety event* investigations; performing independent [accident] *safety event* investigations; and [reviewing incidents and occurrences; and] for expertise *or resources* the SSOA does not have within its own organization.

[(7)] (8) All *designated SSOA* 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. 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. *The program standard may set other requirements to further the safety and security of Maryland rail transit agencies. Each RTA and its personnel must comply with the program standard.*

C. Triennial Audits. At least once every 3 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 3-year time frame. [After the 3-year audit cycle, t] 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, *findings, observations, or recommendations for improvements, and a requirement for a corrective action plan or plans, if necessary or appropriate.* The RTA shall be given an opportunity to comment on the findings, *observations, and* recommendations.

D. Notifications of [Accidents] *Safety Events*.

(1) [Two-Hour] *Federal Transit Administration (FTA)* Notification. In addition to the other requirements for [accident] *safety event* notification set forth in [an] *the SSO program standard, in any instance in which an RTA must notify the FTA of a safety event, the* [an] RTA must notify both the SSOA and the [Federal Transit Agency (FTA)] *FTA* within [2 hours of any accident occurring on a rail fixed guideway public transportation system, as defined by the FTA.] *the time frame required by 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 CFR §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] *safety event that requires the transit agency to notify FTA under 49 CFR §674.33, may investigate or require investigations of other safety events,* 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] *a safety event*, the SSOA must conduct an independent review of the RTAs findings of causation. In any instance in which an RTA is conducting its own internal *safety event* 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] *a safety event* or review of an RTA's [accident] *safety event* 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] *safety event*; and set forth a corrective action plan or *plans*, as necessary or appropriate. *If the SSOA conducts its own investigation, it shall* [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 SSOAs 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. *The SSOA shall formally adopt each investigation report.*

(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 *correct the deficiency and to mitigate the identified risks and hazards to an acceptable level as required by the SSOA Program Standard and the RTA's Agency Safety Plan*[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 RTAs 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 CFR §674.27, with an indication of any changes to the SSO program standard during the preceding 12 months;

(b) Evidence that each of its [employees and contractors] *designated personnel* 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 12 months, describes the causal factors of [accidents] *safety events* identified through investigation, and identifies the status of corrective actions, changes to Public Transportation Agency Safety Plans, and the level of effort by the SSOA in carrying out its oversight activities;

(d) *Final investigation reports for all safety events meeting one or more of the criteria specified at 49 CFR §674.33;*

[(d)] (e) A summary of the triennial audits completed during the preceding 12 months, and the RTAs' progress in carrying out CAPs arising from triennial audits conducted in accordance with 49 CFR §674.31;

[(e)] (f) Evidence that the SSOA has reviewed and approved any changes to the Public Transportation Agency Safety Plans during the preceding 12 months; and

[(f)] (g) A certification that the SSOA [follows] *is in compliance with* the requirements of [this part] 49 CFR §674.

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

11.08.03 Inspections and Audits

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

.01 Compliance Inspections and Triennial Safety Audits.

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] with the requirements of 49 U.S.C. §5329(e). *The SSOA is authorized to conduct unannounced inspections and reviews, including as listed in 11.08.02.03.*

11.08.04 [Rules Compliance] Safety Violations

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

.01 State Safety Oversight Agency Investigative Authority.

A. To carry out this title [the MDOT Deputy Secretary of Operations or designee], *the state safety oversight agency (SSOA)* 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] SSOA 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 COMAR 11.[24]08.02.03 to compel compliance by the RTA with any Corrective Action Plan or order, *including those corrective action plans or orders* stemming from the investigation of [accidents, incidents, and occurrences as listed in Appendix A to 49 CFR 674 Notification and Reporting of Accidents, Incidents, and Occurrences] *safety events*.

B. Nothing in this regulation shall be deemed to alter *the obligation of any individual* [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] *Authority to Suspend Individuals From Performing Safety-Sensitive Functions.*

[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 CFR §674.7) that is deemed to be a safety violation, the employee may have his or her safety-sensitive certification suspended for up to 1 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 6 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 1 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.]

A. The SSOA may suspend any individual (including RTA employees or contractors) from performing all safety-sensitive functions or specific safety-sensitive functions at a rail transit agency overseen by the SSOA in the event the SSOA determines that the individual is unfit to safely perform such functions.

(1) Safety-sensitive functions include those functions directly or indirectly affecting the safety of passengers, employees, or other people and property in and around the rail transit system. This may include frontline personnel, supervision, or management. Safety-sensitive functions include work such as operations, central control, maintenance, systems, signals, safety, and emergency response.

(2) The SSOA may determine the length of suspension from performing safety-sensitive functions that is warranted based on the totality of the circumstances, including the specific nature of the event(s), history, and action already taken by the transit agency, its contractors, or the individual. The SSOA may set requirements that must be met prior to returning to a safety-sensitive position.

(3) The SSOA will communicate such a suspension to the RTA and direct the RTA not to utilize the individual in safety-sensitive functions for the specified period. The RTA must communicate this suspension to the individual and to the individual's supervisor(s). The RTA must confirm that the individual and their supervisor(s) received this notification, provide records of this notification, and must ensure that the suspension from performing safety-sensitive functions is implemented.

(4) The SSOA's action to suspend an individual from performing a safety sensitive function is not a form of discipline, does not affect employment status, and does not replace or otherwise affect the transit agency's (or its contractor's) disciplinary processes.

(5) If an individual is not on full duty at the time a suspension is issued, the suspension from performing a safety-sensitive function will commence the first day the employee would otherwise return to full duty. The individual is not permitted to perform any safety sensitive function until the suspension is complete.

(6) Any suspension from safety-sensitive duties by the Maryland SSOA applies at any other Maryland rail transit system overseen by the SSOA.

.04 Reinstatement of Safety-Sensitive Eligibility.

A. An [employee whose safety-sensitive certification has been suspended] *individual who has been suspended from performing safety-sensitive functions* 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 1 year or less;]

[(2)] (1) The suspension was for reasons other than noncompliance with the drug and alcohol policy;

[(3)] (2) The [employee] *individual* has been evaluated by a qualified supervisor of the specific safety-sensitive position and determined by the qualified supervisor and RTA management to

a) have received and *successfully completed* adequate remedial training on any specific areas identified by the RTA in relation to the suspension; and

b) have demonstrated the necessary commitment to safety processes and procedures;

[(4) The employee has successfully completed any mandatory training program or retraining, deemed necessary by the RTA prior to return to service;]and

[(5)] (3) At least one half of the imposed period of suspension has elapsed.

B. An [employee] RTA requesting reinstatement of an individual to perform safety-sensitive functions[,] must do so formally in writing to the MDOT [Deputy Secretary of Operations] Assistant Secretary for Administration, or designee. This request must include, at minimum, confirmation by a qualified supervisor and RTA management that the individual has met the above requirements, supporting documentation, and a written explanation supporting the request for reinstatement. This may include a written statement by the suspended individual.

C. The [Deputy Secretary of Operations] Secretary of Transportation or Secretary's designee will conduct an evaluation and advise the [employee] RTA of the determination within 30 calendar days.

.05 Administrative Hearing.

A. A[n] *state* employee wishing to file an appeal must notify the SSOA within 15 calendar days of receiving the notice of their suspension from performing safety-sensitive functions, to request an administrative hearing. Such a request does not create a stay of the suspension from performing safety-sensitive functions.

B. When a suspension from performing safety-sensitive functions is contested by a state employee, 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 Secretary of Transportation or Secretary's designee. [of the MDOT Deputy Secretary of Policy, Planning, and Enterprise Services].

Samantha J. Biddle

Acting Secretary

Maryland Department of Transportation