



TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

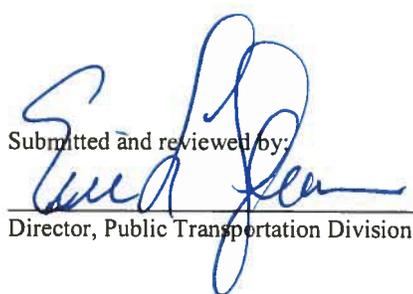
The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §§7.80 - 7.88 and propose new §§7.80 - 7.95, relating to Rail Fixed Guideway System State Safety Oversight Program to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A, B, and C, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the repeal of §§7.80 - 7.88 and new §§7.80 - 7.95 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

  
\_\_\_\_\_  
Director, Public Transportation Division

Recommended by:

  
\_\_\_\_\_  
Executive Director

115126 JAN 25 '18  
Minute Number      Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes the  
3 repeal of Subchapter E, §§7.80 - 7.88, and the simultaneous  
4 adoption of new Subchapter E, §§7.80 - 7.95 concerning the  
5 department's safety oversight of rail fixed guideway systems.

6  
7 EXPLANATION OF PROPOSED REPEALS AND NEW SECTIONS

8 Senate Bill 1523, 85<sup>th</sup> Legislature, Regular Session, 2017, (SB  
9 1523) requires the department to create a state safety oversight  
10 program for rail fixed guideway public transportation systems.  
11 The legislation also aligns Texas law with federal state safety  
12 oversight requirements of 49 U.S.C. Section 5329(e), as amended  
13 by the Moving Ahead for Progress in the 21st Century Act (MAP-  
14 21), 49 C.F.R. Part 674.

15  
16 New Subchapter E implements SB 1523 and 49 C.F.R. Part 674, and  
17 makes general changes and updates to the existing State Safety  
18 Oversight Program. The department has been responsible for the  
19 State Safety Oversight program since 1996. SB 1523 expands the  
20 department's authority by providing more enforcement  
21 responsibilities to comply with the changes in the federal  
22 regulations. The federal requirements must be implemented by  
23 March 2019 and these rules are necessary to meet that  
24 obligation. Failure to comply with 49 C.F.R. §674 could result  
25 in the loss of federal transit funding, including funds

1 disbursed directly to the local transit agencies.

2

3 New §7.80, Purpose, states that the purpose of these rules is  
4 establishing the standards for the state oversight of the safety  
5 practices of rail fixed guideway systems as required by 49  
6 C.F.R. §5330. This is a reinstatement of the current §7.80 with  
7 minor non-substantive changes.

8

9 New §7.81, Definitions, is a restatement of many of the  
10 definitions used in the existing §7.81 without substantive  
11 changes. However, definitions of "hazard," "incident,"  
12 "investigation," "pre-revenue operations," "rail fixed guideway  
13 public transportation system," "rail transit agency," and  
14 "revenue service" have been added or modified to be consistent  
15 with the definitions in 49 C.F.R. §674 and federal guidance on  
16 State Safety Oversight.

17

18 New §7.82, System Safety Program Plan, is the language of  
19 existing §7.82, Program Standard, with only non-substantive  
20 changes. The language continues to track the federal  
21 requirements for a system safety program plan.

22

23 New §7.83, Hazard Management Process, is the language of  
24 existing §7.83 System Safety Program Plan regarding the hazard  
25 management process with the addition of a new hazard reporting

1 requirement as required by the new federal regulations.

2

3 New §7.84, New State Rail Transit Agency Responsibilities,  
4 provides that a new rail transit system may not begin pre-  
5 revenue operations until the state approves the agency's system  
6 safety program plan (SSPP) in accordance with the federal  
7 requirements. This section also provides specific time lines for  
8 the submission and approval of the SSPP.

9

10 New §7.85, Modifications to a System Safety Program Plan,  
11 provides guidance for modifying an existing transit agency SSPP.  
12 The section requires a new plan to be approved prior to  
13 implementation unless the transit agency believes the  
14 modification is necessary to address an imminent safety hazard.  
15 These provisions are needed for compliance with the federal  
16 requirements.

17

18 New §7.86, Rail Transit Agency's Annual Review, primarily  
19 reinstates the requirements of existing §7.85. The section  
20 provides that the state may participate in or observe the  
21 agency's internal review. It also establishes December 1<sup>st</sup> as the  
22 date for an annual internal safety review submission to the  
23 state, a change from the current February 1 deadline. This is  
24 necessary due to the federal requirement for the state to submit  
25 an accurate report to the Federal Transit Administration (FTA)

1 by March 15 each year. The department has found that the current  
2 timeline does not provide sufficient time for the department to  
3 prepare the required federal report.

4

5 New §7.87, Department System Safety Program Plan Audit, provides  
6 guidance on the department's audit procedures. The new section  
7 includes details on the required elements of the SSPP audit, the  
8 department's checklist procedures and time lines to coordinate  
9 with the agency and conduct the audit, details on the draft and  
10 final report process, and necessary corrective actions. The new  
11 guidance provides the transit agencies with the information  
12 needed to prepare for the department's audit and provide for a  
13 smoother process.

14

15 New §7.88, Accident Notification, revises the elements of the  
16 accident notification requirements based on new federal  
17 requirements and a pending update to the department's web-based  
18 notification and tracking system. The new section provides for  
19 the various reporting deadlines as required under 49 C.F.R.  
20 §674. The federal regulations require a 2-hour or 30-day  
21 notification for most accidents, depending on the level of  
22 severity or the type of incident. The new section details which  
23 accidents must be reported within 2 hours and those that must be  
24 reported within 30 days and mirrors the federal requirements.  
25 The section requires a transit agency to track other accidents

1 and events that do not require reporting and to make that  
2 information available on request. The section also requires the  
3 agencies to notify the department in a format specified by the  
4 department to accommodate the transition from a manual, paper-  
5 based notification system to an online, web-based electronic  
6 system that is currently in the procurement process. This will  
7 allow the department the ability to change to the more efficient  
8 system without requiring a change to the rules.

9

10 New §7.89, Accident Investigations, describes the department's  
11 requirements for accident investigations in accordance with FTA  
12 and National Transportation Safety Board regulations. It also  
13 provides department discretion in authorizing an agency to  
14 conduct its own investigation provided that personnel meet  
15 federal qualifications. This section specifies the time line for  
16 submitting investigation reports and provides that the  
17 department may conduct an accident investigation in specified  
18 circumstances.

19

20 New §7.90, Corrective Action Plan, includes language that is in  
21 existing §7.86, Accident Notification and Corrective Action  
22 Plans. Language is added to commit the department to reviewing a  
23 Corrective Action Plan (CAP) submitted by an agency within 30  
24 days of receipt and requires an agency to submit CAPs every 30  
25 days until compliance is achieved. New language also provides

1 that failure to complete a CAP is a violation of this chapter.  
2 The new language is needed to strengthen the department's  
3 enforcement responsibilities as required under the new federal  
4 regulations.

5  
6 New §7.91, Administrative Actions by the Department, ensures  
7 that the department has investigative and enforcement authority.  
8 The new federal regulations require the department enforce the  
9 federal requirements. The administrative process outlined in  
10 this section lays out the process the department has selected to  
11 enforce compliance with the program requirements. The section  
12 provides that the department will notify the transit agency of  
13 any violations and the needed compliance action and that the  
14 transit agency has 45 days to comply with the notification or to  
15 request administrative review.

16  
17 New §7.92, Administrative Review, provides the process for an  
18 agency to challenge the department's decision on a CAP under  
19 §7.90 or an administrative actions under §7.91. The section  
20 provides for a review by the department's executive director or  
21 designee if the request is submitted in writing within 45 days  
22 of receipt of the violation notification. The department will  
23 make the final determination within 60 days of the review  
24 request and that failing to comply with the final determination  
25 could result in the rescission of the SSPP. The department's

1 determination is final and enforceable by rescinding the  
2 agency's approved SSPP which may lead to petitioning a court to  
3 halt the operation of the agency's rail service. This new  
4 language is needed to establish an enforcement process as  
5 required by the federal regulations.

6

7 New §7.93, Escalation of Enforcement Action, describes the  
8 process that the department will use if an agency fails to  
9 comply with an administrative action notification. The section  
10 allows the department to escalate the issue to the transit  
11 agency's governing body to resolve safety issues before  
12 petitioning a court to halt the operation of an agency's rail  
13 service. This language is necessary to address problems with a  
14 transit agency that is not responding to the department's  
15 enforcement actions.

16

17 New §7.94, Emergency Order to Address Imminent Public Safety  
18 Concerns, describes the conditions under which the department  
19 may address imminent safety concerns that a rail transit agency  
20 is unable to eliminate. The department's executive director will  
21 rescind approval of the agency's SSPP and order the agency to  
22 cease all operations until the immediate threat is eliminated.  
23 If the agency fails to halt operations, the department may seek  
24 a temporary injunction. This new language is needed to make it  
25 clear that the department can take immediate action if continued

1 operations create an imminent safety threat to the public.

2

3 New §7.95, Admissibility; Use of Information, is a restatement  
4 of existing §7.88 with no substantive changes.

5

6 FISCAL NOTE

7 Brian Ragland, Chief Financial Officer, has determined that for  
8 each of the first five years in which the proposed rules are in  
9 effect, there will be no fiscal implications for state or local  
10 governments as a result of enforcing or administering the rules.  
11 Although some new reporting periods have been established the  
12 reporting requirements stem from federal regulations and are not  
13 new requirements on the local transit agencies.

14

15 Eric Gleason, Director, Public Transportation Division, has  
16 determined that there will be no significant impact on local  
17 economies or overall employment as a result of enforcing or  
18 administering the repeals and new sections.

19

20 PUBLIC BENEFIT AND COST

21 Mr. Gleason has also determined that for each of the first five  
22 years the sections are in effect, the public benefit anticipated  
23 as a result of enforcing or administering these rules will be a  
24 greater clarity and organization of the department's operation  
25 of the State Safety Oversight Program. There are no anticipated

1 economic costs for persons required to comply with the proposed  
2 rules. There will be no adverse economic effect on small  
3 businesses or a municipality with a population of less than  
4 25,000 and therefor, an economic impact statement and regulatory  
5 flexibility analysis are not required under Government Code,  
6 §2006.002.

7

#### 8 GOVERNMENT GROWTH IMPACT STATEMENT

9 Mr. Gleason has determined that for the first five years in  
10 which the proposed rules are in effect the enforcement authority  
11 of the state's Safety Oversight Program will be expanded to  
12 comply with Federal Transit Agency requirements. Mr. Gleason  
13 does not anticipate that this additional enforcement authority  
14 will have an impact on the growth of state government.

15

#### 16 PUBLIC HEARING

17 Pursuant to the Administrative Procedure Act, Government Code,  
18 Chapter 2001, the Texas Department of Transportation will  
19 conduct a public hearing to receive comments concerning the  
20 proposed rules. The public hearing will be held at 10:00 a.m.  
21 on February 27, 2018, in the Ric Williamson Hearing Room, First  
22 Floor, Dewitt C. Greer State Highway Building, 125 East 11th  
23 Street, Austin, Texas and will be conducted in accordance with  
24 the procedures specified in 43 TAC §1.5. Those desiring to make  
25 comments or presentations may register starting at 8:30 a.m.

1 Any interested persons may appear and offer comments, either  
2 orally or in writing; however, questioning of those making  
3 presentations will be reserved exclusively to the presiding  
4 officer as may be necessary to ensure a complete record. While  
5 any person with pertinent comments will be granted an  
6 opportunity to present them during the course of the hearing,  
7 the presiding officer reserves the right to restrict testimony  
8 in terms of time and repetitive content. Organizations,  
9 associations, or groups are encouraged to present their commonly  
10 held views and identical or similar comments through a  
11 representative member when possible. Comments on the proposed  
12 text should include appropriate citations to sections,  
13 subsections, paragraphs, etc. for proper reference. Any  
14 suggestions or requests for alternative language or other  
15 revisions to the proposed text should be submitted in written  
16 form. Presentations must remain pertinent to the issues being  
17 discussed. A person may not assign a portion of his or her time  
18 to another speaker. Persons with disabilities who plan to  
19 attend this meeting and who may need auxiliary aids or services  
20 such as interpreters for persons who are deaf or hearing  
21 impaired, readers, large print or Braille, are requested to  
22 contact the General Counsel Division, 125 East 11th Street,  
23 Austin, Texas 78701-2483, (512) 463-8630 at least five working  
24 days before the date of the hearing so that appropriate services  
25 can be provided.

1

2 SUBMITTAL OF COMMENTS

3 Written comments on the repeal of §§7.80 - 7.88 and adoption of  
4 new §§7.80 - 7.95 may be submitted to Rule Comments, General  
5 Counsel Division, Texas Department of Transportation, 125 East  
6 11th Street, Austin, Texas 78701-2483 or to  
7 RuleComments@txdot.gov with the subject line "State Safety  
8 Oversight Program." The deadline for receipt of comments is  
9 5:00 p.m. on March 12, 2018. In accordance with Transportation  
10 Code, §201.811(a)(5), a person who submits comments must  
11 disclose, in writing with the comments, whether the person does  
12 business with the department, may benefit monetarily from the  
13 proposed amendments, or is an employee of the department.

14

15 STATUTORY AUTHORITY

16 The new sections are proposed under Transportation Code,  
17 §201.101, which provides the commission with the authority to  
18 establish rules for the conduct of the work of the department,  
19 and more specifically Transportation Code, §455.060, which  
20 authorizes the commission to adopt rules for the oversight of  
21 rail fixed guideway systems.

22

23 CROSS REFERENCE TO STATUTE

24 Transportation Code, Chapter 455, Subchapter B.

1                   SUBCHAPTER E. RAIL FIXED GUIDEWAY SYSTEM STATE

2                                   SAFETY OVERSIGHT PROGRAM

3 §7.80. Purpose. Transportation Code, Chapter 455 requires the  
4 Texas Transportation Commission to establish standards for and  
5 implement state oversight of safety practices of rail fixed  
6 guideway systems in compliance with 49 U.S.C. §5330. This  
7 subchapter prescribes the policies and procedures governing  
8 state oversight of rail fixed guideway systems' safety  
9 practices.

10  
11 §7.81. Definitions. The following words and terms, when used  
12 in this subchapter, shall have the following meanings, unless  
13 the context clearly indicates otherwise.

14                   (1) Department--The Texas Department of  
15 Transportation.

16                   (2) Executive director--The executive director of the  
17 department.

18                   (3) Fatality--A death that results from an incident  
19 and that occurs within 30 days after the date of the incident.

20                   (4) FTA--The Federal Transit Administration, an agency  
21 of the United States Department of Transportation.

22                   (5) Hazard--Any real or potential condition that can  
23 cause injury, illness, or death; damage to or loss of the  
24 facilities, equipment, rolling stock, or infrastructure of a  
25 rail fixed guideway public transportation system; or damage to  
26 the environment.

1           (6) Incident--An event that involves any of the  
2 following: A personal injury that is not a serious injury; one  
3 or more injuries requiring medical transport; or damage to  
4 facilities, equipment, rolling stock, or infrastructure that  
5 disrupts the operations of a rail transit agency.

6           (7) Injury--Any physical damage or harm that occurs to  
7 an individual as a result of an incident and that requires  
8 immediate medical attention away from the scene.

9           (8) Investigation--The process of determining the  
10 causal and contributing factors of an accident, incident, or  
11 hazard, for the purpose of preventing recurrence and mitigating  
12 risk.

13           (9) Passenger--An individual who is on board,  
14 boarding, or alighting from a rail transit vehicle used for the  
15 individual's travel.

16           (10) Pre-revenue Operations--Operation of the rail  
17 fixed guideway public transportation system prior to revenue  
18 service that includes identification and performance of tests,  
19 drills, exercises, and audits designed to verify the functional  
20 capability and readiness of the system.

21           (11) Rail fixed guideway public transportation system  
22 --Any fixed guideway system that uses rail, is operated for  
23 public transportation, is within the jurisdiction of a State,  
24 and is not subject to the jurisdiction of the Federal Railroad  
25 Administration, or any such system in engineering or  
26 construction. Rail fixed guideway public transportation systems  
27 include but are not limited to rapid rail, heavy rail, light

1 rail, monorail, trolley, inclined plane, funicular, and  
2 automated guideway.

3 (12) Rail transit agency--Any entity that provides  
4 services on a rail fixed guideway public transportation system.

5 (13) Rail transit controlled property--Property that  
6 is used by the rail transit agency.

7 (14) Rail transit vehicle--The rail transit agency's  
8 rolling stock, including passenger and maintenance vehicles.

9 (15) Revenue Service - Operation of the rail fixed  
10 guideway public transportation system to carry passengers that  
11 pay fares, provide payment through a contractual arrangement, or  
12 have the fares subsidized by public policy. Vehicles operated  
13 in fare free service are considered in revenue service.

14

15 §7.82. System Safety Program Plan.

16 (a) Each rail transit agency shall develop and implement a  
17 written system safety program plan that complies with the  
18 requirements of this section.

19 (b) The system safety program plan must include, at a  
20 minimum:

21 (1) a policy statement, signed by the agency's chief  
22 executive, that endorses the safety program and describes the  
23 authority that establishes the system safety program plan;

24 (2) a clear definition of the goals and objectives for  
25 the safety program and stated management responsibilities to  
26 ensure that those goals and objectives are achieved;

1 (3) an overview of the management structure of the  
2 rail transit agency, including:

3 (A) an organization chart;

4 (B) a description of how the safety function is  
5 integrated into the rest of the rail transit organization; and

6 (C) clear identification of the lines of  
7 authority used by the rail transit agency to manage safety  
8 issues;

9 (4) a description of the process used to control  
10 changes to the system safety program plan, which must include:

11 (A) an annual assessment of whether the system  
12 safety program plan should be updated in accordance with §7.86  
13 of this subchapter (relating to Rail Transit Agency's Annual  
14 Review); and

15 (B) coordination with the department, including  
16 timeframes for submission, revision, and approval;

17 (5) a description of the specific activities required  
18 to implement the system safety program, including:

19 (A) tasks to be performed by the rail transit  
20 agency as its safety function, by position and management  
21 accountability, specified in matrices or a narrative format; and

22 (B) safety-related tasks to be performed by other  
23 rail transit departments, by position and management  
24 accountability, specified in matrices or a narrative format;

25 (6) a description of the process used by the rail  
26 transit agency to implement its hazard management program, which  
27 must include activities for:

- 1 (A) hazard identification;
- 2 (B) hazard investigation, evaluation, and  
3 analysis;
- 4 (C) hazard control and elimination;
- 5 (D) hazard tracking; and
- 6 (E) requirements for on-going reporting to the  
7 department relating to hazard management activities and status;
- 8 (7) a description of the process used by the rail  
9 transit agency to ensure that safety concerns are addressed in  
10 modifications to existing systems, vehicles, and equipment that  
11 do not require formal safety certification but may have safety  
12 impacts;
- 13 (8) a description of the safety certification process  
14 required by the rail transit agency to ensure that safety  
15 concerns and hazards are adequately addressed before the  
16 initiation of passenger operations and before subsequent major  
17 projects to extend, rehabilitate, or modify an existing system,  
18 or to replace vehicles and equipment;
- 19 (9) a description of the process used to collect,  
20 maintain, analyze, and distribute safety data to ensure that the  
21 safety function within the rail transit organization receives  
22 the necessary information to support implementation of the  
23 system safety program;
- 24 (10) a description of the process used by the rail  
25 transit agency to perform accident notification, investigation,  
26 and reporting, which must include:

- 1 (A) notification thresholds for internal and  
2 external organizations;
- 3 (B) accident investigation process and references  
4 to procedures;
- 5 (C) the process used to develop, implement, and  
6 track corrective actions that address investigation findings;
- 7 (D) reporting to internal and external  
8 organizations; and
- 9 (E) coordination with the department;
- 10 (11) a description of the process used by the rail  
11 transit agency to develop an approved, coordinated schedule for  
12 all emergency management program activities, which must include:
- 13 (A) meetings with external agencies;
- 14 (B) emergency planning responsibilities and  
15 requirements;
- 16 (C) the process used to evaluate emergency  
17 preparedness, such as annual emergency field exercises;
- 18 (D) after action reports and implementation of  
19 findings;
- 20 (E) revision and distribution of emergency  
21 response procedures;
- 22 (F) familiarization training for public safety  
23 organizations; and
- 24 (G) employee training;
- 25 (12) a description of the process used by the rail  
26 transit agency to ensure that planned and scheduled internal

1 safety reviews are performed to evaluate compliance with the  
2 system safety program plan, which must include:

3 (A) identification of departments and functions  
4 subject to review;

5 (B) identification of responsibility for  
6 scheduling reviews;

7 (C) the process used for conducting reviews,  
8 including the development of checklists and procedures and the  
9 issuing of findings;

10 (D) review of reporting requirements;

11 (E) tracking the status of implemented  
12 recommendations; and

13 (F) coordination with the department;

14 (13) a description of the process used by the rail  
15 transit agency to develop, maintain, and ensure compliance with  
16 rules and procedures having a safety impact, which must include:

17 (A) identification of operating and maintenance  
18 rules and procedures subject to review;

19 (B) techniques used to assess the implementation  
20 of operating and maintenance rules and procedures by employees,  
21 such as performance testing;

22 (C) techniques used to assess the effectiveness  
23 of supervision relating to the implementation of operating and  
24 maintenance rules; and

25 (D) the process used for documenting results and  
26 incorporating them into the hazard management process;

1           (14) a description of the process used for facilities  
2 and equipment safety inspections, which must include:

3                   (A) identification of the facilities and  
4 equipment subject to regular safety related inspection and  
5 testing;

6                   (B) techniques used to conduct inspections and  
7 testing;

8                   (C) inspection schedules and procedures; and

9                   (D) a description of how results are entered into  
10 the hazard management process;

11           (15) a description of the maintenance audits and  
12 inspections program, which must include identification of the  
13 affected facilities and equipment, maintenance cycles,  
14 documentation required, and the process for integrating  
15 identified problems into the hazard management process;

16           (16) a description of the training and certification  
17 program for employees and contractors, which must include:

18                   (A) the categories of safety-related work  
19 requiring training and certification;

20                   (B) a description of the training and  
21 certification program for employees and contractors in safety-  
22 related positions;

23                   (C) the process used to maintain and access  
24 employee and contractor training records; and

25                   (D) the process used to assess compliance with  
26 training and certification requirements;

1           (17) a description of the configuration management  
2 control process, which must include:

3                   (A) the authority to make configuration changes;

4                   (B) the process used for making changes; and

5                   (C) assurances necessary for formally notifying  
6 all involved departments;

7           (18) a description of the safety program for employees  
8 and contractors that incorporates the applicable local, state,  
9 and federal requirements, which must include:

10                   (A) the safety requirements that employees and  
11 contractors must follow when working on, or in close proximity  
12 to, rail transit agency property; and

13                   (B) the processes used for ensuring that the  
14 employees and contractors know and follow the requirements;

15           (19) a description of the hazardous materials program,  
16 which must include the process used to ensure knowledge of and  
17 compliance with program requirements;

18           (20) a description of the drug and alcohol program and  
19 the process used to ensure knowledge of and compliance with  
20 program requirements; and

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

25

26 §7.83. Hazard Management Process.

1 (a) Each rail transit agency shall develop, and document in  
2 its system safety program plan, a process to identify and  
3 resolve hazards during its operation, including any hazards  
4 resulting from a subsequent system extension, rehabilitation, or  
5 modification, from operational changes, or from other changes  
6 within the rail transit environment.

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

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

11 (2) specify the mechanisms used for the on-going  
12 identification of hazards;

13 (3) define the process used to evaluate identified  
14 hazards and prioritize them for elimination or control;

15 (4) identify the mechanism used to track through  
16 resolution the identified hazards;

17 (5) define minimum thresholds for the notification and  
18 reporting of hazards to the department; and

19 (6) specify the process used by the rail transit  
20 agency to provide on-going reporting of hazard resolution  
21 activities to the department.

22 (c) A rail transit agency shall report to the department  
23 each identified hazard within 24 hours of the time that the  
24 hazard is identified and shall submit not later than the 15<sup>th</sup> day  
25 of each month a log that lists each hazard that was identified  
26 during the preceding month.

27

1 §7.84. New State Rail Transit Agency Responsibilities.

2 (a) A rail transit agency may not begin operation before a  
3 system safety program plan is approved by the department.

4 (b) Each new rail transit agency is required to submit its  
5 system safety program plan to the department not later than 180  
6 days before the target date of pre-revenue operations.

7 (c) The department will conduct an on-site pre-revenue  
8 review of each new rail transit agency's system safety program  
9 plan within 60 days after the date that the plan is received by  
10 the department under subsection (b) of this section.

11 (d) The department may request additional information or  
12 clarification related to, or revisions of, the system safety  
13 program plan.

14 (e) On approval, the department will issue to the chief  
15 executive of the rail transit agency a formal letter of approval  
16 of the initial system safety program plan.

17

18 §7.85. Modifications to a System Safety Program Plan.

19 (a) If a rail transit agency determines, or is notified by  
20 the department, that the safety program plan needs to be  
21 modified, the rail transit agency shall submit the modified plan  
22 and any subsequently modified procedures to the department for  
23 review and approval.

24 (b) Except as provided by subsection (c) of this section,  
25 the rail transit agency may not implement the proposed  
26 modifications before the modified plan is approved by the  
27 department.

1 (c) If the rail transit agency determines that a  
2 modification is necessary to address an imminent safety hazard,  
3 the rail transit agency may make a temporary modification to its  
4 system safety program plan before that modification is approved  
5 by the department, but the modification must be approved by the  
6 department before it may become permanent.

7

8 §7.86. Rail Transit Agency's Annual Review.

9 (a) Annually, each rail transit agency shall conduct an  
10 internal review of its system safety program plan to ensure that  
11 all elements of the system safety program plan are performing as  
12 intended.

13 (b) The internal review process must, at a minimum:

14 (1) describe the process used by the rail transit  
15 agency to determine if all identified elements of its system  
16 safety program plan are performing as intended;

17 (2) ensure that all elements of the system safety  
18 program plan are reviewed in an ongoing manner; and

19 (3) include checklists or procedures that the rail  
20 transit agency will use for the review.

21 (c) The rail transit agency shall notify the department at  
22 least 60 days before the day of conducting the internal safety  
23 review. This notification must include any checklists or  
24 procedures that will be used during the review.

25 (d) The rail transit agency shall permit the department to  
26 participate in or observe the on-site portions of the rail  
27 transit agency's internal review.

1 (d) Before December 1 of each year, the rail transit  
2 agency shall submit a report documenting internal safety review  
3 activities that have been performed since the last report and  
4 the findings and status of corrective actions.

5 (e) The annual report must be accompanied by a formal  
6 letter, signed by the rail transit agency's chief executive,  
7 that:

8 (1) certifies that the rail transit agency is in  
9 compliance with its system safety program plan; or

10 (2) if the rail transit agency determines that the  
11 findings from its internal safety review indicate that it is not  
12 in compliance with its system safety program plan, states that  
13 the rail transit agency is not in compliance with its system  
14 safety program plan, specifies each noncompliance issue, the  
15 activities that the rail transit agency will take to achieve  
16 compliance, the date that those activities will be completed,  
17 and the projected date that compliance with the plan will be  
18 achieved.

19

20 §7.87. Department System Safety Program Plan Audit.

21 (a) The department will conduct an audit of the rail  
22 transit agency at least once every three years. The audit will  
23 evaluate whether the rail transit agency has implemented a  
24 system safety program plan that meets the requirements of 49  
25 C.F.R. Part 659, 49 C.F.R. Part 674.27, the department's program  
26 standards, and the National Public Transportation Safety Plan  
27 and whether the rail transit agency complies with the plan.

1 (b) The department will provide an audit checklist based on  
2 the required elements of the system safety program plan.

3 (c) The department will verify the required elements by;

4 (1) interviews;

5 (2) document review;

6 (3) field observations;

7 (4) testing;

8 (5) measurements;

9 (6) spot checks; and

10 (7) demonstrations provided by the rail transit agency  
11 staff.

12 (d) To determine compliance with the system safety program  
13 plan, the department will sample accident reports, internal  
14 review reports, and the agency's hazard management program.

15 (e) The audit may be conducted as a single on-site  
16 assessment or in an ongoing manner over a three-year cycle.

17 (f) In planning the audit the department will:

18 (1) develop the audit schedule in coordination with  
19 the rail transit agency;

20 (2) designate the audit team and an audit team lead;

21 (3) prepare an audit plan that includes all elements  
22 identified in the rail transit agency's system safety program  
23 plan;

24 (4) prepare audit checklists and templates;

25 (5) identify methods of verification for each  
26 checklist item; and

1           (6) request and review the rail transit agency's  
2 safety documents.

3           (g) In conducting the audit, the department will:

4           (1) conduct an entrance meeting with the rail transit  
5 agency's administration;

6           (2) conduct interviews with appropriate rail transit  
7 staff;

8           (3) observe on-site operations;

9           (4) evaluate documents and data maintained on-site;

10          (5) take measurements and conduct spot checks;

11          (6) review all checklist items for compliance; and

12          (7) inform the rail transit agency of initial findings  
13 and observations.

14          (h) The rail transit agency shall cooperate with the  
15 department during the audit review and provide access to all  
16 documents, records, equipment, and property necessary to  
17 complete the audit.

18          (i) The department will issue a draft report to the rail  
19 transit agency within 60 days after the date of the completion  
20 of the audit.

21          (j) The rail transit agency may submit written comments on  
22 the draft audit report. The department will include in the  
23 final audit report any comments received within 30 days after  
24 the date that the draft report was issued.

25          (k) The department will prepare a final audit report and  
26 deliver a copy to the rail transit agency.

1           (1) Within 45 days after the date of its receipt of the  
2 final audit report, the rail transit agency shall provide to the  
3 department all corrective action plans necessary to address the  
4 findings in the report.

5           (m) The department will notify the rail transit agency when  
6 all findings have been addressed and the audit is closed.

7

8 §7.88. Accident Notification.

9           (a) Each rail transit agency shall notify the department  
10 and FTA within two hours of any incident involving a rail  
11 transit vehicle or taking place on property used by rail transit  
12 agency if the incident:

13                   (1) results in a fatality at the scene;

14                   (2) results in one or more persons suffering serious  
15 injury;

16                   (3) results in property damage from a collision  
17 involving a rail transit vehicle or derailment of a rail transit  
18 vehicle;

19                   (4) results in an evacuation for life safety reasons;

20                   (5) is a collision at a grade crossing resulting in  
21 serious injury or a fatality;

22                   (6) is a main-line or yard derailment;

23                   (7) is a collision with an individual resulting in  
24 serious injury or a fatality;

25                   (8) is a collision with an object resulting in serious  
26 injury or a fatality;

27                   (9) is a runaway train;

1           (10) is a fire resulting in a serious injury or a  
2 fatality; or

3           (11) is a collision between rail transit vehicles.

4           (b) If an incident involving a rail transit vehicle or  
5 taking place on property used by rail transit agency results in  
6 a fatality away from the scene of the incident but within 30  
7 days after the incident, the rail transit agency shall notify  
8 the department within two hours of the confirmation of the death  
9 of the individual.

10          (c) A rail transit agency that shares track over the  
11 general railroad system of transportation and is subject to the  
12 Federal Railroad Administration notification requirements, shall  
13 notify the department within two hours of an incident for which  
14 the rail transit agency must notify the Federal Railroad  
15 Administration.

16          (d) A rail transit agency must track and report to FTA and  
17 the department each accident that does not qualify for reporting  
18 under subsection (a) of this section and that results in one or  
19 more non-serious injuries that require medical transportation  
20 from the accident scene or that results in non-collision related  
21 damage to equipment, rolling stock, or infrastructure that  
22 disrupts operation. The report must be filed within 30 days  
23 after the date of the accident.

24          (e) A rail transit agency must track and make the resulting  
25 information available when requested by the department or FTA  
26 any accident or event that does not qualify for reporting under  
27 subsection (a), (b), or (d) of this section.

1 (f) Notification to the department under this section must  
2 be provided in the method specified by the department in the  
3 program standards and must contain all the information required  
4 in the program standards.

5

6 §7.89. Accident Investigations.

7 (a) The department will investigate any accident that is  
8 required to be reported under §7.88(a),(b) and (d) of this  
9 subchapter.

10 (b) The department may authorize the rail transit agency to  
11 conduct the investigation on the department's behalf or may join  
12 the investigation being conducted by the National Transportation  
13 Safety Board through the NTSB's Party System.

14 (c) If the department authorizes the rail transit agency to  
15 conduct the investigation, all personnel and contractors in the  
16 investigation must be trained in accordance with the Public  
17 Transportation Safety Certification Program and department  
18 approved procedures shall be followed.

19 (d) An investigation conducted by a rail transit agency  
20 shall be documented in a final report and submitted to the  
21 department within 30 days after the date of the accident. The  
22 final report must be in the form prescribed in the department's  
23 program standard.

24 (e) If the department does not agree with the rail safety  
25 agency's accident report, the department will conduct an  
26 accident investigation and will issue a separate accident  
27 report.

1 (f) The department may conduct an independent accident  
2 investigation for any accident required to be reported under  
3 §7.88(a), (b) and (d). The rail transit agency shall provide all  
4 information and access to all property necessary for the  
5 department to conduct the investigation. The department's  
6 investigation report will be submitted to the rail transit  
7 agency within 45 days after the date of the completion of the  
8 report.

9 (g) If the National Transportation Safety Board conducts  
10 the accident investigation, the department and the rail transit  
11 agency shall cooperate and provide information to the board when  
12 requested.

13

14 §7.90. Corrective Action Plan.

15 (a) Each rail transit agency shall develop a corrective  
16 action plan for:

17 (1) results from investigations in which identified  
18 causal and contributing factors are determined by the rail  
19 transit agency or the department to require corrective actions;  
20 and

21 (2) findings from safety and security reviews  
22 performed by the department that require corrective action.

23 (b) Each corrective action plan must identify the action to  
24 be taken by the rail transit agency, an implementation schedule,  
25 and the individual or department responsible for implementation  
26 of the plan.

1 (c) The department will review the corrective action plan  
2 within 30 days after the date of receipt. If a plan is not  
3 approved, the department will work with the rail transit agency  
4 to develop appropriate corrective action plans.

5 (d) The rail transit agency shall submit correction action  
6 reports at 30-day intervals until the issue has been corrected  
7 and compliance has been achieved.

8 (e) The rail transit agency shall provide the department  
9 with verification that corrective actions have been implemented,  
10 as described in the corrective action plan, or that proposed  
11 alternate actions will be implemented, subject to department  
12 review and approval.

13 (f) If the rail transit agency disputes the department's  
14 decision related to a corrective action plan, the rail transit  
15 agency shall submit an application for administrative review  
16 under §7.92 of this subchapter (relating to Administrative  
17 Review) not later than 30 days after the date of receipt of the  
18 written decision.

19 (g) Failure to complete a corrective action plan is a  
20 violation under this subchapter.

21  
22 §7.91. Administrative Actions by the Department.

23 (a) If the department determines that a rail transit agency  
24 violates this subchapter, 49 C.F.R. Part 659, 49 C.F.R. Part  
25 674.27, or Transportation Code, Chapter 455, the department may  
26 initiate an administrative action.

1 (b) The department will notify the rail transit agency in  
2 writing of any findings of violations.

3 (c) Notification under subsection (b) of this section will  
4 specify each violation identified by the department, the  
5 administrative action to be taken by the department, the  
6 compliance action needed to address the violation, and the  
7 information concerning the process for requesting administrative  
8 review of the department's determination.

9 (d) Within 45 days after the date of receipt of  
10 notification under subsection (b) of this section, the rail  
11 transit agency shall submit documentation showing compliance  
12 with the action needed to address the violation or shall request  
13 administrative review under §7.92 of this subchapter (relating  
14 to Administrative Review).

15 (e) Failure to act as required by subsection (d) of this  
16 section will lead to the escalation of an enforcement action  
17 under §7.93 of this subchapter (relating to Escalation of  
18 Enforcement Action)and may lead to the removal of the  
19 department's approval of the rail transit agency's system safety  
20 program plan.

21  
22 §7.92. Administrative Review.

23 (a) If a rail transit agency disagrees with a decision by  
24 the department regarding the corrective action plan under §7.90  
25 of this subchapter (relating to Corrective Action Plan) or a  
26 violation finding under §7.91 of this subchapter (relating to  
27 Administrative Actions by the Department), the rail transit

1 agency may file a request for an administrative review with the  
2 executive director.

3 (b) The request for administrative review must:

4 (1) be in writing; and

5 (2) specify the reasons that the department's action  
6 is in error and provide evidence that supports the rail transit  
7 agency's position.

8 (c) The executive director or the executive director's  
9 designee, who is not below the level of division director, will  
10 make a final determination on the appeal within 60 days after  
11 the date the executive director receives the request for the  
12 appeal and will notify the rail transit agency of the  
13 determination. If the final determination upholds the  
14 department's decision under §7.90 of this subchapter or finding  
15 under §7.91 of this subchapter, the executive director or the  
16 executive director's designee will send the final determination  
17 to the rail transit agency stating the reason for the decision  
18 and setting a deadline for compliance with the department's  
19 violation notice or the corrective action plan.

20 (d) The determination of executive director or the  
21 executive director's designee under subsection (c) of this  
22 section is final. The rail transit agency is not entitled to a  
23 contested case hearing and has no right to appeal the decision  
24 of the executive director or the executive director's designee.

25 (e) Failure of a rail transit agency to comply with a  
26 deadline provided by the executive director or the executive  
27 director's designee under subsection (c) of this section may

1 result in the rescission of the department's approval of the  
2 rail transit agency's system safety program plan and the  
3 department may petition a court of competent jurisdiction to  
4 halt the operation of the rail transit agency's rail fixed  
5 guideway system program.

6

7 §7.93. Escalation of Enforcement Action.

8 (a) If a rail transit agency fails to comply with an  
9 administrative action notification, the department will notify  
10 the executive director.

11 (b) The executive director will notify the rail transit  
12 agency's governing body of the violation and the failure of the  
13 rail transit agency's correction of the violation.

14 (c) Within 45 days after the date on which the rail transit  
15 agency's governing body receives notice under subsection (b) of  
16 this section, the governing body shall provide to the executive  
17 director evidence that the violation has been resolved.

18 (d) If the rail transit agency's governing body is unable  
19 to show that the corrective action has been satisfactorily  
20 completed, the department shall rescind approval of the rail  
21 transit agency's system safety program plan.

22 (e) If the department rescinds approval of a rail transit  
23 agency's system safety program plan, the department may petition  
24 a court of competent jurisdiction to halt the operation of the  
25 rail transit agency's rail fixed guideway system program.

26

1 §7.94. Emergency Order to Address Imminent Public Safety  
2 Concerns.

3 (a) Notwithstanding §7.91 of this subchapter (relating to  
4 Administrative Actions by the Department), §7.92 of this  
5 subchapter (relating to Administrative Review), and §7.93 of  
6 this subchapter (relating to Escalation of Enforcement Action),  
7 if there is good cause for the executive director, or the  
8 executive director's designee, to believe that the operations of  
9 a rail transit agency poses an imminent threat to the safety of  
10 the general public, the executive director or the executive  
11 director's designee immediately will notify the governing body  
12 of the rail transit agency.

13 (b) If the rail transit agency is unable to immediately  
14 eliminate the threat identified under subsection (a) of this  
15 section, the executive director will rescind approval of the  
16 system safety program plan and order the rail transit agency to  
17 cease all operations of its rail fixed guideway public  
18 transportation system until the rail transit agency eliminates  
19 the threat.

20 (c) If the rail transit agency fails to cease operation of  
21 its rail fixed guideway public transportation system in  
22 accordance with an order issued under subsection (b) of this  
23 section, the department may seek a temporary injunction to  
24 enforce the executive director's order.

25

26 §7.95. Admissibility; Use of Information. The data collected  
27 and the report of any investigation conducted by the department

1 or a contractor acting on behalf of the department, or any part  
2 of a system security plan or safety program plan that concerns  
3 security for the system, may not be admitted in evidence or used  
4 for any purpose in any action or proceeding arising out of any  
5 matter referred to in an investigation except in an action or a  
6 proceeding instituted by the state.

1 SUBCHAPTER E. RAIL FIXED GUIDEWAY SYSTEM STATE

2 SAFETY OVERSIGHT PROGRAM

3 §7.80. Purpose. The department is required by 49 U.S.C. §5330  
4 to establish and carry out a safety program plan for each fixed  
5 guideway mass transportation system. Transportation Code,  
6 Chapter 455 requires the commission to establish standards for  
7 and implement state oversight of safety and security practices  
8 of rail fixed guideway systems in compliance with 49 U.S.C.  
9 §5330. The sections under this subchapter prescribe the  
10 policies and procedures governing state oversight of rail fixed  
11 guideway systems' safety and security practices.

12  
13 §7.81. Definitions. The following words and terms, when used  
14 in this subchapter, shall have the following meanings, unless  
15 the context clearly indicates otherwise.

16 (1) Commission--The Texas Transportation Commission.

17 (2) Corrective action plan--A plan developed by the  
18 rail transit agency that describes the actions the rail transit  
19 agency will take to minimize, control, correct, or eliminate  
20 hazards, and the schedule for implementing those actions.

21 (3) Department--The Texas Department of  
22 Transportation.

23 (4) Fatality--A death that results from an incident  
24 and that occurs within 30 days following the incident.

25 (5) FTA--The Federal Transit Administration, an agency  
26 of the United States Department of Transportation.

NOTE: Repeals

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1           (6) Hazard--Any real or potential condition (as  
2 defined in the rail transit agency's hazard management process)  
3 that can cause injury, illness, or death; damage to or loss of a  
4 system, equipment or property; or damage to the environment.

5           (7) Incident--An intentional or unintentional act that  
6 occurs on or in association with transit-controlled property and  
7 that threatens or affects the safety or security of an  
8 individual or property.

9           (8) Individual--A passenger; employee; contractor;  
10 other rail transit facility worker; pedestrian; trespasser; or  
11 any person on rail transit controlled property.

12           (9) Injury--Any physical damage or harm that occurs to  
13 an individual as a result of an incident and that requires  
14 immediate medical attention away from the scene.

15           (10) Investigation--The process used to determine the  
16 causal and contributing factors of an accident or hazard, so  
17 that actions can be identified to prevent recurrence.

18           (11) Passenger--A person who is on board, boarding, or  
19 alighting from a rail transit vehicle for the purpose of travel.

20           (12) Passenger operations--The period of time when any  
21 aspects of rail transit agency operations are initiated with the  
22 intent to carry passengers.

23           (13) Property damage--The dollar amount required to  
24 replace any vehicle, whether transit or non-transit, and any  
25 property or facility damaged during an incident, or to repair it  
26 to the condition of the property or facility that existed before  
27 the incident.

1 (14) Rail fixed guideway system--Any light, heavy, or  
2 rapid rail system, monorail, inclined plane, funicular, trolley,  
3 or automated guideway that:

4 (A) is not regulated by the Federal Railroad  
5 Administration; and

6 (B) is included in FTA's calculation of fixed  
7 guideway route miles or receives funding under FTA's formula  
8 program for urbanized areas (49 U.S.C. §5336); or

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

13 (15) Rail transit agency--An entity operating a rail  
14 fixed guideway system.

15 (16) Rail transit controlled property--Property that  
16 is used by the rail transit agency and may be owned, leased, or  
17 maintained by the rail transit agency.

18 (17) Rail transit vehicle--The rail transit agency's  
19 rolling stock, including, but not limited to passenger and  
20 maintenance vehicles.

21 (18) Revenue service--Passenger transportation  
22 occurring when a vehicle is available to the general public and  
23 there is a reasonable expectation of carrying passengers that  
24 directly pay fares, are subsidized by public policy, or provide  
25 payment through some contractual agreement. This does not imply  
26 that a cash fare must be paid. Vehicles operated in free fare  
27 services are considered in revenue service.

1           (19) Revenue vehicle--The rolling stock used in  
2 providing transit service for passengers. This definition does  
3 not include a vehicle used in connection with keeping revenue  
4 vehicles in operation, such as a tow truck or a staff car.

5           (20) Safety--Freedom from harm resulting from  
6 unintentional acts or circumstances.

7           (21) Security--Freedom from harm resulting from  
8 intentional acts or circumstances.

9           (22) System safety program plan--A document developed  
10 by the rail transit agency, describing its safety policies,  
11 objectives, responsibilities, and procedures.

12           (23) System security plan--A document developed by the  
13 rail transit agency describing its security policies,  
14 objectives, responsibilities, and procedures.

15  
16 §7.82. Program Standard. In accordance with 40 C.F.R. §659.15,  
17 the department has developed and distributed a State Safety and  
18 Security Oversight Program Standard, available on the  
19 department's website at <http://www.txdot.gov/safety/rail.htm>, or  
20 by calling the department's Rail Division at (512) 486-5230.

21  
22 §7.83. System Safety Program Plan.

23           (a) Each rail transit agency shall develop and implement a  
24 written system safety program plan that complies with the  
25 requirements of this section. The system safety plan shall  
26 include, at a minimum, the following documents.

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

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

7           (3) An overview of the management structure of the  
8 rail transit agency, including:

9                   (A) an organization chart;

10                   (B) a description of how the safety function is  
11 integrated into the rest of the rail transit organization; and

12                   (C) clear identification of the lines of  
13 authority used by the rail transit agency to manage safety  
14 issues.

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

17                   (A) specifying an annual assessment of whether  
18 the system safety program plan should be updated; and

19                   (B) required coordination with the department,  
20 including timeframes for submission, revision, and approval.

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

23                   (A) tasks to be performed by the rail transit  
24 safety function, by position and management accountability,  
25 specified in matrices and/or narrative format; and

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

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

7 (A) hazard identification;

8 (B) hazard investigation, evaluation and  
9 analysis;

10 (C) hazard control and elimination;

11 (D) hazard tracking; and

12 (E) requirements for on-going reporting to the  
13 department relating to hazard management activities and status.

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

19 (8) A description of the safety certification process  
20 required by the rail transit agency to ensure that safety  
21 concerns and hazards are adequately addressed prior to the  
22 initiation of passenger operations for new starts and subsequent  
23 major projects to extend, rehabilitate, or modify an existing  
24 system, or to replace vehicles and equipment.

25 (9) A description of the process used to collect,  
26 maintain, analyze, and distribute safety data, to ensure that  
27 the safety function within the rail transit organization

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1 receives the necessary information to support implementation of  
2 the system safety program.

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

6 (A) notification thresholds for internal and  
7 external organizations;

8 (B) accident investigation process and references  
9 to procedures;

10 (C) the process used to develop, implement, and  
11 track corrective actions that address investigation findings;

12 (D) reporting to internal and external  
13 organizations; and

14 (E) coordination with the department.

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

18 (A) meetings with external agencies;

19 (B) emergency planning responsibilities and  
20 requirements;

21 (C) process used to evaluate emergency  
22 preparedness, such as annual emergency field exercises;

23 (D) after action reports and implementation of  
24 findings;

25 (E) revision and distribution of emergency  
26 response procedures;

1 (F) familiarization training for public safety  
2 organizations; and

3 (G) employee training.

4 (12) A description of the process used by the rail  
5 transit agency to ensure that planned and scheduled internal  
6 safety reviews are performed to evaluate compliance with the  
7 system safety program plan, including:

8 (A) identification of departments and functions  
9 subject to review;

10 (B) responsibility for scheduling reviews;

11 (C) process for conducting reviews, including the  
12 development of checklists and procedures and the issuing of  
13 findings;

14 (D) review of reporting requirements;

15 (E) tracking the status of implemented  
16 recommendations; and

17 (F) coordination with the department.

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

21 (A) identification of operating and maintenance  
22 rules and procedures subject to review;

23 (B) techniques used to assess the implementation  
24 of operating and maintenance rules and procedures by employees,  
25 such as performance testing;

1 (C) techniques used to assess the effectiveness  
2 of supervision relating to the implementation of operating and  
3 maintenance rules; and

4 (D) process for documenting results and  
5 incorporating them into the hazard management program.

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

8 (A) identification of the facilities and  
9 equipment subject to regular safety related inspection and  
10 testing;

11 (B) techniques used to conduct inspections and  
12 testing;

13 (C) inspection schedules and procedures; and

14 (D) description of how results are entered into  
15 the hazard management process.

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

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

23 (A) categories of safety-related work requiring  
24 training and certification;

25 (B) a description of the training and  
26 certification program for employees and contractors in safety-  
27 related positions;

1 (C) process used to maintain and access employee  
2 and contractor training records; and

3 (D) process used to assess compliance with  
4 training and certification requirements.

5 (17) A description of the configuration management  
6 control process, including:

7 (A) the authority to make configuration changes;

8 (B) process for making changes; and

9 (C) assurances necessary for formally notifying  
10 all involved departments.

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

14 (A) safety requirements that employees and  
15 contractors must follow when working on, or in close proximity  
16 to, rail transit agency property; and

17 (B) processes for ensuring the employees and  
18 contractors know and follow the requirements.

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

22 (20) A description of the drug and alcohol program and  
23 the process used to ensure knowledge of and compliance with  
24 program requirements; and

25 (21) A description of the measures, controls, and  
26 assurances in place to ensure that safety principles,

1 requirements, and representatives are included in the rail  
2 transit agency's procurement process.

3 (b) Each rail transit agency shall also develop and  
4 document in its system safety program plan a process to identify  
5 and resolve hazards during its operation, including any hazards  
6 resulting from subsequent system extensions or modifications,  
7 operational changes, or other changes within the rail transit  
8 environment. The hazard management process must, at a minimum:

9 (1) define the rail transit agency's approach to  
10 hazard management and the implementation of an integrated  
11 systemwide hazard resolution process;

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

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

16 (4) identify the mechanism used to track through  
17 resolution the identified hazards;

18 (5) define minimum thresholds for the notification and  
19 reporting of hazards to the department; and

20 (6) specify the process by which the rail transit  
21 agency will provide on-going reporting of hazard resolution  
22 activities to the department.

23

24 §7.84. System Security Plan.

25 (a) Each rail transit agency shall implement a system  
26 security plan that, at a minimum, complies with requirements in  
27 this section. The system security plan must be developed and

NOTE: Repeals

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Exhibit C

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

3 (b) The system security plan must, at a minimum address the  
4 following:

5 (1) identify the policies, goals, and objectives for  
6 the security program endorsed by the agency's chief executive;

7 (2) document the rail transit agency's process for  
8 managing threats and vulnerabilities during operations, and for  
9 major projects, extensions, new vehicles and equipment,  
10 including integration with the safety certification process;

11 (3) identify controls in place that address the  
12 personal security of passengers and employees;

13 (4) document the rail transit agency's process for  
14 conducting internal security reviews to evaluate compliance and  
15 measure the effectiveness of the system security plan; and

16 (5) document the rail transit agency's process for  
17 making its system security plan and accompanying procedures  
18 available to the department for review and approval.

19

20 §7.85. Reviews.

21 (a) Annual reviews.

22 (1) Each rail transit agency shall conduct an annual  
23 review of its system safety program plan and system security  
24 plan.

25 (2) In the event the rail transit agency's system  
26 safety program plan is modified, the rail transit agency must

1 submit the modified plan and any subsequently modified  
2 procedures to the department for review and approval.

3 (3) In the event the rail transit agency's system  
4 security plan is modified, the rail transit agency must make the  
5 modified system security plan and accompanying procedures  
6 available to the department for review.

7 (b) Internal safety and security reviews.

8 (1) Each rail transit agency shall develop and  
9 document a process for the performance of on-going internal  
10 safety and security reviews in its system safety program plan.

11 (2) The internal safety and security review process  
12 must, at a minimum:

13 (A) describe the process used by the rail transit  
14 agency to determine if all identified elements of its system  
15 safety program plan and system security plan are performing as  
16 intended;

17 (B) ensure that all elements of the system safety  
18 program plan and system security plan are reviewed in an ongoing  
19 manner and completed over a three-year cycle;

20 (C) the rail transit agency must notify the  
21 department at least thirty (30) days before the conduct of  
22 scheduled internal safety and security reviews;

23 (D) the rail transit agency shall submit to the  
24 department any checklists or procedures it will use during the  
25 safety portion of its review;

1                   (E) the rail transit agency shall make available  
2 to the department any checklists or procedures subject to the  
3 security portion of its review;

4                   (F) the rail transit agency shall submit an  
5 annual report documenting internal safety and security review  
6 activities and the status of subsequent findings and corrective  
7 actions. The security part of this report must be made  
8 available for department review;

9                   (G) the annual report must be accompanied by a  
10 formal letter of certification signed by the rail transit  
11 agency's chief executive, indicating that the rail transit  
12 agency is in compliance with its system safety program plan and  
13 system security plan; and

14                   (H) if the rail transit agency determines that  
15 findings from its internal safety and security reviews indicate  
16 that the rail transit agency is not in compliance with its  
17 system safety program plan or system security plan, the chief  
18 executive must identify the activities the rail transit agency  
19 will take to achieve compliance.

20

21 §7.86. Accident Notification and Corrective Action Plans.

22           (a) Accident notification.

23                   (1) Each rail transit agency shall notify the  
24 department within two (2) hours of any incident involving a rail  
25 transit vehicle or taking place on rail transit controlled  
26 property where one or more of the following occurs:

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

4 (B) injuries requiring immediate medical  
5 attention away from the scene for two or more individuals;

6 (C) property damage to rail transit vehicles,  
7 non-rail transit vehicles, other rail transit property or  
8 facilities and non-transit property that equals or exceeds  
9 \$25,000;

10 (D) an evacuation due to life safety reasons;

11 (E) a collision at a grade crossing;

12 (F) a main-line derailment;

13 (G) a collision with an individual on a rail  
14 right of way; or

15 (H) a collision between a rail transit vehicle  
16 and a second rail transit vehicle, or a rail transit non-revenue  
17 vehicle.

18 (2) The rail transit agencies that share track with  
19 the general railroad system and are subject to the Federal  
20 Railroad Administration notification requirements, shall notify  
21 the department within two (2) hours of an incident for which the  
22 rail transit agency must also notify the Federal Railroad  
23 Administration.

24 (b) Corrective action plans.

25 (1) Each rail transit agency must, at a minimum,  
26 develop a corrective action plan for the following:

1 (A) results from investigations, in which  
2 identified causal and contributing factors are determined by the  
3 rail transit agency, or the department, as requiring corrective  
4 actions; and

5 (B) findings from safety and security reviews  
6 performed by the department.

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

11 (3) The corrective action plan must be reviewed and  
12 formally approved by the department.

13 (4) The rail transit agency must provide the  
14 department:

15 (A) verification that the corrective action(s)  
16 has been implemented as described in the corrective action plan,  
17 or that a proposed alternate action has been implemented subject  
18 to department review and approval; and

19 (B) periodic reports requested by the department,  
20 describing the status of each corrective action not completely  
21 implemented, as described in the corrective action plan.

22 (5) In the event of a dispute concerning the  
23 department's decision related to a corrective action plan, a  
24 rail transit agency shall submit an application for  
25 administrative review to the following address: Director, Rail  
26 Division, Texas Department of Transportation, 125 E. 11th  
27 Street, Austin, Texas 78701-2483. The application for

1 administrative review shall be submitted no later than 30 days  
2 after receipt of the written decision.

3 (A) Application. The application for  
4 administrative review shall, at a minimum:

5 (i) state and explain the relief requested;

6 (ii) state and explain all relevant facts;

7 and

8 (iii) state and explain the legal basis for  
9 the relief sought.

10 (B) Decision. The division director shall decide  
11 whether to grant, grant in part, or deny the application. If an  
12 applicant does not provide information sufficient to evaluate  
13 the application, the application shall be denied. The applicant  
14 is not entitled to a contested case hearing, and there is no  
15 right to appeal the decision of the division director.

16

17 §7.87. Deadlines. A rail transit agency shall submit to the  
18 department:

19 (1) prior to beginning revenue service, a system  
20 safety program plan required by §7.83 of this subchapter  
21 (relating to System Safety Program Plan) and a system security  
22 plan required by §7.84 of this subchapter (relating to System  
23 Security Plan);

24 (2) by February 1 of each year, a written report of  
25 its annual internal safety audit conducted as required by  
26 §7.85(b) of this subchapter (relating to Reviews);

1           (3) by February 1 of each year, a certification,  
2 signed by the rail transit agency's chief executive, that the  
3 rail transit agency is in compliance with its system safety  
4 program plan and system security plan;

5           (4) by February 1 of each year, a written report of  
6 the rail transit agency's safety activities for the preceding 12  
7 months as required by §7.83 - §7.86 of this subchapter; and

8           (5) by February 1 of each year, a certification signed  
9 by the rail transit agency's chief executive, that the rail  
10 transit agency is in compliance with the provisions of this  
11 subchapter.

12  
13 §7.88. Admissibility; Use of Information. The data collected  
14 and the report of any investigation conducted by the department  
15 or a contractor acting on behalf of the department, or any part  
16 of a system security plan or safety program plan that concerns  
17 security for the system, may not be admitted in evidence or used  
18 for any purpose in any action or proceeding arising out of any  
19 matter referred to in an investigation except in an action or a  
20 proceeding instituted by the state.