

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

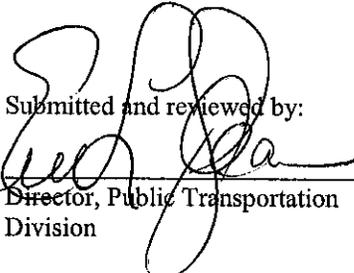
The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §31.3, §31.61, §31.62, §31.64 and §31.65, and new §31.3, §31.61 and §31.62, relating to fixed guideway rail systems, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the repeals and new sections are attached to this minute order as Exhibits A - E, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the repeal of §31.3, §31.61, §31.62, §31.64 and §31.65, and new §31.3, §31.61 and §31.62 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

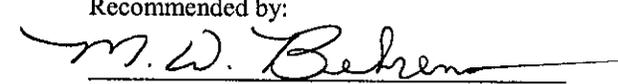
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Director, Public Transportation
Division

Recommended by:



Executive Director

110425 FEB 23 06

Minute
Number

Date
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes the
3 repeal of §31.3, §31.61, §31.62, §31.64, and §31.65 and
4 simultaneously proposes new §31.3, §31.61, and §31.62,
5 concerning the rail fixed guideway system state safety oversight
6 program.

7
8 EXPLANATION OF PROPOSED REPEALS AND NEW SECTIONS

9 The Federal Transit Administration (FTA) adopted new regulations
10 governing Rail Fixed Guideway Systems, State Safety Oversight.
11 The new regulations are published in Title 49 CFR Part 659 and
12 are entitled: Rail Fixed Guideway Systems; State Safety
13 Oversight. New provisions specify the department responsibility
14 of adopting requirements that address the elements identified in
15 49 CFR Part 659. In accordance with the federal regulation, new
16 proposed §31.3, §31.61 and §31.62 require the rail fixed
17 guideway systems to adhere to the provisions outlined in the
18 federal regulations.

19
20 In 1991, Congress required that the FTA establish a program
21 providing for the state-conducted oversight of the safety and
22 security of rail systems not regulated by the Federal Railroad
23 Administration (FRA), by enacting a statute in Title 49 USC
24 §5330. FTA published final regulations to implement the federal
25 statute in 1995 and the final rule went into effect January 26,

1 1996. In 1997, the Texas Legislature enacted a state statute,
2 Transportation Code, §455.005, requiring state compliance with
3 Title 49 USC §5330. In enacting the state statute in May 1997,
4 the Texas Legislature adopted the compliance requirements set
5 out in the FTA regulations in effect at the time. The department
6 adopted rules to further implement the statute in September
7 1997. The state statute states that its purpose is to ensure
8 state compliance with the federal statute published in Title 49
9 USC §5330.

10

11 The FTA amended its regulations that implement the federal
12 statute and published final regulations on April 29, 2005. The
13 final regulations became effective on May 31, 2005 and the date
14 by which states are required to comply is May 1, 2006.

15

16 FTA's new final regulations contain compliance requirements that
17 are more stringent and more specific than the requirements
18 stated in its former regulations. The regulations are more
19 specific in that the FTA no longer requires compliance with
20 standards published in a transportation association manual,
21 rather the new rule enumerates the specific compliance
22 standards.

23

24 The department proposes the repeal of §31.3 and simultaneously
25 proposes new §31.3 in a revised form. New §31.3, Definitions,

1 proposes new terms that match terms used in the new federal
2 regulations.

3

4 The new federal regulations spell out the requirements formerly
5 stated in the American Public Transportation Association (APTA)
6 Manual and guidelines, instead of incorporating the requirements
7 by reference. The FTA determined that it is in the interest of
8 users to publish all of the provisions of the APTA Manual in the
9 state safety oversight regulation, so reference to APTA
10 guidelines must be deleted. The new federal regulations were
11 intended to improve the performance of the State Safety
12 Oversight Program and to ensure the following outcomes: (1)
13 enhance program efficiency; (2) increase responsiveness to
14 recommendations from the National Transportation Safety Board
15 (NTSB) and emerging safety and security issues; (3) improve
16 consistency in the collection and analysis of accident causal
17 factors through increased coordination with other federal
18 reporting and investigation programs; and (4) improve
19 performance of the hazard management process. The regulation
20 also clarifies FTA's oversight management objectives, and
21 streamlines current reporting requirements. The regulations also
22 address heightened concerns for rail transit security and
23 emergency preparedness.

24

25 Terms no longer used in the federal regulations include

1 references to "APTA," "hazardous condition," and "unacceptable
2 hazardous condition," as those terms were used in the manual.
3 New provisions are proposed in order for the state to comply
4 with the federal statute and the regulations that implement the
5 statute. New terms and definitions are included to reflect the
6 new federal regulations: "corrective action plan," "FRA,"
7 "hazard," "individual," "investigation," "new starts project,"
8 "passenger operations," "program standard," "rail accident,"
9 "rail transit accident," "rail transit contractor," "rail
10 transit controlled property," "rail transit fixed guideway
11 system," "rail transit passenger," "rail transit vehicle,"
12 "security," "system safety program plan," and "system security
13 plan." The definitions have been renumbered to reflect the
14 deletions and additions detailed above.

15
16 The department proposes the repeal of §31.61 and simultaneously
17 proposes new §31.61 in a revised form. New §31.61, Rail Transit
18 Agency Responsibilities, proposes new provisions to comply with
19 the federal regulations published in 49 CFR Part 659.

20
21 New §31.61(a) sets out the requirements for each rail transit
22 agency to develop and implement a system safety program that
23 complies with the federal regulations. Rail transit agencies
24 are required to develop and maintain a separate system safety
25 program plan that complies with the requirements specified in

1 the federal regulations.

2

3 New §31.61(b) sets out the requirements for each rail transit
4 agency to develop and implement a system security plan that
5 complies with the new federal regulations.

6

7 New §31.61(c) requires each rail transit agency to perform an
8 annual review of its system safety program and its system
9 security plan that complies with the new federal regulations.

10

11 New §31.61(d) requires the rail transit authority to maintain
12 ongoing internal safety and security reviews that complies with
13 the new federal regulations.

14

15 New §31.61(e) requires the rail transit agency to develop and
16 document a hazard management process that complies with the new
17 federal regulations. The rail transit agency hazard management
18 process must be part of its system safety program plan, to be
19 reviewed and approved by the department. The rail transit
20 agency must develop, in coordination with the department,
21 thresholds for the notification and reporting of hazards to the
22 department. Measures to eliminate or control hazards and the
23 associated corrective actions are to be managed through the
24 hazard management process, including rail transit agency
25 procedures for providing the department with reports to track

1 mitigation. The rail transit agency's hazard management process
2 must include, at a minimum, a definition of the rail transit
3 agency's approach to the hazard management and resolution
4 process, a list of the sources and mechanisms used to support
5 the ongoing identification of hazards, the process by which
6 identified hazards will be evaluated and prioritized for
7 elimination or control, the mechanism used to track identified
8 hazards to resolution, and the process for ongoing reporting of
9 hazard resolution activities to the department.

10

11 New §31.61(f) requires the rail transit agency to notify the
12 department of accidents, including a fatality, injuries
13 requiring immediate medical attention and property damage, in
14 accordance with federal regulations. FTA has modified the
15 thresholds for the notification and investigation of accidents.
16 Rail transit agencies are required to report the occurrence of
17 accidents within two (2) hours. In those instances where the
18 rail transit agency shares track with the general railroad
19 system and is subject to FRA notification requirements, the rail
20 transit agency must notify the department within two (2) hours
21 of an incident for which FRA is notified. The department must
22 investigate, or cause to be investigated, all accidents meeting
23 the notification and investigation thresholds.

24

25 New §31.61(g) requires the transit agency to develop and

1 implement corrective action plans that comply with the new
2 federal regulations. The department must review and approve all
3 procedures, except those used by the NTSB that will be used to
4 conduct an investigation on its behalf. The rail transit agency
5 is required to develop corrective action plans to address
6 findings from accidents and the department's three-year safety
7 and security review. In the case of accident investigations,
8 the department is responsible for ensuring that a corrective
9 action plan is developed, implemented, and tracked, regardless
10 of the entity that conducts the investigation on the state's
11 behalf. The provisions identify a dispute resolution process
12 for matters related to corrective action plan requirements.

13
14 The provisions in §31.62, State Responsibilities, are proposed
15 for repeal because they set out the department's
16 responsibilities for reporting and compliance with the new
17 federal regulations, in 49 CFR Part 659. The provisions state
18 internal requirements for the department and are therefore not
19 required to be adopted as a rule.

20
21 The department proposes the repeal of §31.64, Contractors for
22 Rail Fixed Guideway Transit Agencies, because the provisions
23 covered under this section are now listed in the elements
24 contained in 49 CFR Part 659 and the requirements are reflected
25 under the new proposed §31.61.

1

2 The department proposes the repeal of §31.65, Deadlines, and
3 simultaneously proposes new §31.62, Deadlines, reflecting the
4 requirements outlined in the new federal regulations, 49 CFR
5 Part 659.

6

7 FISCAL NOTE

8 James Bass, Chief Financial Officer, has determined that for
9 each of the first five years the repeals and new sections as
10 proposed are in effect, there will be no fiscal implications for
11 state or local governments as a result of enforcing or
12 administering the repeals and new sections. There are no
13 anticipated economic costs for persons required to comply with
14 the sections as proposed.

15

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

20

21 PUBLIC BENEFIT

22 Mr. Gleason has also determined that for each year of the first
23 five years the sections are in effect, the public benefit
24 anticipated as a result of enforcing or administering the
25 repeals and new sections will be compliance with federal

1 regulations and with state law, and ensuring the safety and
2 security of rail fixed guideway systems. There will be no
3 adverse economic effect on small businesses.

4

5 SUBMITTAL OF COMMENTS

6 Written comments on the proposed repeals and new sections may be
7 submitted to Eric Gleason, Director, Public Transportation
8 Division, Texas Department of Transportation, 125 East 11th
9 Street, Austin, Texas 78701-2483. The deadline for receipt of
10 comments is 5:00 p.m. on April 10, 2006.

11

12 STATUTORY AUTHORITY

13 The repeals and new sections are proposed under Transportation
14 Code, §201.101, which provides the Texas Transportation
15 Commission (commission) with the authority to establish rules
16 for the conduct of the work of the department, and more
17 specifically, Transportation Code, §455.005, which requires the
18 commission to adopt rules governing rail fixed guideway system
19 safety oversight.

20

21 CROSS REFERENCE TO STATUTE

22 Transportation Code, §201.101 and §455.005.

1 SUBCHAPTER A. GENERAL

2 §31.3. Definitions. The following words and terms, when used
3 in this chapter, shall have the following meanings, unless the
4 context clearly indicates otherwise:

5 (1) Administrative expenses--Include, but are not limited
6 to, general administrative expenses such as salaries of the
7 project director, secretary, and bookkeeper; insurance premiums
8 or payments to a self-insurance reserve; office supplies;
9 facilities and equipment rental; and standard overhead rates.

10 (2) Allocation--A preliminary distribution of grant funds
11 representing the maximum amount to be made available to a
12 subrecipient during the fiscal year, subject to the
13 subrecipient's completion of and compliance with all application
14 requirements, rules, and regulations applicable to the specific
15 funding program.

16 (3) APTA guidelines--The "Manual for the Development of
17 Rail Transit System Safety Program Plans" published by the
18 American Public Transportation Association on May 1, 1999, and
19 subsequent revisions.

20 (4) Authority--A metropolitan or regional authority
21 created under Transportation Code, Chapter 451 or 452, or a city
22 transit department created under Transportation Code, Chapter
23 453, by a municipality having a population of not less than

1 200,000 according to the most recent federal census.

2 (5) Average revenue vehicle capacity--The number of seats
3 in all revenue vehicles divided by the number of revenue
4 vehicles.

5 (6) Capital expenses--Include the acquisition,
6 construction, and improvement of public transit facilities and
7 equipment needed for a safe, efficient, and coordinated public
8 transportation system.

9 (7) Commission--The Texas Transportation Commission.

10 (8) Common rule--49 CFR, Part 18, Uniform Administrative
11 Requirements for Grants and Cooperative Agreements to State and
12 Local Governments.

13 (9) Contractor--A recipient of public transportation
14 funds through a contract with the department. This definition
15 is synonymous with subrecipient.

16 (10) Department--The Texas Department of Transportation.

17 (11) Deputy executive director--The deputy executive
18 director of the department.

19 (12) Designated recipient--The state, an authority, a
20 municipality that is not included in an authority, a local
21 governmental body, or a nonprofit entity providing rural public
22 transportation services, that receives federal or state public
23 transportation money through the department or the Federal

1 Transit Administration, or its successor.

2 (13) Director--The director of public transportation for
3 the department.

4 (14) District--One of the 25 districts of the department
5 having responsibility for administration of public
6 transportation programs in a designated geographic area.

7 (15) District engineer--The chief executive officer in
8 charge of a district.

9 (16) Equipment--Tangible, nonexpendable, personal
10 property having a useful life of more than one year and an
11 acquisition cost of \$5,000 or more per unit.

12 (17) Executive director--The chief executive officer of
13 the department.

14 (18) Fatality--A death that results from an incident and
15 that occurs within 30 days following the incident.

16 (19) Federally funded project--A public transportation
17 project that is being funded in part under the provisions of the
18 Federal Transit Act, as amended, 49 USC §5301 et seq., the
19 Federal-Aid Highway Act of 1973, as amended, 23 USC §101 et
20 seq., or any other federal program for funding public
21 transportation.

22 (20) Fiscal year--The state accounting period of 12
23 months that begins on September 1 of each calendar year and ends

1 on August 31 of the following calendar year.

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

4 (22) Good standing - A status indicating that the
5 department's director of public transportation has not sent a
6 letter to an entity signifying the entity is in noncompliance
7 with any aspect of a program.

8 (23) Hazardous condition--A condition that may endanger
9 human life or property, including an unacceptable hazardous
10 condition.

11 (24) Incident--An intentional or unintentional act that
12 occurs on or in association with transit-controlled property and
13 that threatens or affects the safety or security of an
14 individual or property.

15 (25) Individual--A natural person, including a passenger,
16 trespasser, employee, or bystander.

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

20 (27) Investigation--A process to determine the probable
21 cause of a rail accident or an unacceptable hazardous condition,
22 including a review by the department, or its agent, of a rail
23 transit agency's determination of the probable cause of a rail

1 accident or an unacceptable hazardous condition.

2 (28) Like-kind exchange--The trade-in or sale of a
3 transit vehicle before the end of its useful life to acquire a
4 replacement vehicle of like kind.

5 (29) Local funds--Directly generated funds, as defined in
6 the latest edition of the Federal Transit Administration
7 National Transit Database Reporting Manual. Examples include,
8 but are not limited to, passenger fares, special transit fares,
9 purchased transportation fares, park and ride revenue, other
10 transportation revenue, charter service revenue, freight
11 tariffs, station and vehicle concessions, advertising revenue,
12 funds dedicated to transit at their source, taxes, cash
13 contributions, contract revenue, general revenue, and in-kind
14 contributions.

15 (30) Local governmental entity--Any local unit of
16 government including a city, town, village, municipality,
17 county, city transit department, metropolitan transit authority,
18 or regional transit authority.

19 (31) Local public body--Includes cities, counties, and
20 other political subdivisions of states; public agencies; and
21 instrumentalities of one or more states, municipalities, or
22 political subdivisions of states.

23 (32) Local share requirement--The amount of funds that is

1 required and is eligible to match federally funded projects for
2 the improvement of public transportation.

3 (33) MPO--Metropolitan Planning Organization, the
4 organization designated by the governor as the responsible
5 entity for transportation planning in urbanized areas over
6 50,000 in population.

7 (34) Net operating expenses--Those expenses that remain
8 after operating revenues are subtracted from eligible operating
9 expenses.

10 (35) Nonprofit organization--A corporation or association
11 determined by the Secretary of the Treasury of the United States
12 to be an organization described by 26 USC §501(c), one that is
13 exempt from taxation under 26 USC §504(a) or §101, or one that
14 has been determined under state law to be nonprofit and for
15 which the state has received documentation certifying the status
16 of the nonprofit organization.

17 (36) Nonurbanized area--An area outside an urbanized
18 area.

19 (37) Obligated funds--Monies made available under a
20 valid, unexpired contract between the department and a public
21 transportation subrecipient.

22 (38) Operating expenses--Costs directly related to system
23 operations of a transit agency regardless of the category of

1 funding. At a minimum, this definition includes:

2 (A) fuel, oil, replacement tires, replacement parts
3 that do not meet the criteria for capital items, drivers' and
4 mechanics' salaries and fringe benefits, dispatchers' salaries,
5 and licenses;

6 (B) maintenance, repair, servicing, and inspection of
7 transit agency property, including both vehicles and other
8 property, whether routine or to remedy the effects of collision
9 damage or vandalism; and

10 (C) expenses funded with capital or administrative
11 funds, including preventative maintenance, provision of
12 paratransit service under the Americans with Disability Act
13 (ADA), capital cost of contracting, and insurance.

14 (39) Private--Pertaining to nonpublic entities. This
15 definition does not include municipalities or other political
16 subdivisions of the state; public agencies or instrumentalities
17 of one or more states; Indian tribes (except private nonprofit
18 corporations formed by Indian tribes); public corporations,
19 boards, or commissions established under the law of any state;
20 or entities subject to control by public authority, whether
21 state or municipal.

22 (40) Project--The public transportation activities to be
23 carried out by a subrecipient, as described in its application

1 for funding.

2 (41) Property damage--The dollar amount required to
3 replace any vehicle, whether transit or non-transit, and any
4 property or facility damaged during an incident, or to repair it
5 to a state equivalent to the state that existed before the
6 incident.

7 (42) Public transportation--Transportation of passengers
8 and their hand-carried packages or baggage on a regular or
9 continuing basis by means of surface or water conveyance. This
10 definition includes fixed guideway transportation and
11 underground transportation, but excludes services provided by
12 aircraft, taxicabs, ambulances, and emergency vehicles.

13 (43) Rail accident--An event that occurs when a rail
14 fixed guideway system is in operation and as a result of which
15 an individual dies or suffers bodily injury for which immediate
16 medical treatment is given at a location other than the scene of
17 the event or in which a collision, derailment, or fire results
18 in property damage in excess of \$100,000. This definition does
19 not include injuries, deaths, and property damage that occur
20 when a rail fixed guideway system is not in revenue service
21 operation.

22 (44) Rail fixed guideway system--Any light, heavy, or
23 rapid rail system, monorail, inclined plane, funicular, trolley,

1 or automated guideway that:

2 (A) is included in FTA's computation of fixed guideway
3 route miles or receives funding under FTA's formula program for
4 urbanized areas, found in 49 USC §5336; and

5 (B) is not regulated by the Federal Railroad
6 Administration.

7 (45) Rail transit agency--An entity operating a rail
8 fixed guideway system.

9 (46) Real property--Land, including improvements,
10 structures, and appurtenances, but excluding movable machinery
11 and equipment.

12 (47) Revenue vehicle--The rolling stock used in providing
13 transit service for passengers. This definition does not
14 include a vehicle used in connection with keeping revenue
15 vehicles in operation, such as a tow truck or a staff car.

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

23 (49) Revenues--Fares paid by riders, including those who

1 are later reimbursed by a human service agency or other user-
2 side subsidy arrangement. This definition includes subscription
3 service fees, whether or not collected on-board a transit
4 vehicle. Payments made directly to the transportation system by
5 a human service agency are not considered to be revenues.

6 (50) Ridership--Unlinked passenger trips.

7 (51) Ridesharing activities--Transportation provided by
8 rubber-tired vehicles that carry no fewer than 10 nor more than
9 15 passengers and that are operated on a nonprofit basis.

10 (52) Rural public transportation (RPT)--A generic term
11 used to identify subrecipients who provide service in
12 nonurbanized areas.

13 (53) Rural transit district--A political subdivision of
14 the state that provides and coordinates rural public
15 transportation within its boundaries in accordance with the
16 provisions of Transportation Code, Chapter 458.

17 (54) Safety--Freedom from danger, including freedom from
18 unintentional as well as intentional acts.

19 (55) Security--Freedom from intentional danger, including
20 criminal acts such as muggings, rapes, robberies, and terrorist
21 acts, such as bombings, releases of poisonous gases, and
22 kidnappings.

23 (56) Stakeholders--All individuals or groups that are

1 potentially affected by transportation decisions. Examples
2 include public agencies, representatives of transportation
3 agency employees or other affected employees, private providers
4 of transportation, non-governmental agencies, local businesses,
5 persons in diverse and traditionally underserved communities,
6 and other interested parties.

7 (57) Strategic priorities--Projects that the commission
8 has determined will:

9 (A) stabilize funding levels;

10 (B) increase transit operating efficiency or
11 effectiveness as demonstrated by significant cost savings or
12 substantial enhancements to service delivery; or

13 (C) advance the level of coordination among
14 transportation service providers, and among transportation
15 service providers and health and human services agencies.

16 (58) Subrecipient--An entity that receives FTA assistance
17 from the department, rather than directly from FTA. This
18 definition is synonymous with contractor.

19 (59) Unacceptable hazardous condition--A particular kind
20 of hazardous condition determined by using the hazard resolution
21 matrix contained in the American Public Transportation
22 Association's guidelines.

23 (60) Uniform grant and contract management standards--The

1 standards contained in the Texas Administrative Code, Title 1,
2 Chapter 5, Subchapter A, concerning uniform grant and contract
3 management standards for state agencies.

4 (61) Unlinked passenger trips--The number of passengers
5 who board public transportation vehicles. A passenger is
6 counted each time the passenger boards a vehicle even though the
7 passenger might be on the same journey from origin to
8 destination.

9 (62) Urban transit district--In accordance with
10 Transportation Code, Chapter 458, a local governmental body or a
11 political subdivision of the state that operates a public
12 transportation system in an urbanized area with a population
13 between 50,000 and 200,000, according to the most recent federal
14 census. This definition includes small urban transportation
15 providers under Transportation Code, Chapter 456, that received
16 state money through the department on September 1, 1994.

17 (63) Urbanized area--A core area and the surrounding
18 densely populated area with a population of 50,000 or more, with
19 boundaries fixed by the United States Census Bureau.

20 (64) Vehicle miles--The miles a vehicle travels while in
21 revenue service, plus deadhead miles. This definition excludes
22 miles a vehicle travels for charter service, school bus service,
23 operator training, or maintenance testing.

1 (65) Vehicle revenue hours or miles--The hours or miles a
2 vehicle travels while in revenue service. This definition
3 includes layover and recovery, but excludes travel to and from
4 storage facilities, the training of operators prior to revenue
5 service, road tests, deadhead travel, and school bus and charter
6 service.

7 (66) Vehicle utilization--Average daily passenger trips
8 per revenue vehicle, divided by average revenue vehicle
9 capacity. This definition provides a measure of an individual
10 system's ability to use existing seating capacity.

Repealed

1 SUBCHAPTER A. GENERAL

2 §31.3. Definitions. The following words and terms, when used
3 in this chapter, shall have the following meanings, unless the
4 context clearly indicates otherwise:

5 (1) Administrative expenses--Include, but are not limited
6 to, general administrative expenses such as salaries of the
7 project director, secretary, and bookkeeper; insurance premiums
8 or payments to a self-insurance reserve; office supplies;
9 facilities and equipment rental; and standard overhead rates.

10 (2) Allocation--A preliminary distribution of grant funds
11 representing the maximum amount to be made available to a
12 subrecipient during the fiscal year, subject to the
13 subrecipient's completion of and compliance with all application
14 requirements, rules, and regulations applicable to the specific
15 funding program.

16 (3) Authority--A metropolitan or regional authority
17 created under Transportation Code, Chapter 451 or 452, or a city
18 transit department created under Transportation Code, Chapter
19 453, by a municipality having a population of not less than
20 200,000 according to the most recent federal census.

21 (4) Average revenue vehicle capacity--The number of seats
22 in all revenue vehicles divided by the number of revenue
23 vehicles.

1 (5) Capital expenses--Include the acquisition,
2 construction, and improvement of public transit facilities and
3 equipment needed for a safe, efficient, and coordinated public
4 transportation system.

5 (6) Commission--The Texas Transportation Commission.

6 (7) Common rule--49 CFR, Part 18, Uniform Administrative
7 Requirements for Grants and Cooperative Agreements to State and
8 Local Governments.

9 (8) Contractor--A recipient of public transportation
10 funds through a contract with the department.

11 (9) Corrective action plan--A plan developed by the rail
12 transit agency that describes the actions the rail transit
13 agency will take to minimize, control, correct, or eliminate
14 hazards, and the schedule for implementing those actions.

15 (10) Department--The Texas Department of Transportation.

16 (11) Deputy executive director--The deputy executive
17 director of the department.

18 (12) Designated recipient--The state, an authority, a
19 municipality that is not included in an authority, a local
20 governmental body, or a nonprofit entity providing rural public
21 transportation services, that receives federal or state public
22 transportation money through the department or the Federal
23 Transit Administration, or its successor.

1 (13) Director--The director of public transportation for
2 the department.

3 (14) District--One of the 25 districts of the department
4 having responsibility for administration of public
5 transportation programs in a designated geographic area.

6 (15) District engineer--The chief executive officer in
7 charge of a district.

8 (16) Equipment--Tangible, nonexpendable, personal
9 property having a useful life of more than one year and an
10 acquisition cost of \$5,000 or more per unit.

11 (17) Executive director--The chief executive officer of
12 the department.

13 (18) Fatality--A death that results from an incident and
14 that occurs within 30 days following the incident.

15 (19) Federally funded project--A public transportation
16 project that is being funded in part under the provisions of the
17 Federal Transit Act, as amended, 49 USC §5301 et seq., the
18 Federal-Aid Highway Act of 1973, as amended, 23 USC §101 et
19 seq., or any other federal program for funding public
20 transportation.

21 (20) Fiscal year--The state accounting period of 12
22 months that begins on September 1 of each calendar year and ends
23 on August 31 of the following calendar year.

1 (21) FRA--The Federal Railroad Administration, an agency
2 of the United States Department of Transportation.

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

5 (23) Good standing--A status indicating that the
6 department's director of public transportation has not sent a
7 letter to an entity signifying the entity is in noncompliance
8 with any aspect of a program.

9 (24) Hazard--Any real or potential condition (as defined
10 in the rail transit agency's hazard management process) that can
11 cause injury, illness, or death; damage to or loss of a system,
12 equipment or property; or damage to the environment.

13 (25) Incident--An intentional or unintentional act that
14 occurs on or in association with transit-controlled property and
15 that threatens or affects the safety or security of an
16 individual or property.

17 (26) Individual--A passenger; employee; contractor; other
18 rail transit facility worker; pedestrian; trespasser; or any
19 person on rail transit controlled property.

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

23 (28) Investigation--The process used to determine the

1 causal and contributing factors of an accident or hazard, so
2 that actions can be identified to prevent recurrence.

3 (29) Like-kind exchange--The trade-in or sale of a
4 transit vehicle before the end of its useful life to acquire a
5 replacement vehicle of like kind.

6 (30) Local funds--Directly generated funds, as defined in
7 the latest edition of the Federal Transit Administration
8 National Transit Database Reporting Manual. Examples include,
9 but are not limited to, passenger fares, special transit fares,
10 purchased transportation fares, park and ride revenue, other
11 transportation revenue, charter service revenue, freight
12 tariffs, station and vehicle concessions, advertising revenue,
13 funds dedicated to transit at their source, taxes, cash
14 contributions, contract revenue, general revenue, and in-kind
15 contributions.

16 (31) Local governmental entity--Any local unit of
17 government including a city, town, village, municipality,
18 county, city transit department, metropolitan transit authority,
19 or regional transit authority.

20 (32) Local public body--Includes cities, counties, and
21 other political subdivisions of states; public agencies; and
22 instrumentalities of one or more states, municipalities, or
23 political subdivisions of states.

1 (33) Local share requirement--The amount of funds
2 required and eligible to match federally funded projects for the
3 improvement of public transportation.

4 (34) MPO--Metropolitan Planning Organization, the
5 organization designated by the governor as the responsible
6 entity for transportation planning in urbanized areas over
7 50,000 in population.

8 (35) Net operating expenses--Those expenses that remain
9 after operating revenues are subtracted from eligible operating
10 expenses.

11 (36) New starts project--Any rail fixed guideway system
12 funded under FTA's 49 U.S.C. 5309 discretionary construction
13 program.

14 (37) Nonprofit organization--A corporation or association
15 determined by the Secretary of the Treasury of the United States
16 to be an organization described by 26 USC §501(c), one that is
17 exempt from taxation under 26 USC §504(a) or §101, or one that
18 has been determined under state law to be nonprofit and for
19 which the state has received documentation certifying the status
20 of the nonprofit organization.

21 (38) Nonurbanized area--An area outside an urbanized
22 area.

23 (39) Obligated funds--Monies made available under a

1 valid, unexpired contract between the department and a public
2 transportation subrecipient.

3 (40) Operating expenses--Costs directly related to system
4 operations of a transit agency regardless of the category of
5 funding. At a minimum, this definition includes:

6 (A) fuel, oil, replacement tires, replacement parts
7 that do not meet the criteria for capital items, drivers' and
8 mechanics' salaries and fringe benefits, dispatchers' salaries,
9 and licenses;

10 (B) maintenance, repair, servicing, and inspection of
11 transit agency property, including both vehicles and other
12 property, whether routine or to remedy the effects of collision
13 damage or vandalism; and

14 (C) expenses funded with capital or administrative
15 funds, including preventative maintenance, provision of
16 paratransit service under the Americans with Disability Act
17 (ADA), capital cost of contracting, and insurance.

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

21 (42) Private--Pertaining to nonpublic entities. This
22 definition does not include municipalities or other political
23 subdivisions of the state; public agencies or instrumentalities

1 of one or more states; Indian tribes (except private nonprofit
2 corporations formed by Indian tribes); public corporations,
3 boards, or commissions established under the law of any state;
4 or entities subject to control by public authority, whether
5 state or municipal.

6 (43) Program standard--A written document developed and
7 distributed by the oversight agency, that describes the
8 policies, objectives, responsibilities, and procedures used to
9 provide rail transit agency safety and security oversight.

10 (44) Project--The public transportation activities to be
11 carried out by a subrecipient, as described in its application
12 for funding.

13 (45) Property damage--The dollar amount required to
14 replace any vehicle, whether transit or non-transit, and any
15 property or facility damaged during an incident, or to repair it
16 to a state equivalent to the state that existed before the
17 incident.

18 (46) Public transportation--Transportation of passengers
19 and their hand-carried packages or baggage on a regular or
20 continuing basis by means of surface or water conveyance. This
21 definition includes fixed guideway transportation and
22 underground transportation, but excludes services provided by
23 aircraft, taxicabs, ambulances, and emergency vehicles.

1 (47) Rail transit accident--An incident involving a rail
2 fixed guideway transit vehicle or taking place on rail fixed
3 guideway transit controlled property where one or more of the
4 following occurs:

5 (A) A fatality at the scene; or where an individual is
6 confirmed dead within thirty (30) days of a rail fixed guideway
7 transit-related incident;

8 (B) Injuries requiring immediate medical attention away
9 from the scene for two or more individuals;

10 (C) Property damage to rail fixed guideway transit
11 vehicles, non-rail transit vehicles, other rail transit property
12 or facilities and non-transit property that equals or exceeds
13 \$25,000;

14 (D) An evacuation due to life safety reasons;

15 (E) A collision at a grade crossing;

16 (F) A main-line derailment;

17 (G) A collision with an individual on a rail fixed
18 guideway right of way; or

19 (H) A collision between a rail fixed guideway transit
20 vehicle and a second rail fixed guideway transit vehicle, or a
21 rail fixed guideway transit non-revenue vehicle.

22 (48) Rail transit agency--An entity operating a rail
23 fixed guideway system.

1 (49) Rail transit contractor--An entity that performs
2 tasks required on behalf of the oversight or rail transit
3 agency. The fixed guideway system may not be a contractor for
4 the oversight agency.

5 (50) Rail transit controlled property--Property that is
6 used by the rail transit agency and may be owned, leased, or
7 maintained by the rail transit agency.

8 (51) Rail transit fixed guideway system--Any light,
9 heavy, or rapid rail system, monorail, inclined plane,
10 funicular, trolley, or automated guideway, as determined by the
11 FTA, that:

12 (A) is not regulated by the Federal Railroad
13 Administration; and

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

17 (C) has submitted documentation to FTA indicating its
18 intent to be included in FTA's calculation of fixed guideway
19 route miles to receive funding under FTA's formula program for
20 urbanized areas (49 U.S.C. 5336).

21 (52) Rail transit passenger--A person who is on board,
22 boarding, or alighting from a rail transit vehicle for the
23 purpose of travel.

1 (53) Rail transit vehicle--The rail transit agency's
2 rolling stock, including, but not limited to passenger and
3 maintenance vehicles.

4 (54) Real property--Land, including improvements,
5 structures, and appurtenances, but excluding movable machinery
6 and equipment.

7 (55) Revenue service--Passenger transportation occurring
8 when a vehicle is available to the general public and there is a
9 reasonable expectation of carrying passengers that directly pay
10 fares, are subsidized by public policy, or provide payment
11 through some contractual agreement. This does not imply that a
12 cash fare must be paid. Vehicles operated in free fare services
13 are considered in revenue service.

14 (56) Revenue vehicle--The rolling stock used in providing
15 transit service for passengers. This definition does not
16 include a vehicle used in connection with keeping revenue
17 vehicles in operation, such as a tow truck or a staff car.

18 (57) Revenues--Fares paid by riders, including those who
19 are later reimbursed by a human service agency or other user-
20 side subsidy arrangement. This definition includes subscription
21 service fees, whether or not collected on-board a transit
22 vehicle. Payments made directly to the transportation system by
23 a human service agency are not considered to be revenues.

1 (58) Ridership--Unlinked passenger trips.

2 (59) Ridesharing activities--Transportation provided by
3 rubber-tired vehicles that carry no fewer than 10 nor more than
4 15 passengers and that are operated on a nonprofit basis.

5 (60) Rural public transportation (RPT)--A generic term
6 used to identify subrecipients who provide service in
7 nonurbanized areas.

8 (61) Rural transit district--A political subdivision of
9 the state that provides and coordinates rural public
10 transportation within its boundaries in accordance with the
11 provisions of Transportation Code, Chapter 458.

12 (62) Safety-- Freedom from harm resulting from
13 unintentional acts or circumstances.

14 (63) Security-- Freedom from harm resulting from
15 intentional acts or circumstances. Intentional danger includes
16 crimes and must be reported the department if the intentional
17 act meets the thresholds for notification.

18 (64) Stakeholders--All individuals or groups that are
19 potentially affected by transportation decisions. Examples
20 include public agencies, representatives of transportation
21 agency employees or other affected employees, private providers
22 of transportation, non-governmental agencies, local businesses,
23 persons in diverse and traditionally underserved communities,

1 and other interested parties.

2 (65) Strategic priorities--Projects that the commission
3 has determined will:

4 (A) stabilize funding levels;

5 (B) increase transit operating efficiency or
6 effectiveness as demonstrated by significant cost savings or
7 substantial enhancements to service delivery; or

8 (C) advance the level of coordination among
9 transportation service providers, and among transportation
10 service providers and health and human services agencies.

11 (66) Subrecipient--An entity that receives FTA assistance
12 from the department, rather than directly from FTA.

13 (67) System safety program plan--A document developed by
14 the rail transit agency, describing its safety policies,
15 objectives, responsibilities, and procedures.

16 (68) System security plan--A document developed by the
17 rail transit agency describing its security policies,
18 objectives, responsibilities, and procedures.

19 (69) Uniform grant and contract management standards--The
20 standards contained in the Texas Administrative Code, Title 1,
21 Chapter 5, Subchapter A, concerning uniform grant and contract
22 management standards for state agencies.

23 (70) Unlinked passenger trips--The number of passengers

1 who board public transportation vehicles. A passenger is
2 counted each time the passenger boards a vehicle even though the
3 passenger might be on the same journey from origin to
4 destination.

5 (71) Urban transit district--In accordance with
6 Transportation Code, Chapter 458, a local governmental body or a
7 political subdivision of the state that operates a public
8 transportation system in an urbanized area with a population
9 between 50,000 and 200,000, according to the most recent federal
10 census. This definition includes small urban transportation
11 providers under Transportation Code, Chapter 456, that received
12 state money through the department on September 1, 1994.

13 (72) Urbanized area--A core area and the surrounding
14 densely populated area with a population of 50,000 or more, with
15 boundaries fixed by the United States Census Bureau.

16 (73) Vehicle miles--The miles a vehicle travels while in
17 revenue service, plus deadhead miles. This definition excludes
18 miles a vehicle travels for charter service, school bus service,
19 operator training, or maintenance testing.

20 (74) Vehicle revenue hours or miles--The hours or miles a
21 vehicle travels while in revenue service. This definition
22 includes layover and recovery, but excludes travel to and from
23 storage facilities, the training of operators prior to revenue

1 service, road tests, deadhead travel, and school bus and charter
2 service.

3 (75) Vehicle utilization--Average daily passenger trips
4 per revenue vehicle, divided by average revenue vehicle
5 capacity. This definition provides a measure of an individual
6 system's ability to use existing seating capacity.

1 SUBCHAPTER F. RAIL SAFETY OVERSIGHT PROGRAM

2 §31.61. Rail Transit Agency Responsibilities.

3 (a) Plan. A rail transit agency shall develop a system
4 safety program plan and submit it to the department 120 days
5 before beginning revenue service. The plan shall:

6 (1) address the topics outlined in "Implementation
7 Guidelines for State Safety Oversight of Rail Fixed Guideway
8 Systems," DOT-FTA-MA-90-7006-96-3 (available from the
9 department);

10 (2) comply with the APTA guidelines (available from the
11 department) including:

12 (A) standards for the personal security of passengers
13 and employees of the rail fixed guideway system;

14 (B) lines of authority;

15 (C) levels of responsibility and accountability; and

16 (D) methods of documentation for the system; and

17 (3) contain a security system program plan that complies
18 with the "Transit Security Procedures Guide," FTA-MA-90-7001-94-
19 2 and the "Transit System Security Program Planning Guide," FTA-
20 MA-90-7001-94-1 (available from the department), and include:

21 (A) current security conditions and existing security
22 capabilities and practices;

23 (B) management of the system security plan and roles

1 and responsibilities for planning, proactive measures, training,
2 and day-to-day activities;

3 (C) threat and vulnerability identification,
4 assessment, and resolution;

5 (D) prevention and resolution of security problems,
6 including general security issues and crimes against passengers,
7 the rail transit system, and the public; and

8 (E) implementation, evaluation, and modification of
9 system security plan.

10 (b) Rail accident notification and report. A rail transit
11 agency shall report rail accidents and unacceptable hazardous
12 conditions to the department by telephone, electronic mail, or
13 facsimile within 24 hours of the occurrence of the rail accident
14 or the discovery of the unacceptable hazardous condition and in
15 writing within 30 days of the last day of the reporting month,
16 including a final corrective action plan and a summary report
17 for the month.

18 (c) Internal safety audit. A rail transit agency shall
19 conduct an annual internal safety audit in accordance with APTA
20 guidelines, submit audit forms for approval six weeks prior to
21 the audit, and submit a written report to the department that
22 shall, at a minimum:

23 (1) summarize the rail transit agency's safety activities

1 for the preceding 12 months including a report of the internal
2 safety audits performed during the preceding 12 months; and

3 (2) describe major findings of the rail transit agency's
4 safety audits and inspections, including:

5 (A) areas of non-compliance and corrective actions
6 taken;

7 (B) outcomes of safety and related initiatives; and

8 (C) progress of training efforts and evaluations.

9 (d) Hazardous conditions and investigations. A rail
10 transit agency shall:

11 (1) minimize, control, correct, or eliminate any
12 investigated unacceptable hazardous conditions as required by
13 §31.62(c) of this subchapter; and

14 (2) provide all necessary assistance to allow the
15 department, or its agent, to conduct:

16 (A) appropriate on-site investigations of rail
17 accidents and unacceptable hazardous conditions under §31.62(c)
18 of this subchapter; and

19 (B) an on-site triennial safety review under §31.62(c)
20 of this subchapter.

21 (e) Reports and certification. A rail transit agency shall
22 submit:

23 (1) reports and other information to the department as

1 required by 49 USC §5330 and Transportation Code, Chapter 455;
2 and

3 (2) a certification, signed by an authorized official of
4 the rail transit agency, to the department stating that the rail
5 transit agency has complied with the provisions of this
6 subchapter.

7
8 §31.62. State Responsibilities.

9 (a) Department guidelines. In carrying out its
10 responsibilities under this subchapter, the department will
11 follow the principles and procedures outlined in "Implementation
12 Guidelines for State Safety Oversight of Rail Fixed Guideway
13 Systems" (DOT-FTA-MA-90-7006-96-3) (available from the
14 department).

15 (b) Plan. The department, or its agent, will review the
16 rail transit agency's system safety program plan required by
17 §31.61(a) of this subchapter; and

18 (1) approve the plan, if it meets the required standards
19 in §31.61(a) of this subchapter; or

20 (2) notify the rail transit agency in writing and
21 identify the specific sections of the plan that are not in
22 compliance with the state standards, and recommend appropriate
23 modifications or additions, specifying a time frame during which

1 the revisions must be accomplished.

2 (c) Probable cause. The department will review the rail
3 transit agency's findings of probable cause of a rail accident
4 or unacceptable hazardous condition in accordance with the APTA
5 guidelines, Transit Security Procedures Guide, and the Transit
6 System Security Program Planning Guide, including operating
7 hazard, subsystem interface, and human factors analyses; and

8 (1) approve the findings of probable cause in accordance
9 with those guidelines; or

10 (2) conduct an independent investigation, either with
11 department personnel or an outside agent if the findings of
12 probable cause are not approved under paragraph (1) of this
13 subsection and will:

14 (A) advise the rail transit agency by telephone at
15 least 24 hours in advance of the arrival of an investigator at
16 the transit property; and

17 (B) provide written confirmation to the rail transit
18 agency within 48 hours that explains the reasons the department
19 is conducting an independent investigation and provide the names
20 of the personnel who will be conducting the investigation.

21 (d) Security and safety reviews.

22 (1) The department will require, review, and approve in
23 accordance with APTA guidelines, the Transit Security Procedures

1 Guide, and the Transit System Security Program Planning Guide:

2 (A) any plan of a rail transit agency to minimize,
3 control, correct, or eliminate any investigated rail accident;
4 and

5 (B) the agency's annual safety audit report required by
6 §31.61(c) of this subchapter.

7 (2) At least every three years, the department will:

8 (A) conduct an on-site safety review of each rail
9 transit agency's system safety program plan based upon the
10 criteria in §31.61(a) of this subchapter; and

11 (B) prepare and issue a report containing findings and
12 recommendations resulting from that review that, at a minimum,
13 include:

14 (i) an analysis of the efficacy of the system safety
15 program plan; and

16 (ii) a determination of whether it should be revised
17 to meet the requirements of §31.61(a) of this subchapter.

18 (e) Reports. The department will submit reports or other
19 information required by the United States Department of
20 Transportation.

21
22 §31.64. Contractors for Rail Transit Agencies. A transit
23 agency may use a contractor to:

- 1 (1) develop or update a system safety program plan;
- 2 (2) prepare annual audit reports; and
- 3 (3) develop a corrective action plan.

4
5 §31.65. Deadlines. A rail transit agency shall submit to the
6 department:

7 (1) prior to beginning revenue service, a system safety
8 program plan required by §31.61(a) of this subchapter, including
9 the system security portion of the plan required by §31.61(a)(3)
10 of this subchapter;

11 (2) by February 1 of each year, a written report of its
12 annual internal safety audit conducted as required by §31.61(c)
13 of this subchapter;

14 (3) by February 1 of each year, a certification, signed
15 by an authorized official of the rail transit agency, that the
16 rail transit agency has complied with the provisions of this
17 subchapter; and

18 (4) by February 1 of each year, a written report of the
19 rail transit agency's safety activities for the preceding 12
20 months as required by §31.61(c) of this subchapter.

1 SUBCHAPTER F. RAIL FIXED GUIDEWAY SYSTEM
2 STATE SAFETY OVERSIGHT PROGRAM
3

4 §31.61. Rail Transit Agency Responsibilities.

5 (a) System safety program plan. The rail transit agency
6 shall develop and implement a written system safety program plan
7 that complies with the requirements of this section. The system
8 safety plan shall include, at a minimum, the following
9 documents.

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

13 (2) A clear definition of the goals and objectives for
14 the safety program and stated management responsibilities to
15 ensure they are achieved.

16 (3) An overview of the management structure of the rail
17 transit agency, including:

18 (A) an organization chart;

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

21 (C) clear identification of the lines of authority used
22 by the rail transit agency to manage safety issues.

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

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

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

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

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

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

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

16 (A) hazard identification;

17 (B) hazard investigation, evaluation and analysis;

18 (C) hazard control and elimination;

19 (D) hazard tracking; and

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

22 (7) A description of the process used by the rail transit
23 agency to ensure that safety concerns are addressed in

1 modifications to existing systems, vehicles, and equipment,
2 which do not require formal safety certification but which may
3 have safety impacts.

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

10 (9) A description of the process used to collect,
11 maintain, analyze, and distribute safety data, to ensure that
12 the safety function within the rail transit organization
13 receives the necessary information to support implementation of
14 the system safety program.

15 (10) A description of the process used by the rail
16 transit agency to perform accident notification, investigation
17 and reporting, including:

18 (A) notification thresholds for internal and external
19 organizations;

20 (B) accident investigation process and references to
21 procedures;

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

1 (D) reporting to internal and external organizations;

2 and

3 (E) coordination with the department.

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

7 (A) meetings with external agencies;

8 (B) emergency planning responsibilities and
9 requirements;

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

12 (D) after action reports and implementation of
13 findings;

14 (E) revision and distribution of emergency response
15 procedures;

16 (F) familiarization training for public safety
17 organizations; and

18 (G) employee training.

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

23 (A) identification of departments and functions subject

1 to review;

2 (B) responsibility for scheduling reviews;

3 (C) process for conducting reviews, including the
4 development of checklists and procedures and the issuing of
5 findings;

6 (D) review of reporting requirements;

7 (E) tracking the status of implemented recommendations;

8 and

9 (F) coordination with the department.

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

13 (A) identification of operating and maintenance rules
14 and procedures subject to review;

15 (B) techniques used to assess the implementation of
16 operating and maintenance rules and procedures by employees,
17 such as performance testing;

18 (C) techniques used to assess the effectiveness of
19 supervision relating to the implementation of operating and
20 maintenance rules; and

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

23 (14) A description of the process used for facilities and

1 equipment safety inspections, including:

2 (A) identification of the facilities and equipment

3 subject to regular safety related inspection and testing;

4 (B) techniques used to conduct inspections and testing;

5 (C) inspection schedules and procedures; and

6 (D) description of how results are entered into the
7 hazard management process.

8 (15) A description of the maintenance audits and
9 inspections program, including identification of the affected
10 facilities and equipment, maintenance cycles, documentation
11 required, and the process for integrating identified problems
12 into the hazard management process.

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

15 (A) categories of safety-related work requiring
16 training and certification;

17 (B) a description of the training and certification
18 program for employees and contractors in safety-related
19 positions;

20 (C) process used to maintain and access employee and
21 contractor training records; and

22 (D) process used to assess compliance with training and
23 certification requirements.

1 (17) A description of the configuration management
2 control process, including:

3 (A) the authority to make configuration changes;

4 (B) process for making changes; and

5 (C) assurances necessary for formally notifying all
6 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, including:

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

13 (B) processes for ensuring the employees and
14 contractors know and follow the requirements.

15 (19) A description of the hazardous materials program,
16 including the process used to ensure knowledge of and compliance
17 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

1 transit agency's procurement process.

2 (b) System security plan.

3 (1) The rail transit agency shall implement a system
4 security plan that, at a minimum, complies with requirements in
5 this subsection. The system security plan must be developed and
6 maintained as a separate document and may not be part of the
7 rail transit agency's system safety program plan.

8 (2) The system security plan must, at a minimum address
9 the following:

10 (A) identify the policies, goals, and objectives for
11 the security program endorsed by the agency's chief executive;

12 (B) document the rail transit agency's process for
13 managing threats and vulnerabilities during operations, and for
14 major projects, extensions, new vehicles and equipment,
15 including integration with the safety certification process;

16 (C) identify controls in place that address the
17 personal security of passengers and employees;

18 (D) document the rail transit agency's process for
19 conducting internal security reviews to evaluate compliance and
20 measure the effectiveness of the system security plan; and

21 (E) document the rail transit agency's process for
22 making its system security plan and accompanying procedures
23 available to the department for review and approval.

1 (c) Annual reviews.

2 (1) The rail transit agency shall conduct an annual
3 review of its system safety program plan and system security
4 plan.

5 (2) In the event the rail transit agency's system safety
6 program plan is modified, the rail transit agency must submit
7 the modified plan and any subsequently modified procedures to
8 the department for review and approval.

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

13 (d) Internal safety and security reviews.

14 (1) The rail transit agency shall develop and document a
15 process for the performance of on-going internal safety and
16 security reviews in its system safety program plan.

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

19 (A) describe the process used by the rail transit
20 agency to determine if all identified elements of its system
21 safety program plan and system security plan are performing as
22 intended;

23 (B) ensure that all elements of the system safety

1 program plan and system security plan are reviewed in an ongoing
2 manner and completed over a three-year cycle;

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

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

9 (E) the rail transit agency shall make available to the
10 department any checklists or procedures subject to the security
11 portion of its review;

12 (F) the rail transit agency shall submit an annual
13 report documenting internal safety and security review
14 activities and the status of subsequent findings and corrective
15 actions. The security part of this report must be made
16 available for department review;

17 (G) the annual report must be accompanied by a formal
18 letter of certification signed by the rail transit agency's
19 chief executive, indicating that the rail transit agency is in
20 compliance with its system safety program plan and system
21 security plan; and

22 (H) if the rail transit agency determines that findings
23 from its internal safety and security reviews indicate that the

1 rail transit agency is not in compliance with its system safety
2 program plan or system security plan, the chief executive must
3 identify the activities the rail transit agency will take to
4 achieve compliance.

5 (e) Hazard management process.

6 (1) The rail transit agency shall develop and document in
7 its system safety program plan a process to identify and resolve
8 hazards during its operation, including any hazards resulting
9 from subsequent system extensions or modifications, operational
10 changes, or other changes within the rail transit environment.

11 (2) The hazard management process must, at a minimum:

12 (A) define the rail transit agency's approach to hazard
13 management and the implementation of an integrated systemwide
14 hazard resolution process;

15 (B) specify the sources of, and the mechanisms to
16 support, the on-going identification of hazards;

17 (C) define the process by which identified hazards will
18 be evaluated and prioritized for elimination or control;

19 (D) identify the mechanism used to track through
20 resolution the identified hazards;

21 (E) define minimum thresholds for the notification and
22 reporting of hazards to the department; and

23 (F) specify the process by which the rail transit

1 agency will provide on-going reporting of hazard resolution
2 activities to the department.

3 (f) Accident notification.

4 (1) The rail transit agency shall notify the department
5 within two (2) hours of any incident involving a rail transit
6 vehicle or taking place on rail transit controlled property
7 where one or more of the following occurs:

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

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

13 (C) property damage to rail transit vehicles, non-rail
14 transit vehicles, other rail transit property or facilities and
15 non-transit property that equals or exceeds \$25,000;

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

17 (E) a collision at a grade crossing;

18 (F) a main-line derailment;

19 (G) a collision with an individual on a rail right of
20 way; or

21 (H) a collision between a rail transit vehicle and a
22 second rail transit vehicle, or a rail transit non-revenue
23 vehicle.

1 (2) The rail transit agencies that share track with the
2 general railroad system and are subject to the Federal Railroad
3 Administration notification requirements, shall notify the
4 department within two (2) hours of an incident for which the
5 rail transit agency must also notify the Federal Railroad
6 Administration.

7 (g) Corrective action plans.

8 (1) The rail transit agency must, at a minimum, develop a
9 corrective action plan for the following:

10 (A) results from investigations, in which identified
11 causal and contributing factors are determined by the rail
12 transit agency, or the department, as requiring corrective
13 actions; and

14 (B) findings from safety and security reviews performed
15 by the department.

16 (2) Each corrective action plan should identify the
17 action to be taken by the rail transit agency, an implementation
18 schedule, and the individual or department responsible for the
19 implementation.

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

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

23 (A) verification that the corrective action(s) has been

1 implemented as described in the corrective action plan, or that
2 a proposed alternate action has been implemented subject to
3 department review and approval; and

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

7 (5) In the event of a dispute concerning the department's
8 decision related to a corrective action plan, a rail transit
9 agency shall submit an application for administrative review to
10 the following address: Director, Public Transportation
11 Division, Texas Department of Transportation, 125 E. 11th
12 Street, Austin, Texas 78701-2483. The application for
13 administrative review shall be submitted no later than 30 days
14 after receipt of the written decision.

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

17 (i) state and explain the relief requested;

18 (ii) state and explain all relevant facts; and

19 (iii) state and explain the legal basis for the
20 relief sought.

21 (B) Decision. The division director shall decide
22 whether to grant, grant in part, or deny the application. If an
23 applicant does not provide information sufficient to evaluate

1 the application, the application shall be denied. The applicant
2 is not entitled to a contested case hearing, and there is no
3 right to appeal the decision of the division director.

4

5 §31.62. Deadlines. A rail transit agency shall submit to the
6 department:

7 (1) prior to beginning revenue service, a system safety
8 program plan required by §31.61(a) of this subchapter (relating
9 to System safety program plan), including the system security
10 portion of the plan required by §31.61(b) of this subchapter;

11 (2) by February 1 of each year, a written report of its
12 annual internal safety audit conducted as required by §31.61(d)
13 of this subchapter;

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

18 (4) by February 1 of each year, a written report of the
19 rail transit agency's safety activities for the preceding 12
20 months as required by §31.61 of this subchapter; and

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