

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

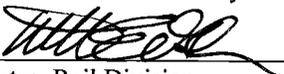
The Texas Transportation Commission (commission) finds it necessary to adopt new §§7.80 - 7.88, amendments to §31.2, §31.3, and §31.48, and the repeal of §§31.60 - 31.63, all relating to rail fixed guideway system state safety oversight to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, repeals, and new sections attached to this minute order as Exhibits A - F, 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 new §§7.80 - 7.88, amendments to §31.2, §31.3, and §31.48, and the repeal of §§31.60 - 31.63 are adopted and are authorized for filing with the Office of the Secretary of State.

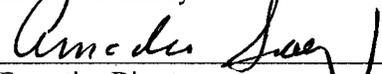
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Director, Rail Division

Recommended by:



Executive Director

112658 APR 28 11

Minute
Number

Date
Passed

Adoption Preamble

1
2 The Texas Department of Transportation (department) adopts new
3 §7.80, Purpose, §7.81, Definitions, §7.82, Program Standard,
4 §7.83, System Safety Program Plan, §7.84, System Security Plan,
5 §7.85, Reviews, §7.86, Accident Notification and Corrective
6 Action Plans, §7.87, Deadlines, and §7.88, Admissibility; Use of
7 Information, all concerning the department's safety oversight of
8 rail fixed guideway systems, and all to be contained in a new 43
9 T.A.C. Chapter 7, Subchapter E, Rail Fixed Guideway System State
10 Safety Oversight Program. New §§7.80 - 7.88 are adopted without
11 changes to the proposed text as published in the February 11,
12 2011 issue of the *Texas Register* (36 TexReg 750) and will not be
13 republished.

14

15 EXPLANATION OF ADOPTED NEW SECTIONS

16 The department adopts new Subchapter E in conjunction with the
17 adoption of amendments to §31.2, §31.3 and §31.48 and repeal of
18 §§31.60 - 31.63, concerning the department's safety oversight of
19 rail fixed guideway systems. The primary purpose of these
20 actions is to move rules pertaining to the department's
21 oversight of rail fixed guideway systems from 43 TAC Chapter 31,
22 Public Transportation, to 43 TAC Chapter 7, Rail Facilities, in
23 recognition that the department's Rail Division, established in
24 December of 2009, has responsibility for the oversight program.

25

1 New Subchapter E retains the substance of Chapter 31, Subchapter
2 F, while separating the subsections of §31.61, Rail Transit
3 Agency Responsibilities, into new sections to improve clarity
4 and readability. Non-substantive changes and additions using
5 the language of Chapter 31, Subchapter F sections are made to
6 improve clarity, correct internal citations, and conform to
7 statutory requirements.

8

9 New §7.80, Purpose, carries forth the language from current 43
10 TAC §31.60, Purpose, without any changes.

11

12 New §7.81, Definitions, carries forth from current 43 TAC §31.3
13 definitions of terms used in the sections governing the
14 department's oversight of rail transit agencies. The definition
15 of "security" from current §31.3(68) is revised to conform to
16 the definition found at 49 C.F.R. §659.5. A definition of
17 "passenger," also taken from 49 C.F.R. §659.5, is added to
18 improve the rules' clarity.

19

20 New §7.82, Program Standard, references and draws attention to
21 the State Safety and Security Oversight Program Standard, which
22 the department has developed and distributed in accordance with
23 the Federal Transit Administration's rules at 49 C.F.R. §659.15.

24

25 New §7.83, System Safety Program Plan, carries forth the

1 language from current §31.61(a), System safety program plan and
2 current §31.61(e), Hazard management process.

3

4 New §7.84, System Security Plan, carries forth the language from
5 current §31.61(b), System security plan.

6

7 New §7.85, Reviews, carries forth the language from current
8 §31.61(c), Annual reviews and current §31.61(d), Internal safety
9 and security reviews.

10

11 New §7.86, Accident Notification and Corrective Action Plans,
12 carries forth the language from current §31.61(f), Accident
13 notification and current §31.61(g), Corrective action plans.
14 The reference to the Director of the Public Transportation
15 Division is replaced with a reference to the Director of the
16 Rail Division.

17

18 New §7.87, Deadlines, carries forth the language from current
19 §31.62, Deadlines, with corrections to the internal rule
20 citations and changes intended to clarify that, as provided by
21 the current §31.61(b)(1), a rail transit agency's system safety
22 program plan and security program plan are two separate
23 documents.

24

25 New §7.88, Admissibility; Use of Information, carries forth the

1 language from current §31.63, Disclosure of Information, with
2 changes intended to conform the rule to Transportation Code,
3 §455.005(c) and (e). Specifically, the phrase, "an
4 investigative or security report," is replaced with the phrase,
5 "the data collected and the report of any investigation
6 conducted by the department or contractor acting on behalf of
7 the department, or any part of a system security plan or safety
8 program plan that concerns security for the system."
9 Additionally, the reference to "the department" is changed to
10 "the state."

11
12 In new §§7.83 - 7.86, in carrying forth the language from
13 current §31.61, the phrase, "[t]he rail transit agency" at the
14 beginning of the rule sections or subsections, is changed to
15 "each rail transit agency," to clarify that each rail transit
16 agency is subject to the rules.

17
18 COMMENTS

19 No comments on the proposed new sections were received.

20
21 STATUTORY AUTHORITY

22 The new sections are adopted under Transportation Code,
23 §201.101, which provides the Texas Transportation Commission
24 with the authority to establish rules for the conduct of the
25 work of the department, and more specifically, Transportation

1 Code, §455.005, which provides for the oversight of rail fixed
2 guideway systems by the department.

3

4 CROSS REFERENCE TO STATUTE

5 Transportation Code, §455.005.

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 rail
18 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 Transportation.

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

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

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

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

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

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

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

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

22 (12) Passenger operations--The period of time when any
23 aspects of rail transit agency operations are initiated with the

1 intent to carry passengers.

2 (13) 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 the condition of the property or facility that existed before
6 the incident.

7 (14) Rail fixed guideway system--Any light, heavy, or
8 rapid rail system, monorail, inclined plane, funicular, trolley,
9 or automated guideway that:

10 (A) is not regulated by the Federal Railroad
11 Administration; and

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

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

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

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

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

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

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

15 (20) Safety--Freedom from harm resulting from
16 unintentional acts or circumstances.

17 (21) Security--Freedom from harm resulting from
18 intentional acts or circumstances.

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

22 (23) System security plan--A document developed by the
23 rail transit agency describing its security policies,

1 objectives, responsibilities, and procedures.

2

3 §7.82. Program Standard. In accordance with 40 C.F.R. §659.15,
4 the department has developed and distributed a State Safety and
5 Security Oversight Program Standard, available on the
6 department's website at <http://www.txdot.gov/safety/rail.htm>, or
7 by calling the department's Rail Division at (512) 486-5230.

8

9 §7.83. System Safety Program Plan.

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

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

17 (2) A clear definition of the goals and objectives for
18 the safety program and stated management responsibilities to
19 ensure they are achieved.

20 (3) An overview of the management structure of the rail
21 transit agency, including:

22 (A) an organization chart;

23 (B) a description of how the safety function is

1 integrated into the rest of the rail transit organization; and

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

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

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

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

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

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

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

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

21 (A) hazard identification;

22 (B) hazard investigation, evaluation and analysis;

23 (C) hazard control and elimination;

1 (D) hazard tracking; and

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

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

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

15 (9) A description of the process used to collect,
16 maintain, analyze, and distribute safety data, to ensure that
17 the safety function within the rail transit organization
18 receives the necessary information to support implementation of
19 the system safety program.

20 (10) A description of the process used by the rail
21 transit agency to perform accident notification, investigation
22 and reporting, including:

23 (A) notification thresholds for internal and external

1 organizations;

2 (B) accident investigation process and references to
3 procedures;

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

6 (D) reporting to internal and external organizations;
7 and

8 (E) coordination with the department.

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

12 (A) meetings with external agencies;

13 (B) emergency planning responsibilities and
14 requirements;

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

17 (D) after action reports and implementation of
18 findings;

19 (E) revision and distribution of emergency response
20 procedures;

21 (F) familiarization training for public safety
22 organizations; and

23 (G) employee training.

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

5 (A) identification of departments and functions subject
6 to review;

7 (B) responsibility for scheduling reviews;

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

11 (D) review of reporting requirements;

12 (E) tracking the status of implemented recommendations;

13 and

14 (F) coordination with the department.

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

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

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

23 (C) techniques used to assess the effectiveness of

1 supervision relating to the implementation of operating and
2 maintenance rules; and

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

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

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

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

10 (C) inspection schedules and procedures; and

11 (D) description of how results are entered into the
12 hazard management process.

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

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

20 (A) categories of safety-related work requiring
21 training and certification;

22 (B) a description of the training and certification
23 program for employees and contractors in safety-related

1 positions;

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

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

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

8 (A) the authority to make configuration changes;

9 (B) process for making changes; and

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

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

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

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

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

23 (20) A description of the drug and alcohol program and

1 the process used to ensure knowledge of and compliance with
2 program requirements; and

3 (21) A description of the measures, controls, and
4 assurances in place to ensure that safety principles,
5 requirements, and representatives are included in the rail
6 transit agency's procurement process.

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

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

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

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

20 (4) identify the mechanism used to track through
21 resolution the identified hazards;

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

1 (6) specify the process by which the rail transit agency
2 will provide on-going reporting of hazard resolution activities
3 to the department.
4

5 §7.84. System Security Plan.

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

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

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

15 (2) document the rail transit agency's process for
16 managing threats and vulnerabilities during operations, and for
17 major projects, extensions, new vehicles and equipment,
18 including integration with the safety certification process;

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

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

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

4

5 §7.85. Reviews.

6 (a) Annual reviews.

7 (1) Each rail transit agency shall conduct an annual
8 review of its system safety program plan and system security
9 plan.

10 (2) In the event the rail transit agency's system safety
11 program plan is modified, the rail transit agency must submit
12 the modified plan and any subsequently modified procedures to
13 the department for review and approval.

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

18 (b) Internal safety and security reviews.

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

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

1 (A) describe the process used by the rail transit
2 agency to determine if all identified elements of its system
3 safety program plan and system security plan are performing as
4 intended;

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

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

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

14 (E) the rail transit agency shall make available to the
15 department any checklists or procedures subject to the security
16 portion of its review;

17 (F) the rail transit agency shall submit an annual
18 report documenting internal safety and security review
19 activities and the status of subsequent findings and corrective
20 actions. The security part of this report must be made
21 available for department review;

22 (G) the annual report must be accompanied by a formal
23 letter of certification signed by the rail transit agency's

1 chief executive, indicating that the rail transit agency is in
2 compliance with its system safety program plan and system
3 security plan; and

4 (H) if the rail transit agency determines that findings
5 from its internal safety and security reviews indicate that the
6 rail transit agency is not in compliance with its system safety
7 program plan or system security plan, the chief executive must
8 identify the activities the rail transit agency will take to
9 achieve compliance.

10

11 §7.86. Accident Notification and Corrective Action Plans.

12 (a) Accident notification.

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

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

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

22 (C) property damage to rail transit vehicles, non-rail
23 transit vehicles, other rail transit property or facilities and

1 non-transit property that equals or exceeds \$25,000;

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

3 (E) a collision at a grade crossing;

4 (F) a main-line derailment;

5 (G) a collision with an individual on a rail right of
6 way; or

7 (H) a collision between a rail transit vehicle and a
8 second rail transit vehicle, or a rail transit non-revenue
9 vehicle.

10 (2) The rail transit agencies that share track with the
11 general railroad system and are subject to the Federal Railroad
12 Administration notification requirements, shall notify the
13 department within two (2) hours of an incident for which the
14 rail transit agency must also notify the Federal Railroad
15 Administration.

16 (b) Corrective action plans.

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

19 (A) results from investigations, in which identified
20 causal and contributing factors are determined by the rail
21 transit agency, or the department, as requiring corrective
22 actions; and

23 (B) findings from safety and security reviews performed

1 by the department.

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

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

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

9 (A) verification that the corrective action(s) has been
10 implemented as described in the corrective action plan, or that
11 a proposed alternate action has been implemented subject to
12 department review and approval; and

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

16 (5) In the event of a dispute concerning the department's
17 decision related to a corrective action plan, a rail transit
18 agency shall submit an application for administrative review to
19 the following address: Director, Rail Division, Texas
20 Department of Transportation, 125 E. 11th Street, Austin, Texas
21 78701-2483. The application for administrative review shall be
22 submitted no later than 30 days after receipt of the written
23 decision.

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

3 (i) state and explain the relief requested;

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

5 (iii) state and explain the legal basis for the
6 relief sought.

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

13

14 §7.87. Deadlines. A rail transit agency shall submit to the
15 department:

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

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

23 (3) by February 1 of each year, a certification, signed

1 by the rail transit agency's chief executive, that the rail
2 transit agency is in compliance with its system safety program
3 plan and system security plan;

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

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

10

11 §7.88. Admissibility; Use of Information. The data collected
12 and the report of any investigation conducted by the department
13 or a contractor acting on behalf of the department, or any part
14 of a system security plan or safety program plan that concerns
15 security for the system, may not be admitted in evidence or used
16 for any purpose in any action or proceeding arising out of any
17 matter referred to in an investigation except in an action or a
18 proceeding instituted by the state.

Adoption Preamble

1
2 The Texas Department of Transportation (department) adopts
3 amendments to §31.2, Organization, §31.3, Definitions, §31.48,
4 Project Oversight, and the repeal of Subchapter F, Rail Fixed
5 Guideway System State Safety Oversight Program, §§31.60 - 31.63,
6 all concerning the department's safety oversight of rail fixed
7 guideway systems. The amendments to §§31.2, §31.3, §31.48, and
8 the repeal of §§31.60 - 31.63 are adopted without changes to the
9 proposed text as published in the February 11, 2011 issue of the
10 Texas Register (36 TexReg 758) and will not be republished.

11
12 EXPLANATION OF ADOPTED AMENDMENTS AND REPEALS

13 The department adopts the amendments to §31.2, §31.3, and §31.48
14 and repeal of §§31.60 - 31.63 in conjunction with its adopted
15 new Subchapter E, Rail Fixed Guideway System State Safety
16 Oversight Program, of 43 TAC Chapter 7. The primary purpose of
17 these actions is to move rules pertaining to the department's
18 oversight of rail fixed guideway systems from 43 TAC Chapter 31,
19 Public Transportation, to 43 TAC Chapter 7, Rail Facilities, in
20 recognition that the department's Rail Division, established in
21 December of 2009, has responsibility for the oversight program.

22
23 Amendments to §31.2(4) remove the rail oversight function from
24 the Public Transportation Division's responsibilities, as this
25 function is now performed by the Rail Division. Subsequent
26 paragraphs in §31.2 are renumbered.

1
2 Amendments to §31.3, Definitions, remove definitions of terms
3 that are no longer used in Chapter 31 and redesignates the
4 definitions appropriately.

5
6 Amendments to §31.48(b) remove paragraph (7) related to the Rail
7 Transit Agency Report reporting requirement from the Public
8 Transportation Division, as this function is now performed by
9 the Rail Division. Subsequent paragraphs in §31.48 are
10 renumbered.

11
12 Subchapter F, composed of §31.60, Purpose, §31.61, Rail Transit
13 Agency Responsibilities, §31.62, Deadlines, and §31.63,
14 Disclosure of Information, Rail Fixed Guideway System State
15 Safety Oversight Program, is repealed. The requirements of that
16 subchapter are simultaneously adopted as new sections in 43 TAC
17 Chapter 7. This reflects the shift of the responsibility for
18 rail safety from the department's Public Transportation Division
19 to the Rail Division.

20
21 COMMENTS

22 No comments on the proposed amendments and repeals were
23 received.

24
25 STATUTORY AUTHORITY

26 The amendments and repeals are adopted under Transportation

1 Code, §201.101, which provides the Texas Transportation
2 Commission with the authority to establish rules for the conduct
3 of the work of the department, and more specifically,
4 Transportation Code, §455.005, which provides for the oversight
5 of rail fixed guideway systems by the department.

6

7 CROSS REFERENCE TO STATUTE

8 Transportation Code, §455.005.

SUBCHAPTER A. GENERAL

§31.2. Organization. The Public Transportation Division is responsible for:

(1) preparing and updating a statewide comprehensive master plan for public transportation;

(2) providing financial assistance through appropriate communication and the establishment of procedures for the development and processing of applications;

(3) assisting local entities in securing financial aid offered by the federal government for the purpose of establishing, maintaining, or expanding public transportation systems;

~~[(4) carrying out the Federal Transit Administration (FTA) rail safety oversight program;]~~

(4) ~~[(5)]~~ administering the state public transportation funds and other monies appropriated by the Texas Legislature for public transportation purposes and established within the department budget, in accordance with all federal, state, and local laws, statutes, ordinances, rules, and regulations;

(5) ~~[(6)]~~ providing technical assistance to district personnel and local jurisdictions;

(6) ~~[(7)]~~ representing the state in public transportation matters with federal officials, other state agencies, transit

1 organizations, and local communities;

2 (7) [~~8~~] monitoring and sponsoring research and
3 development activities to enhance public transportation
4 development;

5 (8) [~~9~~] assisting in the development of policies by the
6 commission, the governor, and the legislature; and

7 (9) [~~10~~] encouraging the coordination of public
8 transportation services to eliminate waste, to generate
9 efficiencies that will permit increased levels of service, and
10 to further the state's efforts to reduce air pollution.

11

12 §31.3. Definitions. The following words and terms, when used
13 in this chapter, shall have the following meanings, unless the
14 context clearly indicates otherwise:

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

20 (2) Allocation--A preliminary distribution of grant funds
21 representing the maximum amount to be made available to a
22 subrecipient during the fiscal year, subject to the
23 subrecipient's completion of and compliance with all application

1 requirements, rules, and regulations applicable to the specific
2 funding program.

3 (3) Authority--A metropolitan or regional authority
4 created under Transportation Code, Chapter 451 or 452, a city
5 transit department created under Transportation Code, Chapter
6 453, by a municipality having a population of not less than
7 200,000 according to the most recent federal census, or a
8 coordinated county authority created under Transportation Code,
9 Chapter 460.

10 (4) Average revenue vehicle capacity--The number of seats
11 in all revenue vehicles divided by the number of revenue
12 vehicles.

13 (5) Capital expenses--Include the acquisition,
14 construction, and improvement of public transit facilities and
15 equipment needed for a safe, efficient, and coordinated public
16 transportation system.

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

18 (7) Common rule--49 CFR Part 18, Uniform Administrative
19 Requirements for Grants and Cooperative Agreements to State and
20 Local Governments or 49 CFR Part 19, Uniform Administrative
21 Requirements for Grants and Agreements with Institutions of
22 Higher Education, Hospitals, and Other Non-profit Organizations.

23 (8) Contractor--A recipient of public transportation

1 funds through a contract or grant agreement with the department.

2 ~~[(9) Corrective action plan--A plan developed by the rail~~
3 ~~transit agency that describes the actions the rail transit~~
4 ~~agency will take to minimize, control, correct, or eliminate~~
5 ~~hazards, and the schedule for implementing those actions.]~~

6 (9) ~~[(10)]~~ Department--The Texas Department of
7 Transportation.

8 (10) ~~[(11)]~~ Deputy executive director--The deputy
9 executive director of the department.

10 (11) ~~[(12)]~~ Designated recipient--The state, an
11 authority, a municipality that is not included in an authority,
12 a local governmental body, or a nonprofit entity providing rural
13 public transportation services, that receives federal or state
14 public transportation money through the department or the
15 Federal Transit Administration, or its successor.

16 (12) ~~[(13)]~~ Director--The director of public
17 transportation for the department.

18 (13) ~~[(14)]~~ District--One of the 25 districts of the
19 department having responsibility for administration of public
20 transportation programs in a designated geographic area.

21 (14) ~~[(15)]~~ District engineer--The chief executive
22 officer in charge of a district.

23 (15) ~~[(16)]~~ Employment-related transportation--

1 Transportation to support services that assist individuals in
2 job search or job preparation. Trips to daycare centers, one-
3 stop workforce centers, jobs interviews, and vocational training
4 are examples.

5 (16) [~~(17)~~] Equipment--Tangible, nonexpendable, personal
6 property having a useful life of more than one year and an
7 acquisition cost of \$5,000 or more per unit.

8 (17) [~~(18)~~] Executive director--The executive director of
9 the department.

10 (18) [~~(19)~~] Farebox revenues--Fares paid by riders,
11 including those who are later reimbursed by a human service
12 agency or other user-side subsidy arrangement. This definition
13 includes subscription service fees, whether or not collected on-
14 board a transit vehicle. Payments made directly to the
15 transportation system by a human service agency are not
16 considered to be farebox revenues.

17 [~~(20) Fatality--A death that results from an incident and
18 that occurs within 30 days following the incident.]~~

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

1 transportation.

2 (20) [~~(22)~~] Fiscal year--The state accounting period of
3 12 months that begins on September 1 of each calendar year and
4 ends on August 31 of the following calendar year.

5 [~~(23) FRA--The Federal Railroad Administration, an agency~~
6 ~~of the United States Department of Transportation.~~]

7 (21) [~~(24)~~] FTA--The Federal Transit Administration, an
8 agency of the United States Department of Transportation.

9 (22) [~~(25)~~] Good standing--A status indicating that the
10 department's director of public transportation has not sent a
11 letter to an entity signifying the entity is in noncompliance
12 with any aspect of a program.

13 [~~(26) Hazard--Any real or potential condition (as defined~~
14 ~~in the rail transit agency's hazard management process) that can~~
15 ~~cause injury, illness, or death; damage to or loss of a system,~~
16 ~~equipment or property; or damage to the environment.]~~

17 (23) [~~(27)~~] Incident--An intentional or unintentional act
18 that occurs on or in association with transit-controlled
19 property and that threatens or affects the safety or security of
20 an individual or property.

21 [~~(28) Individual--A passenger; employee; contractor;~~
22 ~~other rail transit facility worker; pedestrian; trespasser; or~~
23 ~~any person on rail transit controlled property.]~~

1 ~~[(29) Injury--Any physical damage or harm that occurs to~~
2 ~~an individual as a result of an incident and that requires~~
3 ~~immediate medical attention away from the scene.]~~

4 ~~[(30) Investigation--The process used to determine the~~
5 ~~causal and contributing factors of an accident or hazard, so~~
6 ~~that actions can be identified to prevent recurrence.]~~

7 (24) ~~[(31)]~~ Job access project--A public transportation
8 project relating to the development and maintenance of
9 transportation services designed to transport welfare recipients
10 and eligible low-income individuals to and from jobs and
11 activities related to their employment, or as otherwise defined
12 by 49 USC §5316, the Job Access and Reverse Commute program.

13 (25) ~~[(32)]~~ Like-kind exchange--The trade-in or sale of a
14 transit vehicle before the end of its useful life to acquire a
15 replacement vehicle of like kind.

16 (26) ~~[(33)]~~ Local funds--Directly generated funds, as
17 defined in the latest edition of the Federal Transit
18 Administration National Transit Database Reporting Manual.
19 Examples include, but are not limited to, passenger fares,
20 special transit fares, purchased transportation fares, park and
21 ride revenue, other transportation revenue, charter service
22 revenue, freight tariffs, station and vehicle concessions,
23 advertising revenue, funds dedicated to transit at their source,

1 taxes, cash contributions, contract revenue, general revenue,
2 and in-kind contributions.

3 (27) [~~34~~] Local governmental entity--Any local unit of
4 government including a city, town, village, municipality,
5 county, city transit department, metropolitan transit authority,
6 coordinated county transportation authority, or regional transit
7 authority.

8 (28) [~~35~~] Local public body--Includes cities, counties,
9 and other political subdivisions of states; public agencies; and
10 instrumentalities of one or more states, municipalities, or
11 political subdivisions of states.

12 (29) [~~36~~] Local share requirement--The amount of funds
13 required and eligible to match federally funded projects for the
14 improvement of public transportation.

15 (30) [~~37~~] Low income individual--An individual whose
16 family income is at or below 150 percent of the poverty line, as
17 that term is defined in the Community Services Block Grant Act
18 (42 USC §9902(2)), including any revision required by that
19 section, for a family of the size involved, or as otherwise
20 defined by 49 USC §5316, the Job Access and Reverse Commute
21 program.

22 (31) [~~38~~] Mobility management-- Eligible capital
23 expenses consisting of short-range planning and management

1 activities and projects for improving coordination among public
2 transportation and other transportation-service providers
3 carried out by a recipient or subrecipient through an agreement
4 entered into with a person, including a government entity, under
5 49 USC Section 5301 et seq. (other than Section 5309). Mobility
6 management excludes operating public transportation services.

7 (32) [~~+39+~~] MPO--Metropolitan Planning Organization, the
8 organization designated by the governor as the responsible
9 entity for transportation planning in urbanized areas over
10 50,000 in population.

11 (33) [~~+40+~~] Net operating expenses--Those expenses that
12 remain after farebox revenues are subtracted from eligible
13 operating expenses.

14 (34) [~~+41+~~] New public transportation services or
15 alternatives--An activity that, with respect to the New Freedom
16 program:

17 (A) is targeted toward people with disabilities;

18 (B) is beyond the ADA requirements;

19 (C) meets the intent of the program by removing
20 barriers to transportation and assisting persons with
21 disabilities with transportation, including transportation to
22 and from jobs and employment services; and

23 (D) is not included in a Transportation Improvement

1 Program or Statewide Transportation Improvement Program prior to
2 August 10, 2005.

3 [~~(42) New starts project--Any rail fixed guideway system~~
4 ~~funded under FTA's 49 USC §5309 discretionary construction~~
5 ~~program.~~]

6 (35) [~~(43)~~] Nonprofit organization--A corporation or
7 association determined by the Secretary of the Treasury of the
8 United States to be an organization described by 26 USC §501(c),
9 one that is exempt from taxation under 26 USC §504(a) or §101,
10 or one that has been determined under state law to be nonprofit
11 and for which the state has received documentation certifying
12 the status of the nonprofit organization.

13 (36) [~~(44)~~] Nonurbanized area--An area outside an
14 urbanized area.

15 (37) [~~(45)~~] Obligated funds--Monies made available under
16 a valid, unexpired contract or grant agreement between the
17 department and a public transportation subrecipient.

18 (38) [~~(46)~~] Operating expenses--Costs directly related to
19 system operations of a transit agency regardless of the category
20 of funding. At a minimum, this definition includes:

21 (A) fuel, oil, replacement tires, replacement parts
22 that do not meet the criteria for capital items, drivers' and
23 mechanics' salaries and fringe benefits, dispatchers' salaries,

1 and licenses;

2 (B) maintenance, repair, servicing, and inspection of
3 transit agency property, including both vehicles and other
4 property, whether routine or to remedy the effects of collision
5 damage or vandalism; and

6 (C) expenses funded with capital or administrative
7 funds, including preventative maintenance, provision of
8 paratransit service under the Americans with Disability Act
9 (ADA), capital cost of contracting, and insurance.

10 ~~[(47) Passenger operations--The period of time when any~~
11 ~~aspects of rail transit agency operations are initiated with the~~
12 ~~intent to carry passengers.]~~

13 (39) ~~[(48)]~~ Private--Pertaining to nonpublic entities.
14 This definition does not include municipalities or other
15 political subdivisions of the state; public agencies or
16 instrumentalities of one or more states; Indian tribes (except
17 private nonprofit corporations formed by Indian tribes); public
18 corporations, boards, or commissions established under the law
19 of any state; or entities subject to control by public
20 authority, whether state or municipal.

21 ~~[(49) Program standard--A written document developed and~~
22 ~~distributed by the oversight agency, that describes the~~
23 ~~policies, objectives, responsibilities, and procedures used to~~

1 ~~provide rail transit agency safety and security oversight.]~~

2 (40) [~~(50)~~] Project--The public transportation activities
3 to be carried out by a subrecipient, as described in its
4 application for funding.

5 ~~[(51) Property damage--The dollar amount required to~~
6 ~~replace any vehicle, whether transit or non transit, and any~~
7 ~~property or facility damaged during an incident, or to repair it~~
8 ~~to the condition of the property or facility that existed before~~
9 ~~the incident.]~~

10 (41) [~~(52)~~] Public transportation--Transportation of
11 passengers and their hand-carried packages or baggage on a
12 regular or continuing basis by means of surface or water
13 conveyance by a governmental entity or by a private entity if
14 the private entity receives financial assistance for that
15 conveyance from any governmental entity. This definition
16 includes fixed guideway transportation and underground
17 transportation, but excludes services provided by aircraft,
18 ambulances, and emergency vehicles.

19 ~~[(53) Rail transit accident--An incident involving a rail~~
20 ~~fixed guideway transit vehicle or taking place on rail fixed~~
21 ~~guideway transit controlled property where one or more of the~~
22 ~~following occurs:]~~

23 ~~[(A) a fatality at the scene; or where an individual is~~

1 ~~confirmed dead within thirty (30) days of a rail fixed guideway~~
2 ~~transit related incident;~~]

3 [~~(B) injuries requiring immediate medical attention~~
4 ~~away from the scene for two or more individuals;~~]

5 [~~(C) property damage to rail fixed guideway transit~~
6 ~~vehicles, non rail transit vehicles, other rail transit property~~
7 ~~or facilities and non transit property that equals or exceeds~~
8 ~~\$25,000;~~]

9 [~~(D) an evacuation due to life safety reasons;~~]

10 [~~(E) a collision at a grade crossing;~~]

11 [~~(F) a main line derailment;~~]

12 [~~(G) a collision with an individual on a rail fixed~~
13 ~~guideway right of way; or]~~

14 [~~(H) a collision between a rail fixed guideway transit~~
15 ~~vehicle and a second rail fixed guideway transit vehicle, or a~~
16 ~~rail fixed guideway transit non revenue vehicle.]~~

17 [~~(54) Rail transit agency--An entity operating a rail~~
18 ~~fixed guideway system.]~~

19 [~~(55) Rail transit contractor--An entity that performs~~
20 ~~tasks required on behalf of the oversight or rail transit~~
21 ~~agency. The fixed guideway system may not be a contractor for~~
22 ~~the oversight agency.]~~

23 [~~(56) Rail transit controlled property--Property that is~~

1 ~~used by the rail transit agency and may be owned, leased, or~~
2 ~~maintained by the rail transit agency.]~~

3 ~~[(57) Rail transit fixed guideway system--Any light,~~
4 ~~heavy, or rapid rail system, monorail, inclined plane,~~
5 ~~funicular, trolley, or automated guideway, as determined by the~~
6 ~~FTA, that:]~~

7 ~~[(A) is not regulated by the Federal Railroad~~
8 ~~Administration; and]~~

9 ~~[(B) is included in FTA's calculation of fixed guideway~~
10 ~~route miles or receives funding under FTA's formula program for~~
11 ~~urbanized areas (49 USC §5336); or]~~

12 ~~[(C) has submitted documentation to FTA indicating its~~
13 ~~intent to be included in FTA's calculation of fixed guideway~~
14 ~~route miles to receive funding under FTA's formula program for~~
15 ~~urbanized areas (49 USC §5336).]~~

16 ~~[(58) Rail transit passenger--A person who is on board,~~
17 ~~boarding, or alighting from a rail transit vehicle for the~~
18 ~~purpose of travel.]~~

19 ~~[(59) Rail transit vehicle--The rail transit agency's~~
20 ~~rolling stock, including, but not limited to passenger and~~
21 ~~maintenance vehicles.]~~

22 (42) ~~[(60)]~~ Real property--Land, including improvements,
23 structures, and appurtenances, but excluding movable machinery

1 and equipment.

2 (43) [~~+61~~] Revenue service--Passenger transportation
3 occurring when a vehicle is available to the general public and
4 there is a reasonable expectation of carrying passengers that
5 directly pay fares, are subsidized by public policy, or provide
6 payment through some contractual agreement. This does not imply
7 that a cash fare must be paid. Vehicles operated in free fare
8 services are considered in revenue service.

9 (44) [~~+62~~] Revenue vehicle--The rolling stock used in
10 providing transit service for passengers. This definition does
11 not include a vehicle used in connection with keeping revenue
12 vehicles in operation, such as a tow truck or a staff car.

13 (45) [~~+63~~] Reverse commute project--A public
14 transportation project designed to transport residents of
15 urbanized areas and other than urbanized areas to suburban
16 employment opportunities, or as otherwise defined by 49 USC
17 §5316, the Job Access and Reverse Commute program.

18 (46) [~~+64~~] Ridership--Unlinked passenger trips.

19 (47) [~~+65~~] Rural public transportation (RPT)--A generic
20 term used to identify subrecipients who provide service in
21 nonurbanized areas.

22 (48) [~~+66~~] Rural transit district--A political
23 subdivision of the state that provides and coordinates rural

1 public transportation within its boundaries in accordance with
2 the provisions of Transportation Code, Chapter 458.

3 ~~[(67) Safety--Freedom from harm resulting from
4 unintentional acts or circumstances.]~~

5 ~~[(68) Security--Freedom from harm resulting from
6 intentional acts or circumstances. Intentional danger includes
7 crimes and must be reported to the department if the intentional
8 act meets the thresholds for notification.]~~

9 (49) ~~[(69)]~~ Stakeholders--All individuals or groups that
10 are potentially affected by transportation decisions. Examples
11 include public agencies, representatives of transportation
12 agency employees or other affected employees, private providers
13 of transportation, non-governmental agencies, local businesses,
14 persons in diverse and traditionally underserved communities,
15 and other interested parties.

16 (50) ~~[(70)]~~ Strategic priorities--Projects that the
17 commission has determined will:

18 (A) stabilize funding levels;

19 (B) increase transit operating efficiency or
20 effectiveness as demonstrated by significant cost savings or
21 substantial enhancements to service delivery; or

22 (C) advance the level of coordination among
23 transportation service providers, and among transportation

1 service providers and health and human services agencies.

2 (51) [~~(71)~~] Subrecipient--An entity that receives state
3 or federal transportation funding from the department, rather
4 than directly from FTA or other state or federal funding source.

5 [~~(72) System safety program plan--A document developed by~~
6 ~~the rail transit agency, describing its safety policies,~~
7 ~~objectives, responsibilities, and procedures.]~~

8 [~~(73) System security plan--A document developed by the~~
9 ~~rail transit agency describing its security policies,~~
10 ~~objectives, responsibilities, and procedures.]~~

11 (52) [~~(74)~~] Uniform grant and contract management
12 standards--The standards contained in the Texas Administrative
13 Code, Title 1, Chapter 5, Subchapter A, concerning uniform grant
14 and contract management standards for state agencies.

15 (53) [~~(75)~~] U.S. DOT--United States Department of
16 Transportation.

17 (54) [~~(76)~~] Unlinked passenger trips--The number of
18 passengers who board public transportation vehicles. A
19 passenger is counted each time the passenger boards a vehicle
20 even though the passenger might be on the same journey from
21 origin to destination.

22 (55) [~~(77)~~] Urban transit district--In accordance with
23 Transportation Code, Chapter 458, a local governmental body or a

1 political subdivision of the state that operates a public
2 transportation system in an urbanized area with a population
3 between 50,000 and 200,000, according to the most recent federal
4 census. This definition includes small urban transportation
5 providers under Transportation Code, Chapter 456, that received
6 state money through the department on September 1, 1994.

7 (56) [~~+78~~] Urbanized area--A core area and the
8 surrounding densely populated area with a population of 50,000
9 or more, with boundaries fixed by the United States Census
10 Bureau.

11 (57) [~~+79~~] Vehicle miles--The miles a vehicle travels
12 while in revenue service, plus deadhead miles. This definition
13 excludes miles a vehicle travels for charter service, school bus
14 service, operator training, or maintenance testing.

15 (58) [~~+80~~] Vehicle revenue hours or miles--The hours or
16 miles a vehicle travels while in revenue service. This
17 definition includes layover and recovery, but excludes travel to
18 and from storage facilities, the training of operators prior to
19 revenue service, road tests, deadhead travel, and school bus and
20 charter service.

21 (59) [~~+81~~] Vehicle utilization--Average daily passenger
22 trips per revenue vehicle, divided by average revenue vehicle
23 capacity. This definition provides a measure of an individual

1 system's ability to use existing seating capacity.

2 (60) [~~82~~] Welfare recipient--An individual who has
3 received assistance under a state or tribal program funded under
4 the Social Security Act, Title IV, Part A, at any time during
5 the previous three year period, or as otherwise defined by 49
6 USC §5316, the Job Access and Reverse Commute program.

1 SUBCHAPTER D. PROGRAM ADMINISTRATION

2 §31.48. Project Oversight.

3 (a) Purpose. This section describes reporting requirements
4 for designated recipients and subrecipients of state and federal
5 public transportation grant funds and monitoring activities to
6 be performed by the department.

7 (b) Reporting requirements. The subrecipient shall submit
8 reports to the department in a format prescribed by the
9 department within deadlines established by the department.

10 (1) Incident reports. Subrecipients shall report all
11 incidents that meet criteria established by the department. The
12 subrecipient shall submit the report within five days of the
13 incident or discovery of the incident.

14 (2) Asset inventory. Each subrecipient shall provide
15 information on state and federally funded equipment as described
16 in §31.50 of this chapter.

17 (3) Charter service. Section 5311 subrecipients shall
18 provide charter service only under the specific circumstances
19 established by the FTA. Operators shall advise the department
20 of any charter service provided and the exemption under which
21 charter service is provided.

22 (4) Disadvantaged Business Enterprises and Historically
23 Underutilized Businesses. Subrecipients shall submit reports in

1 accordance with §9.54 of this title (relating to Historically
2 Underutilized Business (HUB) Program).

3 (5) Operations reports. All FTA designated recipients
4 and subrecipients shall submit quarterly and annual operations
5 reports.

6 (A) Pursuant to 49 U.S.C. §5311 and §5335,
7 subrecipients of assistance under Section 5311 shall submit to
8 the department data required by the department for reporting to
9 the National Transit Database.

10 (B) Pursuant to the requirements of Transportation
11 Code, §456.008(a) and (b), the department will publish annually
12 the following performance-based indicators for recipients of FTA
13 Section 5307 funds, including metropolitan transportation
14 authorities.

15 (i) Service efficiency - Operating expense per
16 vehicle revenue hour and operating expense per vehicle revenue
17 mile.

18 (ii) Cost effectiveness - Operating expense per
19 unlinked passenger trip.

20 (iii) Service effectiveness - Unlinked passenger
21 trips per vehicle revenue mile and unlinked passenger trips per
22 vehicle revenue hour.

23 (iv) Safety - Total incidents per 100,000 miles of

1 service and average number of miles between revenue vehicle
2 mechanical system failures that prevent the vehicle from
3 completing a scheduled revenue trip.

4 (C) Pursuant to the requirements of Transportation
5 Code, §456.008(a) and (b), the department will publish annually
6 the following performance-based indicators for RPT subrecipients
7 of FTA Section 5311 funds:

8 (i) Service efficiency - Operating expense per
9 vehicle mile.

10 (ii) Cost effectiveness - Operating expense per
11 unlinked passenger trip.

12 (iii) Service effectiveness - Unlinked passenger
13 trips per capita and unlinked passenger trips per vehicle mile.

14 (iv) Safety - Total incidents per 100,000 miles of
15 service and average number of miles between revenue vehicle
16 mechanical system failures that prevent the vehicle from
17 completing a scheduled revenue trip.

18 (6) Significant events. The recipient shall promptly
19 advise the department in writing of events that have a
20 significant effect on the delivery of public transportation
21 services, including:

22 (A) problems, delays, and adverse conditions that will
23 materially affect the ability to attain program objectives,

1 prevent the meeting of time schedules and goals, or preclude the
2 attainment of project work units by established time periods,
3 accompanied by a statement of the action taken or contemplated
4 and any departmental assistance needed to resolve the situation;
5 and

6 (B) favorable developments and events that will enable
7 meeting time schedules and goals sooner than anticipated or
8 producing more work units than originally projected.

9 [~~(7) Rail Transit Agency Report. Rail Transit Agency~~
10 ~~Reports shall be submitted in accordance with §31.61 of this~~
11 ~~chapter.~~]

12 (7) [~~(8)~~] Miscellaneous reports. Entities receiving
13 funds from either the department or the FTA shall cooperate with
14 the department in providing other information as requested by
15 state and federal funding agencies.

16 (c) Department monitoring. The department will rely on
17 subrecipient reports as described in subsection (b) of this
18 section as the primary means of monitoring subrecipient
19 performance. In addition, department personnel and the
20 subrecipient at least quarterly will discuss problems
21 encountered by the subrecipient, the subrecipient's need for
22 technical assistance, and other topics related to the provision
23 of public transportation services. Routine monitoring activity

1 will occur in the following areas according to a schedule that
2 accommodates federal deadlines and department and operator
3 workloads. Most, but not all, monitoring activities will occur
4 on a quarterly basis.

5 (1) Civil rights. The department will monitor
6 subrecipients for compliance with Title VI Civil Rights
7 requirements.

8 (2) Drugs and alcohol.

9 (A) Each Section 5311 subrecipient and each of its
10 subcontractors with safety-sensitive employees shall have
11 policies and programs in place that comply with drug and alcohol
12 standards established by the FTA. The department will monitor
13 subrecipients for compliance with these regulations. In
14 addition, the FTA requires each subrecipient to file a calendar
15 year report (January 1 - December 31) with the department on
16 drug and alcohol testing and compliance activities.

17 (B) Each Section 5310, 5316, and 5317 subrecipient
18 shall comply with Federal Motor Carrier Safety Administration
19 requirements for drug and alcohol compliance if it owns a
20 vehicle that requires a commercial driver's license to operate.
21 If the subrecipient also receives Section 5307 or 5311 funding,
22 the subrecipient shall include Section 5310, 5316, and 5317
23 employees in their FTA testing program.

1 (3) Fiscal responsibility. The district employee
2 responsible for coordinating the district's public
3 transportation program will make on-site quarterly visits to
4 review agency financial records that support requests for
5 payment.

6 (4) Insurance. Subrecipients of state or federal funds
7 through the department shall insure all facilities, equipment,
8 and vehicles from loss. Checks for appropriate insurance levels
9 will occur at the time the local agency renews its policies.

10 (5) Maintenance. Subrecipients are required to have
11 written maintenance plans, schedules, and logs to ensure the
12 proper care and longevity of vehicles and facilities in
13 accordance with §31.53(d) of this chapter. The plans,
14 schedules, and logs are subject to periodic on-site inspection
15 by the department.

16 (6) Incidental vehicle use. A vehicle purchased with
17 federal or state funds may be used for incidental uses that do
18 not conflict with the primary purposes for which the vehicle was
19 purchased. An example of permissible incidental use is using
20 the vehicle for other public transportation activities when it
21 is not required for project purposes. The vehicle shall not be
22 altered in any way to accommodate an incidental use.

23 (7) Procurement. The district employee responsible for

1 coordinating the district's public transportation program will
2 work with subrecipients to ensure that procurement activities
3 meet applicable state and federal requirements and that all
4 required documents are received and actions completed in a
5 timely manner. Checksheets developed by the department will be
6 maintained by the district to ensure all benchmark activities
7 are accomplished in the proper sequence.

8 (d) Noncompliance. A subrecipient's failure to comply with
9 federal or state law, standard or special grant or subgrant
10 conditions, or contractual agreements on which the grant or
11 subgrant award is predicated, is subject to actions under
12 Chapter 9, Subchapter H of this title (relating to Grant
13 Sanctions).

1 SUBCHAPTER F. RAIL FIXED GUIDEWAY SYSTEM

2 STATE SAFETY OVERSIGHT PROGRAM

3 §31.60. Purpose.

4 §31.61. Rail Transit Agency Responsibilities.

5 §31.62. Deadlines.

6 §31.63. Disclosure of Information.

Repeals