

Decision No. C06-1179

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 06R-540R

IN THE MATTER OF EMERGENCY RULES RELATING TO THE RULES REGULATING
SYSTEM SAFETY PROGRAM STANDARDS FOR RAIL FIXED GUIDEWAY SYSTEMS.

ORDER ADOPTING EMERGENCY RULES

Mailed Date: October 11, 2006

Adopted Date: October 11, 2006

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of emergency rules entitled System Safety Program Standard for Rail Fixed Guideway Systems, 4 *Code of Colorado Regulations* (CCR) 723-7-7002(f), and 7340 through 7354 to replace previously adopted rules in Docket No. 06R-114R. *See* Decision No. C06-0239. For the reasons set forth in this Decision, we now adopt on an emergency basis (*i.e.*, without compliance with the rulemaking requirements for permanent rules set forth in § 24-4-103, C.R.S.) the emergency rules appended to this Decision as Attachment A. We take this action in accordance with the provisions of § 24-4-103(6), C.R.S.

2. Generally, the purpose of the rules adopted by this order is to allow the rules to remain in effect during the pendency of the permanent rulemaking in Docket No. 06R-189R. No substantive changes were made from the previous version adopted by Decision No. C06-0239.

3. The statutory authority for the proposed rules is found in §§ 40-2-108, 40-18-102, and 40-18-103, C.R.S.

4. We adopt the attached rules as emergency rules in accordance with the provisions of § 24-4-103(6), C.R.S. We find that immediate adoption of the rules is imperative and necessary to prevent a situation where no rules are in effect while the permanent rulemaking is proceeding. Further, compliance with the rulemaking requirements associated with permanent rules, as set forth in § 24-4-103, C.R.S. would be contrary to the public interest.

5. Therefore, emergency adoption of the attached rules is appropriate. The statutory authority for adoption of these rules is set forth in §§ 24-4-103(6), 40-2-108, 40-4-101, and 40-15-306, C.R.S. The rules attached to this order shall be effective on October 18, 2006, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

II. ORDER

A. The Commission Orders That:

1. The emergency rules appended to this Decision as Attachment A are hereby adopted as emergency rules consistent with the above discussion.
2. The attached rules shall be effective on October 18, 2006.
3. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 11, 2006.**

(SEAL)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-7

PART 7

RULES REGULATING RAILROADS, RAIL FIXED GUIDEWAYS, TRANSPORTATION BY RAIL, AND RAIL CROSSINGS

BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis for and purpose of these rules is to describe the manner of regulation over railroads, railroad corporations, rail fixed guideways, rail fixed guideway systems, transit agencies, persons holding a certificate of public convenience and necessity to operate by rail, any other person operating by rail, governmental or quasi-governmental entities that own and/or maintain public highways at rail crossings, railroad peace officers, and to Commission proceedings concerning such entities. These rules address a wide variety of subject areas including, but not limited to, applications, petitions, annual reporting, formal and informal complaints, operating authority, transfers of operating authority, mergers, tariffs, crossings and warning devices, cost allocation for grade separations, crossing construction and maintenance, railroad clearances, system safety program standard for rail fixed guideway systems, and employment of railroad peace officers.

The statutory authority for the promulgation of these rules can be found at §§ 40-2-108, 40-2-119, 40-3-101(1), 40-3-102, 40-3-103, 40-3-110, 40-4-101(1), 40-4-101(2), 40-4-106, 40-5-105, 40-6-111(3), 40-9-108(2), 40-18-102, 40-18-103, 40-29-110, and 40-32-108, C.R.S.

* * *

[signifies omission of unaffected rule sections]

7002. Applications.

Commission action may be sought regarding any of the following matters through the filing of an appropriate application:

- (a) For a certificate of public convenience and necessity, as provided in rule 7101.
- (b) To amend a certificate of public convenience and necessity, or to change, extend, curtail, abandon, or discontinue any service, as provided in rule 7102.
- (c) For authority to transfer a certificate of public convenience and necessity, to obtain a controlling interest in any utility, to transfer assets or stock, or to merge a utility with another entity, as provided in rule 7103.
- (d) For authority to construct, alter, or abolish a utility crossing, a railroad-highway crossing, a railroad crossing, or a highway-railroad crossing; or for authority to install or modify crossing warning devices, as provided in rule 7204

- (e) For authority to allocate costs for railroad-highway grade separations, as provided in rule 7205.
- (f) For approval of a transit agency's system safety program plan, as provided in rule 7343, or system security plan, as provided in rule 7344.
- (g) For any other matter provided by statute or rule but not specifically described in this rule.

* * *

System Safety Program Standard for Rail Fixed Guideway Systems

7340. Applicability.

Rules 7341 through 7354 apply to all transit agencies and rail fixed guideway systems operating within the State of Colorado, which systems are regulated by the Commission pursuant to Title 40, Article 18, C.R.S.

7341. Definitions.

The following definitions apply only in the context of rules 7341 through 7354:

- (a) "Contractor" means an entity that performs tasks required on behalf of the Commission or transit agency. The transit agency is not a contractor for the Commission.
- (b) "Corrective action plan" ("CAP") means a plan developed by the transit agency that describes the actions the transit agency will take to minimize, control, correct, or eliminate hazards, and the schedule for implementing those actions.
- (c) "Finding" means non-compliance with the transit agency's SSPP, SSP, rules, procedures, programs, or other regulatory guidelines, which results in the formulation of a CAP.
- (d) "FRA" means the Federal Railroad Administration, an agency of the United States Department of Transportation.
- (e) "FTA" means the Federal Transit Administration, an agency of the United States Department of Transportation.
- (f) "Hazard" means any real or potential condition (as defined in the transit agency's hazard management process) that can cause injury, illness, or death; damage to or loss of a system, equipment or property; or damage to the environment.
- (g) "Individual" means a passenger; employee; contractor; other rail transit facility worker; pedestrian; trespasser; or any person on rail transit-controlled property.
- (h) "Investigation" means the process used to determine the causal and contributing factors of an accident or hazard, so that actions can be identified to prevent recurrence.
- (i) "New starts project" means any rail fixed guideway system funded under FTA's discretionary construction program in 49 U.S.C. 5309.

- (j) "NTSB" means the National Transportation Safety Board.
- (k) "Passenger" means a person who is on board, boarding, or alighting from a rail transit vehicle for the purpose of travel.
- (l) "Passenger operations" means the period of time when any aspect of transit agency operations are initiated with the intent to carry passengers.
- (m) "Program standard" means the standards in rules 7340 through 7354, that codify the policies, objectives, responsibilities and procedures used to provide transit agency safety and security oversight.
- (n) "Rail fixed guideway system" means those rail fixed guideway systems as defined in rule 7001(c) of which:
 - (I) The rail fixed guideway's route miles are Included in FTA's calculation of rail fixed guideway route miles;
 - (II) The rail fixed guideway system receives funding under FTA's formula program for urbanized areas; or
 - (III) The rail fixed guideway system has submitted documentation to FTA indicating its intent to be included in FTA's calculation of fixed guideway route miles to receive funding under FTA's formula program for urbanized areas.
- (o) "Rail transit-controlled property" means property that is used by the transit agency and may be owned, leased, or maintained by the transit agency.
- (p) "Rail transit vehicle" means the transit agency's rolling stock, including but not limited to passenger and maintenance vehicles.
- (q) "Safety" means freedom from harm resulting from unintentional acts or circumstances.
- (r) "Security" means freedom from harm resulting from intentional acts or circumstances.
- (s) "System safety program plan" ("SSPP") means a document developed and adopted by the transit agency, describing its safety policies, objectives, responsibilities, and procedures.
- (t) "System security plan" ("SSP") means a document developed and adopted by the transit agency describing its security policies, objectives, responsibilities, and procedures.

7342. Incorporation by Reference.

References in these rules to 49 C.F.R. 659 are rules issued by the FTA and are hereby incorporated by reference in these rules. References in these rules to 49 C.F.R. 15 are rules issued by the Office of the Secretary of the U.S. Department of Transportation and are hereby incorporated by reference in these rules. References in these rules to 49 C.F.R. 1520 are rules issued by Transportation Security Administration Department of Homeland Security and are hereby incorporated by reference in these rules. These rules may be found at 49 C.F.R. 15, 659, and 1520 revised as of October 1, 2005.

References to 49 C.F.R. 15, 659 and 1520 do not include later amendments to, or editions of, 49 C.F.R. 15, 659 and 1520. References in these rules to standards of the American Public Transit Association are standards contained in its "Manual for the Development of Rail Transit System Safety Program Plans" published on August 20, 1991. References to standards of the American Public Transit Association do not include later amendments to, or editions of, this Manual. A copy of all material that has been incorporated by reference is maintained at the offices of the Colorado Public Utilities Commission, 1580 Logan Street, Office Level 2, Denver, Colorado 80203, and is available for inspection during normal business hours. Copies of the incorporated rules shall be provided at cost upon request. The Director of the Commission, 1580 Logan, Office Level 2, Denver, Colorado 80203, will provide information regarding how 49 C.F.R. 15, 659 and 1520 and the "Manual for the Development of Rail Transit System Safety Program Plans" may be obtained or examined. This incorporated material may be examined at any state publications depository library.

7343. System Safety Program Plan.

Every transit agency shall establish and maintain a written system safety program plan, as a separate document from the SSP that complies with the program standard and includes the following sections:

- (a) Introduction. The Introduction section of the SSPP shall contain the following:
 - (I) A policy statement supporting the SSPP from the General Manager/Executive Director of the transit agency.
 - (II) A statement of the legal authority for the SSPP.
 - (III) A description of the purpose and scope of the SSPP.
 - (IV) A clear definition of the goals and objectives of the SSPP.
 - (V) A statement of management responsibilities to ensure the goals and objectives of the SSPP are achieved.
 - (VI) Specifications of policies in place to support implementation of the SSPP and a description of the specific activities required to implement the system safety program including:
 - (A) Tasks to be performed by the rail transit safety function, by position and management accountability, specified in matrices and narrative format.
 - (B) Safety-related tasks to be performed by other rail transit departments, by position and management accountability, specified in matrices and narrative format.
 - (VII) Identification of the process and procedures for controlling updates and modifications to SSPP including specification of an annual assessment of whether the SSPP should be updated and a requirement of coordination with the Commission, including timeframes for submission, revision, and approval.
 - (VIII) A description of the process used by the transit agency to implement its hazard management program, including activities for:

- (A) Hazard identification.
 - (B) Hazard investigation, evaluation and analysis.
 - (C) Hazard control and elimination.
 - (D) Hazard tracking.
 - (E) Requirements for on-going reporting to the oversight agency relating to hazard management activities and status.
- (IX) A description of the process used by the transit agency to ensure that safety concerns are addressed in modifications to existing systems, vehicles, and equipment, which do not require formal safety certification but which may have safety impacts.
- (b) System Description. The system description section of the SSPP shall include the following:
- (I) A brief history of the system(s) operated by the transit agency.
 - (II) The scope of service the transit agency provides.
 - (III) A description of the organizational structure of the transit agency, including organizational diagrams of the transit agency and the system safety unit that identify the lines of authority and communications used by the agency to manage safety issues and define responsibilities within the organization.
 - (IV) A description of how the safety function of the agency is integrated into the rest of the rail transit organization.
 - (V) A description of the physical plant including track, signal and communication system, vehicle type and operating characteristics, station facilities and maintenance facilities.
 - (VI) A description of the process to modify the system. The system modification review and approval process shall include the following:
 - (A) The identification of the unit or group of the transit agency responsible for ensuring that the hazards associated with system expansions or modifications are included in the transit agency's hazard resolution process.
 - (B) Participation of operating and safety department personnel in the design review process for new equipment and system expansions or modifications.
 - (C) A sign-off and certification process for verification of operational readiness of new equipment and system expansions or modifications prior to entering revenue service.
 - (D) Documentation of responsibility and authority for approval of modification exceptions to established design criteria for new equipment and system expansions.

- (E) Procurement procedures that preclude the introduction into the rail fixed guideway system of unauthorized hazardous materials and supplies, as well as defective or deficient equipment.
- (VII) A description of the safety certification process required by the transit agency to ensure that safety concerns and hazards are adequately addressed prior to the initiation of passenger operations for new starts projects, and subsequent major projects to extend, rehabilitate or modify an existing system, or to replace vehicles and equipment.
- (c) System Safety Department Activities of the Transit Agency. The system safety department activities of the transit agency section of the SSPP shall contain the following:
 - (I) A description of the responsibilities of those in charge of managing the system safety process within the transit agency.
 - (II) A description of the process used to identify and resolve hazards during operation including any hazards resulting from subsequent system extensions or modifications, operational changes or other changes within the rail transit environment.
 - (III) The hazard management process shall include the following:
 - (A) A description of the transit agency's approach to hazard management and the implementation of an integrated system-wide hazard resolution process.
 - (B) Specification of the sources of, and the mechanisms to support, the on-going identification of hazards.
 - (C) A description of the process by which identified hazards will be evaluated and prioritized for elimination or control including hazards associated with operations, maintenance, and engineering.
 - (D) A description of the process and mechanism used to track through resolution the identified hazard(s).
 - (E) Definition of the minimum thresholds for the notification and reporting of hazard(s) to the Commission.
 - (F) A description of the process by which the transit agency will provide on-going reporting of hazard resolution activities to the Commission.
 - (IV) A procedure for accident and hazard notification, reporting and investigation. This procedure shall comply with rules 7347 and 7348 and shall include the following:
 - (A) Notification thresholds for internal and external organizations.
 - (B) The criteria for determining which accidents require investigation and who is going to conduct the investigation.

- (C) A description of the process and procedures used for conducting accident investigations which include the reporting of findings to internal and external organizations, conclusions, development, implementation and tracking of corrective actions that address investigation findings, and follow up to verify corrective action implementation.
- (D) Coordination with the Commission.
- (V) An employee and contractor training and certification safety program including training and certification, drug and alcohol testing, as well as information about drug and alcohol abuse. The employee and contractor certification and training program shall include a description of the training material and documentation of training test scores and dates. The employee and contractor training and certification shall also include:
 - (A) Categories of safety-related work requiring training and certification.
 - (B) A description of the training and certification program for employees and contractors in safety-related positions including a description of the training material used.
 - (C) Process used to maintain and access employee and contractor records including documentation of training test scores and dates, when applicable.
 - (D) Process used to assess compliance with training and certification requirements.
- (VI) A process for internal safety inspection of operation and maintenance facilities and equipment including audits and review of procedures that complies with rule 7349 and includes:
 - (A) Identification of the facilities and equipment subject to regular safety-related inspection and testing.
 - (B) Techniques used to conduct inspections and testing.
 - (C) Inspection schedules and procedures.
 - (D) Description of how results are entered into the hazard management process.
- (VII) A description of the process used by the transit agency to develop an approved coordinated schedule for all emergency management program activities including:
 - (A) Meetings with external agencies.
 - (B) Emergency planning responsibilities and requirements.
 - (C) Process used to evaluate emergency preparedness, such as annual emergency field exercises.
 - (D) After action reports and implementation of findings.

- (E) Revision and distribution of emergency response procedures.
 - (F) Familiarization training for public safety organizations.
 - (G) Employee training.
 - (H) An emergency plan that includes planning updates.
- (VIII) A description of the hazardous materials program including the process to ensure knowledge of and compliance with program requirements.
- (IX) A contractor safety coordination program.
- (X) A description of the process used to collect, maintain, analyze, and distribute safety data, to ensure that the safety function within the rail transit organization receives the necessary information to support implementation of the system safety program.
- (XI) A description of the process used by the transit agency to develop, maintain, and ensure compliance with rules and procedures having a safety impact including:
- (A) Identification of operating and maintenance rules and procedures subject to review.
 - (B) Techniques used to assess the implementation of operating and maintenance rules and procedures by employees, such as performance testing.
 - (C) Techniques used to assess the effectiveness of supervision relating to the implementation of operating and maintenance rules.
 - (D) Process for documenting results and incorporating them into the hazard management program.
- (XII) A description of the maintenance audits and inspections program, including identification of the affected facilities and equipment, maintenance cycles, documentation required, and the process for integrating identified problems into the hazard management process.
- (XIII) A description of the configuration management control process including:
- (A) The authority to make configuration changes.
 - (B) The process for making changes.
 - (C) Assurances necessary for formally notifying all involved departments.
- (XIV) A description of the safety program for employees and contractors that incorporates the applicable local, state and federal requirements including:
- (A) Safety requirements that employees and contractors must follow when working on, or in close proximity to transit agency property.

- (B) Processes for ensuring the employees and contractors know and follow the requirements.
- (XV) A description of the drug and alcohol program and the process used to ensure knowledge of and compliance with program requirements.
- (XVI) A description of the measures, control, and assurances in place to ensure that safety principles, requirements and representatives are included in the transit agency's procurement process.
- (d) Safety-related Activities of Other Departments of the Transit Agency. The safety-related activities of other departments of the transit agency section of the SSPP shall contain the following:
 - (I) A process of coordination of safety related tasks with other departments.
 - (II) A matrix of safety related tasks that shows department responsibility.
- (e) System Safety Program Plan Implementation and Maintenance. The system safety program plan implementation and maintenance section of the SSPP shall contain the following:
 - (I) Program schedule for implementation and maintenance of the SSPP which shall contain the following:
 - (A) Specified time intervals between SSPP reviews to determine whether or not the SSPP needs to be revised because of changed operating conditions and/or system modifications.
 - (B) A detailed description of the SSPP revision process including the identification of the persons responsible for initiating, developing, and approving changes to the SSPP.
 - (C) A statement that the Commission will be notified of all changes to the SSPP and supplied with a copy of all revised pages.
 - (II) A description of the process and procedure for conducting planned and scheduled internal safety reviews to evaluate compliance with the SSPP and comply with rule 7349 including the review and modification of the SSPP based upon audit results. This procedure shall include the following:
 - (A) Identification of departments and functions subject to review.
 - (B) The transit agency's schedule for conducting internal reviews and the responsibility for scheduling such reviews.
 - (C) A description of the process for conducting reviews, including the development of written checklists and procedures and the issuing of findings.
 - (D) Written documentation of the process and procedures of issuing audit findings including an evaluation of the adequacy and effectiveness of the SSPP.

- (E) A process for the review of reporting requirements.
 - (F) A process for tracing the status of implemented recommendations.
 - (G) A requirement for an annual audit report, a copy of which must be submitted to the Commission by February 15 each year, which summarizes the results of the internal audits performed during the previous year, including a summary of required corrective actions taken, if any, and provision for follow up to ensure timely implementation and to determine effectiveness.
 - (H) Coordination with the Commission.
- (f) System Safety Program Plan Verification. The system safety program plan verification section of the SSPP shall contain the following:
- (I) A process to ensure that the design and construction of new systems and/or extensions comply with the SSPP.
 - (II) A process to ensure compliance of existing operating systems with the SSPP.
 - (III) A process to ensure that safety audits and review of the SSPP are conducted including consideration of occupational safety and health, fire protection, safety training, and safety information and reporting.

7344. System Security Plan.

Every transit agency shall establish and maintain a written system security plan, as a separate document from the SSPP that complies with the program standard and includes the following sections:

- (a) Introduction. The Introduction section of the SSP shall contain the following:
- (I) A policy statement supporting the SSP from the General Manager/Executive Director of the transit agency.
 - (II) A statement of the legal authority for the SSP.
 - (III) A description of the purpose and scope of the SSP.
 - (IV) A clear definition of the goals and objectives of the SSP.
 - (V) A statement of management responsibilities to ensure the goals and objectives of the SSP are achieved.
 - (VI) Specifications of policies in place to support implementation of the security portions of the SSP and a description of the specific activities required to implement the system security program including:
 - (A) Tasks to be performed by the rail transit security function, by position and management accountability, specified in matrices and narrative format.

- (B) Security-related tasks to be performed by other rail transit departments, by position and management accountability, specified in matrices and narrative format.
 - (VII) Identification of the procedures for controlling updates and modifications to the SSP including specification of an annual assessment of whether the SSP should be updated and a requirement of coordination with the Commission, including timeframes for submission, revision, and approval.
- (b) System Security Department Activities of the Transit Agency. The system security department activities of the transit agency section of the SSP shall contain the following:
 - (I) A description of the transit agency's process for identifying and managing threats and vulnerabilities, both proactive and reactive, during operations, and for major projects, extensions, new vehicles and equipment including integration with the safety certification process. Such process must include the process for assessment and resolution of the threats and vulnerabilities identified.
 - (II) Identification of controls in place that address the personal security of passengers and employees.
 - (III) Documentation of the transit agency's process for conducting internal security reviews to evaluate compliance and measure the effectiveness of the SSP.
 - (IV) Documentation of the transit agency's process for making its SSP and accompanying procedures available to the Commission for review and approval.
 - (V) Emergency response training, coordination and management both internal and external.
 - (VI) A process for the collection and analysis of security data.
- (c) Security-related Activities of Other Departments of the transit agency. The security-related activities of other departments section of the SSP shall contain the following:
 - (I) Security related activities of other departments of the transit agency.
 - (II) A matrix of security related tasks that shows department responsibility.
- (d) System Security Plan Implementation and Maintenance. The system security plan implementation and maintenance section of the SSP shall contain the following:
 - (I) Program schedule for implementation and maintenance of the SSP which shall contain the following:
 - (A) Specified time intervals between SSP reviews to determine whether or not the SSP needs to be revised because of changed operating conditions and/or system modifications.

- (B) A detailed description of the SSP revision process including the identification of the persons responsible for initiating, developing, and approving changes to the SSP.
- (C) A statement that the Commission will be notified of all changes to the SSP and supplied with a copy of all revised pages.
- (II) A description of the process and procedure for conducting planned and scheduled internal security reviews to evaluate compliance with the SSP and comply with rule 7349 including the review and modification of the SSP based upon audit results. This procedure shall include the following:
 - (A) Identification of departments and functions subject to review.
 - (B) The transit agency's schedule for conducting internal reviews and the responsibility for scheduling such reviews.
 - (C) A description of the process for conducting reviews, including the development of written checklists and procedures and the issuing of findings.
 - (D) Written documentation of the process and procedures of issuing audit findings including an evaluation of the adequacy and effectiveness of the SSP.
 - (E) A process for the review of reporting requirements.
 - (F) A process for tracking the status of implemented recommendations.
 - (G) A requirement for an annual audit report, a copy of which must be submitted to the Commission by February 15 each year, which summarizes the results of the internal audits performed during the previous year, including a summary of required corrective actions taken, if any, and provision for follow up to ensure timely implementation and to determine effectiveness.
 - (H) Coordination with the Commission.
- (e) System Security Plan Verification. The system security plan verification section of the SSP shall contain the following:
 - (I) A process to ensure that the design and construction of new systems and/or extensions comply with the SSP.
 - (II) A process to ensure compliance of existing operating systems with the SSP.
- (f) A process to ensure that security audits and review of the SSP are conducted including consideration of security aspects of occupational safety and health, fire protection, safety training, and safety information and reporting.

7345. Submittal and Review of the System Safety Program Plan and System Security Plan.

- (a) On or before November 1 of the first year of operation for new systems, and each November 1 thereafter, each transit agency subject to rules 7341 through 7354 shall file its SSPP and SSP as separate applications for Commission approval. The Commission shall give ten days notice of the filing of the applications.
- (b) On or before December 20th of the year in which any applications for SSPP or SSP approval are filed, the Commission shall review each plan and shall approve those plans that comply with rules 7340 through 7354. All plans approved shall be approved by Commission order.
- (c) In the event that the Commission finds that the SSPP does not comply with rule 7343 or that the SSP does not comply with rule 7344, the Commission shall specify the sections not in compliance, recommend appropriate modifications and/or additions necessary to bring the SSPP or the SSP into compliance, and set a time frame for bringing the SSPP or SSP into compliance.
- (d) On or before January 1st of each year, the Commission shall certify to the FTA that each rail fixed guideway system subject to 49 C.F.R. Part 659 has a SSPP and SSP that conform to the program standard set forth in rules 7340 through 7354, or in the alternative, when the rail fixed guideway system will have the SSPP or SSP revised and in compliance. Upon receipt of the revised SSPP or SSP, the Commission will review the revised SSPP or SSP. If the Commission finds that the revised SSPP or SSP is in compliance with rules 7343 and 7344, the Commission shall approve the SSPP or SSP and certify to the FTA that the SSPP or SSP is in compliance. If the Commission finds that the revised SSPP or SSP is not in compliance, the Commission shall set the application for hearing and enter an appropriate order resolving the matter.
- (e) All materials submitted to the Commission in accordance with rule 7345 which pertain to security planning shall be submitted under seal in accordance with Commission rule 1100 regarding confidentiality. The Commission and its staff shall treat such reports as confidential pursuant to Commission rule 1100, and §24-72-204, C.R.S., and 49 C.F.R. Part 15 and Part 1520. All materials submitted to the Commission in accordance with rule 7345 which pertain to security planning shall be returned to the transit agency upon review and approval by the Commission. The transit agency shall keep at least one original copy of every security plan submitted to the Commission under rule 7345 for review and inspection by the Commission. The Commission shall not retain or image any material submitted to the Commission in accordance with rule 7345 that has been marked as sensitive security information pursuant to 49 C.F.R. Part 15 and Part 1520.

7346. Corrective Action Plan

Every transit agency required to develop a CAP shall develop a CAP that is based upon a hazard analysis, if necessary, and that complies with the following standards:

- (a) CAP Development. The transit agency shall develop a CAP for the following:
 - (I) Results from investigations, in which identified causal and contributing factors are determined by the transit agency or Commission as requiring corrective actions.
 - (II) Findings from safety and security reviews performed by the oversight agency.

- (b) Each CAP and associated hazard analysis, if necessary, shall identify:
 - (I) The element or activity identified including the assigned tracking number.
 - (II) The action to be taken by the transit agency to prevent recurrence and/or mitigate the element, activity, or hazardous condition(s).
 - (III) The interim measures the transit agency plans to implement to prevent recurrence before the final corrective actions are implemented.
 - (IV) The implementation schedule.
 - (V) The method(s) the transit agency will use to validate the effectiveness of the corrective measures.
 - (VI) The individual or department responsible for the implementation.
 - (VII) Any specific actions required by the Commission.
- (c) A CAP must be reviewed and formally approved by the Commission.
 - (I) The Commission shall open an investigation docket and notify the transit agency by order that a CAP is required.
 - (II) The transit agency shall file a CAP and associated hazard analysis, if necessary, in the investigation docket within 30 days of the Commission order.
 - (III) The Commission shall issue an order in the investigation docket approving or rejecting the CAP within 15 days of receiving the transit agency's CAP.
 - (IV) If the CAP is rejected, the Commission order rejecting the CAP will provide the reasons for rejection and recommended revisions.
 - (V) If the CAP is rejected, the transit agency shall submit a revised CAP within 15 days of the Commission's order rejecting the CAP.
 - (VI) The Commission shall issue an order in the investigation docket approving or rejecting the revised CAP within 10 days of receiving the transit agency's CAP.
 - (VII) If the revised CAP is rejected, the Commission shall initiate its dispute resolution process.
- (d) The Commission's dispute resolution process will be used to resolve disputes between the Commission and transit agency resulting from the development or enforcement of a CAP.
- (e) The Commission will evaluate the findings from any NTSB accident investigation and will determine if a CAP should be developed by either the Commission or the transit agency to address the NTSB findings.
- (f) The transit agency must provide to the Commission the following:

- (I) Verification that the corrective action(s) has been implemented as described in the CAP, or that a proposed alternate action(s) has been implemented subject to Commission review and approval.
 - (II) Periodic reports requested by the Commission describing the status of each corrective action(s) not completely implemented as described in the CAP.
- (g) The Commission will monitor and track the implementation of each approved CAP using the following procedure:
- (I) The transit agency shall submit quarterly reports on the status of the actions and activities contained in the CAP. The quarterly report shall address, at a minimum, the following:
 - (A) Activity associated with the CAP that has occurred in the interim or since the last report.
 - (B) A statement as to whether the actions and activities are on-schedule, behind schedule, or ahead of schedule.
 - (C) If actions and activities are behind schedule, a statement as to the causes of the delay and the planned measures to meet the schedule.
 - (D) Any changes in key personnel assigned to implementing the CAP.
 - (E) Any management issues.
 - (F) Effectiveness of interim safety measures.
 - (G) A statement as to the effectiveness of actions and/or activities that have already been implemented.
 - (H) If a like accident and/or hazardous condition has been identified subsequently to the CAP, a statement about the possible impacts on the CAP.
 - (II) The Commission shall actively monitor the progress of the CAP by meeting periodically with the transit agency and shall develop a monitoring plan in cooperation with the transit agency.
 - (III) All CAP related correspondence between the Commission and the transit agency will include a tracking number.
 - (IV) The Commission shall maintain a computerized log for tracking and recordkeeping of CAP's and shall enter and update all quarterly status reports, additional information, and information from the finalization of the CAP and shall check due dates.

7347. Accident Notification.

- (a) The Commission shall require the transit agency to notify the Commission's staff within two hours of any incident involving a rail transit vehicle or taking place on rail transit-controlled property where one or more of the following occurs:
 - (I) A fatality at the scene; or where an individual is confirmed dead within thirty days of a rail transit-related incident.
 - (II) Injuries requiring immediate medical attention away from the scene for two or more individuals.
 - (III) Property damage to rail transit vehicles, non-rail transit vehicles, other rail transit property or facilities, and non-transit property that equals or exceeds \$25,000.
 - (IV) An evacuation due to life safety reasons.
 - (V) A collision at a grade crossing.
 - (VI) A main-line derailment.
 - (VII) A collision with an individual on a rail right of way.
 - (VIII) A collision between a rail transit vehicle and a second rail transit vehicle, or a rail transit non-revenue vehicle.
- (b) The Commission shall require each transit agency that shares track with the general railroad system and are subject to FRA notification requirements to notify the Commission within two hours of an incident for which the transit agency must also notify the FRA.
- (c) The Commission's required method of notification of accidents is by telephone first within two hours followed by facsimile or electronic mail of any initial notification checklists and information sheets which shall contain the following information.
 - (I) The nature of the accident as described in rule 7347(a)(I through VIII) above.
 - (II) The time, date, and location of the accident.
 - (III) The time and date of the notification to the Commission.
 - (IV) A description of the vehicles, rail transit vehicles, passengers, individuals, rail transit-controlled property, and other property involved in the accident and the direction they were traveling at the time of the incident, if known.

7348. Investigations and Reporting Procedures for Accidents and Hazards.

- (a) The Commission shall investigate, or cause to be investigated, at a minimum, any incident involving a rail transit vehicle or taking place on rail transit-controlled property meeting the

notification thresholds identified in rule 7347(a) or any hazard that meets the definition outlined in rule 7341 and to which rules 7343(c)(II) and (III) apply.

- (b) The Commission shall use its own investigation procedures or those that have been formally adopted from the transit agency and that have been submitted to FTA.
- (c) Each transit agency shall notify the Commission's staff of hazards by telephone or facsimile as soon as practicable, but not later than 24 hours from the time of occurrence or discovery.
- (d) Investigating accidents and hazards.
 - (I) Each transit agency shall investigate accidents and hazards on behalf of the Commission's staff. The Commission's staff may also perform separate, independent investigations at its own discretion.
 - (II) When investigating an accident as defined in rule 7347(a), the transit agency shall give prior sufficient telephone or facsimile notice to the Commission's staff of the times that an accident investigation team will convene to conduct interviews, inspections, examinations, or tests to determine the cause of the accident.
 - (III) The transit agency shall investigate each hazard in compliance with the procedures contained in the transit agency's approved SSPP.
 - (IV) The transit agency shall document its investigation in a written report. The transit agency shall submit the report to the Commission on forms available from the Commission. The report shall be submitted within 45 days after the accident occurred or the hazard was discovered. Reports shall be submitted for all accidents and hazards. The Accident/Hazard Report shall contain the following:
 - (A) The name of the transit agency and the name of the rail fixed guideway system if different.
 - (B) An indication showing whether the report concerns an accident or whether it concerns a hazard.
 - (C) The following accident data, if applicable: the accident date and time; the accident's location; the type of accident; whether the accident occurred at a grade crossing; the number of fatalities; the number of injuries; and the estimated damage in dollars to the rail fixed guideway system, vehicles, or other rail transit-controlled property.
 - (D) The following hazard data, if applicable: the date the hazard was identified; the location of the hazard; the type of hazard; the severity of the hazard; the name of the person who identified the hazard; the manner in which such person identified the hazard; and the probability that the hazard could cause death or injury to passengers or employees if not immediately corrected.
 - (E) A written description of the accident or hazard.

- (F) A diagrammatic sketch of the accident or hazard.
- (G) An explanation of the accident or hazard's most probable cause and any additional contributing causes.
- (H) A CAP to prevent reoccurrence of the accident or to eliminate the hazard, if a determination is made that a CAP is warranted, or a statement that a CAP is not necessary.
- (I) A copy of the schedule for the implementation of the CAP if a CAP is warranted.
- (J) A signature and title of the person authorized to certify the accuracy of the report, together with the date the report is signed.
- (K) Copies of all photographs regarding the accident or hazard, or a statement that no such photographs exist.
- (L) A copy of any evidence that exists in the form of magnetic media, such as video or audio recordings of the event, or a statement that none exists.
- (M) Copies of any report from an outside agency that was involved in the investigation (e.g., local police investigation reports or coroners' reports), or a statement explaining why none is available. Copies of police reports must include, if available, information regarding whether a citation or notice of violation was issued and to whom it was issued.
- (N) A statement regarding whether drug and/or alcohol testing was performed on any transit agency employees or contractors in connection with the accident, and copies of the results of any such drug and/or alcohol tests or an affidavit reporting the results of any such testing.
- (O) Copies of any witness statements.
- (P) Copies of any other information, reports, or statements that would aid in the formation of a conclusion as to the cause of the accident.
- (V) The transit agency shall submit its investigation report, including its CAP and implementation schedule, to the Rail/Transit Safety Section of the Commission. Such report shall be submitted under seal in compliance with the confidentiality provisions of the Commission's Rules Regulating Practice and Procedure. The Commission and its staff shall treat such reports as confidential pursuant to § 40-18-104, C.R.S.
- (VI) Commission staff may request that the Commission consider the transit agency's investigation and report thereon. The Commission may, after considering the transit agency's investigation and report, make such order as it deems necessary, including an order mandating a staff investigation. If a staff investigation is ordered, the Commission shall consider staff's report and issue an appropriate order. Nothing in this subparagraph shall preclude Commission staff from, in its discretion, performing its own investigation without an order of the Commission.

- (e) The threshold for the Commission's investigation of accidents is the same as the transit agency's threshold for reporting accidents and pursuant to rule 7347(a). All hazards shall be investigated.
- (f) The Commission authorizes the transit agency to conduct investigations on the Commission's behalf and requires the transit agency to use investigation procedures that have been formally approved by the Commission.
- (g) Each investigation must be documented in a final report that includes a description of investigation activities, identified causal and contributing factors, and a corrective action plan and hazard analysis if warranted.
- (h) The Commission shall formally adopt a final investigation report for each investigation. Such adoption shall include the following:
 - (I) If the Commission has conducted the investigation, the Commission shall formally transmit its final investigation report to the transit agency.
 - (II) If the Commission has authorized an entity other than the Commission (including the transit agency) to conduct the investigation on the Commission's behalf, the Commission shall review and formally adopt the final investigation report.
 - (III) If the Commission does not concur with the findings of the transit agency investigation report, the Commission shall either:
 - (A) Conduct a Commission investigation according to rule 7348; or
 - (B) Formally transmit the Commission's dissent to the findings of the investigation, report the Commission's dissent to the transit agency, and negotiate with the transit agency until a resolution on the findings is reached.
- (i) The Commission shall require periodic status reports that document investigation activities and findings on a quarterly basis.

7349. Internal Safety and Security Reviews.

- (a) The transit agency is required to develop and document the process for the performance of on-going internal safety and security reviews in its SSPP and SSP.
- (b) The internal safety and security review process must:
 - (I) Describe the process used by the transit agency to determine if all identified elements of its SSPP and SSP are performing as intended.
 - (II) Ensure that all elements of the SSPP and SSP are reviewed in an on-going manner and completed over a three-year cycle.
- (c) The transit agency must notify the Commission at least 30 days before the conduct of scheduled internal safety and security reviews.

- (d) The transit agency shall submit to the Commission any checklists or procedures it will use during the safety portion of its review prior to such review.
- (e) The transit agency shall make available to the Commission any checklists or procedures subject to the security portion of its review, consistent with 49 C.F.R. §659.23(e).
- (f) The Commission requires the transit agency to annually submit a report documenting internal safety and security review activities and the status of subsequent findings and corrective actions. The security part of this report must be made available for Commission review consistent with 49 C.F.R. §659.23(e).
- (g) The annual report must be accompanied by a formal letter of certification signed by the transit agency's chief executive, indicating that the transit agency is in compliance with its system safety program plan and system security plan.
- (h) If the transit agency determines that findings from its internal safety and security reviews indicate that the transit agency is not in compliance with its SSPP, the chief executive must identify the activities the transit agency will take to achieve compliance.
- (i) The Commission must formally review and approve the annual report.
 - (I) The transit agency shall file its annual report on or before February 15 of the first year of operation for new systems, and each February 15 thereafter as an application for Commission approval. The Commission shall give ten days notice of the filing of the application.
 - (II) On or before April 5 of the year in which the application for approval of the annual report is filed, the Commission shall review the annual report and shall approve those annual reports that conform to rule 7349.
 - (III) In the event the Commission finds that the annual report does not comply with rule 7349, the Commission shall specify the sections not in compliance, recommend appropriate modifications and/or additions necessary to bring the annual report into compliance, and set a time frame for bringing the annual report into compliance.

7350. Commission Safety and Security Reviews.

At least every three years, beginning with the initiation of transit agency passenger operations, the Commission shall complete an on-site safety review of each transit agency's implementation of its SSPP and SSP in an on-going manner. At the conclusion of the three-year review cycle during which all parts of the SSPP and SSP have been reviewed, the Commission shall prepare and issue a report containing findings and recommendations resulting from that review, which at a minimum must include an analysis of the effectiveness of the SSPP and SSP, and a determination of whether either should be updated.

- (a) The Commission shall conduct six semi-annual safety and security review audits during the three-year review process. The first five semi-annual audits shall involve a review of five to nine areas of interest such that the entire SSPP and SSP are fully examined during the first five semi-annual audits. The sixth semi-annual audit shall be comprised of a review of the auditing process and

procedures used during the previous five semi-annual audits in preparation for the next three-year review process.

- (b) For each semi-annual audit during the three-year review process, the Commission staff shall prepare audit checklists that identify the safety and security areas of interest and the compliance criteria to be used for the audit during the specific semi-annual audit.
- (c) For each semi-annual audit during the three-year review process, the Commission staff shall prepare a draft report for the semi-annual audit with completed audit checklists and audit findings. This draft report will be provided to the transit agency for a 30 day review and comment by the transit agency. The transit agency shall provide written responses to all audit report recommendations, any written comments, and proposed CAP's and implementation schedules within 30 days of receipt of the Commission's audit report. The transit agency shall also be allowed to make corrections to any findings outlined in the draft report within the 30 day review period. The transit agency must provide written documentation of the actions implemented to bring any findings into compliance with the accepted criteria as part of the transit agency's written response for the transit agency to avoid inclusion of such findings as documented findings in the final report and avoid development of CAP's for those findings in the final report. The Commission shall incorporate comments, CAP's and implementation schedules in a final audit report for the semi-annual audit. The Commission shall approve the final audit report.
- (d) The transit agency shall notify the Commission prior to the start of any transit agency internal safety and security review as outlined in rule 7349(c).
- (e) The Commission's safety and security review audits may be conducted in conjunction with the transit agency's internal safety and security reviews.
 - (I) If the transit agency chooses to conduct its internal safety and security reviews in conjunction with the Commission's safety and security review audit, the transit agency shall inform the Commission of its intentions 30 days before the start of the Commission's audit.
 - (II) If the transit agency chooses to conduct its internal safety and security reviews in conjunction with the Commission's safety and security review audit, such combined reviews will consist of the following:
 - (A) Pre-audit meetings where areas of interest and checklists can be compared and/or combined and pertinent documents reviewed.
 - (B) Joint on-site audit(s) of the areas of interest and checklist items.
 - (C) Post-audit meetings where the Commission and the transit agency shall present audit findings and recommended corrective actions.
 - (D) Submittal of the joint final audit report for agreement between the Commission and transit agency, or submittal of separate final audit reports for disagreement between the Commission and transit agency.

- (III) At the conclusion of the three-year review cycle, the Commission shall prepare and issue a report as outlined in rule 7350.

7351. Safety Oversight of Rail Fixed Guideway System Design, Construction, Pre-Operational Testing and Operation Start-Up.

The Commission shall provide safety oversight guidance of rail fixed guideway system design, construction, pre-operational testing and operation start-up.

7352. Inspection of Records.

All transit agency records required by these rules shall be made available upon request to authorized personnel of the Commission.

7353. Safety Data Acquisition/Analysis.

The transit agency shall review and analyze all information and documentation required by these rules. The information or data collected shall be analyzed for potential safety impacts, and identified areas of concern shall be reported to appropriate personnel for investigation and resolution.

7354. Variances.

A transit agency may request a variance from these rules. A transit agency seeking such a variance shall comply with the variance request procedures contained in Commission's Rules Regulating Practice and Procedure.

7355. – 7399. [Reserved].

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