

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: DIVISION OF PUBLIC TRANSIT TITLE NUMBER: 225

CITE AUTHORITY: W. Va. Code § 17-16E-1-3(b)

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: RAIL FIXED GUIDEWAY SYSTEMS STATE SAFETY OVERSIGHT

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
Authorized Signature

FILED

225 CSR 1

TITLE 225

LEGISLATIVE RULE

DEPARTMENT OF TRANSPORTATION

DIVISION OF PUBLIC TRANSIT

SERIES 1

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

## **RAIL FIXED GUIDEWAY SYSTEMS STATE SAFETY OVERSIGHT**

### **225-1- 1. General.**

1.1. Scope. – This Legislative Rule establishes the requirements for the State's oversight of the safety of rail fixed guideway systems by the Division of Public Transit. The Division of Public Transit was designated the State's oversight agency by Enrolled Senate Bill 407 enacted during the 2015 Regular Session by the Eighty-Seventh Legislature. The requirements for the safe operation and maintenance of rail fixed guideway systems apply to any such system operating in this state.

1.2. Authority. – W.Va. Code §17-16E-3.

1.3. Filing Date. – July 1, 2015

1.4. Effective Date. --

### **225-1-2. Definitions.**

2.1. "Accident" means an Event that involves any of the following: a fatality; one or more persons suffers a serious injury; property or equipment damage equal to or greater than \$25,000; a mainline derailment, occurring at any location; OR an evacuation of equipment or a station to prevent injury or loss of life.

2.2. "APTA Guidelines" means "Manual for the Development of Rail Transit System Safety Program Plans," as amended and supplemented, published by the American Public Transit Association on August 20, 1991, 1201 New York Avenue, N.W., Washington, DC 20005-3917, Telephone: (202) 893-3917 or (202) 893-4000. The APTA Guidelines are available at the following site:

[http://www.apta.com/resources/reportsandpublications/Documents/commuter\\_rail\\_manual.pdf](http://www.apta.com/resources/reportsandpublications/Documents/commuter_rail_manual.pdf)

2.3. "Corrective Action Plan" means a plan prepared by the rail fixed guideway system or the Oversight Agency to minimize, control, or eliminate any investigated hazardous condition within a time period specified by, and in accordance with, the oversight agency. Corrective Action Plans are prepared in response to hazardous conditions identified as a result of accident and unacceptable hazardous condition investigations, three-year safety reviews, and the Rail Fixed Guideway Transportation Systems internal safety audit process.

2.4. "Contractor" means an entity that performs tasks required by this rule on behalf of a Oversight Agency, or a Rail Transit Agency, through contract or other agreement. The transit agency may not be a contractor for the oversight agency.

2.5. "Division" means the West Virginia Department of Transportation, Division of Public Transit.

2.6. "Event" means any Accident, Incident or Occurrence.

2.7. "FTA" means the Federal Transit Administration, an agency within the U.S. Department of Transportation.

2.8. "Hazard" means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, or property of a rail fixed guideway public transportation system; or damage to the environment.

2.9. "Incident" means an Event that exceeds the definition of an Occurrence, but does not meet the requirements of an Accident. Examples include, but are not limited to: A near miss or close call, a rail yard derailment, non-serious injuries, a violation of a safety standard, or equipment or property damage less than \$25,000 that affects transit operations.

2.10. "Investigation" means the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.

2.11. "National Public Transportation Safety Plan" means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53; authorized by 49 U.S.C. 5329(b).

2.12. "Implementation Guidelines" means the "Implementation Guidelines for State Safety Oversight of Rail Fixed Guideway Systems, July 1996, Final Report" published by the FTA, United States Department of Transportation, Research and Special Programs Administration, John A. Volpe National Transportation Systems Center, Safety and Security Systems Division, Cambridge, MA 02142-1093, obtainable from the National Technical Information Service, Springfield, VA 22161. The Implementation Guidelines are available at the following site: <https://www.hsdl.org/?view&did=455185>

2.13. "Internal safety audit process" means the formal process by which the transit agency audits itself.

2.14. "Occurrence" means an Event with no injuries, where damage occurs to property or equipment but does not affect transit operations.

2.15. "Passenger" means a person who is on board, boarding, or alighting from a vehicle on a rail fixed guideway public transportation system for the purpose of travel.

2.16. "Public Transportation Safety Certification Training Program" means either the certification training program for Federal and State employees, or other designated personnel,

who conduct safety audits and examinations of public transportation systems, and employees of public transportation agencies directly responsible for safety oversight, established through interim provisions in accordance with 49 U.S.C. 5329(c)(2), or the program authorized by 49 U.S.C. 5329(c)(1).

2.17. "Rail fixed guideway public transportation system" or "RFGPTS" means any fixed guideway system that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration, or any such system in engineering or construction. Rail fixed guideway public transportation systems include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

2.18. "Rail Transit Agency" or "Agency" means any entity that provides services on a rail fixed guideway public transportation system.

2.19. "Safety" means freedom from danger.

2.20. "Safety review" means a formal, comprehensive, on-site examination by the Division of a transit agency's safety practices to determine whether they comply with the policies and procedures required under the transit agency's system safety program plan.

2.21. "Security" means freedom from intentional danger.

2.22. "Serious injury" means any injury which:

2.22.a. Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received;

2.22.b. results in a fracture of any bone (except simple fractures of fingers, toes, or nose);

2.22.c. causes severe hemorrhages, nerve, muscle, or tendon damage;

2.22.d. involves any internal organ; or

2.22.e. involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

2.23. "State Safety Oversight Agency" or "Oversight Agency" means the West Virginia Department of Transportation, Division of Public Transit which is the state agency that has the responsibility to interpret, administer and enforce state law, rules and program standards for the regulation of RFGPTS.

2.24. "System safety program plan" means a document adopted by the transit agency detailing its safety policies, objectives, responsibilities, and procedures.

2.25. "System safety program standard" means the standard adopted by the Division to comply with 49 C.F.R. § 659.31.

2.26. "TS Procedures Guide" means the FTA's "Transit Security Procedures Guide," Final Report, Reprinted November 1997, published by the United States Department of Transportation, Research and Special Programs Administration, John A. Volpe National

Transportation Systems Center, Cambridge, MA 02142. The TS Procedures Guide is available at the following site:

<http://www3.cutr.usf.edu/security/documents/FTA/dot-vntsc-fta-94-8.pdf>

2.27 "TSSP Planning Guide" means the "Transit System Security Program Planning Guide," Final Report, Reprinted November 1997, published by the FTA, United States Department of Transportation, Research and Special Programs Administration, John A. Volpe National Transportation Systems Center, Cambridge, MA 02142. The Transit System Security Program Planning Guide is available at the following site:

<http://www3.cutr.usf.edu/security/documents/FTA/Transit%20System%20%20Security%20%20Program%20Planning%20Guide.pdf>

2.28. "Transit Agency Safety Plan" means the comprehensive agency safety plan for a transit agency, including a Rail Transit Agency, that is required by 49 U.S.C. 5329(d); based on a Safety Management System.

2.29. "Vehicle" means any rolling stock used on a rail fixed guideway public transportation system, including but not limited to passenger and maintenance vehicles.

#### **225-1-3. State system safety program standard.**

3.1. The Division, as the designated state oversight agency with responsibility for rail transit safety and security oversight, must comply with the federal program requirements set out in 49 CFR Part 674. In order to effectuate these federal requirements the Division shall develop and implement a state System Safety Program Standard (SSPS).

3.2. Upon completion of the SSPS, every rail transit agency must develop and implement a Transit Agency System Safety Program Plan in accordance with the SSPS and 49 CFR Part 674.

#### **225-1-4. Rail transit agency's system safety program plan.**

4.1. Every agency is required to prepare and submit to the Division, for its written approval, a system safety program plan that complies with the state's system safety program standard and to update its system safety program plan as deemed necessary by the Division in response to changes affecting the safety and security elements of the system. Examples of such changes include, but are not limited to, changes in federal regulations or state standards, changes or modifications to the system, changes in operating conditions, and changes necessitated by audits or reviews of the system by the transit agency or the Division.

4.1.a. An agency shall not publicly disclose the security aspects of its approved system safety program plan.

4.1.b. An agency may use a contractor to develop or update its system safety program plan.

4.2. The Division will approve a transit agency's system safety program plan if it meets or exceeds the SSPS and the requirements of 49 CFR Part 674.

4.3. If the Division determines that a system safety program plan does not meet the requirements of this section, the Division will provide an explanation of the plan's deficiencies and a time frame for the agency to revise the plan.

4.4. The Division may use a contractor to review system safety program plans.

**225-1-5. Rail transit agency audit reports.**

5.1 Every agency shall develop and implement an internal safety audit process which complies with the provisions of 49 CFR Part 674 and requires a minimum of one safety audit every three years. Every agency shall submit to the Division for its review, a copy of the agency's safety audit report each time an audit is conducted.

5.2. A transit agency may use a contractor to prepare its safety audit reports.

5.3. The Division may use a contractor to review safety audit reports.

**225-1-6 Division safety review; inspections.**

6.1. The Division will conduct a comprehensive onsite safety review at each agency as specified by the FTA.

6.2. The review will assess the efficacy of the agency's system safety program plan in its entirety.

6.3. The Division will issue its findings from the onsite safety review in a written report, which will include a determination of whether the transit agency will be required to update its system safety program plan.

6.4. The Division may conduct inspections of all aspects of an agency's facilities and operations including infrastructure, documentation, electronic data and personnel. The Division shall prepare a report of any investigation it conducts and provide it to the agency. The report shall include a discussion the agency's facilities and operations that are in compliance with state and federal law, rules and regulations as well as a discussion of the agency's deficiencies and a time frame for correcting such deficiencies.

6.5. Neither the Division's inspection report, nor any inspection report that may be prepared by its contractor, shall be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in either of the reports.

6.6. The Division may use a contractor to conduct safety reviews, inspections and to prepare safety review findings and inspection reports.

**225-1-7. Rail Transit agency report on events.**

7.1. Every agency shall report events to the Division in accordance with this section.

7.2. As soon as practicable, but not more than twenty-four (24) hours after an event, a rail transit agency shall report the event to the Division by telephone, and shall include the time of the event or discovery of the event, description of the event, and an estimate of damages.

7.3. The initial telephonic report of the event will be made to the Division at (304) 558-0428. If the initial telephonic report occurs outside of Division business hours, the agency must leave a detailed message.

7.4. Every agency shall also submit a written report of an event to the Division of Public Transit addressed as follows: Todd Dorcas, State Safety Oversight Program Manager, Building 5, Room 650, 1900 Kanawha Blvd. E., Charleston, WV 25305.

7.5. Written reports shall be submitted as soon as practicable but no later than fifteen (15) days following an occurrence, forty-five (45) following an incident, ninety (90) days following an accident. The Oversight Agency may extend the reporting deadlines if the circumstances require additional time.

7.6. In addition to the information set forth in 7.2 above, the agency's written report shall include a determination by the agency of the probable cause of the event.

#### **225-1-8. Division investigations.**

8.1. Every agency shall fully inform and cooperate with the Division in its investigation of onsite events.

8.2. The Division's investigation shall consist of, but in the Division's discretion need not be limited to, the review and approval of the agency's determination of the probable cause of the event.

8.3. If the Division determines that the transit agency's determination of probable cause is not supported by a preponderance of the evidence submitted by the agency, the Division may require additional submissions as it deems necessary until it is satisfied that the agency's determination is appropriate, or that a preponderance of the evidence submitted by the agency supports a determination other than that of the agency.

8.4. The Division may use a contractor to conduct investigations, and to prepare investigation reports.

8.5. Neither the agency's report of an event under this section, nor any investigation report that may be prepared by the Division or its contractor regarding such event, shall be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in either of the reports.

#### **225-1-9. Corrective actions.**

9.1. After an event the agency shall submit to the Division a Corrective Action Plan that sets forth in detail the actions the agency shall take to minimize, control, correct, or eliminate any investigated event.

9.2. After the Division reviews and approves the corrective action plan, and within the time period specified by the Division, the agency shall implement the approved Corrective Action Plan.

9.3. The Division may use a contractor to review Corrective Action Plans.

9.4. An agency may use a contractor to develop a Corrective Action Plan.

9.5. An agency shall notify the Division in writing when its approved Corrective Action Plan has been fully implemented.

**225-1-10. Penalties.**

10.1. Should an agency fail to timely meet the requirements of state or federal law or this rule, the Division may impose sanctions by issuing directives, requiring Corrective Action Plans, suspension of service or recommending withholding of funding. Evidence of any criminal activity shall be reported to the proper state or federal authorities.

10.2. It is within the Division's discretion what, if any, penalty may be imposed based on the risk to individuals posed by the agency's acts or omissions.

**225-1-11. Adoption and incorporation by reference.**

The West Virginia Division of Public Transit hereby adopts and incorporates by reference as part of this rule, Federal Rail Fixed Guideway Systems State Safety Oversight Regulations and standards under 49 U.S.C. Section 5329(e), as amended by the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), FTA is required to certify each State's program to ensure compliance with MAP-21, as amended which is available at the following:  
[http://www.fta.dot.gov/tso\\_15863.html](http://www.fta.dot.gov/tso_15863.html)