



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

**[Docket No. FTA-2013-0022]**

### **State Safety Oversight Formula Grant Program**

**AGENCY: Federal Transit Administration (FTA), DOT.**

**ACTION: Establishment of the State Safety Oversight (SSO) Formula Grant Program Formula; Apportionment of Fiscal Years 2013 and 2014 SSO Formula Grant Program Funding.**

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**SUMMARY:** The Federal Transit Administration (FTA) is apportioning fiscal years (FY) 2013 and 2014 funds for the new State Safety Oversight (SSO) Formula Grant Program in accordance with the Moving Ahead for Progress in the 21st Century Act (MAP-21). This notice apportions the available funding for FYs 2013 and 2014 and provides instructions and guidance for this new formula grant program, for which funding is available to eligible States to develop or carry out SSO Programs (SSOPs) that monitor and improve the safety of rail fixed guideway public transportation systems (RFGPTS or rail transit systems) in their jurisdictions that are not regulated by the Federal Railroad Administration (FRA). This notice also establishes the formula for this new grant program and responds to the comments received pursuant to the May 13, 2013 Federal Register notice (78 FR 28014) on the illustrative apportionment for SSO grant funding.

**FOR FURTHER INFORMATION:** For application-specific information and other assistance in preparing a grant application, please contact the appropriate FTA Regional Office found at <http://www.fta.dot.gov>. For program-specific questions about certification or eligible grant activities as outlined in this notice, please contact Maria Wright, Office of Safety and Oversight,

1200 New Jersey Ave, S.E., Washington, D.C. 20590, (202) 366-5922, or

[Marial.Wright@dot.gov](mailto:Marial.Wright@dot.gov). For legal questions, please contact Mary J. Lee, Office of Chief

Counsel, 1200 New Jersey Ave, S.E., Washington, D.C. 20590, (202) 366-9085, or

[Mary.J.Lee@dot.gov](mailto:Mary.J.Lee@dot.gov).

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### **A. Overview**

Section 5336(h)(4) of 49 U.S.C. stipulates that FTA must apportion 0.5 percent of amounts made available to provide financial assistance for urbanized areas under 49 U.S.C. 5307 to eligible States for the SSO Formula Grant Program. For FY 2013, \$21,945,771 is available for eligible States to develop or carry out SSOP activities described in 49 U.S.C. 5329(e). For FY 2014, \$22,293,250 is available under the SSO Formula Grant Program. These amounts are

being apportioned according to the established formula in this notice. The final apportionment amounts are set forth in Table 13 on FTA's website: <http://www.fta.dot.gov/grants/15105.html>.

## **B. Definitions For Use In This Notice**

Applicant: The Governor-designated State entity that applies for the SSO Formula Grant Program funds and later becomes the grant recipient that carries out the grant funding responsibilities on behalf of the State.

Eligible State: A State that has: (1) a rail transit system, as defined below, within the jurisdiction of the State, that is not subject to regulation by the FRA, or (2) a rail transit system in the engineering or construction phase of development that will not be subject to regulation by the FRA.

Engineering or Construction phase of development: a project phase that involves completing significant design work, refining project scope and cost estimates, preparing construction documents, and securing local funding commitments.

At a minimum, for a project in engineering or construction to be included in the SSO Formula Grant Program, the project must: 1) have completed the National Environmental Policy Act (NEPA) of 1969 if it will be a federally funded project as demonstrated by a determination that the project is categorically excluded from review under NEPA, issuance of a Finding of No Significant Impact, or issuance of a Record of Decision; and 2) have demonstrated local financial commitment. FTA will monitor projects used in the SSO Formula Grant Program and reserves the right to change its initial eligibility determination if there are significant changes to the level of financial commitment to a project or the project is not making adequate progress.

National Transit Database (NTD) Reporter: a rail transit system that reported service data or capital expenditure data to the NTD in the most recent Reporting Year.

Out-of-Service rail transit system: a previously-operational system that has discontinued rail transit operations for more than one year, as indicated by having reported zero service data in the NTD for the most recent Report Year.

Public Transportation: Section 5302(14)(A) of the U.S.C. provides that public transportation means “regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income. . . .” Section 5302(14)(B) of 49 U.S.C. establishes seven types of service that are excluded from the definition of Public Transportation. Accordingly, FTA will exclude any non-public transportation systems listed in 49 U.S.C. 5302(14)(B) that a State may have reported in its annual report. Applicable exclusions include, among others, sightseeing service and intra-terminal or intra-facility shuttle services.

Rail fixed guideway public transportation system (RFGPTS or rail transit system): For purposes of this notice, a RFGPTS is a fixed guideway system, including, but not limited to, light, heavy, hybrid, or rapid rail system, monorail, inclined plane, funicular, trolley, cable car, streetcar, or automated guideway, that is not regulated by the FRA, or any such system in the engineering or construction phase of development. This definition excludes systems such as aerial tramways, ferry boats, trackless trolleys, trolleybuses, and bus rapid transit.

Recipient or grantee: A State entity that receives Federal transit funds directly from FTA to support its SSOP.

State: Includes all of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands. A State is eligible for SSO Formula Grant Program funds only if it meets the definition of an eligible State as defined in this notice.

State Safety Oversight Agency (SSOA): A public entity in compliance with 49 U.S.C. 5329(e)(4) that implements the SSOP requirements for the State.

State Safety Oversight Program (SSOP): The program implemented by the eligible State and its designated SSOA to address 49 U.S.C. 5329(e) requirements and objectives.

### **C. Background**

Prior to MAP-21, Pub. L. 112-141, except under limited circumstances, FTA was prohibited from regulating the operation, routes, or schedules of a public transportation system, which included much of rail transit safety. See 49 U.S.C. 5334(b)(1), as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59. What safety authority FTA had over rail transit safety was limited to the authority delineated under 49 U.S.C. 5330 (Section 5330). Section 5330 provides limited authority for States to oversee the safety of rail transit systems in their jurisdictions with no Federal funding to support such oversight activities.

MAP-21 provides funding for States to develop or carry out their SSOPs that meet the requirements under 49 U.S.C. 5329(e)(3), as amended by MAP-21, which include, among other things:

- Overseeing rail transit safety;
- Adopting and enforcing Federal and relevant State laws on rail transit safety;
- Establishing an SSOA;
- Determining, in consultation with FTA, an appropriate staffing level for the SSOA that is commensurate with the number, size, and complexity of the rail transit system(s) in the State;

- Requiring that employees and other designated personnel of the eligible SSOA who are responsible for rail transit oversight are qualified to perform such functions through appropriate training, including successful completion of the public transportation safety certification training program, which is being established under 49 U.S.C. 5329(c); and
- Prohibiting any public transportation agency from providing funds to the SSOA.

Per 49 U.S.C. 5329(e)(4), the SSOA must meet the following requirements:

- Has financial and legal independence from any public transportation entity the SSOA oversees;
- Does not directly provide public transportation services in an area with a rail transit system subject to the requirements of 49 U.S.C. 5329;
- Does not employ any individual who is also responsible for the administration of rail transit programs subject to the requirements of 49 U.S.C. 5329;
- Has the authority to review, approve, oversee, investigate, and enforce the implementation by the rail transit agency of the public transportation agency safety plan required under 49 U.S.C. 5329(d);
- Has investigative and enforcement authority with respect to the safety of rail transit systems in its State;
- Audits, at least once triennially, the compliance of the rail transit systems in the State subject to 49 U.S.C. 5329(d); and
- Provides, at least once annually, a status report on the safety of the rail transit systems the SSOA oversees to the FTA, the Governor of its State, and the Board of Directors (or equivalent) of any rail transit system the SSOA oversees.

Under MAP-21, FY 2013 funds in the amount of \$21,945,771 are available for eligible States to develop or carry out SSOP activities described above. For FY 2014, funds in the amount of \$22,293,250 are available. On May 13, 2013, FTA published a Federal Register notice (78 FR 28014) that set forth an illustrative formula apportionment and requested public comments. The comment period ended on June 12, 2013. FTA considered all comments received when developing the final apportionment formula and grant guidelines discussed below in this notice.

#### **D. SSO Formula Grant Program**

In this section, FTA provides the final formula for the SSO Formula Grant Program as well as responses to comments received for the proposed formula.

FTA publishes an annual apportionment notice that includes program and funding information on FTA's formula and discretionary programs. Formula apportionments are based on congressional appropriations. The Federal Register notice published on May 13, 2013, among other things, included the then-illustrative apportionment for the SSO Formula Grant Program. The funds shown in Table 13 on FTA's website (<http://www.fta.dot.gov/grants/15105.html>) now represent the final FYs 2013 and 2014 apportionments and are available for obligation by eligible States consistent with FTA's SSO Formula Grant Program Requirements (see Section E.5). FTA is providing additional guidance in the form of Frequently Asked Questions (FAQs) that are posted on FTA's website concurrently with this notice (<http://www.fta.dot.gov/tso.html>), and during upcoming webinars. Interested parties should monitor the FTA event calendar (<http://www.fta.dot.gov/newsroom/calendar.html>) for instructions to join the upcoming webinars.

##### **1. Funding Formula**

MAP-21 requires FTA to develop a formula that takes into account fixed guideway vehicle revenue miles, fixed guideway route miles, and fixed guideway vehicle passenger miles attributable to all rail transit systems not subject to regulation by the FRA within each eligible State. In developing this formula, FTA intended to provide funding in proportion to the level of effort necessary for required oversight duties, while still ensuring that each State receives adequate funding to carry out a minimum level of oversight duties. Therefore, FTA is apportioning funds using a three-tier formula.

FTA is apportioning the majority of funds, sixty percent (60%), through the factors required by MAP-21, called the Service Tier, as follows:

- a. Fifteen percent (15%) based on vehicle passenger miles (PMT),
- b. Fifteen percent (15%) based on vehicle revenue miles (VRM), and
- c. Thirty percent (30%) based on directional route miles (DRM).

The Service Tier includes a cap so that no State can receive more than 15% of the funding available for each of the above NTD data measures (i.e. PMT, VRM, DRM). The Service Tier is intended to reflect the infrastructure size and service delivered by rail transit systems and the consequent level of effort required from each State.

FTA is apportioning twenty percent (20%) equally to each eligible State through a second tier, the Base Tier, to provide funding equally among the eligible States and ensure a minimum funding level for each State.

FTA is apportioning the remaining twenty percent (20%) through a third tier, the Modal Tier, which takes into account the number of separate rail transit systems (e.g., light rail, heavy rail, etc.) not regulated by the FRA in each State's jurisdiction. The Modal Tier is intended to

reflect the additional oversight activities and technical complexity associated with overseeing each distinct rail mode.

The table below summarizes the percentage apportioned to each tier. A flow chart that further explains the final formula is available on the FTA website

([http://www.fta.dot.gov/12853\\_14910.html](http://www.fta.dot.gov/12853_14910.html)).

**Table 1: Final Formula Factors and Percent Apportioned Under Each Factor.**

<u>Service Tier Factors</u> (60%) <sup>1</sup>	<u>Base Tier Factor</u> (20%)	<u>Modal Factor</u> (20%)
PMT Factor (15%) VRM Factor (15%) DRM Factor (30%) as reported to the NTD	Equal amount per eligible State	Number of separate rail modes in each State’s jurisdiction not regulated by FRA, as reported to the NTD, or in the engineering or construction phase of development

<sup>1</sup> FTA includes a 15% cap on each factor within the Service Tier.

Consistent with other formula programs, FTA uses VRM, DRM, and PMT data as reported to the NTD. Also, as consistent with other FTA apportionments, FTA uses passenger car miles to calculate VRM. A modal system in revenue operations must be an NTD reporter during the previous NTD Reporting Year to be included in the Service Tier apportionment. For example, a rail transit system in operations must have reported to the NTD in Report Year 2011 to be included in the FY 2013 Apportionment. See the NTD website for information on becoming a NTD reporter (<http://www.ntdprogram.gov/ntdprogram/ntdid.htm>).

FTA reserves the right to remove out-of-service rail transit systems from the apportionment. If a previously operational system is out of service for one or more years, as of September 30 of the current fiscal year, the system may not be eligible for inclusion in the next fiscal year apportionment.

For the Modal Tier, FTA is apportioning an equal amount of funding for each rail transit system mode in the State's jurisdiction reported to the NTD. Projects in engineering or construction may not report to the NTD and, as such, FTA will use a separate process to identify the appropriate number of modes in engineering or construction to use in this formula. States must notify FTA of their intent to oversee and receive formula funding for rail transit systems in engineering or construction in their annual SSO report in order for the project(s) to be considered for inclusion in the apportionment. States that are new to the SSO program and are not currently required to complete an annual SSO report should work with FTA to assess whether the project meets the definition of engineering and construction, as defined in this notice, and can be included in the apportionment.

Projects must be in engineering or construction by the SSO Program annual report submission due date, which is typically March 15 of the prior fiscal year. For FY 2013 and FY 2014 only, FTA will use the beginning of the fiscal year (October 1, 2012 and October 1, 2013, respectively) as the date for inclusion.

FTA evaluates the projects submitted and determines whether they fall within the definition of engineering or construction, as described in this notice. FTA will post a table on its website that includes the data used for each apportionment (see [http://www.fta.dot.gov/12853\\_13935.html](http://www.fta.dot.gov/12853_13935.html)). FTA monitors projects in the engineering and construction phase of development to confirm the project is progressing and States are using the SSO Formula Grant Program funds to oversee the safety of these projects. FTA reserves the right to change its initial determination (to include a project in the apportionment) if there is a significant change to the level of financial commitment. States should contact FTA to discuss specific projects.

In cases where a rail transit system serves multiple States, FTA apportions funding associated with the Service Tier and the Modal Tier to the eligible State in which the rail transit system is headquartered. For the States that are apportioned funds based upon a rail transit system that serves multiple States, apportioned funds pursuant to the Service Tier and the Modal Tier are distinguished by each system within that State. A State that is apportioned funds based upon a multi-State rail system may use those apportioned funds only for the oversight of that multi-State rail system. The amount apportioned to each eligible State in the Base Tier is unaffected by multi-state rail transit systems. The eligible State to which funds are apportioned is ultimately responsible for carrying out the grant program responsibilities as the FTA grantee (although FTA recognizes a subrecipient relationship may exist). Each State served by the multi-state rail transit system is expected to support the oversight program's local match as defined in their SSO program plans and grant agreement. As part of the grant application process, FTA requires local agreements that identify how each State will contribute to the SSOP and demonstrate each State's agreement with the division of responsibilities. This approach consolidates federally funded SSOP activities to oversee a single rail transit system into one grant to eliminate duplication of efforts and reimbursement for the same activities, as well as to lessen the eligible States' grant administration burden. FTA recognizes that States with multi-state rail transit systems are developing SSOPs that will conform to MAP-21 requirements. FTA will continue to work with these States on an individual basis.

## **2. Comments and Responses**

In the May 13, 2013 Federal Register notice (78 FR 28014), FTA requested comment on six specific questions concerning the methodology used to apportion SSOP funding. FTA

received 16 comments and reviewed each comment it received. The 16 comments were from 13 SSOAs and 3 rail transit systems.<sup>1</sup>

The comments generally supported SSO grant funding and improving SSOPs to strengthen safety oversight of rail transit systems. FTA received a number of additional questions and comments about eligible activities and expenses under the SSO Formula Grant Program, local match requirements, the period of availability of the funds, and FTA's administration of the grants. These areas are discussed in more detail in Section E.4 of this notice. Other questions and comments included the future of the SSO Formula Grant Program beyond MAP-21 and the uncertainty of the level of available funding in the future.

The section below provides the six questions posed in the May 13 notice, a summary of the comments received, and FTA's corresponding response. Some commenters did not provide comments on each question, so each question has fewer than 16 commenters.

***i. Should FTA include a Base Tier Factor and is this share appropriate?***

*Comments:* Eight of eleven commenters agreed that FTA should include a Base Tier Factor and distribute twenty percent (20%) of the total available funds equally to each State. These commenters stated that the allocated amount for each State under the Base Tier would be sufficient to cover the expenses for one full-time employee and reasonable program expenses. One commenter agreed with having the Base Tier factor, but wanted a higher percentage of the total apportionment allocated for this Tier. Another commenter stated that the factor and amount allocated for the factor would be appropriate to carry out 49 CFR Part 659, but insufficient to

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<sup>1</sup> Commenters included: Arizona Department of Transportation; California Public Utilities Commission; Colorado Department of Regulatory Agencies, Public Utilities Commission; Hawaii Department of Transportation; New York Metropolitan Transportation Authority; Missouri Department of Transportation; New Jersey Department of Transportation, Oregon Department of Transportation; Sarasota County Area Transit; St. Clair County Transit District; Texas Department of Transportation; Tri-State Oversight Committee; Virginia Department of Rail and Public Transportation; Michigan Department of Transportation; Ohio Department of Transportation; and New York Department of Transportation.

carry out additional duties beyond those required in 49 CFR Part 659. Finally, one commenter disagreed with the Base Tier because it had “no practical correlation to the characteristics that drive the susceptibility and risk of a system.”

*Response:* In allocating twenty percent (20%) of the available funds for the Base Tier, FTA intends to alleviate some of the basic cost burdens for each State to develop or carry out an SSOP that addresses MAP-21 requirements. FTA recognizes that this amount may not be sufficient to cover all costs associated with a SSOP, but the funds apportioned through the Base Tier, as well as the Service Tier and the Modal Tier, along with the local match funds, should provide substantial, if not full, support to all States.

***ii. Should FTA include an Oversight Complexity Tier Factor as presented?***

*Comments:* Ten of fourteen commenters generally agreed that FTA should include an Oversight Complexity Tier Factor. However, three of these ten commenters stated that because this tier only considered one dimension of complexity (i.e., the number of rail modes), it would not fully capture the increased oversight burden resulting from increasing degrees of complexity of each rail mode. One commenter stated that the percentage allocated to this tier should be higher. Three commenters stated that FTA miscalculated the number of rail modes in their respective States.

*Response:* FTA instituted this component of the formula to recognize that a State must oversee additional technical complexity for each rail technology present at each rail transit agency it oversees. This may become increasingly important as FTA adopts minimum vehicle safety standards. As one respondent noted, each unique system type has different operational and infrastructure components. FTA’s intent is to distribute funds in a manner that reflects each State’s level of effort. Although other drivers of complexity may exist, readily available, objective data does not exist to measure these drivers of safety oversight complexity. Therefore,

for now, FTA will allocate these funds using the number of rail modes in a particular State. FTA renamed this tier as the Modal Tier to more accurately reflect the measure used.

In response to commenters that believed FTA had miscalculated the number of rail modes in their respective States, FTA believes these issues have been resolved or clarified based upon, among other things, the definition of a rail transit system and the requirements for consideration under this tier. States should contact FTA to discuss any specific cases.

***iii. Should FTA include rail fixed guideway public transportation systems in the engineering or construction phase of development in the Oversight Complexity Tier?***

*Comments:* Ten of eleven commenters agreed with FTA’s proposal to include rail transit systems in the engineering or construction phase of development in the Oversight Complexity Tier. Out of the ten, one commenter stated that this tier should include engineering or construction projects only to the extent that SSO workload is generated and its construction and ultimate operation is assured. Three commenters stated that FTA should include rail transit systems that are not funded by FTA. Some commenters noted that FTA should consider extensions to existing systems and not just projects funded under 49 U.S.C. 5309. According to other commenters, there would be a delay between the time a rail transit system in the engineering or construction phase enters revenue service and is included in an FTA-validated NTD data report. These commenters stated this would cause a delay for States to receive funds.

One commenter disagreed with this factor, stating strong opposition to the inclusion of this factor because it has “no practical correlation to the characteristics that drive the susceptibility and risk of a system.”

*Response:* As stated above, this tier has been renamed the Modal Tier. FTA will include systems in the engineering or construction phase in the Modal Tier as proposed. This policy encourages SSOPs to have a role in rail transit safety earlier than currently required under 49

CFR Part 659. FTA believes this early investment will improve safety oversight and accountability in the future. Additionally, by providing funding to States to oversee projects in the engineering or construction phase, FTA believes it is reducing the perceived effects of a “delay” to include Service Tier data in the apportionment. The process by which FTA determines whether rail transit systems are in the engineering or construction phase of development is described above in Section D.1 of this notice.

Finally, SSO Formula Grant Program funding may be used to oversee rail transit systems that are still in the early stages of development, such as planning, that occur prior to the engineering or construction phase. However, as stated above, only those rail transit systems in the engineering or construction phase of development as defined in this notice will be included in the Modal Tier and additional funds will not be provided for oversight of such rail transit systems in earlier development stages. In addition, use of these funds for the oversight of rail transit systems in earlier stages, such as planning, that occur prior to the engineering or construction phase is conditioned upon meeting all applicable Federal requirements even if that particular rail transit system is not funded by FTA. The applicant or that rail transit system should submit documentation to FTA indicating that rail transit system’s intent to report to NTD.

***iv. Are the Service Tier factors appropriately weighted?***

*Comments:* Eight of thirteen commenters stated that the Service Tier factors were appropriately weighted. Two of these eight commenters requested additional explanation of how the dollar amounts were computed. Three commenters raised a concern regarding the delay in the validated NTD data publication for new systems in revenue service that will not receive funding during that delay. One commenter stated that FTA should use anticipated DRM, PMT, and VRM for systems in operations that do not yet have validated Service Tier data in the NTD. Additionally, one commenter stated the percentage of allocated funds under this tier was too high

and should not exceed more than forty percent (40%) while two commenters stated the cap for this tier was too low.

*Response:* The factors used in this Service Tier are required by law and cannot be changed, and FTA finds that the percentages of allocated funds for each factor under this tier are appropriate because of the importance Congress placed on these factors. Moreover, FTA finds that the percentages of allocated funds are a good measure for States' safety oversight level of effort. However, FTA agrees that more explanation is warranted and provides this detail below.

In determining the percentages of each Service Tier factor, FTA considered historical data such as the frequency and scope of required SSOP activities based on system size and number of RFGPTSs overseen as well as the annual level of effort totals reported by states for previous years. FTA found that DRM is a useful indicator of the physical size of rail transit system infrastructure, which is closely related to the level of effort required to perform SSO activities. VRM (service provided) and PMT (service consumed) are useful measures of transit service and provide an indication of both SSOP level of effort and safety risk exposure. FTA chose to split these factors evenly between system size (DRM) and service (VRM and PMT). Thus, of the 60% total apportionment allocated to the Service Tier, FTA allocated 30% to DRM, 15% to VRM, and 15% to PMT. Based upon the foregoing, FTA determined these percentages are fair and appropriate. Additionally, in many cases the apportionment in this notice is similar to the historical distribution of resources to fund 2011 SSOP activities, as reported by States.

Finally, this apportionment uses passenger car miles instead of train car miles for the VRM calculation. This is consistent with other FTA formula apportionments.

- v. Should FTA include a fifteen percent (15%) cap on each Service Tier factor, and are they weighted appropriately?*

*Comments:* Eight of twelve commenters were in favor of a fifteen percent (15%) cap on each Service Tier factor. One commenter stated that if no State is disadvantaged by allowing a State to exceed the fifteen percent (15%) cap, then the cap should not apply. All other commenters disagreed with the fifteen percent (15%) cap and cited various reasons, including that a cap would result in a formula that inaccurately reflected the workload of a specific SSOA, and that more funds are required for States with larger rail transit systems.

*Response:* The cap is intended to improve the fit between States' safety oversight level of effort and the formula funding provided to each State. For the two States that meet this cap in FY 2013, both are apportioned Federal funding well in excess of their reported FY 2011 SSOP expenses and one of the two receives Federal funding approximately ten times greater than its FY 2011 SSOP expenses. Without a cap, States with the largest rail transit systems would receive an overwhelming proportion of the total grant funds. FTA believes the cap better matches funding to level of effort. (See the discussion above for more information on the weight of each Service Tier.)

***vi. Should FTA apportion multi-State operator funding to the eligible State in which the operator is headquartered?***

*Comments:* Six out of nine commenters disagreed with FTA's proposal that FTA apportion multi-State operator funding to the eligible State in which the operator is headquartered. Three of these six commenters have multi-State operators within their jurisdiction. Of the three commenters that agreed with FTA's proposal, only one commenter is part of a State that includes a multi-State rail transit system. Concerns with FTA's proposal included the following:

- Apportioning the multi-State operator funds to one State would add an extra financial and administrative burden on that State (*e.g.*, all of the local match would need to come from that State);
- A State might not have the authority to accept and administer such funds on behalf of another State;
- Achieving a fair and equitable distribution among multiple States with varying levels of oversight responsibilities; and
- The apportionment methodology could negatively impact States' agreements with each other that cover funding, oversight responsibility, and program administration.

*Response:* FTA is apportioning funding to multi-State operators as proposed in the May 13, 2013 notice. FTA recognizes that there are inherent challenges with apportioning funds for the safety oversight of multi-State operators and has invested a significant amount of time and effort to examine alternatives. FTA believes this approach is the most suitable.

FTA believes the SSO Program activities are more effectively and efficiently managed in one grant as opposed to monitoring program activities and grant reimbursements for one program through multiple grants. Multiple Federal grants to oversee one rail transit system creates extra and potentially duplicative work, regardless of whether a single SSOA or multiple SSOAs provide safety oversight. In the first case, where each State establishes its own SSOA under 49 U.S.C. 5329(e)(5)(A), each State would need to agree to uniform standards and enforcement procedures and to coordinate extensively to ensure there was no duplication of effort in the Federal grant agreements. In the second, a single multi-State SSOA established under 49 U.S.C. 5329(e)(5)(B) would have to manage multiple Federal grants to operate the SSOP.

Although the funding is apportioned to one State, FTA requires local agreements that identify how the States will structure the SSOP and SSOA and how each State will contribute to the local match. Notwithstanding this decision, FTA will continue to work with States that have multi-state rail transit systems within their jurisdictions to resolve any remaining issues.

## **E. SSO Formula Grant Program Requirements**

This section describes SSO Formula Grant Program Requirements. FAQs are available on FTA's website to further explain grant requirements (<http://www.fta.dot.gov/tso.html>).

### **1. Eligible Recipients**

Eligible recipients include any eligible State or entity designated by the eligible State(s) with the legal capacity to perform all of the following responsibilities:

- a) Receive and dispense Federal funds for the purposes of the SSOP;
- b) Submit grant applications to FTA; and
- c) Enter into formal grant agreements with FTA.

### **2. Eligible Activities**

FTA requires each applicant to demonstrate in its grant application that its proposed grant activities will develop, lead to, or carry out an enhanced SSOP that meets the requirements under 49 U.S.C. 5329(e). Grant funds may be used for program operational and administrative expenses, including employee training activities. Grant funds under this program used for activities related to oversight of rail transit systems within an SSOA's jurisdiction must meet the definition of a rail transit system as defined herein, including those in operation, in the engineering or construction phase of development as defined herein, and those in a planning or other earlier phase occurring prior to the engineering or construction phase as long as that rail transit system meets all applicable Federal requirements. As stated above, the applicant or the

rail transit system should submit documentation to FTA indicating that rail transit system's intent to report to NTD in order for oversight of such systems to be considered an eligible cost. In addition, it is important to state that SSO Formula Grant funds may not be used to support activities that meet 49 CFR Part 659 requirements unless those activities also meet 49 U.S.C. 5329(e). FTA has provided FAQs to further clarify eligible activities:

<http://www.fta.dot.gov/tso.html>.

Also, FTA will work with the transit industry in using the Safety Management System (SMS) approach to bridge the disparity between the current SSO program and the enhanced requirements specified in 49 U.S.C. 5329. Therefore, State participation in FTA-sponsored SMS activities, such as training, review of technical assistance materials, completion of gap assessments and development of transition or implementation plans, are eligible activities funded through the SSO Formula Grant Program.

FTA is in the process of implementing the National Public Transportation Safety Program under 49 U.S.C. 5329 and a rulemaking on the SSO Program, among other things, is expected under 49 U.S.C. 5329(e). If FTA subsequently establishes criteria or conditions for grants made under the SSO Formula Grant Program that are different from those in this notice, the different criteria or conditions will not be applied retroactively to applications submitted or grants awarded consistent with this notice, unless the change benefits the applicant.

(a) ***SSOP Certification***

As stated in the May 13, 2013 Federal Register notice, the grant award and certification processes are considered separate and distinct from each other. FTA announced the initial certification status of each eligible State on October 1, 2013. To determine this status, FTA evaluated each eligible State's submitted SSO program against the statutory mandates set forth in

49 U.S.C. 5329(e). As required in 49 U.S.C. 5329(e)(7), FTA provided each State with the results of this evaluation in writing by October 1, 2013. FTA also conducted teleconference calls with the eligible States to review these results.

States that were certified may be awarded grants to cover the costs associated with implementing or carrying out their SSO programs. States that were not certified, but received FTA approval to submit grant applications, may be awarded grants to support initial development and implementation of enhanced SSOPs. Regardless, as stated above, States may only use grant funds to develop or carry out activities that meet requirements specified in 49 U.S.C. 5329(e). States may not use grant funds to carry out activities established in their 49 CFR Part 659 programs that do not also address 49 U.S.C. 5329(e) provisions.

To confirm States use their grant funds to enhance their SSOPs in ways that address MAP-21 requirements, FTA intends for States to use FTA's October 1, 2013 certification correspondence and the supporting teleconference calls to develop work plans to supplement their applications to FTA's new SSO Formula Grant Program. States that are not certified are required to provide these work plans as part of the grant application process and must be submitted and approved prior to submission of the State's grant application. States that are certified are encouraged, but not required, to submit work plans that will further enhance their SSOPs. FTA will work with grantees to identify meaningful milestones to apply grant funding.

These work plans should demonstrate a clear and workable transition to meet MAP-21 statutory requirements. They should identify gaps or deficiencies in their respective State's authorizing safety legislation relative to MAP-21 statutory requirements, articulate a clear end result to achieve compliance, and identify eligible activities with reasonable timeframes to accomplish these goals. FTA will provide States with a work plan template, as well as

supporting materials for addressing some of the more common gaps in meeting MAP-21 provisions. These materials are available on the FTA website at:

<http://www.fta.dot.gov/tso.html>. States are not required to use these materials and may use a format of their choice when developing their work plan.

FTA will review each plan to assess compliance with MAP-21 statutory requirements and the reasonableness of the activities and timeframes proposed. Each State's work plan must be accepted by FTA before the State may submit its grant application and the funds can be awarded. FTA will work closely with each eligible State to determine conformance with these eligibility criteria and to develop these transition or remedial work plans to address any non-compliance with these criteria.

### **3. Ineligible Activities**

The SSO Formula Grant Program specified in 49 U.S.C. 5329(e)(6) is intended to support administrative and operating costs for State safety oversight of rail transit systems. Therefore, the following costs are ineligible:

- a) Project costs that cover rail transit system expenses;
- b) Project costs for State activities unrelated to the SSOP;
- c) Project costs that directly support the operation or maintenance of a rail transit system;
- d) Project costs for which the recipient has received funding from another Federal agency; and
- e) Other project costs that FTA determines are not appropriate for the SSOP.

To find standards for determining eligible and ineligible expenses, see 2 CFR part 200.

### **4. Grant Application Procedures**

To receive the funds apportioned through this formula, each eligible State must be or become an FTA grantee. Eligible States should follow these steps to begin the grant application process:

- a) Identify FTA grant recipient: Each Governor will need to identify the State agency that will be the FTA grant recipient for these program funds by sending a letter to the appropriate FTA Regional Administrator. A listing of FTA Regional Offices and full contact information is available at <http://www.fta.dot.gov/>.
- b) Coordinate with the FTA Regional Office: The identified grant recipient should work with the FTA Regional Office to determine what additional activities or information are required with respect to the new SSO Formula Grant Program. If the identified grant recipient is not an existing FTA grant recipient, it must work with the appropriate FTA Regional Office to be established as a new FTA recipient. The FTA Regional Office will identify the specific activities necessary to become established as a FTA recipient.
- c) Identify sufficient and allowable matching funds: Eligible States are required to provide a twenty percent (20%) match for FTA-funded SSOP activities. See section E.5.b “Local Share” for more information.

## **5. Grant Requirements**

Section 5329(e)(6)(B)(ii) requires that grant funds apportioned to eligible States must be subject to uniform administrative requirements for grants and cooperative agreements to State and local governments under part 18 of title 49, Code of Federal Regulations. Thus, 49 CFR Part 18 applies to SSO grant funding. SSO grant funding under 49 U.S.C. 5329(e)(6) is also “. . . subject to the requirements of this chapter [49 U.S.C. chapter 53] as the Secretary determines

appropriate.” 49 U.S.C. 5329(e)(6)(B)(ii). Among these requirements, the following terms and conditions apply:

- a) **Work Plan Submission Requirements.** As stated in section E.2 (a) above, States that have not yet been certified as part of FTA’s October 1, 2013 initial certification determination must submit a work plan. The work plan must identify and address gaps and deficiencies in the State’s SSOP to meet 49 U.S.C. 5329(e) requirements. See section E.2 (a) of this notice for additional information.
- b) **49 CFR Part 659.** Until three years after a final rule issued by FTA, 49 U.S.C. 5330 and its implementing regulations at 49 CFR Part 659 will stay effective. In order to receive FTA funding for its SSOP, recipients in compliance with 49 CFR Part 659 as of October 1, 2013, must, at a minimum, maintain compliance until these provisions are repealed. However, as stated above, SSO Formula Grant Program funds may not be used to support activities that meet 49 CFR Part 659 requirements unless those activities also meet 49 U.S.C. 5329(e) requirements.
- c) **Local Share.** FTA’s formula provides a Federal share covering up to eighty percent (80%) of the eligible project costs of an SSOP grant developed or carried out under MAP-21. Eligible States must provide at least a twenty percent (20%) local share. The twenty percent (20%) local share may not include other Federal funds, any funds received by the State from a rail transit agency, or any revenues earned by a rail transit agency. Section 5329(e)(4)(A)(i) requires each SSOA to be financially and legally independent from any public transportation entity it oversees. States that currently rely entirely upon fees, assessments, or funding from rail transit systems in their jurisdiction to fund SSO activities are unable to use those funds for any SSO

Formula Grant Program activities and will need to address this issue of financial and legal independence as part of their work plan. FTA will work with these States on an individual basis, to the extent necessary, to identify permissible local share sources. States overseeing multi-state operations may include funds collected from partner States as part of their local share as long as those funds are not otherwise prohibited under this Grant Program. As part of the grant application, States need to include the source of the local match. In addition, for those States overseeing multi-state operations must show evidence of agreement regarding how the local share will be met among the States.

- d) **Period of availability.** SSO Formula Grant Program funds are available for the year of apportionment plus two additional years. Any FY 2013 funds that remain unobligated at the close of business on September 30, 2015 will revert to FTA for reapportionment under the SSO Formula Grant Program. Any FY 2014 funds that remain unobligated at the close of business on September 30, 2016 will revert to FTA for reapportionment under the SSO Formula Grant Program.
- e) **Pre-award authority.** Grantees may be reimbursed for eligible activities incurred as of the date of publication of this notice, provided the grantee has been certified or upon approval of a certification work plan. A grant marked for pre-award authority cannot be executed unless the Initial Federal Financial Report (FFR) has been completed in TEAM-Web. Please see the most current version of FTA Circular 5010, “Grants Management Guidelines” found on FTA’s Circular web page. (<http://www.fta.dot.gov/circulars>) or contact your Regional Office for more information.

- f) **Procurement and contracting guidelines.** FTA procurement and contracting requirements apply to projects funded by the SSO Formula Grant Program. For additional information, please see the latest version of FTA Circular 4220.1, “Third Party Contracting Guidance.” (<http://www.fta.dot.gov/circulars>)
- g) **Grant Management.** FTA Circular 5010, “Grants Management Guidelines” (<http://www.fta.dot.gov/circulars>) provides FTA’s grant management requirements. All recipients need to affirm the current version of FTA’s Master Agreement, which contains the terms and conditions applicable to awards of Federal financial assistance. The Master Agreement will be incorporated by reference and made part of the underlying Grant Agreement when executed. The latest Master Agreement can be found on FTA’s website (<http://www.fta.dot.gov/grants/15072.html>).
- h) **Annual Certifications and Assurances.** Each Applicant for (and later Recipient of) SSO grant funds must sign and submit the required Certifications and Assurances and submit updated Certifications and Assurances annually thereafter. Submissions may be made electronically through TEAM-Web. The latest Certifications and Assurances can be found on FTA’s website at <http://www.fta.dot.gov/grants/13071.html>.
- i) **Planning requirements.** Projects funded by the SSO Formula Grant Program may, but are not required to, be included in the Statewide Transportation Improvement Program (STIP) or a Metropolitan Transportation Improvement Plan (TIP). Inclusion of such projects in the STIP or TIP is not a prerequisite in order to be reimbursed by FTA.

j) **Cost Principles (2 CFR Part 200 subpart E).** Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses. Grantees should exercise care when incurring costs to confirm all expenditures meet the criteria of eligible costs. Failure to comply with these requirements may result in expenditures for which use of project funds cannot be authorized. For further information on allowable costs and FTA financial grant management expectations, please refer to the most current version of FTA Circular 5010, “Grants Management Guidelines” Chapter VI, “Financial Management.” The document can be found at the following web address:

[http://www.fta.dot.gov/documents/C\\_5010\\_1D\\_Finalpub.pdf](http://www.fta.dot.gov/documents/C_5010_1D_Finalpub.pdf).

k) **Apportionments Based Upon a Rail Transit System That Serves Multiple States.**

As stated above, for a State that is apportioned funds based upon a rail transit system that serves multiple States, apportioned funds pursuant to the Service Tier and the Modal Tier are distinguished by each system within that State. The amounts apportioned based upon a particular system that serves multiple States may only be used for oversight of that system.

## **6. Award Administration**

Upon award, payments to recipients will be made by electronic transfer to the recipient's financial institution through FTA's Electronic Clearing House Operation web-based system (ECHO-Web), an Internet accessible system that provides grantees the capability to submit payment requests on-line. New applicants should contact the appropriate FTA Regional Office to obtain and submit the registration package necessary for set-up under ECHO-Web.

Grantees must submit a quarterly Federal Financial Report and Milestone Progress Report in TEAM-Web consistent with the most current version of FTA Circular 5010, “Grants Management Guidelines,” as well as any other reporting requirements FTA determines necessary. When applicable, FTA will review the quarterly reports to assess consistency with the SSOP work plans approved by FTA.

FTA is responsible for conducting oversight activities to confirm grant recipients are using Federal financial assistance in a manner consistent with their intended purpose and in compliance with regulatory and statutory requirements. FTA conducts periodic oversight reviews to assess grantee compliance and will similarly, or in conjunction with other oversight reviews, conduct oversight reviews and audits of the operations of each SSOA at least once triennially as required under 49 U.S.C. 5329(e)(9).

Therese W. McMillan,  
Deputy Administrator.

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