Chapter 468-550 WAC

SAFETY OVERSIGHT OF RAIL FIXED GUIDEWAY SYSTEMS RULES

WAC

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WAC 468-550-010 Purpose. This chapter is adopted to comply with 49 C.F.R. Part 659 and RCW 81.104.115 which requires the state of Washington to oversee the system safety program and the security and emergency preparedness plans of rail fixed guideway systems (RFGS) not regulated by the Federal Railroad Administration. These rules prescribe the system safety and security criteria to be met by RFGS and are intended to improve the safety and security of RFGS in Washington state.

[Statutory Authority: RCW 81.104.115. 08-15-078, § 468-550-010, filed 7/15/08, effective 8/15/08. Statutory Authority: RCW 43.06.120. 98-19-052, § 468-550-010, filed 9/15/98, effective 10/16/98.]

WAC 468-550-020 Applicability. These rules are applicable to all Washington state entities, public or private, which own, operate, or maintain RFGS that are not regulated by the Federal Railroad Administration.

These rules apply to all owners of rail fixed guideway systems as defined by RCW 81.104.015 which are required by RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, or 81.112.180 to comply with the requirements of the Washington state department of transportation for the development and implementation of a system safety program plan and a security and emergency preparedness plan.

[Statutory Authority: RCW 81.104.115. 08-15-078, § 468-550-020, filed 7/15/08, effective 8/15/08. Statutory Authority: RCW 43.06.120. 98-19-052, § 468-550-020, filed 9/15/98, effective 10/16/98.]

WAC 468-550-030 Definitions. For the purposes of this chapter, the following definitions of terms shall apply unless the context clearly indicates otherwise:

(1) Accident, reportable means any event involving the operation of a RFGS along a revenue line segment, if as a result:

(a) An individual dies; or

(b) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or

(c) A collision, derailment, or fire causes property damage in excess of $25,000.

(2) APTA Guidelines means the American Public Transit Association's "*Manual for the Development of Rail Transit System Safety Program Plans.*"

(3) Chief executive officer means, but is not limited to, the mayor, county executive, or chair of the municipality, or corporate president of the public or private entity that owns, operates, or maintains a RFGS.

(4) Contractor means an entity that performs tasks required by this chapter on behalf of the department or a RFGS.

(5) Department means the Washington state department of transportation which has been designated as the state safety oversight agency.

(6) Directional route mile means the mileage in each direction over which public transportation vehicles travel while in revenue service. Directional route miles are a measure of the route path over a facility or roadway and not the service carried on the facility. Directional route miles are computed with regard to direction of service, but without regard to the number of traffic lanes or rail tracks existing in the right of way. Directional route miles do not include staging or storage areas at the beginning or end of a route.

(7) Emergency means a situation which is life threatening to passengers, employees, or others or which causes damage to any rail fixed guideway vehicle or facility or results in a significant theft of services which severely affects the ability of the system to fulfill its mission.

(8) FTA means the Federal Transit Administration, or its successors, an agency within the U.S. Department of Transportation.

(9) Hazardous condition means a set of circumstances that if not identified and corrected has or will result in personal injury or property damage. It includes unacceptable hazardous conditions.

(10) Incident reporting thresholds are criteria established by Federal Transit Administration in C.F.R. 49 Part 659 and further by the Washington state rail safety oversight program standard for determining which accidents/incidents require investigation.

(11) Investigation means a procedure that the department or a RFGS utilizes to determine the cause of a reportable accident, hazardous condition, or security breach.

(12) Medical attention means emergency care at a state-licensed general hospital, critical access hospital, or health clinic, or by a religious practitioner.

(13) Plan means the system safety program plan and the security and emergency preparedness plan of rail fixed guideway systems not regulated by the Federal Railroad Administration adopted by the RFGS detailing its safety and security policies, objectives, responsibilities and procedures.

(14) Procedure means an established and documented method to perform a task.

(15) Rail fixed guideway system or "RFGS" means a light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or other fixed rail guideway component of a high-capacity transportation system that is not regulated by the Federal Railroad Administration or its successor. "RFGS" does not include elevators, moving sidewalks or stairs, and vehicles suspended from aerial cables, unless they are an integral component of a station served by a rail fixed guideway system.

(16) Revenue line segment means that portion of a fixed guideway system upon, under, or through which a RFGS provides service available to the general public. It includes stations used by the system's passengers to enter or leave the RFGS's conveyance.

(17) Risk means the probability that a security breach will occur.

(18) Safety means freedom from danger.

(19) Security and emergency preparedness plan or "SEPP" is a document developed and implemented for each rail fixed guideway system which describes its security policies, objectives, responsibilities, and procedures. This plan is a requirement of RCW 81.104.115 and meets the standards established by the Federal Transit Administration in C.F.R. 49 Part 659 and the Washington state rail safety oversight program.

(20) Seasonally means the provision of service available to the general public fewer than a total of one hundred eighty days within a twelve-month period. The provision of service any time on a calendar day is a day counted towards the threshold of one hundred eighty days.

(21) Security means freedom from intentional danger.

(22) Security breach means an unforeseen event or occurrence that endangers life or property and may result in the loss of services or system equipment.

(23) Service available to the general public does not include operations for a specific private function when a RFGS accepts hire, such as group charters, weddings, or other private events that are not available to the general public on a walk-in basis.

(24) Standard means the system safety and security program standard which is the standard developed and adopted by the department which complies with the requirements of C.F.R. 49 Part 659.

(25) System means a composite of people, property, environment, and procedures which are integrated to perform a specific operational function in a specific environment.

(26) System safety program plan or "SSPP" is a document developed and implemented for each rail fixed guideway system which describes its safety policies, objectives, responsibilities, and procedures. The requirements for this plan are established by the Federal Transit Administration in C.F.R. 49 Part 659 and further by the Washington state rail safety oversight program standard.

(27) Triennial safety and security audit means a formal, comprehensive, on-site examination by the department of a RFGS's safety and security procedures to determine whether it complies with the RFGS's policies and procedures as outlined in the RFGS's plan.

(28) Washington state rail safety oversight program is the program administered by the Washington state department of transportation to ensure compliance by rail fixed guideway systems with the Washington state rail safety oversight program standard.

(29) Washington state rail safety oversight program standard is a document developed and adopted by the Washington state department of transportation that describes the policies, objectives, responsibilities, and procedures used to provide safety and security oversight of rail fixed guideway systems. This document is a requirement established by the Federal Transit Administration in C.F.R. 49 Part 659.

(30) Unacceptable hazard is a real or potential condition that may endanger human life or property that after an assessment of its severity and probability cannot remain and must be mitigated.

(31) Unacceptable hazardous condition means a hazardous condition classified by the rail transit agency as being unacceptable based on a hazardous resolution matrix or other evaluation methodology approved by the department.

[Statutory Authority: RCW 81.104.115. 08-15-078, § 468-550-030, filed 7/15/08, effective 8/15/08. Statutory Authority: RCW 81.104.115(5). 02-13-004, § 468-550-030, filed 6/6/02, effective 7/7/02. Statutory Authority: 1999 c 202 § 7. 99-18-059 (Order 193), § 468-550-030, filed 8/30/99, effective 9/30/99. Statutory Authority: RCW 43.06.120. 98-19-052, § 468-550-030, filed 9/15/98, effective 10/16/98.]

WAC 468-550-040 Requirements for system safety program plan and security and emergency preparedness plans. (1) Each RFGS, except any that operate seasonally, shall prepare a system safety program plan and security and emergency preparedness plans. Such plans shall describe the RFGS's procedures for:

(a) Reporting and investigating reportable accidents and unacceptable hazardous conditions;

(b) Submitting corrective action plans and annual safety and security audit reports;

(c) Facilitating on-site safety and security reviews by the department; and

(d) Addressing passenger and employee security.

The plans and any revisions thereto shall, at a minimum, conform to the standard set forth in WAC 468-550-050, be approved by the RFGS's chief executive officer and submitted for departmental review, or within three months prior to beginning operations or instituting revisions to the plans. The RFGS shall not transmit the security portions of its security and emergency preparedness plan to the department. The RFGS shall notify the department of the location and availability of the security portions of its plan.

(2) Each RFGS shall implement and comply with the provisions of its plans and any revisions thereto. Further, should the RFGS change ownership or operating or maintenance providers, the RFGS shall require its successors, assigns, and contractors to continue to comply with the RFGS's established plans and shall notify the department of any change of ownership or operating or maintenance providers within thirty days of the effective date of transfer or contract.

(3) The security section of the security and emergency preparedness plan is exempt from public disclosure under chapter 42.56 RCW. Each RFGS may develop procedures to

implement this subsection. Completed reports of reportable accidents and unacceptable hazardous conditions, corrective action plans, annual safety and security audit reports, published reviews of the department, published RFGS internal safety and security audits, and notifications of reportable accidents and unacceptable hazardous conditions are not subject to this exemption.

(4) Each RFGS that operates seasonally shall submit a system description and organization structure to the department within ninety days of commencing operations. Each RFGS shall update this submittal within thirty days after any changes to the system description or organizational structure occur.

(a) The system description shall identify the revenue line segments, revenue equipment, and all locations for embarking or debarking passengers.

(b) The organizational structure shall identify the decision-making structure for the RFGS, including any firm or organization contracted to undertake its seasonal operations.

(c) This submittal shall include safety contact information for the RFGS and any firm or organization contracted to undertake its seasonal operations.

[Statutory Authority: RCW 81.104.115. 08-15-078, § 468-550-040, filed 7/15/08, effective 8/15/08. Statutory Authority: RCW 81.104.115(5). 02-13-004, § 468-550-040, filed 6/6/02, effective 7/7/02. Statutory Authority: 1999 c 202 § 7. 99-18-059 (Order 193), § 468-550-040, filed 8/30/99, effective 9/30/99. Statutory Authority: RCW 43.06.120. 98-19-052, § 468-550-040, filed 9/15/98, effective 10/16/98.]

WAC 468-550-050 Department procedures for reviewing, approving, and filing rail fixed guideway system safety program plan and security and emergency preparedness plans and inspections. (1)(a) The department shall review each RFGS system safety program plans, and all subsequent revisions, for compliance with these rules and the standard, using the system safety checklist which includes:

- Policy statement and authority for the plan
- Description of purpose for the plan
- Clearly stated goals for plan
- Identifiable and attainable objectives
- System description and organizational structure
- The plan control and update procedures
- Hazard identification and resolution process
- Accidents, hazardous conditions and reporting and investigation procedures
- Internal safety audit process
- Facilities inspections (includes system equipment and rolling stock)
- Maintenance audits and inspections (all systems and facilities)
- Rules and procedures review
- Training and certification reviews and audits
- Emergency response planning, coordination and training
- System modification review and concurrence process
- Safety data acquisition and analysis
- Interdepartmental and interagency coordination
- Configuration management
- Employee safety program
- Hazardous materials program
- Drug abuse and alcohol misuse programs
- Contractor safety coordination
- Procurement

(b) The department shall provide written concurrence with the RFGS's system safety program plan or provide written comments to the RFGS specifying required changes. The RFGS shall revise its plan to incorporate the department's review comments, if any, within sixty days after receipt thereof, and resubmit its revised plan for review. After resolving issues arising in the review process, the department shall notify the RFGS of its concurrence with the plans. The plans and the department's concurrence shall be maintained by the department in a permanent file.

(2)(a) The department shall review RFGS's security and emergency preparedness plan, and all subsequent revisions, for compliance with these rules and the standard, using the WSDOT security and emergency preparedness checklist which includes:

- Policy statement for the plan
- Purpose for the plan
- Clearly stated goals and identifiable and attainable objectives
- Scope of plan and system security program
- Security and law enforcement functions that manage and support plan
- Management authority which oversees the operation and management of the agency
- Interface of the plan with local, state and federal authorities
- Security acronyms and definitions
- Background and history of agency's rail transit services
- Organization charts and lines of authority
- Description of passenger and ridership characteristics
- Description of operations and services including operating environment
- Description of how the plan integrates with other plans including the SSPP
- Current security conditions
- Capabilities and practices
- Identification of person(s) responsible for establishing SEPP policy and developing and approving plan
- Identification of person(s) responsible for the management of the SEPP program
- Listings of the SEPP related responsibilities of individuals working within the security function
- Description of equipment used to support implementation of the plan
- Description of training, exercises, and procedures in place to ensure employee proficiency and readiness
- Description of activities to identify threats and vulnerabilities and to access their likely impacts
- Response strategies for prioritizing vulnerabilities
- Identification and schedule of tasks to be performed for implementing the plan
- Description of methods for evaluating the effectiveness of the plan
- Process for reviewing and revising the plan and for implementing any revisions

(b) The department shall provide written concurrence with the RFGS's security and emergency preparedness plan or provide written comments to the RFGS specifying required changes. The RFGS shall revise its plan to incorporate the department's review comments, if any, within sixty days after receipt thereof, and resubmit its revised plan for review. After resolving issues arising in the review process,

the department shall notify the RFGS of its concurrence with the plan. The plan and the department's concurrence shall be maintained by the department in a permanent file.

[Statutory Authority: RCW 81.104.115. 08-15-078, § 468-550-050, filed 7/15/08, effective 8/15/08. Statutory Authority: RCW 43.06.120. 98-19-052, § 468-550-050, filed 9/15/98, effective 10/16/98.]

WAC 468-550-060 Annual and triennial safety and security audits and reports. (1)(a) Each RFGS shall perform scheduled internal safety and security audits to evaluate compliance with the standard, identify hazardous and risk conditions, and measure the effectiveness of its plans. The RFGS shall include its internal safety and security audit schedule for the next year with the annual report required in WAC 468-550-070(5). These audits shall include, but are not limited to:

(i) Observing work practices and employee performance during system operations;

(ii) Sampling and inspecting selected system components to verify proper maintenance; and

(iii) Reviewing RFGS records for all phases of system operations, maintenance, and security.

The RFGS shall select a qualified person(s) or contractor to perform its internal audits and shall notify the department not later than ten days prior to performing the internal audits. The notification shall include date(s) of audit, what is to be audited, and the qualifications of those selected to perform the audit, such qualifications are subject to departmental concurrence. The department may assess the effectiveness of each RFGS audit program; however, any departmental review or concurrence shall not substitute for the RFGS's own safety and security inspection audit programs, nor relieve the RFGS from its sole liability for the safety and security of its system.

(b) Each RFGS, as a basis for its audit process, shall prepare, maintain, and make available for departmental review records that document the results of all tests, inspections, and audits conducted by the RFGS or its contractor in compliance with the plans. These records shall include, but are not limited to:

(i) Start up test records;

(ii) Drug and alcohol test records;

(iii) Training and certification records;

(iv) Operation performance evaluation records;

(v) Facility inspections;

(vi) Maintenance audits and inspections (all systems and facilities);

(vii) Rules and procedures review;

(viii) Emergency response planning, coordination, and training;

(ix) System modification review and approval process;

(x) Safety and security data acquisition and analysis;

(xi) Interdepartmental and interagency coordination;

(xii) Employee safety and security program;

(xiii) Hazardous materials program;

(xiv) Contractor safety coordination; and

(xv) Procurement records.

These records shall be maintained by the RFGS for a minimum of three years.

(2) Internal safety and security audits shall be documented in an annual report that includes the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity and the results of each audit in terms of the adequacy and effectiveness of the plan. This annual report for the internal safety and security audits performed during the preceding year shall be included with the annual report required in WAC 468-550-070(5).

(3) The department shall audit each RFGS plan at least once every three years. The RFGS shall be given written notification at least thirty days in advance of the department's audit. The notification shall include a proposed schedule, planned scope, and list of activities to be reviewed for the audit. Each audit shall be preceded by an on-site, preaudit conference attended by the department's audit team, the RFGS's owner, and the RFGS staff in charge of the activities subject to audit. Each audit shall be conducted in accordance with an audit checklist. Checklists shall not restrict the department from performing additional investigations as it deems appropriate. The department shall use as a basis for its checklist the RFGS's plan and records which shall include, but are not limited to:

(a) The RFGS operating rule book, bulletins, and procedures;

(b) The RFGS maintenance manuals and procedures for vehicles, track and signals;

(c) The RFGS procedures for identifying, documenting, evaluating, and correcting hazards;

(d) The RFGS system design criteria and project engineering procedures for system modifications;

(e) The RFGS annual internal audit reports for the previous three years;

(f) The RFGS corrective action plans for reportable accidents and unacceptable hazardous conditions reported to the department during the previous three years;

(g) APTA audit reports;

(h) National Transportation Safety Board accident investigation reports, and any other agency peer review reports, if any, prepared during the previous three years and previously prepared department audit reports.

(4) Upon the department's completion of the triennial on-site audit, the audit team leader shall prepare a draft final audit report and submit it to the RFGS. The RFGS shall respond, in writing to the recommendations made in the draft final audit report, with a plan and schedule of corrective actions within thirty days of receipt thereof. An on-site, post audit conference shall be held following each departmental audit to review the results of the audit. Audit results that identify a deficiency that is not corrected before the post audit conference is held shall be documented in the final audit report. The final audit report shall contain the department audit team's findings and recommendations and the RFGS plan and schedule for corrective action. The final audit report shall also include the department audit team's evaluation of the effectiveness of the RFGS plan and a determination of whether the plan should be updated.

(5) The department shall summarize oversight activities for all RFGS performed during the preceding twelve months in a publicly available annual report and submit it to the FTA before March 15 of each year.

(6) Each RFGS that operates seasonally shall be exempt from the provisions of this section.

[Statutory Authority: RCW 81.104.115. 08-15-078, § 468-550-060, filed 7/15/08, effective 8/15/08. Statutory Authority: RCW 81.104.115(5). 02-13-004, § 468-550-060, filed 6/6/02, effective 7/7/02. Statutory Authority: 1999 c 202 § 7. 99-18-059 (Order 193), § 468-550-060, filed 8/30/99, effective 9/30/99. Statutory Authority: RCW 43.06.120. 98-19-052, § 468-550-060, filed 9/15/98, effective 10/16/98.]

WAC 468-550-070 Notifying of, investigating, and reporting accidents and unacceptable hazardous conditions. (1) Each RFGS shall notify the department by telephone, electronic mail or facsimile within two hours of the occurrence of any reportable accident, or within twenty-four hours of the identification or discovery of any unacceptable hazardous condition. The department shall notify each RFGS of the person to notify and the telephone, electronic mail and facsimile numbers for notification. The notification shall include all of the following details:

(a) Name and title of the person making the notification;

(b) Time and date the notification is transmitted;

(c) Synopsis of what happened, such as, but not limited to: Collision with another RFGS revenue vehicle, derailment, collision with a motor vehicle, collision with a pedestrian, collision with a bicyclist, fire, bomb threat, or hostage-taking;

(d) Specific location of the accident or unacceptable hazardous condition;

(e) Time of the accident or discovery of the unacceptable hazardous condition;

(f) Identification of RFGS vehicle(s) and/or facility involved;

(g) Initial number of fatalities and/or individuals who suffered bodily injury and immediately received medical attention away from the scene of the accident; and

(h) Description of and preliminary value of property damage.

(2) The department has authority to perform separate, independent investigations of reportable accidents or unacceptable hazardous conditions at its own discretion.

(3) Each RFGS shall investigate all reportable accidents and unacceptable hazardous conditions. The RFGS may use its own staff or a contractor to conduct its investigation and shall designate a staff person to be responsible for submitting written investigation reports and findings to the department, on a department form, within forty five calendar days after the reportable accident or unacceptable hazardous condition was discovered. This report shall identify the causal factors contributing to the occurrence and contain a corrective action plan with an implementation schedule to prevent a recurrence of the accident, or to mitigate the unacceptable hazardous condition.

(4) The department shall review the RFGS investigation report, corrective action plan, and accompanying implementation schedule to ensure that it meets the goal of preventing and mitigating a recurrence of the reportable accident or unacceptable hazardous condition. In the event that the department does not concur with the findings of the RFGS investigation, the department shall confer with the RFGS of its preliminary review findings. The RFGS may amend its report to the department in writing, within ten calendar days after conferring with the department. If, after conferring with the RFGS, the department does not concur with the findings of the RFGS, the department shall notify the RFGS in writing of its review findings. The RFGS shall submit its response to the department's findings within forty-five calendar days of receipt thereof. Should the department and the RFGS disagree, the department will notify the FTA.

(5) Each RFGS shall submit an annual summary report to the department covering all reportable activities. The RFGS shall ensure delivery of the annual report to the department no later than February 1 after the year being reported.

[Statutory Authority: RCW 81.104.115. 08-15-078, § 468-550-070, filed 7/15/08, effective 8/15/08. Statutory Authority: RCW 81.104.115(5). 02-13-004, § 468-550-070, filed 6/6/02, effective 7/7/02. Statutory Authority: 1999 c 202 § 7. 99-18-059 (Order 193), § 468-550-070, filed 8/30/99, effective 9/30/99. Statutory Authority: RCW 43.06.120. 98-19-052, § 468-550-070, filed 9/15/98, effective 10/16/98.]

WAC 468-550-080 Notifying of and applying financial penalties. (1) The due dates for documentation required herein are specified in (a) through (e) of this subsection. The department shall provide a RFGS a written notification of the required due date no later than one month before the applicable due date.

(a) System safety program plan and security and emergency preparedness plan within three months prior to beginning operations;

(b) Internal safety and security audit schedule for the next year by February 1;

(c) Annual report for the internal safety and security audits performed during the preceding year by February 1;

(d) Annual summary report to the department covering all reportable occurrences by February 1;

(e) Written investigation reports and findings within forty-five calendar days after a reportable accident occurred, or unacceptable hazardous condition was discovered.

(2) If any RFGS notified by the department fails to deliver the required documentation by the due date specified in subsection (1) of this section, the department shall schedule a meeting with the director responsible for the RFGS's operations and maintenance to discuss the RFGS's progress in completing the documentation and the potential consequences of further delay. In scheduling this meeting, the department shall notify the RFGS's chief executive officer of the purpose of the meeting and its time and location. The department shall attempt to schedule the meeting within one week of the specified due date.

(a) The department may cancel this meeting if the department receives the required documentation prior to the scheduled meeting.

(b) The department may defer scheduling the meeting in the event of a catastrophic event affecting the RFGS and its ability to conduct routine business.

(c) The department shall document the results of the meeting in writing to the director responsible for the RFGS's operations and maintenance and the RFGS's chief executive officer within one week of the meeting.

(d) Should the department determine that there is no reasonable cause for any further delay by the RFGS for submission of its required documentation, the department shall notify the RFGS's chief executive officer of the applicable financial penalty, as defined in subsection (5) of this section.

(e) If the department receives no further communication from the RFGS within ten calendar days of the notification

made in accord with (d) of this subsection, the department shall proceed to notify FTA of the RFGS's failure to supply the required documentation and to apply the appropriate financial penalty in accord with subsection (5) of this section.

(3) If any RFGS delivers incomplete documentation by the required due date, the department shall notify the RFGS of any deficiency within one week. The RFGS shall supplement its required documentation within one week after receiving the department's notification. If the RFGS fails to supplement its documentation adequately, the department shall proceed to schedule a meeting and follow the procedures in subsection (2) of this section.

(4) If any RFGS fails to implement a corrective action plan, according to the implementation schedule developed pursuant to WAC 468-550-070(4), to prevent a recurrence of an accident or to mitigate an unacceptable hazardous condition, the department shall schedule a meeting with the director responsible for the RFGS's operations and maintenance to discuss the RFGS's progress in completing the corrective action plan and the potential consequences of further delay.

(a) The department may cancel this meeting if the department receives the required documentation prior to the scheduled meeting.

(b) The department may defer scheduling the meeting in the event of a catastrophic event affecting the RFGS and its ability to conduct routine business.

(c) The department shall document the results of the meeting in writing to the director responsible for the RFGS's operations and maintenance within one week of the meeting.

(d) Should the department determine that there is no reasonable cause for a RFGS's failure to implement the corrective action plan, the department shall notify the RFGS's chief executive officer that the department intends to notify FTA of the RFGS's noncompliance.

(e) If the department receives no further communication from the RFGS within ten calendar days of the notification made in accord with (d) of this subsection, the department shall notify FTA of the RFGS's failure to implement a corrective action plan action.

(f) This subsection shall apply also to a corrective action plan upon which the department and the RFGS disagree. In this situation, the department shall use the corrective action plan and implementation schedule proposed by the RFGS.

(5) Any RFGS that fails to comply with the timelines as set forth in this chapter shall be assessed the financial penalties following:

(a) One thousand five hundred dollars for each calendar month two months prior to beginning operations, for failure to deliver to the department an acceptable system safety and security program plan;

(b) Five hundred dollars for each calendar month, beginning with February, for failure to deliver to the department an acceptable:

(i) Internal safety and security audit schedule for the next year;

(ii) Annual report for the internal safety and security audits performed during the preceding year; or

(iii) Annual summary report to the department covering all reportable occurrences; and

(c) One thousand dollars applied each thirty-day period, beginning the 90th day after a reportable accident occurred, or after an unacceptable hazardous condition was discovered for failure to deliver to the department an acceptable investigation report, corrective action plan, and accompanying implementation schedule.

(6) If FTA notifies the department that it will impose a financial penalty on the state of Washington as a consequence of a RFGS's failure to take appropriate action in a safety or security situation, the department shall:

(a) Notify that RFGS's chief executive officer that the department will impose all FTA financial penalties to that RFGS if the RFGS fails to take adequate action to bring itself into compliance to FTA's satisfaction. Said notice shall include a copy of FTA's written communication and an estimate of FTA's financial penalty.

(b) Recommend steps to the RFGS' chief executive officer that the RFGS should take to bring it into compliance with FTA requirements.

(7) Any RFGS notified by the department of its failure to take appropriate action in a safety or security situation shall take immediate and adequate action to bring itself into compliance to FTA's satisfaction and provide adequate documentation to the department of its corrective measures. The department shall provide that documentation to FTA.

(8) If any RFGS notified by the department of its failure to take appropriate action in a safety or security situation also fails to respond to the department and FTA imposes a financial penalty on the state of Washington as a consequence, the department shall apply the full amount of the financial penalty on the RFGS.

(9) In applying any financial penalty, the department shall take the following steps:

(a) Invoice the RFGS for the amount of financial penalty; the invoice shall identify:

(i) The documentation not received by the specified due date;

(ii) The number of calendar months or, for failure to deliver to the department an acceptable investigation report, corrective action plan, and accompanying implementation schedule, thirty-day periods past the specified due date;

(iii) The applicable financial penalty rate per calendar month or, for failure to deliver to the department an acceptable investigation report, corrective action plan, and accompanying implementation schedule, thirty-day periods; and

(iv) Where payment should be made.

(b) If a RFGS fails to remit the full amount of the imposed financial penalty within sixty days of when due, the department may seek judicial enforcement to recover full payment. Venue for any action hereunder shall be Thurston County.

[Statutory Authority: RCW 81.104.115. 08-15-078, § 468-550-080, filed 7/15/08, effective 8/15/08. Statutory Authority: RCW 81.104.115(5). 02-13-004, § 468-550-080, filed 6/6/02, effective 7/7/02. Statutory Authority: 1999 c 202 § 7. 99-18-059 (Order 193), § 468-550-080, filed 8/30/99, effective 9/30/99.]

WAC 468-550-090 Reimbursement for costs associated with the management of the rail safety oversight program. (1) Owners of rail fixed guideway systems shall reimburse WSDOT for costs incurred for its management of the Washington state rail safety oversight program. These reimbursable costs can be grouped as follows:

(a) Costs for conducting triennial safety and security audits.

(b) Costs for WSDOT staff and/or consultants to conduct investigations of incidents or unacceptable hazards, as necessary.

(c) Labor, administrative, and travel costs incurred by WSDOT for its administration of the Washington state rail safety oversight program. These include but are not limited to:

(i) Staff hours dedicated to the oversight of system safety program plan and security and emergency preparedness plan development and implementation.

(ii) Office support and supplies necessary to carry out this oversight.

(iii) Travel and labor costs associated with WSDOT's administration of the program including for the attendance at federal and state safety, security, and emergency preparedness conferences, workshops, meetings, and trainings which enhance WSDOT oversight of system safety program plan and security and emergency preparedness plan development and implementation.

(2) Triennial safety and security audits. Within ninety days after receipt of an invoice, each RFGS shall reimburse the reasonable expenses of the department in carrying out its responsibilities pursuant to WAC 468-550-060. The department shall notify the RFGS of the estimated expenses at least six months in advance of when the department audits the system.

(3) Investigations of incidents or unacceptable hazards. WSDOT at its discretion may choose to conduct an independent investigation of unacceptable hazards or incidents given that they meet the incident reporting thresholds established in the Washington state safety program standard. Costs associated with these investigations are to be reimbursed in full by the owners of the rail fixed guideway systems being investigated. This includes the cost of hiring consultants to conduct investigations, if determined necessary by WSDOT.

(4) Administrative costs. All other reimbursable costs of the Washington state rail safety oversight program are allocated to each rail fixed guideway system owner based on a formula. This formula allocates the total of all reimbursable costs for the management of the program to each rail fixed guideway system. The owners of the rail fixed guideway systems are responsible for the reimbursement of costs allocated to each rail fixed guideway system for which they own. The allocation of such reimbursable costs is determined as follows:

(a) Fifty percent of all reimbursable costs, except those for investigations of unacceptable hazards or incidents, are allocated in equal share among rail fixed guideway systems. This allocation of reimbursable costs is equal among rail fixed guideway systems, regardless of the number of passengers they carry or the length of their system. The amount of all such reimbursable costs is arrived at by dividing all such reimbursable costs by the number of RFGS, and then multiplying that result by fifty percent or (reimbursable costs/number of RFGS) x fifty percent.

(b) Fifty percent of all reimbursable costs, excluding those for investigations of unacceptable hazards or incidents, are allocated based on route mileage that is funded, obligated, and/or operational. These reimbursable costs are allocated to rail fixed guideway systems based on their share of the total directional route miles falling under the oversight of the Washington state rail safety oversight program. The owners of the rail fixed guideway systems are responsible for the reimbursement costs allocated to each rail fixed guideway system for which they own. The amount of all such reimbursable costs is arrived at by dividing the RFGS's route miles by total route miles, and then multiplying that result by the product of reimbursable costs multiplied by fifty percent or (RFGS route miles/total route miles) x (reimbursable costs x fifty percent).

(c) The total allocation of reimbursable costs to owners of rail fixed guideway systems is the total of the fifty percent of costs allocated based on an equal share allocation, and the fifty percent allocated based on directional route miles.

(d) WSDOT will provide monthly invoices to owners of rail fixed guideway systems for the reimbursement of costs described above.

[Statutory Authority: RCW 81.104.115. 08-15-078, § 468-550-090, filed 7/15/08, effective 8/15/08.]