

**UNITED STATES DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**[Special Directive No. 22-34 Notice No. 1]**

**Special Directive Under 49 U.S.C. § 5329 (k) and 49 CFR Part 670  
Required Actions to Implement a Risk-Based Inspection Program  
at the Massachusetts Department of Public Utilities**

**AGENCY:** Federal Transit Administration (FTA), U.S. Department of Transportation (USDOT).

**SUMMARY:** FTA issues Special Directive 22-34 to require the Massachusetts Department of Public Utilities (MDPU) to develop and implement a risk-based inspection program as required by 49 U.S.C. § 5329(k).

**FOR FURTHER INFORMATION, CONTACT:** For program matters, Melonie Barrington, Director, FTA Office of Safety Review, telephone (202) 366-0332 or [Melonie.Barrington@dot.gov](mailto:Melonie.Barrington@dot.gov); for legal matters, Emily Jessup, Attorney Advisor, FTA, telephone (202) 366-8907 or [Emily.Jessup@dot.gov](mailto:Emily.Jessup@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 15, 2021, President Biden signed the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act, which continues the public transportation safety program. The Bipartisan Infrastructure Law amended 49 U.S.C § 5329 to require State Safety Oversight Agencies (SSOAs) to conduct risk-based inspections of the rail fixed guideway public transportation systems that the SSOA oversees. The Bipartisan Infrastructure Law also added a provision directing FTA to issue a Special Directive to each SSOA on the development and implementation of risk-based inspection programs (see 49 U.S.C. § 5329(k)(5)).

A risk-based inspection program uses qualitative and quantitative data analysis to inform ongoing inspection activities. Risk-based inspection programs are designed to prioritize inspections to address safety concerns and hazards associated with the highest levels of safety risk.

As described in 49 U.S.C. § 5329(k), each SSOA must develop policies and procedures for inspection access and data collection in consultation with each rail transit agency that the SSOA oversees. The policies and procedures must address SSOA authority and capability to enter and conduct inspections of the rail fixed guideway public transportation system, including access for inspections that occur with and without advance notice. Additionally, the policies and procedures must address how the SSOA will collect data from each rail transit agency to support its risk-based inspection monitoring and prioritization activities, including data that the rail fixed guideway public transportation agency collects when identifying and evaluating safety risk. Risk-based inspection programs must be implemented in a way that is commensurate with the

size and complexity of each rail fixed guideway public transportation system that the SSOA oversees.

These policies and procedures must be incorporated into the SSOA Program Standard required by the State Safety Oversight regulation at 49 CFR Part 674, and the rail transit agency's Agency Safety Plan required by the Public Transportation Agency Safety Plan regulation at 49 CFR Part 673. Section 30012(b) of the Bipartisan Infrastructure Law provides SSOAs two years from the date of the Special Directive's issuance to develop and begin to implement a risk-based inspection program.

FTA is issuing this Special Directive to require MDPU to develop and implement a risk-based inspection program compliant with 49 U.S.C. § 5329(k). It is important to note that in assessing the capability of an SSOA to conduct inspections, FTA must ensure that the inspection practices of the SSOA are commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems that the SSOA oversees; the inspection program of the SSOA is risk-based; and the SSOA has sufficient resources to conduct the inspections.

#### **DIRECTIVE AND REQUIRED ACTIONS:**

In accordance with 49 U.S.C. § 5329 and 49 CFR Part 670, FTA directs MDPU to:

- (1) submit documentation that demonstrates the SSOA has developed a risk-based inspection program in accordance with this Special Directive and the criteria set forth in U.S.C. § 5329(k) within two years of the issuance of this Directive; and
- (2) within one year of FTA's approval of the SSOA's risk-based inspection program, submit documentation that demonstrates the SSOA has implemented that approved program for at least six months.

FTA will first review and approve MDPU's submissions for development of its risk-based inspection program, making any necessary revisions. FTA will review the documentation as it is received and may contact MDPU for additional details or clarifications.

After FTA has approved the MDPU risk-based inspection program, MDPU shall begin implementing the risk-based inspection program. FTA will review and approve MDPU's implementation of the risk-based inspection program based on the documentation submitted per (2) above. MDPU must submit documentation demonstrating program implementation not later than one year following FTA's approval of the program.

FTA will monitor MDPU's progress in developing and implementing its risk-based inspection program, including conducting progress meetings with MDPU as needed.

FTA has developed the Risk-Based Inspection Program Toolkit to assist SSOAs in developing and implementing a risk-based inspection program sufficient to meet the requirements of this Special Directive.

### **Petition for Relief or Reconsideration**

As set forth in 49 CFR § 670.27(d), MDPU has thirty (30) calendar days from the date of this Special Directive to petition for reconsideration with the FTA Administrator. The petition must be in writing and signed by the Director of Transportation Oversight and must include a brief explanation of why MDPU believes the Special Directive should not apply to it or why compliance with the Special Directive is not possible, is not practicable, is unreasonable, or is not in the public interest. Unless explicitly stayed or modified by the Administrator, this Special Directive will remain in effect and must be observed pending review of a petition for reconsideration.

MDPU must transmit a petition to the Administrator via email through Melonie Barrington, Director, Office of Safety Review, FTASSODocs@dot.gov.

### **Enforcement**

FTA may take enforcement action for any violation of this Special Directive or the terms of any written plan adopted pursuant to this directive in accordance with FTA's authorities under 49 U.S.C. § 5329, including, but not limited to a determination that MDPU does not meet the requirements of 49 U.S.C. § 5329(e) and attendant financial penalties, including: (1) withholding SSO formula grant funds; (2) withholding up to five percent of the State's urbanized Area Formula Funding authorized under 49 U.S.C. § 5307; or (3) directing MDPU to use Federal financial assistance to comply with 49 U.S.C. § 5329(k).

Issued on: October 21, 2022

  
**Veronica Vanterpool**

Deputy Administrator  
Federal Transit Administration  
U.S. Department of Transportation

<b>Risk-Based Inspection Program Development Requirements</b>		
<b>Category 1: Authority to Perform Risk-Based Inspections</b>		
<b>Risk-Based Inspection Requirement</b>	<b>Tracking #</b>	<b>SSOA Required Action</b>
<p><b>49 U.S.C. § 5329(k)(1)(A)</b>  A State safety oversight program shall provide the State safety oversight agency established by the program with the authority and capability to enter the facilities of each rail fixed guideway public transportation system that the State safety oversight agency oversees to inspect infrastructure, equipment, records, personnel, and data, including the data that the rail fixed guideway public transportation agency collects when identifying and evaluating safety risks.</p> <p><b>49 U.S.C. § 5329(k)(1)(B)</b>  A State safety oversight agency, in consultation with each rail fixed guideway public transportation agency that the State safety oversight agency oversees, shall establish policies and procedures regarding the access of the State safety oversight agency to conduct inspections of the rail fixed guideway public transportation system, including access for inspections that occur without advance notice to the rail fixed guideway public transportation agency.</p>	FTA-22-34-D001-MDPU	Submit Program Standard and relevant documentation that demonstrate the SSOA has the authority and capability to enter the facilities of each RTA that the SSOA oversees.
	FTA-22-34-D002-MDPU	Submit Program Standard and relevant documentation that demonstrate the SSOA has the authority and capability to inspect RTA activities, including infrastructure, equipment, records, personnel, and data.
	FTA-22-34-D003-MDPU	Submit Program Standard and relevant documentation that demonstrate the SSOA has the authority to conduct inspections with and without advance notice.

Category 2: Risk-Based Inspection Policies and Procedures		
Risk-Based Inspection Requirement	Tracking #	SSOA Required Action
<p><b>49 U.S.C. § 5329(k)(1)(B)</b>  A State safety oversight agency, in consultation with each rail fixed guideway public transportation agency that the State safety oversight agency oversees, shall establish policies and procedures regarding the access of the State safety oversight agency to conduct inspections of the rail fixed guideway public transportation system, including access for inspections that occur without advance notice to the rail fixed guideway public transportation agency.</p> <p><b>49 U.S.C. § 5329(k)(3)</b>  Policies and procedures [for risk-based inspections] established under this subsection shall be incorporated into—  (A) the State safety oversight program standard adopted by a State safety oversight agency under 674.27 of title 49, Code of Federal Regulations (or any successor regulation); and  (B) the public transportation agency safety plan established by a rail fixed guideway public transportation agency under subsection (d).</p>	FTA-22-34-D004-MDPU	Submit SSOA Program Standard and citation of Agency Safety Plan language for each RTA that the SSOA oversees that demonstrate comprehensive policies and procedures that address SSOA access to each rail fixed guideway public transportation system for risk-based inspections, both with and without notice. These policies and procedures must be developed in consultation with each rail transit agency the SSOA oversees.
	FTA-22-34-D005-MDPU	<p>Submit SSOA Program Standard and citation of Agency Safety Plan language for each RTA the SSOA oversees that demonstrate consistent and descriptive policies and procedures to conduct risk-based inspections. At a minimum, these policies and procedures must address:</p> <ul style="list-style-type: none"> <li>• Scheduling inspections</li> <li>• Inspection reports</li> <li>• Immediate safety concerns</li> <li>• Inspections of equipment, infrastructure, and practices specific to each rail fixed guideway public transportation system</li> <li>• Incident verification</li> <li>• Ongoing monitoring</li> <li>• Defects and corrective or remedial action</li> <li>• Corrective Action Plan (CAP) and safety risk mitigation verification</li> </ul>

Category 3: Data Sources and Collection		
Risk-Based Inspection Requirement	Tracking #	SSOA Required Action
<p><b>49 U.S.C. § 5329(k)(2)(A)</b> A rail fixed guideway public transportation agency shall provide the applicable State safety oversight agency with the data that the rail fixed guideway public transportation agency collects when identifying and evaluating safety risks</p> <p><b>49 U.S.C. § 5329(k)(2)(B)</b> A State safety oversight agency, in consultation with each rail fixed guideway public transportation agency that the State safety oversight agency oversees, shall establish policies and procedures for collecting data described in subparagraph (A) from a rail fixed guideway public transportation agency, including with respect to frequency of collection, that is commensurate with the size and complexity of the rail fixed guideway public transportation system.</p> <p><b>49 U.S.C. § 5329(k)(4)(B)</b> The inspection program of the</p>	FTA-22-34-D006-MDPU	Submit SSOA Program Standard and citation of Agency Safety Plan language for each RTA that the SSOA oversees that specifically states the RTA must provide its SSOA with the data the RTA collects when identifying hazards and assessing and mitigating safety risk.
	FTA-22-34-D007-MDPU	Submit SSOA Program Standard and citation of Agency Safety Plan language for each RTA that demonstrates consistent policies and procedures for sharing the data that RTA collects when identifying hazards and assessing and mitigating safety risk. At a minimum, these policies and procedures should define the safety data sets to be shared, define the processes for sharing the data, and define the frequency that the data will be shared.
	FTA-22-34-D008-MDPU	Submit SSOA Program Standard language that demonstrates that the SSOA will collect the following subcategories of data from each RTA it oversees: <ul style="list-style-type: none"> <li>• Safety Program Data</li> <li>• Maintenance Data</li> <li>• Inspection Data</li> </ul>
	FTA-22-34-D009-MDPU	Submit SSOA Program Standard that includes the policies and procedures of the risk-based inspection data management system. The Program Standard must demonstrate the SSOA's data management system capacity to store records according to the SSOA's risk-based inspection data management system policies and procedures, including how the data management system is managed and maintained. Additionally, SSOAs must provide documentation that verifies the data management system accurately stores records according to the SSOA's risk-based inspection data management system policies.

State safety oversight agency is risk-based;		
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Category 4: Inspection Prioritization		
Risk-Based Inspection Requirement	Tracking #	SSOA Required Action
<b>49 U.S.C. § 5329(k)(4)(B)</b> The inspection program of the State safety oversight agency is risk-based;	FTA-22-34-D0010-MDPU	Submit SSOA Program Standard language that specifies the SSOA's prioritization process for its risk-based inspection program, including data analysis procedures, safety concern prioritization rating procedures, and inspection prioritization procedures.
	FTA-22-34-D0011-MDPU	Submit SSOA Program Standard language that describes a continuous process for risk-based inspection prioritization that specifies the frequency of data analysis, safety concern prioritization, and inspection prioritization.

**Category 5: Risk-Based Inspection Programs Are Commensurate with Number, Size, and Complexity of the RFGPTS**

<b>Risk-Based Inspection Requirement</b>	<b>Tracking #</b>	<b>SSOA Required Action</b>
<p><b>49 U.S.C. § 5329(k)(4)(A)</b>                      In assessing the capability of a State safety oversight agency to conduct inspections as required under paragraph (1), the Secretary shall ensure that—                      (A) the inspection practices of the State safety oversight agency are commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems that the State safety oversight agency oversees;</p>	FTA-22-34-D0012-MDPU	Submit SSOA Program Standard policies and procedures that demonstrate the SSOA will administer risk-based inspections programs commensurate with the complexity of each RTA that an SSOA oversees.
	FTA-22-34-D0013-MDPU	Submit SSOA Program Standard policies and procedures that demonstrate consistent and ongoing risk-based inspections of each RTA that an SSOA oversees.
	FTA-22-34-D0014-MDPU	Submit SSOA Program Standard policies and procedures that demonstrate the SSOA inspects the full spectrum of activities for each RTA it oversees and that those inspections are prioritized based on relevant data, including safety program, maintenance, and inspection data collected by the SSOAs.



Category 6: SSO Staffing, Qualifications, and Training		
Risk-Based Inspection Requirement	Tracking #	SSOA Required Action
<p><b>49 U.S.C. § 5329(k)(4)(C)</b></p> <p>In assessing the capability of a State safety oversight agency to conduct inspections as required under paragraph (1), the Secretary shall ensure that—</p> <p>(C) the State safety oversight agency has sufficient resources to conduct the inspections.</p>	FTA-22-34-D0015-MDPU	Submit an updated workload assessment to align with increased responsibilities of the risk-based inspection program.
	FTA-22-34-D0016-MDPU	Submit documentation that confirms the qualifications and capability of SSOA personnel conducting risk-based inspections in required areas of expertise.
	FTA-22-34-D0017-MDPU	Submit an updated Technical Training Plan to align with the increased responsibilities of SSOA risk-based inspection programs.

Risk-Based Inspection Program Implementation Requirements		
Risk-Based Inspection Requirement	Tracking #	SSOA Required Action
SSOA Approved Program Standard Risk-Based Inspections	FTA-22-34-I001-MDPU	<p>Submit documentation that confirms the SSOA has conducted risk-based inspections according to Program Standard requirements, including the areas of:</p> <ul style="list-style-type: none"> <li>• Scheduling inspections</li> <li>• Inspection reports</li> <li>• Immediate safety concerns</li> <li>• Inspections of equipment, infrastructure, and practices specific to each RTA</li> <li>• Incident verification</li> <li>• Ongoing monitoring</li> <li>• Defects and corrective or remedial action</li> <li>• CAPs and safety risk mitigation verification</li> </ul>
	FTA-22-34-I002-MDPU	<p>Submit documentation that demonstrates the SSOA has received safety data from each RTA it oversees, and that the data has been received in accordance with the policies and procedures for sharing the data. This includes receiving the safety data sets specified in the Program Standard, the processes for sharing the data, and submission time frames defined in the Program Standard.</p>
	FTA-22-34-I003-MDPU	<p>Submit documentation that confirms the administrative policies and procedures of the risk-based inspection data management system are followed. The documentation must demonstrate the data management system stores records according to the SSOA's policies and procedures for the risk-based inspection data management system and should demonstrate maintenance of the data management system.</p>
SSOA Approved Program Standard Risk-Based Inspections	FTA-22-34-I004-MDPU	<p>Submit documentation that confirms the SSOA has implemented the risk-based inspection prioritization process, including data analysis and inspection prioritization according to the timelines outlined in the Program Standard.</p>

<b>Risk-Based Inspection Program Implementation Requirements</b>		
<b>Risk-Based Inspection Requirement</b>	<b>Tracking #</b>	<b>SSOA Required Action</b>
	FTA-22-34-I005-MDPU	Submit documentation that the SSOA has conducted risk-based inspections for each RTA it oversees, and that those inspections are consistent and ongoing as defined by the SSOA's Program Standard.
	FTA-22-34-I006-MDPU	Submit documentation that the SSOA has inspected the full spectrum of activities each RTA conducts and that those inspections are prioritized based on relevant data, including safety program, maintenance, and inspection data.