DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 659

[Docket No. FTA–2004–17196]

RIN 2132–AA76

Rail Fixed Guideway Systems; State Safety Oversight

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration is revising its rule on state safety oversight of rail fixed guideway systems not regulated by the Federal Railroad Administration (FRA). Since January 26, 1996, when the rule took effect, the agency has gained experience and insight concerning the benefits of and recommended practices for implementing state safety oversight requirements. This final rule revises the State Safety Oversight rule and adds clarifying sections, further specification concerning what the state must require to monitor safety and security of non-FRA rail systems, and incorporates into the body of the regulation material previously incorporated by reference. The revised part should be easier to understand and ensure greater compliance of the State oversight agencies, and enhance the safety and security of the rail systems governed by this part.

DATES: The effective date of this rule is May 31, 2005. The compliance date of this rule is May 1, 2006.

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SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

You may download this rule and other safety rules from the FTA Office of Safety and Security home page at *http://transit-safety.volpe.dot.gov*. The rule may also be downloaded from the Government Printing Office's **Federal Register** Main Page at *http://www.gpoaccess.gov/fr/index.html*. Users may download an electronic copy of this document using a modem and suitable communications software from the GPO Electronic Bulletin Board Service at (202) 512–1661. To access all comments received by the U.S. DOT Dockets, Room PL–401, refer to the Dockets Management System (DMS) on the DOT home page at *http://dms.dot.gov*. The DMS is available 24 hours each day, 365 days each year. Follow the online instructions for more information.

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I. Background

This document adopts as final a new part 659, Rail Fixed Guideway Systems; State Safety Oversight. This preamble to the final rule contains a brief regulatory and program background about FTA's state safety oversight program. It also summarizes the final rule provisions, and discusses in detail the comments received on the proposed rule. We also include in the preamble a section by section description of the regulation. This is important, because, as discussed in the proposed rule, we have changed the organization of the rule to enhance usability. As a further aid, we are publishing at the end of this preamble, distribution and derivation tables, which track where old sections are in the revised part 659 and, conversely, the old section from which the new part 659 sections are derived.

The preamble to a proposed rule typically contains more detailed information than the final rule, because it lays out in detail the provisions to aid public comment. This is true for this proposed and final rule as well, but we have included a level of information in today's **Federal Register** document that will provide a cogent explanation of the intent and provisions of the program.

Regulatory Background. In 1991, Congress required for the first time that the Federal Transit Administration (FTA) establish a program providing for the State-conducted oversight of the safety and security of rail systems not regulated by the Federal Railroad Administration (FRA). (See Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102–240, Sec. 3029, also codified at 49 U.S.C. 5330.) FTA published its final rule adopting a new part 659, Rail Fixed Guideway Systems; State Safety Oversight, on December 27, 1995 (60 FR 67034). The final rule went into effect January 26, 1996.

For reasons described in the next section of this preamble, the agency determined that improvements could be made to part 659. Accordingly, on March 9, 2004, FTA published a Notice of Proposed Rulemaking (NPRM) proposing changes to its state safety oversight rule contained in 49 CFR part 659. Today's document contains the final rule, making changes to the substance and format of the existing part 659. These changes are detailed later in this preamble.

Program Background. When FTA issued its final rule in 1995, only five (5) states maintained provisions for safety oversight of rail transit agencies. Today, twenty-six (26) state oversight agencies have developed and implemented state safety oversight programs affecting forty-four (44) rail fixed guideway systems. It is projected that over the next decade, an additional four (4) state oversight agencies and as many as twelve (12) new starts rail transit systems may be affected by part 659.

Since part 659 created a community of oversight agencies where previously few existed, the initial goal of the rulemaking was to ensure that states were provided with sufficient authority to establish programs that met the rule's statutory requirements. Now, after eight years of experience in implementing part 659 and evaluating its performance, FTA has identified changes that will improve the program. Today's final rule addresses many of these changes.

Since the beginning of the state safety oversight program, FTA has maintained outreach with a variety of groups, including the affected states, rail transit agencies, our DOT sister agency, FRA, the National Transportation Safety Board (NTSB), and the American Public

Transportation Association (APTA). In addition, FTA has instituted a regulatory compliance program to ensure compliance with the rule's provisions. Since the program went into effect, FTA has received several recommendations concerning possible program improvements, and has taken these recommendations into consideration in the development of the final rule.

For example, the final rule clarifies the role of the state oversight agency and the role of the rail transit provider. We have done this by reorganizing the regulation and including more complete descriptions of the responsibilities of the state, the state oversight agency, and what the state oversight agency must require of the rail transit property. The final rule also includes a new definition of hazard and contains a separate section on a hazard management plan.

In addition, in September 2002, the NTSB issued recommendations to FTA (R–02–18 and –19). NTSB stated that the *APTA Manual,* published on August 20, 1991, does ''not contain the necessary specific guidance for assessing the effectiveness of rules compliance programs; as a result, the guidelines are not effective tools for regulatory authorities or transit agencies.'' The NTSB recommended that rail transit agencies adopt, in their system safety program plans, specific standards covering rules compliance and efficiency testing programs for operations and maintenance personnel. NTSB also recommended to APTA that it update its *Manual* to address this concern and that FTA adopt the updated *APTA Manual*.

APTA may choose to update its Manual. However, to provide a more user-friendly regulation, the FTA determined that it is in the interest of our users to publish all of the provisions of the APTA Manual in the state safety oversight regulation. By eliminating a reference to the APTA manual in the regulation, and listing all requirements in full, this allows FTA to respond to changed circumstances and subsequent recommendations from NTSB directly through the rulemaking process. This listing also provides greater usability of the regulations, since all of the requirements are printed in one place.

II. Purpose

This rule is published to improve the performance of the State Safety Oversight Program and to ensure the following outcomes: (1) Enhance program efficiency; (2) increase responsiveness to recommendations from the NTSB and emerging safety and security issues; (3) improve consistency in the collection and analysis of accident causal factors through increased coordination with other Federal reporting and investigation programs; and (4) improve performance of the hazard management process. The rule also clarifies FTA's oversight management objectives, and streamlines current reporting requirements, including the change from paper reporting to electronic reporting. Finally, the rule addresses heightened concerns for rail transit security and emergency preparedness.

III. Rulemaking Overview/Summary of Rule Changes

FTA amended several sections of the State Safety Oversight rule. These changes are summarized below, according to their effect on state, oversight agency, rail transit agency, and FTA roles and responsibilities.

The State

Under this rule, the primary responsibility of the state remains designating an entity—other than the rail transit agency—to oversee the safety and security of a rail fixed guideway system. If a rail fixed guideway system operates in more than one state, each state may designate an entity as the oversight agency or may agree to designate one agency from one state to provide oversight. In either case, this rule requires that in all circumstances in which a rail fixed guideway system is operating in multiple states, the rail transit agency operating the rail fixed guideway system must be subject to only one program standard.

In addition, an affected state's designation of its oversight agency must now either coincide with the execution of any New Starts project grant agreement between FTA and the rail fixed guideway system within the state's jurisdiction, or occur before the application for funding under FTA's formula program for urbanized areas (49 U.S.C. 5307) by an entity meeting the definition of rail fixed guideway system.

Within sixty (60) days of designating the oversight agency, the state must make its designation submission to FTA. A state that has already designated an oversight agency before the implementation of this rule does not need to re-designate. Should a state change its designated oversight agency, it must submit its proposed designation to FTA for review and approval within thirty (30) days of its change. After FTA approves the oversight agency designation, the designated oversight agency must provide its initial submission within thirty (30) days of receiving FTA's approval.

The state may prohibit public disclosure of investigation reports. Furthermore, states are not required to make available the rail transit agency's security plan or referenced procedures. If states cannot protect rail transit agency security plans or supporting procedures from public disclosure, then the state must review these documents on-site at the rail transit agency.

The Oversight Agency

This rule identifies the minimum requirements for the oversight agency's development of its program standard and the rail transit agency's development of its system safety program plan and security plan. In the previous regulation some of these standards were contained in the APTA Manual, which was incorporated by reference into the regulation.

Each oversight agency must require the rail transit agency to develop and maintain a separate system safety program plan and system security plan that complies with the oversight agency's program standard and requirements specified in this part. The oversight agency must still require the rail transit agency to conduct internal safety and security audits.

The oversight agency must review and approve the rail transit agency's annual report, documenting rail transit agency internal safety and security audit findings. The rule also requires the oversight agency to oversee an annual review by the rail transit agency of its system safety program plan and system security plan to determine whether or not either plan must be modified or updated. The oversight agency must review and approve any modification or update.

The oversight agency must require the rail transit agency to develop a hazard management process as part of its system safety program plan, to be reviewed and approved by the oversight agency. The oversight agency must require the rail transit agency to develop, in coordination with the oversight agency, thresholds for the notification and reporting of hazards to the oversight agency. Measures to eliminate or control hazards and the associated corrective actions are to be managed through the hazard management process, including rail transit agency procedures for providing the oversight agency with reports to track mitigation.

FTA has modified the thresholds for the notification and investigation of accidents. The oversight agency must require rail transit agencies to report the occurrence of accidents within two (2) hours. In those instances where the rail

transit agency shares track with the general railroad system and is subject to FRA notification requirements, the rail transit agency must notify the oversight agency within two (2) hours of an incident for which FRA is notified.

The oversight agency must investigate—or cause to be investigated—all accidents meeting the notification and investigation thresholds. The oversight agency must review and approve all procedures—except those used by the NTSB—that will be used to conduct an investigation on its behalf. Should the oversight agency not accept the rail transit agency's investigation report, it must either conduct its own investigation or prepare its own report with the amended findings. If the NTSB investigates an accident, the oversight agency remains responsible for the development of the accident report and corrective actions. It may adopt, in whole or in part, NTSB's report and findings, just as it may adopt, in whole or in part, the rail transit agency's investigation report and findings.

The oversight agency must require the rail transit agency to develop corrective action plans to address findings from accidents and the oversight agency's three-year safety and security review. In the case of accident investigations, the oversight agency is responsible for ensuring that a corrective action plan is developed, implemented, and tracked, regardless of the entity that conducts the investigation on the oversight agency's behalf. Should the NTSB conduct the accident investigation, the oversight agency must identify a process for evaluating NTSB findings to determine whether or not corrective actions should be implemented. The oversight agency must also identify a dispute resolution process for corrective action plan implementation, should the rail transit agency disagree with the oversight agency.

The oversight agency must still submit three types of reports to FTA: the initial submission, annual reports, and periodic reports. The initial submission must be delivered to FTA not later than sixty (60) days prior to the commencement of passenger operations for any New Starts system. All designated oversight agencies must provide FTA with an initial submission by the rule's date of effectiveness. An oversight agency designated after the rule's date of effectiveness must make its initial submission by the date specified in its designation submission, but no later than sixty (60) days prior to the commencement of passenger operations. In the event a state changes its oversight agency, the initial submission is due within thirty (30) days of the new designation. The initial submission must include the oversight agency program standard, all referenced procedures, and certification that the rail transit agency system safety program plan and the system security plan have been developed, reviewed, and approved by the oversight agency.

Annual reports must summarize oversight activities for the preceding twelve (12) months, including: a description of the causal factors of investigated accidents and status of corrective actions, updates, and modifications to rail transit agency program documentation; a report that documents findings from three-year safety review activities, whether or not a three-year safety review has been completed since the last annual report was submitted; a description of the program standard and supporting procedures, if they have changed during the preceding year; and certification that any changes or modifications to the rail transit agency system safety program plan or system security plan have been reviewed and approved by the oversight agency.

FTA may request periodic reports from the oversight agency. All three types of reports must be submitted electronically to FTA.

The oversight agency must ensure that there is no conflict of interest by either the oversight agency or an entity operating on its behalf in providing oversight activities required in this rule.

Rail Transit Agency

FTA added the definition of ''rail transit agency'' as the agency responsible for operating the rail fixed guideway system. FTA modified the definition of ''rail fixed guideway system'' to ensure that states, their designated oversight agencies, and rail transit agencies have completed applicable requirements prior to the start of passenger operations.

The rail transit agency is still required to develop a system safety program plan and security plan that complies with the oversight agency's program standard and the minimum requirements specified in this rule. However, the two documents must be developed and maintained separately. The rail transit agency must review its system safety program plan and security plan annually. If either the system safety program plan or security plan must be modified, the rail transit agency must submit the modified plan to the oversight agency for review and approval.

The rail transit agency must ensure that all elements of its system safety program and security plan are reviewed in an ongoing manner over a three-year cycle, in accordance with internal audit requirements. The rail transit agency must provide the oversight agency at least thirty (30) days notice prior to the conduct of scheduled internal safety and security reviews. The rail transit agency must also submit to the oversight agency checklists and procedures to be used in conducting the reviews. The rail transit agency's chief executive must submit a statement of compliance or noncompliance with its system safety program plan or security plan, along with the rail transit agency's annual report, to the oversight agency. If the rail transit agency is in noncompliance, the report must identify the areas that do not conform to the rail transit agency's system safety program plan, and must list measures being taken to bring these areas into compliance.

The rail transit agency must develop and implement a hazard management process that includes, at a minimum, a definition of the rail transit agency's approach to the hazard management and resolution process, a list of the sources and mechanisms used to support the ongoing identification of hazards, the process by which identified hazards will be evaluated and prioritized for elimination or control, the mechanism used to track identified hazards to resolution, the minimum thresholds for notification and reporting hazards to the oversight agency, and the process for ongoing reporting of hazard resolution activities to the oversight agency.

The rail transit agency must notify the oversight agency within two (2) hours of accidents in a format defined by the oversight agency. The rail transit agency must provide verification that corrective actions to address the finding(s) from an accident investigation are implemented as described in a corrective action plan, or must propose an alternative action(s) to be implemented subject to oversight agency review and approval. The rail transit agency must provide periodic reports as requested by the oversight agency detailing the status of corrective action implementation.

Federal Transit Administration

The FTA will continue to evaluate whether states have complied with the rule or have made adequate efforts to comply with it. This rule directs FTA to approve state designation submittals, oversight agency initial submissions, and oversight agency annual submissions. FTA retains the authority to request periodic submissions from oversight agencies.

IV. Overview of the Comments

FTA received eighteen (18) comments in response to the NPRM. FTA considered all comments filed. The breakdown among commenter categories is as follows:

State DOTs	7
Transit Agencies	6
Public Utilities	2
Trade Associations	2
States	1

Our evaluation of the comments did not lead to substantial changes between the NPRM and this Final Rule. In Section V below, we discuss in detail the public comments addressing issues raised in the NPRM.

V. Section by Section Discussion of the Comments

General Comments

Historically, states have raised concern over the lack of Federal funding to assist them in the development and implementation of safety and security oversight programs. In response to FTA's NPRM, several commenters addressed the issue of what the states term an ''unfunded mandate.''

Two commenters stated that the proposed rule would increase the burden on the states to perform oversight without providing any funding. These commenters noted that the proposed increase in workload is beyond their current state funding levels. One of the commenters suggested that safety oversight could be monitored and enforced through FTA's Triennial Review Process instead of through the states. One commenter noted that FTA makes funds available to support the development of the oversight program. The commenter recommended that ''FTA provide funding for all capital projects includ[ing] monies to the [oversight agency] for the significant additional costs of safety and security certification.'' One commenter suggested that FTA identify ways to minimize the information collection burden without reducing the quality of the collected information.

Finally, one commenter suggested that the rule should take into account typical state funding cycles in relation to the schedule for implementing corrective actions.

FTA Response. For purposes of required analysis under Federal law applicable to Federal agencies, as discussed in Part VI of this preamble, this rule does not constitute an ''unfunded mandate.'' FTA has attempted to identify Federal funding sources to support state safety oversight. For states with New Starts projects, capital grant monies may be used for the initial development of state oversight agencies. However, neither operating nor capital grants can be used to support existing oversight agencies once passenger service commences.

FTA provides technical assistance to state oversight agencies under development or in existence in an effort to effectively promote safety and security in the rail transit environment and to reduce the learning curve of a state new to the program. The rule makes allowances for state funding cycles and corrective action implementation dates. The implementation cycle of corrective actions continues to be a local issue, and schedules for the implementation of corrective actions should be decided by the rail transit agency, with appropriate state oversight, taking into consideration the funds available to implement the corrective actions. FTA believes that the rule allows the rail transit agency and oversight agency to identify an appropriate schedule for corrective action implementation.

Definitions

One commenter recommended changing the definition of ''hazard'' to ''hazard means any real or potential conditions,'' rather than just stating ''hazard means any condition.'' The commenter recommended that FTA clearly define the context of real or potential condition. Two commenters suggested that FTA replace the phrase ''hazardous condition'' with ''hazard.''

One commenter suggested including a definition of ''medical attention'' (a term used in § 659.33) and ''first aid.'' Three commenters suggested that definitions should be included for ''damage to a system'' and ''damage to the environment,'' terms used in the definition of ''hazard.'' These commenters suggested that the terms be quantifiable.

A few commenters suggested that FTA either remove the definition of ''rail transit-controlled property'' or limit its applicability to only areas that support operations, including revenue facilities.

A few commenters also suggested that changes be made to the definition of ''individual.'' The comments ranged from deleting the term to modifying the definition to make it less restrictive. Two commenters recommended that the definition on ''passenger'' include ''patron'' to address persons who have just used or intend to use the rail transit system.

One commenter requested that the rule include the definition of ''security breach.'' Finally, one commenter recommended that the rule define ''qualified professional.''

FTA Response. FTA believes that a Federal standard defining the real or potential condition for which a rail transit agency must mitigate as a hazard oversteps the intent of this rule. The rule's definition of hazard currently allows management and safety representatives from the rail transit agency—with approval by the oversight agency and potential review by FTA—the opportunity to identify and define the ''real or potential condition'' for which the rail transit agency must mitigate to a level that is acceptable by management and the state oversight agency.

In response to commenters recommending the replacement of ''hazardous condition'' with ''hazard,'' FTA concurs and has made this change throughout the rule.

FTA does not agree with the recommendation by the commenter to remove the definition of ''rail transit-controlled property.'' It is important to maintain consistency within FTA's data collection programs, specifically state safety oversight and the National Transit Database (NTD). Furthermore, through its definition of rail transit-controlled property, FTA expects that safety or security incidents occurring on property controlled by the rail transit agency that meet the accident notification thresholds must be reported to the oversight agency. We believe that the rail transit agency's hazard identification process should include all incidents that occur on its property, regardless of whether or not the activity supports revenue operations.

FTA has chosen to keep the definition of ''individual,'' but add the term ''person'' to the definition to ensure that anyone involved in an accident, meeting the thresholds specified in the notification and investigation sections, is covered by this part. This includes ''pedestrians'' and ''others,'' as specified in the NTD.

FTA does not believe it is appropriate to identify each type of medical attention that an individual could receive as a result of an accident, to support notification and investigation thresholds. The rule is clear that if two or more individuals receive immediate medical attention away from the scene, the incident qualifies as an accident under § 659.33 and § 659.35. FTA's intent is to capture serious events and believes that even if the injuries sustained by two or more individuals were minor, the accident itself, regardless of the type of injury, warrants notification and investigation.

FTA believes that a detailed definition of ''damage'' to the system or environment is most appropriately developed by the rail transit agency, with concurrence from the state oversight agency. The threshold for damage or potential damage to the system, equipment, property or the environment should be identified during the development of the rail transit agency's hazard management process. Each property must address its operating risk in accordance with management's policy for providing standard care to the rail transit agency's passengers and employees. It is the oversight agency's responsibility to ensure that the rail transit agency's level of accepted risk meets the intent of the oversight agency's program standard and this rule, as well as conform to the rail transit agency's requirements for mitigating system hazards and their potential to cause loss.

Defining a ''security breach'' is similar to defining all types of accidents. Notification and investigation thresholds are determined by the impact of the accident on the rail transit passengers, employees, system, and environment. Therefore, security breaches should be reported when thresholds under § 659.33 and § 659.35 have been met.

We have not defined ''qualified professional'' or attempted to regulate minimum qualifications of the individuals involved at either the state oversight agency or rail transit agency level. The state and respective rail transit agency should identify and enforce the qualifications necessary to meet the requirements of this part. Finally, FTA has made a technical correction to paragraph (2) in the definition of ''rail fixed guideway system'' to reflect the wording of the current rule.

Withholding of Funds for Noncompliance

FTA did not propose changes to its criteria for the withholding of funds for noncompliance. A few commenters recommended that FTA extend the judgment of noncompliance to include rail transit agencies, rather than just states. The commenters noted that some states have difficulty in enforcing part 659 requirements. Two commenters recommended that FTA also identify the process by which withheld funds would be released.

FTA Response. FTA has clarified that funds will be released if the Administrator determines that an affected state has achieved compliance within two years in accordance with 49 U.S.C. 5330. We believe this provides an adequate level of detail for what is required.

With regard to state difficulties enforcing the part 659 provisions, FTA did not make changes. States are required to ensure compliance with the provisions of this part. Under 49 U.S.C. 5330, FTA does not have the authority to regulate state policies for managing noncompliance. We believe that each state needs to identify its own enforcement mechanism.

Designation of Oversight Agency

FTA proposed changes to this section to clarify its intent about event(s) that must prompt oversight agency designation, as well as FTA's expectation that once designated the oversight agency will ensure that its program is fully implemented before the initiation of passenger service.

One commenter recommended that FTA include a provision for when a state officially moves oversight responsibility to a ''new'' state organization.

FTA Response. FTA has added language to this section, as well as to the initial submission element of § 659.9(f) to require a new oversight agency to submit its initial submission to FTA for review.

Confidentiality of Investigation Reports and Security Plans

FTA did not propose changes to this section.

One commenter raised concerns over past and potential problems in obtaining accident information from rail transit agencies. The commenter explained that in their state, an existing Public Records Act makes accident information available to citizens. Because of the potential release of accident information, rail transit agencies have refused to provide their investigation information and reports to the oversight agency, citing their protection by the rail transit agencies' attorney-client privilege.

One commenter recommended that security plan directives should mention other documents that should be controlled, such as drill coordination plans, training, and emergency management plans.

FTA Response. FTA understands the need for and agrees that safety and security sensitive information should remain confidential. There is no language in this regulation that requires the state or rail transit agency to release information deemed safety or security-sensitive. FTA recommends that each state identify measures to be taken to ensure that safety and security sensitive information is not publicly disclosed.

Oversight Agency Program Standard

The NPRM proposed removing the reference to the *APTA Manual* from the requirements for a state oversight agency system safety program standard. This is necessary to facilitate FTA's ability to modify or revise the minimum requirements of the program standard through the Federal regulatory process, subject to notice and public comment, rather than through the revision of an industry manual. In addition, FTA must address the role of the oversight agency in the implementation of safety and security program requirements not currently covered in the *APTA Manual*. Finally, during FTA's management of the State Safety Oversight Program, states have requested FTA to identify specific requirements that states can legislate and subsequently develop state-specific program standards that, at a minimum, meet FTA's requirements, but also allow for greater flexibility in implementation.

In its comments to the docket, APTA raised concern over FTA's proposed elimination of the *APTA Manual* reference. APTA suggested that by placing program standard element requirements in the rule, ongoing changes and revisions would be difficult to implement. In addition, APTA noted that retention of the *APTA Manual* would permit the continued transit industry and Federal government collaboration on important safety and security issues. APTA noted that by dropping the *APTA Manual* reference, there would be significant impacts on system safety, including the possibility that each state will implement these specifications differently and a national standard will not be achieved, and states will only move to meet the minimum requirements, not the intent of system safety. Finally, APTA suggested that its adoption of the system safety approach was intended to promote a self-regulatory process, a process that would be put at risk if the NPRM were to proceed as written.

One commenter suggested that FTA require the oversight agency to send a copy of its program standard to all managers of the rail transit agencies within its jurisdiction. Another commenter recommended FTA clarify the role of the oversight agency during construction and pre-revenue phases.

FTA Response. FTA has adopted the proposed rule provision. FTA does not think it is detrimental to remove the mandatory reference to the *APTA Manual* and that it is appropriate to include the program standard requirements in this rule. FTA does not believe that the rule processes

undermine system safety. The requirements in the rule for oversight agency program standard development and rail transit agency system safety program plan and security plan development is more comprehensive than the private sector standards. Additional sections have been included in the regulation to address NTSB recommendations, to strengthen the internal safety audit process, to improve coordination with the state oversight agency, and to formalize reporting requirements. By including all of the provisions in one place, it helps us meet our goals of maximizing the usability of our regulation and encouraging full compliance with its provisions. Further, this part allows for flexibility in application of safety and security principles, while maintaining the delicate balance of mandatory compliance for performance.

Federal law, 49 U.S.C. 5330, does not address the authority to be provided to states to oversee rail transit capital projects before passenger operations commence. In 1995, FTA concluded that this lack of definition prevented application of the state safety oversight rule during the planning, design, and construction of New Starts projects. However, states with New Starts projects must be in compliance with each element of part 659 before the initiation of passenger operations. To facilitate compliance, the rule requires that states make their oversight agency designation prior to a rail transit agency application for formula grant money, or at the same time as the execution of a grant agreement between FTA and the grantee applicant for a New Starts project. Furthermore, FTA requires that each state submit documentation identified in § 659.9(d) to FTA within sixty (60) days of designating its oversight agency.

FTA believes that state oversight agency participation in a project's developmental phases is critical to the success of the State Safety Oversight Program and the state's ability to provide effective oversight during operations. FTA supports states' efforts to participate during pre-operation by providing a funding mechanism through its New Starts projects process that allows capital grant monies to be used for the initial state safety oversight agency program development.

For those capital projects in states with existing rail transit agencies and safety oversight agencies and where the rail system is being modified, extended, or rehabilitated, FTA expects each oversight agency to participate in the pre-operation phases under the requirements of this part (§ 659.15 and § 659.19(g) and (h)), but FTA funds may not be used.

Furthermore, there is no requirement in this part that limits a state's ability to extend its safety oversight in all phases of project development. FTA encourages this practice and a handful of states currently have authority to conduct their safety and security oversight program during the planning, design and construction of a New Starts system.

System Safety Program Plan

In lieu of the *APTA Manual* reference, the NPRM laid out the minimum safety program elements from which states can ensure rail transit agencies address, as a minimum, their system safety program plans. FTA's requirements represent a minimum standard that must be addressed by each rail transit agency and enforced by the state oversight agency. The NPRM retained the requirement for state oversight agencies to review and approve a rail transit agency's system safety program plan.

One commenter requested a clarification of the meaning of ''approved''—whether it meant the system safety program plan would be approved by the oversight agency or the rail transit agency. Another commenter suggested that the regulation should require a formal letter of approval from the state oversight agency, accompanied by the checklist used to review the rail transit agency's system safety program plan and security plan.

FTA received one comment proposing an ''hours of service'' requirement, limiting the number of hours that safety sensitive employees can work and providing a minimum number of required hours off.

Finally, two commenters suggested removing or combining specific sections of the system safety program plan minimum elements to reduce what the commenters believed to be redundant—namely removing § 659.19(s) and combining § 659.19(g) and § 659.19(r) under the heading of ''System Modifications and Configuration Control.''

FTA Response. The final rule requires that the oversight agency must review and approve the rail transit agency's system safety program plan. Furthermore, this section requires that the oversight agency, using a checklist developed by the oversight agency, review the rail transit agency's system safety program plan against the requirements of this Part, in addition to the state's own program standard. FTA recommends that oversight agencies have sufficient authority to carry out their role; this includes the responsibility for the review and approval of rail transit agency safety and security plans. FTA intends that oversight agencies include in their review and approval process the rail transit agency's operating and maintenance procedures, rulebook, and special orders.

FTA proposed, and maintains, that the oversight agency issue a formal letter of approval to the rail transit agency after reviewing the system safety program plan and security plan. FTA agrees with the commenter that the oversight agency should include in its formal submittal to the rail transit agency the checklist used to conduct the system safety program plan and security plan review.

FTA did not propose an ''hours of service'' requirement in this part. FTA does not have the authority to regulate in this area.

System Security Plan

The NPRM proposed minimum requirements for an agency security plan that must be maintained as a separate document.

One commenter recommended that security breaches and other security issues such as threat and vulnerability assessments should be covered similarly to safety issues. Another commenter recommended that FTA modify the security audit requirement so that such audits are conducted periodically and by qualified professionals.

One commenter suggested that the rule require a security plan that includes a description of a positive ID program identifying all contractors, visitors and employees requiring access to the system or facilities, and tracks all security related IDs, uniforms, or equipment that may be used as part of the positive ID program.

Finally, two commenters recommended that FTA not require the oversight agency to conduct an ''on-site'' review of the rail transit agency security plan.

FTA Response. While FTA has not provided the same level of detail relating to the security management processes identified by the commenter, rail transit agencies are required to notify and investigate security breaches that meet the accident notification and investigation thresholds in § 659.33 and 35.

While FTA agrees with the importance of positive ID programs and other access control measures to enhance security at rail transit systems, FTA does not intend that this rule specify the type of security strategy to be used by the rail transit agency and monitored by the state oversight agency.

Conversely, there is no language in this rule that prevents a rail transit agency from using such a strategy and, as noted above, FTA encourages rail transit agencies to monitor access to key areas of the rail system.

In the NPRM ''Section-by-Section Analysis'' FTA proposed that the oversight agency conduct its review of the rail transit agency's security plan on-site at the rail transit agency. FTA agrees with the commenters who suggested that this requirement places an unnecessary burden on the oversight agencies in the conduct of their review. Therefore, we have modified the Final Rule to require that the rail transit agency must submit its security plan to the oversight agency if the state has established protocols to protect the security plan from public disclosure. If the state cannot provide these protections, the oversight agency must review the security plan on-site at the rail transit agency. Finally, FTA intends that state oversight agencies always identify in-house representatives or contract personnel whose qualifications are sufficient to review a rail transit agency's system safety program plan and security plan.

Rail Transit Agency Review of its System Safety Program Plan

The NPRM proposed a requirement for the oversight agency to require the rail transit agency to conduct an annual review of its safety and security plans.

One commenter requested clarification regarding the level of system modification that would require resubmission of the rail transit agency's system safety program plan.

FTA Response. It is the responsibility of the state oversight agency to develop the criteria for which rail transit agency system modifications prompt the resubmission and consequent review of the system safety program plan.

Rail Transit Agency Internal Safety and Security Reviews

FTA proposed a section that requires the oversight agency to require the rail transit agency to develop and document a process for performing on-going internal safety and security reviews.

A commenter recommended FTA require a rail transit agency general manager to sign off on all conducted internal safety and security audits to ensure management is aware of internal operations and processes, and that they are effective. Three commenters voiced concern over outstanding issues at time of certification, suggesting that the requirement of the rail transit agency's general manager to certify compliance in its annual report does not address the instance when a rail transit agency may not be in full compliance with its system safety program plan, but is still required to certify as such. One of these commenters proposed specific language indicating certification by the agency's chief executive officer.

Another commenter requested that FTA shorten the time period requirement for notifying state oversight agencies of internal safety audits from 30 days to 10 days. Three commenters recommended lengthening the time requirement for notifying state oversight agencies of scheduled internal safety audits, 45 days and 60 days. Finally, one commenter suggested that the internal safety audit process not be ''reset'' to coincide with the implementation of the new rule, inasmuch as certain transit operators might currently be dealing with safety issues in the midst of their audit cycles.

FTA Response. We believe that the § 659.27 proposal that a certification of compliance issued by the rail transit agency general manager or executive director be included with the annual report compiled by the rail transit agency, documenting its internal safety audit activities, addresses the commenter's request for general management endorsement. FTA also agrees that the general manager should not be required to certify compliance if internal safety audits have identified areas of noncompliance. Consequently, FTA has added the condition that in those cases where the rail transit agency is not in compliance with its system safety program plan—or security plan—the chief executive must identify those areas of noncompliance for the oversight agency, accompanied with a list of activities the rail transit agency will take to achieve compliance.

We have not reduced the timeframe for rail transit agency notification to the state before the conduct of internal safety audits from at least thirty (30) days to ten (10) days. Internal safety audits are the means by which a rail transit agency can assess effectiveness of its own safety program and how well it is being implemented agency-wide. A rail transit agency must be able to develop a schedule for these audits and make the schedule available to its oversight agency thirty (30) days before conducting the internal review. Other commenters requested the timeframe be expanded to forty-five (45) or sixty (60) days. FTA believes that thirty (30) days is sufficient for oversight agency notification since the oversight agency is not required—but strongly encouraged—to participate in the internal safety review process.

FTA agrees with the last commenter and will not require the internal safety audits to be ''reset.'' Instead, the rail transit agency should continue its cycle of audits in compliance with all other terms of this rule, regardless of the date this rule goes into effect. It should be noted, however, that any changes to internal safety audit procedures or processes as the result of this rule must be implemented at the date this rule goes into effect.

Oversight Agency Safety and Security Reviews

FTA proposed that the oversight agency must conduct an on-site review of the rail transit agency's safety and security plans every three years or in an on-going manner.

One commenter requested that the regulation outline what should be included in the state oversight agency safety and security review report. Another commenter recommended that the proposed rule be amended to clarify that the state oversight agency reserves the right to conduct an on-site review more frequently than every three years. This commenter also recommended adding the following language, ''[t]he oversight agency must prepare and issue a report containing findings, recommendations, corrective actions, and the rail transit agency's response to each finding that requires additional action. The rail transit agency's response shall set a time frame to implement the corrective actions resulting from the review. The report, at a minimum, must include an analysis of the efficacy of the system safety program plan and a determination of whether it should be updated.''

FTA Response. The oversight agency should be able to determine the extent of its three-year safety reviews, to effectively evaluate rail transit agency compliance with state safety oversight requirements. FTA has shared checklists with oversight agencies and will continue to facilitate information exchange and coordination within the community. Many states have slightly different requirements within their respective program standards. However, FTA disagrees that this part should identify each element of the safety or security review since it could limit oversight agencies in their approach to the three-year safety review.

There is no language in this requirement that precludes the oversight agency from establishing the right to conduct an on-site review of the rail transit agency more frequently than every three years. FTA agrees that the reviews may be conducted in an ''ongoing manner.''

FTA disagrees with the commenter that additional language is needed to address oversight findings from the three-year safety or security review. Section 659.37 requires that rail transit agencies develop corrective action plans to address three-year review findings. Subsequently, the corrective actions must be implemented and tracked according to § 659.37 requirements.

Hazard Management Process

FTA proposed that each rail transit agency develop and implement a hazard management process that has been reviewed and approved by the state oversight agency. Two comments were received. One commenter agreed with FTA's process while another recommended that FTA delete the hazard management process section and make reference to it only in the proposed § 659.13 (system safety program standard) in the NPRM.

FTA Response. We disagree with the commenter who suggested referencing the hazard management process solely in the system safety program standard section. The hazard management process is central to system safety and warrants its own section within this rule.

Accident Notification and Investigation

In the NPRM, FTA proposed revisions to the definition of accident to provide greater consistency with the notification and investigation requirements used by the NTSB as well as reporting thresholds established by FTA's NTD. Further, FTA proposed defining accident in relation to the activities required by the rail transit agency and oversight agency after the occurrence of an event deemed an accident. FTA proposed in the NPRM that the oversight agency must require the rail transit agency to notify the oversight agency within two (2) hours of any event involving a rail transit vehicle or taking place on rail transit-controlled property where one or more of the following occurs:

(1) A fatality, where an individual is confirmed dead within thirty (30) days of a transit-related incident, excluding suicides and deaths from illness;

(2) Injuries requiring immediate medical attention away from the scene for two or more individuals;

(3) Property damage to rail transit vehicles, non-rail transit vehicles, other rail transit property or facilities that equals or exceeds $25,000;

(4) An evacuation due to life safety reasons; or

(5) A main-line derailment.

In addition the oversight agency must require rail transit agencies that share track with the general railroad system and are subject to the Federal Railroad Administration notification requirements to notify the oversight agency within two (2) hours of an incident for which the rail transit agency must notify the Federal Railroad Administration.

A majority of the commenters addressed the definition or thresholds for accident notification and investigation in several ways. Two commenters suggested that the two-hour notification requirement adds an unreasonable burden on the rail transit agency, especially during a catastrophic event, and recommended that FTA change the time period to four hours. One commenter recommended that FTA further define what constitutes ''notification,'' questioning whether or not an individual from the state oversight agency should be required to be available to receive the notification twenty-four (24) hours a day, seven (7) days a week or if it is sufficient that a message is left or fax is sent within the two (2) hour window. The commenter suggested that this might influence state resource allocation.

Several commenters expressed concern over the definition of fatality, noting that a fatality may be difficult to ''[confirm] within thirty (30) days of a transit incident,'' given increased constraints on retrieving patient information due to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). A few commenters suggested that the 30-day confirmation period should be removed, while one commenter suggested it be reduced to twenty-four (24) hours.

Several commenters recommended that state oversight agencies be notified of all fatalities, including suicides. Several of these commenters noted that the determination of cause of death might not be made within the first two hours after the incident. Other commenters noted that FRA and NTSB do not make distinctions between a fatality and a suicide, and that a situation may occur where the NTSB or FRA may be notified of a fatality but the state oversight agency would not.

Relating to the notification threshold for injuries, some commenters recommended that FTA maintain the current definition, which requires notification by the rail transit agency when an incident occurs resulting in a single injury instead of ''two or more persons'' in the NPRM. These commenters suggested that under FTA's proposed threshold for injury, an incident in which a person is struck by a train and is transported to the hospital would not be reported to the oversight agency. One commenter also noted that FTA's NTD requires the reporting of one person injured in a collision occurring on a rail right-of-way. Other commenters suggested that while the NPRM attempted to align definitions with NTD, in some areas conflicts remain.

Several commenters objected to the reduction in the property damage threshold from $100,000 in the current rule to $25,000 in the NPRM. Many of these commenters indicated that in lowering the threshold, rail transit agencies and state oversight agencies would face an unnecessary increase in notifications, and there would be an increased burden in investigating and tracking these accidents. Most commenters recommended that FTA maintain the $100,000 property damage notification threshold. One commenter suggested that the qualification of property damage to only ''rail transit vehicles, non-rail transit vehicles, [or] other rail transit property or facilities'' limits applicable items, and that since the current rule includes all property damage and provides the necessary information, it should be retained.

Several commenters proposed that FTA either delete the definition of individual for threshold purposes, or make it broader to ensure that pedestrians are included. Another commenter suggested that the term ''person'' be used, as no fatality should go unreported.

Some commenters recommended that FTA either add a definition for ''medical attention'' or clarify the term ''injury,'' to clarify that the intent of the rule is not to require immediate notification for very minor items.

Some commenters objected to the proposed location of the incident ''involving a rail transit vehicle or taking place on rail transit-controlled property,'' suggesting that FTA should limit the requirement for notification to those instances where an event has occurred only when it involves the operation of the rail transit vehicle, and not in such places as offices, parking lots and other areas that do not involve rail transit operations.

In reference to requirements for accident investigation, § 659.29, FTA proposed, ''[t]he oversight agency must investigate, or cause to be investigated, at a minimum, any event involving a rail transit vehicle or taking place on rail transit-controlled property meeting the fatality, injury, or property damage thresholds identified in § 659.27(a).'' Relating to the threshold for investigations, one commenter suggested that the NPRM creates a large investigative workload. Some

commenters recommended that FTA also make a distinction between FTA-reportable (those meeting the fatality, injury, and property damage thresholds for notification) and non-reportable (namely, the evacuation and main-line derailment thresholds), to ensure that the non-reportable incidents are still logged, reviewed and tracked for possible identification of trends and patterns.

Additionally, the NPRM proposed, ''(b) The oversight agency must use approved investigation procedures that have been submitted to FTA as required in the initial submission or annual submission'' and ''(c) In the event the oversight agency designates the rail transit agency to conduct investigations on its behalf, it must do so formally and require the rail transit agency to use investigation procedures that have been formally approved by the oversight agency.''

Some commenters recommended that the required investigation process for the analysis of probable or multiple causal determinations be standardized across the industry. Another commenter recommended that the state oversight agency's procedures include the rail transit agency's own investigation of the accident.

The NPRM proposed, ''(d) Each investigation must be documented in a final report that includes a description of investigation activities, identified causal factors, and a corrective action plan. (1) The final investigation report must be submitted to the oversight agency in a format and timeframe specified by the oversight agency. (2) The oversight agency must review and formally approve each final investigation report. (3) The oversight agency shall have the authority to require periodic status reports that document investigation activities and findings in a time frame determined by the oversight agency.''

One commenter objected to the requirement for the state oversight agency to approve the rail transit agency investigation report, indicating that the investigating party must be given autonomy for findings in the final report and that any state comments should be made during the drafting phase. Another commenter suggested that the proposed rule for accident investigations relied on transparency between the agencies and that the rail transit agencies must release, or make available, all essential information to the state oversight agency in order for the state to adequately review the determination of cause(s).

Finally, one commenter recommended that FTA require sending the final investigation report to the rail transit agency's executive director or general manager.

FTA Response. In light of the comments submitted relating to the accident notification and investigation sections of the rule, FTA has made changes to these requirements. For instance, we will require the rail transit agency to notify an oversight agency of all fatalities, and will not exclude suicides from the notification process. We agree with those commenters who suggested that the cause of death might not be readily apparent and that it should not be the role of the rail transit agency or state oversight agency to make that determination. In addition, suicides on urban rail systems are a visible problem and the oversight agency should be notified when they occur. Safety issues may be involved in these incidents, and corrective actions could potentially prevent additional suicides.

In reference to the notification threshold for a fatality, FTA disagrees with the commenters who noted that it might be difficult to track the status of an individual for thirty (30) days to determine whether or not the individual has been confirmed dead, thus requiring notification of the state oversight agency and compliance with subsequent investigation and corrective action plan requirements. Furthermore, FTA believes that the rail transit agency's representative(s) responsible for risk management, legal duties, or claims will either be notified of the confirmed death or will track status information. In addition, rail transit agencies must currently track this information for NTD reporting. For these reasons we did not revise the 30-day tracking period.

FTA agrees with commenters indicating that noteworthy incidents, such as a collision between a train and a person would go unreported under the notification threshold for two (2) or more injuries in the NPRM. Furthermore, we agree that there are still discrepancies between notification and investigation thresholds in the NPRM and those of the data reporting thresholds for ''major events'' within the NTD Program and notification thresholds for NTSB. While we believe that minor inconsistencies will remain, we have made changes to the accident notification and investigation thresholds in an effort to increase the coordination between the above stated programs. Most significantly, FTA has changed the accident notification and investigation thresholds to mirror all eight (8) NTD ''Major Event'' thresholds, not just the first five (5) thresholds identified in the NPRM. In addition to the five (5) thresholds identified in the NPRM, rail transit agencies are now also required to notify state oversight agencies in the event of a mainline derailment, a collision with person(s) on a rail right-of-way, and a collision between a rail transit vehicle and another rail transit vehicle or a transit non-revenue vehicle.

We agree with several commenters who requested greater clarity for key definitions within the accident notification and investigation thresholds, namely individual and medical attention. We have more clearly identified the definition of ''individual'' to include pedestrians and other persons. While there are distinctions between the types of individuals, FTA intends that all persons who suffer injuries that require medical attention away from the scene of the incident or end in fatality are individuals under this rule. Historically, FTA excluded the reporting of fatalities and injuries of employees and trespassers under the State Safety Oversight Program.

FTA agrees with one commenter who recommended FTA clarify that the intent of this rule is not to require state safety oversight agency notification for very minor injuries. For consistency, the use of ''immediate medical attention'' in this rule should be interpreted as it is used under FTA's NTD program. The following is an excerpt from the NTD reporting manual and clarifies FTA's intent within this rule:

> The definition of injury requires immediate medical attention away from the scene. Immediate medical attention includes, but is not limited to, transport to the hospital by ambulance. If an individual is transported immediately from the incident scene to a hospital or physician's office by another type of emergency vehicle, by passenger vehicle, or through other means of transport, this is also considered an injury. An individual seeking medical care several hours after an incident or in the days following an incident is not considered to have received immediate medical attention. In cases that are less clear-cut, reporters should apply their judgment in determining whether the injury sustained caused the individual to immediately seek medical attention.
>
> The medical attention received must be at a location other than the location at which the incident occurred. The intent of this distinction is to exclude incidents that only require minor first aid or other assistance received at the scene. This distinction is not, however, intended to be burdensome for the [rail] transit agency. It is not a requirement that an agency follow-up on each person transported by ambulance, for example, to ensure that they actually received medical attention at the hospital. It is acceptable to count each person immediately transported by ambulance as an injury. If, however, an agency representative does choose to follow-up with the hospital and finds that, though an individual was transported to the hospital, he did not receive any medical attention, this

individual does not need to be reported as an injury.''

We disagree with commenters suggesting that the two-hour notification requirement does not provide an adequate amount of time for the rail transit agency to notify the oversight agency, especially during catastrophic events. While we understand that a catastrophic event can overwhelm rail transit agency personnel, we believe that two (2) hours is reasonable and mirrors requirements by the NTSB, and may provide more time than the ''immediate notification'' required by FRA.

In reference to the format in which notifications are made and state oversight agency personnel availability, we believe that these decisions are best left to the state to identify and define. FTA believes it is reasonable to expect state oversight agency and rail transit agency representatives to identify a practical process that ensures the oversight agency is notified appropriately and can carry out subsequent activities.

We agree with commenters who noted that the qualifying of property damage as applying only to ''rail transit vehicles, non-rail transit vehicles, [or] other rail transit property or facilities'' limits applicable items. To clarify FTA's intent, FTA has removed the qualifiers and requires notification when an accident equals or exceeds $25,000 in total accident damage. Consistent with NTD and NTSB requirements, property damage to both transit and non-transit property should be included in the estimate. While many commenters objected to the reduction in the property damage threshold, we believe that the $25,000 notification and investigation threshold is appropriate and reflects the current requirements of the NTSB.

FTA disagrees with recommendations to constrain the applicability of the accident notification and investigation thresholds to only those incidents ''involving the operation of a transit vehicle,'' ignoring incidents that occur in parking lots, stations, and other areas of rail transit property and responsibility. We believe that this rule limits notification and investigation to only the most serious events that might occur on rail transit property. As such, we believe that in accordance with the intent of state safety oversight, these events should be reported to the state in a timely manner to ensure the state's ability to investigate and require corrective actions, as required under Section 5330 of the enabling legislation. Furthermore, FTA has interpreted the state safety oversight legislation to include security considerations. In so doing, FTA requires the rail transit agency to report security incidents that meet the notification thresholds to the oversight agency. We believe that passenger safety and security are often interrelated and each passenger should expect to be free from danger, unintentional or intentional, to the extent that it is reasonably practicable. As such, we believe that efforts by the rail transit agency, in accordance with state oversight, should be applied system-wide and not limited to only specific passenger or vehicle operations.

As mentioned above, accident investigation thresholds have been changed to accurately reflect thresholds identified in the NTD major event category. FTA disagrees with the commenter who suggested that the NPRM creates a large investigative workload. Under the old definition of accident, states were required to investigate all single person events in which an individual was treated for injuries away from the scene (the majority of these events were slips, trips and falls in transit stations and vehicles). The new accident investigation thresholds actually lessen the investigative burden by only requiring investigation of single person events in which there has been a train/person collision or a collision between a rail transit vehicle and another rail transit vehicle or a transit non-revenue vehicle. Some commenters expressed concern over the exclusion of all single person events meeting the injury threshold under the old rule. FTA requires this threshold to be identified in the hazard management process developed by the rail transit agency. We believe that an effective identification process within a hazard management resolution program would include single person events as a source for hazards or potential hazards. We believe that the changes are necessary to capture incidents with serious consequences. FTA acknowledges that while one set of thresholds will not necessarily accommodate different modal considerations or state and local resource allocation and burden, they support our intent to standardize the reporting and investigation of accident causal factors and mitigating activities, and allow us to identify proactive activities that prevent fatalities, serious injury and major system loss. Finally, we believe it is imperative that oversight agencies are notified of accidents within a timeframe consistent with that of the NTSB notification requirement.

FTA has clarified the investigation reporting requirements to ensure that rail transit agency investigation reports maintain their autonomy, while assuring the state's right to conduct its own investigation. However, FTA kept the requirement for state oversight agencies to review and approve corrective action plans.

With reference to the requirements for state approval of investigation reports, FTA agrees with the commenter recommendation to not require such approval. FTA did not intend the state oversight agency to formally review and approve the rail transit agency's investigation report. In those instances where the oversight agency has authorized the rail transit agency to conduct an investigation on its behalf, FTA intends that the oversight agency review and approve the report for the oversight agency's own internal process, not for the rail transit agency. This investigation report is now the responsibility of the oversight agency, which must either formally approve it or amend the report prior to adopting it as its final investigation report.

FTA also allows the oversight agency to contract for this service and/or allow the rail transit agency to conduct some of the investigations. For each accident that meets the investigation thresholds, the oversight agency must approve the investigation report. They must also require the rail transit agency to develop corrective action plans to address accident findings. These plans must then be reviewed and approved by the oversight agency. In addition, the oversight agency must establish a process to resolve any disagreements in the event that the two agencies cannot reach an agreement on the corrective action plan.

FTA disagrees with the recommendation to require the submission of the final investigation report to the rail transit agency's chief executive. While FTA encourages inter and intra-agency communication and coordination, we did not specify the distribution list for the final investigation report. However, there is no language in this part that limits the rail transit agency safety manager from providing the chief executive with a copy of the investigation report, and FTA encourages this level of intra-agency coordination.

Finally, FTA recommends that rail transit agencies and oversight agencies develop investigation procedures and apply them consistently. However, FTA did not require standardization of the investigation process across the industry as some commenters recommended. We believe that there are different, yet equally effective, methods of conducting accident investigations. Furthermore, we believe it is the responsibility of rail

transit agencies and their state oversight agency counterparts to determine which investigative methodology is most effective.

Corrective Action Plans

FTA proposed that oversight agencies review and formally approve corrective action plans.

Two commenters recommended that FTA should not require state oversight agencies to approve corrective action plans. Three commenters suggested that FTA require corrective actions plans be developed after safety and security internal audits and any annual reviews that may be performed by the rail transit agency.

One commenter proposed a clarification change in the language from ''* * * its process for the review and approval of a corrective action plan,'' to ''* * * the Transit Agency's process for the review and approval of the corrective action plan.''

FTA Response. FTA disagrees with commenters who suggested that FTA not require oversight agency review and approval. Given that oversight agency approval is only necessary for corrective actions developed resulting from three-year safety and security reviews and the results from accident investigations, FTA believes that oversight agency participation is not intrusive or overbearing. State oversight agencies are required by the enabling legislation to investigate and approve corrective actions, and FTA believes that an independent assessment of the developed corrective actions not only meets the intent of safety oversight, but also provides the necessary objectivity to ensure that rail transit agencies have prioritized safety and security activities to meet the most critical and pressing needs.

FTA also disagrees with the commenters that recommend developing corrective action plans to address findings from rail transit agency internal audits. FTA believes that some level of autonomy is necessary when the rail transit agency conducts its own internal safety and security audit process. We recommend that the state oversight agency work with the rail transit agency to identify the criteria for which findings from internal safety and security audits are subject to the hazard identification and subsequent resolution process.

Oversight Agency Reporting to the Federal Transit Administration

One commenter suggested spreading the reporting requirements specified in the NPRM over a two-year period so that states operating under a deficit are not unnecessarily burdened. Two commenters requested that FTA allow a minimum one-year grace period to states for implementation of new regulations. One of these commenters went on to recommend that the rule identify the records required to be maintained and specify the required retention periods.

One commenter recommended that the rule explicitly specify the requirements of the initial submission, including its program standard, procedures or process for reviewing and approving the rail transit agencies' system safety program plans, investigatory procedures, and criteria for the development of the rail transit agencies' corrective action plans to correct, eliminate, minimize or control investigated hazardous conditions. The commenter went on to recommend that the rule explicitly name the types of periodic submissions that FTA may request.

Three commenters suggested that the rule provide a list of any records that must be maintained by the oversight agency and specify the required retention periods. Two of those commenters stated that the rule should also provide the same information for transit agencies.

Finally, one commenter suggested that reporting requirements were too burdensome to states and FTA should identify a mechanism to improve the effectiveness of annual reporting without affecting the quality of reporting.

FTA Response. FTA asked commenters to make recommendations in reference to the timeframe for requiring initial submissions, once the state safety oversight rule takes effect. Two commenters recommended providing one year from the rule's date of effectiveness to achieve compliance. One commenter suggested that one year may be too ambitious and requested that states be allowed extensions if needed, due to legislation issues. FTA agrees and will allow one year from the rule's date of effectiveness for states to comply with rule requirements. However, in those cases where state legislatures may only meet once every two years, FTA may entertain an exception to the compliance date. FTA will address this subject through future guidance.

FTA expects that each oversight agency will submit its entire program standard and all program procedures developed to support the oversight activities required by this rule. This includes all procedures associated with the oversight agency's implementation of its program identified in § 659.19 and each procedure that requires action by the oversight agency. FTA disagrees that we should identify every procedure to be submitted and believes that it is not necessary to burden the rule with what may be redundant requirements, without greater justification.

While one commenter presented an exhaustive list of information FTA may request as part of a periodic submission, FTA believes it is unnecessary to identify each potential submission in the text of the rule. Instead, FTA will identify needed material on a case-by-case basis and work with the oversight agency to obtain needed material. Similarly, FTA decided not to identify records that the oversight agency should maintain. We believe that the oversight agency should maintain the necessary records for the effective development, management, and implementation of its oversight duties.

FTA is requiring electronic data collection for oversight agency reporting. FTA agrees that the quality of information collected is of the greatest importance.

Conflict of Interest

The NPRM proposed that the oversight agency must prohibit a party or entity from providing services to both the oversight agency and the rail transit agency, when a conflict of interest exists.

A few commenters suggested that FTA either define conflict of interest in the rule, or provide a clarification of the scope of services to be performed by a contractor. One commenter also suggested that this might limit the number of contractors eligible to compete for proposals.

FTA Response. The intent of state safety oversight is to establish an independent agency to oversee the implementation of safety and security programs by the rail transit agency. The independent agency must adhere to the requirements in this rule and ensure that any rail transit agency within its jurisdiction also adheres to these requirements. FTA believes that the state designated agency must function without prejudice; this extends to procuring a contractor to perform oversight activities. The selected contractor must be able to perform its duties on behalf of the state with the same level of impartiality, without conflict of interest. FTA believes it is in the best interest of the State Safety Oversight Program to take steps to ensure that contractors can effectively perform their duties without bias. FTA also believes that each state is in a better position to define the conflict of interest provisions necessary to meet the intent

of state safety oversight while contracting for services.

VI. Section-by-Section Analysis

Purpose (§ 659.1)

This section explains that FTA is implementing the requirements of 49 U.S.C. 5330, which requires a state to establish an agency to oversee the safety of rail fixed guideway systems. This rule directs the oversight agency to develop a program standard, including a security element, and to require the rail transit agency to develop a security plan and a separate system safety program plan that complies with the program standard and requirements of this rule. In addition, the oversight agency must conduct safety and security reviews and ensure the conduct of accident and hazard investigations. The oversight agency must also ensure that corrective action plans are developed and implemented to address findings from accident and hazard investigations and track implementation to resolution. The oversight agency must ensure that the rail transit agency implements its system safety program plan and security plan effectively.

Scope (§ 659.3)

This section explains that the rule applies only to states with rail fixed guideway systems, as defined in this part.

Definitions (§ 659.5)

Contractor

''Contractor'' means an entity that performs tasks required by this part on behalf of the oversight or ''rail transit agency.'' The ''rail transit agency'' may not be a ''contractor'' for the ''oversight agency.''

Corrective Action Plan

''Corrective action plan'' means a plan developed to set forth the actions the ''rail transit agency'' will take to minimize, control, correct, or eliminate ''hazards,'' and the schedule for implementation for those actions.

FRA

''FRA'' means the Federal Railroad Administration, an agency within the U.S. Department of Transportation.

FTA

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

Hazard

''Hazard'' means any real or potential condition (as defined in the ''rail transit agency's'' hazard management process) that can cause injury, illness, or death; damage to or loss of a system, equipment or property; or damage to the environment.

Individual

''Individual'' means a passenger; employee; contractor; other rail transit facility worker; pedestrian; trespasser; or any person on rail transit-controlled property.

Investigation

''Investigation'' means the process used to determine the causal and contributing factors of an accident or hazard, so that actions can be identified to prevent recurrence. The oversight agency is ultimately responsible for the conduct of the investigation and the resulting findings. An investigation may be conducted by an entity acting on behalf of the oversight agency, providing the procedures to be used during the investigation have been reviewed and approved by the oversight agency and submitted to FTA. If the rail transit agency conducts the investigation on behalf of the oversight agency, the oversight agency must either adopt the findings from the investigation or successfully negotiate any disputes that result from the findings. In the event there is a dispute over investigation findings, if there is no resolution, the oversight agency must either conduct its own investigation or amend the rail transit agency findings with its opinion. There must not be conflicting corrective actions to address investigation findings.

New Starts Project

''New Starts Project'' means any rail fixed guideway system funded under FTA's 49 U.S.C. 5309 discretionary construction program.

Oversight Agency

''Oversight Agency'' means the entity, other than the rail transit agency, designated by the state or several states to implement this part.

Passenger

''Passenger'' means a person who is on board, boarding, or alighting from a rail transit vehicle for the purpose of travel. The intent of this definition is to make a distinction between individuals that are physically on the rail transit vehicle, or those in the process of entering or leaving the rail transit vehicle, and non-passengers such as pedestrians or trespassers as categorized under the National Transit Database (NTD).

Passenger Operations

''Passenger operations'' means the period of time commencing when any aspect of rail transit agency operation is initiated with the intent to carry passengers. In the previous rule, there was confusion over the definition of revenue service; did it mean the period the agency opened its doors to the public, or simply when a passenger boarded the first rail transit vehicle of the day. In this rule, FTA uses the former definition. Once the rail transit agency initiates its first action with the intent to carry passengers, it is considered to be in passenger operations.

Program Standard

''Program standard'' means a written document developed and adopted by the oversight agency, that describes the policies, objectives, responsibilities, and procedures used to provide rail transit agency safety and security oversight.

Rail Fixed Guideway System

''Rail fixed guideway system'' means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that:

(1) is not regulated by the Federal Railroad Administration; and

(2) is included in FTA's calculation of fixed guideway route miles, or receives funding under FTA's formula program for urbanized areas (49 U.S.C. 5336); or

(3) has submitted documentation to FTA indicating its intent to be included in FTA's calculation of fixed guideway route miles to receive funding under FTA's formula program for urbanized areas (49 U.S.C. 5336).

Rail Transit Agency

''Rail transit agency'' means an entity that operates a rail fixed guideway system. If the grantee has contracted out operations and maintenance of the rail fixed guideway system, it maintains full accountability to ensure that all requirements identified in the oversight agency's program standard and this rule are met.

Rail Transit-Controlled Property

''Rail transit-controlled property'' means property that is used by the rail transit agency and may be owned, leased, or maintained by the rail transit agency. FTA does not distinguish between different types of rail transit-controlled property, meaning that an accident meeting the notification and investigation thresholds of this section must prompt notification of the oversight agency, regardless of where it occurred on rail transit-controlled property.

Rail Transit Vehicle

''Rail transit vehicle'' means the rail transit agency's rolling stock. This definition includes vehicles used for carrying ''passengers'' and providing maintenance (*i.e.*, high-rail vehicle).

Safety

''Safety'' means freedom from harm resulting from unintentional acts or circumstances.

Security

''Security'' means freedom from harm resulting from intentional acts or circumstances. Intentional danger includes crimes and must be reported to the oversight agency if the intentional act meets the thresholds for notification as specified in this rule.

State

''State'' means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

System Safety Program Plan

''System safety program plan'' means a document developed and adopted by the rail transit agency, describing its safety policies, objectives, responsibilities, and procedures.

System Security Plan

''System security plan'' means a document developed and adopted by the rail transit agency, describing its security policies, objectives, responsibilities, and procedures. The system security plan must be a separate document from the system safety program plan.

Withholding of Funds for Noncompliance (§ 659.7)

Authority for this section is based on 49 U.S.C. 5330, which directs FTA to withhold federal funding from a state or an urbanized area in the state. FTA is authorized to withhold up to five percent of an affected urbanized area's apportionment if FTA determines the state is not in compliance or making adequate efforts to comply with the rule. Withheld formula funds will be restored if the state is in compliance within two (2) years.

Designation of Oversight Agency (§ 659.9)

This section directs the state to select an agency to oversee the rail fixed guideway system and prohibits the state from selecting the rail transit agency to perform this role. It also prohibits the state from selecting an agency for which a conflict of interest—as determined by FTA—exists that would prevent the oversight agency from carrying out its activities in an unbiased manner.

The rule requires that the state's designation, at a minimum, coincides with the execution of a grant agreement between FTA and the rail transit agency for a New Starts project or prior to the application for any formula funds.

Designation means that the Governor for the affected state would identify an agency, and a point of contact from that agency who will assume oversight responsibility. Designation, for purposes of the final rule, may occur prior to the passage of enabling legislation or other activities that may be necessary for the oversight agency to assume its responsibilities for implementing part 659 requirements.

After designation, the state would have sixty (60) days to provide FTA with a designation submission, which would include: (1) Identification of the agency most likely to provide oversight; (2) a description of its current authorities relating to rail transit safety and security oversight; (3) a point of contact within the designated agency to coordinate program development with FTA; (4) identification of any potential conflicts of interest between the designated agency and the rail transit agency, based on financial or shared management responsibilities; and (5) a proposed schedule describing major milestones to ensure implementation of the state's oversight program before the start of passenger operations at the rail transit agency.

For rail transit agencies that operate, or will operate, in more than one state, the affected states may each designate an agency of the state to implement state safety oversight requirements, or may agree to designate one agency of one state, or an agency representative of each state. After the states designate an agency, a single program standard, adopted by each state, must be developed to implement state safety oversight program requirements. This will allow the rail transit agency to develop a seamless program that is equally applicable in all affected states, rather than being burdened with requirements from two or more states.

States that have already designated an approved agency to FTA are not required to re-designate. However, if a state changes its designation, the new oversight agency must submit a new initial submission to FTA within thirty (30) days of the change, consistent with § 659.39.

Confidentiality of Investigation Reports (§ 659.11)

This section allows states to prohibit an investigation report prepared or adopted by the oversight agency from being admitted into evidence or used in a civil action. In addition, this part does not require public availability of the rail transit agency's security plan.

Oversight Agency Overview and Program Standard (§ 659.13–15)

This rule removes the reference to the *APTA Manual* from the requirements for a State Safety Oversight Program standard. FTA has prepared a list of nine (9) elements that must be included in a program standard, including minimum requirements to address oversight agency authority and specific interfaces with the rail transit agency.

The program standard must address both safety and security and be submitted to FTA with the oversight agency's initial submission. If the oversight agency modifies its program standard it must submit the revised version to FTA.

System Safety Program Plan (§§ 659.17–19)

The rule stipulates that the oversight agency must require the rail transit agency to develop and implement a written system safety program plan that complies with the oversight agency's program standard. FTA has identified twenty-one (21) elements that, at a minimum, must be addressed by the rail transit agency. The rail transit agency must submit its system safety program plan—and any subsequent revisions—to the oversight agency for review and approval.

System Security Plan (§§ 659.21–23)

The rule requires that the system security plan is developed and maintained separately from the rail transit agency's system safety program plan. FTA considers the system security plan to be sensitive information and has not established any requirements preventing the state, oversight agency, or rail transit agency from protecting the system security plan and any referenced procedures from public disclosure. The oversight agency and rail transit agency must identify a process by which the oversight agency can review and approve the system security plan without compromising sensitive information. Throughout this process, the transit system and the oversight agency must comply with all regulations relating to the non-disclosure of sensitive information in 49 CFR part 1520.

FTA, to the best of its knowledge, has not established any requirements for the system security plan that are in conflict with Department of Homeland Security (DHS) directives. The DHS is the lead Federal agency on security matters, including transportation, and FTA collaborates closely with them.

Annual Review of System Safety Program Plan and System Security Plan (§ 659.25)

The rule specifies that the oversight agency must require the rail transit agency to conduct an annual review of its system safety program plan and system security plan. This review may simply result in the determination that no update is necessary in either plan, or it may result in more substantive changes to one or both plans.

In the event that the system safety program plan is modified, the rail transit agency must submit the modified plan and any subsequently modified procedures to the oversight agency for review and approval. When the plan is approved, the oversight agency must issue a formal letter of approval to the rail transit agency.

In the event that the system security plan is modified, the rail transit agency is required to make it available to the oversight agency for review and approval. When the plan is approved, the oversight agency must issue a formal letter of approval to the rail transit agency.

Internal Safety and Security Reviews (§ 659.27)

Each rail transit agency must conduct internal safety and security reviews as described in its procedures. The rail transit agency must document this process in its system safety program plan for review and approval by the oversight agency. The rail transit agency must notify the oversight agency at least thirty (30) days before conducting a scheduled review, in a manner acceptable to the oversight agency without placing undue burden on the rail transit agency.

The internal safety and security reviews must be conducted throughout the year, with all elements to be reviewed completed within a three-year cycle. The rail transit agency must provide the oversight agency with all checklists and procedures used to conduct its safety reviews, and make available checklists and procedures for conducting security reviews, provided this does not compromise sensitive information.

The oversight agency must require the rail transit agency to submit an annual report documenting internal safety and security review activities and the status of subsequent findings and recommendations. The security section of this report must be made available to the oversight agency in a manner that does not compromise sensitive information. The annual report must be accompanied by a formal letter of certification signed by the rail transit agency's executive director or general manager, indicating that the rail transit agency is in compliance with its system safety program plan and system security plan. In the event that the rail transit agency is not in compliance with its own system safety program plan or security plan, the rail transit agency must identify the actions it is taking to achieve compliance, including a schedule and the department that is responsible. The oversight agency must formally review and approve this report.

Oversight Agency Safety and Security Reviews (§ 659.29)

At least every three (3) years, the oversight agency must conduct an on-site review of the rail transit agency's implementation of its system safety program plan and system security plan. The rule also requires that the oversight agency prepares and issues a report containing findings and recommendations resulting from that review, which, at a minimum, must include an analysis of the effectiveness of the system safety program plan and the security plan and a determination of whether either should be updated. Based on the results of this on-site review, the oversight agency must ensure that corrective action plans are developed to address review findings.

The rail transit agency's system safety program plan and system security plan may be reviewed in an ongoing manner over the three-year timeframe, or in a comprehensive on-site review, once every three years.

Hazard Management Process (§ 659.31)

The rule requires the rail transit agency to develop a process to identify and resolve hazards during operation, system extensions, modifications, or changes (including procedural changes). This process would replace the current requirements for the notification and investigation of unacceptable hazardous conditions, and ensure that the oversight agency has an ongoing role in the rail transit agency's hazard identification and resolution process.

As part of the system safety program plan, the oversight agency must require the rail transit agency to develop a hazard management process, to be reviewed and approved by the oversight agency. This process must, at a minimum: (1) Define the rail transit agency's approach to hazard management and the implementation of an integrated system-wide hazard resolution process; (2) specify the sources of, and the mechanisms to support, the on-going identification of hazards; (3) define the process by which identified hazards will be evaluated and prioritized for elimination or control; (4) identify the mechanism used to track to resolution the identified hazards; (5) define minimum thresholds for the notification and reporting to oversight agencies of hazards; and (6) specify the process by which the rail transit agency will provide on-going reporting of hazard resolution activities to the oversight agency.

Accident Notification (§ 659.33)

The oversight agency must require the rail transit agency to notify the oversight agency within two (2) hours of any incident involving a rail transit vehicle or taking place on rail transit-controlled property, where one or more of the following occurs:

(1) A fatality at the scene; or where an individual is confirmed dead within thirty (30) days of a rail transit-related incident;

(2) Injuries requiring immediate medical attention away from the scene for two or more individuals;

(3) Property damage to rail transit vehicles, non-rail transit vehicles, other rail transit property or facilities, and non-transit property that equals or exceeds $25,000;

(4) An evacuation due to life safety reasons;

(5) A collision at a grade crossing;

(6) A main-line derailment;

(7) A collision with an individual on a rail right of way; or

(8) A collision between a rail transit vehicle and another rail transit vehicle or a rail transit non-revenue vehicle.

These events could take place on a rail transit vehicle or on rail transit-controlled property, and could involve rail transit passengers, employees, contractors, rail transit facility occupants, other workers, trespassers, or other persons.

For rail transit agencies that share track with the general railroad system and are subject to FRA notification requirements, the rule requires notifying the oversight agency within two (2) hours of an incident for which the rail transit agency must notify the FRA. FTA believes this is necessary to address the role of the State Safety Oversight Program in the FRA's waiver process at 49 CFR parts 209 and 211.

The rule requires that the oversight agency identify in its program standard

the information to be provided by the rail transit agency with the method of notification.

Investigations (§ 659.35)

At a minimum the oversight agency must investigate, or cause to be investigated, any incident involving a rail transit vehicle or taking place on rail transit-controlled property meeting the notification thresholds identified in the notification § 659.33(a).

These thresholds correspond closely to the thresholds required by the NTSB for rail transit agency notification of events that may be subsequently investigated by the NTSB, as well as the thresholds identified in the NTD for major incidents.

In meeting this requirement, the oversight agency must ensure that the investigation is conducted according to procedures reviewed and approved by the oversight agency and submitted to FTA. In the event the oversight agency designates the rail transit agency to conduct the investigation on its behalf, it must do so formally and require the rail transit agency to use investigation procedures that have been formally approved by the oversight agency and submitted to FTA to fulfill the oversight agency's initial or annual submission requirements.

The rule specifies that each investigation must be documented in a final report that includes a description of investigation activities, causal factors and contributing factors, and a corrective action plan. The rule provides the oversight agency with the flexibility to determine, in its program standard, when the final investigation report must be submitted to the oversight agency, the format of the final report, and whether status updates or preliminary findings should also be submitted according to a timeframe specified by the oversight agency.

The oversight agency is ultimately responsible for the investigation and the final report. The oversight agency may adopt the final report, findings, and corrective actions submitted by the rail transit agency or conduct its own investigation to determine findings. If a dispute relating to investigation findings should arise between the oversight agency and the rail transit agency, the oversight agency is responsible for resolving the dispute to ensure that corrective actions are developed to address report findings and requiring periodic status reports that document investigation activities and findings.

Corrective Action Plans (§ 659.37)

The rule consolidates all requirements for corrective action plans into a single section. The rule specifies that the oversight agency, at a minimum, require the rail transit agency to develop a corrective action plan for the following occurrences: (1) results from investigations in which identified causal and contributing factors are determined by the rail transit agency or oversight agency as requiring corrective actions; and (2) findings from safety and security reviews performed by the oversight agency. Requirements for corrective action plan development for identified hazards are to be specified by the rail transit agency in the hazard management process.

The rule specifies that each corrective action plan must identify the action to be taken by the rail transit agency, the schedule for its implementation, and the department responsible for its implementation. The corrective action plan must be reviewed and formally approved by the oversight agency. The oversight agency is required to monitor the implementation of each approved corrective action plan.

The rule specifies that the oversight agency must require the rail transit agency to provide (1) verification that the corrective action(s) has been implemented as detailed in the corrective action plan or a proposed alternate action(s) subject to oversight agency review and approval and (2) periodic reports as requested by the oversight agency describing the status of each corrective action(s) not completely implemented as described in the corrective action plan.

Oversight Agency Report to the Federal Transit Administration (§ 659.39)

The rule requires that all submissions to FTA be made electronically. At the current time, FTA anticipates that this reporting would occur in an Internet-based format, as a secure page on FTA's existing safety and security Web site. Until the system is in place, FTA requires that annual submissions be made through electronic mail or on CD-ROM through regular mail. Oversight agencies will be notified when the Internet-based system is operational.

For initial submissions, the rule specifies that each designated oversight agency must submit to FTA: (1) oversight agency program standard and referenced procedures; and (2) certification that the system safety program plan and the system security plan have been developed, reviewed, and approved. In states with rail fixed guideway systems in passenger operations, as of the publication date of this rule, the designated oversight agency must make its initial submissions to FTA no later than one year after the publication of the final rule. In states with rail fixed guideway systems entering passenger operations *after* the publication date of this rule, the designated oversight agency must make its initial submission within the time frame proposed by the state in its designation submission and approved by FTA.

This rule requires that oversight agencies make annual submissions prior to March 15 of each year using a reporting system specified by FTA. The annual submission would require the following: (1) Publicly available annual report summarizing its oversight activities for the preceding twelve months; (2) report documenting and tracking findings from three-year safety and security review activities, and whether a three-year safety or security review has been completed since the last annual report was submitted; and (3) program standard and supporting procedures that have changed during the preceding year.

Finally, FTA has the authority to request periodic submissions from oversight agencies, which may include status reports for accident investigations, hazards, and corrective action plans.

Conflict of Interest (§ 659.41)

This rule requires the oversight agency to prohibit a person or entity from providing services to both the state safety oversight agency and rail transit agency when a conflict of interest exists.

Certification of Compliance (§ 659.43)

This rule requires that each oversight agency annually certify electronically to FTA that it has complied with the requirements of the State Safety Oversight Program. The oversight agency must maintain a signed copy of each annual certification, subject to audit by FTA.

VII. Distribution and Derivation Tables

DISTRIBUTION TABLE

Old section	New section(s)
659.1	659.1
659.3	659.3
659.5	659.5
659.7	659.7
659.21	659.9
659.23	659.11
659.31	659.13 and 659.15
659.33	659.17, 659.19, and 659.21
659.23	N.A.
N.A.	659.25
659.35	659.27
659.37	659.29
659.39	659.31 and 659.33
659.41	659.35

DISTRIBUTION TABLE—Continued

Old section	New section(s)
659.43	659.37
659.45	659.39
N.A.	659.41
659.47	None
659.49	659.43

DERIVATION TABLE

New section	Old section(s)
659.1	659.1
659.3	659.3
659.5	659.5
659.7	659.7
659.9	659.21
659.11	659.23
659.13	659.31
659.15	659.31
659.17	659.33
659.19	New
659.21	659.33
659.23	New
659.25	New
659.27	659.37
659.29	659.39
659.31	New
659.33	659.39
659.35	659.41
659.37	659.43
659.39	659.45
659.41	New
659.43	659.49

VIII. Regulatory Process Matters

Executive Order 12866

The Office of Management and Budget (OMB) has determined that OMB review under EO 12866 is not necessary. While the economic impact of this rulemaking is not anticipated to be significant because the changes are incremental in nature, FTA recognizes that this rule affects state governments, may be of congressional interest and makes changes to important DOT policy. These changes include replacing a referenced industry manual as the guideline for program compliance with proposed minimum requirements, revised thresholds for accident notification and investigation, clarification of critical processes such as the management of hazardous conditions, and additional definitions. For these reasons, this rule is a significant regulation under the Department's Regulatory Policies and Procedures.

In 1995, FTA evaluated the industry-wide costs and benefits of part 659 before this revision. The economic analysis is available from FTA. In its analysis, FTA estimated the total costs for the first ten years to be approximately $9.1 million. However, when factoring in projections for program growth and new starts, the estimated annual burden between years five (5) and ten (10) increased approximately 15 percent. FTA estimates the annual cost of this rule (*i.e.*, the annual cost of the entire rule as amended, as distinct from incremental costs of the proposed changes) to be approximately $2.1 million—this represents a nearly $800,000 increase over the previous rule. The $800,000 difference between the previous cost of implementing the rule and the annual cost of implementing this revised rule over the next 10 years is mostly caused by continued program growth (*i.e.*, addition of seven (7) rail transit agencies and new states by the year 2013). When estimating costs for this rule, FTA increased the assumed hourly rate for personnel responsible for implementing rule requirements from $25 per hour to $35 per hour. This increase reflects FTA experience with the implementation of the previous rule's requirements and outreach with state and rail transit agency representatives. FTA believes that while the estimate for the annual cost burden has increased, the proposed changes will not cause the regulated parties to drastically change their behavior or substantially increase the number of resources needed to meet rule requirements.

Regulatory Flexibility Act

In accordance with the *Regulatory Flexibility Act* (Pub. L. 96–354, 5 U.S.C. 601–612), FTA has evaluated the effects of these rule changes on small entities and has determined that there will not be a significant impact on a substantial number of these entities; only larger rail transit agencies and oversight agencies (such as state departments of transportation and public utility commissions) will be affected. The original analysis for the 1995 final rule determined that there would be no significant impact on small entities. This rule merely makes modest administrative changes to the original rule. For these reasons, FTA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not impose unfunded mandates as defined by the *Unfunded Mandates Reform Act of 1995* (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in state, local, and tribal governments or the private sector incurring aggregate expenditures of $100 million or more in any one year, adjusted for inflation (2 U.S.C. 1532). As noted above, the estimated $2.1 million annual cost of implementing the rule is well below this threshold.

Executive Order 13132 (Federalism Assessment)

Prior to the publication of the original State Safety Oversight rule, FTA conducted a Federalism Assessment according to the requirements of Executive Order 12612, which has since been revoked and replaced by the above-referenced order. Refer to 60 FR 67041 (December 27, 1995). Because the state safety oversight requirements are already in place, and this rule only provides more detailed requirements for greater clarification and performance-based evaluation to the existing rule, FTA has determined that Federalism impacts are minimal.

FTA has also determined that this action does not preempt any state law or state regulation or affect the states' ability to discharge traditional state governmental functions. As noted in the original analysis, there may be instances in which a state or local agency faces a conflict between compliance with this rule and state and local requirements. Because compliance with this rule is a condition of Federal financial assistance, state and local governments have the option of not seeking the Federal funds if they choose not to comply.

Paperwork Reduction Act

Under the *Paperwork Reduction Act of 1995* (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This rule includes information collection requirements subject to PRA. OMB approved FTA's collection requirements in the original rule, and reviewed and approved an updated submission in November 2002 (OMB #2132–0558). Since this rule will result in additional or altered paperwork collection burdens, FTA will submit this requirement to the Office of Information and Regulatory Affairs of the OMB for review.

The estimated burden for information collection requirements is an annualized 26,502 hours and $927,600 for oversight agencies and 33,244 hours and $1,163,540 for rail transit agencies. These numbers relate to the burdens of the entire rule as amended, distinct from incremental burdens of the changes.

National Environmental Policy Act

FTA has analyzed this action for the purpose of compliance with the

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined that this rulemaking will not have any effect on the quality of the human environment.

List of Subjects in 49 CFR Part 659

Grant Programs—Transportation, Mass Transportation, Reporting and recordkeeping requirements, Safety, Security, Transportation.

■ For the reasons described in the preamble, FTA revises part 659 to read as follows:

PART 659—RAIL FIXED GUIDEWAY SYSTEMS; STATE SAFETY OVERSIGHT

Subpart A—General Provisions

Sec.
659.1 Purpose.
659.3 Scope.
659.5 Definitions.

Subpart B—Role of the State

659.7 Withholding of funds for noncompliance.
659.9 Designation of oversight agency.
659.11 Confidentiality of investigation reports and security plans.

Subpart C—Role of the State Oversight Agency

659.13 Overview.
659.15 System safety program standard.
659.17 System safety program plan: general requirements.
659.19 System safety program plan: contents
659.21 System security plan: general requirements.
659.23 System security plan: contents.
659.25 Annual review of system safety program plan and system security plan.
659.27 Internal safety and security reviews.
659.29 Oversight agency safety and security reviews.
659.31 Hazard management process.
659.33 Accident notification.
659.35 Investigations.
659.37 Corrective action plans.
659.39 Oversight agency reporting to the Federal Transit Administration.
659.41 Conflict of interest.
659.43 Certification of compliance.

Authority: 49 U.S.C. 5330.

Subpart A—General Provisions

§ 659.1 Purpose.

This part implements 49 U.S.C. 5330 by requiring a state to oversee the safety and security of rail fixed guideway systems through a designated oversight agency.

§ 659.3 Scope.

This part applies only to states with rail fixed guideway systems, as defined in this part.

§ 659.5 Definitions.

Contractor means an entity that performs tasks required on behalf of the oversight or rail transit agency. The rail transit agency may not be a contractor for the oversight agency.

Corrective action plan means a plan developed by the rail transit agency that describes the actions the rail transit agency will take to minimize, control, correct, or eliminate hazards, and the schedule for implementing those actions.

FRA means the Federal Railroad Administration, an agency within the U.S. Department of Transportation.

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

Hazard means any real or potential condition (as defined in the rail transit agency's hazard management process) that can cause injury, illness, or death; damage to or loss of a system, equipment or property; or damage to the environment.

Individual means a passenger; employee; contractor; other rail transit facility worker; pedestrian; trespasser; or any person on rail transit-controlled property.

Investigation means the process used to determine the causal and contributing factors of an accident or hazard, so that actions can be identified to prevent recurrence.

New Starts Project means any rail fixed guideway system funded under FTA's 49 U.S.C. 5309 discretionary construction program.

Oversight Agency means the entity, other than the rail transit agency, designated by the state or several states to implement this part.

Passenger means a person who is on board, boarding, or alighting from a rail transit vehicle for the purpose of travel.

Passenger Operations means the period of time when any aspect of rail transit agency operations are initiated with the intent to carry passengers.

Program Standard means a written document developed and adopted by the oversight agency, that describes the policies, objectives, responsibilities, and procedures used to provide rail transit agency safety and security oversight.

Rail Fixed Guideway System means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that:

(1) Is not regulated by the Federal Railroad Administration; and

(2) Is included in FTA's calculation of fixed guideway route miles or receives funding under FTA's formula program for urbanized areas (49 U.S.C. 5336); or

(3) Has submitted documentation to FTA indicating its intent to be included in FTA's calculation of fixed guideway route miles to receive funding under FTA's formula program for urbanized areas (49 U.S.C. 5336).

Rail Transit Agency means an entity that operates a rail fixed guideway system.

Rail Transit-Controlled Property means property that is used by the rail transit agency and may be owned, leased, or maintained by the rail transit agency.

Rail Transit Vehicle means the rail transit agency's rolling stock, including but not limited to passenger and maintenance vehicles.

Safety means freedom from harm resulting from unintentional acts or circumstances.

Security means freedom from harm resulting from intentional acts or circumstances.

State means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

System Safety Program Plan means a document developed and adopted by the rail transit agency, describing its safety policies, objectives, responsibilities, and procedures.

System Security Plan means a document developed and adopted by the rail transit agency describing its security policies, objectives, responsibilities, and procedures.

Subpart B—Role of the State

§ 659.7 Withholding of funds for noncompliance.

(a) The Administrator of the FTA may withhold up to five percent of the amount required to be distributed to any state or affected urbanized area in such state under FTA's formula program for urbanized areas, if:

(1) The state in the previous fiscal year has not met the requirements of this part; and

(2) The Administrator determines that the state is not making adequate efforts to comply with this part.

(b) The Administrator may agree to restore withheld formula funds, if compliance is achieved within two years (See 49 U.S.C. 5330).

§ 659.9 Designation of oversight agency.

(a) *General requirement*. Each state with an existing or anticipated rail fixed guideway system regulated by this part shall designate an oversight agency consistent with the provisions of this section. For a rail fixed guideway system that will operate in only one state, the state must designate an agency of the state, other than the rail transit

agency, as the oversight agency to implement the requirements in this part. The state's designation or re-designation of its oversight agency and submission of required information as specified in this section, are subject to review by FTA.

(b) *Exception*. States which have designated oversight agencies for purposes of this part before May 31, 2005 are not required to re-designate to FTA.

(c) *Timing*. The state designation of the oversight agency shall:

(1) Coincide with the execution of any grant agreement for a New Starts project between FTA and a rail transit agency within the state's jurisdiction; or

(2) Occur before the application by a rail transit agency for funding under FTA's formula program for urbanized areas (49 U.S.C. 5336).

(d) *Notification to FTA*. Within (60) days of designation of the oversight agency, the state must submit to FTA the following:

(1) The name of the oversight agency designated to implement requirements in this part;

(2) Documentation of the oversight agency's authority to provide state oversight;

(3) Contact information for the representative identified by the designated oversight agency with responsibility for oversight activities;

(4) A description of the organizational and financial relationship between the designated oversight agency and the rail transit agency; and

(5) A schedule for the designated agency's development of its State Safety Oversight Program, including the projected date of its initial submission, as required in § 659.39(a).

(e) *Multiple states*. In cases of a rail fixed guideway system that will operate in more than one state, each affected state must designate an agency of the state, other than the rail transit agency, as the oversight agency to implement the requirements in this part. To fulfill this requirement, the affected states:

(1) May agree to designate one agency of one state, or an agency representative of all states, to implement the requirements in this part; and

(2) In the event multiple states share oversight responsibility for a rail fixed guideway system, the states must ensure that the rail fixed guideway system is subject to a single program standard, adopted by all affected states.

(f) *Change of designation*. Should a state change its designated oversight agency, it shall submit the information required under paragraph (d) of this section to FTA within (30) days of its change. In addition, the new oversight agency must submit a new initial submission, consistent with § 659.39(b), within (30) days of its designation.

§ 659.11 Confidentiality of investigation reports and security plans.

(a) A state may withhold an investigation report that may have been prepared or adopted by the oversight agency from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report.

(b) This part does not require public availability of the rail transit agency's security plan and any referenced procedures.

Subpart C—Role of the State Oversight Agency

§ 659.13 Overview.

The state oversight agency is responsible for establishing standards for rail safety and security practices and procedures to be used by rail transit agencies within its purview. In addition, the state oversight agency must oversee the execution of these practices and procedures, to ensure compliance with the provisions of this part. This subpart identifies and describes the various requirements for the state oversight agency.

§ 659.15 System safety program standard.

(a) *General requirement*. Each state oversight agency shall develop and distribute a program standard. The program standard is a compilation of processes and procedures that governs the conduct of the oversight program at the state oversight agency level, and provides guidance to the regulated rail transit properties concerning processes and procedures they must have in place to be in compliance with the state safety oversight program. The program standard and any referenced program procedures must be submitted to FTA as part of the initial submission. Subsequent revisions and updates must be submitted to FTA as part of the oversight agency's annual submission.

(b) *Contents*. Each oversight agency shall develop a written program standard that meets the requirements specified in this part and includes, at a minimum, the areas identified in this section.

(1) *Program management section*. This section shall include an explanation of the oversight agency's authority, policies, and roles and responsibilities for providing safety and security oversight of the rail transit agencies within its jurisdiction. This section shall provide an overview of planned activities to ensure on-going communication with each affected rail transit agency relating to safety and security information, as well as FTA reporting requirements, including initial, annual and periodic submissions.

(2) *Program standard development section*. This section shall include a description of the oversight agency's process for the development, review, and adoption of the program standard, the modification and/or update of the program standard, and the process by which the program standard and any subsequent revisions are distributed to each affected rail transit agency.

(3) *Oversight of rail transit agency internal safety and security reviews*. This section shall specify the role of the oversight agency in overseeing the rail transit agency internal safety and security review process. This includes a description of the process used by the oversight agency to receive rail transit agency checklists and procedures and approve the rail transit agency's annual reports on findings, which must be submitted under the signature of the rail transit agency's top management.

(4) *Oversight agency safety and security review section*. This section shall lay out the process and criteria to be used at least every three years in conducting a complete review of each affected rail transit agency's implementation of its system safety program plan and system security plan. This section includes the process to be used by the affected rail transit agency and the oversight agency to manage findings and recommendations from this review. This also includes procedures for notifying the oversight agency before the rail transit agency conducts an internal review.

(5) *Accident notification section*. This section shall include the specific requirements for the rail transit agency to notify the oversight agency of accidents. This section shall also include required timeframes, methods of notification, and the information to be submitted by the rail transit agency. Additional detail on this portion is included in § 659.33 of this part.

(6) *Investigations section*. This section contains the oversight agency identification of the thresholds for incidents that require an oversight agency investigation. The roles and responsibilities for conducting investigations shall include: coordination with the rail transit agency investigation process, the role of the oversight agency in supporting investigations and findings conducted by the NTSB, review and concurrence of investigation report findings, and procedures for protecting the confidentiality of investigation reports.

(7) *Corrective actions section*. This section shall specify oversight agency criteria for the development of corrective action plan(s) and the process for the review and approval of a corrective action plan developed by the rail transit agency. This section shall also identify the oversight agency's policies for the verification and tracking of corrective action plan implementation, and its process for managing conflicts with the rail transit agency relating to investigation findings and corrective action plan development.

(8) *System safety program plan section*. This section shall specify the minimum requirements to be contained in the rail transit agency's system safety program plan. The contents of the system safety plan are discussed in more detail in § 659.19 of this part. This section shall also specify information to be included in the affected rail transit agency's system safety program plan relating to the hazard management process, including requirements for on-going communication and coordination relating to the identification, categorization, resolution, and reporting of hazards to the oversight agency. More details on the hazard management process are contained in § 659.31 of this part. This section shall also describe the process and timeframe through which the oversight agency must receive, review, and approve the rail transit agency system safety program plan.

(9) *System security plan section*. This section shall specify the minimum requirements to be included in the rail transit agency's system security plan. More details about the system security plan are contained in §§ 659.21 through 659.23 of this part. This section shall also describe the process by which the oversight agency will review and approve the rail transit agency system security program plan. This section also shall identify how the state will prevent the system security plan from public disclosure.

§ 659.17 System safety program plan: general requirements.

(a) The oversight agency shall require the rail transit agency to develop and implement a written system safety program plan that complies with requirements in this part and the oversight agency's program standard.

(b) The oversight agency shall review and approve the rail transit agency system safety program plan.

(c) After approval, the oversight agency shall issue a formal letter of approval to the rail transit agency, including the checklist used to conduct the review.

§ 659.19 System safety program plan: contents.

The system safety plan shall include, at a minimum:

(a) A policy statement signed by the agency's chief executive that endorses the safety program and describes the authority that establishes the system safety program plan.

(b) A clear definition of the goals and objectives for the safety program and stated management responsibilities to ensure they are achieved.

(c) An overview of the management structure of the rail transit agency, including:

(1) An organization chart;

(2) A description of how the safety function is integrated into the rest of the rail transit organization; and

(3) Clear identification of the lines of authority used by the rail transit agency to manage safety issues.

(d) The process used to control changes to the system safety program plan, including:

(1) Specifying an annual assessment of whether the system safety program plan should be updated; and

(2) Required coordination with the oversight agency, including timeframes for submission, revision, and approval.

(e) A description of the specific activities required to implement the system safety program, including:

(1) Tasks to be performed by the rail transit safety function, by position and management accountability, specified in matrices and/or narrative format; and

(2) Safety-related tasks to be performed by other rail transit departments, by position and management accountability, specified in matrices and/or narrative format.

(f) A description of the process used by the rail transit agency to implement its hazard management program, including activities for:

(1) Hazard identification;

(2) Hazard investigation, evaluation and analysis;

(3) Hazard control and elimination;

(4) Hazard tracking; and

(5) Requirements for on-going reporting to the oversight agency relating to hazard management activities and status.

(g) A description of the process used by the rail transit agency to ensure that safety concerns are addressed in modifications to existing systems, vehicles, and equipment, which do not require formal safety certification but which may have safety impacts.

(h) A description of the safety certification process required by the rail transit agency to ensure that safety concerns and hazards are adequately addressed prior to the initiation of passenger operations for New Starts and subsequent major projects to extend, rehabilitate, or modify an existing system, or to replace vehicles and equipment.

(i) A description of the process used to collect, maintain, analyze, and distribute safety data, to ensure that the safety function within the rail transit organization receives the necessary information to support implementation of the system safety program.

(j) A description of the process used by the rail transit agency to perform accident notification, investigation and reporting, including:

(1) Notification thresholds for internal and external organizations;

(2) Accident investigation process and references to procedures;

(3) The process used to develop, implement, and track corrective actions that address investigation findings;

(4) Reporting to internal and external organizations; and

(5) Coordination with the oversight agency.

(k) A description of the process used by the rail transit agency to develop an approved, coordinated schedule for all emergency management program activities, which include:

(1) Meetings with external agencies;

(2) Emergency planning responsibilities and requirements;

(3) Process used to evaluate emergency preparedness, such as annual emergency field exercises;

(4) After action reports and implementation of findings;

(5) Revision and distribution of emergency response procedures;

(6) Familiarization training for public safety organizations; and

(7) Employee training.

(l) A description of the process used by the rail transit agency to ensure that planned and scheduled internal safety reviews are performed to evaluate compliance with the system safety program plan, including:

(1) Identification of departments and functions subject to review;

(2) Responsibility for scheduling reviews;

(3) Process for conducting reviews, including the development of checklists and procedures and the issuing of findings;

(4) Review of reporting requirements;

(5) Tracking the status of implemented recommendations; and

(6) Coordination with the oversight agency.

(m) A description of the process used by the rail transit agency to develop, maintain, and ensure compliance with rules and procedures having a safety impact, including:

(1) Identification of operating and maintenance rules and procedures subject to review;

(2) Techniques used to assess the implementation of operating and maintenance rules and procedures by employees, such as performance testing;

(3) Techniques used to assess the effectiveness of supervision relating to the implementation of operating and maintenance rules; and

(4) Process for documenting results and incorporating them into the hazard management program.

(n) A description of the process used for facilities and equipment safety inspections, including:

(1) Identification of the facilities and equipment subject to regular safety-related inspection and testing;

(2) Techniques used to conduct inspections and testing;

(3) Inspection schedules and procedures; and

(4) Description of how results are entered into the hazard management process.

(o) A description of the maintenance audits and inspections program, including identification of the affected facilities and equipment, maintenance cycles, documentation required, and the process for integrating identified problems into the hazard management process.

(p) A description of the training and certification program for employees and contractors, including:

(1) Categories of safety-related work requiring training and certification;

(2) A description of the training and certification program for employees and contractors in safety-related positions;

(3) Process used to maintain and access employee and contractor training records; and

(4) Process used to assess compliance with training and certification requirements.

(q) A description of the configuration management control process, including:

(1) The authority to make configuration changes;

(2) Process for making changes; and

(3) Assurances necessary for formally notifying all involved departments.

(r) A description of the safety program for employees and contractors that incorporates the applicable local, state, and federal requirements, including:

(1) Safety requirements that employees and contractors must follow when working on, or in close proximity to, rail transit agency property; and

(2) Processes for ensuring the employees and contractors know and follow the requirements.

(s) A description of the hazardous materials program, including the process used to ensure knowledge of and compliance with program requirements.

(t) A description of the drug and alcohol program and the process used to ensure knowledge of and compliance with program requirements.

(u) A description of the measures, controls, and assurances in place to ensure that safety principles, requirements and representatives are included in the rail transit agency's procurement process.

§ 659.21 System security plan: general requirements.

(a) The oversight agency shall require the rail transit agency to implement a system security plan that, at a minimum, complies with requirements in this part and the oversight agency's program standard. The system security plan must be developed and maintained as a separate document and may not be part of the rail transit agency's system safety program plan.

(b) The oversight agency may prohibit a rail transit agency from publicly disclosing the system security plan.

(c) After approving the system security plan, the oversight agency shall issue a formal letter of approval, including the checklist used to conduct the review, to the rail transit agency.

§ 659.23 System security plan: contents.

The system security plan must, at a minimum address the following:

(a) Identify the policies, goals, and objectives for the security program endorsed by the agency's chief executive.

(b) Document the rail transit agency's process for managing threats and vulnerabilities during operations, and for major projects, extensions, new vehicles and equipment, including integration with the safety certification process;

(c) Identify controls in place that address the personal security of passengers and employees;

(d) Document the rail transit agency's process for conducting internal security reviews to evaluate compliance and measure the effectiveness of the system security plan; and

(e) Document the rail transit agency's process for making its system security plan and accompanying procedures available to the oversight agency for review and approval.

§ 659.25 Annual review of system safety program plan and system security plan.

(a) The oversight agency shall require the rail transit agency to conduct an annual review of its system safety program plan and system security plan.

(b) In the event the rail transit agency's system safety program plan is modified, the rail transit agency must submit the modified plan and any subsequently modified procedures to the oversight agency for review and approval. After the plan is approved, the oversight agency must issue a formal letter of approval to the rail transit agency.

(c) In the event the rail transit agency's system security plan is modified, the rail transit agency must make the modified system security plan and accompanying procedures available to the oversight agency for review, consistent with requirements specified in § 659.23(e) of this part. After the plan is approved, the oversight agency shall issue a formal letter of approval to the rail transit agency.

§ 659.27 Internal safety and security reviews.

(a) The oversight agency shall require the rail transit agency to develop and document a process for the performance of on-going internal safety and security reviews in its system safety program plan.

(b) The internal safety and security review process must, at a minimum:

(1) Describe the process used by the rail transit agency to determine if all identified elements of its system safety program plan and system security plan are performing as intended; and

(2) Ensure that all elements of the system safety program plan and system security plan are reviewed in an on-going manner and completed over a three-year cycle.

(c) The rail transit agency must notify the oversight agency at least thirty (30) days before the conduct of scheduled internal safety and security reviews.

(d) The rail transit agency shall submit to the oversight agency any checklists or procedures it will use during the safety portion of its review.

(e) The rail transit agency shall make available to the oversight agency any checklists or procedures subject to the security portion of its review, consistent with § 659.23(e).

(f) The oversight agency shall require the rail transit agency to annually submit a report documenting internal safety and security review activities and the status of subsequent findings and corrective actions. The security part of this report must be made available for oversight agency review, consistent with § 659.23(e).

(g) The annual report must be accompanied by a formal letter of certification signed by the rail transit agency's chief executive, indicating that the rail transit agency is in compliance

with its system safety program plan and system security plan.

(h) If the rail transit agency determines that findings from its internal safety and security reviews indicate that the rail transit agency is not in compliance with its system safety program plan or system security plan, the chief executive must identify the activities the rail transit agency will take to achieve compliance.

(i) The oversight agency must formally review and approve the annual report.

§ 659.29 Oversight agency safety and security reviews.

At least every three (3) years, beginning with the initiation of rail transit agency passenger operations, the oversight agency must conduct an on-site review of the rail transit agency's implementation of its system safety program plan and system security plan. Alternatively, the on-site review may be conducted in an on-going manner over the three year timeframe. At the conclusion of the review cycle, the oversight agency must prepare and issue a report containing findings and recommendations resulting from that review, which, at a minimum, must include an analysis of the effectiveness of the system safety program plan and the security plan and a determination of whether either should be updated.

§ 659.31 Hazard management process.

(a) The oversight agency must require the rail transit agency to develop and document in its system safety program plan a process to identify and resolve hazards during its operation, including any hazards resulting from subsequent system extensions or modifications, operational changes, or other changes within the rail transit environment.

(b) The hazard management process must, at a minimum:

(1) Define the rail transit agency's approach to hazard management and the implementation of an integrated system-wide hazard resolution process;

(2) Specify the sources of, and the mechanisms to support, the on-going identification of hazards;

(3) Define the process by which identified hazards will be evaluated and prioritized for elimination or control;

(4) Identify the mechanism used to track through resolution the identified hazard(s);

(5) Define minimum thresholds for the notification and reporting of hazard(s) to oversight agencies; and

(6) Specify the process by which the rail transit agency will provide on-going reporting of hazard resolution activities to the oversight agency.

§ 659.33 Accident notification.

(a) The oversight agency must require the rail transit agency to notify the oversight agency within two (2) hours of any incident involving a rail transit vehicle or taking place on rail transit-controlled property where one or more of the following occurs:

(1) A fatality at the scene; or where an individual is confirmed dead within thirty (30) days of a rail transit-related incident;

(2) Injuries requiring immediate medical attention away from the scene for two or more individuals;

(3) Property damage to rail transit vehicles, non-rail transit vehicles, other rail transit property or facilities and non-transit property that equals or exceeds $25,000;

(4) An evacuation due to life safety reasons;

(5) A collision at a grade crossing;

(6) A main-line derailment;

(7) A collision with an individual on a rail right of way; or

(8) A collision between a rail transit vehicle and a second rail transit vehicle, or a rail transit non-revenue vehicle.

(b) The oversight agency shall require rail transit agencies that share track with the general railroad system and are subject to the Federal Railroad Administration notification requirements, to notify the oversight agency within two (2) hours of an incident for which the rail transit agency must also notify the Federal Railroad Administration.

(c) The oversight agency shall identify in its program standard the method of notification and the information to be provided by the rail transit agency

§ 659.35 Investigations.

(a) The oversight agency must investigate, or cause to be investigated, at a minimum, any incident involving a rail transit vehicle or taking place on rail transit-controlled property meeting the notification thresholds identified in § 659.33(a).

(b) The oversight agency must use its own investigation procedures or those that have been formally adopted from the rail transit agency and that have been submitted to FTA.

(c) In the event the oversight agency authorizes the rail transit agency to conduct investigations on its behalf, it must do so formally and require the rail transit agency to use investigation procedures that have been formally approved by the oversight agency.

(d) Each investigation must be documented in a final report that includes a description of investigation activities, identified causal and contributing factors, and a corrective action plan.

(e) A final investigation report must be formally adopted by the oversight agency for each accident investigation.

(1) If the oversight agency has conducted the investigation, it must formally transmit its final investigation report to the rail transit agency.

(2) If the oversight agency has authorized an entity other than itself (including the rail transit agency) to conduct the accident investigation on its behalf, the oversight agency must review and formally adopt the final investigation report.

(3) If the oversight agency does not concur with the findings of the rail transit agency investigation report, it must either:

(i) Conduct its own investigation according to paragraphs (b), (d) and (e)(1) of this section; or

(ii) Formally transmit its dissent to the findings of the accident investigation, report its dissent to the rail transit agency, and negotiate with the rail transit agency until a resolution on the findings is reached.

(f) The oversight agency shall have the authority to require periodic status reports that document investigation activities and findings in a time frame determined by the oversight agency.

§ 659.37 Corrective action plans.

(a) The oversight agency must, at a minimum, require the development of a corrective action plan for the following:

(1) Results from investigations, in which identified causal and contributing factors are determined by the rail transit agency or oversight agency as requiring corrective actions; and

(2) Findings from safety and security reviews performed by the oversight agency.

(b) Each corrective action plan should identify the action to be taken by the rail transit agency, an implementation schedule, and the individual or department responsible for the implementation.

(c) The corrective action plan must be reviewed and formally approved by the oversight agency.

(d) The oversight agency must establish a process to resolve disputes between itself and the rail transit agency resulting from the development or enforcement of a corrective action plan.

(e) The oversight agency must identify the process by which findings from an NTSB accident investigation will be evaluated to determine whether or not a corrective action plan should be developed by either the oversight agency or rail transit agency to address NTSB findings.

(f) The rail transit agency must provide the oversight agency:

(1) Verification that the corrective action(s) has been implemented as described in the corrective action plan, or that a proposed alternate action(s) has been implemented subject to oversight agency review and approval; and

(2) Periodic reports requested by the oversight agency, describing the status of each corrective action(s) not completely implemented, as described in the corrective action plan.

(g) The oversight agency must monitor and track the implementation of each approved corrective action plan.

§ 659.39 Oversight agency reporting to the Federal Transit Administration.

(a) *Initial submission.* Each designated oversight agency with a rail fixed guideway system that is in passenger operations as of April 29, 2005 or will begin passenger operations by May 1, 2006, must make its initial submission to FTA by May 1, 2006. In states with rail fixed guideway systems initiating passenger operations after May 1, 2006, the designated oversight agency must make its initial submission within the time frame specified by the state in its designation submission, but not later than at least sixty (60) days prior to initiation of passenger operations. Any time a state changes its designated oversight agency to carry out the requirements identified in this part, the new oversight agency must make a new initial submission to FTA within thirty (30) days of the designation.

(b) An initial submission must include the following:

(1) Oversight agency program standard and referenced procedures; and

(2) Certification that the system safety program plan and the system security plan have been developed, reviewed, and approved.

(c) *Annual submission.* Before March 15 of each year, the oversight agency must submit the following to FTA:

(1) A publicly available annual report summarizing its oversight activities for the preceding twelve months, including a description of the causal factors of investigated accidents, status of corrective actions, updates and modifications to rail transit agency program documentation, and the level of effort used by the oversight agency to carry out its oversight activities.

(2) A report documenting and tracking findings from three-year safety review activities, and whether a three-year safety review has been completed since the last annual report was submitted.

(3) Program standard and supporting procedures that have changed during the preceding year.

(4) Certification that any changes or modifications to the rail transit agency system safety program plan or system security plan have been reviewed and approved by the oversight agency.

(d) *Periodic submission.* FTA retains the authority to periodically request program information.

(e) *Electronic reporting.* All submissions to FTA required in this part must be submitted electronically using a reporting system specified by FTA.

§ 659.41 Conflict of interest.

The oversight agency shall prohibit a party or entity from providing services to both the oversight agency and rail transit agency when there is a conflict of interest, as defined by the state.

§ 659.43 Certification of compliance.

(a) Annually, the oversight agency must certify to the FTA that it has complied with the requirements of this part.

(b) The oversight agency must submit each certification electronically to FTA using a reporting system specified by FTA.

(c) The oversight agency must maintain a signed copy of each annual certification to FTA, subject to audit by FTA.

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Jennifer L. Dorn,

Administrator.

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