

addition, the system safety program standard must include specific provisions addressing "security" matters, intentional wrongful or criminal acts, such as muggings, rapes, murders, assaults, or terrorist activities. To develop this portion of the system safety program plan, we suggest that the oversight agency use FTA's "Transit Security Procedures Guide" and "Transit System Security Program Planning Guide," available from the FTA at the address above.

The oversight agency must require the transit agency to develop a system safety program plan that complies with the oversight agency's system safety program standard. By January 1, 1997, the oversight agency must review and approve, in writing, the transit agency's system safety program plan; however, the "security" provisions of the system safety program plan must be approved initially by the oversight agency by January 1, 1998. After the initial approvals, the oversight agency must review, as necessary, the transit agency's system safety program plan and determine whether it should be updated. All oversight agency approvals must be in writing.

The rule allows the oversight agency to prohibit the transit agency from publicly releasing the "security" provisions in the system safety program plan.

The oversight agency must require the transit agency to conduct safety audits according to the Internal Safety Audit Process detailed in checklist number 9 of the APTA Guidelines. Once a year the transit agency must compile and submit an audit report to the oversight agency or an entity acting on its behalf for review.

Aside from reviewing the transit agency's safety audit reports, the oversight agency must conduct on-site safety reviews every three years. In a safety review, the oversight agency must assess whether the transit agency's actual safety practices and procedures comply with its system safety program plan. Once this review is completed, the oversight agency must prepare a report containing its findings and recommendations, an analysis of the efficacy of the transit agency's system safety program plan, and a determination of whether the system safety program plan should be updated.

The oversight agency must require the transit agency to report the occurrence of accidents and unacceptable hazardous conditions within a period of time specified by the oversight agency. The oversight agency must investigate such reports in accordance with procedures it has established. The

oversight agency may conduct its own investigation, use a contractor to conduct an investigation, or rely on the investigation conducted by the transit agency or the National Transportation Safety Board (NTSB).

After the oversight agency has investigated an accident or unacceptable hazardous condition, it must require the transit agency to minimize, control, correct, or eliminate it, in accordance with a corrective action plan drafted by the transit agency and approved by the oversight agency.

The oversight agency must submit three kinds of reports to FTA: an initial submission, an annual submission, and a periodic submission. In the initial submission, the oversight agency lists the names and addresses of the rail fixed guideway systems it oversees. This report must be updated only when that information changes. In the annual submissions, the oversight agency must submit to FTA a publicly available report summarizing its oversight activities for the past year. Periodically, an oversight agency must submit to FTA status reports of accidents, hazardous conditions, and corrective action plans. The oversight agency must submit these reports only if FTA so requests.

The Transit Agency

The transit agency must develop a system safety program plan that complies with the oversight agency's system safety program standard. It must conduct safety audits that comply with the Internal Safety Audit Process, APTA Guidelines, checklist number 9, and draft and submit to the oversight agency a report summarizing the results of the safety audit. The transit agency must classify hazardous conditions according to the APTA Guidelines' Hazard Resolution Matrix. The transit agency must report, within the timeframe specified by the oversight agency, any accident or unacceptable hazardous condition that has occurred on the rail fixed guideway system. The transit agency may, if the oversight agency so chooses, conduct investigations on behalf of the oversight agency. Once an investigation has been completed, the transit agency must obtain the oversight agency's approval of a corrective action plan and then implement the plan so as to minimize, control, correct, or eliminate the particular unacceptable hazardous condition or condition that has caused an accident.

The Federal Transit Administration

The FTA assesses whether the State has complied with the rule or has made adequate efforts to comply with it. If the FTA determines that the State is not in

compliance or has not made adequate efforts to comply, it may withhold up to five percent of the amount apportioned for use in the State or affected urbanized areas under FTA's formula program for urbanized areas (formerly section 9). Also, FTA receives reports from the oversight agency.

C. Overview of the Comments

The FTA received 60 comments in response to the NPRM. FTA considered all comments filed in a timely manner as well as all statements and material presented at the public hearings on the rule. The breakdown among commenter categories is as follows:

Transit Agencies	27
State DOTs	9
Public Utilities	6
Cities.....	1
Federal Agencies.....	2
Independent Consultants.....	8
Trade Associations	2
Safety Societies/Associations.....	5

In Section II below, we discuss in detail the public comments addressing issues raised in the NPRM. One such issue, how the term "rail fixed guideway system" should be defined, affects the scope of the rule. Another key issue, how the system safety program standard should be developed and what it should include, will directly affect the relationship between the oversight and transit agencies. Most important, we examine whether the oversight agency should use the APTA Guidelines or Military Standard 882B or 882C (MIL-STD 882B or 882C) to develop its system safety program standard. We also examine whether the system safety program standard should cover the planning, design, and construction phases of a rail fixed guideway system's life cycle; EPA and OSHA-type matters; "security"; and other issues.

Also, we discuss the oversight agency's role in investigating accidents and unacceptable hazardous conditions. A related issue concerns whether investigation reports should be kept confidential.

For additional discussion on individual issues, see also the Section-By-Section Analysis below in Section III.

II. Discussion of the Comments

A. Rail Fixed Guideway System

The first issue is the definition of "rail fixed guideway system." Statutes give us limited guidance in this regard; section 5330, the authority for this rulemaking, states that it applies "only to States that have rail fixed guideway mass transportation systems not subject