

property; freedom from danger"; this would certainly cover intentional acts. Similarly, according to the Transit Security Program Planning Guide recently published by the FTA, "security" means "freedom from intentional danger," while "safety" means "freedom from danger." Therefore, section 5330 can be interpreted, and we do, to require the inclusion of security in the system safety program plan.

Other commenters indicated that security should not be included in the system safety program plan because safety and security are as different from each other as apples from oranges. One transit agency presented safety and security as two different disciplines requiring two different approaches and two different kinds of trained personnel. Thus, this commenter reasoned, the system safety program plan should not address security matters. In our view, however, safety and security risks are interrelated, especially from the perspective of transit passengers. We agree with the commenter who wrote:

[A]lthough the disciplines have been separated in their normal application, there is a trend for a united knowledge base of safety with security so that any type of hazard is examined for its implication as a security type of problem. As with other disciplines, safety and security requirements may be at odds requiring careful analysis of the potential hazards and threats against the transit system and the development of appropriate trade-off studies. The Transit Safety Professional needs to have security analyses in the curriculum of study and certification to ensure awareness of the issues and concerns related to security. In addition, security systems themselves require safety analyses to ensure that they are properly covered.

We also disagree with the commenter who recommended that only emergency response procedures be included in the system safety program plan. We note that the APTA Guidelines already contain a provision concerning emergency preparedness. While emergency preparedness is itself a valuable activity, it does not prevent either intentional or unintentional acts from occurring. An emergency preparedness plan is used to develop a response to an event, while the overall system safety program plan develops procedures to reduce the likelihood of either intentional or unintentional events from occurring.

#### H. Biennial Safety Reviews

In the proposed rule, the oversight agency would comprehensively review, on-site, the rail fixed guideway system's safety practices every two years. Most commenters objected to this provision.

Some maintained that a review every two years was unnecessary and burdensome; in support of their contention, they mentioned APTA's Rail Safety Audit Program, in which auditors employed by APTA review a rail fixed guideway system's safety practices every three years. They maintain that a three-year review schedule adequately addresses safety needs. One commenter indicated that APTA adopted a three-year schedule to give rail fixed guideway systems time to take corrective and other recommended actions. Another commenter, a State agency already overseeing rail fixed guideway systems, stated that it does not independently conduct on-site reviews, but instead observes the APTA auditors review a system; this commenter concluded that this approach works well for it and the rail fixed guideway systems under its jurisdiction. Some commenters urged us to specifically allow oversight agencies to use the APTA Rail Safety Audit Program.

Other commenters favored a flexible approach, in which the oversight and transit agencies schedule reviews appropriate for the age, size, and complexity of the rail fixed guideway system. One commenter recommended that we specify the exact requirements of a safety review.

**FTA Response.** Agreeing generally with the commenters, we have made the rule more flexible. For instance, the rule requires the oversight agency to review the transit agency's safety practices at least every three years instead of every two, as we had proposed. The oversight agency may conduct these reviews more frequently if it chooses. Moreover, the rule expressly allows the oversight agency to use a contractor to conduct the required review, which allows the oversight agency to use the APTA Rail Safety Audit Program or any other qualified contractor to conduct safety reviews.

Although one commenter had urged us to define specifically the requirements of a safety review, we have declined to do so. Instead, the oversight agency should determine for itself, based on the age, size, and complexity of the individual rail fixed guideway system within its jurisdiction, the exact extent of the review; however, it must be comprehensive, *i.e.*, cover all matters included in the transit agency's system safety program plan.

The process used by the California Public Utilities Commission (CPUC) illustrates how the rule can be flexible. Instead of using its staff to conduct comprehensive safety reviews, CPUC staff accompany and observe APTA

auditors who perform a comprehensive safety audit. This system allows CPUC personnel to cover the daily operation and maintenance activities of the rail fixed guideway system and conduct in-depth reviews of particular activities on an "apparent need" basis. For instance, CPUC's staff conducted in-depth reviews of track maintenance practices at five different rail fixed guideway systems. In short, an oversight agency could conduct its own safety reviews, contract them out completely, or adopt an approach similar to CPUC's, in which both a comprehensive safety review and an in-depth review of a particular system component is conducted by another contractor or oversight agency personnel.

One commenter recommended that the extent and frequency of safety reviews depends on the particular phase of the rail fixed guideway system's lifecycle. This commenter recommended that a safety audit be performed during the preliminary engineering phase to assure properly defined criteria, during the final design stage to assure that the criteria has been included in the specifications, during pre-revenue testing to assure the systems have been properly installed and the system tested and safety certified, then every two to three years when the system is operational, and more frequently if there are serious problems. We agree with this commenter, although we have not adopted his suggestions formally in the rule. Instead, we strongly urge oversight agencies to consider these kinds of factors when establishing a safety review process.

#### I. Safety Audits

FTA proposed to require the transit agency to conduct a "safety audit," a "methodical, ongoing, internal examination of a transit agency's safety practices to determine whether they comply with the policies and procedures required under the transit agency's system safety program plan." The results of these safety audits were to be compiled every six months by the transit agency into a report to the oversight agency, which would review those reports as part of its monitoring function required under section 5330.

Nineteen commenters responded to this proposed safety audit process, with most of them objecting that such audits amount to a "paperwork exercise" that could be detrimental to the safe operation of a rail fixed guideway system. They argued that the "safety audits" and the "biennial reviews" were redundant and that auditing continuously was not necessary to