

ensure the safe operation of a rail fixed guideway system. Some of these commenters recommended that FTA adopt a system of random periodic checks similar to the APTA review process; others recommended that the oversight agency set the timeframe for safety audits by the transit agency. Still others recommended that the frequency of safety audits be linked to the age, type, and speed of the system, maintaining that different rail fixed guideway systems have different safety auditing needs.

**FTA Response.** FTA had intended the "safety audit" process to be used in addition to the "Internal Safety Audit Process" in checklist number 9 of the APTA Guidelines, which apparently confused the commenters. To clarify our intent, we have withdrawn the proposed definition, "safety audit," and now require the oversight agency to develop a process that complies with APTA's "Internal Safety Audit Process." Although we make this change, we nevertheless encourage transit and oversight agencies to view safety and the safety auditing process as a routine, daily matter. As noted in the APTA Guidelines, "[t]he Internal Safety Audit Process \* \* \* requires constant attention and activity."

To ensure that both transit and oversight agencies view the safety auditing process as a "constant activity," we have retained the requirement for the transit agency to complete and submit safety auditing reports to the oversight agency, a requirement in the APTA Guidelines, which states that audit reports are to be used as a "management tool." FTA had proposed semi-annual reports, which most commenters objected to as a "paperwork exercise." In response, we have changed the reporting time period from semi-annually to annually to reduce the paperwork burden.

#### *J. Accident*

To focus oversight agency accident investigations on serious events that may show a systemic safety problem, FTA proposed to define "accident" as "any event involving the operation of a rail fixed guideway system resulting in: (1) [D]eath directly related to the event; (2) [i]njury requiring hospitalization within twenty-four hours of the event; (3) [a] collision, derailment, or fire causing property damage in excess of \$25,000; or (4) [a]n emergency evacuation." The vast majority of commenters opposed this definition and recommended numerous ways to change it.

For instance, several commenters requested that FTA limit the definition

to those events involving revenue service operations, thus excluding incidents occurring in rail yards. According to the commenters, these kinds of incidents are covered by OSHA rules; eliminating them from the rule, these commenters reasoned, would avoid duplicative and perhaps conflicting jurisdiction between the oversight agency and the State and Federal agencies responsible for enforcing OSHA regulations.

Some commenters recommended that any incident involving trespassers or employees be excluded from the definition. These commenters maintained that events involving trespassers would not necessarily indicate a systemic safety problem; in other words, it is impossible to protect against trespassers. Several commenters maintained that events involving employees should not be covered to avoid duplicative jurisdiction between the oversight agency and the State and Federal agencies regulating the workplace.

Other commenters recommended that FTA exclude certain kinds of personal injuries from the definition, stating that it is difficult, if not impossible, for a transit agency to monitor every slip, trip, or fall that occurs at a rail fixed guideway system. They further maintain that these kinds of injuries are not sufficiently serious to trigger an investigation by the oversight agency.

Still other commenters noted that, in most cases, a transit agency would be unable to determine whether a person was hospitalized as a result of the injury. Transit agency personnel operating in large metropolitan areas would be forced to contact dozens of hospitals, a task that would strain its resources; moreover, many hospitals do not release this kind of information to the public.

Several of these commenters recommended that FTA define accident, in part, as any injury in which a person is treated at the scene or is transported from the scene by medical personnel. This change would ease the administrative burden on the rail fixed guideway system, these commenters contended.

Many commenters strongly objected to the \$25,000 property damage threshold, with most of them indicating that property damage estimates are subjective and become obsolete over time; others contended that \$25,000 was too low. Some recommended that FTA annually adjust the dollar amount for inflation, and others recommended that the dollar amount be set by agreement between the oversight and transit agencies.

Several commenters recommended that FTA define an emergency evacuation, with one proposing that it be limited to circumstances in which emergency doors and exit routes are used, thus excluding instances when passengers are asked to leave a train disabled in a station.

**FTA Response.** In light of the comments, FTA has made several changes to the definition of accident. For instance, we have limited the definition to only those events that occur during the revenue service operation of the rail fixed guideway system, which eliminates from the rule any injuries or deaths to workers in rail yards. We made this change, not because these are unimportant events, but to avoid overlapping jurisdiction among State agencies. We do, however, encourage the oversight agency to establish a relationship with the State agency having jurisdiction over these matters and share information, thus making the workplace safer for rail fixed guideway system employees.

We disagree with commenters asking us to exclude incidents involving trespassers from the rule. Although we sympathize with the perspective of transit agencies, we believe that any death or injury requiring immediate medical treatment away from the scene of the event, which occurs while the rail fixed guideway system is in revenue service, should be investigated by the oversight agency.

We agree with those commenters who objected to the hospitalization requirement and have changed the rule to state that an accident has occurred if a person has been injured and "immediately receives medical treatment away from the scene of the accident." This language is used in FTA's drug and alcohol rules, as well.

Although several commenters asked us to remove property damage dollar thresholds, we did not do so. Instead, we have raised the dollar threshold to \$100,000, which should reduce the number of accidents involving property damage.

Last, we have removed the portion of the definition concerning emergency evacuations. In many instances, a serious event involving the evacuation of a mass transit vehicle also will involve a death, an injury requiring immediate medical treatment away from the scene, or more than \$100,000 in property damage, any of which, by themselves, will trigger an oversight agency investigation. Hence, by making this change we have focused an oversight agency's resources on serious events involving the emergency evacuation of a mass transit vehicle.