

the Administrator may withhold funds until the State comes into compliance.

#### **Subpart B—The Role of the State**

##### *A. Designation of Oversight Agency. (§ 659.21)*

This section directs the State to select an agency to oversee the rail fixed guideway system and prohibits the State from selecting the transit agency to perform this role. Paragraph (a) concerns rail fixed guideway systems that operate within only one State. In these instances, the State must designate a State agency to implement the rule. If the State chooses, this paragraph allows the State to designate an oversight agency for each rail fixed guideway system within the State. For instance, a State may wish to designate one agency for an historical trolley system and another for the remaining systems within the State. The rule is flexible in this regard and is written to accommodate those States that have established an oversight program under State law.

For those States that have not established an oversight program and have more than one rail fixed guideway system within the State, we recommend that the State designate only one agency to implement the rule. This would save resources and ensure the consistent application of the rule.

Paragraph (b) is directed to States that jointly operate a multi-State rail fixed guideway system. Although we recommend that the affected States designate a single oversight agency, this paragraph allows them to designate more than one agency, other than the transit agency, to implement the rule. Moreover, this paragraph recognizes that a single oversight agency designated by the affected States will not be an agency of any particular State.

##### *B. Confidential Accident Reports. (§ 659.23)*

This section permits the State to require the oversight agency to keep investigation reports confidential in civil litigation.

#### **Subpart C—The Oversight Agency's Role**

##### *A. The System Safety Program Standard. (§ 659.31)*

This section directs the oversight agency to develop a system safety program standard that complies, at a minimum, with the American Public Transit Association's "Manual for the Development of Rail Transit System Safety Program Plans" (APTA Guidelines) available from the American

Public Transit Association, 1201 New York Avenue, N.W., Washington, D.C. 20005-3917 or Office of Safety and Security, Federal Transit Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, and requires the transit agency to address the personal security of its passengers and employees.

As discussed above, because the APTA Guidelines were derived from MIL-STD 882B, we believe that existing oversight agencies that have used MIL-STD 882B or its successor MIL-STD 882C to create their oversight programs should meet, if not exceed, the APTA Guidelines, although we recommend that these existing oversight agencies review their programs in this regard.

This section further directs the oversight agency to develop a standard that would require the transit agency to address the personal security of its passengers and employees. In this regard, FTA has neither developed specifications nor adopted a standard for the oversight agency to follow. Instead, we have published, independently, two "how to" documents to be used by both the oversight and transit agencies in developing security standards and procedures. These documents, "Transit Security Procedures Guide" and "Transit System Security Program Planning Guide," are available free of charge from the Office of Safety and Security, Federal Transit Administration, at the address noted above. Although the use of these documents is not mandated under the rule, we recommend strongly that every affected State and transit agency obtain copies and review them. As noted above, FTA also offers several courses on security through TSI. Moreover, we suggest that the oversight agency require the transit agency to address such criminal acts as terrorist activities and "street crime" such as muggings, rapes, drug dealings, etc.

This section also allows the oversight agency to create a program that is more stringent than that required under the APTA Guidelines, although we urge those agencies not to adopt FRA-type regulations.

##### *B. System Safety Program Plans. (§ 659.33)*

This section establishes January 1, 1997, as the deadline for the implementation of the system safety program plan and requires the oversight agency to have initially reviewed and approved it before that date. It further establishes January 1, 1998, as the implementation date for the security provisions of the system safety program

plan. It also requires the oversight agency to direct the transit agency to update the system safety program plan as necessary. The oversight agency may decide that it is necessary for a system safety program plan to be updated at certain intervals, or it may make a determination based on accident statistics or results from safety audits or reviews, for example. Should the oversight agency make such a determination, this section directs it to again review and approve the transit agency's updated system safety program plan.

This section allows the oversight agency to determine whether the security provisions of the system safety program plan should be publicly available. FTA recommends strongly that the oversight agency prohibit the transit agency from publicly disclosing the security portions of the system safety program plan under any circumstance.

##### *C. Transit Agency Annual Audit Reports. (§ 659.35)*

Checklist number 9 of the APTA Guidelines requires the transit agency to draft a report summarizing the findings of its internal safety audit. This section of the rule requires the annual submission of that report to the oversight agency for its review.

##### *D. Safety Reviews. (§ 659.37)*

At least every three years, the oversight agency must conduct an on-site safety review of the transit agency's implementation of its system safety program plan. After this review has been completed, the oversight agency must issue a report detailing its findings and recommendations, its analysis of the system safety program plan, and its determination whether the safety program plan should be updated or changed.

##### *E. Transit Agency Report on Accidents and Unacceptable Hazardous Conditions. (§ 659.39)*

To investigate "accidents" and "unacceptable hazardous conditions" as required by section 5330, the oversight agency must know about them. This section directs the oversight agency to require the transit agency to report "accidents" and "unacceptable hazardous conditions" within the time specified by the oversight agency.

##### *F. Investigations. (§ 659.41)*

As discussed above in the Discussion of the Comments, the oversight agency is not required to conduct the investigation itself, but may do so through another entity such as a