

contractor or even the transit agency. The oversight agency, however, must decide how it is going to conduct an investigation and establish the procedures it or the entity acting on its behalf will use.

There are numerous ways the oversight agency may comply with this requirement. For instance, the oversight agency may establish one set of procedures to investigate accidents and another to investigate unacceptable hazardous conditions. The oversight agency may use a contractor, such as the APTA Panel of Inquiry, to investigate certain kinds of accidents and its own staff to investigate others.

The rule is intentionally flexible to allow the oversight agency to adapt an oversight program to the needs of the rail fixed guideway systems within the State's jurisdiction.

G. Corrective Actions. (§ 659.43)

Section 659.41 requires the oversight agency to investigate "unacceptable hazardous conditions." This section directs the oversight agency to require the transit agency to develop a corrective action plan to eliminate, minimize, or control investigated hazardous conditions in accordance with the approved corrective action plan and within the time period specified by the oversight agency.

H. Oversight Agency Report to the Federal Transit Administration. (§ 659.45)

This section requires three kinds of reports: initial, annual, and periodic. The initial submission contains information that will not change frequently, such as the name and address of the oversight agency and the transit agencies it oversees, a copy of the system safety program standard, and a description of the oversight agency's procedures for conducting investigations and ensuring that the transit agency has undertaken appropriate corrective actions. This report must be updated only when some of the information within it changes.

The annual submission describes the activities of the oversight agency for the previous twelve months, including any determinations by the oversight agency of the probable cause of "accidents" and "unacceptable hazardous conditions," if it can do so and protect the confidentiality of investigation reports. This section allows an oversight agency required to submit annual reports to the State to submit the same report to FTA, if it contains all the necessary information.

Last, this section allows FTA to periodically ask the oversight agency to

submit certain kinds of information such as the status reports on "accidents," "hazardous conditions," and corrective action plans. These reports must be submitted only upon FTA's request.

I. Use of Contractors. (§ 659.47)

This section expressly allows the oversight or transit agency to use contractors to perform certain tasks required under the rule. The agencies may use a contractor to perform some or all of these tasks. For instance, an oversight agency may use a contractor to conduct only accident investigations, while another may use a contractor solely to conduct safety reviews. A transit agency may not be a contractor for the oversight agency, however.

J. Certification of Compliance. (§ 659.49)

This section requires the oversight agency to initially certify before January 1, 1997, that it has complied with the rule. Thereafter, the oversight agency is required to certify annually that it is in compliance with the rule.

IV. Economic Analysis

FTA has evaluated the industry-wide costs and benefits of the rule, "Rail Fixed Guideway Systems; State Safety Oversight," which requires a State to develop, through an oversight agency, a program to oversee the safety of rail fixed guideway systems. At least 19 States will be required to create an oversight agency that must:

- Develop a System Safety Program Standard which includes provisions addressing security.
- Approve the transit agency's initial system safety program plan.
- Conduct safety reviews.
- Establish investigation procedures.
- Investigate accidents and unacceptable hazardous conditions.
- Ensure the transit agency complies with the oversight agency's system safety program standard.

- Review corrective action plans.
- Report to FTA.

At least 33 transit agencies must:

- Develop a System Safety Program Plan and update it, as necessary.
- Prepare annual audit reports.
- Conduct safety audits.
- Classify hazardous conditions according to the APTA Hazard Resolution Matrix.
- Report accidents and unacceptable hazardous conditions to the oversight agency.
- Prepare corrective action plans.
- Handle hazardous conditions according to approved corrective action plans.
- Maintain safety data.

Generally, in analyzing the costs of this rule, the Regulatory Evaluation considered only those activities required by the rule. For those States and transit agencies that have already established a program similar to the one required by the rule, the Regulatory Evaluation considered only those activities necessary to bring these programs into compliance with the rule. Year One costs are estimated to be approximately \$336,000, the lowest for any single year. This is because the costs incurred in Year One are generally limited to activities of the oversight agencies and the FTA. Total costs for the first ten years are estimated to be approximately \$9.1 million.

The estimated benefits of the rule are assumed to take full effect in the third year of implementation, 1998. Therefore, the estimated fatalities and injuries averted are based on an eight-year period. For this period there would be 16 fatalities and 1,528 injuries averted. Based on the Department's Willingness to Pay Threshold, the total benefit of the rule is approximately \$107 million over a ten-year period.

V. Regulatory Process Matters

A. Executive Order 12866

FTA has evaluated the costs and benefits to the States of creating an oversight program to oversee the safety of rail fixed guideway systems and has determined that this rule is a major rule under Executive Order 12866 because it affects State and local governments.

B. Departmental Significance

This proposed rule is a "significant regulation" under the Department's Regulatory Policies and Procedures, because it changes an important Departmental policy. That policy change requires the States to oversee the safety of rail fixed guideway systems, something the Federal government has never before required.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), FTA has evaluated the effects of this proposed rule on small entities. Based on this evaluation, FTA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities because the affected transit agencies will in most cases be large.

D. Paperwork Reduction Act

The information collection requirements in this rule have been reviewed and approved by the Office of Management and Budget under OMB #2132-0558.