State of New Jersey

DEPARTMENT OF TRANSPORTATION
P.O.Box 600
Trenton, New Jersey 08625-0600

JAMES E. MCGREEVEY
Governor

JACK LETTIERE
Commissioner

U.S. Department of Transportation
Central Docket Office, Room PL-401
400 Seventh Street, SW
Washington, DC 20590

RE: Docket No. FTA-2004-17196, Rail Fixed Guideway Systems; State Safety Oversight; Notice of proposed rulemaking

Dear Madam/Sir:

Thank you for the opportunity to comment on this proposed rulemaking pertaining to the regulations for State oversight of rail transit safety and security programs. The following are comments that we have relative to this rulemaking.

659.5 Definitions

"Pedestrian" should be added to the definition of "individual". The State Safety Oversight office or agency (SSO) should be notified of all fatalities.

"Rail transit-controlled property" should relate to public or private owned, leased, rented, or other property in use intended for the support of the rail transit system and its operations.

659.7 Withholding of funds for noncompliance

The rule should include the process to request the release of withheld funds. Consider adding the following: "...and shall do so with due regard to the state's authority to compel compliance and cognizant of multiple jurisdictional issues related to interstate rail fixed guideway systems. The Administrator may restore withheld funds upon determining adequate efforts toward compliance are being undertaken."

659.9 Designation of oversight agency:

Include a provision for the case when a State officially moves oversight responsibility to a "new" State organization.

659.15 System safety program plans

Recommend that the regulation require a formal letter of approval from the State safety oversight office, accompanied by a checklist used to review the System Safety Program Plan.

659.17 System security plan
Recommend that the regulation require a security plan, including a description of a positive ID program that identifies all contractors, visitors and employees requiring access to the system or facilities, and that tracks all security related IDs, uniforms, or equipment that may be used as part of the positive ID program.

Recommend that the regulation require a formal letter of approval from the State safety oversight office, accompanied by a checklist used to review the System Security Program Plan.

659.21 Rail transit agency internal safety and security reviews
Recommend that the regulation require the rail transit agency to give at least a 45-day notice to the SSO agency prior to the internal safety and security review.

659.23 Oversight agency safety and security reviews
Recommend that the rule be amended to clarify that the SSO agency reserves the right to conduct an on-site review more frequently than every three years.

Recommend adding: "The oversight agency must prepare and issue a report containing findings, recommendations, corrective actions, and the rail transit agency's response to each finding that requires additional action. The rail transit agency's response shall set a time frame to implement the corrective actions resulting from the review. The report, at a minimum, must include an analysis of the efficacy of the system safety program plan and a determination of whether it should be updated."

659.27 Notification
The term "non-rail transit vehicle" should be defined.

The SSO office should be notified in the event of any fatality. Neither the rail transit agency nor the SSO should be required to determine the cause of death. For instance, the NTSB is always notified if there is a fatality regardless if it is the result of a suicide. As the rule is currently written, the transit agency would notify the NTSB, but the SSO office would not receive a notification, of death by suicide or illness. Also, the rail transit agency, under the language of the proposed new rule, may not report the fatality until a determination is made as to whether the death is by suicide or illness.

In addition, the transit agency should notify the SSO office of all accidents and incidents. The SSO, and the rail transit agency, should be involved in reviewing data to ascertain whether the event meets the FTA's criteria for reportability. The FTA established that the purpose of Part 659 is to ensure that the RFGS operates safely and that the systemic causes of accidents and unacceptable hazardous conditions are addressed. For this reason the SSO needs to identify trends, repeatable occurrences and other events that may lead to failures in the systems operating in its state. The source of information that is needed to determine whether trends, repeats, and violations are occurring usually comes from events that do not meet the FTA's criteria and, therefore, under the rule as presented would unfortunately not be reportable to the SSO either, therein impeding the desired safety work of the SSO.

659.29 Investigations

Recommend the following changes to 659.29 as follows:

FTA reportable events:

(a) through (d), (1) – (3)

Include all of the above sections with no changes.

(Add) FTA non-reportable events:

(a) The rail transit agency must report all events as required above to the SSO. The SSO must review, log, and track the events to determine possible repeats, trends, or patterns and notify the rail transit agency when this occurs.

(b) The rail transit agency must verify these conditions and respond in writing with corrective actions to the SSO.

659.31 Corrective actions plans

Recommend that the rule be amended also to require that the corrective actions plan cover findings from safety and security internal audits and from annual reviews performed by the transit agency.

659.33 Oversight agency report to the Federal Transit Administration

The timeframe of within one year for the SSO to make its initial submission might be a bit ambitious, particularly if the SSO needs state statutory authority. Can the SSO request additional time if necessary?

Clarification is needed here or in Section 659.13, regarding the reporting requirements for a new start under an existing SSO agency.

Also recommend consideration of the following or similar language:

" (__) The initial submission must include the following:

(1) oversight agency program plan documents, as a minimum including:

i. its program standard;

ii. procedures or process for reviewing and approving the rail transit agencies' system safety program plans;

iii. investigatory procedures; and

iv. criteria for the development of the rail transit agencies' corrective action plans to correct, eliminate, minimize or control investigated hazardous conditions. .....

(__) Periodic submissions – FTA retains the authority to periodically request program information. A periodic report submitted to the FTA for start-up or initiation of passenger service related to new systems, major modernizations, rehabilitations, modifications, extensions or new subsystems must include with the submission:

(1) renewal of the annual certification;
(2) Communications related to the safety certification of the related system or improvements, including the verification of the process used to ensure the safety and security of the system;
(3) Checklist and verification of the approval process for the transit agency SSPP;
(4) Identification of hazardous conditions; and
(5) Corrective action plan that provides for periodic reporting on all open or work-a-round activities resulting from the initiation of new or renewed passenger carrying service. "

Thank you for your consideration of the aforementioned comments.

Dennis Keck, Assistant Commissioner