

Proposed Comments to Rail Fixed Guideway Rulemaking from the Colorado Public Utilities Commission

§ 659.05 Definitions

There should be a definition of "damage to a system" and "damage to the environment". It needs to be quantifiable. These terms are used in the definition of "hazard." Inappropriate use of these terms could change an event or condition that is a common and everyday occurrence into a hazard or on the other side of the spectrum, might deem an extremely hazardous event or condition as non-hazardous. Under the current rule the notion of "unacceptable hazardous condition" has been very hard to corner and not defining these terms does little to improve upon the current situation.

659.27 Notification.

Concerning the proposed two-hour notification of the Oversight Agency by the RFGO and the additional proposed lowering of some of the reporting threshold limits:

Assuming that many states will continue in the practice of designating the transit agencies to perform investigations on their behalf, we request that "notification" be more explicitly defined. If the intent is that when the RFGO reports an event, there is someone available to receive the report on a 24/7 basis, then it would seem reasonable to assume that an increase in staffing of the oversight agencies would also be needed. On the other hand, if notification means that the RFGO calls a phone number and leaves a message or sends a fax within the two hour time frame, then that is another matter and it is unlikely that staff increases would be needed. Does FTA propose to leave it to the States to iron out these details?

§ 659.27 Notification.

Since suicides are currently reportable to the NTD, the oversight agency should be notified in the event of each and every fatality regardless if it is initially determined to be a suicide. In many cases, a suicide occurs when a person trespasses somewhere on the rail system. FRA and NTSB reporting does not make a distinction between a fatality and a fatality that is the result of a suicide. Transit authorities are not qualified or authorized to make the determination that a fatality is the result of a suicide. Such determinations are made by local law enforcement investigations usually in conjunction with a coroner.

§ 659.27 Notification.

Additional changes are as follows:

(a) The oversight agency must require the rail transit agency to notify the oversight agency within two (2) hours of any known event involving a rail transit vehicle or taking place on rail transit-controlled property where one or more of the following occurs:

(a) (1) This rule asks state oversight agencies to require families to notify state agencies in the event of a fixed guideway related death. We do not have the authority to require the family of an injured person to notify us if the injured person dies within 30 days. Also, we cannot report what is unknown. Thus we ask you to remove the phrase "confirmed dead" and replace it with "is known to have died as a result of".

(a) (3) property damage to rail transit vehicles, non-rail transit vehicles, other rail transit property or facilities known to equal or exceed \$25,000;

(b) The oversight agency must require rail transit agencies that share track with the general railroad system and are subject to the Federal Railroad Administration notification requirements to notify the oversight agency within two (2) hours of any known incident for which the rail transit agency must notify the Federal Railroad Administration

§ 659.33 Oversight agency report to the Federal Transit Administration. The rule should provide a grace period for the oversight agency's implementation. It should be a minimum one (1) year after publication of the final rule. Under certain circumstances this may not be adequate time for a state's administrative rule (standard) revisions and adoption. Suggest a provision to allow the oversight agency an opportunity to request additional time for adoption if necessary.

659.35 Conflict of interest.

We request that the rule define further what exactly is considered to be a "conflict of interest". Specifically we have concerns as to whether or not a joint audit program such as that which is practiced in Colorado between the PUC and the RTD could be considered to fall under this definition. The Colorado PUC program is one in which the PUC participates in both the Internal Safety and Security Audit Program of the Rail Fixed Guideway Operator (RFGO), and is responsible for and participates in, the Three Year Safety and Security Audit of the RFGO.

Additionally, there are a limited number of safety consultants in this industry. It is highly probable that a consultant could work in a Program Management Oversight role for FTA, work for the rail transit agency, or work for the SSO agency in some type of capacity. It may be necessary to specify what is considered "safety work" or "safety related work" so the oversight agency can conduct a review and avoid any real or potential conflicts.

Additional Comment.

We suggest that the Rules identify any records that must be maintained and specify the required retention periods. This should be specified for both the rail transit system as well as the state oversight agency.