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**Maryland Department of Transportation**

**The Secretary's Office**

June 7, 2004

United States Department of Transportation  
Central Docket Office, PL-401  
400 Seventh Street SW  
Washington, DC 20590

Re: Docket No. FTA-2004-17196 -25

U.S. DOT:

The following comments, related to the proposed rule regarding 49 CFR Part 659, are made by the State of Maryland Rail Fixed Guideway Oversight Agency within the Secretary's Office of the Maryland Department of Transportation. The proposed changes to the rule are generally more proscriptive than the current rule. Though we agree with many of the new provisions within the proposed rule, some changes may reduce the current flexibility needed to work with transit agencies to make timely changes to enhance safety and security.

In addition to this general comment, reducing the property damage amount for notification in Section 659-27 from \$100,000 to \$25,000 will result in many more incidents being reported with not much more value being realized. It is recognized that while creating a standard set of criteria consistent with the National Transit Database [NTD] reporting requirements is a worthwhile goal, we would suggest that a figure between \$25,000 and \$100,000 would be more workable.

Most of the definition changes in the proposed rule enhance the understanding and meaning of Part 659. One example regards the expectation that transit agencies be directly involved in the process of "developing and adopting System Safety Program Plan" documents rather than just adopting the plans. We do have some recommendations for definition modifications to the proposed rule in Section 659.5. The Corrective Action Plan definition should recognize the typical State funding cycle regarding the "schedule for implementation for those actions", to "minimize, control, correct, or eliminate hazardous conditions". In some cases, depending on the scope of changes necessary, there can be a delay in funding that makes it difficult to specify an exact date for completion of actions during the year. Also in Section 659.5, changing the definition regarding hazards to "hazard means any real or potential conditions", rather than just stating "hazard means any condition", increases the uncertainty regarding the definition rather than the objective of improving the definition. We strongly suggest rewording this definition to clearly define the context of "real and potential conditions".

The new "Conflict of Interest" provision (Section 659.35), requiring the state oversight agency prohibit a party or entity from providing services to both the oversight agency and the rail transit agency where there exists a conflict of interest, will have the affect of limiting competition from qualified firms that could otherwise provide contractor services to the oversight agencies. State oversight agencies should continue to be allowed to determine these issues on a case by case basis. Many of the larger consulting firms in the transit industry have different groups providing services in many segments of the industry. Many of these firms will not risk losing transit agency business to provide services to rail oversight agencies, to the detriment of the oversight process.

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**Robert L. Ehrlich, Jr.**  
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Secretary

**Trent M. Kittleman**  
Deputy Secretary

COMMUNICATIONS SECTION



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Please consider the above comments as you work to revise the proposed rule. Contact either Mr. John Contestabile (420-865-1386 [jcontestabile@mdot.state.md.us](mailto:jcontestabile@mdot.state.md.us)) or Mr. Earl Lewis (410-865-1386 [rlewis1@mdot.state.md.us](mailto:rlewis1@mdot.state.md.us)) if you have any questions or need clarification regarding our comments. Thank you for your consideration of these comments.

Sincerely,

  
John M. Contestabile, Director  
Rail Safety Oversight Program - MDOT

  
R. Earl Lewis, Manager  
Rail Safety Oversight Program – MDOT

JMC/REL/dhz

Cc: Mr. Ronald Keele, Executive Director, Office of Safety, Maryland Transit Administration  
Ms. Trent M. Kittleman, Deputy Secretary of Transportation  
Mr. James F. Ports, Jr., Assistant Secretary for Administration, MDOT  
Mr. Robert Smith, Administrator, Maryland Transit Administration