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# Texas Department of Transportation

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June 4, 2004

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

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DEPT. OF TRANSPORTATION  
DOCKETS

RE: Docket No. FTA-2004-17196 - 27

Dear Comment Clerk:

The Texas Department of Transportation (TxDOT) would like to respond to the United States Department of Transportation's request for comments that was published in the *Federal Register*, Vol. 69, No. 46, on March 9, 2004. TxDOT offers the following comments and recommendations on the "Notice of Proposed Rulemaking on Rail Fixed Guideway Systems; State Safety Oversight," 49 CFR Part 659.

## § 659.5 Definitions.

**Individual** – The Federal Transit Administration (FTA) has added the term individual to the rule. We believe that the new definition is too restrictive. As written, the state safety oversight agency would not be notified by the rail transit agency if a pedestrian was killed in an accident involving a rail transit vehicle or on rail transit-controlled property. However, the same accident may require the rail transit agency to notify the National Transportation Safety Board (NTSB). The FTA's National Transit Database (NTD) lists the definition of 'others' as an individual who is neither a transit passenger, a transit facility occupant, an employee/other worker at a transit agency, nor a trespasser. We suggest the terms pedestrian and others be added to broaden the meaning of the definition.

**Passenger** – The definition of passenger does not address persons who had just used or intended to use the rail transit system. We suggest adding the term patron to the definition to address those persons.

**Rail transit-controlled property** – We believe the definition should be tied to operations of the rail transit system. We request clarification on this definition. Are the roadways, the right-of-way, and facilities both revenue and non-revenue included under this definition?

§ 659.7 Withholding of funds for noncompliance.

We appreciate FTA's stance that withholding funds apportioned for use in a state or affected urbanized area within that state will elicit a prompt response from the oversight agency to comply with this rule. However, this clause does not directly address a rail transit agency's lack of action or disregard for the state's safety oversight program. Often times the oversight agency does not have a fiduciary relationship with the rail transit property. This is the situation with two of the three rail transit agencies currently operating in Texas. They receive their federal funds directly from FTA, have taxing authority, but they do not receive state funds. In instances where the rail transit agency is not making efforts to comply with the rule we believe that it is appropriate for FTA to directly withhold funds from the rail transit agency until all safety and security issues are resolved. We request clarification on the processes by which the state may initiate the withholding of funds by FTA from a rail transit agency for non-compliance.

§ 659.13 System safety program standard.

Clarification is required in this section to document the reporting requirements for a new start rail transit agency under an existing state safety oversight agency. For example, TxDOT was required to submit documentation to FTA showing our agency had approved Houston METRO's system safety and security plan prior to the commencement of revenue service. The documentation and submission procedures FTA requires for new starts should be identified in this section.

§ 659.17 System security plan.

FTA's decision to require the rail transit agency to develop and maintain a system security plan that is separate from the system safety plan is appropriate. However, the oversight agency should not be limited to reviewing the system security plan on-site at the rail transit agency. The oversight agency should also be able to retain a copy of the plan. The security plan should contain sufficient detail to indicate what the rail transit agency is going to accomplish but should not reveal how they will do so. If the state safety oversight agency is prohibited from retaining a copy of the security plan it will make it more difficult to monitor and oversee the security function of the rail transit agency.

§ 659.21 Rail transit agency internal safety and security review.

We agree the state safety oversight agency must be apprised prior to the internal safety and security review. However, notification 30 days prior does not give enough lead-time for the state safety oversight agency to have a role in the actual review. The notification lead-time should be increased to a minimum of 60 days to give the state adequate time to review and approve the rail transit agency's plan checklists.

§ 659.27 Notification.

As written, suicides are not reportable to the state safety oversight agency. The state safety oversight agency should be notified in the event of each fatality regardless if it is a suicide. Suicides are reportable under the NTD. Frequently, a suicide occurs when a person trespasses somewhere on the rail system. The Federal Railroad Administration (FRA) and the NTSB reporting requirements do not make a distinction between a fatality and a fatality that is the result of a suicide. In fact, most transit agencies will not make the determination that a fatality is the result of a suicide. Typically, the police or a medical examiner makes that determination.

We agree that rail transit agencies that share track with the general railroad should be required to notify the oversight agency of an incident for which a rail transit agency must notify the FRA. This requirement should be extended to include NTSB reporting. The NTSB is notified by the rail transit agency if there is a fatality regardless if it is the result of a suicide. As the rule is currently written the state safety oversight agency would not receive notification of a suicide. This provision could also address any future changes to the current NTSB reporting requirements.

Language should be added to the rule that addresses how long a state safety oversight agency and a rail transit agency must retain documents pertaining to the safety and security program. A list of those documents should also be specified in the rule. The deadline for the state oversight agencies and the rail transit agencies to adopt and comply with the new rule once final was omitted from the proposed rule.

The proposed rule will serve the state safety oversight agencies well by clearly defining the state's role and authority in the management of the rail safety oversight program. We appreciate the chance to comment on rule. If you have any questions about these comments, please call Susan Hausmann at (512) 416-2833.

Sincerely,



Michael W. Behrens, P.E.  
Executive Director

cc: Susan Hausmann, Public Transportation Division, TxDOT