



U.S. Department of Transportation
Federal Transit Administration
Office of Safety and Security

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State Safety Oversight

Spring 1999

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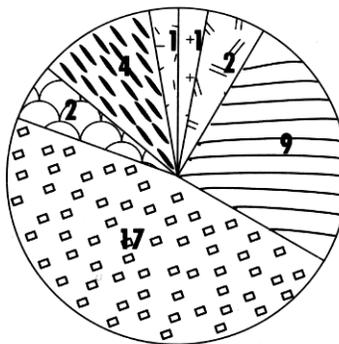
Audits Identify Program Weaknesses

The Federal Transit Administration (FTA) has completed two audits of oversight agencies so far in 1999: the California Public Utilities Commission from March 22 to 26; and the Texas Department of Transportation from May 4 to 7. This makes a total of five completed audits since the FTA's audit program began in the fall of 1998.

FTA issues two types of findings at the audits. A **deficiency** is an area in which the Oversight Agency (OA) fails to comply with a requirement in the FTA regulation *or* does not follow one of the procedures set forth in its own System Safety Program Standard. If the OA does not correct a deficiency, FTA could withhold funds. FTA issues a finding of an **area of concern** when it sees a weakness in the oversight program that, while not a deficiency, should be addressed by the OA to improve the program's effectiveness. Among the five completed audits, there were 36 deficiencies and 38 areas of concern.

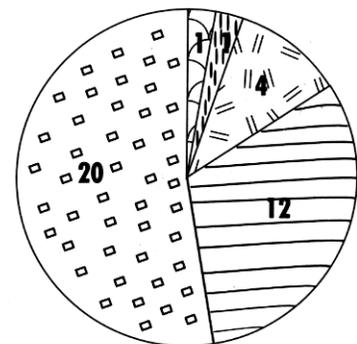
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Deficiencies



Total = 36

Areas of Concern



Total = 38

	OA Designation & Authority		Three-Year Safety Reviews
	Program Management		RFGS Internal Audit Process
	Program Standard and SSPP Review & Approval		Certification and Reporting to FTA
	Accident/Unacceptable Hazardous Condition Investigations & Corrective Actions		

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 **Newsletter readers:** Make sure that you receive future issues. Please keep us informed of changes to your contact name, address, and phone numbers. And if you're not on our mailing list, send us your address by mail, fax, or e-mail. See the back page for the editor's address and numbers.

This Just In...

Watch this page for changes to the rail safety regulation, breaking news, and previews of coming events.

Oversight Agencies for PATCO and Michigan

On April 5, 1999, FTA approved the designation of the **Delaware River Port Authority (DRPA)** as the State Safety Oversight agency for the **Port Authority Transit Corporation (PATCO)**. PATCO operates a heavy rail system between Lindenwold, New Jersey and Philadelphia. Because PATCO operates in two states, New Jersey and Pennsylvania had the joint responsibility of selecting the oversight agency.

PATCO is a wholly-owned subsidiary of DRPA. Because of this close relationship between the two agencies, FTA "requested DRPA to describe this relationship and explain how it will be able to independently and effectively oversee the safety of PATCO." FTA gave approval after Mr. Paul Drayton, DRPA's chief executive officer (who is also PATCO's president) recused himself from any involvement in DRPA's role as the oversight agency. Mr. J.P. Marinari, chief operating officer of DRPA, will manage the safety oversight program.

In early May, Michigan Governor John Engler designated the **Michigan Department of Consumer and Industry Services (CIS)** as the oversight agency for the **Detroit People Mover (DPM)**. The DPM is an automated guideway that operates in downtown Detroit.

Mr. Kalmin Smith, deputy director of CIS, will be the manager of the state's oversight program. He is currently developing the system safety program standard and system security standard for FTA review.

There are now 20 oversight agencies that oversee the safety of 32 rail operators across 19 states and the District of Columbia.



1999 Workshop

The FTA's 1999 Workshop for State Safety Oversight Agencies will take place in **Portland, Oregon, from September 22 to 24**. The Oregon Department of Transportation will be the host for the third annual gathering of the oversight agency managers and FTA safety staff. *See page 8 for more information.*

1998 Annual Reports

By March 15, an oversight agency must "submit to FTA a publicly available annual report summarizing its oversight activities for the preceding twelve months" (49 CFR §659.45(b)). The chart on this page presents summary information from the 1998 annual reports of the Oversight Agencies.

Please be careful in comparing numbers for different states. California, Maryland (MTA), Massachusetts, New York, Oregon, and Texas did not use the FTA thresholds in reporting the number of accidents or injuries. Therefore, the values for accidents and injuries for these states are not equal to (and are generally higher) than the FTA-reportable values.

To see the full report of any state, you may request a copy directly from the Oversight Agency.

STATE	Number of RFGSs	Reported Accidents	Unacceptable Hazardous Conditions	Fatalities (Suicides)	Injuries
CA	6	337	2	7	256
CO	1	2	0	0	2
DC/MD/VA (WMATA)	1	20	0	5(3)	7
FL	2	3	0	3	0
GA*	1	1	0	0	1
IL	1	11	1	2(1)	9
LA	1	6	0	0	7
MD (MTA)	1	127	4	1 (1)	26
MA	1	283	1	0	155
MO	1	1	0	0	1
NJ	1	2	0	0	10
NY	2	15	NR	4	NR
OH	1	6	0	0	7
OR	1	63	5	0	17
PA	3	21	0	1	32
TN	2	0	0	0	0
TX	2	NR	NR	0	NR
WA	2	1	0	0	1

NR = not reported

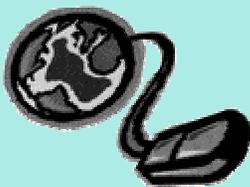
* Georgia DOT began active oversight in November, 1998

Bold green type indicates that the Oversight Agency did not distinguish between FTA-reportable and other incidents.

While we all learned in junior high social studies about how the government makes laws, most of us skipped the advanced course on the Federal regulatory process. Yet it is these regulations that emerge from the laws that guide many of the programs that the Federal government carries out on it daily

This edition of Counsel's Corner explains the basics of the Federal rulemaking process used by many agencies, including FTA. The State Safety Oversight Rule -with its ANPRM, NPRM, public hearing, and public docket is a typical example of the rulemaking process in action. And for anyone seeking to revise the rule, this is a roadmap for what's ahead.

Nancy Zaczek, Attorney for the FTA's Office of the Chief Counsel (TCC), returns to these pages for the second of her occasion columns.



USEFUL WEB SITES

<http://www.fta.dot.gov>

FTA Web Page

<http://www.nara.gov/fedreg>

Federal Register

Counsel's Corner

Federal Rulemaking in a Nutshell



How does a Federal agency issue a rule?

The Federal regulatory process is controlled by many statutes, executive orders, and departmental orders, but primarily, it is controlled by the Administrative Procedure Act (APA) and, in the case of the Federal Transit Administration (FTA), the Federal transit laws at chapter 53 of title 49 of the United States Code.

Basically, the APA requires that the Federal government use a public process for developing and issuing rules, called "notice and comment" rulemaking. An agency gives notice that it is developing a rule by publishing a rulemaking document in the Federal Register; FTA also simultaneously publishes rulemaking on its web site at <http://www.fta.dot.gov>. Once FTA issues an Advance Notice of Proposed Rulemaking (ANPRM) or Notice of Proposed Rulemaking (NPRM), members of the public must be given 60 days to comment on it. Members of the public can electronically access any U.S. Department of Transportation docket at <http://www.nara.gov/fedreg>.

When does an agency issue an ANPRM?

Technically, a Federal agency starts the rulemaking process when it issues an NPRM. But, sometimes an agency precedes the NPRM with an ANPRM asking for the public to comment on a series of questions. An agency uses an ANPRM when it is issuing a rule in a totally new area and needs information to develop the rule. FTA used an ANPRM in developing the State Safety Oversight rule. More often, an agency begins the rulemaking process by issuing an NPRM. The NPRM generally contains the proposed rule text, an explanation of the proposed rule (in the preamble and the section-by-section analysis), and asks for comments. Although the agency frequently asks for comment on specific questions, a commenter can comment on anything in the rule.

What happens when an agency decides to publish a rule?

When FTA decides to publish a rule, the behavior of its employees is governed by the Departmental Order called the *ex parte* communication order; "ex parte" means "without notice to the other side." Because rulemaking is a public process, the public has a right to know of any communication FTA receives, orally or in writing, which seeks to influence the agency's decision on a particular rule. Hence, once FTA has issued an NPRM, a member of the public communicates to FTA about the rule by placing a comment in

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Audits Identify Program Weaknesses

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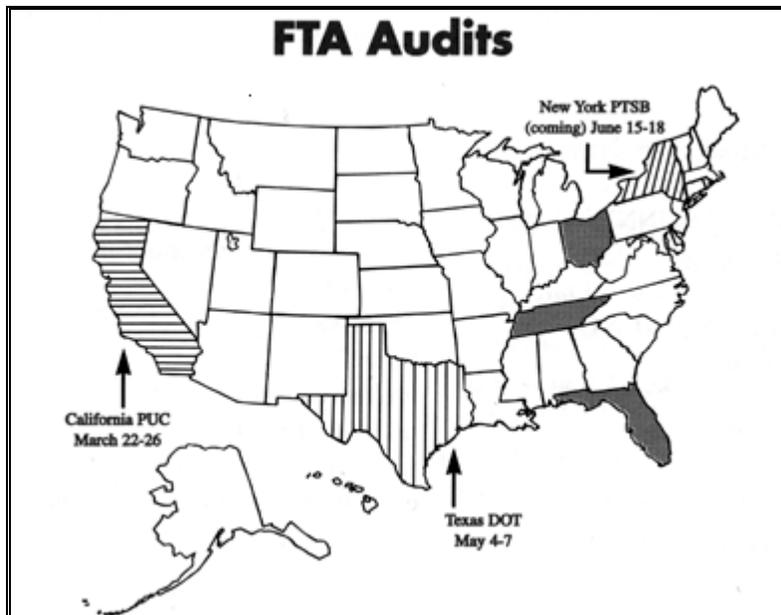
The pie charts show the categories of findings from the five audits. The area of *Accident/Unacceptable Hazardous Condition Investigations and Corrective Actions* accounted for half of all audit findings. Auditors found that most OAs have delegated investigation responsibilities to the rail systems. However, the OAs have not been sufficiently vigilant in monitoring the investigations, reviewing the findings, or monitoring the rail systems' corrective actions.

Nearly 30 percent of the findings related to the *Program Standard and System Safety Program Plan (SSPP) Review and Approval*. In this area, auditors found that OAs were not following the policies in their own program standards. Also, some OAs did not conduct thorough reviews of the rail systems' SSPPs. The good news is that the OAs' responses to audit findings in this area indicate significant improvement.

What's Ahead

In response to the findings from the audits completed so far, FTA has prepared and distributed to all oversight agencies a *Technical Advisory on Investigations and Corrective Actions for Accidents and Unacceptable Hazardous Conditions*. Experts from this *Technical Advisory* will appear in the next issue of the *Newsletter*. FTA's Office of Safety and Security plans to provide further technical assistance on this topic, including:

- a Handbook on recommended investigation procedures
- training sessions at this fall's State Safety Oversight Workshop



Counsel's Corner

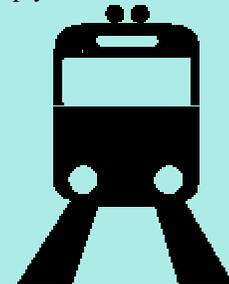


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the docket. If a member of FTA talks to a member of the public about a substantive issue in the NPRM, then the FTA employee must reduce the conversation to writing and enter it into the docket. If an employee has a conversation with a member of the public about a substantive issue before the NPRM is issued, that conversation must be described in the preamble to the rule.

During the comment period, the agency may choose to hold a series of public hearings. If the agency decides to hold public hearings, it will announce the location, date, time, and procedures of the hearings. The announcement will be published in the *Federal Register*.

Once the final rule is issued, except under limited circumstances, it becomes effective 30 days after publication. Sometimes, however, as in the case of the State Safety Oversight rule, the agency can delay its implementation date to allow the regulated entities time to do whatever it is that they have to do to comply with the rule.



The oversight agencies create the program standards, review system safety program plans, establish investigation and corrective action plan procedures, and conduct three-year reviews.

We thought that you would want to know the people on the other side: the transit safety directors who are following the standards, developing the SSPPs, preparing for the three year reviews, and -in nearly all states conducting the investigations on behalf of the oversight agencies.

Here is a list of the individuals who have daily responsibility for safety at the 20 light rail systems. In the next issue, we will provide the list of safety managers for the other rail modes.

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Calendar

1999

- Spring FTA audits of Oversight Agencies continue
- Summer Issue #6 of *Newsletter*
- Sept. 22-24 3rd State Safety Oversight Workshop, Portland OR
We are still looking for Oversight Agency staff to round out the Workshop Steering Committee
(especially people who did not serve on the 1998 Steering Committee) to help us plan the content and format. Please contact Roy Field of FTA (202-366-0197) if you are interested.
-  *Oversight Agencies: watch for the first your mailing concerning participation in this fall's workshop. We are planning an expanded agenda this year, with oversight agency presentations, FTA updates, guest speakers, plus breakout training sessions.*
- October 1 Happy Federal Y2K
- Fall Issue #7 of *Newsletter*

State Safety
Oversight

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