

## Summary of Comments

*Extracted from the Public Transportation Safety Certification Training Program NPRM published on December 3, 2015 Vol. 80 No. 232. Comments are published on pgs. 75641-75645*

On October 3, 2013, FTA issued an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register on all aspects of FTA's safety authority, including the training program. (See 78 FR 61251, <http://www.gpo.gov/fdsys/pkg/FR-2013-10-03/pdf/2013-23921.pdf>).

In the ANPRM, FTA noted that there are discrete and different skill-sets required for those who perform safety audit and examination functions compared to those who are directly responsible for safety oversight. For example, at the Federal level, FTA's responsibilities include ensuring that SSOA personnel are properly trained and adequately resourced to regulate rail transit systems within their respective jurisdictions. At the State level, SSOA personnel are responsible for direct safety oversight of those rail transit systems under their jurisdiction. And on the local level, public transportation agency personnel are directly responsible for developing and implementing safety oversight within their respective agencies. Recognizing this distinction, FTA outlined its vision for the PTSCTP which included a wholly new FTA-sponsored training curriculum to enhance the technical proficiency of safety oversight professionals in the public transportation industry.

In the ANPRM, FTA noted that pursuant to 49 U.S.C. 5329(c)(2), it would promulgate an interim program for safety certification training prior to developing a proposed rule for the PTSCTP. On April 30, 2014, FTA published a Federal Register notice requesting comment on its proposed requirements for the interim program. A number of the proposed requirements for the interim program were based in part, on recommendations provided by commenters on the ANPRM (see 79 FR 24363).

FTA evaluated comments received in response to the proposed interim program notice and promulgated the final interim program requirements in a Federal Register notice dated February 27, 2015, with an effective date of May 28, 2015 (see 80 FR 10619). Since the interim program was implemented only recently, FTA has not had sufficient opportunity to evaluate the effectiveness of the program, nor assess lessons learned. However, to implement the requirement of 49 U.S.C. 5329(c)(1) via a regulatory framework, FTA is proposing with this rule that the curriculum for the PTSCTP remain the same as that of the interim program.

Some comments on the ANPRM were outside the scope of the questions posed and, therefore, are not addressed in this notice. However, many of the comments and recommendations were instructive for developing both the interim program and this NPRM. What follows is a discussion of relevant ANPRM comments, development of the interim program requirements, and the regulatory framework proposed for the PTSCTP.

Question 48. In the ANPRM, FTA proposed organizing the training around a series of competencies and basic skills that Federal, State, and public transit agency safety oversight personnel need to perform their respective responsibilities. To that end, FTA proposed a wholly new FTA-sponsored safety training curriculum, provided a list of competencies and technical capabilities supported by the curriculum, and sought comment regarding what other safety-related competency areas or training outcomes should be identified for the PTSCTP.

Thirty commenters responded directly to the question or provided comments relative to the issue. A few commenters indicated that the FTA list sufficiently covered all safety-related competency areas. Several commenters identified safety-related competency areas for inclusion in the PTSCTP, such as: Incident investigation, emergency response, fundamental safety management concepts and processes, methods for the identification, assessment and evaluation of hazards, safety assurance methods, measurement and evaluation of safety management processes and mitigation strategies, National Incident Management System (NIMS) training, and Occupational Safety & Health Administration (OSHA) standards.

Some commenters suggested that FTA focus on developing a safety program that recognizes the six key functions of bus safety identified in the 2003 Memorandum of Understanding (MOU) signed by FTA and the Federal Motor Carrier Safety Administration (FMSCA). Those functions include management, operations and maintenance, human resources, safety activities, security activities, and emergency/all hazards management. A few commenters stated that FTA should develop clear and workable guidelines for safety certification training and accommodate the differing needs of small, medium and large agencies in those requirements.

Three commenters indicated that the PTSCTP called for in MAP-21 only applies to the SSO program and does not require specific training requirements for State Department of Transportation (State DOT) staff involved in managing federal funds. Two commenters stated that defining training outcomes and competency areas is not an appropriate role for FTA and should be left up to the determination of a transit agency and based on the scope, scale and complexity of fixed facilities, systems and operating environment. Commenters also suggested the following:

- Since a culture of safety already exists in rural transit, FTA should consider flexible, scalable approaches that use training programs that have a proven track record for driver training, vehicle maintenance, and drug and alcohol compliance;
- there needs to be a concerted effort to drill down on safety concerns that cause the greatest risk in cost and life and focus on improving those areas;
- the FTA Safety Certification Program requirement should allow FRA-regulated properties the flexibility to comply with FRA safety training regulations without requiring additional, redundant training and certification requirements.

*FTA response:* As discussed further in Section IV of this notice, FTA is undertaking this proposed rulemaking in accordance with the authority granted under 49 U.S.C. 5329(c)(1). FTA recognizes that one size will not fit all; therefore, the curriculum proposed for the PTSCTP is designed to be scalable and flexible, especially for State DOTs and the bus transit industry.

In response to the commenters who provided a list of safety-related competency areas for consideration, FTA notes that many of those competency areas are included in the current curriculum for the TSSP, which is a requirement for the interim program and a proposed requirement for the PTSCTP. However, FTA does not believe the initial requirements for the PTSCTP should include NIMS or OSHA training standards because a primary objective of the initial requirements is to promote a common framework for developing SMS principles across the industry.

The curriculum proposed for the PTSCTP would include a risk-based approach for analyzing and mitigating safety risks. It also would leverage existing FTA-sponsored training for all

recipients including State DOTs, and both rural and urban bus transit providers. Accordingly, FTA concurs with the commenters who indicated that bus safety training should include the six key functions of bus safety as identified in the FTA/FMCSA MOU signed in 2003. FTA proposes to continue offering the Bus Safety program and other bus safety-related course offerings as a *voluntary* component of the PTSCTP.

FTA also concurs with the commenters who indicated that personnel who may be subject to both FRA and FTA training requirements should not be subject to redundant training. Accordingly, the PTSCTP would not apply to personnel of rail transit agencies subject to the jurisdiction of the Federal Railroad Administration (*e.g.*, commuter railroads).

FTA agrees that State DOT personnel involved in managing federal funds that are passed on to sub-recipients are not likely to be charged with safety oversight responsibilities. But the State DOT is responsible for ensuring that sub-recipients adhere to all applicable Federal requirements. We emphasize that this rule does not propose mandatory training requirements for State DOT personnel who perform safety oversight roles for non-rail public transportation systems.

Question 49. FTA next asked whether all of the competencies listed in the ANPRM are necessary for personnel with safety oversight responsibilities.

Twenty-nine commenters responded directly to the question or provided comments related to the issue. Several commenters agreed that the competencies identified in the ANPRM are necessary to craft a comprehensive safety training program that addresses the various hazards and threats faced by public transportation systems. A couple of these commenters added that the current FTA-sponsored training is not sufficient and transit agencies will need more than the current training programs in order to successfully comply with new safety requirements.

Two commenters indicated that the competencies identified were unnecessary. One of the commenters stated the current program is overly broad and beyond the capacity of many small operators. The other commenter recommended that FTA utilize safety training offered through the American Public Transportation Association (APTA). Another commenter indicated that training should cover the four SMS principles and strategies for controlling risk. Several commenters indicated that the competencies required for a small, rural, bus-only agency are far different than those required in a large, urban, multi-modal agency. They noted that agencies with fewer risk factors should be allowed to work within standards appropriate to their risk profile. A few commenters stated they do not see a need for the rules to prescribe specific training requirements for State DOT staff involved in managing federal funds that are passed on to sub-recipients. Other commenters suggested the following:

- Advanced SMS Principles for Rail Transit can probably be combined with Level 100 SMS Principles for Rail Transit, and Level 300 SMS Risk Control Strategies can probably be combined with Level 201 Advanced SMS Risk Management;
- public transportation agencies should determine which competencies are necessary for the scope, scale and complexity of their fixed facilities, systems and operating environments;
- many transit safety professionals already have the majority of the specific competencies listed. Emphasis may be placed on specific SMS areas where gaps exist based on the transit agency's safety risk analysis.

*FTA response.* A similar question was posed in the Federal Register notice for the interim program dated April 30, 2014. Commenters to both notices indicated that the existing FTA-sponsored training already includes many of the competencies FTA identified as necessary to implement a safety certification training program. Consequently, FTA reviewed the TSI curriculum and concurs that the courses for the TSSP Certificate sufficiently cover many of the competency areas that FTA identified; therefore, FTA will leverage the curriculum for the TSSP program instead of developing a wholly new curriculum for the PTSCTP.

As suggested by commenters however, FTA agrees that the existing TSSP curriculum should be revised to better reflect SMS principles. Accordingly, as noted in Section IV, the TSSP curriculum is being updated and FTA is proposing additional courses for the PTSCTP that focus on SMS principles. This approach aligns with FTA's adoption of the SMS framework to enhance safety while effectively leveraging a curriculum and training model familiar to the industry. FTA believes its approach to the interim program and the proposed implementation of the PTSCTP adequately addresses commenter's concerns regarding costs, scalability and flexibility for the transit industry.

Question 50. In the ANPRM, FTA did not propose a timeframe for safety oversight personnel to complete the safety certification training requirements. However, the following question was posed to obtain the industry's perspective on the issue: Should personnel be required to obtain certification prior to starting a position, or should they be given a specific timeframe to obtain safety certification after starting a position?

Forty-seven commenters responded directly to the question or provided comments relative to the question. Forty commenters indicated they do not believe personnel should be required to obtain certification prior to starting a position, and a new hire should be given a period of time to obtain necessary certifications. Many of the commenters noted that it would be more effective to attend required safety certification training concurrently with on-the-job training. Otherwise, it would limit the pool of qualified candidates for safety positions if personnel were required to obtain certification prior to starting a position. Commenters also noted that agencies should have the flexibility to customize training to address their unique safety concerns, size, and management structure. Further, commenters noted that currently it is difficult to recruit and hire safety professionals; therefore, requiring certification prior to starting a position would only increase the difficulty.

A few commenters stated that personnel should be required to obtain all safety certification prior to starting a position because lack of appropriate training could potentially put the public at risk. One commenter stated that both options should be available depending on the position occupied. For instance, at the director level and higher, an individual should have experience with the principles of SMS and program development. At lower levels, a certain amount of on-the-job training could be incorporated in an individual's development plan.

One commenter indicated that it would be costly to require a person to complete the training before a recipient could hire that person. Another commenter stated that both approaches have problems. The commenter noted that if an agency hires inexperienced people with no training and provides the training once aboard, the agency will have trained but inexperienced people. On the other hand, an employee needs to learn the details of the transit business which cannot be taught entirely in the classroom. The commenter noted that if a state agency hires only those that have the requisite training, the agency will have people with the minimum qualifications to do the job but may still require considerable on-the-job training in order to prepare them to actually perform the requirements of a regulator.

Lastly, a commenter stated that since there are no current certification requirements for bus transit, time to obtain the certification would be appropriate. The commenter also stated that personnel performing any specific function or task in a rail system should be certified before being allowed to independently perform in that capacity.

*FTA response.* The objective of safety certification training is to enhance the technical proficiency of those responsible for safety oversight of public transportation systems. FTA recognizes that in order for any proposed regulatory requirements to be implemented practically, issues of resource allocation and availability must be considered. To that end, FTA concurs with those commenters who indicated that it could be overly burdensome to limit the pool of available applicants to only those that have completed the proposed training requirements. For this reason, the interim program provides designated personnel three years from the date of the recipient's initial designation to complete the interim program requirements. FTA is proposing the same three-year timeframe to complete the initial PTSTP requirements. FTA believes this approach adequately balances concerns with personnel training requirements and the recipient's resource management requirements.

Question 51. In the ANPRM, FTA did not propose a specific timeframe for how often safety oversight personnel should be required to undergo refresher training requirements. However, we did ask the following question to obtain the public's perspective on the needed frequency: How often should personnel be required to receive refresher training?

Forty-seven commenters responded directly to the question or provided comments relative to the issue. Several commenters indicated that personnel should be required to receive refresher training either every two or three years. Some commenters recommended refresher training every three to five years. A few commenters thought refresher training should be conducted annually. Two commenters stated that depending on the number of courses required and the length of the training curriculum, refresher training should occur somewhere between every one to five years.

A few commenters indicated that personnel should receive refresher training on an as-needed basis to keep them up-to-date on new safety standards and changes to existing safety standards. Some commenters suggested that the primary concern should be the quality, not the quantity or frequency of refresher training. In addition, commenters suggested the following:

- Frequency of training should be left to the discretion of the recipient;
- FTA should regularly convene those responsible for public transportation safety oversight at the Federal, State, and agency level to discuss safety critical risks. These discussions should focus on trends in public transportation safety risks, safety risk management practices and risk control strategies;
- the frequency of refresher training should be based on several factors, including, but not limited to the scope of job functions, frequency of application of the functions, and experience with the specific function for which the individual is responsible;
- frequency of refresher training is dependent on the employee's position and safety responsibilities;
- the question is premature and cannot be addressed until the final requirements are adopted and the number of professionals requiring training can be assessed;
- training standards and timing should evolve as the requirements are adopted and implemented. Overlaying refresher training requirements on an already strained training system would further slow training of new safety professionals.

*FTA response.* FTA is taking a comprehensive approach as it considers the safety training requirements proposed here, as well as those that will be proposed in other rules to implement the Public Transportation Safety Program authorized by 49 U.S.C. 5329. FTA recognizes that proposed training and refresher requirements should align and support the objectives of the SMS framework adopted by FTA. To that end, proposed training requirements will be driven by safety data in conjunction with safety trend analysis. FTA will periodically review safety data and trends which may indicate a need for FTA to revise refresher training requirements. However, any revisions will be subject to notice and comment prior to becoming effective.

FTA agrees with the commenters who indicated that refresher training should occur every two years following the initial three-year timeframe for completing safety certification training requirements. Since any refresher training should be relevant to a recipient's specific circumstances, the recipient will be in the best position to determine the subject matter and timeframe that should be allotted for refresher training. However, FTA believes that at minimum, one hour of refresher training every two years should be required. The minimum requirement of one hour of biannual refresher training strikes an appropriate balance that reinforces safety oversight training while recognizing that each recipient can best determine refresher training that is appropriate for its safety oversight personnel.

Questions 52 and 53. In the ANPRM, FTA posed a series of questions to assist with identifying the universe of potential personnel that may be subject to the PTSCPT requirements. Question 52 sought to identify which *transit agency positions* are directly responsible for safety oversight. Question 53 sought to identify specific *operations personnel* who are directly responsible for safety, their duties, and the training they receive. The questions, as phrased in the ANPRM, did not clearly reflect this functional distinction; however, responses from many of the commenters indicated an awareness of the distinction. The point is noted here because both the interim program and this NPRM would apply only to transit personnel with direct safety *oversight* responsibilities (emphasis added) as distinguished from operations personnel who are responsible for safety (oversight omitted). FTA's proposed approach to the training requirements for operations personnel who are responsible for safety will be included in the NPRM for the Public Transportation Agency Safety Plan to be issued pursuant to 49 U.S.C. 5329(d).

Twenty-eight commenters responded to the question of which transit agency positions are directly responsible for safety oversight. Several commenters listed various transit agency positions as being directly responsible for safety oversight including: The entire System Safety Department and the divisions under it; agency leadership, operations managers, supervisors, and safety staff; the Director of Safety, the Risk Management Department and various safety departments and trainers that are contractor specific; Safety Managers; Bus and Rail Managers; the responsible Executive; Safety Operations Manager; and Safety Administrators (Bus, Rail).

Some commenters noted that in their organizations every employee has a responsibility for safety. A number of the commenters also noted that overall authority and responsibility was vested in a number of individuals, including the General Manager/Transit Director, Chief Operating Officer/Operations Manager, Facilities Managers, Maintenance Manager, and the Chief Safety Officer and staff. A few commenters stated that FTA already has a process for identifying safety-sensitive personnel subject to its Drug and Alcohol Testing program requirements and recommended that FTA adopt a similar process to identify those subject to the safety rules. Two commenters noted that this decision should be at the discretion of the

transit agency as some agencies, because of size, may have a person serving as the safety person in addition to other duties. Two other commenters stated that it varies depending on the size of the agency and the position should be identified by the transit agency General Manager.

With regard to the series of questions about operations personnel, thirty-one commenters responded. Many of the comments were similar to responses to the question above; however, a number of commenters specifically addressed operations personnel. These commenters identified widely varied and diverse operations positions that are directly responsible for safety oversight to include: Operations Supervisors, Department Managers/Supervisors, Safety Department personnel/Safety Managers/Director of Safety, Safety/Training Officer, all supervisory and management personnel, Chief Operating Officer, Operations Managers, Maintenance Directors, and Transportation Safety Specialist.

Comments regarding the duties of operations positions were just as varied and diverse. Duty descriptions included, but were not limited to, contract management, research, development, implementation and maintenance of programs and procedures, policy development, observations, inspections, audits, investigations and liaison. One commenter stated that Bus and Rail Transit Operations Supervisors are directly responsible for overseeing the operational safety of the agency by conducting efficiency tests, rules compliance line rides, post-accident line rides, accident investigations, verifying compliance with Roadway Worker Protection (RWP) requirements, and investigating reported hazards. Commenters noted that the Operations Supervisors are trained in all of the above either by internal staff or by attending courses offered by TSI.

One commenter stated that all operations managers and supervisors are directly responsible for safety oversight and their duties vary, but include development, implementation, training and enforcement of policies/procedures; inspection and observation; hazard management; tool box safety meetings; and assuring compliance with all local, state and federal regulations governing the safe operation of vehicles.

Responses to the question of training received by operations personnel also varied but TSI and OSHA training were mentioned most frequently. A number of commenters indicated that they have received training such as university level safety training courses, fundamentals of bus collision investigation, fatigue and sleep apnea awareness for transit employees, transit industrial safety management, and transit rail incident investigation.

*FTA response.* The responses to both questions clearly indicate the universe of transit agency personnel responsible for safety oversight, and operations personnel responsible for safety vary among transit agencies. As discussed further in Section V of this notice, FTA believes that each recipient, with guidance from FTA, is better situated to determine which of its personnel are directly responsible for safety oversight. As noted earlier, training requirements for operations personnel will be addressed in the rulemaking for the Public Transportation Agency Safety Plan.

Question 54. FTA asked whether members of a transit agency board of directors or other equivalent entity currently receive any type of safety or risk management training; if so, what does the training cover?

Thirty commenters responded, with twenty-three stating that their Boards or the equivalent do not receive safety/risk management training. In general, several commenters noted that

Boards should not be required to receive this type of training. A few commenters indicated that Boards receive some type of training, ranging from informal or familiarization training to training provided by insurance companies or executive staff.

One commenter stated that the Board's involvement with safety/risk issues is at a policy level while two other commenters indicated that the General Manager is responsible for ensuring that board members, or their equivalents, understand the safety culture of the agency. Two commenters stated that the Board receives informal safety training. One of these commenters noted that this training is a part of their service on a Subcommittee for Safety and another responded that the Board is instructed on the definitions related to safety reporting and how to interpret safety data to improve their understanding of the monthly safety data presented to them.

One commenter responded that when members first come onto the Board they are provided familiarization training on FTA safety requirements under 49 CFR part 659. Another commenter noted that board members might receive this training through an agency's insurance company. Another noted that their agency is currently writing a new safety plan that incorporates SMS principles; since the Board of Directors will be required to review and approve the plan they will receive a presentation that will explain SMS principles and processes, including risk management.

*FTA response.* The information provided by the commenters to this question will be reviewed as FTA considers appropriate methods to increase SMS awareness for the Board of Directors or those with equivalent executive oversight functions.

Question 55. FTA asked questions about the availability of industry training specifically for personnel with transit safety oversight responsibility; the effectiveness and accessibility of such training; and what other types of training oversight personnel need but that may not be readily available to them.

Twenty-nine commenters responded to this question. Several commenters listed the various training that safety oversight personnel currently receive, with the common thread being federally-sponsored training programs offered by the National Transit Institute (NTI), the National Transportation Safety Board, the National Safety Council, TSI, and OSHA. Some commenters responded that most of their training was developed and/or provided in-house or through on-the-job training. A few commenters noted the availability of the following training for bus small urban and rural operators: Community Transportation Association of America's Certified Safety and Security Officer Training Program and FTA's Bus Safety Program Orientation Seminar. One commenter noted that Colorado has a robust program offering two full-day safety-related training sessions at their spring and fall transit conferences. Two commenters mentioned classes conducted by local safety personnel such as police, fire, sheriffs, emergency management organizations, and the risk manager.

Commenters noted that the effectiveness of the training is evaluated using the following methods: Internal safety audits; facility safety inspections; on the job evaluations by departmental managers, the General Manager, insurance pool staff, or State DOT staff; ride checks; efficiency tests; and SSO triennial audits. In addition, one commenter noted that regulatory audits and written tests are used to measure training effectiveness.

Comments on the types of training that oversight personnel need but is not readily available included SMS training, risk assessment training, reactive training programs that address



changes to strategic safety philosophy, and tactical issue-specific initiatives. A few commenters recommended that FTA develop this training specifically for the public transportation industry.

*FTA response.* The comments indicate the availability of an array of relevant safety training for safety oversight professionals. As noted in Section V of this notice, the comments support FTA's proposal to develop a process to evaluate safety training obtained from other competent organizations for credit towards PTSCPT requirements.