**TRACS Workgroup 2:**

**Chicago Meeting November 4-5, 2010 Synopsis**

**Meeting Attendees:**

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| --- | --- | --- | --- | --- | --- |
| Diane Davidson (Working Group Lead) | Jackie Jeter | Richard Clark | Rick Inclima | Jim Dougherty | Alvin Pearson |
| Amy Kovalan | Richard Krisak | David Morgan | Vijay Khawani | John Goodworth | Matthew Bassett |

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| --- | --- | --- | --- | --- | --- |
| FTA/Volpe: | Michael Flanigon | Duana Love | Iyon Rosario | Mary Lee | Jeff Bryan |

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| FMCSA: Rose McMurray | FRA: Jo Strang |

**Day 1:**

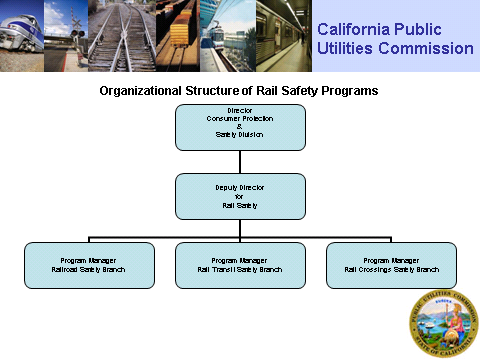
1. **Introduction and Safety Briefing**
2. **State Safety Organization Model Outline**

* Status of Safety Legislation: The bill has been put on hold by Senator Coburn with an uncertain outcome. The point is not to feel constrained, but to focus on the task at hand and on what would be the optimum arrangement for an SSO organization.
* Consensus on Tasks: If there are 12 tasks, and 11 in consensus, 11 move forward. In addition, a Minority Report will go to the TRACS committee as well as the administrator. The 12th task is noted in the Minority Report.
* Tasking: The one-page outline is prepared for tasking. Task forces can be created, as well as ad hoc groups.

1. **The California Model: Essential Functions of an SSO**

**Presentation 1: CPUC Rail Transit Safety Program Description for TRACS Working Group 2. Presenter: Mr. Richard Clark, Director of Consumer Protection and Safety Division, California Public Utilities Commission.**

* In the California Public Utilities Commission (CPUC), five commissioners are appointed for six year terms and currently some positions are vacant.
* The CPUC is responsible for investigating all reportable accidents, as well as conducting regular audits and inspections of rail transit systems. All new projects, extensions, and retrofits must also pass a rigorous CPUC safety certification process before carrying passengers.
* Under this umbrella, the organizational structure of the rail safety programs for the State of California can be seen in Slide 3 of the presentation:



* Authority comes from CPUC, section 778. General orders are comparable to the Code of Federal Regulations, similar to 659.
* Staff recommendations: A good SSO has to have a good sized staff. They have been able to broaden the skill set of their staff, which comprises of 24 that report to the Deputy Director or Rail Safety:
  + Program manager (rail crossing/rail transit) – currently vacant, Program project supervisor, Regulatory analyst (looks at stats and trends and analyzes new best practices, Utilities engineer (to keep up with latest technology on special projects), Three utilities engineer supervisors (see slide list included in referenced presentation), Operations Supervisor, and Track inspectors of multiple kinds, i.e. track, equipment, signal, and train control.
* The State of Good Repair is very important as they oversee twelve properties.
* Safety History - Fortunate to have had few major accidents. None on light rail.
* Vision and culture of the Consumer Protection & Safety Division above - Strategic planning is key, as well as articulating a vision:

“CPSD is an organization of highly trained and respected **experts**. We are **objective** in our inquiries, and we are **critical in our thinking**. We **continuously improve** the work that we do and the way that we do it.”

* This vision has almost become the culture.
* Training Obstacle – Struggle with the expert part, hard to find training. They continue to struggle with finding experts in the field for the training. In rail transit they have done some particularly good training in the last year.
* Objectivity is highly important in the culture. They see themselves as colleagues in safety.
* Core work - High reliability operations. Conduct inspections. Delineate staff duties.
* Approach - Better to get involved very early in the process, i.e. risk analysis, and spend the money initially rather than later to plaintiff’s attorneys.

**Follow Up Discussion:**

* At CPSD, engineers and their supervisors rarely need to use enforcement actions.
* Need to discuss how to avoid conflicts of interest. Funding mechanisms can cause issues, i.e. money from gas tax.
* Dissemination of information – there is a good working relationship with the union at CPSD, with whom they work together on rulemakings. There is an abiding belief that the people can solve problems, and this is a great strength.
* Two concepts being worked on:
  + 1) Rulemakings – they would like anyone to be able attend the rulemaking meetings, participate, and that workers be compensated for it. In the past they could not get compensation for union members on this issue and are working hard to change that; and
  + 2) Moving away from structured rulemaking (in the past done briefly with lawyers). CA is now better to do effective rulemaking and training.
* Independence and acknowledgement of separate entities is important, with guidelines such that states can have some structure. Enforcement actions are important.
* CA has had accidents such as two cars running together, or a fire in the tunnel. A safety program plan was in place, but implementation could have been improved.
* Triennial audits are valuable; with 12 rail systems you can achieve economies of scale.
* CPSD also has a citation program to keep walkways clear. After this program was put in place, it solved the ticketing problem, and this enforcement of authority has greatly helped.
* Some differences - In CA they don’t hire consultants to do safety oversight work. At TDOT they hire consultants, the state oversees that work.
* The FRA’s approach to safety is very different from FTA. It’s a rules compliance model (FRA). The FRA model may not work for small entities.
* How would the background of the commissioners play into optimizing the SSO? Do the commissioners have skills and a background in the area?
* Need to codify early design stage for safety and control systems, based on speeds and grade crossing. If federal funding is provided, basic standards need to be utilized.

1. **Role of FMCSA Service Centers & Division Offices, and Enforcement Process:**

**Presentation 2: Commercial Motor Vehicle Oversight in the U.S.: A Federal/State Partnership. Presenter: Ms. Rose McMurray, Chief Safety Officer and Assistant Administrator, FMCSA.**

* FMCSA’s Mission – to reduce crashes, injuries, and fatalities involving large trucks and commercial buses.
* UMTA has evolved since not having a safety office.
* Utilize the state agencies as a multiplier and enhancer of their five primary roles:
  + regulations,
  + enforcement mainly through the state,
  + research and data analysis,
  + grants to states,
  + outreach and public information.

* FMCSA helps to set medical standards, impose civil penalties, and can put a company out of business if it doesn’t comply. In this way the agency helps to protect victims of crashes.
* There is a common operating environment throughout the U.S. in main requirements. The jurisdiction is interstate and foreign based registered transportation as seen in Slide 5 below:



* FMCSA undertakes inspections and compliance reviews. They look for root causes for accidents. Over 5000 civil penalties are issued a year. 2000 companies are put out of business a year. They pay particularly high attention to high-risk carriers.
* MCSAP is the federal grant program that helps to form a national uniform standard and to improve commercial vehicle safety through enforcement, education, and outreach. This program also provides the states with money to carry out commercial enforcement programs and look for chronic offenders.
* Using MCSAP – states submit a plan, it lays out a plan of action in response to a problem. They work with them to bring a plan up to par, rarely are any rejected. They pay the state back with vouchers every month. 80 percent paid by government. State troopers do this work. Data is so important.
* Formal audits every 4-5 years. Slide 12. MCSAP is a very important part, state law enforcement officials mostly receive these funds.
* FMCSA’s training and new initiatives have had very positive outcomes. States like the program because it is predictable, and money they can count on. Trucking and bus companies appreciate the training programs as well.
* The grant are given out as shown in Slide 9:



* With these grant programs they have created a new system of measurement. They have provided a more robust data field, capturing also minor violations. They now have a fuller picture, and can better focus their resources on these companies to improve safety.
* MCSAP program now also offers a safety rating that can be obtained through an audit, which companies want to increase their client base. The safety rating is offered every 30 days, will be rolling, and will be more up-to-date. This is a very exciting development. It is an example of putting teeth into a system to help tackle the problems.

**Follow Up Discussion:**

* Transit needs a similar type of intervention, but funding has always been a problem. With new funding authority, improved safety measures could be possible. Right now it is all funded from the federal gasoline tax. The question is what is going to happen with that?
* Preemption is possible. They are not trying to alienate the states – the purpose is simply to have basic common standards for CDLs. This new program has progressive interventions. The interventions are not trying to collect money; they start simply with a warning letter. Automatic fines and investigations are the next steps. The point is that if FMCSA does not get a company’s attention, and the company does not follow basic safety rules, they can put it out of service.
* To help with this, FMCSA maintains a huge database of real-time information as well as conducts the tracking of safety trends in general.
* In transit there are issues with cell phone use that can be unsafe.
* There is a pre-employment screening program at FMCSA in addition to a way to report incidents. Are there similar performance metrics at FTA? Not today.
* Relevant mechanisms could include data-driven risk assessment, strong standards based program at the core, the use of progressive intervention and early warning, dealing effectively with human factors issues, and using data to inform and investigate.
* What is the current relationship between FTA HQ and the rest of the transit industry? I.e. regular service centers, transit properties, SSOs, etc.
* At FMCSA there are four service centers with thousands of companies and drivers. They start at the lowest level, divisions, every state, and territories. They are staffed with a safety investigator, inspectors at the border, and new entrant auditor, these are the foot soldiers. These feds work closely with their state counterparts.

1. **FRA’s experience with state-federal partnerships in oversight:**

**Presentation 3: FRA’s State Rail Safety Participation Program. Presenter: Jo Strang, Associate Administrator for Safety, Chief Safety Officer, FRA.**

* FRA is primarily a safety organization with 8 regions. They work closely with the states and do a lot of work with Mr. Clark in Calif., mainly in providing support. They do penalties as well.
* Each region has inspectors and a technical specialist. Under FRA, they can regulate for safety with a comprehensive program of safety regulations. They are basically safety inspectors and the states pay their salaries.
* FRA has experience since 1912.
* Related programs under FRA include:
  + State Program Regulations:
  + State Inspector Certifications
  + Technical Oversight
  + Federal-State Relationships
* The states have to have the authority to conduct certain civil penalties, i.e. warning letters, defect notices, can shut down a line down, can issue emergency orders. Cell phone use is now codified into the regulations. The assessment of civil penalties is not done by them, but by their lawyers in DC. However, it is considered a federal function.
* The principal role of FRA’s State Participation Program is the facilitation of a state and federal partnership that incorporates state inspectors into a federal enforcement program. State program agreements are described in Slide 5 of the presentation below:



* Under FRA, State Agency Requirements are that:
  + State agencies must have jurisdiction over the safety practices of the facilities, equipment, rolling stock, and operations of railroads in the state.
  + State agencies must have authority and capability to conduct investigative and surveillance activities in connection with the regulations issued under federal railroad safety laws.
* FRA has rigorous training programs with specific guidance. I.e. Proficiency training for State Inspector Certification. This creates a seamless federal/state partnership.
* They have a dashboard for inspection reports that is visible daily. You can see right away who has and hasn’t uploaded. It is a very useful thing to have.
* FRA Violation Guidance is as follows:

“To ensure effectiveness, fairness, and an acceptable level of consistency in the exercise of enforcement discretion, the Code of Federal Regulations provides general guidelines (See 49 CFR Part 209, Appendix A) to aid an inspector in recognizing serious violations.”

* FRA and State enforcement actions include:
  + Defect Notice
  + Special Notice for Repairs (MP&E and Track)
  + Civil Penalties
  + Individual Liability Sanctions
* FRA sponsors a state director, Mike Calhoun who manages state relations. He coordinates all of the training with the training team and testifies as well. Congress authorized 200 inspectors.
* FRA has other programs such as grade crossing programs. There is also a state association. RSAC helps with the rulemaking, while federal/state relationships work in a cooperative fashion. A state manager’s association, recently for example, has been helpful in resolving certain issues.
* There is also a handbook for state managers – so guidance is available.

**Follow Up Discussion:**

* As for what’s in it for the state, they get extra safety. Both FRA and the states need a higher level of safety, the major issue is the level of preemption, and when they’ve sued each other, FRA wins every time. Both sides benefit from the heavy training and certification of inspectors. If FTA is interested, they might be available to help fund similar training. FMCSA also does train.
* National certification for safety oversight managers or auditors is feasible for transit but needs to be tailored. The standards do exist; it’s just not a requirement. Nothing right now in transit has a compelling national requirement.
* APTA track maintenance standards are basically FRA and could be useful to look at as well. At MARTA they have adopted the APTA standards as an effective tool.
* FMCSA has used them in the past. The states contemplated using third parties, but they would have to provide third party training, require more vigilance, and constant quality control.
* On the job training for an inspector would depend on how someone is brought in. A disciplined specialist will review that person’s qualifications. A class on regulatory requirement and enforcement will be provided, then three weeks of on-the-job training, and an assigned mentor who will work with them. Then they get stamped as federally qualified.
* The inspectors learn all the regulations they have to enforce in classes; then are deployed to the states. There they are monitored for the quality of their work.
* FRA also has recurring annual training. They have to have a certain number of days in the field to maintain their status (i.e. 15 days). Specialists would be very useful for transit. A national inspection plan would also very useful. The low state salary is an issue all over, not just CA.
* The APTA standards should be utilized as a bare minimum. Those shouldn’t be *the* standards. Goal is to go higher. System safety is more of an auditor function. Enhancing the length of training time for operators may not be sufficient. One can’t take an inspector and turn him into an auditor.

**Day Two:**

**What are the gaps between the ideal SSO and present reality?**

* At MATA and Chattanooga there was a culture clash with inspectors who brought a different attitude; and there was tension in the railroads. Therefore discretion is very important with enforcement and compliance. How does FRA get involved in transit oversight?
* Resources can be borrowed, as well as costs of travel, if another state needs a track inspector. These types of measures help with funding issues and save on costs. APTA for example, utilizes specialist exchanges within the peer group process. This is certainly something to think about.
* APTA has done a lot for the industry in terms of making it safe and it might makes sense to look at how APTA has been working and mirror that.
* Reporting to the same director is important so that all employees have the same leadership.
* APTA standards need to be tailored to transit, because railroads and rail transit are somewhat different.
* Drawing from FRA expertise is important but FTA inspectors also need some additional transit operations training. At MARTA they went through an additional phase of training.
* One of the nice things about hiring contractors is the possibility of short term hiring to meet immediate needs. The contractors, however, would need to be operationally trained as well.

**What national and state policy, organization, and resource issues need to be resolved to fill the gap?**

* On the issue of specialization, we need a proactive approach, not just the audits. An intermediary measure would be useful.
* We need to beout there and talk with transit agencies on upcoming projects and make sure they have a system safety plan in place:
  + grade crossing improvements,
  + keeping track in good shape,
  + specialization – applying staff who know the equipment, are aware of plans and what to look for, and
  + if that plan is being implemented and how well it is being implemented.
* This kind of thinking produces intelligent operations.
* Working with contractors requires a familiarity with corporate knowledge; sometimes it is not quite a partnership but they are colleagues.
* Right now what exists is a crisis of program management ability within government agencies, to manage the efforts of consultants. We need a state safety oversight agency that is competent and has the knowledge of how to effectively manage consultants – managing a program that is technically complex is a government function, not to be run by consultants.
* A continuous targeted focus needs to be applied on safety and one way to do that is a risk analysis program. FMCSA has their risk assessment program. FRA has one, and so does FAA.
* We need to figure out how to utilize existing forms of risk analysis to deploy resources, do inspections, etc. Getting involved early in the process is the way to go - planning for improvement.
* The 2010 FMCSA model can be an additional resource.

**Additional discussion on the best new model for an SSO:**

**What are the desired principles or characteristics beyond how they function currently?**

* This is about drawing the key points that can be learned from the above presentations. Some of the essential functions are in 659 and some can be found outside of that.
* Audits, triennial reviews, and intermediary measures can be general SSO requirements.
* Safety certification is important – something that the SSO oversees, while making sure it is a collaborative effort.
* Re: audits – let’s not be constrained by time period, and try to make them tailored and the most effective – i.e. risk analysis audits, ad hoc audits, joint audits.
* Accident investigation – overseeing it and being able to perform it – need to have the technical capacity to do it.
* Even though 659 says the SSO is responsible for conducting the investigation – the RTA can have this function and if the SSO agrees, they adopt, or they decide to do their own independent investigation?
* Would it be useful to look at the NTSB model? How to insulate yourself from the public. In that model, NTSB leads the investigation and is independent. SSOs need the technical capacity to do it if the cause comes up. It is easier to visualize the accident if someone goes out and gets information first-hand from the safety department immediately after.
* SSOs should have the right to conduct their own investigations; agencies have their own independent right and responsibility to conduct their own investigations. Each has their own approaches to risk management and know their procedures well. It is very important to build the transit agencies into more robust systems with state safety procedures. These should gel with the way of those who operate the systems.
* This being said, the authorities need to conduct their investigations no matter what. It’s irresponsible not to. There are times when agency officers also need to be investigated.

**What would the key features be of the ideal SSO?**

* An analogy is this work group – it is very healthy to discuss these issues and provides integrity.
* Developing options for resources if there none at the SSO.
* Most accidents in light rail are grade crossing, fender benders, and are handled by RTA.
* One problem was parasitic oscillation – the agency thought they found what the problem was, but it wasn’t that and they stopped looking. If the problem is within a comfort zone sometimes nothing is done, it is left alone, and three years later, something happens.
* SSO and NTSB should look more deeply into problems to ensure the safety of passengers.
* Improved Enforcement:
  + Sanctioned authority, impose penalties
  + Inspectors can impose penalties or a fine
* Need some kind of mechanism for compliance – to compel action. There’s got to be an approach that gives the entity an opportunity to fix it. To have your house in order.
* This is true, but it may also cause a tendency to hide things more.
* Amy has a good model – there was a big change after their blue line incident – a new reporting structure, leadership from the top - anyone in her safety dept can stop the railroad.
* Partnerships in oversight are important. They make sure the passengers and workers are safe. Ranges of penalties are also useful for different SSOs.
* Initiate Rulemaking.
* A level of disregard comes from somewhere. Acceptance of federal money for a system should come with an understanding that federal money can be withheld.
* Additional suggestions:
  + Early involvement by an SSO in an RTA project
  + Add oversight as a function, establish standards and practices
  + Collaboration between technical and policy sides
  + Community outreach/internal education/training
  + Use of examples – for instance when a system with two tracks needs a third track - time for design review.
  + Review of accident trends as an essential function.