

2018 Joint State Safety Oversight (SSO) and Rail
Transit Agency (RTA) Workshop
October 23-25, 2018
Washington D.C.

Tuesday, October 23

Welcome and SSO/RTA Introductions

Moderator: Dr. Alfonz Ruth, Chief Learning Officer, Office of Administration, FTA

Dr. Ruth welcomed participants to the Joint State Safety Oversight (SSO) and Rail Transit Agency (RTA) Workshop. He stated the goal of the workshop is to help RTAs incorporate the provisions of the agency safety plan rule and safety training certification rule into their policies and procedures, to guide SSOAs in their oversight role of RTAs and to encourage communication among participants. He then asked attendees to stand and be recognized when their state or agency is announced.

The Office of Transit Safety and Oversight

Presenters: Patrick Nemons, Special Assistant, Office of Transit Safety and Oversight, FTA
Angela Dluger, Deputy Associate Administrator, Office of Transit Safety and Oversight, FTA
Corey Walker, Director, FTA WMATA Safety Oversight, Office Transit Safety and Oversight, FTA
Candace Key, Acting Director, Office of System Safety, Office of Transit Safety and Oversight, FTA
Kimberly Burtch, Director, Office of Safety Review, Office of Transit Safety and Oversight, FTA
Scott Giering, Acting Director, Office of Program Oversight, Office of Transit Safety and Oversight, FTA

Mr. Nemons congratulated State Safety Oversight Agencies (SSOAs) with established FTA-certified SSO Programs and assured those remaining continual support till they cross the finish line. He then provided a broad overview of the Department of Transportation's (DOT) organizational structure, listing its operating administrations and bureaus including the Federal Transit Administration (FTA), Federal Railroad Administration (FRA), Federal Aviation Administration (FAA) and others.

Mr. Nemons then pointed to a Power Point illustrating FTA's organizational leadership structure and described various offices and divisions within the agency.

Ms. Dluger said the workshop is timely due to the recent release of the Public Transportation Agency Safety Plan rule, which requires transit agencies to incorporate the Safety Management System (SMS) policies and procedures into their safety plans. She added that FTA also issued the Public Transportation Safety Training Certification Program, which sets out the basic training curriculum to enhance competencies of those responsible for safety oversight of RTAs. She urged participants to share challenges related to safety issues and brainstorm solutions.

Mr. Walker then explained that the role of the Washington Metropolitan Transit Authority (WMATA) Safety Oversight Team is to verify WMATA's progress on implementing safety-related Corrective Action Plans and remedial actions, and to ensure WMATA is carrying out its own maintenance, operations and training programs.

Ms. Key said the Office of System Safety's role is to guide the transit industry shift to an SMS approach by developing, implementing and maintaining transit safety policies. The office also oversees transit accident investigations and safety data collection as well as provides technical assistance to the transit industry.

Ms. Burtch explained that the Office of Safety Review is responsible for establishing the framework for coordinated reviews of safety activities within FTA based on the SMS approach. The office reviews, oversees and maintains transit safety policy compliance. Her office is currently developing guidance for the Part 674 audit program and putting together the audit schedule for FY 19 calendar year.

Mr. Giering said the Office of Program Oversight conducts oversight activities to help ensure recipients of federal funds are in compliance with regulatory and statutory requirements. The office conducts comprehensive reviews as well as specialized reviews.

DISCUSSION

In response to a question by a staffer from the Colorado Public Utilities Commission (PUC), Mr. Giering said FTA has not made a policy decision to expand the state management review on a required basis beyond state DOTs that receive Section 5311 funding. On an ad hoc basis, he added, FTA does have authority to do a modified state management review if the region determines a need to do so to ensure, for instance, that the Colorado PUC is properly managing FTA funds.

Ms. Burtch added that FTA is working on the audit guidance for SSOA triennials.

Another participant asked about quality assurance.

Mr. Giering clarified that GAO is asking that FTA develop performance measures to assess the quality of its contractors' work. The quality assurance review is not a recipient-based requirement—it is internally focused within the Office of Program Oversight.

Another FTA staffer added that FTA operates program oversight through its regional offices and needs to ensure it is consistently implementing programs. Quality assurance is about consistency across the board with all contractors and staff.

FTA Office of Transit Safety and Oversight Welcome Remarks

Presenters: Henrika Buchanan, Acting Association Administrator/Chief Safety Officer
 Office of Transit Safety and Oversight, FTA
 K. Jane Williams, Acting Administrator, FTA

Ms. Buchanan declared that FTA and DOT Secretary Chao have established safety as a top priority. The Office of Safety and Oversight has been leading a multi-year effort to develop the national safety program to make public transit, an already safe mode of public transportation, even safer. She added that since the last time participants met, strides have been made in rulemakings regarding the agency safety plan rule and safety certification training plan. FTA has held webinars and provided guidance to industry to help public transit agencies implement the new rules.

Ms. Williams reported that 27 states have established FTA-certified SSO programs, with Oklahoma and California as the most recent ones. FTA stands ready to partner with the Washington Metrorail Safety Commission, New Jersey, New York and Florida as they move through the certification process and get across the finish line.

She explained that the two final safety rules issued complete the new foundation in national public transit safety, topping off a six-year effort by the agency to develop safety plans. These rules apply to all transit agencies and recipients of Urban Area Formula Funds who operate public transit systems—97% of which are large operators. FTA has in place an active outreach program to train industry on compliance with the new rules. FTA is eager to partner with smaller transit systems concerned with compliance costs, and agrees that one size does not fit all since every transit agency is unique

Ms. Williams announced that the Transit Advisory Committee for Safety (TRACS) is up and running again, the new charter was published in the Federal Register and members have been selected. The committee will look at innovation to further enhance the safety of public transportation. Funding will be used to support the development of innovative projects, to assist transit agencies address public safety specifically geared towards human trafficking, and to develop technical assistance materials.

Wednesday, October 24

Accident Notification and Rail Safety Data Report

Presenter: Phil Herbert, Accident Investigator, Office of System Safety
 Office of Transit Safety and Oversight, FTA
 Maria Wright, SSO Lead Program Manager, Office of Safety Review

Office of Transit Safety and Oversight, FTA
Rick Gerhart, Program Manager, Office of System Safety,
Office of Transit Safety and Oversight, FTA

Panelists explained that RTAs must provide FTA Two-Hour Accident Notifications as required by Part 674. SSO Program Standards should include requirements ensuring and enforcing that RTA provide such notifications. Speakers clarified when notification of rail transit vehicle collisions must be reported, how to determine serious injury, and under what circumstances evacuations must be reported.

They added that SSOAs must submit a report to FTA summarizing oversight activities during the previous 12 months, describe causal factors of accidents identified through investigations and identify status of corrective actions changes to Public Transportation Agency Safety Plans. Transit agencies must report NTD safety data to FTA, which then uses the information to support the SSO audit program. FTA will also use NTD data to support SMS risk management and safety assurance activities.

DISCUSSION

How do you know someone went into the hospital after an accident?

Mr. Herbert said that rail agencies would know if someone was transported to the hospital after an accident. RTAs would have to follow up by submitting their reports to their SSOAs and FTA.

A participant described a typical scenario in which an individual refuses medical treatment at the site of the accident and then ends up in a hospital two days later without the transit agency's knowledge. The hospital may not be able to notify the transit agency of the individual's hospital visit because of potential HIPAA violations.

Mr. Herbert said if the transit agency doesn't know that the person went into the hospital after the fact they are not held accountable for not reporting.

If vehicles are towed from the scene are they considered to have substantial damage? Owners hurt during the crash who don't feel safe driving may have the vehicle towed.

Substantial damage is any physical damage to transit or non-transit property including vehicles, facilities, equipment, rolling stock, or infrastructure. Substantial damage includes damage which adversely affects the structural strength, performance, or operating characteristics of the vehicle, facility, equipment, rolling stock, or infrastructure requiring towing, rescue, onsite maintenance, or immediate removal prior to safe operation.

Mr. Herbert said that generally the reason for towing the vehicle is because it is damaged but it's possible that towing would be necessary if the driver was hurt and couldn't drive it. RTAs have to determine whether the vehicle is drivable. If the vehicle is being towed because the wheel

came off, then it has substantial damage. If it is being towed because the operator was taken to the hospital and couldn't drive it, then the answer would be no.

Would a flat tire be considered damage that requires towing?

Substantial damage excludes damage such as cracked windows, dented, bent or small punctured holes in the body, broken lights, mirrors, or removal from service for minor repair or maintenance, testing, or video and event recorder download.

Mr. Herbert said the RTA will have to make that call. But if it appears that there is enough damage it must be reported. He suggested RTAs err on the side of reporting.

Should the 2018 annual report reflect incident reporting under both Part 659 and Part 674?

Ms. Wright said Part 659 becomes obsolete once the agency is certified under Part 674. But she said SSOAs should report incidents that happened within the 12 month window. FTA is working on an automated Excel template to facilitate reporting. The template FTA provides will allow the reporting of event and causal data based on Part 659 thresholds (for time prior to certification) and Part 674 thresholds (for time after certification). FTA will get in touch with SSOAs to inform them on how it wants SSOAs to report incidents under both Part 674 and 659. •

Can the SSOA annual report sent to FTA also be sent to the governor and RTA's board?

Ms. Wright said SSOAs have to determine how they want to distribute that information. If the information submitted to all entities is similar, the SSOA may want to submit a streamlined version of the SSOA annual report to the governor and RTA board. Another option would be to give those parties a summary of the overall activities within their system over a 12-month window.

One participant commented that a full report of an incident may not be available for a few months later and it may need to be augmented after the original submission. Example: When an incident takes place at, say, a grade crossing, the police may show up and take over some part of the investigation but won't release information on whether, for instance, the driver was intoxicated. If the driver is hospitalized, the hospital will release details to the police but not to the RTA. The police will eventually provide the information to the RTA, but it may take up to two months.

One participant asked whether medically-related fatalities in the transit system not involving an incident have to be reported.

Rail transit agencies must only provide two-hour notification of loss of life (fatality) that occurs on a transit property or are related to transit operations or maintenance. This requirement excludes deaths resulting from illness or other natural causes and criminal homicides that are not related to collisions with a rail transit vehicle.

TSA Brief

Presenter: Sonya Proctor, Director, Surface Division, Office of Security Policy and Industry Engagement (OSPIE), Transportation Security Administration (TSA)

Ms. Proctor provided an update of TSA’s activities regarding security plans and industry engagement. She said the new TSA Administrator is interested in surface transportation and has developed a multi-year strategic plan setting out priorities and objectives through 2026. Thirty-nine of the 42 requirements set by the 9/11 law have been satisfied since its enactment. Three outstanding items include: The security training rule, which affects mass transit, freight rail and the Over-the-Road-Bus community; vetting employees; and developing vulnerability assessments and security plans.

The NPRM for vetting of surface transportation workers was published in January. TSA plans to share a framework for vulnerability assessment and security plans with stakeholders to get their feedback. Other updates include the establishment of the Surface Transportation Advisory Council and a feasibility study to develop annual risk-based priorities across all modes.

DISCUSSION

Should SSOAs still develop security plans?

Ms. Proctor said that nothing she mentioned would affect requirements regarding safety reviews—and those are still required. Security plans, however, are no longer required by FTA. Some SSOAs may decide to include security as part of their program standards, but there is no requirement for submission. She said that the law requires TSA to issue regulations involving security training of frontline employees as well as vulnerability assessments and security plans. The Vulnerability Assessments and Security Plans will provide a framework for addressing specific issues identified in the legislation.

FRA Brief

Presenter: Kyle Fields, Attorney, Office of Chief Counsel,
Federal Railroad Administration (FRA)

Mr. Fields addressed challenges related to FRA Data Protections. He said that risk reduction records obtained by FRA are exempt from public disclosure requirements under FOIA unless disclosure is necessary to enforce or carry out any federal law. Disclosure is also necessary when a record is comprised of facts otherwise available to the public and disclosure would be consistent with the confidentiality needed. The Confidential Close-Call Reporting System, he explained, is a program designed to improve railroad safety by collecting and analyzing reports describing unsafe conditions in the railroad industry. Employees will be able to report safety issues or “close calls” voluntarily and confidentially.

DISCUSSION

One participant commented that his transit agency has various modes of operation—including light rail, heavy rail and commuter rail. He can now easily prepare a global safety plan that will be compliant with the new regulations because FTA has provided a framework for doing so. But FRA has not issued a similar document. Will FRA sit down with FTA to come up with one framework for safety?

Mr. Fields explained that different rules exist for different modes trying to accomplish similar goals. He asked: Should a System Safety Program (SSP) Plan be structured like the SSO plan? FRA would have to coordinate such activities with FTA.

Ms. Key said FTA did coordinate with FRA in developing the State Safety Oversight (SSO) program rule, Part 674. Both parties decided it was not a good idea to combine the two plans. The preamble to FTA’s rule says that states should not combine their agency safety plans with FRA’s required safety plans. If SSOAs did combine the plans, they would risk losing data protection for their FRA-related safety plan.

APTA Update

Presenter: Brian Alberts, Director of Safety, American Public Transportation Association

Mr. Alberts said that APTA’s Safety Management Audit Program is now more aligned with the SMS approach and with FTA and FRA requirements. The audit program is also directly connected to the Transit Asset Management Plan (TAM). Mr. Alberts discussed other APTA programs, including Peer Review Program, which helps agencies address issues through Subject Matter Experts (SMEs) from within the transit industry.

With technology grants from FTA and TSA, APTA also develops standards for bus and rail safety and security. Other topics he discussed included APTA Conferences and seminars, the FTA and FRA Partnership, Cybersecurity and Positive Train Control activities.

OSHA State Plans

Presenters: Suzanne Smith, Director, Office of State Programs,
Occupational Safety and Health Administration (OSHA)

Jay Withdraw, Director, Division of Legal Support, Office of Voluntary
Protection Programs, Research and Analysis Policy and Planning, and
Whistleblower Protection
Virginia Department of Labor and Industry

Ms. Smith explained that a “State Plan” is an OSHA-approved state-run program for occupational safety and health. State plans must be “at least as effective” as the federal OSHA

standards and enforcement programs. Congress wanted states to be actively involved in assuring safe and healthful working conditions for workers.

Mr. Withrow said that most Virginia State Plan for Occupational Safety and Health (VOSH) laws and regulations are identical to the federal regulations. But VOSH also approved a law involving overhead high-voltage line safety as well as issued manufacturers' specification and limitation for machinery, vehicles tools and materials. Mr. Withrow also discussed multi-employer worksite regulations, described problems with worker misclassification and outlined whistleblowers protections.

Thursday, October 25

FTA Drug and Alcohol Program Update

Presenter: Iyon Rosario, Drug and Alcohol Compliance Program Manager
Office of Safety Review, Office of Transit Safety and Oversight, FTA

Ms. Rosario reported that, effective January 1, 2019, the minimum random drug testing rate will increase to 50%. The testing covers all FTA employees including grantees, contractors, sub-recipients, consortia/TAP. The Minimum Random Alcohol Testing Rate remains at 10%. Projected industry cost-estimate for increased random testing will total an additional \$4.5 million, assuming each drug test conducted costs \$55.

DISCUSSION

One participant commented that his transit agency conducts marijuana law awareness seminars but his agency just lost a good employee who visited his cousin in Washington D.C. and was exposed to the substance. The employee asked the participant: "What am I supposed to do ask my cousin what's in the food he is serving?"

Ms. Rosario said FTA holds a national conference every year to disseminate the latest information and attendance among grantees is high. She said FTA and DHS has been going back and forth on the issue of marijuana testing. DHS wants to conduct hair testing on federal employees. Ms. Rosario stated that hair testing is not scientifically valid. In Washington D.C., for instance, recreational usage is legal. Many federal employees go to street fairs and may be exposed to marijuana by walking near smokers. She suggested that grantees tell their employees to take nothing for granted and that they should always ask what is in the food they are eating.

What are the biggest areas of noncompliance when conducting drug and alcohol testing?

Ms. Rosario said that a common finding of noncompliance relates to program managers setting up predictive patterns for when testing will occur. The testing is supposed to be random—given at different times of the day, holidays, etc. The other finding for noncompliance involves testing facilities filling out collection forms incorrectly, allowing employees to refute the findings by saying that the signature in the form is not theirs, or that the testing batch number is wrong.

Do transit agencies have to increase the scope of their drug and alcohol programs to include opioids?

Ms. Rosario said that nothing has changed. The DOT testing continued to be a 5-panel drug test regimen, which includes opioids. Semi-synthetic opioids were added to the DOT testing panel, including oxycodone. The only change from the DOT regulations is that random testing will now include at least 50% of the employee pool, up from 25%.

Peer-to-Peer Exchange

Presenter: Patrick Nemons, Special Assistance, Office of Transit Safety and Oversight, FTA

Mr. Nemons announced that the peer-to-peer exchange session was designed to encourage participants to speak out about their agencies' policies and procedures related to safety and about the relationship between SSOAs and RTAs. He began the discussion by asking how transit authorities plan to move forward with training at their own organizations.

Tim Tyran, safety officer at Maryland Transit Administration (MTA), said his agency held an SMS kickoff conference in August with nearly 120 employees in attendance to introduce the SMS concept. He informed conference attendees about the upcoming online SMS awareness training and told them that he will be following up with another training on October 29 to go over what participants learned, review the SSPPs and agency safety plan. Staff will then attend another training in November—a 3-day TSI course on SMS principles. Mr. Tyran said he is not a fan of online training and believes it is important to pursue all avenues of training.

Alvin Pearson, RTA safety staff at Memphis Area Transit Authority (MATA), said that his agency hired a consultant to evaluate the agency's training program. In November, another consultant will redo the training program to comply with the new regulations. The training on the bus side has become more challenging.

John Ekblad, safety management system officer at Chicago Transit Authority (CTA), said that employees first learn about the Safety Certification Training Program Part 672 requirements, which gives them a baseline understanding of the SMS concepts. Training is then provided to individuals responsible for developing and implementing the SMS framework. In the future, training will include the tasks operations or maintenance managers must carry out incorporating the SMS approach. Employees will be taught to use the relevant software and to speak to front-line employees about safety issues. First, however, the agency should determine what it expects from its maintenance and operations managers, and then identify who in the staff will be carrying out which tasks. All this information needs to be considered while developing the training program.

David Moskowitz, RTA safety staff with Charlotte Area Transit System, created a baseline program that combines TSI training and online training. A two-week intensive program was recently developed to send safety personnel into the system to learn about rail car operations and

maintenance. Before developing its training program, the agency put in place systems and processes to implement the SMS concept. The agency also conducts internal training on many areas including, OSHA, safety, security and emergency management.

Sharmila Samarasinghe, SSO program manager, Washington Metrorail Safety Commission, said the RTA conducts training for various departments and disciplines. The triennial audit involves a review of documents outlining training requirements, and training records sampling. Through this process, the commission takes a cross-section or sampling of what training is required for a given employee and determines whether that particular training is being carried out. All triennial audits are validated through documents and records review.

Mr. Nemons then asked SSOAs if they are conducting risk-based inspections—inspections done when certain suspicious data calls for further examination.

Daren Gilbert, SSO program manager, California Public Utilities Commission (PUC), said the SSOA has an 8-person inspection team to conduct risk-based inspections as troublesome issues arise. If a risk-based inspection reveals a safety concern, the SSOA examines other transit agencies for similar problems. Risk-based inspections are conducted in addition to the routine triennial audits.

Nemons added that RTAs should conduct their own risk-based inspections even if SSOAs have already conducted them.

Wendy Perez, RTA safety officer, Herzog Transit Service—Oklahoma City Streetcar, said her agency is small and doesn't hire inspectors. Instead, personnel are trained to walk the tracks during their shift to detect hazards, such as near misses, so that risks can be mitigated. Staff has been introduced to the SMS approach

Mr. Nemons said that many RTAs have been implementing the SMS concept for many years, but possibly calling it by another name. He then asked participants to discuss the relationship between RTAs and SSOAs.

He said some SSOAs have expressed frustration over RTAs when developing the Program Standard. He said it was important that the relationship run smoothly because both entities share the goal of ensuring public transit safety.

Pamela Fischhaber, SSO program manager from Colorado Public Utilities Commission, said that Commission rules require her SSOA to work with the RTA on transit safety-related issues. Her agency along with the RTA examined the transit agency's safety processes and procedures to determine what needs to be changed to comply with Part 674. Communication is especially important to make sure the Program Standard is incorporated into the RTA's processes.

José Cruz Mangual, HCI Hertzog AJV, said his agency worked closely with its SSOA during recovery efforts from the hurricane in Puerto Rico to identify risks. The RTA relies on the SSOA to ensure its safety policies comply with FTA's rules, and to serve as a liaison between FTA and his agency.

Mr. Nemons congratulated Puerto Rico for its success in continuing to provide transit services to the public in the aftermath of the hurricane. He emphasized the importance for RTAs to communicate with SSOAs as well as FTA headquarters and regional offices. All stakeholders need to be on the same page as it relates to safety plan implementation.

Ronald Nickle, RTA safety officer, Massachusetts Bay Transportation Authority (MBTA), said the transit agency is a complex organization with high leadership turnover and conflicting internal interests. His agency meets with its SSOA continuously to develop strategic approaches regarding safety policies and practices, and to get help on responding to FTA's information requests. MBTA is trying to catch up on capital improvements to bring its system into a State-of-Good Repair and SSOAs have been helpful on that front as well.

Martin Shutt, SSO program manager, Maryland Department of Transportation, said his agency has a good relationship with the RTA's safety department because both parties understand the SSOA's role. The resistance comes from the middle managers—so the SSOA needs to develop closer relationships with management and front-line employees as the SMS framework is rolled out.

Mr. Nemons encouraged RTAs and SSOAs to meet routinely to review their Program Standard because that document is at the core of the safety oversight function and must meet Part 674 requirements. But he reminded participants that those requirements are minimum. Some states have additional safety requirements above and beyond those required by federal rules.

Closing Remarks

Presenter: Henrika Buchanan, Acting Associate Administrator/Chief Safety Officer
Office of Transit Safety and Oversight, FTA

Ms. Buchanan recapped highlights of the workshop and encouraged RTAs and SSOAs to work together to further enhance the safety of an already safe public transit system. She also asked for audience preferences for an annual meeting or meeting twice a year for both SSOAs and RTAs.