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Richard A. White

Department of Transportation
Docket Operations
M-30, West Building Ground Floor, Room W12-140
1200 New Jersey Avenue S.E.
Washington, DC 20590

RE: TSA- 2015-0001

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Transportation Security Administration's notice of proposed rulemaking regarding security training for surface transportation employees, published in the *Federal Register* on December 16, 2016 at 81 FR 91336.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation.

General Comments

APTA has surveyed its member organizations seeking comments in response to the notice of proposed rulemaking and offers the following comments:

- *1582/1584.113 (9) Method(s) for evaluating effectiveness.* Need to define how to measure, and may not match owner/operator metrics.
 - For example, if a 15-minute module is more effective every two years, is it allowed compared to one hour annually?
 - May need to adjust number of years, or provide some other specific method for evaluating effectiveness.

- *1582/1584.115 (b) Limits on use of untrained employees.* We are opposed to the 60-day time limit required to train an employee. This creates a hardship if training cannot be performed within this period.
 - APTA recommends 180-day time period to train employees. This allows for flexibility based on the size of the transit agency.

- In addition:
 - With the emphasis on security training, we recommend that TSA create the training module like a video. TSA should keep in mind that some agencies do not have the expertise to create their own training module.
 - A video would also create consistency throughout the industry.
 - TSA should also provide a list of training that TSA deems acceptable.
 - The “first observer” training currently utilized by TSA is not adequate.

- *1582/1584.115 (f) (3) Use of applicable self-defense devices or other protective equipment*
This section should include language specifically stating the agency is not required to issue any self-defense devices (and does not violate state law). TSA should clarify that this refers to standard personal protection equipment (PPE). Left undefined, this requirement would be overly broad and redundant with other safety training. It should be noted that OSHA already requires employees to receive training in the use of PPE required by their job functions.

- *1570.11 Recurrent security training.* Since APTA first suggested annual training, it has reevaluated that position because of the budget shortfalls in most, if not all, of the agencies in Appendix A Annual training is not practical or financially realistic, and APTA suggests every three years instead of annual training.
 - In terms of budget shortfalls, many agencies have expressed concerns about grant funding going away, and acknowledge they will not be able to complete regular security training.

- *Appendix B* – The inclusion of maintenance personnel creates an additional financial burden on a transit agency.

- TSA cost estimates do not account for all the ancillary costs of staff replacement and adjustment to schedules. APTA questions whether TSA’s cost-benefit analysis truly considers the Unfunded Mandate Reform Act of 1995.

- TSA must coordinate with transit agencies closely before having a TSA inspector conduct an unannounced inspection. There should be a reasonable notice standard.
 - TSA inspectors need to undergo safety training before going on property at a transit agency.

- TSA should provide the transit agency an audit checklist before TSA arrives on property, and the transit agency should be able to prepare for the audit (i.e., TSA should not be able to just “show up” for an audit unannounced).
- TSA would require a transit agency to be responsible even if its contractor does not provide training. How does the transit agency (or equivalent) ensure that its contractor, under current contracts that do not address this new rule, ensure training is provided and the new rules are followed? (Page 91356)
 - For example, background investigations on contractors can be difficult.
 - Also, transit agencies will need to provide contractors with TSA’s expectations regarding security training.
 - TSA should consider an audit program for contractors instead.
- TSA would require a transit agency to report, within 24 hours, any initial discovery of a potential threat. – This is an unreasonable requirement. (Page 91388)
 - TSA must develop some criteria to narrow what needs to be reported within 24 hours
 - Some transit agencies may not know what the threat is right away, or that it is a threat until after 24 hours.
 - APTA requests TSA provide a list of what is reportable and what is not reportable. Such a list of actual activities/issues that are reportable would be very helpful.

APTA recommends TSA define what is a security threat. TSA must parameters around what is a security threat and harmonize it with the Federal Railroad Administration’s regulation at 49 CFR 1580.203.

We appreciate the opportunity to assist TSA in this important endeavor. For additional information, please contact Linda Ford, APTA’s Chief Counsel, at (202) 496-4808 or lford@apta.com.

Sincerely yours,



Richard A. White
Acting President & CEO