

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1408

[Docket No. CPSC–2015–0033]

#### Petition for Labeling Requirements Regarding Slip Resistance of Floor Coverings; Request for Comments

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of petition for rulemaking.

**SUMMARY:** The United States Consumer Product Safety Commission (“CPSC” or “Commission”) received a petition requesting that the Commission initiate rulemaking under the Consumer Product Safety Act (“CPSA”) to require that manufacturers of floor coverings, floor coverings with coatings, and treated floor coverings label their products’ slip resistance in accordance with the applicable American National Standards Institute (“ANSI”) standard. The Commission invites written comments concerning the petition.

**DATES:** The Office of the Secretary must receive comments on the petition by February 1, 2016.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2015–0033, by any of the following methods:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through [www.regulations.gov](http://www.regulations.gov). The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

*Written Submissions:* Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

*Instructions:* All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

*Docket:* For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov>, and insert the docket number, CPSC–2015–0033, into the “Search” box, and follow the prompts. A copy of the petition is available at <http://www.regulations.gov> under Docket No. CPSC–2015–0033, Supporting and Related Materials.

**FOR FURTHER INFORMATION CONTACT:** Todd Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833.

**SUPPLEMENTARY INFORMATION:** The Commission received a petition requesting that manufacturers of floor coverings, floor coverings with coatings, and treated floor coverings (herein abbreviated as “floor coverings”) be required to label their products to provide point-of-sale information regarding such products’ degree of slip resistance, in accordance with the labeling requirements of ANSI B101.5–2014.<sup>1</sup> Specifically, petitioner requests a rule that would require a label indicating the slip resistance (also known as “coefficient of friction” or “COF”) for floor coverings based on tests described in ANSI B101.1 and B101.3. The required label would provide a graphic of a traction scale and indicate the COF value for the product.

The petition was filed by the National Floor Safety Institute. Petitioner notes that manufacturers of floor coverings currently are not required to provide consumers with information relating to slip resistance of their products. Petitioner asserts that because different

<sup>1</sup> The petition does not apply to floor coatings, such as waxes, that are sold separately or to coverings such as carpets, rugs, mats, runners or artificial turf.

types of floor coverings have pronounced differences in slip resistance, many flooring materials will be inappropriate for specific uses. Petitioner states that the primary focus of the petition is to protect the elderly, a population petitioner believes to be most vulnerable to the risk of slip and fall events. As an example, petitioner cites that in 2014, more than 23,000 elderly Americans died as a result of accidental falls. Furthermore, petitioner notes that the CDC stated that in 2013, the direct medical costs of older adult falls was approximately \$34 billion.

Petitioner states that slip resistance labeling would be analogous to the requirements for labeling nutritional content in food, noting that labeling regarding flooring slip resistance would allow consumers to make more informed decisions when selecting a flooring product, enabling elderly consumers to select flooring that offers higher slip resistance, potentially reducing the risk of accidental slip and fall events.

By this notice, the Commission seeks comments concerning this petition. Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923. A copy of the petition is also available for viewing under “Supporting and Related Materials” in [www.regulations.gov](http://www.regulations.gov), under Docket No. CPSC–2015–0033.

Dated: November 25, 2015.

**Todd A. Stevenson,**

*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. 2015–30440 Filed 12–2–15; 8:45 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### 49 CFR Part 672

[Docket No. FTA–2015–0014]

RIN 2132–AB25

#### Public Transportation Safety Certification Training Program

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Federal Transit Administration (FTA) seeks public comment on a notice of proposed rulemaking (NPRM) for safety certification training. FTA proposes to adopt the current interim safety certification training provisions as the initial regulatory training requirements for public transportation industry personnel responsible for safety oversight of public transportation systems. The NPRM defines to whom the training requirements apply, describes recordkeeping requirements, provides administrative provisions, and compliance requirements.

**DATES:** Comments must be received by February 1, 2016. FTA will accept late-filed comments to the extent practicable.

**ADDRESSES:** Please submit your comments by only one of the following methods:

- *Online:* Use the Federal eRulemaking portal at <http://www.regulations.gov> and follow the instructions for submitting comments.
- *U.S. Mail:* Send your comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* Go to Room W12-140 on the ground floor of the West Building, U.S. Department of Transportation headquarters, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday except Federal holidays.
- *Telefax:* Send your comments to 202-493-2251.

*Instructions:* All comments must include the docket number for this rulemaking: FTA-2015-0014. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed, stamped postcard. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading under "Supplementary Information," below, for Privacy Act information pertinent to any submitted comments or materials, and you may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477.

*Docket Access:* For access to background documents and comments received in the rulemaking docket, go to <http://www.regulations.gov> or to the U.S. Department of Transportation, 1200

New Jersey Avenue SE., Room W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For program issues, contact Ruth Lyons, FTA, Office of Safety and Oversight, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202-366-2233 or email: [Ruth.Lyons@dot.gov](mailto:Ruth.Lyons@dot.gov)). For legal issues, contact Bruce Walker, FTA, Office of Chief Counsel, same address, (telephone: 202-366-9109 or email: [Bruce.Walker@dot.gov](mailto:Bruce.Walker@dot.gov)). Office hours are Monday through Friday from 8 a.m. to 6 p.m. (EST), except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

- I. Executive Summary
- II. Advance Notice of Proposed Rulemaking
- III. Overview of the Proposed Rule
- IV. Interim Program Curriculum and Technical Training Requirements
- V. Section-by-Section Analysis
- VI. Cost-Benefit Analysis
- VII. Regulatory Analyses and Notices

**I. Executive Summary**

In the Moving Ahead for Progress in the 21st Century Act (MAP-21; Pub. L. 112-141, July 6, 2012), Congress directed FTA to establish a comprehensive Public Transportation Safety Program (codified at 49 U.S.C. 5329), one element of which is the Public Transportation Safety Certification Training Program (PTSCTP). The purpose of today's NPRM is to carry out the statutory mandate to provide a framework to enhance the technical proficiency of those directly responsible for safety oversight of public transportation systems.

This proposed rulemaking would incorporate the curriculum promulgated recently for the interim provisions for safety certification training (interim program) as the training requirements for the PTSCTP. The interim program curriculum and training requirements may be found in Section V of the **Federal Register** notice promulgating the interim program at: <https://www.federalregister.gov/articles/2015/02/27/2015-03842/interim-safety-certification-training-program-provisions>.

The NPRM provides a regulatory framework for safety certification training for personnel who are directly responsible for safety oversight of public transportation systems and the State personnel who conduct safety audits and examinations of rail transportation systems. Besides incorporating the interim program curriculum and training requirements, this proposal would: (1) Permit participants to request

evaluation of non-FTA sponsored safety training for credit towards applicable PTSCTP requirements; (2) require designated personnel to complete a minimum of one hour of refresher safety training every two years as determined by his or her employer; (3) require recipients to maintain administrative records and ensure a participant's curriculum completion status is updated periodically; and (4) require SSOAs and recipients that operate rail fixed guideway systems not regulated by the Federal Railroad Administration (FRA) to annually certify compliance with the rule as a condition of receiving Chapter 53 funding.

*Legal Authority*

This rulemaking is issued under the authority of 49 U.S.C. 5329(c)(1) which requires the Secretary of Transportation to prescribe a public transportation safety certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems, as well as employees of public transportation agencies directly responsible for safety oversight. The Secretary is authorized to issue regulations to carry out the general provisions of this statutory requirement pursuant to 49 U.S.C. 5329(f)(7).

*Summary of Key Provisions*

Similar to the interim program, the focus of the proposed rule would be on enhancing the technical proficiency of safety oversight professionals in the rail transit industry. To that end, this proposed rule would incorporate the curriculum set forth in Section V of the **Federal Register** notice promulgating the interim program. FTA may periodically update the curriculum following a period for public notice and comment. This approach is similar to that of the National Transit Database (NTD) rule at 49 CFR part 630 in which the Reporting Manuals set forth reporting requirements. FTA periodically updates the manuals with public notice and an opportunity for stakeholders to comment. FTA believes this proposal would provide for a consistent and stable curriculum as the public transportation industry acclimates to the requirement for safety oversight training.

The proposed rule would reflect the interim program in that mandatory participants would continue to be State Safety Oversight Agency (SSOA) personnel and contractors, and designated personnel of rail transit agencies not otherwise regulated by another Federal agency. Employees or contractors of entities providing safety

oversight of bus operations would be permitted to participate on a voluntary basis. Participants would continue to have three years to complete the initial requirements for the PTSCTP.

Participation in the interim program would be credited towards meeting the initial three-year PTSCTP completion requirements. The three-year timeframe for new participants would commence upon their enrollment in the PTSCTP.

Another key proposal is the requirement for SSOAs and recipients that operate rail fixed guideway systems not regulated by the Federal Railroad Administration (FRA) to ensure its designated personnel are enrolled in the PTSCTP electronic database maintained by FTA and to monitor their participation towards completing applicable training requirements. In addition, SSOAs would be required to maintain administrative records of the participation of its designated personnel in applicable technical training as outlined in the SSOA's FTA-approved technical training plan.

Unlike the interim program, FTA is proposing a process for participants to request review of documented training obtained from sources other than FTA for credit towards the equivalent PTSCTP training. In addition, FTA is proposing that mandatory participants be required to undertake at least one hour of refresher training every two years on a safety subject determined by his or her employer. The timeframe for determining the two-year refresher training period would commence following completion of the initial PTSCTP.

Lastly, each SSOA and recipient that operates a rail fixed guideway system not regulated by the FRA would be required to certify compliance with the PTSCTP requirements as part of FTA's procedures for annual grant certification and assurances. Should FTA determine an SSOA or recipient is not in compliance with the PTSCTP, the Administrator would have discretion to withhold Chapter 53 funds following notice and an opportunity for the recipient to respond.

With this NPRM, FTA is seeking comment on its proposal to incorporate the interim program curriculum and technical training requirements as the initial training requirements for the PTSCTP. Additionally, FTA seeks comments of its proposed regulatory framework for the PTSCTP.

#### *Costs and Benefits*

As discussed in greater detail below, FTA reviewed data from the Transportation Safety Institute (TSI), the entity that provides substantial safety

training to the transit industry, albeit on a voluntary basis. Using this data and our familiarity with how SSOAs are organized, we developed a maximum and minimum number of personnel, to include employees and contractors that would be affected by the PTSCTP. Next, using the same data from TSI, we determined the number of rail transit personnel that would be affected by the PTSCTP. We also reviewed the number of FTA personnel who participate in safety audits and examinations and determined the number of FTA personnel that would be required to undergo some level of training and certification. In developing annual costs for personnel that would attend the PTSCTP, we assumed a minimum and maximum case scenario.

For the minimum case, we assumed that all designated personnel under this program already had completed the Transit Safety and Security Program (TSSP) Certificate and would require only the safety management system (SMS) portion of the coursework described in Section IV of this notice. For the maximum case, we assumed that no one subject to the NPRM has a TSSP Certificate. In this case, all designated personnel would have to take and complete both the TSSP and SMS coursework over the allotted 3-year period. Using these assumptions, we estimate an approximate maximum cost of \$2.6 million per year, of which up to 80 percent may be funded with FTA funds.

To assess the benefits for the PTSCTP, we considered how other transportation modes that are in the process of implementing SMS or similar systematic approaches to safety have estimated the benefits of their programs in reducing incidents, adverse outcomes, and improving the industry's safety culture. It is difficult to quantify the effects of a positive safety culture as a safety culture will develop over time. Characteristics of a positive safety culture include: Actively seeking out information on hazards; employee training; information exchanges; and understanding that responsibility for safety is shared. While the returns on investment in training should be fairly quick, establishing, promoting, and increasing safety, even in an industry that is very safe, is difficult to predict with any certainty. Consistent with other recent rulemakings issued by the Department on SMS, we conducted a breakeven analysis. As explained further in Section VI, for the State Safety Oversight (SSO) NPRM published in the **Federal Register** on February 27, 2015 at 80 FR 11002, FTA estimated that the SSO program revisions realistically

would garner a 2 percent reduction in costs associated with fatalities and "serious" injuries. Based on the analysis for the, SSO NPRM, for the benefits to break even with the costs to both SSOs and rail transit agencies, the rule only would require a 1.23 percent reduction of the accident costs per year, which did not include potentially significant unquantified costs related to property damage and disruption. The SSO program is reliant on the PTSCTP for part of its safety improvements. While the SSO NPRM proposed to improve SSO and rail transit agency processes, the PTSCTP improves the requisite human capital within the SSO program by improving the training and by making mandatory training for those designated personnel charged with safety oversight at SSO and rail transit agencies.

## **II. Advance Notice of Proposed Rulemaking**

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 subrecipients are not likely to be charged with safety oversight responsibilities. But the State DOT is responsible for ensuring that subrecipients 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 subrecipients. 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 PTSCPT.

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 PTSCPT 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 PTSCPT 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 PTSCPT 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 PTSCTP requirements.

### III. Overview of the Proposed Rule

FTA considered the recommendations submitted by commenters on the ANPRM while developing both the interim program and this proposed rule. Many of those recommendations are reflected in the requirements proposed for this rule.

To implement this rule, FTA proposes to leverage the interim program training requirements as the foundation for the PTSCTP. FTA recognizes that the interim program was implemented only recently; therefore, a reasonable period of time should pass to allow FTA to assess its effectiveness before proposing new or additional requirements. The interim program curriculum and technical training requirements are republished in Section IV of this notice for clarity. FTA invites public comment on its proposed implementation of the PTSCTP as noted herein.

As with the interim program, FTA proposes the initial focus of the PTSCTP will be on enhancing the technical proficiency of safety oversight professionals in the rail transit industry.

In addition, public transportation safety is a priority for all public transit providers; therefore, safety oversight professionals of other modes of public transportation are encouraged to participate voluntarily. The initial mandatory PTSCTP requirements would provide SMS training for Federal and SSOA personnel and their contractor support, as well as rail transit agency personnel who are directly responsible for safety oversight of rail transit systems. Safety oversight personnel of recipients such as State DOTs and bus transit providers would continue as *voluntary* participants. FTA believes this initial approach of mandatory training for SSOAs and rail transit agencies, and voluntary training for bus only systems, allows for optimum utilization of Federal and local resources while providing flexibility to revise the training requirements as appropriate. However, FTA notes that pursuant to 49 U.S.C. 5329(c)(1), it has discretion to promulgate mandatory training requirements for all public transportation systems—not just rail.

In response to commenters who recommended that the PTSCTP program requirements be flexible and scalable and take into consideration the varying needs and sizes of different public transit agencies, FTA notes that the PTSCTP's mandatory training would apply only to SSOAs and rail transit agencies with minimum training requirements necessary to enhance technical proficiency. State DOT and bus transit personnel would be voluntary participants. Further, FTA recognizes the value of leveraging its published safety toolkits, best practices guides, and providing technical assistance as the PTSCTP is implemented. Therefore, before FTA would propose new training requirements, existing FTA-sponsored training would be reviewed for applicability and scalability relative to the diverse universe of public transit providers.

FTA also proposes flexibility with regard to how personnel would be identified as participants for the PTSCTP. FTA agrees with commenters who indicated the recipient should have discretion to identify which of its personnel perform safety oversight functions. Comments to the ANPRM indicated that position titles and functions in the public transportation industry are not universal. In general, it would be impractical for FTA to identify the specific positions or titles of those directly responsible for safety oversight or those who conduct audits and examinations. Therefore, the proposed rule includes definitions for

the terms “*directly responsible for safety oversight*,” “*safety audits*,” and “*safety examinations*” in order to assist public transit agencies with identifying personnel who will need to complete the training.

FTA is proposing flexibility with developing the curriculum for the PTSCTP. Specifically, FTA would use a process similar to that used to identify National Transit Database (NTD) reporting requirements under 49 CFR part 630. To illustrate, FTA periodically publishes revisions to the NTD Reporting Manuals (defined in part 630 as *reference documents*) following notice and comment. For the PTSCTP, FTA would issue and update the training requirements for the PTSCTP in a similar manner. After FTA issues a final PTSCTP rule, FTA would periodically review the training requirements to determine if any modifications should be made to improve the effectiveness of the program. If warranted, revised requirements would be published in the **Federal Register** for notice and comment before taking effect. The requirements then would be made available via the FTA Web site as the *reference document* noted in sections 672.5, 672.11 and 672.13 of the proposed regulatory text. The flexibility of this process would align with FTA's periodic review of safety data and trends to determine if the *reference document* warrants revisions. FTA believes this proposed approach provides the public transportation industry with predictable training requirements yet allows flexibility to respond to emerging safety trends within a reasonable timeframe.

The proposed PTSCTP is also flexible with regard to its application. FTA is not proposing that a recipient only can hire personnel that have completed the initial training requirements. As suggested by a number of commenters, FTA proposes that personnel would have three years from the date the recipient identifies him or her as designated personnel to complete the initial requirements. FTA believes this measured approach promotes the legislative intent of enhancing the technical proficiency of safety oversight personnel while recognizing the recipient's need to prudently manage its human capital and resources.

Additionally, FTA agrees with commenters who indicated that refresher training should occur every two years following the initial three-year timeframe for completing safety certification training requirements. Topics for refresher training would be at the discretion of the SSOA or rail transit

agency, but would likely align with the training requirements to be proposed for the Public Transportation Agency Safety Plan. Refresher training would likely place greater emphasis on advanced areas or topics that often lead to accidents, injuries, or non-compliance. This process would allow both FTA and the public transportation industry to analyze safety data and identify risks before recommending risk mitigation strategies. FTA believes a two-year refresher cycle following the initial three-year training period reasonably permits designated personnel to train on relevant safety issues while not significantly impacting operations.

Although each SSOA and rail transit agency would have discretion with regard to the subject matter for refresher training, the proposed rule would require designated personnel to participate in at least one hour of refresher training. FTA emphasizes that this proposal would provide the SSOAs and rail transit agencies with discretion to require more than one hour of refresher training based on the specific safety oversight training needs of the SSOA or rail transit agency.

FTA also agrees with those ANPRM commenters who indicated that FTA should recognize relevant safety training and certification that designated personnel already have obtained. To that end, FTA is proposing to allow designated personnel to have their previous training evaluated by FTA to determine if the training competencies are equivalent to the competencies of the curriculum proposed for the PTSCTP. FTA would have the discretion to determine whether specific PTSCTP training requirements should be waived for the designated personnel.

FTA believes the regulatory construct described above balances flexibility and scalability for recipients while achieving the objective of enhancing the technical proficiency of public transportation personnel. FTA invites public comment on the flexible and scalable approach proposed to implement the PTSCTP.

#### **IV. Interim Program Curriculum and Technical Training Requirements**

FTA is providing the following requirements of the interim program here to assist stakeholders with understanding the curriculum and requirements proposed for this rule. As stated previously, FTA adopted these requirements through a notice and comment process and is not seeking comments on the requirements themselves. FTA believes the curriculum and technical training requirements developed for the interim

program provide a sufficient baseline for enhancing the technical competency of those directly responsible for safety oversight. However, since these requirements only became effective in May of this year, FTA is interested in receiving comments on the effectiveness of the curriculum and technical training requirements noted herein.

For purposes of consistency, FTA has changed “covered personnel” to “designated personnel” as that is the term proposed for use in the rule. All other text is the same as that published in the February 27, 2015, **Federal Register** notice (80 FR 10619), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03842.pdf>.

#### A. Required Curriculum Over a Three-Year Period

• *FTA/SSOA personnel and contractor support, and rail transit agency personnel with direct responsibility for safety oversight of rail transit systems not subject to FRA regulation:*

- One (1) hour course on SMS Awareness—e-learning delivery (all required participants)
- Two (2) hour course on Safety Assurance—e-learning delivery (all required participants)
- Two (2) hour SMS Gap course (e-learning for existing TSSP Certificate holders)
- SMS Principles for Rail Transit (2 days—all required participants)
- SMS Principles for SSO Programs (2 days—FTA/SSOA/contractor support personnel only)
- Revised TSSP with SMS Principles Integration (not required of current TSSP Certificate holders—17.5 days for all other designated personnel)
- Rail System Safety
- Effectively Managing Transit Emergencies
- Transit System Security
- Rail Incident Investigation

• *FTA/SSOA/contractor support personnel (technical training component):*

Each SSOA shall develop a technical training plan for designated personnel and contractor support personnel who perform safety audits and examinations. The SSOA will submit its proposed technical training plan to FTA for review and evaluation as part of the SSOA certification program in accordance with 49 U.S.C. 5329(e)(7). This review and approval process will support the consultation required between FTA and SSOAs regarding the staffing and qualification of the SSOAs' employees and other designated personnel in accordance with 49 U.S.C. 5329(e)(3)(D).

Recognizing that each rail fixed guideway public transportation system has unique characteristics, each SSOA will identify the tasks related to inspections, examinations, and audits, and all activities requiring sign-off, which must be performed by the SSOA to carry out its safety oversight requirements, and identify the skills and knowledge necessary to perform each task at that system. At a minimum, the technical training plan will describe the process for receiving technical training from the rail transit agencies in the following competency areas appropriate to the specific rail fixed guideway system(s) for which safety audits and examinations are conducted:

- Agency organizational structure
- System Safety Program Plan and Security Program Plan
- Knowledge of agency:
  - Territory and revenue service schedules
  - Current bulletins, general orders, and other associated directives that ensure safe operations
  - Operations and maintenance rule books
  - Safety rules
  - Standard Operating Procedures
  - Roadway Worker Protection
  - Employee Hours of Service and Fatigue Management program
  - Employee Observation and Testing Program (Efficiency Testing)
  - Employee training and certification requirements
  - Vehicle inspection and maintenance programs, schedules and records
  - Track inspection and maintenance programs, schedules and records
  - Tunnels, bridges, and other structures inspection and maintenance programs, schedules and records
  - Traction power (substation, overhead catenary system, and third rail), load dispatching, inspection and maintenance programs, schedules and records
  - Signal and train control inspection and maintenance programs, schedules and records

The SSOA will determine the length of time for the technical training based on the skill level of the designated personnel relative to the applicable rail transit agency(s). FTA will provide a template on its Web site to assist the SSOA with preparing and monitoring its technical training plan and will provide technical assistance as requested. Each SSOA technical training plan that is submitted to FTA for review will:

- Require designated personnel to successfully:

■ Complete training that covers the skills and knowledge the designated personnel will need to effectively perform his or her tasks.

■ Pass a written and/or oral examination covering the skills and knowledge required for the designated personnel to effectively perform his or her tasks.

■ Demonstrate hands-on capability to perform his or her tasks to the satisfaction of the appropriate SSOA supervisor or designated instructor.

○ Establish equivalencies or written and oral examinations to allow designated personnel to demonstrate that they possess the skill and qualification required to perform their tasks.

○ Require biennial refresher training to maintain technical skills and abilities which includes classroom and hands-on training, as well as testing. Observation and evaluation of actual performance of duties may be used to meet the hands-on portion of this requirement, provided that such testing is documented.

○ Require that training records be maintained to demonstrate the current qualification status of designated personnel assigned to carry out the oversight program. Records may be maintained either electronically or in writing and must be provided to FTA upon request.

○ Records must include the following information concerning each designated personnel:

■ Name;

■ The title and date each training course was completed and the proficiency test score(s) where applicable;

■ The content of each training course successfully completed;

■ A description of the designated personnel's hands-on performance applying the skills and knowledge required to perform the tasks that the employee will be responsible for performing and the factual basis supporting the determination;

■ The tasks the designated personnel is deemed qualified to perform; and

■ Provide the date that the designated personnel's status as qualified to perform the tasks expires, and the date in which biennial refresher training is due.

○ Ensure the qualification of contractors performing oversight activities. SSOAs may use demonstrations, previous training and education, and written and oral examinations to determine if contractors possess the skill and qualification required to perform their tasks.

○ Periodically assess the effectiveness of the technical training. One method of

validation and assessment could be through the use of efficiency tests or periodic review of employee performance.

#### B. Voluntary Curriculum

- *Bus transit system personnel with direct safety oversight responsibility and State DOTs overseeing safety programs for subrecipients*
  - FTA-sponsored Bus Safety Programs
  - One (1) hour course on SMS Awareness—e-learning delivery
  - SMS for Bus Operations
  - TSSP Certificate (Bus)

#### V. Section-by-Section Analysis

This section explains the requirements proposed to implement the Public Transportation Safety Certification Training Program in accordance with 49 U.S.C. 5329(c)(1).

##### Section 672.1 Purpose

This part proposes to implement 49 U.S.C. 5329(c)(1) by establishing a uniform curriculum of safety certification training to enhance the technical proficiency of individuals who are directly responsible for safety oversight of public transportation systems not subject to the safety oversight requirements of another Federal agency. This part would not preempt a State from implementing its own safety certification training requirements for public transportation systems subject to its jurisdiction.

##### Section 672.3 Scope and Applicability

In general, the proposed rule would apply to all recipients of Federal public transportation funding under Chapter 53 of Title 49 of the United States Code. However, the mandatory requirements would apply specifically to SSOA personnel and their contractor support who conduct safety audits and examinations. In addition, the mandatory requirements would apply to rail transit agency personnel who are directly responsible for safety oversight of rail transit systems that are not subject to the requirements of FRA. All other recipients of Chapter 53 funding would have discretion to participate voluntarily in the training requirements proposed for the PTSCTP.

##### Section 672.5 Definitions

This section would set forth the definitions of some key terms for the proposed rule. Although this would be a new rule, many of the terms used for this section will carry the same or similar meaning as the terms are used in other documents issued by FTA. Specifically, they are “Administrator,”

“Contractor,” “FTA,” “Recipient,” “Public Transportation Agency,” “Rail Fixed Guideway System,” “State,” and “State Safety Oversight Agency.”

In addition, there are some new terms proposed for this rulemaking with definitions that are consistent with the common sense use as they appear in the proposed rule text. They are:

“Designated Personnel,” “Directly Responsible for Safety Oversight,” “Reference Documents,” “Safety Audits,” and “Safety Examinations.”

##### Section 672.11 Designated Personnel Who Conduct Safety Audits and Examinations

With paragraph (a) of this section, FTA is proposing that the State entity authorized by the Governor to perform public transportation safety oversight functions should identify its personnel who conduct safety audits and examinations of the public transportation systems for mandatory participation in training requirements of this part. In general, those identified would be SSOA personnel and the contractor support whose functions include on-site safety audits and examinations of rail public transportation systems. This section also would apply to the managers and supervisors who have direct authority over such personnel. FTA is proposing this approach because each SSOA is better situated to determine which of its personnel and contractors perform safety audit and examination functions as those terms are proposed in the Definitions section for this rule.

Paragraph (b) proposes that personnel designated by the SSOA would have three years to complete the applicable training noted in the Reference Document as the term is defined in proposed section 672.5. To implement this rule, the interim program training requirements listed in Section IV of this notice would be listed in the Reference Document. Paragraph (b) also would require the SSOA to ensure that designated personnel complete at least one-hour of refresher training every two years after the initial three-year period above. The SSOA would have discretion to determine the subject area and time for such training. Paragraph (c) would identify the FTA web address for locating the current version of the safety certification training requirements.

##### Section 672.13 Designated Personnel of Public Transportation Agencies

This section would require a recipient to identify its employees whose job function is “directly responsible for safety oversight” of the public transportation system. FTA understands

that the unique organizational framework of public transit systems does not reasonably allow for uniform designation of the same position or function as being “directly responsible for safety oversight.” FTA believes each transit agency is better situated to determine which of its personnel should be designated for participation in the PTSCTP, whether mandatory or voluntary.

Paragraph (a) would require each recipient that operates a rail transit system not subject to FRA requirements to identify its designated personnel for mandatory participation in the PTSCTP. Paragraph (b) would allow recipients of other modes of public transportation with personnel who are directly responsible for safety oversight to participate voluntarily. In general, these recipients would be State DOTs, transit agencies with both bus and rail transit systems, as well as bus only systems. These recipients would have discretion to scale their training requirements based on their safety risks, as well as guidance issued by FTA. FTA would continue to provide technical assistance for training through its Safety Training and Resource Web site which can be located at: <https://safety.fta.dot.gov/>.

Paragraph (c) would provide mandatory participants up to three years from the time of his or her initial designation to complete the initial training requirements. The recipient would then ensure that each mandatory participant completes at least one-hour of refresher training every two years thereafter. However, the recipient may require additional time for such training. As noted in paragraph (d), the FTA web address for locating the current version of the safety certification training requirements is identified.

##### 627.15 Evaluation of Prior Certification and Training

FTA recognizes the existence of other competent organizations that provide relevant safety training and certification for public transportation safety professionals. Therefore, paragraph (a) of this section would allow a participant to request that FTA review other non-FTA sponsored safety training the participant has completed for the purpose of receiving credit toward equivalent elements of PTSCTP training requirements.

Paragraph (b) would require the participant to provide official documentation from the organization that conducted the training for which credit is being requested. The documentation should indicate the date(s) and subject matter of the completed training. In addition, the

participant would be required to provide a narrative summary of the training objectives and the competencies obtained through that training.

In accordance with paragraph (c), FTA would evaluate the submission to determine if the previously completed safety training conforms to the training objectives and competencies of the FTA curriculum. If approved, FTA would provide the participant credit for the previous training and waive completion of the equivalent element of the PTSCTP requirement. However, the waiver would not exempt a participant from having to comply with any applicable refresher training or technical training requirements.

#### *Section 672.21 Records*

An essential requirement of any training program is the maintenance of adequate records to document that the training was completed. To that end, as noted in paragraph (a), FTA proposes to maintain an electronic record of each PTSCTP participant. The electronic record would be created when the participant registers online for the program at: <https://safety.fta.dot.gov/>.

FTA would maintain and administer the online database; however, paragraph (b) would require that each recipient be responsible for ensuring that its designated personnel are properly registered and completing the curriculum for their position (e.g., safety oversight function, or conducting safety audits and examinations). The database would allow participants to update his or her status as training requirements are completed.

Paragraph (c) would require each SSOA develop a technical training plan based on applicable requirements identified in the technical training component of Section IV of this notice. Each SSOA would maintain training records that document the technical training undertaken by its designated personnel and contractors who conduct audits and examinations of rail transit systems under its jurisdiction. This documentation would be retained by the SSOA for at least five years from the date the record is created. This documentation process would assist the SSOA in complying with the requirements of 49 U.S.C. 5329(e)(3)(E), as it would provide supporting documents that show designated SSOA personnel and contractor support are have received training to perform requisite safety oversight functions. As with the interim program, FTA would provide templates and guidance to assist the SSOA with this process.

With regard to contractors that provide audit and examination services to SSOAs, the SSOA would be responsible for ensuring that any contractor it engages to perform a safety oversight function is qualified to perform the service as contracted. Therefore, it is reasonable for the SSOA, working with its contractor, to maintain training records of those providing contract services.

#### *Section 672.23 Availability of Records*

With this section, FTA is proposing requirements for the safekeeping and limited release of information maintained in accordance with the proposed requirements of this part. Paragraph (a) would require that information maintained in applicable training records not be released without the consent of the participant for whom the record is maintained, except in those limited instances as prescribed by law or as indicated in paragraphs (b), (c) and (d).

Paragraph (b) would allow a participant to receive a copy of his or her training records without cost to the participant. To assist with safety oversight activities, paragraph (c) would require a recipient to provide appropriate Federal and SSOA personnel access to all of the recipient's facilities where required training is conducted. In addition, the recipient would be required to grant access to all training records required to be maintained by this part to appropriate Department of Transportation personnel and appropriate State officials who are responsible for safety oversight of public transportation systems. Paragraph (d) would require a recipient to provide information regarding a participant's training when requested by the National Transportation Safety Board when such request is made as part of an accident investigation.

#### *Section 672.31 Requirement To Certify Compliance*

Recipients are required to annually certify their compliance with Federal grant requirements as a condition for receiving funding. Paragraph (a) would require recipients for whom the training requirements are mandatory to self-certify compliance with this part through the annual FTA certification and assurances. Paragraph (b) would require the recipient to identify the person(s) within its organization authorized to certify the status of the recipient's compliance.

#### *Section 672.33 Compliance as a Condition of Financial Assistance*

This section would define actions available to the Administrator if a recipient for whom the training requirements are mandatory does not comply with the requirements of this part. Paragraph (a) would indicate that the Administrator has discretion to withhold Federal public transportation funds should the Administrator find that a recipient is not complying with the requirements of this part. Paragraph (b) would provide the recipient with written notice of the Administrator's decision and the factual basis for the Administrator's finding of noncompliance. Paragraph (c) would provide the recipient an opportunity to respond to the Administrator within 30 days of receiving written notice of the finding of noncompliance. Paragraph (d) provides actions the Administrator may undertake at his or her discretion.

### **VI. Cost-Benefit Analysis**

Section 5329(h) of title 49, United States Code requires FTA to "take into consideration the costs and benefits of each action the Secretary proposes to take" under section 5329. To assess the costs for the PTSCTP, we first reviewed data from the Transportation Safety Institute (TSI). Using this data and our familiarity with how SSOAs are organized, we developed a maximum and minimum number of personnel, to include employees and contractors that would be affected by the PTSCTP. Next, using the same data from TSI, we determined the number of rail transit personnel that would be affected by the PTSCTP. We also reviewed the number of FTA personnel who participate in safety audits and examinations and determined the number of FTA personnel that would be required to undergo the some level of training and certification. In developing annual costs for personnel that would attend the PTSCTP, we assumed a minimum and maximum case scenario.

For the minimum case, we assumed that all designated personnel under this program had already completed the TSSP Certificate Program and would require only the SMS portion of the coursework described in Section IV of this notice. This assumption is supported given the popularity of the TSSP Certificate Program within the industry. This assumption is supported further by the level of voluntary participation by transit industry personnel obtained from current graduation/attendance data at TSI. For the maximum case, we assume that no one subject to the NPRM has a TSSP

Certificate. In this case, all designated personnel would have to take and complete both the TSSP and SMS coursework over the allotted 3-year period. The table below shows the estimated counts used in our analysis.

To simplify the analysis, we assumed that the total designated personnel

under this NPRM would undertake one-third of the total coursework each year. While affected employees will have three years to complete the coursework—it would be unreasonable to expect an employee to be away from a duty station for training purposes for

over four consecutive weeks. As noted in the comments received on the ANPRM, many commenters suggested that we harness the existing voluntary training offered by TSI and build upon that base.

**ESTIMATED UNIVERSE OF POTENTIAL SSOA, RAIL TRANSIT AGENCY, AND FTA PERSONNEL**

	Minimum	Maximum
SSOA Personnel .....	70	120
Rail Transit Agency Personnel .....	200	340
FTA Personnel .....	40	40
<b>Total .....</b>	<b>310</b>	<b>500</b>

Next, we determined the training, by course, that would be required of each person within the scope of the PTSCPT. The TSSP Certificate Program consists of four courses.<sup>1</sup> The Table below lists the courses and duration.

**TSSP COURSEWORK REQUIRED**  
[Completed within a 3-year period]

TSSP courses	Days
Rail Safety .....	4.5
Rail Incident Investigation ....	4.5
Rail Security .....	4.5
Managing Emergencies .....	4
<b>Total .....</b>	<b>17.5</b>

The SMS Coursework consists of two courses and three online training

sessions. While SSO personnel will be required to take 5.125 days of total training, rail transit agency personnel will not be required to take the two-day SMS Principles Course. However, we assume here that all rail transit agency personnel will take all 5.125 days. This approach is conservative and potentially over counts the total costs by about \$65–110,000.00 per year but does not complicate this analysis. The Table below lists the courses and duration.

**SMS COURSEWORK—IN-CLASS AND ONLINE REQUIRED**  
[Completed within a 3-year period]

SMS courses	Days
SMS Awareness .....	0.125

**SMS COURSEWORK—IN-CLASS AND ONLINE REQUIRED—Continued**  
[Completed within a 3-year period]

SMS courses	Days
Safety Assurance .....	0.25
SMS Gap .....	0.25
SMS Principles Rail Transit ..	2.5
SMS Principles SSO Pro-grams .....	2
<b>Total .....</b>	<b>5.125</b>

Using the 2013 Bureau of Labor Statistics (BLS) average wage rate of \$40.84 for those taking training under this program, we developed the following Lower Bound and Upper Bound costs for attendance as depicted in the table below.

**COSTS FOR ATTENDANCE OF SSOA, RAIL TRANSIT AGENCY, AND FTA PERSONNEL WITHIN A 3-YEAR PERIOD**

	Number of personnel	Hourly rate	Training time (days)	Attendance costs
Lower Bound Mandatory Costs/Yr .....	310	\$40.84	5.125	\$172,467.32
Upper Bound Mandatory Costs/Yr .....	500	40.84	22.625	1,234,470.68

Next, we developed costs associated with developing, managing, and administering the coursework for the PTSCPT. First, we reviewed the course catalog for TSI and determined the percentage of courses required by the PTSCPT of the total courses offered—a little more than one-fourth (six courses plus three online courses out of 21 total courses or about 28 percent) of the total course offerings would be required of the combined TSSP/SMS training under this NPRM. Furthermore, of the total days of coursework offered by TSI, 30 percent were attributable to the TSSP/SMS coursework. To be conservative,

we used 30 percent for weighting for unattributable costs and allocated full costs where we were able to identify cost resulting from the TSSP and/or SMS training components. Using data from FTA’s budget for TSI, the cost for the administration of courses, contract costs, and costs for the development of new coursework we developed the program costs. We factored no facility costs as regional transit agencies or FTA Regional Offices host courses. Hence, we also do not account for travel costs because courses are hosted locally—travel for those attending would be included within normal commuting

parameters. Lastly, there is no cost associated with taking the coursework for public agency employees. Using this information, we developed the costs presented in the following table.

**TSI PROGRAM COSTS ASSOCIATED WITH TSSP AND SMS COURSEWORK**

Federal Salaries and Benefits * .....	\$210,212
Contract Services .....	368,000
Equipment, Supplies, Space, Other * .....	58,260
Travel (Other than Course Delivery) * .....	13,800
Course Delivery .....	462,866

<sup>1</sup> The TSSP Certificate Program has two tracks, one for rail and one for bus-based transport. Since

the PTSCPT is optional for bus-based transit we do

not address those costs or benefits in the instant analysis.

**TSI PROGRAM COSTS ASSOCIATED WITH TSSP AND SMS COURSEWORK—Continued**

Indirect at 19% .....	211,496
Est. Materials Fee Recovery* .....	97,570
<b>Total Program .....</b>	<b>1,422,204</b>

\* Weighted Cost Allocation.

Using the costs presented above, the table below presents the total annual

costs for the PTSCTP. We note here again that we have been very conservative in aggregating costs, so in fact the aggregate cost estimates are greater than we expect to be the case. We have not removed costs for rail transit agency personnel that do not have to take the SMS SSO Principles course. We have assumed in the Maximum scenario, in an overabundance of caution, that everyone has not taken the TSSP Certificate

coursework, which is a weak assumption given the level of voluntary participation and popularity of the program. Moreover, we have used a weighting that over estimates unattributable costs given the level of presence in the TSI course load. While we present data for both a Maximum Cost and Minimum Cost scenarios, the actual experience for costs should be closer to the Minimum scenario than to the Maximum scenario.

**TOTAL COSTS FOR THE PTSCTP OVER A 3-YEAR CERTIFICATION PERIOD**

	Attendance costs	TSI costs	Total costs
Aggregate Costs MIN .....	\$172,467	\$1,422,204	\$1,594,671
Aggregate Costs MAX .....	1,234,471	1,422,204	2,656,674

As the interim provisions only have been in effect for a short time, we were unable to generate any estimate of their benefits. Thus, to assess the benefits for the PTSCTP, we considered how other transportation modes that are in the process of implementing SMS or similar systematic approaches to safety have estimated the benefits of their programs in reducing incidents, adverse outcomes, and improving training programs. For example, although no two programs are identical, the Federal Railroad Administration (FRA) in its final rule implementing its Training Standards issued November 7, 2014 at 79 FR 66460, <http://www.gpo.gov/fdsys/pkg/FR-2012-02-07/html/2012-2148.htm>, provided evidence that training programs for the railroad industry would yield a breakeven point with a 7 percent reduction in human factor-caused accidents. Moreover, FRA in its proposed rules to implement its System Safety Program (SSP) (see 80 FR 10950) and its Risk Reduction Program (RRP) (see 77 FR 55372) provided anecdotal evidence that both programs could lead to meaningful reductions in serious crashes, and conducted breakeven analyses that found that a less than 1 percent reduction in the incidents and accidents under consideration would lead to a cost-neutral SSP rule and an approximately 2 percent reduction for the RRP rule. Additionally, the Federal Aviation Administration estimated that its SMS program could yield a 20 percent reduction in crashes.

Enhancements brought about by SMS have also supported transportation and oversight agencies in mitigating the impacts of those events that do occur. For the SSO program NPRM issued February 27, 2015, at 80 FR 11002–30, FTA considered what percentage of

potential safety benefits that rule would need to achieve in order to achieve a “break even” point with the costs based on two different estimates of the potential benefit pool. (FTA noted, therein, that the analysis was not intended to be a full analysis of the potential benefits of SMS for transit safety—rather it was intended to provide some quantified estimate of the potential benefits of the changes to the SSO program proposed in that rule). FTA also noted that the analysis may understate the potential benefits because of the lack of data on some non-injury related costs associated with many incidents, particularly regarding property damage and travel delays. For the SSO NPRM, FTA estimated that the SSO program revisions would realistically garner a 2 percent reduction in costs associated with fatalities and “serious” injuries. FTA performed analyzed the potential safety benefits of the SSO NPRM by reviewing the rail transit incidents specifically identified by the NTSB as related to inadequate safety oversight programs. Of the 19 major rail transit accidents the NTSB has investigated (or preliminarily investigated) since 2004, five had probable causes that included inadequate safety oversight on the part of the rail transit agency or FTA. Based on the analysis for the SSO NPRM, for the benefits to breakeven with the costs to both SSOs and rail transit agencies, the rule would only require a 1.23 percent reduction of the accidents costs per year, which did not include potentially significant unquantified costs related to property damage and disruption.

At base, the SSO NPRM increases the frequency and/or comprehensiveness of activities that are already performed, such as reviews, inspections, field

observations, investigations, safety studies, data analysis activities, and hazard management. The SSO NPRM focuses its efforts on process improvements to achieve its benefits.

The SSO program is reliant on the PTSCTP for part of its safety improvements. While the SSO NPRM proposed to improve SSO and rail transit agencies processes, the PTSCTP improves the requisite human capital within the SSO program by improving the training and by making mandatory training for those designated personnel charged with safety oversight at SSO and rail transit agencies.

We were very confident that a 2 percent reduction, which is in line with FRA estimates, could be achieved with the SSO NPRM—in fact, our calculations showed the breakeven point to be a reduction of 1.23 percent. This leaves about .77 percent or nearly \$14.3 million in benefits that have been unallocated. FTA believes that training for those charged with safety oversight at SSO and rail transit agencies is an imperative to achieve estimated reductions in incidents and accidents. To this end, we calculated the breakeven point for the PTSCTP. The breakeven point for the maximum case of \$2.6 million in annual costs is 0.14 percent and .09 percent for the minimum case of \$1.6 million in annual costs. This level of reduction in fatalities and serious injuries is likely to be extremely conservative and we are highly confident that it is easily attainable when complemented with the changes proposed in the SSO NPRM.

As an alternative and to cross-check the benefits of training, we reviewed literature on returns derived from investments in training and training programs. Bartel conducts a panel study that analyzed large firms, studies that

focused on one or two firms, and company sponsored studies.<sup>2</sup> Bartel finds that employer's return on

investments in training may well be greater than was previously believed.

We partially reproduce the table below from Bartel.

#### ECONOMETRIC ANALYSIS OF LARGE SAMPLES OF FIRMS

Author	Response rate	Sample size	Performance measure	Findings
Bishop .....	75% .....	2594	Productivity .....	ROI on 100 hours of new hire training ranged from 11% to 38%.
Bartel .....	6.5% .....	155	Value-Added .....	Implementation of formal training raised productivity by 6% per year.
Holzer et al. ....	32% .....	157	Scrap Rate .....	Doubling of worker training reduced scrap rate by 7%, using fixed-effects model.
Black and Lynch .....	72% .....	617	Net Sales .....	Percentage of formal training that occurs off the job has significant effect in cross section but no effect on the establishment-specific residual.
Tan and Batra .....	Random Sample .....	300–56000	Value-Added .....	Predicted training has positive effect on value-added; effects range from 2.8% to 71% per year.
Huselid .....	28% .....	968	Tobin's q and Rate of Return on Capital.	High-performance practices had significant effect in cross section that disappeared in fixed-effects model.

Source: Bartel PP. 506.

While these results from Bartel's study are not transportation or even transit related, it still gives a clear picture of the benefits that firms across industries have experienced when they have invested in training. We also reviewed a study by Almeida and Carneiro on firm-provided training, in which they estimate the rate of return for firms that invest in human capital (training).<sup>3</sup> Conducting a panel study of firms with detailed data on training, they estimate that firms that do not provide training yield a *negative* 7 percent return while those that provide training accomplish a 24 percent return. They conclude that training is "a good investment for many firms and the economy, possibly yielding higher returns than either investments in physical capital or investments in schooling."<sup>4</sup>

The literature generally shows that returns on investment for training are positive and usually greater than is typically thought. This comports with the conservative assumptions that we have made and use to assess the PTSCPT program.

#### Qualitative Factors

While the TSSP Certificate Program has been available for some time, it had been an optional certification that some SSOA, rail, and bus safety oversight personnel sought out of self-initiative. With the delineation of a mandatory pool of safety oversight employees, FTA

hopes to unify and harmonize the provision of safety-related activities across SSOAs and rail transit agencies. In this way, this pool of employees will gain knowledge to identify and control hazards with the ultimate goal of decreasing incidents. Additionally, FTA expects that the codification of the PTSCPT will help promote a safety culture within the transit industry. This safety culture should help instill a transit agency-wide appreciation for shared goals, shared beliefs, best practices, and positive and vigilant attitudes towards safety.

We are unsure how to quantify the effects of a positive safety culture as a safety culture will develop over time. Characteristics of a positive safety culture include: Actively seeking out information on hazards; employee training; information exchanges; and understanding that responsibility for safety is shared. While the returns on investment in training should be fairly quick, establishing, promoting, and increasing safety in an industry that is already very safe, is difficult to predict with any certainty.

#### VII. Regulatory Analyses and Notices

All comments received on or before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be

considered to the extent practicable. In addition, FTA may continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

*Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures*

Executive Orders 12866 and 13563 direct Federal agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits—including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

FTA has determined this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866, Executive Order 13563, and the U.S. Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980, 44 FR 11034, Feb. 26, 1979). FTA has determined that this rulemaking is not

<sup>2</sup> Bartel, Ann P. "Measuring the Employer's Return on Investments in Training: Evidence from the Literature" Online: [http://www0.gsb.columbia.edu/faculty/abartel/papers/measuring\\_employer.pdf](http://www0.gsb.columbia.edu/faculty/abartel/papers/measuring_employer.pdf).

<sup>3</sup> Almeida, Rita and Pedro Carneiro. "Costs, Benefits and the Internal Rate of Return to Firm Provided Training" Online: <http://siteresources.worldbank.org/DEC/Resources/AlmeidaCarneiroUpdatedWP3851.pdf>.

<sup>4</sup> Ibid.

economically significant. The proposals set forth in this NPRM will not result in an effect on the economy of \$100 million or more. The proposals set forth in the NPRM will not adversely affect the economy, interfere with actions taken or planned by other agencies, or generally alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

*Regulatory Flexibility Act and Executive Order 13272*

This proposed rule was developed in accordance with Executive Order 13272 (Proper Consideration of Small Entities in Agency rulemaking) and DOT's policies and procedures to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) which requires an agency to review regulations to assess the impact on small entities. In compliance with the Regulatory Flexibility Act, FTA has evaluated the likely effects of the proposals set forth in this NPRM on small entities.

As noted in the cost benefit analysis for this rule, FTA developed a maximum and minimum number of employees of recipients that would be affected by the PTSCTP. FTA believes that approximately 70 to 120 SSOA personnel and contractors would be subject to the mandatory PTSCTP training requirements while approximately 340 personnel of rail transit agencies would be mandatory participants. Further, FTA believes that approximately 2,000 personnel may be voluntary participants. Section 5329(e)(6) permits recipients of rural and urbanized area formula funds to use Federal funds to cover up to 80 percent of the PTSCTP costs. Additionally, FTA believes many of the PTSCTP participants will be eligible to receive credit for prior safety training which will further reduce the cost and impact associated with this proposed rulemaking. For these reasons, FTA certifies that this action will not have a significant economic effect on a substantial number of small entities.

*Unfunded Mandates*

This proposed rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). The cost of training to comply with this NPRM would be an eligible expenditure of Federal financial assistance provided to recipients under 49 U.S.C. Chapter 53. This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector,

of \$143.1 million or more in any one year (2 U.S.C. 1532).

*Executive Order 13132 (Federalism)*

This proposed rulemaking has been analyzed in accordance with the principles and criteria established by Executive Order 13132, and FTA has determined that the proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also concluded that this proposed action would not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

*Executive Order 12372 (Intergovernmental Review)*

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed rulemaking.

*Paperwork Reduction Act*

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*; "PRA") and the OMB regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for the Information Collection Request abstracted below. In order to comply with the requirements proposed to implement the PTSCTP in accordance with 49 U.S.C. 5329(c)(1), this NPRM would require recipients to provide information to FTA regarding the participation of their respective designated personnel as abstracted below. Designated personnel would provide enrollment information, periodically update compliance with PTSCTP training requirements, and where applicable, submit supporting documentation of prior training for credit towards PTSCTP training requirements. All recipients of mandatory PTSCTP requirements would annually certify compliance with the PTSCTP requirements. Additionally, SSOAs would be required to develop annual technical training plans for FTA approval. The plans would support the SSOA requirement to demonstrate that applicable SSOA personnel are qualified to perform safety audits and examinations.

The information collection would be different for each type of recipient (Federal government personnel, Federal contractors, SSOAs and their contractors, and rail transit agencies). Therefore, the paperwork burden would vary. For example, the burden on SSOAs would be proportionate to the number of rail transit agencies within that State, and the size and complexity of those rail transit systems. This would

affect the number of personnel designated for participation. FTA proposes to bear the cost associated with the development and maintenance of the Web site. FTA is seeking comment on whether the information collected will have practical utility; whether its estimation of the burden of the proposed information collection is accurate; whether the burden can be minimized through the use of automated collection techniques or other forms of information technology; and for ways in which the quality, utility, and clarity of the information can be enhanced.

*Type of Review:* OMB Clearance. New information collection request.

*Respondents:* Currently there are 30 States with 60 rail fixed guideway public transportation systems in engineering, construction, and operations. The PRA estimate is based on participation in the PTSCTP by a total of 30 States and 60 rail transit agencies. In addition, we estimate participation by 35-45 SSOA contractors and approximately 30 Federal personnel and contractors.

*Frequency:* Information will be collected through the Web site on an ongoing basis throughout the year. Participants must complete training requirements within 3 years and refresher training every 2 years. Certification of compliance will be required annually.

*Estimated Total Annual Burden Hours:* In the first year of the program, we estimate a total burden of between 5,209 (minimum) and 5,909 (maximum) hours, depending on how many individuals are required to participate. Annually, each SSOA would devote between 88-91 hours to information collection activities including the development and submission of training plans to FTA. SSOA contractors would devote approximately 140-180 hours to information collection activities. These activities would have a combined total of 2,780-2,920 hours, depending on how many individuals are required to participate. The mandatory participants affected by 49 U.S.C. 5329(c)(1) and today's rulemaking include 60 rail fixed guideway public transportation systems which would spend an estimated annual total of between 2,060 (minimum) and 2,620 (maximum) hours on information collection activities in the first year, or approximately 34-44 hours each. Finally, FTA is expected to expend approximately 249 hours in furtherance of the PTSCTP in the first year, and Federal contractors will spend an estimated four (4) hours each, for a combined total of approximately 369 hours in the first year.

Additional documentation detailing FTA's Paperwork Reduction Act Information Collection Request, including FTA's Justification Statement, will be posted in the docket for this rulemaking. OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule within 60 days after receiving the information collection request submission from FTA. FTA will summarize and respond to any comments on the proposed information collection request from OMB and the public in the preamble to the final rule.

#### *National Environmental Policy Act*

The National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) requires Federal agencies to analyze the potential environmental effects of their proposed actions in the form of a categorical exclusion, environmental assessment, or environmental impact statement. This proposed rulemaking is categorically excluded under FTA's environmental impact procedure at 23 CFR 771.118(c)(4), pertaining to planning and administrative activities that do not involve or lead directly to construction, such as the promulgation of rules, regulations, and directives. FTA has determined that no unusual circumstances exist in this instance, and that a categorical exclusion is appropriate for this rulemaking.

#### *Executive Order 12630 (Taking of Private Property)*

This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630.

#### *Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)*

Executive Order 12898 directs every Federal agency to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on minority populations and low-income populations. The USDOT environmental justice initiatives accomplish this goal by involving the potentially affected public in developing transportation projects that fit harmoniously within their communities without compromising safety or mobility. Additionally, FTA has issued a program circular addressing environmental justice in public transportation, C 4703.1, *Environmental Justice Policy Guidance for Federal Transit Administration Recipients*. This circular provides a framework for FTA grantees as they integrate principles of

environmental justice into their transit decision-making processes. The Circular includes recommendations for State Departments of Transportation, Metropolitan Planning Organizations, and public transportation systems on (1) How to fully engage environmental justice populations in the transportation decision-making process; (2) How to determine whether environmental justice populations would be subjected to disproportionately high and adverse human health or environmental effects of a public transportation project, policy, or activity; and (3) How to avoid, minimize, or mitigate these effects.

#### *Executive Order 12988 (Civil Justice Reform)*

This action meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 to minimize litigation, eliminate ambiguity, and reduce burden.

#### *Executive Order 13045 (Protection of Children)*

FTA has analyzed this proposed rulemaking under Executive Order 13045. FTA certifies that this proposed rule will not cause an environmental risk to health or safety that may disproportionately affect children.

#### *Executive Order 13175 (Tribal Consultation)*

FTA has analyzed this proposed rulemaking under Executive Order 13175 and finds that the action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; will not preempt tribal laws; and will not impose any new consultation requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

#### *Executive Order 13211 (Energy Effects)*

FTA has analyzed this proposed rulemaking under Executive Order 13211 and has determined that this action is not a significant energy action under the Executive Order, given that the action is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

#### *Privacy Act*

Anyone is able to search the electronic form of all comments received into any of FTA's dockets by the name of the individual submitting the comment or signing the comment if submitted on behalf of an association,

business, labor union, or any other entity. You may review USDOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477-8.

#### *Statutory/Legal Authority for This Rulemaking*

This rulemaking is issued under the authority of the Moving Ahead for Progress in the 21st Century Act (MAP-21; Pub. L. 112-141), and the statutory provision codified at 49 U.S.C. 5329(c)(1), which requires the Secretary of Transportation to prescribe a public transportation safety certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems and employees of public transportation agencies directly responsible for safety oversight. The Secretary is authorized to issue regulations to carry out the general provisions of this statutory requirement pursuant to 49 U.S.C. 5329(f)(7).

#### *Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### **List of Subjects in 49 CFR Part 672**

Transportation, Mass transportation, Safety, Reporting and recordkeeping requirements.

Issued in Washington, DC, under the authority delegated at 49 CFR 1.91.

**Therese McMillan,**  
*Acting Administrator.*

For the reasons stated in the preamble, and under the authority of 49 U.S.C. 5329(c), 5329(f), and the delegation of authority at 49 CFR 1.91, the Federal Transit Administration proposes to amend chapter VI of Title 49, Code of Federal Regulations, by adding part 672 to read as follows:

#### **PART 672—PUBLIC TRANSPORTATION SAFETY CERTIFICATION TRAINING PROGRAM**

##### **Subpart A—General Provisions**

Sec.

672.1 Purpose.

672.3 Scope and applicability.

672.5 Definitions.

##### **Subpart B—Training Requirements**

672.11 Designated personnel who conduct safety audits and examinations.

- 672.13 Designated personnel of public transportation agencies.
- 672.15 Evaluation of prior certification and training.

#### Subpart C—Administrative Requirements

- 672.21 Records.
- 672.23 Availability of records.

#### Subpart D—Compliance and Certification Requirements

- 672.31 Requirement to certify compliance.
- 672.33 Compliance as a condition of financial assistance.

**Authority:** 49 U.S.C. 5329(c), 49 U.S.C. 5329(f), 49 CFR 1.91.

#### Subpart A—General Provisions

##### § 672.1 Purpose.

(a) This part implements a uniform safety certification training curriculum and requirements that will enhance the technical proficiency of individuals who are directly responsible for safety oversight of public transportation agencies not subject to the safety oversight requirements of another Federal agency.

(b) This part does not preempt any safety certification training requirements required by a State for public transportation agencies within its jurisdiction.

##### § 672.3 Scope and applicability.

(a) In general, this part applies to all recipients of Federal financial assistance under 49 U.S.C. Chapter 53.

(b) The mandatory requirements of this part will apply only to State Safety Oversight Agency personnel and contractor support, and designated personnel of recipients that operate rail fixed guideway systems that are not subject to the requirements of the Federal Railroad Administration.

(c) Other FTA recipients may participate voluntarily in accordance with this part.

##### § 672.5 Definitions.

As used in this part:

*Administrator* means the Federal Transit Administrator or the Administrator's designee.

*Contractor* means an entity that performs tasks on behalf of FTA or a State Safety Oversight Agency through contract or other agreement.

*Designated personnel* means:

(1) Employees identified by a recipient whose job function requires them to be directly responsible for safety oversight of public transportation provided by the agency; or

(2) Employees and contractors of a State Safety Oversight Agency whose job function requires them to conduct safety audits and examinations of the

public transportation systems subject to the jurisdiction of the agency.

*Directly responsible for safety oversight* means a public transportation agency designated personnel whose job function includes the development, implementation and review of the recipient's safety plan.

*FTA* means the Federal Transit Administration, an agency within the United States Department of Transportation.

*Public transportation agency* means an entity that provides public transportation as defined in 49 U.S.C. 5302 and that has one or more modes of service not subject to the safety oversight requirements of another Federal agency.

*Rail fixed guideway public transportation system* means any fixed guideway system that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration, or any such system in engineering or construction. Rail fixed guideway public transportation systems include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

*Recipient* means an entity, including a State or local governmental authority that receives Federal funds pursuant to 49 U.S.C. Chapter 53.

*Reference Document* means the current edition of the Public Transportation Safety Certification Training Program training requirements and curriculum. The curriculum and training requirements are subject to periodic revision through a notice-and-comment process. Recipients are responsible for using the current edition of the Reference Document.

*Safety audit* means an examination of a recipient's safety records and related materials.

*Safety examination* means a process for gathering facts or information, or an analysis of facts or information previously collected.

*State* means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

*State Safety Oversight Agency (SSOA)* means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations set forth in 49 CFR part 659.

#### Subpart B—Training Requirements

##### § 672.11 Designated personnel who conduct safety audits and examinations.

(a) Each State Safety Oversight Agency (SSOA) shall designate its personnel and contractors who conduct safety audits and examinations of public transportation systems, including the managers and supervisors of such personnel, and ensure such designated personnel comply with the applicable training requirements in the current Reference Document.

(b) Designated personnel and contractors shall complete applicable training requirements of this part within three (3) years of their initial designation. Thereafter, refresher training shall be completed every two (2) years. The SSOA will determine refresher training requirements which shall include at a minimum, one (1) hour of safety oversight training.

(c) *Copies.* Copies of the current Reference Document are available from the FTA Web site located at <https://safety.fta.dot.gov>.

##### § 672.13 Designated personnel of public transportation agencies.

(a) Each recipient that operates a rail fixed guideway public transportation system not subject to the safety oversight of another Federal agency shall designate its personnel who are directly responsible for safety oversight and ensure that they comply with the applicable training requirements as set forth in the current Reference Document.

(b) Each recipient that operates a bus or other public transportation system not subject to the safety oversight of another Federal agency may designate its personnel who are directly responsible for safety oversight. Such personnel may participate in the applicable training requirements as set forth in the current Reference Document.

(c) Personnel designated under paragraph (a) of this section shall complete applicable training requirements of this part within three (3) years of their initial designation. Thereafter, refresher training shall be completed every two (2) years. The recipient will determine refresher training requirements which will include at a minimum, one (1) hour of safety oversight training.

(d) *Copies.* Copies of the current Reference Document are available from the FTA Web site located at <https://safety.fta.dot.gov>.

**§ 672.15 Evaluation of prior certification and training.**

(a) Designated personnel subject to this part may request that FTA evaluate safety training or certification previously obtained from another entity to determine if the training satisfies an applicable training requirement of this part.

(b) Designated personnel must provide FTA with an official transcript or certificate of the training, a description of the curriculum and competencies obtained, and a brief statement detailing how the training or certification satisfies the applicable requirement of this part.

(c) FTA will evaluate the submission and determine if any of the applicable training requirements of this part will be credited for waiver. If a waiver is granted, designated personnel are responsible for completing all other applicable requirements of this part.

**Subpart C—Administrative Requirements****§ 672.21 Records.**

(a) *General requirement.* FTA will maintain an electronic database for designated personnel to register and enroll in the Public Transportation Safety Certification Training Program at <https://safety.fta.dot.gov>.

(b) *General requirement.* Each recipient shall ensure that its designated personnel are enrolled in the PTSCPTP via the electronic database. Designated personnel shall update their training profile as the applicable training requirements of this part are completed.

(c) *SSOA Requirement.* Each SSOA will maintain a record of the technical training completed by its designated personnel and contractors in accordance with the technical training requirements of this part. Such records shall be maintained by the SSOA for at least five (5) years from the date the record is created. Each record shall include the following information at minimum:

- (1) The name of the designated personnel or contractor;
- (2) The title of the training, the date the training was completed and the proficiency test score(s), where applicable;
- (3) The content of each training course or curriculum successfully completed and an indication of whether

the participant passed or failed any associated tests;

(4) The tasks the participant is deemed qualified to perform; and

(5) The date the designated personnel's status as qualified to perform the task(s) expires, and the date in which biennial refresher training is due.

**§ 672.23 Availability of records.**

(a) Except as required by law, or expressly authorized or required by this part, a recipient may not release information pertaining to designated personnel that is required to be maintained by this part without the written consent of the designated personnel.

(b) Designated personnel are entitled, upon written request, to obtain copies of any records pertaining to his or her training that is required to be maintained by this part. The recipient shall promptly provide the records requested by designated personnel and access shall not be contingent upon the recipient's receipt of payment for the production of such records.

(c) A recipient shall permit access to all facilities utilized and records compiled in accordance with the requirements of this part to the Secretary of Transportation, the Federal Transit Administration, or any State agency with jurisdiction for public transportation safety oversight authority over the recipient.

(d) When requested by the National Transportation Safety Board as part of an accident investigation, a recipient shall disclose information related to the training of designated personnel.

**Subpart D—Compliance and Certification Requirements****§ 672.31 Requirement to certify compliance.**

(a) A recipient of FTA financial assistance described in § 672.3(b) of this part shall annually certify compliance with this part in accordance with FTA's procedures for annual grant certification and assurances.

(b) A certification must be authorized by the recipient's governing board or other authorizing official, and must be signed by a party specifically authorized to do so.

**§ 672.33 Compliance as a condition of financial assistance.**

(a) *General requirement.* A recipient may not be eligible for Federal financial assistance under 49 U.S.C. Chapter 53, in whole or in part, if the Administrator determines the recipient has failed to comply with the requirements of this part.

(b) *Notice.* If the Administrator determines that Federal financial assistance should be withheld, the Administrator will issue a notice of violation and the amount proposed to be withheld at least ninety (90) days prior to the date from when the funds will be withheld. The notice must contain—

(1) A statement of the legal authority for issuance;

(2) A statement of the regulatory provision(s) the recipient is believed to have violated;

(3) A statement of the factual allegations upon which the notice of violation is based; and

(4) A statement of the remedial action sought to correct the violation.

(c) *Reply.* Within thirty (30) days of service of a notice of violation, a recipient may file a written reply with the Administrator. Upon written request, the Administrator may extend the time for filing for good cause shown. The reply must be in writing, and signed by the Accountable Executive or equivalent entity. A written response may include an explanation for the alleged violation, provide relevant information or materials in response to the alleged violation or in mitigation thereof, or recommend alternative means of compliance for consideration by the Administrator.

(d) *Decision.* Within thirty (30) days of receipt of a reply from a recipient, the Administrator will issue a written reply to the recipient. The Administrator may consider the recipient's response, pursuant to paragraph (c) of this section, in determining whether to dismiss the notice of violation in whole or in part. If the notice of violation is not dismissed, the Administrator may undertake any other enforcement action he or she deems appropriate, including withholding funds as stated in the notice of violation.

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