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PUBLIC TRANSIT SAFETY: EXAMINING THE FEDERAL ROLE

(111–80)

HEARING

BEFORE THE

SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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December 7, 2009

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

SUBJECT: Hearing on "Public Transit Safety: Examining the Federal Role"

PURPOSE OF HEARING

The Subcommittee on Highways and Transit is scheduled to meet on Tuesday, December 8, 2009, at 10:00 a.m., in room 2167 of the Rayburn House Office Building to receive testimony on the Department of Transportation's role in ensuring the safety of public transit systems. This hearing is part of the Subcommittee's effort to reauthorize Federal surface transportation programs under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which expired on September 30, 2009. The Subcommittee will hear from the Secretary of Transportation, the Administrator of the Federal Transit Administration (FTA), a Managing Director of the Government Accountability Office (GAO), the Director of Rail Transit Safety of the (NTSB), the Director of a State Safety Oversight agency, and the President of the American Public Transportation Association (APTA).

BACKGROUND

In 2008, Americans took 10.7 billion unlinked transit passenger trips on public transportation systems, representing the highest transit ridership levels in 52 years. Despite the effects of the current economic downturn and lower State and local revenue sources that fund transit operations, public transportation use in the first six months of 2009 has remained strong, with nearly 5.2 billion transit trips taken during this time. Ridership specifically on rail transit, such as subways and light rail, is growing faster than bus ridership, with more than seven million people boarding rail transit vehicles in the United States each day. These figures point to sustained transit ridership growth across the country. Public transportation use is up 38 percent on all modes since 1995, a figure that is almost triple the growth rate of the population (14 percent) and substantially more than the growth rate for vehicle miles traveled on our nation's highways for that same period.

Amid the increase in transit ridership, rail transit continues to be one of the safest modes of transportation. Transit agencies have fewer fatalities and injuries than any other mode of travel. In fact, the passenger fatality rate for rail transit systems has actually decreased during the six year period of 2002 to 2008, from 0.005 fatalities per 100 million miles to 0.002 fatalities per 100 million miles. During that same period, however, injuries resulting from light rail accidents have slightly increased, although ridership figures also show an increase in the number of light-rail transit systems built in recent years. And when the injury rate of rail transit is compared to the 4.4 injuries per 100 million miles on commuter rail systems under FRA jurisdiction, the 8.7 injuries per 100 million miles for Amtrak passengers, and the 61.3 injuries per 100 million passenger miles traveled in motor vehicles on roadways, transit's injury rate of 0.6 injuries per 100 million miles is the lowest of all passenger modes.

Nevertheless, a number of high profile transit accidents in recent years (Chicago, Boston, San Francisco, Washington, DC, etc.) (*See Attachment I*) have highlighted several weaknesses in the current state of rail transit safety. One such weakness is that the state of good repair of many transit systems has been decreasing to the point where older, less safe rail cars, tracks, electrical equipment and other assets are left in service long after their useful life. According to the FTA, more than one-third of the total assets of the largest rail systems are in either marginal or poor condition. Data contained in the Department of Transportation's 2006 Conditions and Performance Report indicate that 16 percent of elevated transit structures, 13 percent of underground transit tunnels, and eight percent of transit track is in substandard condition. This results in an estimated $80 billion maintenance backlog for the nation's rail transit systems.

A second weakness in the safety of the nation's transit systems is that there are no nationwide mandatory minimum standards for rail transit safety, only voluntary standard produced by industry groups. Although transit systems carry more passengers daily than either U.S. domestic airlines regulated by the Federal Aviation Administration (FAA) or passenger railroads regulated by the Federal Railroad Administration (FRA), public transit systems are not directly regulated by the FTA. While commuter rail transit systems that utilize the general freight railway system are regulated by the FRA, heavy and light rail transit systems such as subways and streetcars, in addition to all transit bus systems operate without Federal safety regulation, oversight, or enforcement. In fact, FTA is statutorily barred from regulating the operations of any public transportation system, except for purposes of national defense or in the event of a national or regional emergency. In lieu of direct Federal oversight of rail transit or the authority to issue unified Federal safety standards, FTA oversees 26 separate and distinct State transit safety programs operating in 27 different States with inconsistent safety practices and effectiveness. This current state-based system is known as the "State Safety Oversight" (SSO) program.

FTA's Current State Safety Oversight Program

Since the inception of Federal transit programs, Congress reserved the duties of transit safety regulation to the States. Congress created the first permanent Federal transit capital assistance program in the Urban Mass Transportation Act of 1964 (P.L. 88-365). The Act included a statutory prohibition against federal regulation of transit operations. The SSO program, which is FTA's current framework for its partnership with State transit regulatory bodies, was created in 1991 in the Intermodal Surface Transportation Efficiency Act (P.L. 102-240). The SSO program was created in part as a response to a 1991 NTSB Special Investigation Report on rail transit safety, but NTSB first

recommended Federal oversight of rail transit as long ago as 1978. The final regulations implementing the SSO program were promulgated in 1995, and all States with qualifying rail transit systems were required to be in compliance by January 1997. As such, the Committee now has more than a decade of experience in overseeing and examining the successes and the failures of the current transit safety regime.

The SSO program, codified at 49 U.S.C. § 5330, applies to rail transit systems that are included within FTA's definition of "fixed guideway" rail transit and are not otherwise regulated by the FRA. The program provides that the Secretary of Transportation may withhold five percent of the State's transit formula grants if the State does not meet the SSO program requirements. These requirements are to establish and carry out a safety program plan for each rail transit system in the State. The State must designate an agency that has responsibility to:

- review, approve, and monitor how the transit system's safety program plan is carried out;
- investigate hazardous conditions and accidents on the transit system;
- require actions that correct or eliminate hazardous conditions; and
- require the rail transit agency to develop and maintain a separate system safety program plan and system security plan.

SAFETEA: LU made only minor statutory changes to the SSO program. The most important legislative change requires earlier compliance with the SSO program -- heretofore, a new rail transit system could not begin revenue operation until it met the section 5330 requirements, but SAFETEA-LU requires compliance in the project design stage, so that safety oversight is "built in" to the project.

There are currently 50 rail transit systems under the SSO program in 27 different States, including the District of Columbia and Puerto Rico. In the next few years, as many as 15 additional rail transit segments may be constructed as new rail systems or as expansions of current systems, and will also come under the SSO program. Using information provided to the Committee from FTA, attached to this memorandum is a chart showing the current legal authorities of the various SSO agencies *(See Attachment II)*.

At the request of the Committee on Transportation and Infrastructure, the GAO reviewed the SSO program in 2006. According to GAO, staffing levels and expertise vary widely across oversight agencies, with some States employing as few as 0.1 or 0.2 full-time equivalent positions for dedicated safety oversight. Although a number of the transit agencies and SSO agencies interviewed for the report stated that the program is worthwhile and has improved overall transit safety, GAO recommended that FTA increase safety training for SSO staff and cover the costs of a more robust training program. GAO also recommended that FTA set better SSO program goals and develop performance measures for the program. To date, FTA has generally complied with these recommendations.

Department of Transportation's Transit Safety Proposal

In response to the series of rail transit accidents and growing industry and Congressional concerns about transit safety, the Secretary of Transportation established an internal Rail Transit Safety Work Group this past summer to evaluate the Federal role in transit safety. One of the

primary recommendations of the internal working group was to establish a larger, formal group of transit industry experts in order to more fully evaluation the issue. As such, the Secretary formally established a Transit Rail Advisory Committee for Safety (TRACS) through public notice in the Federal Register published November 30, 2009 in order to provide advice and recommendations to the FTA regarding transit safety issues. TRACS was established utilizing existing authority in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The Executive Director and 25 voting members of TRACS will be chosen after the notice becomes final, 15 days after publication.

Additionally, the Departmental working group has begun to craft a new public transportation safety proposal, the full details of which the Secretary will unveil at this Subcommittee hearing. In short, this new proposal would require the Secretary of Transportation, acting through the FTA, to establish and enforce minimum Federal safety standards for rail transit systems not already regulated by the FRA. FTA proposes to eliminate the statutory prohibition against regulating transit safety. The proposal also provides the Secretary the option to establish a safety program for public transportation bus systems in the future.

The proposal calls for the creation of "opt-in" and "opt-out" processes for rail transit safety regulation by both the States and the FTA. It would require that the Secretary establish a safety certification program whereby a State that chooses to opt-in be required to demonstrate to the Secretary's satisfaction that the State agency has:

- an adequate number of fully-trained staff to enforce Federal regulations;
- been granted sufficient authority by their Governor and State Legislature to compel compliance by the transit systems they oversee; and
- sufficient financial independence from any transit systems under their purview.

Federal financial assistance to participating States would cover training, certification and travel costs of the State agency in overseeing and enforcing Federal transit safety standards. The Secretary would establish a schedule of reimbursable costs to assist a State in defraying the costs of its safety program.

In all States where either the State agency has "opted out" of its responsibility for State safety oversight, or where the Secretary has found a State agency to be inadequate and therefore ineligible to "opt-in", the Secretary, acting through the FTA, will enforce all Federal safety regulations. FTA and State agencies participating in Federal enforcement will be authorized to:

- conduct inspections, investigations, audits, examinations, and testing of a public transportation system's equipment, facilities, rolling stock, operations, and persons engaged in the business of a public transportation system;
- issue reports, subpoenas, and discovery requests; and
- conduct research, development, testing and training.

It is important to note that, unlike in FRA safety regulation, the proposed FTA safety regulation **would not preempt States from establishing more stringent safety standards than the Federal standards**. Federal regulations implementing the new program would be nationally uniform and consider, to the extent practicable, existing industry standards. Currently, APTA has

developed 109 voluntary rail transit safety standards that could be taken into consideration. FTA would also phase in the requirements of the safety program over a number of years, first increasing its financial support for safety training programs, then working with all States and transit agencies to strengthen their safety management systems and asset management systems, and finally implementing a rulemaking on new Federal safety standards.

PREVIOUS COMMITTEE ACTION

On July 14, 2006, the Subcommittee on Highways and Transit held a hearing to examine the effectiveness and management of the FTA's SSO program, which governs the safety of rail transit systems other than commuter rail.

WITNESSES

The Honorable Ray LaHood
Secretary
United States Department of Transportation

The Honorable Peter Rogoff
Administrator
Federal Transit Administration

Ms. Katherine A. Siggerud
Managing Director, Physical Infrastructure
U.S. Government Accountability Office

Mr. Robert J. Chipkevich
Director of Railroad, Pipeline, and Hazardous Materials
National Transportation Safety Board

Mr. Richard W. Clark
Director, Consumer Protection and Safety Division
California Public Utilities Commission

Mr. William W. Millar
President
American Public Transportation Association

Appendix

San Francisco, CA – July 18, 2009, a San Francisco Municipal Transportation Agency (Muni) light rail vehicle struck the rear of another light rail vehicle at the West Portal Station. The National Transportation Safety Board (NTSB) has begun an investigation into this rail transit accident that injured more than 40 people.

Washington, DC – June 22, 2009, a collision occurred between two Washington Metropolitan Area Transit Authority (WMATA) trains on the Red Line near the Fort Totten station in Washington, DC. There were nine fatalities and over 70 people were injured. During the ongoing investigation, the NTSB investigators collected recorder data from eight of the nine recorders on the struck train. The final report is still pending, but NTSB has preliminarily noted that a failure occurred in the transit system's signal system which caused an incorrect signal to be generated by a track circuit module transmitter on the tracks.

Boston, MA – May 28, 2008, a westbound Massachusetts Bay Transportation Authority (MBTA) Green Line train traveling about 38 mph struck the rear of another westbound Green Line train which had stopped for a red signal. The accident occurred in Newton, Massachusetts, a suburb of Boston. Each train consisted of two light rail cars and carried two crewmembers. The operator of the striking train was killed; the other three crewmembers sustained minor injuries. An estimated 185 to 200 passengers were on the two trains at the time of the collision. Of these, four sustained minor injuries, and one was seriously injured. Total damage was estimated to be about $8.6 million. NTSB has determined that the probable cause of the accident was the failure of the operator of the striking train to comply with the controlling signal indication, likely as a result of becoming disengaged from her environment consistent with experiencing an episode of micro-sleep. Contributing to the accident was the lack of a positive train control system that would have intervened to stop the train and prevent the collision.

Chicago, IL – July 11, 2006, a derailment of a Chicago Transit Authority (CTA) train occurred between the downtown Clark/Lake and Grand/Milwaukee stations. About 1,000 passengers were on board the eight-car rapid transit train. Following the derailment, the train came to a stop, and electrical arcing between the last car and the 600-volt direct current third rail generated smoke. The single operator in the lead car received a number of calls on the train intercom. The operator exited the control compartment, stepped onto the catwalk, and walked beside the train to investigate. Electrical power was removed from the third rail, and most passengers walked to an emergency exit stairway about 350 feet in front of the train that led to the street level. Some passengers had to be assisted in their evacuation by emergency responders. The Chicago Fire Department reported that 152 persons were treated and transported from the scene. There were no fatalities. Total damage exceeded $1 million. NTSB has determined that the probable cause of the accident was ineffective management and oversight of its track inspection and maintenance program and its system safety program, which resulted in unsafe track conditions.

Attachment II

Rail Transit State Safety Oversight Program - Existing State Powers

State Safety Oversight Authority	Establish Safety Standards	Conduct Safety Inspections	Conduct Unannounced Inspections	Issue Emergency Orders	Issue Citations	Fine Transit Agency	Influence Operations
Arizona Department of Transportation	Yes	No	No	No	No	No	No
Arkansas State Highway and Transportation Department	Yes	Yes	Yes	Yes	No	No	Yes
California Public Utilities Commission	Yes	Yes	Yes	Yes	No	Yes	Yes
Colorado Public Utilities Commission	No	No	No	Yes	No	No	Yes
Florida Department of Transportation	Yes	Yes	Yes	No	No	No	No
Georgia Department of Transportation	Yes	Yes	Yes	Yes	No	No	No
Louisiana Department of Transportation and Development	No	Yes	No	No	No	No	No
Maryland Department of Transportation	No	Yes	Yes	No	No	No	Limited
Massachusetts Department of Public Works	Yes	Yes	Yes	Yes	No	No	Yes
Michigan Department of Transportation	No	Yes	Yes	Yes	No	No	Yes
Minnesota Department of Public Safety	No	Yes	Yes	No	No	No	No
Missouri Department of Transportation	Yes	Yes	Yes	Yes	Unknown	Yes	Yes
New Jersey Department of Transportation	No	Yes	No	No	No	No	No
New York Public Transportation Safety Board	Yes	Yes	Yes	Yes	No	Limited	Yes
North Carolina Department of Transportation	Yes	Yes	Yes	No	No	No	No
Ohio Department of Transportation	Yes	Limited	Limited	No	No	No	No
Oregon Department of Transportation	Yes	Limited	Limited	No	Limited	Yes	No
Pennsylvania Department of Transportation	No	Yes	Yes	No	No	No	No
Puerto Rico Emergency Management Agency	Yes	Yes	Yes	Yes	No	No	Yes
Regional Transportation Authority (Chicago)	No	Unknown	Unknown	No	No	No	No
Tennessee Department of Transportation	No	Yes	Yes	No	No	No	No
Texas Department of Transportation	No	No	No	No	No	No	No
Tri-State Oversight Committee (DC-MD-VA)	No	No	No	No	No	No	No
Utah Department of Transportation	No	No	No	No	No	No	No
Washington State Department of Transportation	Limited	Limited	Limited	Limited	No	Yes	No
Wisconsin Department of Transportation	No	No	No	No	No	No	No
All States	46.2%	61.5%	53.8%	34.6%	0.0%	15.4%	30.8%

*Information provided to the T&I Committee by FTA

HEARING ON PUBLIC TRANSIT SAFETY: EXAMINING THE FEDERAL ROLE

Tuesday, December 8, 2009,

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:00 a.m. in room 2167, Rayburn House Office Building, the Honorable Peter DeFazio [chairman of the Subcommittee], presiding.

Mr. DEFAZIO. The Subcommittee will come to order.

I appreciate the Secretary and the FTA Administrator being here this morning. I will keep my opening remarks brief.

The issue before us is transit safety. The Administration has a proposal for the first time in some 45 years to revisit significantly the degree of Federal involvement and/or oversight in transit safety. We will look forward to hearing that presentation.

I think one thing looms over this issue that also needs to be addressed. It is an ongoing and constant source of concern of the Subcommittee. It is the level of investment in our infrastructure or lack thereof. You can't look at transit systems nationwide with more than $60 billion of deferred maintenance and capital needs and say that some of our safety problems aren't due to the fact that we are running decrepit equipment.

One of the big solutions here for dealing with the problem with the trains here in the Washington, DC metropolitan area was to put the most outmoded and worse cars in the middle and have some of the ones that are only senescent or obsolescent on either end because they still kind of work and are in better shape than the really ancient, antique ones in the middle that are past their date for replacement. That was not exactly an optimal solution.

If you look over to the West Coast to the Bay Area Rapid Transit, we think of California as having new things, they have an $8 billion backlog at BART for immediate capital and maintenance needs. That doesn't include the $8 billion to replace their 30 year old, obsolete cars.

I think we have an investment crisis in transit systems across America and that is just dealing with our legacy systems and not even beginning to talk about how we are going to build out a more efficient 21st Century infrastructure and make people safe on that.

In addition to the direct concerns about safety, I don't think we can ignore the elephant in the room, which is we have gone from a first world transit and transportation system to what I call fourth world. That is, we are investing a fraction of our GDP, less than

what most Third World countries are investing, in our transportation infrastructure and it is showing in the state of disrepair and it is going to show in fatalities on highways with obsolete interchanges and bridges, and it is going to show on our transit systems.

I look forward to hearing both more direct testimony on how we can at least begin to look at this problem and provide more Federal oversight, but I don't think we are going to get this problem solved until we get a longer term authorization and more funding.

With that, I would turn to whoever wishes to go first. Mr. Mica, the big Kahuna, goes first.

Mr. MICA. Thank you, Mr. DeFazio. Thank you for calling this hearing.

I just want to say from our side of the aisle, we are very committed to working with you, with the Majority Members and staff. This is a very serious issue and deserves the attention of this Subcommittee and Committee in Congress. We are committed to dedicate whatever resources or efforts of cooperation. We had the opportunity to sit with the Secretary and the Administrator briefly yesterday and expressed some of our concerns.

We did not get the language, I understand, until about 10:00 p.m. last night and we know that was a work in progress. We look forward to being contributors to crafting legislation that will do the job.

I did express some concerns yesterday about the direction we are heading and will work with everyone to try to see that we don't go somewhere we do not need to go and that we do address specific problems that we have seen.

Having the Federal Government take a more significant role in transit safety is a laudable goal. Unfortunately, sometimes it is a disaster that gets our attention. I said after the Washington, DC Metrorail crash that got everyone's attention that we may need to look again at the Federal standards that are set, and enhance some of those to see that we have oversight, compliance, and enforcement. We believe all those things are important.

One of the things that concerns us is that you have to look at the record of where we have been and what we have done as the Federal Government. We have two primary roles. In the past, the Federal Government, through the Federal Railroad Administration, has had oversight, and enforcement responsibilities both in the freight rail business and also over our Nation's primary inter-city and long distance passenger rail carrier, Amtrak. We have a record of activity of the Federal Government.

What I would like to submit for the record takes this issue very seriously, we have produced a report and we will distribute copies of the report. We have gone through and looked at the fatalities by rail transit, commuter rail and also by Amtrak.

It is interesting to note the two areas that do have current Federal regulatory oversight and enforcement authority; commuter rail and Amtrak. If we look at the fatalities by the modes of transportation, these have had the highest number of fatalities.

If you look at public transit, which has very limited Federal participation, you see that is the safest mode if you judge it by the measure of fatalities per passenger. You see about one fatality for

65,000,000 passengers. With transit, you see a much higher rate, 1 for 5,000,000 passengers in commuter rail and then Amtrak, which has probably the highest level of Federal oversight, 1 death in about every 250,000,000 passengers.

We also analyzed, fatalities for the different modes—highway, railroad, air and transit—and that is part of the report. We think this analysis has some important information. It shows transit as one of the safest modes of transportation. We want to keep it that way.

We believe that we should concentrate first on some of the areas where we have had the highest number of fatalities and those are two of the areas in which the Federal Government has already had an extensive role. Whatever we craft for rail transit we think should be geared to dealing with the fatalities and experiences that we have had.

To just have additional inspectors, or having people as they say in the industry, "walk the track," and build additional bureaucracies, we think that would be the wrong way to go.

If you look at the crashes and Washington Metro, we found a very serious number of fatalities, not one is acceptable. You find that kind of inspection or enforcement or additional regulatory requirement, as possibly proposed right now by the Administration, may not, and would not, be that effective.

We need people with the very best qualifications possible, people with technical skills that can deal not only with software but sophisticated and different types of technology used on these different public transit systems.

The second thing we need is to assist them with financing. When we had the Metrorail crash, I asked FTA and the Administration to loosen the requirements. Currently funds that are granted from the Federal Transit Administration are prohibited from going to state safety oversight offices and I asked that we consider some flexibility in that requirement.

If you look at these systems, you find they need improvements in safety. They not only need highly qualified personnel, but need cash and assistance to put in the proper safety measurements and the technology that would eliminate some of those crashes and fatalities that we have seen.

In conclusion, I want to thank you again for bringing this meeting together. We have always worked on a cooperative, bipartisan basis and we intend to do so. We do that based on facts, the facts and findings of a rather comprehensive report which we have issued this morning which I would ask, Mr. Chairman, be made a part of the record today.

Mr. DEFAZIO. Without objection, it will be made a part of the record.

[The information follows:]

U.S. House of Representatives
Committee on Transportation and Infrastructure

Minority Staff Analysis of Rail Transit Safety

Prepared for Ranking Republican Member John L. Mica
111th Congress
Committee on Transportation and Infrastructure
December 2009

Minority Staff Report
Committee on Transportation and Infrastructure
John L. Mica (FL-07), Ranking Member

Staff Analysis of
Rail Transit Safety

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I. Executive Summary

Background

- Local rail public transit systems (subways, light rail, street cars) are overseen by State Safety Oversight Agencies.
- These systems have the highest and best safety performance levels. *(In 2008, rail transit had 1 death for every 66 million passengers)*
- Amtrak and commuter rail safety are overseen by the Federal Government (Federal Railroad Administration) and these two modes have a worse safety record than local rail transit systems. *(Commuter Rail had 1 death for every 5 million passengers; Amtrak had 1 death for every 241,000 passengers)*

Obama Administration Proposal

- The Obama Administration is proposing to expand Federal safety oversight and regulation to local rail transit systems.

Problem with the Obama Administration Proposal

- Amtrak and commuter railroads are subject to Federal safety oversight and they have a worse safety record than local rail transit systems.
- The proposal allows States to opt in or out of Federal safety oversight – there is no way to tell how big the Federal Transit safety staff and cost will grow.
- Some State Safety Oversight agencies lack the resources to hire highly trained technical personnel to monitor and maintain the safety of local transit systems.
- Some transit systems are not in a state of good repair, and have older train control technology, electrical equipment, and rail cars that need to be upgraded.

Recommendations

- Provide dedicated funding for State Safety Oversight Agencies.
- Reform the existing State Safety Oversight program to ensure that the state agencies are properly staffed and have the necessary authority to oversee the safety of local rail transit systems.
- Provide additional funding to local rail transit systems to upgrade safety equipment and technology, or ensure that transit agencies spend Federal funds on safety upgrades first.

II. Rail Transit, Commuter Rail, and Amtrak Safety Oversight

Rail Transit Safety Oversight

Fifty rail transit systems (subways, light rail, street cars, monorails, cable cars) in 27 different States carry 7 million people each day.

The Federal Transit Administration (FTA) provides grants to the transit agencies that operate these systems. However, FTA has always been statutorily prohibited from federally regulating transit operations, reflecting the long-held view that rail transit operations are an inherently local activity.

In lieu of federal regulation of local transit operations Congress created the State Safety Oversight (SSO) program in 1991. FTA's SSO program requires that each state with a rail transit system establish and carry out a rail transit safety program for each rail transit system in the State. The State must also designate an agency that will:

- oversee the implementation of the rail transit system's safety plan,
- investigate hazardous conditions and accidents on the rail transit system,
- require the transit agency take actions to correct or eliminate hazardous conditions

Commuter Rail and Amtrak Safety Oversight

Commuter rail operations – such as Virginia Railway Express and Metrolink in California -- often occur within the same right of way as freight rail operations and intercity passenger rail operations. As a result commuter rail operations are governed by safety regulations set forth by the Federal Railroad Administration (FRA). Amtrak and other passenger rail operations between cities also fall under the jurisdiction of the FRA.

FRA has the statutory authority to promulgate and enforce rail safety regulations. Most of the rail operations overseen by FRA cut across many state and local boundaries, necessitating a federal agency to ensure consistency across several state and local jurisdictions.

III. Transportation Safety Statistics

- Transit is the safest of the four major passenger transportation modes (transit, aviation, rail, highway).
- There were 227 transit-related deaths (excluding suicides) in 2008 resulting in 1 death for every 47.1 million passengers. *[Includes both rail transit and bus transit.]*

Transportation Fatalities by Mode										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total Fatalities	44,084	44,384	44,941	45,297	45,101	44,985	45,565	44,974	43,032	38,853
Highway	41,717	41,945	42,196	43,005	42,884	42,836	43,510	42,708	41,259	37,261
Railroad	932	937	971	951	865	891	883	902	845	801
Air	681	764	1,166	616	699	637	603	771	535	564
Transit	**299**	**295**	**267**	**280**	**234**	**248**	**236**	**227**	**214**	**227**

*** Data provided by U.S. Department of Transportation**

- Rail transit systems (subways, light rail, street cars) – overseen by the State Safety Oversight programs – had only 59 fatalities in 2008.
- Commuter rail and Amtrak – regulated by FRA – had 230 fatalities in 2008.
- The fatality rate for rail transit systems in 2008 was 1 death in 65.9 million passengers.
- The fatality rate for commuter rail systems in 2008 was 1 death in 5.1 million passengers.
- The fatality rate for Amtrak in 2008 was 1 death in 241 thousand passengers.

Fatalities by Rail Transit, Commuter Rail, and Amtrak

Mode	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Number of Passengers Carried in 2008	2008 Fatality Rate	Agency
Rail Transit (excluding suicides)	82	100	73	73	47	68	49	33	52	59	3,892,071,761	1 death in 65,967,317 passengers	FTA
Commuter Rail (excluding suicides)	62	74	102	94	63	71	75	63	88	111	564,674,834	1 death in 5,087,160 passengers	FRA
Amtrak (excluding suicides)	105	131	139	126	118	128	122	118	129	119	28,700,000	1 death in 241,176 passengers	FRA

*** Data provided by U.S. Department of Transportation**

IV. Obama Administration Proposal

Proposal – Rail Transit Safety Initiative

The Obama Proposal will be formally announced at Highways & Transit Subcommittee hearing on December 8, 2009 by Secretary LaHood. The proposal will –

- Require FTA to establish and enforce minimum Federal safety standards for rail transit systems not already regulated by the FRA.
- Eliminate the statutory prohibition against regulating transit operations
- Establish an "opt-in/opt-out" process for State Safety Oversight agencies

A State Safety Oversight agency that opts to retain its state transit safety responsibilities must demonstrate to FTA that the agency has:

- Adequate number of fully-trained staff to enforce Federal regulations;
- Sufficient authority at State level to compel compliance by transit systems; and
- Financial independence from transit systems the SSO regulates.

In all States where either the State agency has "opted out" of its responsibility for State safety oversight, or where the Secretary has found a State agency to be ineligible to "opt-in", **the FTA will enforce all Federal safety regulations**.

Impact of new proposal on FTA agency size and costs

- It is unclear what the costs will be of this expansion of FTA's authority.
- There is no way to estimate how many of the 26 of the current State Safety Oversight agencies will "opt-out", or will be found inadequate to the new Federal regulations.

V. Findings and Conclusions

Findings

Overall, transit is the safest mode of transportation for passenger travel, with 1 death in 47 million passenger trips. Rail transit is even safer, with 1 death for every 66 million trips.

Since the Federal transit program was created in 1964, the FTA has been prohibited from regulating transit operations because transit is an inherently local activity.

Transit has always been regulated at the State level by State Safety Oversight (SSO) agencies.

SSO agencies directly oversee the safety of rail transit systems by reviewing safety plans, inspecting the safety conditions of transit systems, investigating accidents, and requiring transit agencies to correct or eliminate hazardous conditions.

GAO has found that the State Safety Oversight program is generally very effective. However, some SSO agencies do not have adequate authority, staffing, or expertise to be as effective as they should be.

Conclusion

FTA is not a regulatory agency, it is a grant-making agency. The FTA should not become another Federal Railroad Administration, with hundreds of new federal inspectors and enforcement staff.

The Obama Administration's proposal will certainly lead to expansion of the FTA in size and cost, but there is no way to tell at this time how much bigger and more expensive.

In FY2009, Congress provided $10.4 billion to the FTA for federal transit grants. Some of this federal money should be used to help SSO agencies be effective State-level safety regulators. *(See Appendix 1, letter from Republican T&I Committee Members to FTA Administrator Rogoff)*

JOHN L. MICA
7TH DISTRICT, FLORIDA

Congress of the United States
House of Representatives
Washington, DC 20515–0907

July 14, 2009

The Honorable Peter Rogoff
Administrator
Federal Transit Administration
U.S. Department of Transportation
Washington, D.C. 20590

Dear Administrator Rogoff,

We understand that a Federal Transit Administration administrative policy prohibits transit agencies from using their federal grant funds to support expenses of the State Safety Office agencies that directly oversee the safety of transit systems.

According to a July 2006 Government Accountability Office report for the Transportation & Infrastructure Committee, these State Safety Offices are often inadequately funded and staffed. Transit is a very safe mode of transportation, and rail transit accidents are extremely rare. However, given last month's fatal accident on the Washington Metro system, the May 2008 fatal accident on the Boston Green Line trolley, and other infrequent but disturbing accidents on transit systems around the country, we feel it is important that these State Safety Offices be strengthened.

We strongly recommend that the Federal Transit Administration work with us to provide flexibility for transit agencies to utilize a percentage of their federal funds for State Safety Oversight agency support. We are also interested in any suggestions that the FTA has for improvements to safety on the nation's transit systems.

There were more than 10.7 billion transit trips in 2008. These riders deserve the highest possible level of safety. We look forward to working together with you to achieve this goal.

Sincerely,

JOHN L. MICA
Republican Leader
Committee on Transportation & Infrastructure

Appendix 2 – Fatalities and Fatality Rate in 2008 by Rail Transit System

Fatalities and Fatality Rate 2008 by Rail Transit System

Transit System Name	Mode	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2008 Passengers	2008 Fatality Rate
King County Department of Transportation	Light Rail	0	0	0	0	0	0	0	n/a	n/a	0	413,253	n/a
Tri-County Metropolitan Transportation District of Oregon	Light Rail	5	2	1	1	1	1	1	0	1	0	38,931,646	n/a
City of Seattle - Seattle Center Monorail Transit	Mono-rail	0	0	0	0	0	0	0	0	0	0	1,559,792	n/a
Central Puget Sound Regional Transit Authority	Light Rail	0	0	0	n/a	0	0	0	0	0	0	926,076	n/a
Massachusetts Bay Transportation Authority	Heavy Rail and Light Rail	0	5	3	7	2	1	5	2	0	2	222,429,875	1 death in 111,214,937 passengers
Niagara Frontier Transportation Authority	Light Rail	0	0	0	0	0	0	0	0	0	0	5,680,505	n/a
MTA New York City Transit	Heavy Rail	43	34	29	43	23	34	15	3	19	20	2,428,308,510	1 death in 121,415,425 passengers
Port Authority Transit Corporation	Heavy Rail	0	0	1	0	0	0	0	1	0	0	10,337,870	n/a
New Jersey Transit Corporation - Newark City Subway, HBLR, RiverLine	Light Rail	0	0	0	0	0	0	0	0	2	0	25,072,455	n/a
Staten Island Rapid Transit Operating Authority	Heavy Rail	1	0	2	0	0	0	0	0	0	0	n/a	n/a
Cambria County Transit Authority	Incline Plane	0	0	0	0	0	0	0	0	0	0	100,653	n/a
Southeastern Pennsylvania Transportation Authority	Heavy Rail and Light Rail	0	2	0	0	0	3	6	2	6	4	121,562,311	1 death in 30,390,577 passengers
Port Authority Trans-Hudson Corporation	Heavy Rail	0	2	1	0	0	0	0	0	0	0	n/a	n/a
Port Authority of Allegheny County	Incline Plane and Light Rail	0	0	0	0	0	0	0	0	0	0	7851475	n/a
Washington Metropolitan Area Transit Authority	Heavy Rail	2	0	3	2	4	2	3	4	0	2	288,039,725	1 death in 144,019,862 passengers
Maryland Transit Administration	Heavy Rail and Light Rail	0	4	5	3	0	0	0	0	1	0	21809865	n/a

Transit System Name	Mode	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2008 Passengers	2008 Fatality Rate
Chattanooga Area Regional Transportation Authority	Incline Plane	0	0	0	0	0	0	0	0	0	0	424,893	n/a
Memphis Area Transit Authority	Light Rail	0	0	0	0	0	0	0	0	0	0	1,014,777	n/a
Charlotte Area Transit System	Light Rail	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	2,262,631	n/a
Metropolitan Atlanta Rapid Transit Authority	Heavy Rail	2	6	2	1	0	1	2	1	0	1	82,984,033	1 death in 82,984,033 passengers
Miami-Dade Transit	Auto-mated Guide-way and Heavy Rail	2	0	0	0	0	2	1	1	1	3	27,377,897	1 death in 9,125,965 passengers
Jacksonville Transportation Authority	Auto-mated Guide-way	0	0	0	0	0	1	0	0	0	0	502,364	n/a
Hillsborough Area Regional Transit Authority	Light Rail	0	0	0	n/a	0	0	1	0	0	0	484,711	n/a
Puerto Rico Highway and Transportation Authority	Heavy Rail	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0	0	8,699,611	n/a
Kenosha Transit	Light Rail	0	0	0	0	0	0	0	0	0	0	65,759	n/a
The Greater Cleveland Regional Transit Authority	Heavy Rail and Light Rail	0	1	1	0	0	2	0	2	1	0	10901239	n/a
Metro Transit	Light Rail	n/a	n/a	n/a	n/a	n/a	1	1	1	2	0	10,221,681	n/a
Chicago Transit Authority	Heavy Rail	7	6	7	3	5	2	4	4	6	11	198,137,245	1 death in 18,012,476 passengers
City of Detroit Department of Transportation	Light Rail	0	0	0	0	0	n/a	n/a	n/a	n/a	n/a		n/a
Detroit Transportation Corporation	Auto-mated Guide-way	0	0	0	0	0	0	0	0	0	0	2,315,395	n/a
Metropolitan Transit Authority of Harris County, Texas	Light Rail	n/a	n/a	n/a	n/a	n/a	0	1	0	0	0	11,800,912	n/a
Galveston Island Transit	Light Rail	0	0	0	0	0	0	0	0	n/a	n/a		n/a
New Orleans Regional Transit Authority	Light Rail	2	0	0	0	0	1	0	0	1	0	4,230,368	n/a
Central Arkansas Transit Authority	Light Rail	n/a	n/a	n/a	n/a	n/a	0	0	0	0	0	134,204	n/a
Dallas Area Rapid Transit	Light Rail	2	0	0	0	3	1	0	4	1	0	19,437,603	n/a
Bi-State Development Agency	Light Rail	0	4	0	0	0	0	0	0	0	0	19,696,094	n/a
Utah Transit Authority	Light Rail	0	1	2	2	0	1	0	0	1	0	14,752,512	n/a
Denver Regional Transportation District	Light Rail	0	4	0	0	0	0	1	1	0	0	20,635,133	n/a

Transit System Name	Mode	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2008 Passengers	2008 Fatality Rate
San Francisco Bay Area Rapid Transit District	Heavy Rail	0	4	3	5	1	3	0	0	0	3	83,686,697	1 death in 27,895,565 passengers
Santa Clara Valley Transportation Authority	Light Rail	2	1	2	2	2	0	0	0	1	2	10,451,136	1 death in 5,225,568 passengers
San Francisco Municipal Railway	Cable Car and Light Rail	1	2	5	1	1	1	1	1	3	3	57,737,925	1 death in 19,245,975 passengers
Sacramento Regional Transit District	Light Rail	2	0	1	1	1	1	0	0	0	1	15,484,670	1 death in 15,484,670 passengers
San Diego Metropolitan Transit System	Light Rail	3	4	3	0	2	2	5	0	2	3	37,620,944	1 death in 12,540,314 passengers
North County Transit District	Light Rail	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	1	717,960	1 death in 717,960 passengers
Los Angeles County Metropolitan Transportation Authority	Heavy Rail and Light Rail	8	18	2	2	2	8	2	6	4	3	86,707,131	1 death in 28,902,377 passengers

Mr. MICA. Thank you so much for the opportunity to present our side and our priorities in this important matter.

Mr. DEFAZIO. We have some charts and graphs too with some slightly different statistics which are derived from official sources. We will also place those in the record without objection.

[The information follows:]

Fatalities by Rail Transit, Commuter Rail, and Amtrak

Mode	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Number of Passengers Carried in 2008	2008 Fatality Rate	Agency
Rail Transit (excluding suicides)	82	100	73	73	47	68	49	33	52	59	3,892,071,761	1 death in 65,967,317 passengers	FTA
Commuter Rail (excluding suicides)	62	74	102	94	63	71	75	63	88	111	564,674,834	1 death in 5,087,160 passengers	FRA
Amtrak (excluding suicides)	105	131	139	126	118	128	122	118	129	119	28,700,000	1 death in 241,176 passengers	FRA

* Data provided by U.S. Department of Transportation

Attachment II

Rail Transit State Safety Oversight Program - Existing State Powers

State Safety Oversight Authority	Establish Safety Standards	Conduct Safety Inspections	Conduct Unannounced Inspections	Issue Emergency Orders	Issue Citations	Fine Transit Agency	Influence Operations
Arizona Department of Transportation	Yes	No	No	No	No	No	No
Arkansas State Highway and Transportation Department	Yes	Yes	Yes	Yes	No	No	Yes
California Public Utilities Commission	Yes	Yes	Yes	Yes	No	Yes	Yes
Colorado Public Utilities Commission	No	No	No	Yes	No	No	Yes
Florida Department of Transportation	Yes	Yes	Yes	No	No	No	No
Georgia Department of Transportation	Yes	Yes	Yes	Yes	No	No	No
Louisiana Department of Transportation and Development	No	Yes	No	No	No	No	No
Maryland Department of Transportation	No	Yes	Yes	No	No	No	Limited
Massachusetts Department of Public Works	Yes	Yes	Yes	Yes	No	No	Yes
Michigan Department of Transportation	No	Yes	Yes	Yes	No	No	Yes
Minnesota Department of Public Safety	No	Yes	Yes	No	No	No	No
Missouri Department of Transportation	Yes	Yes	Yes	Yes	Unknown	Yes	Yes
New Jersey Department of Transportation	No	Yes	No	No	No	No	No
New York Public Transportation Safety Board	Yes	Yes	Yes	Yes	No	Limited	Yes
North Carolina Department of Transportation	Yes	Yes	Yes	No	No	No	No
Ohio Department of Transportation	Yes	Limited	Limited	No	No	No	No
Oregon Department of Transportation	Yes	Limited	Limited	No	Limited	Yes	No
Pennsylvania Department of Transportation	No	Yes	Yes	No	No	No	No
Puerto Rico Emergency Management Agency	Yes	Yes	Yes	Yes	No	No	Yes
Regional Transportation Authority (Chicago)	No	Unknown	Unknown	No	No	No	No
Tennessee Department of Transportation	No	Yes	Yes	No	No	No	No
Texas Department of Transportation	No	No	No	No	No	No	No
Tri-State Oversight Committee (DC-MD-VA)	No	No	No	No	No	No	No
Utah Department of Transportation	No	No	No	No	No	No	No
Washington State Department of Transportation	Limited	Limited	Limited	Limited	No	Yes	No
Wisconsin Department of Transportation	No	No	No	No	No	No	No
All States	**46.2%**	**61.5%**	**53.8%**	**34.6%**	**0.0%**	**15.4%**	**30.8%**

*Information provided to the T&I Committee by FTA

Mr. DEFAZIO. With that, we are going to limit opening statements, but I would give the Ranking Member an opportunity and unless the full Chairman comes in, we will then get to the testimony.

Mr. DUNCAN. Thank you very much, Mr. Chairman. Thank you for calling this hearing.

I want to, first of all, welcome Secretary LaHood and Federal Transit Administrator Rogoff here this morning to describe the Administration's proposal to expand the role of the Federal Government in overseeing safety in local transit systems.

I want to thank Secretary LaHood for the job that he is doing. I think he has certainly already become one of the most active and most effective Secretaries of Transportation that we have ever had. I appreciate the job that he is doing.

I know safety is job one for State and Federal transportation officials throughout the country and for everyone on this Committee. Ranking Member Mica has outlined the statistics and the situation in which we find ourselves, so I won't say very much in addition to that other than to say he did mention there is one fatality in every 66,000,000 in rail transit which makes that, by far, the safest mode of all. Of course everyone always wants to improve or do better.

I guess my main question or concern would be that we know the funds of the Department of Transportation are not unlimited, so I think all of us want to make sure that the resources of the Department are directed to the areas where the problems are the greatest.

Apparently some States, maybe many States, are doing a pretty effective job in this area. I know there are only two rail transit systems in Tennessee and neither has ever had a fatality. That would be what I would need to ask about.

I look forward to hearing the testimony of the witnesses. I yield back.

Mr. DeFazio. I thank the gentleman.

I ask unanimous consent that the gentlewoman from the District of Columbia, Ms. Norton, be allowed to participate in today's hearing. Hearing no objection, we will proceed.

Mr. Secretary, thank you for being here. Please proceed with your testimony.

TESTIMONY OF HONORABLE RAY LAHOOD, SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY PETER ROGOFF, ADMINISTRATOR, FEDERAL TRANSIT ADMINISTRATION

Secretary LAHOOD. Thank you for holding this hearing, Mr. Chairman.

To Mr. Duncan, Mr. Mica and all the Committee Members, the opportunity to testify on proposed legislation to reform the Department of Transportation's role in overseeing the safety of our Nation's rail transit system is a very, very historic day for us. With me is Peter Rogoff, the Federal Transit Administrator.

Traveling by rail transit in the United States remains extraordinarily safe. Yet serious accidents do occur such as this summer's tragic Washington Metro crash and other recent accidents in Boston and San Francisco. We believe additional action is needed to

make rail transit even safer. Rail transit is currently the only mode within the Department that operates without comprehensive Federal safety regulation, oversight, or enforcement authority. We must remedy that gap.

Rail transit systems carry far more passengers daily than either our domestic airlines or passenger commuter railroads where safety is stringently regulated by the FAA and FRA respectively. Yet, the DOT has been prohibited by law since 1964 from issuing safety standards and regulations for rail transit systems, systems that now serve more than 14,000,000 passengers every day. This is an antiquated law and must be changed.

That is why the Nation's major metropolitan subway and light rail systems from Seattle and San Francisco to Chicago, Boston, New York and Atlanta are subject only to the Federal Transit Administration's State Safety Oversight Program. This program lacks Federal statutory authority to establish meaningful, minimum safety thresholds in States where rail transit systems operate.

Each rail transit system is permitted to determine its own safety practices. It is up to State governments, not FTA, to determine the extent of regulation, oversight and enforcement authority granted to each transit system. This results in a patchwork of 27 separate oversight programs guided by a regulatory framework of inconsistent practices, limited standards and marginal effectiveness.

What is more, most States devote insufficient resources to these safety programs. Nationwide, with one exception, State safety oversight agencies employ, on average, less than one full-time person per year to do this work. Under these conditions, we risk transit safety problems going unidentified and uncorrected, especially as the transit infrastructure gets older and available revenues for transit remain tight.

Clearly, urgent reform is needed. Under the leadership of our Deputy Secretary John Porcari, our Department has developed a legislative proposal that has now been formally submitted on behalf of the President to the Speaker of the House and the President of the Senate. I ask that you consider our reform proposal seriously and promptly.

Our legislative proposal would accomplish three goals to strengthen transit safety nationwide. One, through the FTA, it would establish and enforce minimum Federal safety standards for rail transit systems that received Federal transit funding.

Two, it would establish a safety certification program that would provide Federal assistance to eligible States that elect to carry out federally approved public transportation safety programs and enforce Federal regulations. Through this provision, we will seek to ensure that the States will now have the manpower, the training and the enforcement tools to conduct meaningful oversight. In States that choose to opt out, the FTA will enforce the new Federal standards.

Three, the program would ensure that any State agency overseeing transit systems would be financially independent from the transit system it oversees. This morning I informed Congress that we would establish a Transit Rail Advisory Committee to develop new rail transit safety recommendations for FTA's consideration. The advisory committee will be made up of safety specialists from

transit agencies, labor and academia. Their expertise will guide much of our regulatory efforts.

Our goal is not to impose highly detailed regulations but rather, to encourage rail transit agencies to use modern risk analyses to identify their own unique safety vulnerabilities and then to take action to address them.

Safety remains our highest priority at DOT. Back in October, I established the DOT Safety Council to tackle critical and cross-cutting safety issues across all transportation modes. Our transit safety legislation proposal was brought before the Council and was approved through the input of safety experts across the entire Department.

I believe our legislative proposal offers a critical and necessary step to provide the consistent oversight the rail transit industry needs to ensure safe operations for transit workers and the traveling public.

I look forward to your questions.

As I think you know, Mr. Chairman, I need to leave here about 10:50 a.m., but Mr. Rogoff will stay for any continued questions.

Thank you so much for your leadership in holding this hearing. Parenthetically, I want you to know that Peter and I were in New Orleans recently announcing several million dollars worth of streetcar money and Portland Street Car Company was well represented at that announcement.

I know you have your own opinion about the authorization but I thought maybe the streetcar news might be a way to mitigate that.

Thank you for holding the hearing.

Mr. DEFAZIO. Thank you, Mr. Secretary. We will be mindful of your time.

Yes, made in America streetcars, which for the first time in 70 some years, I think are a great thing. I would be happy if we had competition within the States, but at the moment we are fairly unique.

I thank Administrator Rogoff for being here. I appreciate both of you and your attention to this important issue.

I am going to divert for a second since you mentioned the investment you are proposing in New Starts, Small Starts with some unspent funds. From all I can tell, and from the tracking this Committee has done, which is fairly extraordinary, very detailed, I believe you have done a great job in getting the so-called American Recovery and Reinvestment Act funds out there on the street and under bid and underway.

To the best of my knowledge, we have about the highest percentage of commitment and we are looking at pretty much seeing the program begin to ramp down next spring. Does that coincide with what you have done?

Secretary LAHOOD. Mr. Chairman, first of all, thank you for saying that. We agree with you. We work hard every day to get this money spent the way you all asked us to spend it. More than 60 percent of the highway money is obligated and out the door. Almost all of the transit money is out the door. All of the airport money is out the door. It came in under bid, so you all provided us $1 bil-

lion and we spent $1.1 billion because the bids came in lower. We were actually able to do more on airports.

Peter and his team have done a great job on the transit. We have done a good job on the highways. I have traveled to more than 30 States and more than 70 cities and I can tell you there are a lot of people who have worked this year on repaving roads, on building roads and bridges, and this program has worked.

I think when you hear the President's words today at the Brookings Institution about the path forward, it will reflect the success of what you all passed and what we have been able to do. We are proud of what we have done and we think we have done it by the book, according to what you all asked us to do.

Mr. DEFAZIO. Again, thank you, Mr. Secretary and Administrator Rogoff. It has been my experience and the experience of the full Committee Chairman, that you have delivered, delivered well and followed the rules. I think we are making a good investment.

I hope to hear that from the President today, but his statement last week merits some correction or concern. He said "the term shovel ready, let us be honest, doesn't always live up to the bill." He went on from there to say that infrastructure just takes too long and it wasn't getting out there. Apparently he is just getting the same memo that was provided to him last February from some members of his economic team and they were ignoring the reality of what has actually happened between February and today in terms of spending those funds.

I am hoping that we can get a different memo to him and hopefully get one before today's event.

Secretary LAHOOD. Can I also say that early next year, we will be making announcements on the $1.5 billion. None of that money has been spent, the so-called TIGER Grants.

Mr. DEFAZIO. What was the value of people's applications?

Secretary LAHOOD. Well oversubscribed.

Mr. DEFAZIO. I think it was like $50 billion.

Secretary LAHOOD. About $50 billion to $60 billion.

Mr. DEFAZIO. For $1.5 billion, so that does indicate there is a little need out there.

Secretary LAHOOD. I can tell you we have received some very innovative, creative, inter-modal proposals. We will also be making announcements early next year on our high-speed passenger rail which was $8 billion. Those two pots of money, none of that has been spent. Again, very creative ideas are coming in on high- speed passenger rail from all over the country.

Mr. DEFAZIO. However, going from no Federal investment in high-speed passenger rail to actually beginning to get money out the door at the beginning of the year I think is kind of light speed for the Federal Government. I appreciate that.

I have a couple of questions on the proposed legislation before us and then I will defer to other Members of the Committee.

On August 4 before the Senate Banking Committee, Administrator Rogoff said, "The issues of the conditions of our transit infrastructure and safety of our transit systems are inextricably linked. Deferred maintenance items, if deferred long enough or left undetected can become critical safety risks." I certainly agree with that.

I guess the question becomes, to both of you or either of you, if we are not in a state of good repair and we are going to overlay a new Federal safety mandate, how is this all going to fit in the budget?

Mr. ROGOFF. The first thing I would like to point out is the state of good repair has been adopted by this Administration as one of the very short lists of new priority goals for the Department, not just in transit, that also overlays the aviation infrastructure and the highway infrastructure.

You referenced at the beginning of your presentation decrepit equipment. We were reminded back a couple of years ago in Chicago we had a very bad transit accident involving 150 injuries. I happened to bring a prop. This is a lag screw that dates from the original build of the Chicago transit system.

Mr. DEFAZIO. Could you date that?

Mr. ROGOFF. This would be at least 55 if not 60 years old. The head of the CTA and I met just this past Friday and he informed me there were plenty of these still in his system and that is what results in slow orders over his system. It is not just a matter of the state of good repair potentially posing a safety risk, it also poses a reliability drag on the transit system and the ability of the people of Chicago to use transit and undermines the economic productivity of the people who have to go six miles per hour over equipment that looks like this.

Mr. DEFAZIO. I would like to get one of those if they could provide one.

Mr. ROGOFF. They assure me they have plenty. What concerns me is they still have plenty in the system.

That said, you are correct that the additional regulatory burden that might be brought about as a result of this law could, and I emphasize could, result in certain instances in additional costs. One of the things I would want to emphasize that was in the Secretary's testimony is we are not looking to recreate the FRA rulebook that is this thick. We are really looking to try to get to performance-based measures.

Every regulation that would be put out under this law would be subject to cost benefit analysis and would have to show that the benefits exceed the costs. The position of the Administration is that the safety dollar really needs to be the first expenditure of these transit systems, not the last. Therefore, we need to make sure that they are spending their capital dollars at whatever level on their greatest safety vulnerabilities.

Secretary LAHOOD. Can I just say, Mr. Chairman, when Mr. Catoe called us the day after the WMATA crash and asked to meet with us for a request for $150 billion to buy new cars, what we said was, you can come to the Department and we will meet with you but we are going to talk about safety first. That has to be our priority. That is the purpose of the legislation. I think everyone in this region woke up the next day after that crash and said, who is responsible for looking after safety. There really was no one.

When we talked to Mr. Catoe, we talked about safety first before we talked about anything else.

Mr. DEFAZIO. To me it is somewhat reminiscent of some things that have gone on from time to time in aviation where when the

industry is under extraordinary financial stress, there is some temptation to find ways to save money or defer expenses. I worry a lot about that in these days with our transit systems. I appreciate your sending the message. In this case, safety has apparently meant a lot more manual control, slightly slower performance, but that is what we need to do to keep people safe until the equipment is upgraded. That needs to be the priority.

One last quick question, Mr. Rogoff, because I don't know whether they used different measures or not and I am getting updated on aviation, but in terms of cost benefit, do you know what value they are putting on a life these days? That is always instructive.

Mr. ROGOFF. I believe it is in the range of $6 million to $7 million.

Mr. DEFAZIO. Really? That is much more than I have heard for aviation.

Mr. ROGOFF. I would like to provide a more precise number for the record but I think importantly, when we think about where we would want to regulate first, it is really about getting the agencies to establish more robust systems to know where there assets are and manage them so they are addressing their greatest safety vulnerability first. We don't see that having a hugely burdensome cost.

Mr. DEFAZIO. Thank you.

Mr. Duncan.

Mr. DUNCAN. Thank you very much, Mr. Chairman.

Let me first ask some nuts and bolts questions. Do we know how much this new Federal supervision will cost and how many employees it will require?

Mr. ROGOFF. Sir, those budgetary numbers are being fine tuned with OMB right now. I think you will see them come out as part of our 2012 budget. I can assure you they will be well under one percent of the FTA's total budget. We are talking about a less than one percent uptick, particularly for the safety mission.

Mr. DUNCAN. I know you set standards about certain things in regard to grant requests that are made. Do you presently or have you in the past set safety requirements or safety standards in regard to some of the grant requests that are made by these systems?

Mr. ROGOFF. I will credit my predecessor Jim Simpson for this in terms of as we approach some of the New Starts projects, we have a dilemma as an agency at the FTA about agencies that want to expand their footprint and build extensions to reach new communities that may not be adequately investing in their existing footprint.

We have systems like that around the country because often they come to us and ask us to cost share in the expansion. We are concerned about that. We are pursuing things with other projects where we are asking the tough questions like before you expand out to the next community, how can you assure us that you are adequately investing in the current. It is a dilemma for us because we want to see expanded transit service, but we also want to see safe and reliable transit service.

Mr. DUNCAN. That sort of relates to my next question. These systems vary widely across the country, correct?

Mr. ROGOFF. Yes, sir.

Mr. DUNCAN. Some are much safer than others, would you say, or do a better job in regard to safety than others?

Mr. ROGOFF. Yes, they do, but I think it is tough when you look at individual incidents. A particularly safe system may have one tragic incident that will skew the numbers for that year. Thankfully, catastrophic incidents are few and far between, but when they occur, they are truly catastrophic and they are hit or miss on which system they hit.

Mr. DUNCAN. Mr. Secretary, if or when the Congress gives you this authority, how long do you think it will take to set up a program?

Secretary LAHOOD. We think it will take upwards of three years, no more than three years, but it will take some time to do it and we want to do it in cooperation with the transit districts around the country and with Congress. We think it will take upwards of three years.

Mr. DUNCAN. Do you think you can make sure the States that are doing a good job now are not overburdened with all sorts of inspections or requirements if they are doing a pretty effective job right now? Will they get credit for that?

Secretary LAHOOD. Yes, sir. They will have an opt out provision. In the legislation we presented to the Speaker and the President of the Senate, which you will all have a chance to see sometime today, there is an opt out provision for States.

Mr. DUNCAN. All right.

Mr. ROGOFF. I think importantly, we are also proposing to use some of that additional budgetary resource to help staff, train and handle the travel expenses of those State agencies for those that want to continue to participate. Our real goal is to try to raise the level of expertise and the ability to oversee those systems.

Right now those agencies, as the Secretary pointed out in his opening statement, with the exception of California which is sort of the gold standard, if you take them out of the equation, they average less than one employee for the entire State. We would like to boost those numbers, their expertise and their capability.

Mr. DUNCAN. Thank you very much.

Mr. DEFAZIO. We will go in the order in which Members appeared. Mr. Holden was next. He is not here. Ms. Edwards?

Ms. EDWARDS. Thank you, Mr. Chairman, and thank you, Mr. Secretary. I appreciate your being here.

I wanted, first, to thank you for your leadership on the safety questions and asking those questions first. I know following the tragic accident here on our Metro system, I introduced, along with all of the Members of our delegation, H.R. 3338 which essentially goes to the core of your recommendation and proposal.

The fact is that because there aren't safety standards, there is this hodgepodge of "safety" that is going on around the country, none of it particularly invested in. We just follow up on the recommendations that have been made time after time after time by the National Transportation Safety Board to establish a Federal safety standard.

These are recommendations that have followed almost every one of these catastrophic incidents, but haven't been done. So I think it is high time, especially in a moment where we are going into a

period, I hope, of significant investment in this Nation's infrastructure, both the existing infrastructure and adding new systems and not leaving safety to the last consideration because of questions around being able to support general operations and maintenance.

My question to you is whether you believe the proposal you have will enable the States to play a role, should they want to, in monitoring and overseeing safety or whether that is something that really should be at the base of the responsibility of the Federal Government?

Secretary LAHOOD. Congresswoman, first of all, let me thank you for your leadership on this. We have looked at your legislation and I think if you look at ours, there is a lot of similarity. Thanks so much for your leadership on this issue also. We sort of took a page out of your legislation in what we are trying to do and what will be at the Speaker's office today.

We think there are some States that get it, but it is a mixed bag. When people get on a train, light rail or a bus, they want to be delivered safely. If they are not, they want to know who is accountable. As I said, after the WMATA crash, we were all sort of scratching our heads about how come there is not somebody around who sounding all the alarms.

Some States get it, some States simply don't have the resources for it. Some States haven't had to really do anything because they have had a very good safety record. It is a mixed bag and that is the reason we felt it was very important for our department to step up and follow your lead and the lead of others in trying to put forth some very good safety legislation.

Ms. EDWARDS. I appreciate that.

The other question that has been raised following that accident, it is true that in the Washington Metro system we have wireless access, but there is also a problem around the country of not having adequate wireless access, even for 911 emergency calls.

I wonder if you could give me some guidance as to how we might accommodate those needs as we move forward on safety.

Mr. ROGOFF. The Department still participates in the upgrade of the E911 systems and consults on that. In the transit space specifically, as the Secretary said about the States, it is also true of the systems and that is it is a mixed bag in terms of what wireless access has provided. Sometimes they have waited for a vendor to come in, be it Verizon or a competitor, to provide that wireless access.

It is not currently considered as an elemental safety opportunity for all systems and therefore, we do not have it in all systems.

Ms. EDWARDS. The irony is, of course, this isn't about a Federal investment because the wireless companies want to be able to come in and just do it, but I do think it is important for us to recognize there might be elements specifically around 911 access where we could encourage systems to engage with those wireless companies and let them go to the business of doing what their business is. I don't want to install wireless, but they do, so whatever guidance you could continue to give along that range would be helpful.

I know that Mr. Duncan and I have actually introduced legislation in this direction that we hope will meet with your approval as well as we go forward.

Thank you very much, Mr. Chairman.

Mr. DEFAZIO. Mr. Mica.

Mr. MICA. After the Washington Metro crash, I had written the Administration and asked if we could have more flexibility because I wasn't really aware and you don't pay much attention sometimes to how Federal money is disbursed with what restrictions, but there were, I found, restrictions on using some of this money for safety and enforcement. I asked if we could have some flexibility. The initial response was no. Also, we had restrictions on some of the grants.

Given what we now know, are you more inclined to change your opinion about the use of Federal money? We have all looked at these cases. If we don't have the standards, and I have no problem with enhancing some of the standards, but if we do put in standards or mandates they have to attain as far as safety, it always goes back to the cash. They don't have the cash.

I think you are headed in the right direction by trying to make safety the priority. If we have Federal money and cash is the problem, that should certainly be a priority. What is your take on that, Secretary or Administrator?

Mr. ROGOFF. Sir, the reason we couldn't agree with your earlier proposal was that what you had proposed was that transit agencies be allowed to use a portion of their 5307 formula grants and use their Federal formula dollars as a way of paying the costs of their overseer. We have continued to worry and be concerned about the potential conflict of interest when the regulated transit agency holds the purse strings to the agency that is supposed to oversee and regulate them. It is obviously something we don't allow. In the Federal railroad universe, we don't allow the freight railroads to decide how much to compensate FRA inspectors, we don't allow the airlines to do the same with FAA inspectors.

We believe our legislative proposal fixes that problem and gets Federal dollars into the hands of the States' safety oversight people. However, it does so without being passed through the transit agencies. It is a direct grant to the participating States to do better oversight. I think we have captured your solution, but we have done it in a way that eliminates any risk of conflict of interest.

Mr. MICA. The only other question I will ask is you have described to the Committee and to me personally that you want to have additional resources as far as Federal personnel. My only concern is if we mix all of the enforcement or oversight or regulatory compliance into one kettle that we start diluting the soup. You see that and you are always faced with Congress passing well- intended legislation and then you are stretching your bucks.

We already saw we have serious problems with fatalities, with Amtrak, with freight rail fatalities. I just don't want to pour a little bit more money in there and dilute the soup across the board so we are neglecting what we have to say grace over versus adding to it. Could you comment?

Mr. ROGOFF. I am not sure if you were here when Mr. Duncan asked the question about cost, but basically we view the overall uptick in cost out of the FTA to do this initiative fully built out as being less than one percent of our total budget. We do not see this as a huge drain on agency resources.

I don't think anyone is talking about diluting our efforts in aviation or commuter rail safety through the FRA. This is really about getting at the rail transit agencies not currently regulated by the FRA and where we do see some statistics that truly worry us about their performance and safety concerns.

Mr. MICA. Thank you.

Mr. DEFAZIO. I thank the gentleman.

Mr. Secretary, I am keeping track of your time. That clock is a little fast. It is 10:44 a.m., real time.

Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

Let me begin by thanking the Secretary for taking expeditious and good action in a matter I brought to his attention with respect to FHWA. I should tell you at a meeting with the Port Authority of New York-New Jersey, the two State DOTs and the FHWA last week, things are going excellently. I thank you for that.

Secretary LAHOOD. Thank you.

Mr. NADLER. Secondly, I have two questions for you. I am generally supportive of the proposed legislation. I just want to clarify.

My understanding is that if the State has strong safety standards and regulations in place, they would not be displaced by the Federal system. From what I understand of the proposal, States will not be preempted from establishing more stringent safety standards. Is that correct?

Mr. ROGOFF. That is correct. We do not have preemption. The State would have to apply to us to show their standard is safer, but we would grant that application if we found it to be so.

Mr. NADLER. That is the opt-in/opt-out provision?

Mr. ROGOFF. The opt-in and opt-out really pertains to whether the State oversight agency wants to perform the Federal oversight or whether the State would continue to do it at Federal expense.

Mr. NADLER. I appreciate that and I commend the approach. So often we see the Federal Government trying to displace the States from more stringent standards in whatever areas. I am glad to see that is not the case here.

Secondly, one of the effects of the current economic downturn is that State and local revenue sources that fund transit projects have decreased as we know. Local governments are currently facing revenue shortages and have to make difficult budget choices.

How do you expect transit agencies to make progress in their safety and maintenance projects without further revenues? Specifically, without a long term authorization, would you agree that transit agencies will lack the fiscal ability to make comprehensive transportation safety advances before we get a long term reauthorization?

Mr. ROGOFF. Our view has been and will continue to be that the most critical safety needs need to be addressed first, no matter what the available funding envelope is. I have met with Mr. Walder, the new MTA general manager. He gets that and understands that. He has done this successfully in other systems.

Part of what we want to do with this new regime is help certain transit agencies to gain the expertise to identify what those greatest safety vulnerabilities are. I think it is fair to say especially on things like assets, we have agencies all over the map. We have

agencies who do very, very good management of assets, we have other agencies that couldn't even tell you where all their assets are right now and everything in between.

We want to raise the level of all of them and make sure their dollars are spent first on safety, but we also see safety as sort of a non-negotiable expense. We also think our role can maybe help cities approach city councils, their State legislatures and their governor with serious concerns about their state of good repair.

Mr. NADLER. I would agree that safety is a non-negotiable expense and that it comes before anything else. I don't think you will find anyone who disagrees with that, at least rhetorically.

When agencies are faced with extreme stringencies and pressures on safety, on getting the trains running on time, getting the buses out and getting the people paid, they are going to look for savings in every area. Whatever their good intentions, too often we know safety is going to suffer to some extent along with other things.

I would say again that the ability to have more funds and to plan long term will impact the safety area as well, which is another reason for getting a full reauthorization.

Mr. DEFAZIO. I am sorry. I am going to interrupt you because we only have two minutes and the full Committee Chairman wishes to say something briefly to the Secretary.

Mr. NADLER. I have finished basically.

Mr. OBERSTAR. Thank you for your observations. Mr. Nadler, I appreciate that very much.

I just want to take a moment before the Secretary has to get on to others. It is not snubbing our Committee, he is just pulled in many different directions. I know it full well.

I want to thank you and Mr. Rogoff for taking this initiative. This is a very, very important move on safety. We have learned all too well in the past with the FAA and other government agencies that when you get into a "tombstone" mentality and start reacting when people die, then it is too late and you make the wrong decisions. This is a very good move in anticipation of a broader initiative on safety.

Further, I want to highlight the Secretary's initiative, long over due, 43 years over due, in bringing the administrators together of the various modes of transportation on a safety initiative paralleling the bill that we reported from Subcommittee that establishes a National Transportation Safety Initiative requiring the Department to establish a six year, comprehensive, strategic plan for safety, creating the Council on Intermodalism and establishing an Under Secretary for Intermodalism.

You have taken a chapter from our book, moved ahead on it and I want to signal that out and express my support and I think the support of most Members of this Committee for that initiative.

As for those who say, you are taking the initiative away from the States, safety is a partnership. Safety requires a culture of safety at the top level. That means the States and the Federal Government. This transportation initiative has always been a partnership. When one partner doesn't do the job well, then the other has to take the lead.

We are not isolated little States here, we are not isolated principalities. This is a nation. Some from New York travel to California and expect the same level of safety there as they had in the State they left. We need to engage all the States and the Federal Government in this partnership for safety so that we don't head into a graveyard, grave stone mentality.

This is a start of a long dialog, an important one, and we are going to partner with you and move this initiative along.

Thank you, Mr. Secretary.

Secretary LAHOOD. Mr. Chairman, let me express my thanks to you for your leadership over many years on safety issues and for the opportunity to really step up here and be a part of what we think is a very strong safety agenda.

I know that on Thursday there is an ARRA meeting and I want to express my thanks, as I did to the Chair of the Subcommittee, for your support on our work in getting the ARRA money out the door and into the hands of people who can put people to work. You can look at the record to see what I said to Mr. DeFazio and the Committee Members that were here, but you have been a stalwart in making sure we are doing it by the book and then supporting us when we have done that. I appreciate that very much.

I won't be here for the hearing on Thursday. Mr. Porcari will be here but in the absence of that, I want to say thank to you and to other Members of the Committee who have stood by us on this. We think we have done it the right way and we think a lot of people have gone to work this year.

Mr. OBERSTAR. Yes. As a matter of fact, under just the highway, transit, and safety programs, 350,000 jobs, direct and indirect, those in the supply chain, a $10 billion payroll, $900 million being paid in taxes, people off unemployment rolls getting a payroll check instead of an unemployment check, paying their mortgage and getting their health insurance reinstated, that is what this Recovery Act is all about. We just need to get that over to a few folk over in the White House. They simply need to know that.

Secretary LAHOOD. As you know, the President is making a speech today and Mr. DeFazio already referred to that.

Mr. DeFazio, on my way out the door, may I present this as a Christmas gift to you? [Hands the lag screw to Mr. DeFazio].

Mr. DEFAZIO. I think it meets all of the statutory requirements. That would be great, Mr. Secretary, one used, outmoded part. It was made in America and it did last a long time.

Thank you.

Secretary LAHOOD. It came from the Chicago Transit Authority.

Mr. DEFAZIO. Sorry to deprive you of your paper weight.

Mr. ROGOFF. There is plenty more where that came from.

Mr. DEFAZIO. We will continue with questions of the Administrator. Ms. Schmidt.

Mrs. SCHMIDT. Thank you, Mr. Chairman. I have a couple of questions.

Let me preface this by saying that we have been warned for the past month by many folks that we have to control costs at the Federal level because of the racing deficits that we are creating. Moody's has come out and warned us that if we do not stop the spending, we could be in jeopardy of losing our AAA rating in the

next three to four years which would be catastrophic for the United States.

Having said that, I am very concerned about any spending that we do here on Capitol Hill because that could lead to a deficit. My concern is when you said it is less than one percent of the budget for the overall cost of this. There are three parts of my question.

First of all, what is the actual dollar amount of less than one percent? Two, will you be asking us for an increase in your budget over the next few years to sustain that? Three, as States look at their own budgets and their own budget shortfalls, what would prohibit them from opting in and letting the Federal Government pay their tab and have you factored all that into your costs or would that be even more cost to your proposal?

Mr. ROGOFF. Let me take those in order. What I said was it is less than one percent of the Federal Transit Administration's budget. We are currently a $10 billion agency. I believe I said well less than one percent, so we are talking about well less than $100 million.

Mrs. SCHMIDT. That is still $100 million.

Mr. ROGOFF. Yes, it is. When you look across the safety expenditures across the entire DOT, it is quite modest. The one thing I can't discuss in any detail because obviously the President's 2011 budget is still under development, but that doesn't necessarily mean all that is in the form of an uptick in the overall budget. There are obviously offsets that will be accompanying the President's budget when they come up.

Importantly, you asked about the conditions of the States. Our initiative, in some ways, will be cost-relieving to the States in that we are proposing to eliminate the concerns a number of States have had that this is an unfunded mandate under law, that we would begin to take over the cost requirements of these safety inspectors, pay for their training, pay for their travel and get them to a level of expertise we think is worthy of the safety regime we need.

Importantly, when you really look at the big dollars in my agency, they are in the form of grants to all these transit agencies. Some 40 to 50 percent of all the transit capital expenditures in the country are appropriated dollars from my agency. As such, to ensure that those dollars are being spent wisely and giving rise to safe systems, we believe dedicating less than one percent of our agency to better ensure safety is a wise investment.

Mrs. SCHMIDT. To follow up to your responses, this $100 million that you call modest.

Mr. ROGOFF. I think I said well less than one percent.

Mrs. SCHMIDT. That takes into account if all 50 States opt into the Federal program?

Mr. ROGOFF. Basically, the costs are roughly the same whether a State opts-in or opts-out because we would pay for the State inspectors to do that job. If they opted out, we would need to put Federal inspectors on the job. Those costs are relatively the same.

Mrs. SCHMIDT. Actually, they are not, sir, and that is because 49 out of 50 States have to balance their budgets, the Federal Government does not, so that would increase the Federal deficit which is what my concern is with Moody's.

The second issue, you mentioned the 2012 budget. You are looking at this with anticipation that there will be an increase in the 2012 budget for your agency or not?

Mr. ROGOFF. I said there would be an increment for this initiative we anticipate in the President's 2011 budget that will be transmitted in February. The President's budget is still under development and I couldn't say whether that is a net increase or a net decrease because I, frankly, don't know what the levels are for the other elements of the Department of Transportation.

Mrs. SCHMIDT. However, for you, you will be asking for more money to implement this?

Mr. ROGOFF. We will be asking for money to implement this. Whether it is a net increase or a net decrease, I couldn't tell you at this time.

Mrs. SCHMIDT. Thank you.

Mr. DEFAZIO. Again in the order of appearance, Mr. Hare.

Mr. HARE. Thank you, Mr. Chairman, and thanks for having the hearing.

Mr. Rogoff, I just have one quick question for you. I appreciate your being here and the work that you do.

Three transit maintenance workers were struck and killed while working on the tracks. I wonder if you could tell me what is being done to improve rail transit worker's safety?

Mr. ROGOFF. Among the statistics I said earlier, Mr. Mica had raised some issues related to the fatality levels. Thankfully, the fatality levels in the rail transit area have remained low, though one incident skews those.

One of the areas in which we are greatly concerned is worker fatalities. We believe this proposal helps address that in the following ways. I was on the phone with Mr. Catoe from WMATA the other Sunday after the crash at the West Falls Church yard. We got into a discussion about why these individual incidents keep recurring.

One of the things he pointed out that concerns us greatly is the fact that seniority in the workplace in terms of average seniority is going down. We have a combination of an increasing number of retirements, challenges with adequate wages to keep people on the job and we are losing a lot of expertise through retirement or our inability to retain people in the industry.

We talked specifically this morning about the need to raise the ability of the Federal inspectors, be they State employees or Federal employees. We really need to do a better job just raising the level of safety expertise and cognizance over safety issues in the whole workforce, including those in the transit agencies. I have had conversations with APTA about how we can do that.

We have a number of programs in place that have included areas where we have tried to better educate both the line workers, right-of-way workers, as well as management to right-of-way safety. I think if we have the opportunity to break through the prohibition and approach some regulation in this area, we would want to make sure that discussions of worker safety are part of that mix.

Mr. HARE. I have one quick comment. I appreciate Ms. Schmidt's question, but I would say to you this is the first time in 40 some years we are talking about having a bill at less than one percent.

I don't hold you to a number obviously but I don't know what price you can put on public safety.

I am concerned about deficits as well, but I am more concerned, quite candidly, about the safety of the people who ride these things every single day. I think if it is less than one percent, whatever the percent is, it could be .7 of 1 percent, but I certainly hope we can get you the funds necessary to be able to implement this after 40 some years. I want to commend you.

I know Secretary LaHood well and I think he has done a wonderful job. I appreciate the fact that the President has decided to do this. I think it is well over due. If we don't do it now, when are we ever going to get this thing done.

I appreciate your coming today. I certainly look forward to supporting the bill the Administration is talking about for safety. We will handle the deficit. We also have to handle the deaths and the injuries that come from that. With all due respect to Moody's, I would defer to 40 some years of not having a safety bill in place.

Mr. ROGOFF. I think there are other parts of that picture that play into the Nation's productivity as well. These systems need to be reliable and safe for people to feel comfortable to ride them. If we are really going to lower our dependence on foreign oil, we need adequate, safe and reliable transit and it is a well less than one percent increment to ensure safety. We feel it is just being a good steward of the multiple billions of dollars we put out to maintain these systems every year.

Mr. HARE. Thank you, Mr. Rogoff.

I yield back.

Mr. DEFAZIO. We will now turn to Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

I am sorry Mr. LaHood had to leave. Most of my questions were for him. Hopefully, you will be able to carry them if you can't answer them today.

Involving safety, we have been working on that for a long time in California, as you well know. One of the things that bothers me is sometimes the States are preempted from establishing more stringent safety standards for railroads to protect against local safety hazards.

If the regulation does not affect interstate commerce, could you comment on that?

Mr. ROGOFF. Yes. The proposed legislation we transmitted to the Speaker last evening does not assume Federal preemption in this area. We do have explicit procedures where States that have stronger safety standards need only to apply to us and demonstrate their standard is safer, in which case we would agree with that and allow those safer standards in the States to take place. That is a difference from what you see in a number of other DOT modes.

Mrs. NAPOLITANO. Does that mean you would not need a Federal mandate to do it, you would do it without having to come through us?

Mr. ROGOFF. If we were given the authority to issue regulations, which is what we are seeking under this legislation, the issuance of those regulations would put a process in place where we need not preempt the States. The States could apply to us to maintain their own standard.

Mrs. NAPOLITANO. One of the other questions was the issue with positive train control. Have you any idea where the railroads are to meet those deadlines that Congress passed in new safety standards?

Mr. ROGOFF. That rule is handled by the Federal Railroad Administration. We actually have representatives from the FRA here. I could bring our Chief Safety Officer from the FRA to the table with the Chairman's permission if you want to get into that issue.

Mrs. NAPOLITANO. Mr. Chair?

Ms. STRANG. Thank you. I am Jo Strang, Chief Safety Officer, Federal Railroad Administration.

Currently the status of the positive train control is that it is in clearance. We expect it will be issued shortly. The next deadline we are to meet is they have to file their implementation plans by April 16, 2010. At that time, FRA will review and approve or disapprove the plans and modify them as we need. Everything is on target for the December 31, 2015 implementation date.

Mrs. NAPOLITANO. Thank you very much. That clarifies that one.

The other question I have is there has been a lot of focus in making sure that high speed rail trains and cars are made in America. There was a forum recently on the issue. Should we be focusing on making more transit cars to be made in America. The investment in transit is much more predictable and dependable than high speed rail cars. In LA metro alone, probably we spend $500 million on new cars in five years but the production is overseas.

Mr. ROGOFF. The short answer is absolutely. Indeed, FTA, at the Secretary's insistence, was a full participant in the forum we just had with the rail manufacturers last week because there is a lot of new focus on the new high-speed rail initiative. There was a lot of press attention but we did have the opportunity to meet with those manufacturers.

We hope the expanded presence and expanded investment in this country in rail manufacture will come coincidentally with a greater supply chain based in the United States for transit investment and transit rail cars right here in the United States. We need the jobs here just as we need them when we are producing high-speed rail cars.

Mrs. NAPOLITANO. Is any other agency working on making sure that does happen?

Mr. ROGOFF. We have had conversations with the Commerce Department on this. We were addressed at the forum that Secretary LaHood held by one of the leaders in the White House working on manufacturing policy, so this is a full Administration commitment.

Mrs. NAPOLITANO. Thank you, sir.

Thank you, Mr. Chairman. I yield back.

Mr. DEFAZIO. I thank the gentlelady.

Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman.

There has been a little talk about the Washington accident. I would like to talk a bit about the accident in California.

On September 18, 2008, 25 people were killed, 135 were injured, 40 of which were critically injured. The investigation is being led by the NTSB. It was found that the Metrolink engineer ran a red

light that was preceded by two yellow lights that warned of an upcoming stop.

The NTSB also said the engineer was text messaging before the crash, so the collisions could have had more than one cause. The reports also released in December stated that the red light that could have prevented the crash was not as bright as the other lights on the same track side warning device.

Additionally, there were other communications issues. The engineer responsible for checking the signals and abiding by them, did not happen. When the engineer encountered a signal, he was supposed to radio the train conductor who is supposed to radio back confirming the signal's color which did not happen. This allows the conductor to apply the brakes should the driver appear to be incapacitated for any reason. However, according to the data video, the last two signals were not reported and the conductor did not apply the brakes.

My question to you is, in light of what happened with that accident, where do we stand and are there any impediments to achieving better goals?

Mr. ROGOFF. While Metrolink is regulated as a commuter rail agency by the FRA, the FRA is working diligently on improving safety every day in that area. The tragic Chatsworth crash informs their thinking and is in large part behind the recent rulemaking procedures on positive train control. Progress is being made there.

With this legislation, we are trying to gain the authority for the first time since the agency was formed in the mid-1960s to have safety regulatory authority for systems like MUNI, for systems like the LAMTA, where currently there are no Federal safety minimums and regulations of any kind. We view this as a huge step forward for rail transit passengers in cities around the country.

Ms. RICHARDSON. In light of that, I think one of the issues we talked about in California is the worker requirements are not consistent. For example, a lot of the work that has been done with Union Pacific and on that level, is not the same as in terms of Metrolink.

I have not had a chance to review the President and your legislative proposal. Does that include specific worker requirements to bring things in synch?

Mr. ROGOFF. We do not go into great specificity in the law into precisely which areas we would regulate first. The Secretary has convened and announced—as of today the papers will be delivered—a Transit Rail Safety Advisory Committee, but I can assure you some of the things we look at and some of the distinction between existing rules as relates to freight and commuter rail versus existing rules that we don't have, issues like the fact that we have train operators who do not have to go through an annual physical in this area, while they are required for a commercial drivers licenses, for pilots and locomotive engineers in other areas.

You will hear from the NTSB on this but all of us have recommendations from the NTSB to deal with issues as it relates to the health and ability of operators. We really can't, as an agency at the FTA, respond to them because we don't have statutory authority. That is the authority we are seeking here.

Ms. RICHARDSON. As you seek to get that authority, one of the things that will be key in getting my support will be addressing some of the worker issues. The work you have done on the national level we now need to do on the State and local levels.

Mr. ROGOFF. Absolutely. As I told Mr. Hare earlier, the issue of the ability of workers to operate a safe system, and also the ability of workers to work on a system safely and protect themselves is essential to our thinking.

Ms. RICHARDSON. I only have 46 seconds left. My last question is, how will you determine how many staff at the State level are adequate to enforce these Federal regulations? Where would you find the funding for such staff and who would provide the training?

Mr. ROGOFF. We already do some training through the FTA. That is only voluntary activity that we can do out of available budget resources, but we would envision doing a great deal more. We have budgeted through our process with OMB to pay for the State enforcement authorities that do opt-in or Federal enforcement authorities that do opt-out. We are making room for that in our budget. That is the figure I discussed with Mrs. Schmidt as it related to being less than one percent of our total budget.

Ms. RICHARDSON. Thank you, Mr. Chairman.

Mr. DEFAZIO. I thank the gentlelady.

With that, we would turn to Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman. I appreciate the ability to question our witness today.

I want to thank you very much for this initiative. I am on the Senate House bill—the regional bill where Ms. Edwards is the lead here in the House—that was almost mandated by the June 22 tragic collision, nine people killed, seven from the District of Columbia. Wherever they are from, we look at this and try to see how we can keep this from happening anywhere else.

There have been some questions, as you might expect, on budget and I have processed your answer. I think what you are doing with the opt-out with the States nominally makes sense. First, you will have to make me understand why paying for 50 different safety agencies, unlike what we do anywhere else with safety in transportation, paying completely for 50 different State agencies and you will be paying for the District of Columbia and five territories as well, why in the world that is not demonstrably more costly than having regulation as we have it for every other system in the Federal Government?

Why would anybody opt to have you regulate if you are going to pay for them to set up a whole new bureaucracy in their States with all the administrative costs, all it takes to initiate a new system. Tell me how that fits anybody's set of budget strictures whether they are my colleagues on the other side or frankly, those of us who sit on this side?

Mr. ROGOFF. Ms. Norton, I am not sure that our model is necessarily less cost effective. I say that for the following reason. We did not develop a whole new scheme here, a whole cloth. We are pretty much taking a page from a playbook that we have in other DOT modes, specifically in the Federal Motor Carrier Safety Administration we have something called the MCSAP Program. We

make grants to States to enforce Federal standards. That is potentially what we are talking about doing here.

Ms. NORTON. What kind of standards are you talking about?

Mr. ROGOFF. The Federal Motor Carrier Safety Administration does commercial motor vehicles, basically truck safety standards. In some cases, the Federal agents do that enforcement in those States. In others, we pay States to enforce it.

Ms. NORTON. How many of the States do it on their own?

Mr. ROGOFF. I don't have the precise number.

Ms. NORTON. How many of the States have agencies as we speak?

Mr. ROGOFF. In motor carrier safety?

Ms. NORTON. No.

Mr. ROGOFF. We have 27 State agencies right now who oversee transit safety.

Ms. NORTON. In the District, this region is emblematic of what we have across the country, you don't have anything. These agencies have been catch as catch can. The District's agency was so pathetic it had no staff. Here, right in the mouth of the Federal Government, it could hardly be called an agency. Isn't it true that we would have 50 start-ups to meet the standards you have laid out in the bill?

Mr. ROGOFF. We think among those 27, they are at a variety of strength.

Ms. NORTON. Name me one of those agencies you would consider adequate today?

Mr. ROGOFF. You are going to hear from them on the next panel, California.

Ms. NORTON. You can't name one?

Mr. ROGOFF. California. They are going to be on the next panel. If I could address that, I think your concerns about the adequacy of the existing State agencies is right at the heart of our proposal. We are not just going to start revenue sharing with them. We have envisioned if they want to continue to be Federal partners, they are going to have to be much stronger.

Ms. NORTON. Let me tell you what that is going to take, Mr. Rogoff. That is going to take legislation in almost all the States. This is what I envision. Fifty States, the territories and the District of Columbia are going to have to look at what they have now. Whatever California has, I believe I can say without much contradiction that States, on their own, have had no incentive from the Federal Government, and, by the way, why not? Why is DOT prohibited from enforcement in this area?

Mr. ROGOFF. It was in the original enacted statute for UMTA in 1964.

Ms. NORTON. What was the reason given?

Mr. ROGOFF. The transit universe in 1965 was a dramatically different world, 84 percent of them were private.

Ms. NORTON. The only reason is that we didn't have subways in the first place.

Mr. Chairman, I appreciate being able to sit in here.

Mr. DEFAZIO. I appreciate the gentlelady but her time has expired. We do have a couple other Members who do have questions. A lot of this material was covered in the briefing memos.

Ms. NORTON. The cost sure isn't covered well, Mr. Chairman.

Mr. DEFAZIO. Mr. Schauer is now recognized.

Mr. SCHAUER. Thank you very much, Mr. Chairman.

Mr. Rogoff, I am pleased to have you present this proposed legislation to us here in this Subcommittee. I am from the State of Michigan where I think there is finally a realization, especially in the southeastern part of the State that transit in various forms is an imperative for the economy, for attracting knowledge-based workers, for reducing carbon emissions, for more efficient travel. I appreciate your proposal in making sure that all forms of transit are safe.

I also see this as very preventive in nature. In Michigan, we have submitted high speed passenger rail proposals as part of a Midwest initiative. There are a number of commuter rail initiatives being proposed that intersect with my district and a number of other projects in the works.

I want to mention one of the benefits is prevention. As transit is being expanded in my State and in this country, I think we can't lose the fact we are not talking about making sure that existing transit systems are safe, those that are being established, the protocols, all of the systems. I assume you would agree.

Mr. ROGOFF. Absolutely.

Mr. SCHAUER. I want to clarify something you said. There has been appropriate talk about budget impacts, State budgets and Federal budgets. Did I hear you correctly that States would not bear the cost of these new safety requirements whether they opt in or opt out, that there would be Federal dollars whether they are State or Federal workers? Is that correct?

Mr. ROGOFF. Indeed. We would alleviate the States of the cost of the inspector salaries, the travel, the training. That is how we seek to address the fact that the States have stood up so little since this program was initiated in ISTEA in 1991.

Mr. SCHAUER. We certainly have to pay attention to our Federal spending, but this won't add to State budget problems?

Mr. ROGOFF. No. To the extent the States are making expenditures of any meaningful nature now would be cost relieving to the States and we believe we are doing it at the Federal level in a very cost effective way.

Mr. SCHAUER. That is good news. That is very good news. I will take that back to my State.

Do you have any idea of the job impact? Since this is not adequately being done around the country, do you have any idea how many jobs would be created to ensure public safety for all of our transit systems?

Mr. ROGOFF. I need to be guarded in that the budget is under development. Currently, if we are averaging less than 1 FTE per agency of 27 agencies, we are effectively having fewer than 27 people in this space now. We obviously see the need for a much more robust presence, something approaching a tripling or quadrupling of that level, albeit getting people with the expertise needed to actually oversee these systems in a meaningful way.

Mr. SCHAUER. Given this economy, jobs.

Mr. ROGOFF. Every job counts.

Mr. SCHAUER. Finally, as you develop your proposal, CBO will be looking at it, of course, but do you have any idea of projected savings overall? We talk about this from an outlay standpoint, do you have any idea of determining how much money would be saved at various levels by avoiding some of these accidents or problems?

Mr. ROGOFF. It is obviously hard to pin down a number, but I think there are savings opportunities in a variety of areas, not only from avoiding the costly horrors of an accident, but also making sure that systems are kept to a state of good repair, that there is reliability and they are getting people to work and getting people home. The savings is essential to the mission of the FTA and the President's goal of reducing our dependence on foreign oil. When you see what kind of drain happens on the family budget, a big chunk is transportation, right after housing.

Mr. SCHAUER. I would urge you to look at savings, look at job impacts and so forth going forward.

I would yield back. Thank you.

Mr. DEFAZIO. I thank the gentleman.

I recognize the Chairman of the full Committee, Mr. Oberstar.

Mr. OBERSTAR. Thank you, Mr. Chairman. I will attempt to be brief because I know you have obligations.

I would like the staff to put up the chart. This displays the rail transit oversight programs of the States and the existing powers. Just a little over 45 percent, 46-plus percent have safety standards. The next is roughly 61 percent, nowhere near total. A number of States conduct safety inspections, unannounced inspections, issue emergency orders, zero issue citations, fifteen percent have the ability to fine the transit agency when they are not in compliance, and a number have an effect on influencing operations. That is a pretty dismal record.

Anyone who says the Federal Government shouldn't be engaged here because States are doing such a great job, just take a look at these numbers. States are not doing uniformly a good job.

Under previous management of this Committee, a hearing was held in 2006 on the State Safety Oversight Program and the result of that hearing was direction to GAO to evaluate the States in more detailed fashion. A GAO report came back with findings that there is an uneven—a very kind word and we will hear more from GAO—safety record that training varied widely from State to State with limited staff and insufficient funding.

I think the proposal that the DOT presents responds to that to assure that each State will have an adequate number of fully trained staff, that they have sufficient authority granted by the State legislature and the governor, that they can compel compliance by the transit agencies and that those various entities have financial independence like our NTSB. I think those are reasonable propositions. I think safety is our number one responsibility in transportation. Number two is moving people and goods efficiently and effectively in commerce, reduce congestion and all the rest that we have tried to do in this Committee. The first responsibility is safety.

This proposal parallels what we do in EPA where we give States authority and funding to develop a strong program to control discharges and be in compliance with water quality standards. The

Federal Government sets the standards; States establish entities to meet those standards. If they have the capability, they are given the authority to manage the program with Federal oversight.

We do that in a number of areas. In highway safety, we do the same thing. Bridge oversight, I think we should do a lot more and we will do more when we get our six year bill passed. Mr. Rogoff, that is not your principal responsibility but I have to say that every time we have an opportunity.

Mr. ROGOFF. Understood.

Mr. OBERSTAR. I think the proposal you are offering follows a very clear pattern. Have you determined what the scope of the Federal program should be and secondly, the number of investigators and oversight authorities that States should have? Does that vary from State to State?

Mr. ROGOFF. The legislation clearly enumerates the type of powers we would anticipate an adequate State partner to have. Ms. Norton did identify something that was accurate and that is that in order for those State partners to have those powers, it will require action by State legislatures and governors.

If at the end of that period we do not find them adequately empowered and adequately staffed even on our dollar, then we would not accept them into the program. In that instance, we would have to have the Federal Government fulfill that role. In that regard, it is not completely unlike what we do in FMCSA with the MCSAP Program where we have to find the States capable and adequately staffed to oversee the Federal regulations for truck safety.

Mr. OBERSTAR. Isn't the underlying principle here the Federal Government is providing funds to these transit agencies and has an interest in the safe operation of the programs they are funding?

Mr. ROGOFF. Absolutely, not only funds to do it but also some core Federal regulations that makes clear what they should be focused on.

Mr. OBERSTAR. That is sufficient for the moment. I think it is important to see this chart and also a more detailed rail transit safety oversight program document that I think is available for all Members in their packet. Yes, it is. I see it. I invite Members to review the State safety oversight authority in the various State agencies. It is very important and I expect you have that information as well, Mr. Rogoff.

Mr. ROGOFF. We do, sir.

Mr. OBERSTAR. I expect we will have more consultation as we move along with this proposal.

Mr. ROGOFF. I would just want to add that Mr. Mica had some fatality rates that I think were important to note. We would also share some data for the record as it relates to collision and derailment rates that we see as quite troubling in the rail transit space that we think is also worthy of the Committee's attention. We would submit those for the record.

[The information follows:]

Insert for the record

Rates per 100 million passenger miles traveled between 2003 and 2008 on rail transit systems, not regulated by Federal Railroad Administration, are as follows:

Derailment rates are up from 0.23 to 0.38
Collision rates are up from 0.2 to 0.8
Passenger fatality rates are up from 0.43 to 0.60 (all causes except suicide)
Passenger fatality rates from train collisions have held steady at 1 per year (9 in 2009)
Employee right of way fatalities are steady at 3 per year (double the average number during the previous 15 years)

Mr. OBERSTAR. Yes. I am somewhat skeptical though of figures in transportation safety that measure fatalities by hundreds of millions of miles or tens of thousands of trips taken. Each one of those is a human being, has a family, has relationships and putting a dollar value on human life, we have seen it in aviation, in rail transit, seen it in maritime. There is always an attempt to calibrate the value of the human life. That is terribly misleading.

Mr. ROGOFF. I think, also, sir, we have very few fatalities in the pipeline safety area, we have very few fatalities in the HAZMAT safety area, but we don't talk about not regulating in those areas because they are important and there is an important federal safety nexus all the same.

Mr. OBERSTAR. Thank you, Mr. Rogoff.

Thank you, Mr. Chairman.

Mr. DEFAZIO. Mrs. Schmidt.

Mrs. SCHMIDT. Thank you. I have a couple of follow-ups.

First, we all want to make sure that safety is paramount. In doing so, we have to figure out a way to pay to make sure we have the safest lines possible. We also have to make sure that we don't increase our Federal deficit. I know there are ways we can cut other programs to meet that.

One of the areas I am looking at is the Urbanized Area Formula Grants which is about a $5 billion program. I know we have been doing this for about 20 years. It has been an automatic in any budget. That goes for bus shelters and historic preservation, pedestrian and bicycle accidents, transit connections, signage and public art and landscaping.

If this is going to cost your agency $100 million or right around that figure, if you took one percent out of the $5 billion Urbanized Area Formula Grant that would get you half of that money. That might be a way of getting to your goal and not increasing the Federal deficit. That is my biggest concern.

The other matter I am concerned about is in the Constitution we have Federal and State. Since 1964, when we first started federally funding with streetcars by electrical co-ops and city governments to the first Federal transit funding bill in 1964, transits have been considered to be an inherently local activity. Transit is not an interstate commerce and from the big picture perspective I am concerned about this takeover.

Would it be more costly, less costly or do you know, if we provided for the States that are not up to par like California appears to be in Federal safety standards, grants that would require them to do so, keeping in mind anytime a State spends money, it has to balance its budget in doing so, whereas the Federal Government does not. When you look at costs and raising the deficit, when comparing a State to the Federal level, the State doesn't add to the deficit but the Federal spending can add to the deficit.

My biggest part of the question is how do we do this and control the cost in doing so?

Mr. ROGOFF. I would like to take those two issues in order. First, if funding had to be derived or some program cut back in order to pay for this initiative, I would not go to Urbanized Area Formula Grants because, Mrs. Schmidt, you identified things like bus shelters and other expenditures that can be used for those dollars but

those formula grants are the core Federal investment that reaches about 40 to 50 percent of the transit capital expenditures of these major rail systems. Taking down that money I don't think advances the safety agenda.

As it relates to what we should do about funding this in a cost effective manner, I believe we have done that by involving State partnership. As I said earlier, you will see in February, I think a very fiscally responsible 2011 budget brought forward by the President that will include increments for this.

But, I am not prepared to say that the offsets for that increased spending would necessarily come out of the FTA, out of DOT or elsewhere in the Federal budget.

Mrs. SCHMIDT. I am alluding to the one percent required for enhancements.

Mr. ROGOFF. Oh, transportation enhancements?

Mrs. SCHMIDT. Yes.

Mr. ROGOFF. That is a highway program. That comes out of the Federal-aid highway obligation ceiling. That program, I think, has been debated at length and there have been floor votes in the House over the value of that program.

Frankly, we view that program as having merit in a variety of areas because it does a lot of things to what we call "attack the last mile," that is, to provide bicycle and pedestrian access to get people to transit services. We wouldn't necessarily see that as a valuable offset.

Mrs. SCHMIDT. One percent of your urban area grants have to be used for enhancements and that is what I am going after, that one percent of your grants.

Mr. ROGOFF. The transit set-aside for enhancements.

Mrs. SCHMIDT. All I am saying is we are into tough times now and we have to make some hard decisions. I don't want to compromise safety but I don't want to increase our Federal deficit. This is something we have to be concerned about. What would be the problem with taking a little bit of that one percent enhancement and using it for safety?

Mr. ROGOFF. Mrs. Schmidt, I think you will see when we bring forward our proposal that we will fund the safety initiative in a responsible manner which across the President's entire budget will be fiscally responsible. I don't necessarily believe that the FTA, anymore than any other area of spending within DOT or outside of DOT, but that is for the President to determine and OMB to assist him in determining how to best balance the entire picture.

I do not believe that putting my mode into the safety business necessarily needs be paid out of other transit investments.

Mr. DEFAZIO. To follow up, are you saying this would be a General Fund request?

Mr. ROGOFF. We can go back and forth for a while and I will still seek to not end up in a corner because the 2011 budget isn't out yet.

Mr. DEFAZIO. We will see what we see when we see it.

Mr. ROGOFF. I am afraid I need you to accept that answer for now.

Mr. OBERSTAR. Mr. Chairman, before you go on, I just want to say to my dear friend from Ohio, Mrs. Schmidt, on that noble suggestion, but over my dead body.

Mrs. SCHMIDT. Fair enough.

Mr. DEFAZIO. I think with that, we have concluded the Administrator's testimony. Thank you very, very much for your generous grant of time and we will move on to the next panel being seated.

Mr. OBERSTAR. I want to take this opportunity in this setting to announce the sad news of the loss of our Chief Counsel, Walter May, of the Special Investigating Committee on the Federal-Aid Highway Program begun in 1959 at the direction of Speaker Sam Rayburn and under the Chairmanship of my predecessor, John Blatnik.

Walter May led the experienced team of former FBI investigators that served on the McClellan Rackets Committee staff under then Chief Counsel Bobby Kennedy. When they completed their work, Speaker Rayburn designated John Blatnik to chair a Special Investigating Committee on the Federal Highway Program at the outset of the Interstate Highway Program's implementation.

He was concerned that there were reports of fraud, corruption, and inappropriate activities and right-of-way acquisition, construction of the interstate and wanted to stop it, as Rayburn said, "Before it gave this program a bad name."

My predecessor, John Blatnik, had been a combat paratrooper in World War II and parachuted behind Nazi lines in what is today Slovenia, rescuing American airmen shot down on the return bombing runs over the Ploiesti oilfields in Romania. He was a tough guy, a microbiologist and scientist, but he could stare death in the face and stand up against it.

Rayburn picked the right guy. Blatnik picked the right team—Walter May, John Constandy, George Kopecky—and the results of those investigations was 36 people went to Federal and State prison. When they started, no State had internal audit and review procedures; no State had accounting to keep track of the tens of millions of dollars, in those days lots of money, that they were receiving from the Federal Highway Trust Fund.

As a result of the hearings, every State established internal audit and review procedures; every State established a tracking program for its Federal funding. Walter May led that whole investigative team. The legacy was absolutely extraordinary. They stood up to enormous political pressure in the most significant case and completed their work on the Massachusetts Department of Public Works.

Walter May was from Massachusetts, from Boston. He had been the Circulation Editor for the Boston Globe before he went to the Bobby Kennedy staff. The Committee had compiled a record of abuse in the Department of Public Works in the State of Massachusetts and was ready to publish its report. This was in September 1962. There was a very intense Senate primary between Edward Kennedy and Edward McCormick, nephew of the then Speaker John McCormick.

The Committee staff wondered "What are we going to do now? We have the documentation, we have the report." Walter May and John Blatnik got together and said, "We have to tell the Speaker

and then we have to publish this report. Speaker McCormick, to his credit, said, well, Walter, you have the details; John, you have the facts, release the report.

The opening paragraph of that report read, "The Massachusetts Department of Public Works is a cesspool of political pestilence." It was the front page of the Boston Globe right in the midst of this hot Senate race. Walter knew the right thing to do and so did John Blatnik.

The Committee staff then went on to oversee the other programs of the Committee on Public Works, including later the Clean Water Act, our EDA programs and the Appalachian programs, and was the first of a real program of oversight and investigation conducted by the House branch of the national legislature.

We all owe Walter May a great debt of gratitude for his service. He died at age 91. I didn't know he was ill. Something went amiss in the last two days and I just now got the word. I mourn for the loss of a dear friend, a mentor, a leader. We all owe Walter May a great debt of gratitude for the legacy he left us of unparalleled adherence to truth, facts, and corrective action.

Thank you, Mr. Chairman.

Mr. DEFAZIO. I thank the gentleman for the remembrance and the words.

We are going to try to move very quickly here. They are saying there will be votes around noon, so I would suggest I have read all of your testimony and I assume other Members, those who aren't here, for the most part, have either read it or not, so I would suggest two minutes. You can summarize what you want to say and one minute to react to the Administration proposal.

With that, we will go to Ms. Siggerud. You won't be commenting on the Administration's proposal but go right ahead.

TESTIMONY OF KATHERINE A. SIGGERUD, MANAGING DIRECTOR, PHYSICAL INFRASTRUCTURE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; ROBERT J. CHIPKEVICH, DIRECTOR, OFFICE OF RAILROAD, PIPELINE AND HAZARDOUS MATERIALS INVESTIGATIONS, NATIONAL TRANSPORTATION SAFETY BOARD; RICHARD W. CLARK, DIRECTOR, CONSUMER PROTECTION AND SAFETY DIVISION, CALIFORNIA PUBLIC UTILITIES COMMISSION; AND WILLIAM W. MILLAR, PRESIDENT, AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

Ms. SIGGERUD. I will do my best.

Chairman DeFazio, Members of the Committee, thank you for inviting us to this hearing. I am going to cover two topics today. First is the results of a report we issued to this Committee in 2006 about the State Safety Oversight Program. Second is our observations that we have on an overview we received of the DOT proposal.

As you know, the Oversight Program that currently exists covers rail transit systems that are not subject to FRA oversight and that receive New Starts or Urbanized Area Federal funds. Under this program, the States oversee transit systems and FTA's role is to oversee those State agencies.

We found in 2006 the State oversight and transit agencies generally view the program positively. For example, they told us the required safety plans were beneficial. Reviews by State safety over-

sight agencies in some cases had helped them to make important safety related capital investments.

Our report also found several challenges to the program's effectiveness. Funding challenges in State government limited the number of staff to a level that 14 of the 24 we contacted said were not sufficient. We found that expertise varied significantly among the State agencies, 11 had staff without expertise in rail safety. Nineteen of the State agencies at that time had no enforcement authority if transit agencies did not follow their safety recommendations or violated standards.

Finally, FTA had fallen behind in its management and oversight of the program. We recommended that FTA reinvigorate the program, establish a training curriculum and provide funds to assist with travel for training. FTA has acted on those recommendations in the intervening years.

While we have received only a high level briefing on DOT's proposal, we can provide observations on how, if enacted, it would address the challenges I mentioned. The proposal is likely to address the challenge of staffing levels because it would require FTA certification of State programs and provide funds to these agencies. By providing FTA explicit enforcement authority, it would also address States having no power to compel safety improvements by transit agencies.

In conclusion, Mr. Chairman, there are also several issues for Congress to consider with regard to this proposal. First, oversight and enforcement is it better accomplished at the State or Federal level, keeping in mind this may vary by State and transit agencies.

Second, this is very important, is enforcement tools. What is appropriate given the transit system's need to serve their riders reliably that are typically funded by fares and taxes? Third, what is the cost of the program and, as you mentioned, what would be the source of those funds? Finally, what would be the challenges in Federal regulation of an enormously varied industry?

That concludes my statement. I would be happy to answer questions.

Mr. DEFAZIO. Thank you for that succinct summary.

Mr. Chipkevich, Office of Railroad, Pipeline and Hazardous Materials Investigations, NTSB.

Mr. CHIPKEVICH. Thank you, Chairman DeFazio and Members of the Subcommittee. Thank you for the opportunity to appear on behalf of the National Transportation Safety Board.

Since the 1970s, NTSB has made numerous safety recommendations to the Department of Transportation and the Federal Transit Administration's predecessors to improve the safety of rail transit systems. Our recommendations have urged the Department of Transportation to seek the legislative authority necessary to establish minimum Federal safety standards, enforce compliance, conduct inspections and conduct accident investigations.

We have also recommended that the Federal Transit Administration establish safety requirements to address the following specific issues: the crash worthiness of rail transit passenger cars; the use of event recorders to better identify and understand safety issues directly related to accidents; and the adequacy of operating rules,

execution and compliance, track safety and rest requirements for transit operators.

The NTSB has also made a number of safety recommendations to improve State safety oversight programs. We support legislation that would give the Department of Transportation authority to establish and enforce minimum rail transit safety standards. This is particularly important when State safety oversight programs do not provide adequate safety oversight.

Thank you. I would be happy to answer any questions at the appropriate time.

Mr. DEFAZIO. Thank you, sir.

With that, we would turn to Mr. Clark, Director, Consumer Protection and Safety Division, California PUC.

Go ahead, Grace.

Mrs. NAPOLITANO. Thank you, Mr. Chairman, for today's hearing. I am very happy and honored to welcome Richard Clark, Director of the Consumer Protection and Safety Division of the California Public Utilities Commission. CPUC has been in my directory for many years, working directly with them. Director Clark and I worked together on many safety transportation issues over the years.

He has testified at the Railroad Subcommittee hearings held in my district in 2007 regarding railroad safety issues which led to some of the amendments or actually enactment of the Railroad Safety Act and California has greatly benefited from such a move.

He has always provided us with wise counsel. In fact, some of the amendments brought to this body have come from CPUC and Mr. Clark's office. He has been working with other elected officials in my district and was burdened with multiple railroad accidents in 2006 and 2007.

He and his staff work diligently every day to ensure the safety of people in the great State of California and I am glad the Committee has recognized your leadership. Having you here is a great boon to us. Thank you very much.

Thank you, Mr. Chairman. I yield back.

Mr. CLARK. Thank you, Congresswoman Napolitano.

Mr. Chairman, Members of the Committee, I am pleased to have the opportunity to come before you today. We look forward to examining the legislative proposal in detail that was outlined by Secretary LaHood and Mr. Rogoff and working with them and you going forward.

As many of you know, the PUC is a constitutionally-derived independent agency which, among other things, oversees the safety and security of all rail operations in the State of California, including railroads, both freight and passenger, rail transits and rail crossings. The PUC has had this responsibility since 1911. PUC has quasi-legislative rule-making authority and enforcement authority with the power to assess penalties of up to $20,000 per violation and to shut down unsafe rail transit operations.

There are 12 rail transit operations systems under CPUC's jurisdiction. We are responsible for investigating all reportable accidents, conducting regular audits and inspections of rail transit systems. Moreover, all rail transit agencies' new projects, extensions and retrofits must pass the rigorous CPUC safety certification proc-

ess before we will allow them to carry passengers. We believe strongly that safety is no accident.

The PUC Rail Transit Safety Program has 20-1/2 positions and an annual budget of approximately $3.5 million. The PUC strongly supports the Obama Administration's proposed regulatory initiative. We understand the Act as proposed will not preempt States from imposing their own regulations as long as they are at least as strict as Federal regulations that will provide us with much needed training, better communication between us and the Federal Transit Administration and much needed financial support for achieving adequate staffing levels.

Thank you for this opportunity to appear before you. I would be happy to answer any questions you might have.

Mr. DEFAZIO. Thank you, sir.

Mr. Millar, President, American Public Transportation Association.

Mr. MILLAR. Thank you, Mr. Chairman and Members of the Committee, we are pleased to be here on behalf of the 1,500 members of the American Public Transportation Association. I have three points to make in my oral testimony.

First, public transportation systems in America are safe and well used. In 2008, Americans took 10.7 billion trips on public transportation, some 15 times the number of trips taken on our domestic airlines. According to DOT data, we certainly heard in the first panel repeated many times, a person traveling on public transportation in America is many, many times safer than if they were a passenger in a motor vehicle. That said, we are always looking for ways to make public transit even safer.

My second point, APTA and the transit industry have worked for decades to develop and promote wide ranging safety management programs and standards a well as conduct safety audits to continually improve our safety record. APTA has developed nearly 100 consensus-based, voluntary rail transit safety standards, has conducted more than 415 safety audits over the last 20 years and we would hope this could be used as the basis for whatever additional safety work the Committee may determine is appropriate.

Third, while it will take many, many actions to improve transit's enviable safety record. It will also take significant financial investment, financial investment to bring systems up to a state of good repair; financial investment to make sure the men and women who work in our industry are well trained and are able to do their jobs in the safest way possible; and financial assistance to correct whatever safety deficiencies might be identified. If safety is to be improved to the so-called next level, investments must be made in all these areas.

Mr. Chairman, we look forward to working with you, with the Administration and others as this topic moves along and legislation is developed.

Thank you very much.

Mr. DEFAZIO. Thank you.

We will try to move through questions quickly so that the panel will not be delayed while we have votes.

Mr. Clark, the California PUC I think is unique in terms of its staffing and its oversight. I am interested that you still support

this proposed regulatory initiative. Would you like to give me a couple reasons why?

Mr. CLARK. Yes, sir. I would be happy to.

Primarily is training. We do not have access to adequate training for our staff. Much of our expertise is gleaned from on-the-job training, from institutional knowledge we have developed over the years and that sort of thing. We could use some really good training.

Mr. DEFAZIO. You would like to see some sort of Federal certification process which includes a training regime?

Mr. CLARK. Yes, sir.

Mr. DEFAZIO. Go ahead.

Mr. CLARK. That is really the biggest thing for us, the training element, because our vision for our organization is that our people will be experts in their fields and we don't feel that we can achieve that level of expertise at this point.

Mr. DEFAZIO. Anybody care to comment on what I opened with which is I think it is hard to de-link the backlog of investment. We can have safety inspectors and that is great, but if the lag bolts are rotten or totally disintegrated, unless we are pulling them back and checking them physically, or we have a computer program that says, the life of this in a certain area is X and they must be replaced, anyone want to comment on the huge backlog in investment and the view of the Obama Administration that you are just not ready to spend the money, there is no way to spend the money, infrastructure should be at the bottom of the list after green grids and God only knows what other fanciful things they want to pay for now? Anybody want to comment on that? Mr. Millar?

Mr. MILLAR. Mr. Chairman, I would be very happy to comment.

You are correct in making the link between state of good repair and safety. There is no doubt that if systems are kept up to a safe system, if the latest and safest technologies can be applied, it goes without saying that there will be safer operation.

The Federal Transit Administration did us all a good service last year in completing a report on the state of good repair in the industry. They found that roughly a quarter of the Nation's bus and rail assets are in need of attention and a third of the largest transit systems, both bus and rail, are in marginal or poor condition. It is clear that additional investment needs to be made.

As was apparent from colloquy between yourself, the Secretary and the Administrator, this Administration has done a good job of getting the ARRA funds out there, but we need additional money to bring these systems up to a state of good repair.

Mr. DEFAZIO. Unfortunately, the President is unaware that his department has done a good job because his economic team thinks the money hasn't been spent but maybe that message will get through.

Does anyone care to quantify the needed investment? I believe someone had in their report. Was it you, Ms. Siggerud? Someone quantified the backlog.

Ms. SIGGERUD. We did not. I believe Administrator Rogoff quoted a report on the state of good repair that did put a number on that. Am I right about that?

Mr. DEFAZIO. Mr. Rogoff?

Mr. ROGOFF. The state of good repair report that we issued earlier quantified for the seven largest rail systems that serve about 80 percent of the rail transit traffic a backlog of roughly $50 billion.

Mr. DEFAZIO. Fifty billion?

Mr. ROGOFF. Fifty billion. We are now, at the Secretary's insistence, surveying a larger universe, going to the additional rail transit providers that have not given us that data to give us a more robust figure which is why, as I said, the state of good repair has become a priority not only within the FTA but for the whole Department across all modes.

Mr. DEFAZIO. Mr. Millar, I believe you were at a press conference last week and you threw out a $20 billion number which I believe was ready to go in 120 days. Is that part of this $50 billion that Mr. Rogoff is talking about?

Mr. MILLAR. Yes, sir. Last week we released a recent survey of our members that indicates over $15 billion worth of projects.

Mr. DEFAZIO. Is this pie in the sky or do you think this is reality?

Mr. MILLAR. I think it is reality. I think the existing ARRA funds have allowed us to really step up our program. Now they are up, they are ready to go, they know to take on new projects, they know how to do it, so I believe we could wisely invest many, many, many billions of dollars in this area.

Mr. DEFAZIO. Anyone else? Mr. Clark.

Mr. CLARK. Mr. Chairman, I can comment on the state of good repair in the State of California in some instances such as San Francisco, MUNI, where we have had a number of derailments, where we found some serious problems with the track not being inspected, not being repaired and there are some issues with dead man switches that are not being tested and adjusted and that sort of thing that may or may not have been cause of an accident.

In terms of cost recovery, there's been a lot of discussion about cost recovery here. Quite frankly, with just two of the collisions that happened in San Francisco between, in total, four MUNI vehicles, we could have paid for my entire program for a year from the cost of just those two collisions. That is just the equipment, not the injuries and that sort of thing.

Mr. DEFAZIO. Can you put a number on the backlog at San Francisco MUNI? We have one for BART. I haven't seen anything for San Francisco MUNI.

Mr. CLARK. I am sorry. I don't have that number.

Mr. DEFAZIO. If you can come up with that number subsequent to the hearing, it would be great, or please get MUNI to provide it. It would be useful.

Ms. Siggerud.

Ms. SIGGERUD. As this hearing has pointed out, there really are two parts to the safety question we are addressing, the regulatory issue we are focused on today as well as the ability of transit agencies to make appropriate investments. We are undertaking a new study at the request of your counterpart in the Senate, to look at the challenges the transit agencies are facing in making those kinds of safety-related investments.

Mr. DEFAZIO. Thank you.

Mr. Boozman. We will move quickly through the questions because we are not going to come back.

Mr. BOOZMAN. Thank you, Mr. Chairman.

Very quickly, Mr. Clark, can you summarize the advantages of the State safety oversight?

Mr. CLARK. The major advantage of State safety oversight is that all the different systems in the State of California are different. Every one is different, every one needs a separate set of eyes with particular expertise developed with regard to that system. I don't think it is possible at the Federal level to have that level of flexibility. We do strongly support minimum standards, but in terms of having that sort of flexibility at the State level, we think we are in a position to respond more quickly to particular situations.

Mr. BOOZMAN. Along with that, what State authorities are necessary for successful State safety oversight?

Mr. CLARK. The major one is that each of the agencies has a system safety program plan and that they abide by that system safety program plan and that the agency that oversees their implementation of that, as well as their accident investigations and those sorts of things, that agency be separately funded, that it have rulemaking authority, that it have enforcement authority and that it be not an ancillary inspection force for the transit agency but an overseer of the process itself to ensure that the agency is doing what it should be doing on a more global level.

Mr. BOOZMAN. Very good. Lastly, what kinds of economy of scale activities would the Federal Government be able to provide successfully?

Mr. CLARK. I think they would be able to help us on economies of scale again with minimum standards, with training, with certification, with doing background checks on the employees that we hire to do the inspections of these rail transit agencies. There are probably others I am not thinking about at the moment.

Mr. BOOZMAN. That is all I have. Thank you, Mr. Chairman.

Mr. DEFAZIO. We have three Members. Ms. Norton will assume the Chair upon our departure. There are three Members and if you could do about three minutes each, that way everyone can get in questions. Ms. Edwards is first.

Ms. EDWARDS. Thank you, Mr. Chairman. I just have one question, a particular one with relation to systems like the WMATA system here in the Washington metropolitan area that actually crosses three jurisdictions and how you would envision a safety oversight role where you essentially have three States that would have that responsibility? I am not quite clear how that would work. Perhaps Administrator Rogoff if you could comment on that?

Mr. ROGOFF. We actually do have a provision specifically in the bill that addresses multi-State systems to make sure it is well understood that they have a unified approach, a single entity that is in charge, and we don't have a sort of diffuse responsibility where no one takes ownership and everyone points the other way. Only then would we certify that State partner as being adequate.

Ms. EDWARDS. Just out of curiosity, do you envision then you take a system where you have three jurisdictions that have responsibility and one State makes its regulatory decisions that meet Fed-

eral standards, another State might have regulatory standards that exceed Federal standards and how you balance that?

Mr. ROGOFF. I think we would want a common picture and for that matter, WMATA would need to have a common set of enforcement authorities they would be working under. They would certainly be working under a common, Federal safety regime. We believe we can get at that, but you are right. In terms of us certifying a State safety partner as being adequate, the multi-State systems will have the added burden of showing consistency.

Ms. EDWARDS. I look forward to continuing to work with you all to figure out that quotient and from an implementation standpoint, whether it is really something that could work given the kind of diffuse responsibilities.

Mr. ROGOFF. Where it doesn't, it would become a Federal responsibility.

Ms. EDWARDS. Thank you very much. No further questions.

Mr. DEFAZIO. Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

Mr. Clark, Mr. LaHood stated in his testimony the new transit safety program, the States would not be preempted from establishing additional and more stringent standards. Would you agree with the statement? Do you feel States should not be preempted from establishing more stringent safety standards for railroad operations to protect against local safety hazards? Do you feel this is currently a problem and would you explain why?

Mr. CLARK. I believe the law you are speaking of actually is one that is administered by the Federal Railroad Administration with regard to freight railroads and certain passenger railroads. We strongly object to the preemption that exists in railroad safety. We are very happy to see that is not the case in the proposal here with the Federal Transit Administration.

Mrs. NAPOLITANO. Going back to the infrastructure very quickly, there were several derailments in my area as I stated in my testimony. A lot of it was due to the age of the rail. It has a life I found out—the joint and bar, the hairline crack that could not be detected with the system they have in place now and the employees' down time, the rest periods that they have in between, also the training that we found out a couple of years ago was a CD and a book and here is your training new employees.

Are you going to require them to be able to have a better training system if we implement something in our rulebook requiring that maintenance be provided in any funds Federal Government may be giving towards that end?

Mr. CLARK. Again, I believe you are talking about the freight railroads. That is where all the derailments occurred and that sort of thing. They are doing much better in that regard. The Federal Railroad Administration has stepped up its inspection effort. It is running their geometry cars over those tracks much more frequently than before. We are quite happy with the downward trend in the broken rail, the rail problems and track problems we have had.

I am sorry, the second part of your question had to do with the funding?

Mrs. NAPOLITANO. You talk about assistance in training, making it more standard, being able to have employees understand the consequences of not following some of the rules and regulations that you have.

Mr. CLARK. Under the Federal Transit Administration's proposal, as we understand it, that would be very helpful for us in terms of our being able to increase our expertise so that we can then relay to the people who are responsible for safety within their organizations, within the transit organizations what their responsibilities are and have the means, the manners and the methods to be able to enforce those standards if they are not being adhered to.

Mrs. NAPOLITANO. Thank you very much, Mr. Clark.

Thank you, Mr. Chairman.

Mr. DEFAZIO. I thank the gentlelady.

With that, I am going to turn the gavel over to Ms. Norton who will ask a final round of questions. After that, she will dismiss the panel. I just want to thank you on behalf of the Committee for your time, your testimony and your advocacy here. It will help as we build a new safety oversight system.

With that, Ms. Norton will assume the Chair.

Ms. NORTON. [Presiding] I want to thank the Chairman again for initiating this hearing before the year is out. It is not only important to us, but I can tell from the response of you and your testimony that it is equally important to you.

I would like to ask Ms. Siggerud, I notice in your report you indicate that the safety program certainly enhances safety. Everyone agrees, including the States. You also said that the FTA had very little information, had not been in this business, in other words. I was struck by a sentence in your report at page two that said, "In 2006, 13 State oversight agencies were devoting the equivalent of less than one full-time employee to oversight functions." What does that tell us about the capacity of States to quickly take on this responsibility?

Ms. SIGGERUD. Ms. Norton, I think that is an important challenge. One thing we do need to keep in mind when we look at the FTE numbers which are a concern is that many States did use contractors to supplement the work they were doing.

I think as you pointed out earlier in your questioning, there will be a somewhat elongated transition period if this legislation is enacted. There will be States that will have to enact their own legislation to provide enforcement authority to the States to be able to actually carry out the Federal mandate that will occur and there will be a lot of training and resource increases that need to happen in terms of getting States able to carry out what the Federal Government has in mind.

I do want to point out that enforcement is a very important part of that. We haven't heard a lot about what the actual enforcement mechanism would be. When we have looked at regulations in transit, for example, with regard to the Americans with Disabilities Act, generally speaking, the FTA has been reluctant to withhold funds because of the impact that has on the transit system and its riders.

Ms. NORTON. Here it would be on the hook for people they may already be paying for because essentially, these agencies are paid

for by the Federal Government. In principle, I like the idea. If, in fact, we had a system as we often do when we enact legislation, where agencies were already in the business, it would seem perhaps more realistic to me.

In principle, I think it has a lot to do how you get legislation passed here. You don't set up a whole new agency. You say to the States, all 50 of you and the territories and D.C., you set up your own agencies and we will pay for them. I don't have any problem with that as long as we have the kind of oversight that would be necessary as you may have been able to tell from my past line of questioning.

I have been in Congress long enough to ask up the road questions. The up road question to me is whether or not you think, as I indicated before, that start up and reproducing 50 different State agencies is the most efficient way to do Federal regulation?

Ms. SIGGERUD. I guess I would observe, Ms. Norton, even though we have relatively low numbers of staff devoted to this effort in States, there is something in place in every State that has a regulated transit agency at this time. It certainly is not uncommon for the Department of Transportation and other Federal agencies to go through the State agencies to enforce and oversee activities in those States.

Ms. NORTON. You usually have a Federal agency that also has power.

Ms. SIGGERUD. That is true.

Ms. NORTON. Here it looks like Federal agencies new to the area. Let me ask you, besides California, and I want to ask the California representative a question, are there agencies that given your testimony, you would consider functioning agencies that the public should trust safety to as I speak right now?

Ms. SIGGERUD. I would mention two other agencies along with the California case which is the gold standard with regard to this particular activity. The New York State agency also devotes a significant number of resources and has some authority as does the State of Massachusetts oversight agency.

Ms. NORTON. These systems have grown like topsy. That is to say, in the beginning, I don't know why someone would say you can't, I don't understand why that was put in because it was something that literally kept the States from regulating. I got no answer to why someone would say you can't, but I can understand why there was little regulation when who was doing it was New York, even D.C. was late to the notion. Of course California is the kind of State that has always been in the forefront of regulation.

We found here that the cars were not crashworthy and now questions are being raised as to whether or not even the newer cars—these were 1970s cars—are crashworthy. One of the reasons is there are no national crashworthy standards. Where would you expect those standards to come from so we wouldn't have an accident like the one we had in the District of Columbia?

Ms. SIGGERUD. I would certainly want to hear from Administrator Rogoff on this as well, but I imagine the Administration is talking about developing what we typically would call performance-based standards since the industry to be regulated here is very wide—light rail, heavy rail, incline planes, trolleys, cable cars, a

variety of different types of rail transit that would fall under this legislation.

The performance-based standards would essentially state expectations for how the system would perform. The technical standards would need to be developed on an agency by agency basis, either by the Federal Transit Agency or by the state agencies that would be empowered to do the regulating.

Ms. NORTON. let me ask you, Mr. Rogoff, the crash worthy standard and we are talking about regulation that at least sets a floor across States, wouldn't the crashworthy standards have to be centrally administered by the Federal Government?

Mr. ROGOFF. Certainly a Federal standard in that area would not only be beneficial to the individual transit agencies but for the manufacturers that need to supply the industry. They would need to know what they're building to. We would obviously envision regulating in that area if we found it to be a true safety risk that needed to be addressed soon.

The issue of the crashworthiness of the Series 1000 cars is an interesting test because it is one of these situations where we also have to be cognizant of what we are putting on the agencies. If WMATA's choice right now was to get rid of the Series 1000 cars, it would eliminate one-third of their fleet. That is not practical or, for that matter, safe if it puts all of those WMATA riders on the highway. We need to balance that against the need to do better by way of the crashworthiness of the vehicles.

Ms. NORTON. What you said is very, very important because in some prior conversation you had, discussion you had about cost benefit. Let me pose this to you and any of the panel. NTSB has been before us and perhaps knows of our concern about this.

The NTSB saw the cars that were involved in the June 22 crash as not crashworthy multiple times before. They came back to Metro with the appropriate recommendation and they did it for at least 10 years after there was crash after crash until the ultimate crash occurred. There were people who died but nothing like what we had on June 22. Each time, Metro told them the truth. Metro did not have the funds to invest in a third of its fleet, so it continued to use the trains.

Metro has a favored position because for five days of the week, Federal employees ride Metro. The Federal Government would have to close down tomorrow if Metro closed down tomorrow. It took those of us in this region half a dozen years to even get the bill authorized. Over and over there were hearings that said, this system needs a rush, a real spurt of cash for capital improvements only. Not until 2007 when the Democrats came to power did it even get authorized after several years of trying to get it done and this year after the June 22 crash, the first $150 million of $1.5 billion over ten years was appropriated.

There is not another system in the United States that has the call on Federal funds. Even though we had a life and death of the Federal Government call, we were hardly able to get the funds out and only after a deadly crash occurred did we. No State is in a position now or will be in a position for a very long time to do investments to assure that these kinds of safety first—a lot of words here are spoken—replacements occur.

At the NTSB hearing—I see we have an NTSB witness here—I pointed out to the witness that after the crash occurred, the union which operates the trains every day suggested without having any safety standards, that at least the common sense thing for the NTSB to say and they were saying it now to Metro, was at least don't put the oldest cars in front. All they did was look at the evidence and the evidence was that the people who were not in those cars survived and all of the deaths occurred in the older cars. They said, why don't you run them at the end.

Let me tell you, nobody has done any work because nobody in this country had had any requirement to do any work on crash worthiness. As a common sense standard, without any expertise but as the best it could do, that is what Metro has done.

My concern is not so much with that as a standard, my concern is that the NTSB continued to give a recommendation after each and every crash that it knew could not be met by the transit system here. Unless NTSB or some other entity, perhaps the one we are setting up, is equipped also to look at first, what you should do, then if the District of Columbia, Maryland or Virginia and California, even, which has put a lot of regulations into effect, says you can see with your bare eyes, we can't do that, isn't the only other thing to do to have the agency also equipped to offer standards pending the state of the art replacement standard or are we going to be left in the position that this region was left in, parroting what any fool could see could not be done until people were killed and the Federal Government got off of money it should have gotten off of at least half a dozen years ago.

I am interested not in parroting safety first here. I am interested in what happens when every transit system in the United States hears these standards and says, are you kidding me. What then does the safety agency say or are we going to be left as we were with NTSB saying, you heard what I said, go get the money? I would like all of you to take on that because this is what is on the minds of many of us here in this region.

As it is today, if they use every bit of this money, it will probably take four years of this ten year money just to replace these cars, what do we do with all the other capital improvements they are supposed to be doing with these cars? Do we say safety first, so spend all the money on that or is a safety board or safety standard going to be any good to us if it doesn't also give us things we must do pending the state of the art recommendation that you also must give?

Mr. Rogoff?

Mr. ROGOFF. If you recall, Ms. Norton, I was present at the hearing you had with the NTSB Chair, Debbie Hersman, at that time, and got to hear your dialog with her on this issue.

It has been the longstanding, statutory responsibility of the NTSB to put forward safety recommendations. They put forward those recommendations frankly without regard for cost. That has been the model we have set up with the independent NTSB. Those recommendations are not binding on any of the agencies, be it the FAA, the FTA.

Ms. NORTON. Nowhere in the statute does it say the only thing you can do is issue a regulation without regard to cost.

Mr. ROGOFF. That is how the NTSB model has evolved. My agency doesn't even have the authority right now to do this, but that is what the statutory proposal is about that we are discussing. In the situation of FAA, NHTSA or FMCSA where the NTSB has made the recommendation that the agency that does regulate does not find it to be cost effective, what often happens is they do not regulate in the area and the NTSB does what is called a closed unacceptable response.

One of the things I have had to face in contemplating the possibility that Congress may go forward and give us the authority to do transit regulation in this area is I will join the ranks of the other modes in periodically having a closed, unacceptable response because we will have to bring cost benefit analysis to bear on these regulations, notwithstanding the adamancy of the NTSB that this is the gold standard for safety, we may not be able to get there in a fiscally constrained, reality-based assessment.

We take our safety responsibilities very seriously but we also have to take into account the available financing to the agencies we regulate.

Ms. NORTON. Would you just close and say they don't have the money, so there is nothing we can do? We now have a case in point where that is exactly what was done. I am asking you is that the only alternative that is going to be left to us?

Mr. ROGOFF. Specifically with WMATA, we are looking at the new authorization as the path forward and we have been very adamant with WMATA in saying the Administration may be in a position to support those funds so long as they are spent on the greatest safety needs and not just go into the core system without attention to safety.

Ms. NORTON. You are not going to spend money on funds to replace cars in California, Mr. Rogoff. You really need to face this. Perhaps you don't have an answer yet, but you need to face the fact that there is not a State in the Union that can replace anything now or anytime in the near future.

I need to know whether you think in order to have a safety standard one needs to look at the state of the art and at some other thing you must at least do rather than close the case.

Mr. ROGOFF. Absolutely. As I said, when you go through cost benefit analysis, you also need to take a look at what is the reality on the ground in terms of their ability to achieve this standard. We could have lead encased railcars. There is no value in it. They would be very crash worthy but they wouldn't do much for transit and move people very quickly.

The other thing of which we have to be mindful, as I said earlier in the hearing, is 40 to 50 percent of their capital investment money is Federal money, their Federal grants. We have to be mindful of the fact that we are compensating them for half the investment. That will be essential to our thinking also and that is why we envision a regulatory regime that really comes in at the 10,000 foot level and say what is the most acute safety issue of this agency first and then have them attend to it.

Ms. NORTON. Mr. Millar.

Mr. MILLAR. Ms. Norton, as you and I have talked before, we think the general approach you are contemplating in your legisla-

tion is a good one. We have expressed to you concern that we would hope NTSB, if that is the way the Congress chooses to go, would be required to consult with outside expertise because it is a very technical area.

If I might say, a moment ago you had a conversation going here about structural safety standards of rail cars. I wanted to participate in that.

Ms. NORTON. Go ahead.

Mr. MILLAR. Within the last year in 2008, the American Society of Mechanical Engineers had issued both a safety standard for light rail vehicles as well as heavy rail vehicles. We should be aware such things exist, but you are quite right, it is a moving target. Even if we have them at one moment, we will learn things over the coming years. We will always need to be improving those, so we will always be in a situation where some of the cars in a fleet will be at a lower standard than the newest cars are. Nonetheless, I do think it is important for the Committee to realize those standards do exist. As I said in my testimony, we would hope that such standards as are existent, would be used as the basis for the new program going forward.

Ms. NORTON. Thank you for that intervention, Mr. Millar. I want to thank the APA for going ahead, even though there are no standards. Here is an outside organization without a dime in that dollar and that is the only thing I have heard that is ready to be served.

Mr. Millar was referring to the fact that I was so distressed at the testimony Mr. Rogoff remembers that the union had gone ahead and suggested something that Metro had immediately done, that to the contrary NTSB had simply continued to say go get some money which would amount to millions upon millions of dollars until we had this accident.

The piece of legislation that Mr. Millar is referring to, I am going to ask Mr. Rogoff to take a look at because I think he sees the nuance I am after and he is unwilling, apparently, to simply close the book and just be what the NTSB has been perhaps because it thought that is what it had to do.

He talks about reality-based safety standards. If an agency, Mr. Rogoff, is left with only the gold standard, where gold standards are even when they are not costly met, many of us fear we are just on to another bureaucratic set of regulations. We do believe the Federal Government and the State agencies you would authorize be developed here cannot be held responsible for saying do something that isn't safe.

We also know there are ways to make sure that the gold standard is always out there and there is the expertise, if we develop this system, to say, for example, whether or not you shouldn't put 1970s cars as the lead cars. One can say in a way to indicate this is not crash worthy, but we know what is absolutely crash prone. We know it from this accident as if we set up a case in point. That is often how they find out whether something is crash worthy, they crash something.

Guess what folks? We crashed some people in this region, so we know something about those 1970s cars. What is coming out now about the 1980s or 1990s cars gives us no comfort, but we think one would have to be blind and that is what we think the NTSB

was, blind when it kept just saying the same thing by rote, so that Metro didn't even hear them anymore. Why should they have? They didn't have a dime to move forward on.

Mr. Clark.

Mr. CLARK. A couple of thoughts. I think this is actually the opportunity—I have not seen the bill so I have not examined it in detail—I think it is an opportunity to step up safety in rail transit by, first of all, the Federal Government saying there is an expectation of a safety culture within any organization that accepts Federal money to build a rail transit system.

I don't know if this bill puts in safety performance standards that say essentially that you are not going to get anymore money for extensions unless you maintain that which you have.

Ms. NORTON. However, you did hear Ms. Siggerud say that the Federal Government seldom carries that out, they actually deny money and I will tell you, California will be up here knocking on our doors. That is a nuclear standard to say you don't get your transportation money.

Mr. CLARK. The only option that exists now is to cut off all transportation funding to the State or cut off a certain percentage of it for all projects in the State. I am talking about a much more surgical approach.

Ms. NORTON. Well, cut it off for Metro. Thanks a lot.

Mr. CLARK. That is not what I am saying. I am saying that instead of giving money for building a new extension, we will give you some money to improve your system because we know, because we are an agency paying much more attention, speaking for the FTA and not myself.

Ms. NORTON. Out of your existing funds, that also would produce a plethora of lobbying, but I can see what you are saying. You wouldn't cut off funds, but you would say don't come to us for a new extension when you can't even tell us that you are operating safely?

Mr. CLARK. Or we are going to pen this one and we think you need some more money in this direction, in the safety direction instead because we now have the expertise because we have gathered the data that we didn't have before the Federal Transit Administration was not as far into the safety game as it is now.

Ms. NORTON. I must tell you, Mr. Clark, I like financial incentives. Something approaching it until my good friends across the aisle wouldn't let us do this kind of thing anymore, but you do remember the 50 mile a hour, the hooking of transportation infrastructure funds to reduction in the miles per hour. We had enormous savings in lives as a result.

I can tell you I was on the Committee at the time, and people rushed to meet that. I don't know if they thought we would cut off all their funds. Mr. Rogoff, do you remember what we said we would do?

Mr. ROGOFF. That was under Chairman Howard of New Jersey, I think, and there was a sanction on Federal aid obligation funding, their core highway formula funds if they averaged higher than a certain amount over the speed limit. It was eventually repealed.

Ms. NORTON. It was. Would you take a look at that, by the way, because what Mr. Clark is saying about incentives that in fact are

incentives as opposed to straight out penalties which we have never been able to somehow do and is, of course, the last thing anybody would want to do. If we take a look at some of what we have already done, perhaps what Mr. Clark is speaking about, it would be helpful.

My major concern is you are going to have to say something, Mr. Rogoff. If, in fact, you believe there is something less than spending money, the ultimate expertise is going to be you because if the States say they are going to do something and it isn't up to what you think is safe, you are going to have to speak out. I don't see how this cup can pass from the Federal Government.

If in fact the state of the art, go out and spend a lot of money is not possible for the Federal Government much less for the States, then somebody is going to have to advise the States, perhaps through Mr. Millar's long expertise at the APTA, a non-governmental institution which has not failed to say spend a lot of money but also has expertise about what you should do if you don't have a lot of money.

Unless we are willing to do that, what we are doing here seems to me to be the kind of exercise that we have just seen fail when it came to the District of Columbia.

Mr. ROGOFF. If I could make two quick points. First, as it relates to voluntary standards along the lines of what Mr. Millar was talking about, you will find in the legislation that we submitted yesterday evening a specific mention of our taking a look at voluntary standards as a first step.

Ms. NORTON. What do you mean by voluntary standards?

Mr. ROGOFF. Mr. Millar talked about some standards that have been developed. For example, he specifically spoke on the area of crash worthiness of vehicles, but there are other voluntary standards that both APTA and I believe the Society of Mechanical Engineers have come up with. Frankly, roughly half of the voluntary standard development at APTA is funded by the FTA.

Ms. NORTON. I consider when the FTA will fund that, it means these are the standards the FTA accepted.

Mr. ROGOFF. Importantly, these are voluntary standards and we need to take a fresh look at them as a regulator. We don't necessarily want to regulate in each one of those areas, especially where there is widespread industry compliance, but we also have to take a fresh look at them. There is a difference between a voluntary standard and a Federal regulation. We have to be mindful of that.

The other point I would make along the lines of your thinking, Ms. Norton, is that we are trying to give the States every tool, financial and otherwise, to boost their capability to be a fully trained and adequate partner. We also reserve the right in the same legislation to find them inadequate and federalize it where we need to.

Ms. NORTON. The legislation is very skillfully drawn in that way. Let me suggest to you, I mentioned in my earlier questioning how ill prepared I believe the States were to accept this responsibility. No one has told them to do, no one has given them incentives to do it and they have often decided not to spend their money there. Some of them would rather spend it straight on the system than in oversight of the system.

It does seem to me in light of the talk here about incentives and penalties that State legislatures are going to slow walk you and dare you.

Mr. ROGOFF. They can only slow walk us so long until we don't have them as a State partner.

Ms. NORTON. I tell you they can slow you this way. They can slow walk you if you don't give them a time frame. You have to find a reasonable time frame. Nobody has legislation at the State level of the quality of which you are speaking. You have to give them a time frame for enacting the appropriate legislation, especially since you are funding these agencies. You need basically a time frame. States know how to start up agencies. You need a time frame. We know exactly when States go into session. Let me tell you about time frames. Because we waited it out so long, the three States, Maryland, Virginia and the District of Columbia could not get this money unless they put up an equivalent amount of money. We had no dedicated system, so that means they had to come up with a system where if we were putting $150 million every year for ten, you have to also.

The District jumped in to do it first. It took Virginia and Maryland some time to do it and only when they saw we really were serious near the very end of this period did they finally come in with their funds. Since you are paying for it, all you need to do is say the time frame is, you would know better than I, two legislative sessions to get it done and the start up time frame should be less than that because States, it seems to me, know how to start up an agency or else we are going to be waiting a very long time for anything to happen.

Mr. ROGOFF. Ms. Norton, the legislation does have an explicit three year time frame in the bill.

Ms. NORTON. For the whole thing to be in place?

Mr. ROGOFF. At the end of three years, we would begin making judgments as to whether the State system is adequate. In that interim period, we would seek to try and boost their strength through Federal funding.

Ms. NORTON. I think that is excellent.

Mr. Chipkevich, it is you from the NTSB. You heard me speak about the NTSB. I didn't really mean to criticize the NTSB as such. I think you read your mandate as being you had better tell these people what they should do. You don't have any overall standards either. You go in, you study and as a result of that study, you come out with standards. You don't have crash worthy standards unless you are adopting what Mr. Millar does. I wasn't suggesting that you should somehow have had a whole set of steps. You haven't even been an enforcement agency. I am not sure what the NTSB is. It is almost cruel and unusual punishment to send some folks who act like cops and cannot arrest somebody, if you will forgive the analogy.

Mr. Chipkevich, that is the position you were put in. You didn't have any basis to say what crash worthy standards were, you had no basis to tell the agencies what to do and yet you had to go in there and act like you were a copy when everyone knew you weren't. You were ignored, at least in this region. Do you have any comments on that characterization?

Mr. CHIPKEVICH. I would note that the NTSB is charged with the responsibility to investigate accidents independently, to look at the cause of the accident and to look for recommendations to prevent future accidents.

Ms. NORTON. You do a very good job of that.

Mr. CHIPKEVICH. Thank you.

From our accident investigation, we found areas where we think improvements are needed such as establishing Federal standards for crashworthiness of cars so that cars built in the future will perform better in accidents; for event recorders to be installed on cars so not only the NTSB but transit agencies can understand the circumstances of an accident better and look for areas in which to make improvements; and for track safety improvements and standards. As we saw in the Chicago transit accident, there was a lack of adequate inspection of the track and oversight to make sure deficiencies were repaired.

Improvements need to be made in the area of fatigue management, by making sure there are fatigue management programs across the Nation at the different transit agencies to be sure that the operators of the trains have adequate rest. Also, we have seen collisions at other locations in the country where operators failed to comply with operating rules. We felt there needs to be adequate oversight to be sure that there are good operating standards and requirements in place at the transit agencies and that there is adequate oversight to be sure train operators are complying with those standards.

We found that there are big differences between the various locations in the country in terms of State oversight to be sure that these types of safety issues are being addressed. We support legislation for the FTA to have authority and to also allow the States to do those inspections where they have the capability to be sure that certain standards are met.

Ms. NORTON. I must say I want to make clear in characterizing the position that the NTSB was left in, I certainly don't mean to imply that an investigative agency ought to be an enforcement agency. That has to be, just as it is today, the agency that looks at the accident has a look at the accident, period. Who enforces it is an entirely different matter.

Mr. Chipkevich, you have to go from airlines to buses, to subways. Have you had occasion in any of your work to look at the voluntary standards such as those Mr. Millar spoke about? Have they been useful to you?

Mr. CHIPKEVICH. Voluntary standards that are developed within the industry can be good standards, but the problem is they can't be enforced by either a State or a Federal agency. Therefore, if it is really a good standard, those standards can be incorporated by reference into Federal regulations or State regulations. It is important. We think there are some good standards out there and they can be incorporated--then there can be actual use of those standards.

Ms. NORTON. Mr. Clark, did you have something you wanted to say before we close?

Mr. CLARK. I just wanted to say that we do incorporate into our regulations APTA standards and other standards when we feel they are appropriate.

Ms. NORTON. I think that is very important to understand. It is not as if the States have been left out there with no reference. Frankly, Mr. Millar, without what you have done and a number of others, I am not sure what the States would have done. No one has the capacity on his own to dream up what would be the best thing to do. That is what the Federal Government is here for.

I want to thank all of you. You certainly have helped me understand how to go. I can't thank the Administration enough. We were left here without any sense of anything except we had to move and that is why this region introduced a bill that would begin to regulate.

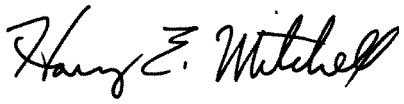
By far, the best way to do it is through an Administration that has the purview over the entire country that can realistically put before us legislation that can be passed. I much appreciate what the Administration has done. I must say for these witnesses, you have immensely educated this Member and I believe all of those who were here.

Finally, I want to thank the Chairman of this Subcommittee. We are about to go out of session if the Senate would let us, but the Chairman of this Subcommittee saw this matter as of such importance to the Nation that even before we go out of session, he has held this hearing which I think helps to speed along what the Administration is doing.

Thank you again for your testimony today.

The Committee is adjourned.

[Whereupon, at 12:55 p.m., the Subcommittee was adjourned.]



Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Highways and Transit
12/8/09

Thank you, Mr. Chairman.

Today we will examine a critical component of the Committee's efforts to move forward with a Surface Transportation Authorization Act—improving transportation safety.

Specifically, we will focus on the safety of public transit systems.

While rail transit, such as subways and light rail, remains one of the safest modes of transportation, as public transportation use continues to grow, it is critical to ensure that passengers' safety is a top priority.

In December 2008, light rail began operating in the Phoenix metropolitan area. According to Valley Metro, more than 34,000 passengers on weekdays, approximately 28,000 passengers on Saturdays, and over 18,800 passengers on Sunday utilize the new light rail system. Ridership has surpassed projections during the project planning by over 30%.

I look forward to hearing more from Secretary LaHood and our other witnesses about what we can do to ensure passenger safety on the light rail in the Phoenix metro area and on the public transit systems across the nation.

At this time, I yield back.

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Bob Chipkevich, Director
Office of Railroad, Pipeline and
Hazardous Materials Investigations

Testimony of Bob Chipkevich
National Transportation Safety Board
Before the
U.S. House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
Hearing on Public Transit Safety: Examining the Federal Role
Washington, D.C.
December 8, 2009

Good afternoon, Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee. Thank you for the opportunity to appear before you today on behalf of the National Transportation Safety Board (NTSB) regarding the safety of our nation's rail transit systems.

Today, I will first discuss the NTSB's longstanding concerns regarding the limited safety oversight of rail transit systems, and then I will highlight several specific safety issues that we have identified through our accident investigations. These safety issues include the need for improvements in the crashworthiness of rail transit cars, the lack of on-board data event recorders on rail transit cars, inadequate testing programs to ensure compliance with transit company operating rules, and deteriorated track conditions.

In the past 10 years alone, the NTSB has investigated 23 serious rail transit accidents. We have made numerous safety recommendations to individual rail transit systems and oversight agencies over the years, and we have found that safety oversight of rail transit systems varies greatly in effectiveness and scope.

Rail Transit Safety Oversight

The Federal Transit Administration (FTA) has limited direct safety oversight authority over rail transit systems. Instead, the FTA must rely on state rail transit safety oversight agencies to determine if rail transit systems have adequate safety programs. In a 1971 special study, the NTSB urged the Urban Mass Transportation Administration (UMTA), now the FTA, to require that all rail transit applications seeking Federal grants include a description of a safety plan for a proposed project. However, a safety study later issued by the NTSB in 1991 concluded that although available information suggested that transportation by rail transit was generally safe, external oversight was still needed because of the potential for catastrophic accidents. The NTSB also found that UMTA's monitoring of state safety oversight programs was limited.

On December 18, 1991, considering the NTSB's safety study and recommendations, Congress enacted the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Public Law 102-240), which added Section 289 to the Federal Transit Act. The ISTEA directed the FTA to establish a state safety oversight program for rail fixed guideway public transportation systems that are not subject to regulation by the Federal Railroad Administration.

The FTA has advised the NTSB that the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Public Law 109-59) allows the FTA to conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed under this chapter to establish the nature and extent of the condition and how to eliminate, mitigate or correct it. However, the FTA also advised the NTSB that it never interpreted this statute "as giving the agency authority to conduct a nationwide investigation into transit facilities or equipment or regulate those facilities or equipment through uniform standards for the entire industry of manufacturers and transit operators."

The FTA, as recently as last year, advised the NTSB that

> "It is the States – not FTA – that are responsible to require, review, approve, and monitor each rail transit agency's plan; investigate hazardous conditions and accidents at rail transit systems; and require action to correct or eliminate those conditions. FTA's role and responsibility is solely one of monitoring the many state agencies that exercise hands-on oversight of rail transit operations, and providing technical assistance to those state agencies."

Title 49 *United States Code* section 5330, and 49 *Code of Federal Regulations* (CFR) Part 659 require each state to designate an oversight agency to conduct safety oversight of its rail transit system. At least every 3 years, the state oversight agency must conduct an on-site review of the rail transit agency's system safety program plan and issue a report containing findings and recommendations resulting from that review. Rail transit agencies must then provide the state oversight agencies with verification that corrective actions have been implemented or that corrective action plans have been prepared to address deficient findings from safety reviews.

However, in our investigation of rail transit accidents, we have continued to find deficiencies in rail transit system safety programs and inadequate safety oversight. For example, following a Chicago Transit Authority (CTA) train derailment in a subway on July 11, 2006, the NTSB found that the CTA did not have an effective track inspection and maintenance program. After derailing, a passenger transit car hit a 600-volt direct current third rail, generating smoke. Most passengers walked to an emergency exit stairway about 350 feet in front of the train, and up 8 flights of stairs that led to the street level. About 1,000 passengers were on the train, and 152 persons were treated and transported from the scene. The NTSB determined that the probable cause of the subway accident was the CTA's ineffective management and oversight of its track inspection and maintenance program and its system safety program, which resulted in unsafe track conditions. Contributing to the accident was the state oversight agency's failure to require that action be taken by the CTA to correct unsafe track conditions and the FTA's ineffective oversight of the state oversight agency.

As a result of the safety oversight issues raised by the 2006 CTA accident, the NTSB recommended that the FTA

> Modify your program to ensure that State safety oversight agencies take action to prompt rail transit agencies to correct all safety deficiencies that are identified as a result of oversight inspections and safety reviews, regardless of whether those

deficiencies are labeled as "findings," "observations," or some other term. (R-07-009); classified Open—Acceptable Response.

Develop and implement an action plan, including provisions for technical and financial resources as necessary, to enhance the effectiveness of State safety oversight programs to identify safety deficiencies and to ensure that those deficiencies are corrected. (R-07-010); classified Open—Acceptable Response.

In response to the recommendations, the FTA has informed the NTSB that it is developing a clarification letter regarding the scope of the 3-year safety reviews, the activities to be performed, and the process for issuing and tracking findings requiring corrective action. The FTA is attempting to incorporate elements of the clarification letter into 49 CFR Part 659, and it is developing a "Safety Auditor Training Program" to assist state safety oversight agencies in carrying out the required safety audits.

In the past, the NTSB had made recommendations that called for regulatory action. However, the FTA has repeatedly informed the NTSB that it cannot exceed the authorities granted by Congress, and rather than seek additional regulatory authority it has addressed safety issues by developing various initiatives, training, and guidelines designed to promote voluntary safety improvements by rail transit agencies and state governments. The FTA has pointed out that unlike any other agency in the DOT, the FTA's predecessor, the UMTA, arose from the General Welfare Clause of the Constitution and its mission was strictly one of providing federal financial assistance to maintain and develop municipal transit systems. Further, the FTA has stated that in the few instances in which it has issued rules that touch on safety, it has done so only at the explicit direction of Congress. The NTSB notes that Secretary LaHood and Administrator Rogoff are now seeking additional authority.

A 2006 U.S. Government Accountability Office (GAO) report on the FTA State Safety Oversight program also found problems with FTA's oversight of state programs. The report recognized that the FTA faces some challenges in managing and implementing its program because officials from 16 of the 24 state system safety oversight agencies said that they do not have enough qualified staff to manage their programs. In addition, officials from both transit and oversight agencies stated that there was a need for additional oversight and technical training to ensure uniformity among the various state programs.

Survival Factors and Crashworthiness

As a part of its accident investigation process, the NTSB examines factors that could have mitigated the consequences of an accident and makes safety recommendations to reduce the likelihood of deaths and injuries if subsequent accidents should occur. Among the potentially mitigating factors investigated is the crashworthiness of the transportation vehicle, that is, the vehicle's ability to withstand the dynamic forces of the accident so as to protect the vehicle operators and passengers. Another factor examined is the emergency response to the accident, for example, the emergency responders' ability to rapidly access, evacuate, and treat the vehicle occupants. Collectively, these factors are referred to as "survival factors" because they all affect the survivability of a transportation accident.

The NTSB's investigation of a 2004 Washington Metropolitan Area Transit Authority (WMATA) rail transit accident examined two significant survival factors issues. Two Metrorail trains collided in the Woodley Park-Zoo/Adams Morgan Station in Washington, D.C. The operator of one train, while stopped on a steep incline between stations, allowed it to roll backward into the station where it struck at 36 mph a standing train that was off-loading passengers. The lead car of the standing train telescoped into the rear car of the striking train. The rear car sustained a loss of about 34 feet of the passenger occupant volume (survival space), which is almost half the length of the passenger compartment. Fortunately, the striking train was not in passenger service at the time of the accident. When the emergency responders sought to confirm that the last car of the striking train was empty, they encountered extreme difficulty in gaining access to the car. The emergency exit door was damaged and could not be opened. The windows were not designed to be easily removed, and the rubber grommets holding the windows in place were brittle and kept tearing as the responders tried to remove them. It was more than an hour after the accident before the emergency responders gained access to the rear car and verified that it was unoccupied.

Although the tragic collision last June between two WMATA passenger trains near the Fort Totten station is still under investigation, staff is examining the same survival factors issues identified in the Woodley Park accident—car telescoping and emergency responder access. During the Fort Totten collision, the lead car of the striking train telescoped and overrode the rear car of the standing train by about 50 feet. The NTSB plans to hold a public hearing on this accident on February 23-24, during which crashworthiness will be among the issues explored.

Currently, the FTA has no requirements that address structural crashworthiness provisions for passenger cars operating in transit service. Nor does the FTA have any requirements that require rail transit cars to be equipped with means for safe and rapid emergency responder entry and passenger evacuation. The NTSB had previously recommended that the FTA

> Develop transit railcar design standards to provide adequate means for safe and rapid emergency responder entry and passenger evacuation. (R-06-5); currently classified Open—Acceptable Response.
>
> Develop minimum crashworthiness standards to prevent the telescoping of transit railcars in collisions and establish a timetable for removing equipment that cannot be modified to meet the new standards. (R-06-6); currently classified Open—Acceptable Response.

In the FTA's response to the recommendations, it stated that it does not have the authority to establish vehicle design or equipment standards or to require the removal of non-compliant equipment from service. The FTA went on to state that it remained aware of the importance of setting voluntary vehicle design standards and is funding the development of consensus-based standards.

In the FTA's most recent response to the NTSB, dated February 14, 2008, it reported working with the American Public Transportation Association (APTA) and the American Society of Mechanical Engineers (ASME) to develop new technical standards for new light- and

heavy-rail vehicles. It is also researching and developing crash energy management specifications for overhauling the front ends of existing light-rail vehicles. The FTA stated that it expects to issue a final report of this project in 2009.

The FTA also responded that it was sponsoring the development of a rail transit standard titled "Emergency Features for Rail Transit Cars." The project will develop consensus-based standards to recommend emergency features for inclusion on light- and heavy-rail transit vehicles.

The NTSB notes that although industry standards can provide guidance, standards are not enforceable as are regulations.

Event Recorders

The NTSB has investigated several accidents in which transit cars did not have event recorders, and insufficient information was available to provide the basis for a thorough analysis of the actions of the operators and the performance of the trains before the collisions.

Although the investigation is ongoing, the NTSB is concerned that the striking train in the Fort Totten station Metrorail accident was not equipped with event recorders that could have recorded numerous parameters on the operation of the train, including the speed commands received from the train control system.

The NTSB has long advocated the installation of event recorders on rail transit vehicles. The lack of event recorders was a significant safety issue discussed in the NTSB's special investigation report issued on September 5, 2002. Within a 2-month period in 2001, the Chicago Transit Authority (CTA) experienced two similar rear-end collisions involving CTA rapid transit trains. The first accident occurred on June 17, 2001, when a CTA train collided with a standing CTA train near Addison Street Station. The second accident occurred on August 3, 2001, when a CTA train collided with a standing CTA train on elevated tracks near Hill Street. The NTSB concluded that because the transit cars involved in these accidents either did not have event recorders or had event recorders with only limited data-recording capability, insufficient information was available to provide the basis for a thorough analysis of the actions of the operators and the performance of the trains before the collisions.

In its special investigation report, NTSB recommended that the FTA

> Require that new or rehabilitated vehicles funded by Federal Transit Administration grants be equipped with event recorders meeting Institute of Electrical and Electronics Engineers Standard 1482.1 for rail transit vehicle event recorders. (R-02-19); Closed—Unacceptable Action.

There continues to be no federal regulation requiring rail transit vehicles to be equipped with event recorders, and most vehicles currently do not have them installed. The FTA reported to the NTSB in March 2007 that a survey of the 37 rail transit agencies in FTA's State Safety Oversight (SSO) program showed that only 26 percent of the nationwide vehicle fleet of 12,591 vehicles had event data recorders. Although the FTA reported that most new and rehabilitated

vehicles are receiving recorders, the FTA estimated that it will not be until 2012 that more than half of the nation's rail transit vehicle fleet is equipped with event data recorders.

In its response to Safety Recommendation R-02-19, the FTA stated that it cannot regulate equipment or operations unless Congress has given the agency explicit authority to issue regulations. Based on the FTA's perceived current limitations of its authority and its subsequent lack of action to address this recommendation, Safety Recommendation R-02-19 was classified Closed—Unacceptable Action by the NTSB on August 29, 2008.

Operating Rules Compliance

Another issue that was addressed in the NTSB's special investigation report on September 5, 2002, was the adequacy of the CTA's programs for ensuring compliance with its operating rules. Within a 2-month period in 2001, the CTA had experienced two similar rear-end collisions involving its rapid transit trains. Both accidents were preceded by the train operators having failed to comply with operating rules designed to prevent collisions.

The investigation of the first CTA accident, which occurred June 17, 2001, revealed that the train's operator was trained and qualified in 3 safety-sensitive positions; operator, flagman, and switchman. She had failed the operator and flagman training programs twice and had qualified on the third try only after receiving remedial training. She had failed switchman training once and qualified on the second try after receiving remedial training. The CTA's records also showed that she had violated several safety rules during her 12-month career as an operator, including failing to stop at stop signals. The CTA's response was to refer her for additional training, in which she was given multiple opportunities to pass. The NTSB concluded that the CTA's management process for identifying and addressing operators who did not meet safety performance standards was not effective in addressing the repeated problems that the operator was experiencing.

An investigation of the second CTA accident, which occurred August 3, 2001, revealed that the train's operator repeatedly proceeded after stops without waiting for the train ahead to clear and without contacting the operations control center, a clear violation of a CTA operating rule. He said that he knew a Purple Line train was close ahead before the accident but it was common practice for operators to proceed from a stop without either waiting for a proceed signal or calling for authorization from the operations control center. Because the operator consciously violated the rule, the safety of further train movements relied entirely on his alertness and his ability to stop short of another train. The NTSB concluded that had the operator complied with the CTA operating rule and waited for his stop signal to clear before proceeding, the accident would not have occurred.

The NTSB concluded that the CTA's program for the enforcement of operating rules was inadequate in design and execution, and consequently, rules violations, such as those related to these two accidents, were not uncommon. The NTSB also found that the CTA's internal safety audit was not effective in identifying the inadequacies in the rules compliance program. The NTSB recommended that the FTA

> Adopt the American Public Transportation Association manual that contains updated language on auditing the effectiveness of operating rules compliance programs, and simultaneously modify 49 Code of Federal Regulations Part 659 so that the Part always references the current American Public Transportation Association manual. (R-02-18); classified Closed—Acceptable Alternate Action.

A final rule for 49 CFR Part 659 "Rail Fixed Guideway Systems, State Safety Oversight" was issued by the FTA on April 29, 2005, revising regulations for safety and security programs. The rule stipulated that rail transit agencies must develop and implement a written system safety program plan, and any subsequent revisions, to the oversight agency for review and approval. Section 659.19(m) now requires a description of the process used by rail transit agencies to develop, maintain, and ensure compliance with rules and procedures having a safety impact, including "techniques used to assess the implementation of operating and maintenance rules and procedures by employees, such as performance testing."

Track Safety and Oversight

The NTSB's investigation of the July 11, 2006 CTA subway accident found serious track problems that were not documented in CTA track inspection records. There were hundreds of missing or incomplete track inspection records, and some records showed track defects without parallel records showing that repairs were made. The investigation found deficiencies in the track inspection training program, and track inspectors for the area of the subway where the accident occurred did not have sufficient time to inspect all of their assigned territory twice a week as prescribed.

The NTSB determined that the CTA did not establish an effective track inspection and maintenance program, and unsafe track conditions developed that were not corrected. The tie plates and fastener system failed to maintain the track gage because of the effects of corrosion and degraded half-ties. Abrasion on the tie plates, broken lag screws, elongated fastener holes, and poor drainage in the area of the derailment were all readily observable and should have been documented during walking inspections.

At least every 3 years, the state oversight agency was required to conduct an on-site review of the rail transit agency's implementation of its system safety program plan and system security plan, and issue a triennial report containing findings and recommendations resulting from that review. However, the NTSB found that the state agency failed to follow up with the CTA and prompt action to correct track safety deficiencies that were identified in the triennial report. The NTSB also found that the FTA's oversight of the state's rail safety oversight program was also inadequate and failed to prompt actions needed to correct track safety deficiencies on the CTA's rail transit system.

The NTSB issued multiple safety recommendations to address the track safety problems identified in its investigation of the July 11, 2006, CTA subway accident including the following safety recommendation to the FTA:

> Schedule the Chicago Transit Authority as a priority for receiving the maintenance oversight workshop and the training course to be developed for track

> inspectors and supervisors that will address the unique demands of track inspection in the rail transit environment. (R-07-11); currently classified Open—Acceptable Response.

The NTSB also issued the following safety recommendations to the Regional Transportation Authority, the state safety oversight agency:

> Determine if track safety deficiencies on the Chicago Transit Authority's Dearborn Subway in the area of the derailment have been adequately repaired. (R-07-14); classified Closed—Acceptable Action.

> Strengthen your followup action on Chicago Transit Authority system safety reviews to ensure that the Chicago Transit Authority corrects all identified safety deficiencies, regardless of whether those deficiencies are labeled as "findings," "observations," or some other term. (R-07-15); classified Closed—Acceptable Action.

In response to these safety recommendations, the Regional Transportation Authority advised the NTSB that it had verified that track deficiencies were corrected at the accident site, and that it had enhanced its safety audit program by requiring the CTA to provide a plan for correcting deficiencies identified in future audits and then tracking those actions.

The NTSB remains concerned about the limited safety oversight of rail transit systems across the country.

This concludes my prepared testimony, and I would be happy to answer questions at the appropriate time.

Testimony of Richard W. Clark
Before the
United States House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
Public Transit Safety: Examining the Federal Role
December 8, 2009

Chairman Oberstar and members of the Committee, my name is Richard W. Clark. I am the Director of the Consumer Protection and Safety Division of the California Public Utilities Commission. I am pleased to have the opportunity today to come before you and discuss rail transit safety and the proposed restructuring of the federal and state regulatory effort.

This testimony has been prepared by the Consumer Protection and Safety Division. The Division has the responsibility for the regulatory oversight of rail transit safety in California. This testimony will describe the Commission's program, comment on the proposed *Public Transportation Safety Program Act of 2009*, and discuss some examples of California's success in exercising it safety jurisdiction over rail transit and fixed guideway systems.

The California Rail Transit Safety Program

The California Public Utilities Commission (CPUC) oversees the safety and security of all rail transit systems within California. There are twelve rail transit systems under the CPUC's jurisdiction, including light rail systems, heavy rail transit, funiculars, automatic people movers, and trolleys. Collectively these systems account for millions of passenger trips every year. The CPUC is responsible for investigating all reportable accidents, as well as conducting regular audits and inspections of rail transit systems. Additionally, at any given time, rail transit agencies have dozens of new projects, extensions, and retrofits in progress, all of which must pass the rigorous CPUC safety certification process before carrying passengers.

Through the California Public Utilities Code, California state law gives the CPUC jurisdiction over rail transit safety. For example, Public Utilities Code (PU Code) section 99152 states:

> Any public transit guideway planned, acquired, or constructed, on or after January 1, 1979, is subject to regulations of the Public Utilities Commission relating to safety appliances and procedures. The commission shall inspect all work done on those guideways and may make further additions or changes necessary for the purpose of safety to employees and the general public. The commission shall develop an oversight program employing safety planning criteria, guidelines, safety standards, and safety procedures to be met by operators in the design, construction, and

> operation of those guideways. Existing industry standards shall be used where applicable. The commission shall enforce the provisions of this section.

Other code sections provide this authority individually to rail transit agencies in operation before January 1, 1979. Additionally, PU Code Section 778 provides authority over rail transit highway-road crossings:

> The commission shall adopt rules and regulations, which shall become effective on July 1, 1977, relating to safety appliances and procedures for rail transit services operated at grade and in vehicular traffic. The rules and regulations shall include, but not be limited to, provisions on grade crossing protection devices, headways, and maximum operating speeds with respect to the speed and volume of vehicular traffic within which the transit service is operated. The commission shall submit the proposed rules and regulations to the Legislature not later than April 1, 1977.

The Commission also has state level accident investigation responsibilities. Transit accidents directly or indirectly related to maintenance or operation activities resulting in:

- loss of life,
- or injury to person or property,
- and which requires, in the judgment of the Commission, an investigation,

may result in Commission order(s) or recommendation(s) it deems appropriate. Further, every transit agency shall prepare and submit an accident report to the Commission under rules prescribed by the Commission. Finally, no order or recommendation of the Commission, nor any accident report received by the Commission, shall be admitted as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property. (See Cal. Pub. Util. Code § 315.)

The CPUC has quasi-legislative rulemaking authority, and uses it to develop General Orders. CPUC General Orders are an integral part of the CPUC oversight program, mandating minimum requirements, are specified in the following:

- General Order 143-B, Safety Rules and Regulations Governing Light Transit, original implementation date June 27, 1978.
- General Order 127, Rules for Maintenance and Operation of Automatic Train Control Systems—Rapid Transit Systems, original implementation date August 15, 1967.
- General Order 75-C, Rules for Grade Crossing Equipment, original implementation February 14, 1973.
- General Order 88-B, Rules for Altering Public Highway Rail Crossings, original implementation February 14, 1973.
- General Order 95, Regulations Governing the Rules for Overhead Electric Line Construction (e.g. Catenary System), original implementation July 1, 1942.
- General Order 26-D, Regulations Governing Clearance on Railroads and Street Railroads with Reference to Side and Overhead Structures, Parallel tracks,

Crossings, and Public Roads, Highways, and Streets, original implementation date February 1, 1948. This General Order applies to joint-usage or shared track railroads such as San Diego trolley, Inc. and other rail transit systems not specifically excluded from its requirements.

- General Order 164-D, Rules and Regulations Governing State Safety Oversight of Fixed Guideway Systems, original implementation September 27, 1996.

Subsequent to the adoption of Section 3029 of the Intermodal Surface Transportation efficiency Act (ISTEA) of 1991, which requires each state to develop and implement safety plans for all fixed guideway transit systems, Governor Pete Wilson designated the CPUC on October 13, 1992 as the agency responsible for ensuring California compliance with that Section.

On December 29, 1995, the Federal Transit Administration (FTA) issued 49 Code of Federal Regulations Part 659, Rail Fixed Guideway Systems: State Safety Oversight. The Rule required States to oversee the safety of rail fixed guideway systems through a designated oversight agency. The Governor's designation of the CPUC fulfilled this requirement. This rule was revised by the Federal Transit Administration, effective May 1, 2006.

The CPUC has both state and federal obligations, and the authority to enforce both state and federal law in the pursuit of rail transit safety.

Rail Transit Safety Section

The CPUC currently has the following 20.5 person-year positions dedicated to the rail transit safety program:

- One half of a Program Manager's time.
- One Program and Project Supervisor.
- Two Senior Utilities Engineer Supervisors.
- One Senior Transportation Operators Supervisor.
- One Senior Utilities Engineer Specialist.
- One Regulatory Analyst.
- Three Railroad Inspectors
- Eleven Utilities Engineers

Rail Transit Safety staff performs the following functions:

- Conducts triennial safety and security reviews of the rail transit systems, performing four audits each year, which covers the 12 agencies in the three-year period.
- Approves rail transit System Safety Program Plans.
- Provides safety certification for new rail transit agency systems or new extensions on existing agency systems.

- Audits System Security Plans.
- Performs accident investigations.
- Writes and publishes accident investigation reports for the more severe accidents.
- Initiates and/or supports CPUC rule promulgation. The Commission currently is considering new regulations that the staff has drafted to ban personal electronic device use by safety-sensitive rail transit personnel. The Commission currently is also formally considering "roadway worker protection" rules for rail transit wayside employees.
- Initiates and/or supports formal Commission safety investigations. Past examples include:
    - Bay Area Rapid Transit (BART) Tunnel Fire – 1979
    - BART Derailment at A05 Interlocking – December 17, 1992, CPUC Case 9867
    - San Francisco Municipal Transportation Authority (MUNI) State Safety Oversight
    - San Francisco International Airport AirTrain Collision at Storage Yard – August 4, 2002
    - San Francisco International Airport AirTrain System Safety Program Plan and Regulatory Authority – Investigation 02-07-014
- Conducts routine inspections of track, equipment, and signal and train control systems.
- Conducts operations compliance observations.
- Participates in rail transit agency internal safety audits.
- Community outreach through staff participation in Operation Lifesaver, the national rail safety education organization.

Proposed *Public Transportation Safety Program Act of 2009*

The proposed *Public Transportation Safety Program Act of 2009* will change the federal-state relationship regarding rail transit safety oversight and regulation. From the material provided us for this hearing, we understand that the proposed new regulatory structure would:

- Eliminate the statutory prohibition against the imposition of safety standards that has been in law since 1965.
- Require the Secretary of Transportation to establish and enforce minimum federal safety standards through the Federal Transit Administration (FTA) for rail transit systems not already regulated by the Federal Railroad Administration. In so doing,

the Act also provides the Secretary the option to establish a safety program for public transportation bus systems.

- Give each state a choice of assuming federal enforcement authority or "opting out" with the FTA taking the enforcement role for states that "opt out."
- Require states that choose to assume federal enforcement authority to demonstrate that they have an adequate number of fully-trained staff to enforce federal regulations, have been granted enforcement authority under state law, and have sufficient financial independence from any transit systems under their purview.
- Provide federal assistance to participating states to cover the salary and benefit costs, as well as the training, certification and travel costs of the state agency in overseeing and enforcing federal transit safety regulations.
- Authorize state agencies participating in federal enforcement to 1) conduct inspections, investigations, audits, examinations, and testing of a public transportation system's equipment, facilities, rolling stock, operations, and persons engaged in the business of a public transportation system, 2) issue reports, subpoenas, and discovery requests, and 3) conduct research, development, testing and training.
- Create nationally uniform federal regulations, considering existing industry standards to the extent practicable.
- Allow states to establish more stringent safety standards than the federal standard.

The CPUC's Consumer Protection and Safety Division supports the administration's proposed regulatory initiative. We understand that the intent of the proposed Public Transportation Safety Program Act of 2009 (Act) is to preserve the well-functioning state rail transit safety programs' ability to continue with full authority to raise the level of public rail transit safety while ensuring consistency in safety oversight quality in all states.

The current proposal to create national rail transit safety standards has many similarities to the federal initiative in the late 1960's on the nation's railroads. The Federal Railroad Safety Act of 1970 (FRSA) created national standards for freight and passenger railroads, and was passed under similar conditions on the railroad that we find described today in the rail transit safety proposal. The CPUC has 39 years of experience with regulating railroad safety in concert with the Federal Railroad Administration (FRA) under FRSA. Originally created in 1879 as the California Railroad Commission, in 1911 the Commission began regulating railroad safety. California experienced the FRA regulatory scheme introduced in 1970 as a clear benefit to safety, but has also experienced some serious pitfalls as well.

California's greatest concern with railroad safety regulation under FRSA has been in the area of federal preemption. Fortunately, in contrast to FRSA, the proposed Act is being presented as <u>not</u> preempting state safety regulation above the minimum levels set by the Act. Whereas FRSA has thwarted attempts by the states to regulate safety areas on railroads, we understand that the Act as proposed will not preempt states from imposing their own regulations as long as they are at least as strict as the federal regulations.

Staff's view in general is that Federal-state relationship should be based on the relative strengths of the two levels of government.

- Federal government has the advantage of an economy of scale for such things as research, equipment testing, and promulgation of regulations that would be applicable across all properties such as accident reporting, equipment crashworthiness, inspector training, and system-safety program plans.
- State government has the advantage of being "on the ground," more familiar with the systems and their different situations, environments, operating conditions – such as operating rules, equipment, track, geography, traffic interface, and local transportation infrastructure.
- State government has the advantage of establishing regulatory compliance relationships with local systems through inspections and compliance follow-up.
- Federal government has the advantage of being able to set a minimum floor of safety requirements that the less safe state systems must follow when the local government does not have the will, authority, or resources to institute sufficient safety requirements.
- State government has the advantage of being able to specify the level of safety that the affected population desires and funds above any minimum requirements.
- State government has the advantage of trying out new regulatory innovations on a test scale.

State governments should be able to set safety requirements that exceed any federal safety requirements, either in the level of specification of a certain type of regulation or the level of resultant safety through a different type of regulation, for example, a performance standard versus an explicit standard.

The FRA-state participation model has worked well in California for promoting freight and passenger railroad safety, and would be a good model for the FTA to adopt - <u>if</u> the lessons learned over the years since the Federal Railroad Safety Act of 1970 were acknowledged and adopted:

- A national <u>minimum</u> floor of regulations has been beneficial.
- The prohibition against state regulatory promulgation has been detrimental. States were expressly preempted from promulgating regulations more strict than the minimum federal regulations where the subject matter was covered, and court precedents have severely restricted the interpretation of "covered subject matter." For example, the 5th Circuit Court of Appeals decision on a Texas Railroad Commission walkway regulation ruled that a walkway surface adjacent to the track was preempted because the subject matter was covered by the federal regulations regarding track

structures.[1] This ruling did not recognize that providing a safe walkway surface for brakemen and switchmen served a different safety purpose than did the federal purpose of creating a roadbed to support trains. In contrast, the 9th Circuit Court of Appeals recognized that similar California walkway surface standards were not only important for employee safety separate from train support, but that the employee walkways and track structure support were different subject matters that had coexisted independently for over 20 years.[2]

- Federal regulations were often set at a "lowest common denominator" level of safety, bringing up the safety level for lagging states and systems and dropping the safety level for achieving states and systems.
- The prohibition against state regulatory promulgation has been detrimental even where the original intent was to allow uniquely strict state regulation where local conditions created a particular safety hazard. However, court precedent since FRSA was enacted has eviscerated the original intent of the Act to allow the states to adapt regulations to local conditions. For example, after a severe derailment and toxic spill that poisoned the Sacramento River for 40 miles, the CPUC adopted a track standards regulation at the Cantara Loop in Northern California. The new state standards exceeded the federal track standards to provide greater track strength and derailment resistance at this uniquely dangerous steep curved part of the mountain grade on a bridge over the river. The railroad even stated in formal testimony that the increased strengthening was needed to prevent derailments at that site. Even so, the 9th Circuit Court ruled that California could not adopt such a stricter regulation,[3] and to-date, the FRA has not done so.
- The 50-percent federal funding for state participation inspectors, since discontinued, was essential in getting state inspection programs started.
- States can often adopt NTSB safety recommendations immediately, whereas a nationwide regulatory proceeding could delay safety improvements.
- Federal economy-of-scale resources have been beneficial. For example, inspector and investigator training and the subsequent certification by the FRA have greatly benefited the California railroad safety program.

Key Elements for Regulatory Reform

CPUC staff believes that the following elements should be considered in the new federal-state safety regulatory structure.

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[1] *Missouri Pacific Railroad Co. v. Railroad Commission of Texas,* 948 F.2d 179 (5th Cir. 1991), *cert. denied* 507 U.S. 1050, 123 L. Ed. 2d 649, 113 S. Ct. 1943 (1993).
[2] *Southern Pac. Transportation Co. v. Public Utility Comm. of State of Cal.*, 647 F. Supp. 1220 (N.D. Cal. 1986), *aff'd per curiam* 820 F.2d 1111 (9th Cir. 1987).
[3] *Union Pac. R.R. v. Cal. Pub. Util. Comm'n*, 346 F.3d 851 (9th Cir. 2003).

1. Expand FTA jurisdiction to include authority to develop and impose minimum safety standards
2. Maintain state authority to impose greater rules/regulations; do not preempt state authority but allow for more stringent rules/regulations than federal minimum standards.
3. Funding for state programs. Funding should be allocated for the cost of operating the state program, including salary and benefits of state staffing and actual expenses in executing rules/regulations.
4. State oversight program needs. Number of staff positions should be equitably established using metrics such as route miles and number of rail transit agencies regulated. Consideration should be given to specific needs of states with interstate systems. Staffing levels should include sufficient staff positions to also oversee rail transit agencies that do not participate in FTA funding programs. Safety oversight should not be linked to funding as criteria for that oversight. The following positions should be funded:
    a. Program Manager
    b. Engineering staff (licensed professional engineers with discipline specific training: mechanical, electrical, traffic, civil)
    c. Discipline specific inspection staff (operating practices, track, signal and train control, motive power and equipment, hazard management)
    d. Analytical staff
    e. Administrative staff
5. FTA should establish criterion for state safety and security oversight programs. Criterion should dictate that designated state safety and security oversight agency be separate from agencies that promote rail transit use, and administer grants and funding for regulated rail transit agencies. Safety programs housed within state departments of transportation may not receive support needed for the program as those agencies predominately focus on highways and funding programs. Therefore, we recommend that the SSO program be housed in an agency whose mission is dedicated to safety and segregated from promotion of rail transit usage and funding and/or administration of funds.
6. Compensation levels for state staff should be competitive with private industry in order to recruit and retain expert staff.
7. Discourage the use of contractors for safety and security reviews and other state responsibilities. Support development of staff stability and institutional expertise to efficiently and comprehensively execute oversight responsibilities, minimizing the

need for consultant/contractors and the resultant loss of expertise and function when contracts expire.

8. Training for state managers and staff. Robust training and certification program fully funded by FTA is essential to the success of the program. Course curriculum should include all aspects of rail transit industry technology as well as regulatory procedures and jurisdiction. Discipline specific training and certification for inspectors is necessary to provide the skills set necessary to conduct efficient oversight. Training should include, but not be limited to:
    a. Industry specific technical training
    b. Investigative techniques
    c. Report writing, digital photo documentation
    d. Performance measurements
    e. Threat and vulnerability analysis tools
    f. Security sensitive information training
    g. Auditing techniques
    h. Drug and Alcohol program
    i. Fitness for duty
    j. Evaluation of the structure and effectiveness of system safety program plans
    k. Safety culture
9. Credentialing and background checks for state employees. Safety and security oversight is closely linked with the essential characteristics of the systems that will fall within this regulation. Safety certification and day-to-day oversight activities may expose rail transit agencies to vulnerability if those effecting the federal and state rules and regulations are not properly vetted and trained in security matters. The Department of Homeland Security (DHS) is equipped to continue its role in the prevention of terrorism and that this element should continue to reside within that segment of the federal government. However, safety is closely linked to security in many elements. Therefore, it is essential that state employees are fully vetted and cognizant of security elements associated with intentional harm to public transportation systems.
10. States should have authority to mark documents as security sensitive information to ensure that security sensitive information is protected from public disclosure. The current regulations in Title 49 Code of Federal Regulations Part 659 extend that authority only to the rail transit agencies and not the state safety oversight agencies. The rule mandates that the states oversee the agency(s) security program plans and conduct triennial reviews of those programs but has no provision to protect these documents from being released in the public domain.

11. Investigative authority for states. As illustrated by the recent banning of state safety oversight staff from the Washington Metropolitan Transportation Authority (WMATA) from trackside inspections it is imperative that states are vested with full investigative authority. The authority relegated to NTSB inspectors might serve as a model for this authority.

12. For states without relevant subpoena authority, establish authority in federal regulation for use in accident investigation and other records and data needs. For those states with such authority, allow enforcement under both sources of authority.

13. Civil penalties and individual agency fines for willful violations of safety-critical rules/regulations should be included in new regulations. Enforcement tools are vital to a successful program. These penalties should include compliance with federal and state regulations as well as rules and procedures established by individual rail transit agencies. Current regulations allows for FTA to withhold 5% of formula funds from a state that is not in compliance. Those states with multiple rail transit agencies are reluctant to report infractions as the monies are withheld from the state and not the egregious agency only. States need a robust citation/violation program that can easily be executed.

14. The regulation should include a licensing/certification program for safety-critical rail transit employees such as train operators, control operators, and roadway workers. The FTA should maintain a database to maintain status of employees and issue the license/certification. This program would provide an essential enforcement tool if tied to specific safety critical regulation/rule infraction that may result in employee forfeiting license/certification with a progressive time and training element.

15. States managers should be at the table for all research and development projects, including the development of industry standards with the American Public Transportation Association (APTA), Volpe National Transportation Systems Center, Transportation Research Board, and other academic research entities. Completed products should be readily available to states.

16. Regulatory reform should not depend on APTA standards. Consideration must be given to the conflict-of-interest of APTA. This organization serves as the lobbying organization for the industry. While APTA deserves much credit for creating consensus-based standards and guideline development, safety-focused independence is lacking. States are generally not members of APTA and have limited input into product development. FTA should develop its state safety and security oversight program independent from APTA. APTA standards and guideline development processes are often cumbersome to complete, often taking several years to reach consensus before being published. APTA should be commended for its accomplishments, but existing standards and guidelines should be adopted outright. These standards should be used as reference materials in developing federal minimum standards, and should be fully vetted with state oversight managers. The

current partnership between the FTA and APTA should be expanded to include all states oversight agencies to capitalize on the benefits of this organization.

17. An organization that includes FTA, state, industry and labor organization representatives should be developed to offer a platform for idea and information sharing. Such an organization could collectively develop standards, guidelines, and best practices for the industry. State participation in this organization should be funded by the FTA.

18. Information sharing is essential to a successful program. States should be included in communications from FTA to stakeholders, both from the FTA headquarters and the FTA regional offices. States should be included in both safety and security communications. Too often FTA efforts are focused on funding alone—safety and security should be elevated to a higher priority level.

19. FTA should establish fitness-for-duty standards for rail transit employees who perform safety critical duties, including wellness programs, annual physical examination requirements, and fatigue management.

20. The FTA should establish and fund project management oversight contractors (PMOC) for state use in safety certification projects—throughout conceptual stages and the life of the project. These resources should be separate from the FTA region contractor list to avoid conflict of interest.

21. Standardize reporting thresholds and guidelines between 49 CFR Part 659, National Transportation Database (NTD) and the Research and Innovation Technology Administration (RITA). Establish web-based reporting forms for both states and rail transit agencies to minimize workload. Include employee accident data in the reporting thresholds.

22. FTA should establish an interactive database or expand the NTD to assist states and rail transit agencies in their accident trend analyses, accident prediction modeling, and hazard management. Applications should include web-based accident/incident/hazard notification, tracking matrices for corrective actions, and document storage (e.g., audits, reviews). The database should accommodate queries for proactive trend analysis and incorporate GIS technology. States should have access to all data.

23. Reorganize FTA staff. Safety functions should report to directly to the Administrator consistent with the FTA recommendation that transit agency safety staff report to the chief executive office of those agencies. Add resources to federal safety staff and utilize FTA regional offices for safety oversight and resources.

24. Link FTA grant funding to safety requirements. Establish a program where safety critical infractions of an agency will result in penalties.

25. Develop a grant program for safety-critical findings of states. Provide funding for safety-critical corrective action plans prompted in audits, accident investigations, random and focused inspections, and NTSB recommendations.
26. Improve communication and coordination between regional offices and states.
27. Establish audit standards where region, state, TSA/DHS, and contractor audits are linked or related. Multiple audit schedules are often repetitive and cumbersome. DHS/TSA and FTA Regions should coordinate audits with state managers. A coordinated effort between all agencies would be more effective and reduce audit fatigue. Audit findings should be shared between all federal and state agencies with safety and security oversight responsibilities of rail transit.
28. Quarterly meetings between FTA and state managers. An annual meeting is not sufficient to maintain consistency and optimize progress.
29. Succession planning for state oversight agency personnel, particularly for the smaller state agencies. Retirements and career moves can cause program disruption in terms of lost institutional knowledge, expertise, and professional networks.
30. The security element descriptions and specifications in Title 49 CFR Part 659 should be enhanced. The link between safety and security should be emphasized. Coordination between DHS/TSA and state oversight agencies should be emphasized to better utilize the skill sets of both agencies. Communications and coordination descriptions should be enhanced. DHS/TSA should focus on terrorism. States should focus on other security issues. DHS/TSA and states should share information and findings. States programs and personnel must be vetted and credentialed. States should be required to maintain Transportation Worker Identification Credentials (TWIC). Emergency response and recovery plans development and implementation should include all stakeholders, including state managers.

Successes of Rail Transit Safety Oversight Jurisdiction

Safety oversight is often reactive. Public attention is aroused too often only after catastrophic events and media attention. Good governance demands a proactive approach where there are clear standards and practices to identify and mitigate hazards before they become tragic events. Proactive safety oversight built upon a systems safety approach and hazard management is necessary to the advance of public transportation. The CPUC's mission in rail transit safety is to proactively ensure the safe design, construction, and operations of rail transit. The following sections describe some of the benefits of the CPUC's exercise of safety jurisdiction over rail transit agencies in California.

BART Automatic Train Control

An example of the CPUC's safety experience is illustrated by its General Order 127, *Rules for Maintenance and Operation of Automatic Train Control Systems – Rapid Transit Systems*, which was adopted on August 15, 1967, before rapid transit construction was

expanded in California. The concept for the Bay Area Rapid Transit (BART) was first envisioned in 1946, with engineering studies and design work beginning in 1963 and with construction beginning in 1964. Promulgated by the CPUC under the authority granted by PU Code Section 29047,[4] General Order 127 ensured that safety was addressed early on in the project.

Revenue service on BART commenced in 1972. Prior to the commencement of revenue service various tests of BART's automatic train control systems were conducted. Through these tests, the Commission staff learned that the automatic train control system could not always detect the presence of a single dead or un-powered car. Also, in the opinion of the staff, the testing of the train braking, propulsion, protection, and interlocking systems was insufficient. The staff recommended to the Commission that it not authorize full automatic train operations, but that the use of the established and proven manual block override method of operation for train separation protection and provide a two-station separation mode between trains.

The Commission ordered that the, "train control system be supplemented by manual override consisting of a trained operator at the controls of each train with a back-up of supervisory personnel at key stations to provide positive train control in accordance with rules to be agreed upon and filed with the Commission"[5]. The CPUC further mandated that the train control system be supplemented by manual override remain in effect until further order of the Commission.[6]

Subsequently, Lawrence Berkeley Laboratory, as consultant to the California Senate Public Utilities and Corporations Committee, conducted failure-mode analyses as part of an independent evaluation of the technical merits of the BART Computer Aided Block system. The objective was to reduce the two-station separation mode to a one-station separation mode as proposed for the transbay operation and that the "worst case" failure should be an "uncovered failure-mode," that is, the collision protection should revert to that provided by the basic automatic train control system in the event of a one-station separation failure.

Lawrence Berkeley Laboratory (LBL) recommended several modifications and additions to the train control system. Recommendations included the establishment of zero speed gates to automatically stop a train in the case of a station run-through; a revision of computer algorithm to require positive detection of a released train in the block past a station platform before the release of a following train; the revision of the existing hardware for the transbay tube train-detection; integrity tests to ensure that the computer hardware and software actually perform their intended functions; abnormal operations performance tests; and a full-scale (36-train) dynamic performance test.

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[4] California Public Utilities Code, Division 10, Transit Districts, Part 2, San Francisco Bay Area Rapid Transit District, Chapter 6, Powers and Functions of District, Article 5, Rapid Transit Facilities and Service, § 29047 Safety appliances and procedures

[5] CPUC Resolution S-1358, August 31, 1972,

[6] CPUC Decision No. 81248

It wasn't until August 27, 1974, after staff reviewed and confirmed BART's installation and testing of the Sequential Occupancy Release (SOR) train control system[7] and implementation of all other LBL recommendations, that the Commission allowed automatic train control in place of manual override.[8]

Subsequent to the tragic Washington Metropolitan Area Transportation Authority (WMATA) collision on June 8, 2009, the NTSB made urgent recommendations to the FTA as follows.

- Advise all rail transit operators that have train control systems capable of monitoring train movements to determine whether their systems have adequate safety redundancy if losses in train detection occur. If a system is susceptible to single point failures, urge and verify that corrective action is taken to add redundancy by evaluating track occupancy data on a real-time basis to automatically generate alerts and speed restrictions to prevent train collisions. (R-09-007) (Urgent)
- Advise all rail transit operators that use audio frequency track circuits in their train control systems that post-accident testing following the June 22, 2009, collision between two rail transit trains near the Fort Totten station in Washington, D.C., identified that a spurious signal generated in a track circuit module transmitter by parasitic oscillation propagated from the transmitter through a metal rack to an adjacent track circuit module receiver, and through a shared power source, thus establishing an unintended signal path. The spurious signal mimicked a valid track circuit signal, bypassed the rails, and was sensed by the module receiver so that the ability of the track circuit to detect the train was lost. (R-09-17) (Urgent)
- Advise all rail transit operators that use audio frequency track circuits in their train control systems to examine track circuits that may be susceptible to parasitic oscillation and spurious signals capable of exploiting unintended signal paths and eliminate those adverse conditions that could affect the safe performance of their train control systems. This work should be conducted in coordination with their signal and train control equipment manufacturers. (R-09-18) (Urgent)
- Advise all rail transit operators that use audio frequency track circuits in their train control systems to develop a program to periodically determine that electronic components in their train control systems are performing within design tolerances. (R-09-19)

It is possible the state oversight similar to that which required the redundant train control measures in California, may have prevented the WMATA accident.

Cell phone use ban

We contend that State Safety Oversight must be empowered with tools to take immediate action as necessary to ensure safety following accidents and/or the identification of

[7] LBL-developed redundant software for train detection and train separation as recommended by the failure-mode analyses.
[8] CPUC Decision No. 83339

hazardous conditions. California has empowered the CPUC with these tools as illustrated in the CPUC emergency Resolution SX-88 which prohibits the use of personal electronic devices by train operators. The CPUC adopted this order within six days of a commuter rail catastrophic accident where use of personal electronic devices is believed to be one of the most probable causes. At this time, the CPUC is in the process of rulemaking to determine if the ban should be made permanent and if so, the content and structure of the resultant rule.

BART fire in the transbay tube

Two days after a fire in the BART transbay tube on January 17, 1979, the CPUC ordered that the transbay tube be closed until further order.[9] The CPUC ordered that six conditions be met before resumption of revenue service in the transbay tube. Conditions included the development of a detailed evacuation plan, improvement of communications, provisions of an extensive public information program on evacuation procedures, modifications of exit doors within the tube to allow rapid egress, employee emergency drills, testing of emergency procedures, and physical modifications to hatch covers and gallery structures to reduce fire risk and improve ventilation capability. Following hearings, the CPUC allowed resumption of service in the transbay tube on April 4, 1979, with a stringent set of requirements that included:

- The complete elimination of polyurethane materials from the seat assemblies in cars within 270 days.
- A plan of action with a timetable to reduce fire risks associated with fiberglass reinforced plastic materials used in the floors, ceiling, and sidewall linings of cars, to reduce fire hazard.
- Requirement for BART Board of Directors to develop a detailed plan to oversee public safety in its operations with a subsequent annual report to the CPUC. The plan included the organization form and levels and types of manpower devoted to safety.
- A detailed plan for training, practice, and repeat training of train operators and safety personnel in appropriate safety and emergency procedures.
- Improved communications capability for emergency situations and for instruction of passengers in emergency procedures.
- Ongoing passenger safety educational programs, including provisions for non-English speaking and handicapped persons.
- Directional signs within the transbay tube indicating the nearest gallery door and the distance to the near alternative door in the opposite direction.
- Provision of back-up emergency personnel at BART Central.
- Provision for walk-through track inspections in the event of unexplained in-service train stoppages.

[9] CPUC Decision No. 89902

- Provisions for airpacks, megaphones, portable radios, and other such devices for attendants on transbay tube trains to facilitate the ability of train attendants to function safety and efficiently outside the train in emergency conditions.
- Further studies of safety issues not fully explored, including the option of a second BART employee in addition to the train operator on all trains through the Berkeley tunnel.
- The submission of a proposal within 30 days of the order to study the toxic effects of car combustion and the impact on evacuation procedures.[10]

It is notable that following the investigation of the Chicago Transit Authority (CTA) derailment and passenger evacuation in a tunnel environment in 2007, the NTSB made the following recommendations.

Recommendations to the FTA:

- Modify your program to ensure that State safety oversight agencies take action to prompts rail transit agencies to correct all safety deficiencies that are identified as a result of oversight inspections and safety reviews, regardless of whether those deficiencies are labeled as findings, observations, or some other term. (R-07-009)
- Inform all rail transit agencies about the circumstances of the July 11, 2006, Chicago Transit Authority subway accident and urge them to examine and improve, as necessary, their ability to communicate with passengers and perform emergency evacuations from their tunnel systems, including the ability to (1) identify the exact location of a train, (2) locate a specific call box, and (3) remove smoke from their tunnel systems. (R-07-012)

Recommendations to the State of Illinois

- Evaluate the Regional Transportations Authority's (state safety oversight agency) effectiveness, procedures, and authority, and take action to ensure that all safety deficiencies identified during rail transit safety inspections and reviews of the Chicago Transit Authority are corrected, regardless of whether those deficiencies are labeled as findings, observations, or some other term. (R-07-013)

Angel's Flight Railway Company

Another example of the necessity for strong safety oversight authority is illustrated in the CPUC actions following a severe accident that occurred on February 1, 2001, on the Angels Flight Railway Company. The CPUC ordered closure of the Angels Flight funicular after a mechanical failure caused a collision between the two vehicles resulting in one fatality and seven injuries.

The Angels Flight Railway Company is a privately owned funicular system that was originally built in 1901 and operated until 1969 when it was dismantled. Beginning in 1993 the Angels Flight funicular was reconstructed approximately ½ blocks from its original location. Operation resumed in 1996 using the original two cars. The system operates at a 33

[10] CPUC Decision 90144, April 4, 1979

percent grade and moves people approximately 298 feet from the bottom of Bunker Hill up to a commercial area.

Restoration efforts are in progress under the close scrutiny of CPUC staff; however revenue service will not be authorized by the CPUC until all outstanding recommendations made in the CPUC accident investigation and those from the NTSB have been closed acceptable. It has become clear to the staff that two outstanding NTSB recommendations requiring end gates on the vehicles and an emergency ingress and egress walkway would not have been implemented were it not for the CPUC's safety certification role.

San Francisco Municipal Transportation Agency

The San Francisco Municipal Transportation Agency (SFMTA), commonly referred to as MUNI, was brought under the umbrella of the CPUC's State Safety Oversight in 1997. During the time between 1997 and 2005, MUNI reported an 87 percent drop in rail transit collisions. Generic statewide statistics of rail transit accidents during the time period between 1997 and 2005 indicate an overall reduction in crossing collisions of 76 percent[11], reduction in derailments of 84 percent, and a reduction in serious injuries of 75 percent. However, fatalities during this same time period increased by 12.5 percent. The SFMTA system is the oldest transit system in the state and, consequently, has many age-related problems which the Commission continues to identify and works to correct.

A more recent example of proactive state safety oversight and hazard management practices is illustrated in the SFMTA track rehabilitation in its subway. CPUC inspectors identified egregious track conditions and mandated that SFMTA take immediate steps to return its tracks to a state of good repair. CPUC mandated that SFMTA not only correct deficiencies noted by its inspectors, but that SFMTA conduct ultrasonic testing and inspection of the entire rail transit system with a geometry car, and repair all discovered defects.

Grove Farmers Market Trolley

The benefits of a separate proactive safety oversight program such as California's is important and is illustrated by an incident that occurred in August 2009 on a small trolley operation at the Grove Farmers Market in Los Angeles. CPUC staff following an on-site inspection made recommendation to the trolley that a park bench located over the tracks at the end of the line in front of the wheel stops be removed. The staff concern was that in the event a mechanical malfunction caused a brake failure, the trolley could collide with the bench and injure members of the public sitting on the bench. Just two weeks after the removal of the bench pursuant to staff's request, a brake failure occurred and the trolley slammed into the concrete planters that had replaced the bench. Severe injuries and possibly fatalities had been prevented by California's safety oversight where no federal safety oversight existed under current law.

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[11] Following the enactment of the Federal Transit Administration final rule, Title 49, Code of Federal Regulations, Part 659, effective May 5, 2006, reportable crossing collisions have increased due to the change in the reporting criteria that mandates all accidents at highway-rail crossing be reported.

STATEMENT OF
THE HONORABLE RAY LAHOOD
SECRETARY OF TRANSPORTATION

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
U.S. HOUSE OF REPRESENTATIVES

HEARING ON

PUBLIC TRANSIT SAFETY: EXAMINING THE FEDERAL ROLE

December 8, 2009

Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee:

Let me thank you for inviting us to testify on the role of the Department, and more specifically, the role of the Federal Transit Administration (FTA), in overseeing the safety of our nation's rail transit systems. With me today is Peter Rogoff, the FTA Administrator.

Safety is my Department's highest priority. In hearings held in the House and Senate shortly after the tragic Washington Metro crash, FTA Administrator Rogoff testified that I had convened an expert working group within the Department to develop transit safety reforms, and that we would be sending those reforms to Congress. This week I will follow through on that promise by submitting, on behalf of the President, a transit safety bill as our first legislative proposal. I ask this Committee to consider it seriously and promptly.

BACKGROUND

As we address this issue, it must be remembered that traveling by rail transit in the United States remains an extraordinarily safe way to travel—far safer than traveling on our highways. Public transit moves millions of passengers to work, school, and home every day without incident. That fact makes it essential that our transit agencies maintain their infrastructure and equipment to a standard where they can provide riders with service that is reliable, comfortable and safe. Any safety-related concern that prompts commuters to abandon transit and get back into their cars is unacceptable.

While rail transit is safe, the Administration believes we must take serious steps now to make it even safer and ensure that it remains safe. We are all aware that rail transit has the potential for catastrophic accidents with multiple injuries, considerable property damage, and heightened public concern. We all must focus our attention and resources on this important issue, if we are to maintain public confidence. Moreover, while transit remains a safe mode of travel, providing almost four billion passenger-trips a year, we

see warning signs regarding the frequency of derailments, collisions, and passenger casualties -- on which we must remain focused.

In the past year, rail transit systems in Boston, San Francisco, and Washington, D.C., experienced train-to-train collisions killing 9 people, injuring 130 others, and resulting in millions of dollars in property damage. Also this year, three rail transit maintenance workers were struck and killed while working on the tracks.

While these rail transit systems carry more passengers daily than either our domestic airlines, regulated by the Federal Aviation Administration (FAA), or our passenger and commuter railroads, regulated by the Federal Railroad Administration (FRA), they are also the only transportation mode within the Department of Transportation without comprehensive Federal safety regulation, oversight, and enforcement. Indeed, the Department of Transportation is prohibited by law from issuing regulations on the safety of rail transit systems.

That means, at present, our nation's rail transit systems operate under two very different Federal safety regimes. In 2008, rail transit system passengers made almost four billion trips. This is seven times the number of trips made on commuter rail, but only commuter rail passengers receive the benefit of robust safety oversight. For example, commuter rail systems that operate on the general railroad system of transportation (such as Maryland's Maryland Area Rail Commuter, Florida's Tri-Rail, and Washington State's Sounder) fall under FRA's safety regulatory system. FRA's aggressive safety program includes mandatory national safety standards and on-site spot inspections and audits by Federal technical specialists and inspectors with backgrounds in signal and train control, track performance, operating practices, and other disciplines. FRA is also empowered to prescribe safety regulations, issue emergency orders, and assess civil fines on this group of rail transit operators for any violations found.

Conversely, the larger universe of transit trips on subway and light rail systems (such as the Washington Metropolitan Area Transportation Authority (WMATA), San Francisco's BART and MUNI systems, Atlanta's MARTA, Houston's METRO, Dallas's DART, Seattle's Link, Boston's MBTA, Chicago's CTA, and the New York City subway system) are not subject, as a general rule, to FRA oversight. Instead, those systems are covered under FTA's State Safety Oversight (SSO) program.

Under the SSO program, Congress tasked States with the primary responsibility for establishing State safety oversight agencies (SSOAs). These SSOAs, in turn, were charged with ensuring that local transit systems create and implement their own safety programs. Under the existing SSO framework, however, each rail transit system is allowed to determine its own safety practices and the State reviews those safety practices. FTA lacks the statutory authority to establish meaningful minimum thresholds. As a result, we have a patchwork of 27 separate State oversight programs. Each agency has only as much regulatory, oversight, and enforcement authority as it has been granted by its State government, and in many cases the oversight agency lacks the authority to compel compliance by or enforce standards on the rail transit system it oversees. The

result is a regulatory framework of inconsistent practices, limited standards, and marginal effectiveness.

Another problem with the current SSO program is that many States view it as an unfunded mandate. As a result, most States devote insufficient resources to the program. Nationwide, State staffing levels for each SSOA average less than 1.3 full-time equivalent employees (FTEs). That is less than 1.3 FTEs to carry out the agency's entire mission for the year. That number drops further when you remove from the calculation the staff associated with one large SSOA -- the California Public Utilities Commission – who will testify on your next panel. When you look collectively at all the other SSOAs across the country, the average staffing level equals less than one full-time employee for each agency, and many of these employees have no career or educational background in transit safety. Most often, that one employee handles transit safety oversight for the entire State simply as a collateral duty. The lack of resources, the lack of authority, and the lack of financial independence, in some cases, mean that the vast majority of States implement the bare minimum when it comes to transit safety requirements. At the Federal level, we fare little better. FTA currently has only 2.5 FTEs dedicated to rail transit safety oversight. Furthermore, the lack of statutory authority to regulate the safety of public transportation has prevented FTA from considering a number of recommendations by the National Transportation Safety Board -- recommendations that followed accidents with fatalities and serious personal injuries. The Department views this status quo as inadequate and in need of urgent reform.

In the wake of the WMATA tragedy in June, I instructed my Deputy Secretary, John Porcari, to convene a team of safety officials and experts to address this gap between the regulatory oversight for rail transit passengers and commuter rail passengers and develop options for transit safety reforms. The working group collaborated with other modal administrations within the Department with safety regulatory authority, including FRA, FAA, and the Federal Motor Carrier Safety Administration (FMCSA). They were also assisted in the analysis by the Research and Innovative Technology Administration. This team reviewed the many alternative models within DOT to address safety, as well as the statutory authorities on safety for transit and developed the legislative proposal described below. In addition, the working group and I met with Federal safety professionals and participated in outreach sessions involving the public, transit officials, labor union representatives, and State and local governmental officials. In the end, we concluded that without minimum national safety standards, programs intended to prevent major rail transit accidents will continue to be uneven, with no assurance that safety issues are adequately addressed.

ADMINISTRATION PROPOSAL

The Department's legislative proposal would do three things:

First, it would require the Secretary of Transportation, acting through FTA, to establish and enforce minimum Federal safety standards for rail transit systems, other than those subject to regulation by FRA, that receive Federal transit funding. The

legislation also provides the Secretary the option to establish a safety program for public transportation bus systems that receive Federal transit assistance.

Second, the Secretary would establish a safety certification program whereby a State would be eligible for Federal transit assistance to carry out a Federally-approved public transportation safety program. States would not be preempted from establishing additional or more stringent safety standards, if the standards meet certain criteria. States would receive training and staffing support from the Federal Government, as well as Federal certification to carry out enforcement activities on behalf of the FTA, similar to the Motor Carrier Safety Assistance Program in FMCSA. Where States choose to "opt out" of enforcing the new Federal transit safety regime, then FTA would enforce Federal safety standards in those States.

Third, the program would ensure that a State agency overseeing transit systems would be fully financially independent from the transit systems it oversees.

Currently, there are SSOAs that receive their funding directly from the transit agencies they oversee. We find this situation presents a potential conflict of interest that is unacceptable. We do not allow it in any other mode of transportation. For example, we do not allow an airline to have control over how many Federal inspectors oversee their operations and how much those inspectors are paid. Similarly, we do not allow freight railroads to exert influence or control over the number of Federal railroad safety inspectors or their compensation. We need an identical guarantee of independence when it comes to transit safety oversight, and our legislative proposal would require such independence.

Overall, we believe our legislative approach will restore public confidence in rail transit as being one of the safest modes of transportation, and it will go a long way toward ensuring that the Federal transit capital investments are adequately maintained and operated to meet basic safety standards. Furthermore, because the Department will be proactive in the setting of Federal safety thresholds, a reformed rail transit safety program will result in greater consistency and uniformity across all rail transit systems in the United States.

In developing those Federal safety standards, FTA will benefit from the guidance and leadership of a new Federal advisory committee to specifically address rail transit safety. Using my existing authority under the Federal Advisory Committee Act, this morning I presented to Congress formal notification establishing the Transit Rail Advisory Committee for Safety, or "TRACS." This new advisory committee will be tasked with developing recommendations to present to the FTA Administrator in the area of rail transit safety. Where specific minimum safety standards are deemed appropriate, we will work with TRACS to first look at existing industry standards and best practices as the starting point. We are excited about the establishment of this committee and we look forward to working with the rail transit industry, labor, and other expert stakeholders to develop appropriate national rail transit safety standards.

We want to make clear that, in placing a rail transit safety responsibility in FTA, it is not our goal to simply replicate the FRA regulatory model, and bring it to bear on subways

and light rail systems. To the contrary, our goal is to take a performance-based approach through the establishment of quality Safety Management Systems for each rail transit agency. We are not interested in creating voluminous and highly specific regulations. Instead, we are interested in each rail transit system actively identifying its greatest safety vulnerabilities through modern risk analysis and then taking the necessary actions to address those risks. Safety Management Systems are information-based iterative processes that the airlines are implementing successfully to address their greatest risks. Given that the rail transit universe is made up of transit operators that are unique in their technologies, ages, and operating environments, we believe that the establishment and expansion of Safety Management Systems is the more appropriate, affordable, and productive approach for rail transit.

To reiterate, rail transit provides almost four billion passenger-trips each year, and safely moves millions of people each day. However, as evidenced by the recent accidents and incidents, in order to maintain this level of safe performance, aggressive reform is needed in the existing Federal transit oversight authorities. We cannot rest on the laurels of a good safety record – especially as our transit infrastructure ages. We must take action to ensure consistency in the way rail transit safety oversight is addressed. As I stated earlier, "Safety is my Department's highest priority." I believe our legislative proposal presents a critical and necessary step to provide consistent oversight to help ensure safe operations for the transit workers and the traveling public.

Again, thank you for the invitation to testify before your Committee. I look forward to working with this Committee as we enhance rail transit safety for the users of our nation's public transportation systems.

I welcome any questions you might have.

QUESTIONS FOR THE HONORABLE RAY LAHOOD
SECRETARY
U.S. DEPARTMENT OF TRANSPORTATION

DECEMBER 8, 2009 HEARING
ON
PUBLIC TRANSIT SAFETY
BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

Questions from Ranking Member Mica

1. **Since the earliest days of streetcars run by local electric co-ops and city governments, and in the first federal transit funding bill, the Urban Mass Transit Act of 1964, transit has been considered to be an inherently local activity. Transit is not interstate commerce. From a "big picture" perspective, why do you think it is appropriate to regulate transit at the federal level?**

RESPONSE: Rapid and light rail transit operations in urban areas are the only modes of transportation whose passengers are not protected by a comprehensive safety regimen of regulations, oversight, and enforcement at the federal level. Albeit travel by rail transit is much safer than travel by other means—far safer than traveling by highways, for example—rail transit carries the risk of catastrophic accidents with death, personal injury, considerable property damage, and extensive media attention, as witnessed most recently in Boston, San Francisco, and Washington, D.C. To maintain public confidence in rail transit, and attract additional ridership on our transit systems, we must ensure that our transit agencies throughout the nation operate and maintain their infrastructure to a common set of standards that provide passengers with service that is reliable, comfortable, and safe. Plainly, any situation that prompts travelers to abandon transit and get back into their cars is a situation that degrades safety.

Under the current State Safety Oversight (SSO) scheme authorized at 49 U.S.C. § 5330, we have a patchwork of 27 separate state oversight programs that lack a common set of standards. Each State Safety Oversight Agency (SSOA) has only as much regulatory, oversight and enforcement authority as they have been granted by their own state government. Each rail transit system is allowed to determine its own safety practices. The result is a hodgepodge of inconsistent practices, limited standards, and marginal effectiveness. Moreover, in many States, the requirement for establishing and staffing an SSOA is perceived as an unfunded mandate, and, therefore, they devote precious few resources to the program. Except for California, the nationwide staffing levels for an SSOA average less a single full-time employee.

Conversely, the nation's freight and commuter railroads are governed by national uniform safety standards under the hands-on oversight of the Federal Railroad Administration (FRA), which is empowered to conduct on-site spot inspections and audits by Federal technical specialists with backgrounds in train control, track operations, and other disciplines. FRA is also vested with the authority to prescribe operating practices and assess civil fines for non-compliance with its safety standards.

Whether rail transit is "interstate commerce," per se, is irrelevant to the need for urgent reform. All across the country we see warning signs in the frequency of derailments, collisions, and personal injury—both to passengers and maintenance workers. Without question, there are innumerable, latent safety issues in the rail transit industry, unidentified and uncorrected, which stand to worsen in the current era of tight budgets, and as transit facilities and equipment continue to age. Furthermore, the lack of federal statutory authority to regulate the safety of public transportation has prevented FTA and the U.S. Department of Transportation (DOT), in general, from implementing a number of recommendations by the National Transportation Safety Board (NTSB)—recommendations precipitated by many different types of accidents and accident causes. As a practical matter, it is impossible to effectuate the recommendations of the NTSB at any level other than the federal level.

To reiterate, the Administration's legislative proposal would do three things: First, it would require the Secretary of Transportation, acting through FTA, to establish and enforce minimum federal safety standards for rail transit systems not regulated by FRA, and vest the Secretary with discretion to establish a safety program for public transportation bus systems, as well. Second, it would give the Secretary authority to establish a safety certification program whereby states would be eligible for federal transit assistance to carry out a federally-approved public transportation safety program. Specifically, under the Administration's legislative proposal, states choosing to implement the federally-approved program could be certified to enforce their State Public Transportation Safety program and receive training and staffing support from the federal government. Moreover, those states having met certain conditions would not be preempted from establishing standards more stringent than the federal standards. Third, under the Administration's legislative proposal, state agencies overseeing the safety of transit systems would be fully financially independent from the transit systems they oversee, thus, they would avoid any conflict of interest arising from financial dependence on those transit systems.

Let me emphasize, also, that in developing federal safety standards, FTA and DOT as a whole will benefit from the guidance and leadership of the Transit Rail Advisory Committee for Safety ("TRACS"), an advisory committee established by DOT on December 8, 2009. TRACS will be tasked with developing recommendations for the Department and FTA in the area of rail transit safety. Where specific minimum safety standards are deemed necessary, we will work with TRACS to determine whether existing industry standards and best practices are an appropriate starting point. We are excited about the prospects for TRACS and we look forward to collaborating with rail

transit industry, labor, and other expert stakeholders in developing national rail transit safety standards.

2. **The record is clear that when developing the UMTA Act of 1964, Congress determined that it had the constitutional authority to fund local transit pursuant to the General Welfare clause of the Constitution. Thus, unlike "Commerce Clause agencies," the FTA lacks regulatory authority. Further, over the past 45 years, Congress has required FTA to impose mandates and limitations upon transit agencies, but only as a condition of financial assistance, not through any agency authority to regulate transit agencies. How has the Department determined that this new regulatory authority is constitutional?**

RESPONSE: The premise that only "Commerce Clause agencies" have regulatory authority is incorrect. On innumerable occasions, the Congress has vested federal agencies arising under the General Welfare Clause with explicit statutory authority to promulgate regulations on matters within the purview of their missions and functions. In the instance of FTA, moreover, the regulations that have been mandated by statute—*e.g.*, Bus Testing, Buy America, Charter Service, Clean Fuels, Drug and Alcohol Testing, Environmental Impacts, Major Capital Investments, Metropolitan and Statewide Planning, Project Management Oversight, School Bus Operations—have been promulgated in accordance with the public notice-and-comment rulemaking requirements of the Administrative Procedure Act (APA), 5 U.S.C. §§ 551 *et seq.*; these are not mere "mandates and limitations upon transit agencies" imposed solely through the terms and conditions of grant agreements between FTA and its grantees.

It is well settled, of course, that an agency does not have inherent regulatory power absent a statutory basis, regardless of whether the agency was created under the Commerce Clause or the General Welfare Clause. The Congress has strictly delimited any federal agency's ability to regulate by prescribing procedures for rulemaking under the APA. That Act provides an agency with the authority to promulgate a regulation only if that agency includes in its regulation a reference to the statutory authority under which the regulation is adopted.[1] The United States Supreme Court has interpreted this provision to mean that an agency's power to promulgate a *legislative* regulation is limited to the authority delegated to it by Congress.[2] This holding is consistent with separation of powers principles, wherein, pursuant to the Constitution, all legislative powers are vested in Congress and the executive power is vested in the President.[3]

Consistent with these limitations, Congress may provide an agency with regulatory authority through its Spending Power in the General Welfare Clause. Pursuant to Article I, Section 8, of the Constitution, "The Congress shall have Power . . . to pay the

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[1] Administrative Procedure Act, Pub. L. No. 79-404, § 4(a), 60 Stat. 237, 239 (1947) (codified as amended at 5 U.S.C. § 553(b)(2) (2006)).
[2] Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988).
[3] See U.S. CONST. art. I, § 1; U.S. CONST. art. II, § 1, cl. 1.

Debts and provide for the . . . general Welfare of the United States."[4] Specifically, through this power, Congress may regulate certain activities that it believes to be in the public interest, and it may selectively fund programs to encourage those activities without violating the Constitution.[5] In other words, Congress may spend its money, and place conditions on those expenditures, as it sees fit, so long as the expenditures and conditions are made in pursuit of the general welfare.[6]

A leading case on point is *South Dakota v. Dole*, which centered on the effort to promote safety on the nation's highways by curtailing drunk driving. Congress passed legislation that directed the Secretary of Transportation to withhold a percentage of federal highway funds otherwise allocable from states "in which the purchase or possession . . . of any alcoholic beverage by a person who is less than twenty-one years of age is lawful."[7] The Secretary of Transportation delegated this authority to the Federal Highway Administration (FHWA). The Supreme Court upheld this statute as a valid exercise of Congress' Spending Power under the General Welfare Clause stating that, "Incident to this power, Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power 'to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives.'"[8] Thus, objectives not thought to be within Article I's enumerated legislative fields, such as the Commerce Clause, may nevertheless be attained through the use of the Spending Power and the conditional grant of federal funds. It follows, logically, based on the Supreme Court's longstanding jurisprudence in this area, that Congress may authorize FTA to regulate rail transit safety—just as Congress authorized FHWA to regulate highway safety—by conditioning the receipt of federal transit funds upon the pursuit of the general safety and welfare of transit passengers.

Just as Congress has constitutional authority under the General Welfare Clause to regulate rail transit safety, Congress has the necessary constitutional authority under the Commerce Clause. Pursuant to the Commerce Clause, "The Congress shall have Power . . . To regulate Commerce . . . among the several States."[9] The Supreme Court has made clear that, through the Commerce Clause, Congress has the power to regulate the channels of interstate commerce, the instrumentalities of interstate commerce, and, most importantly, the activities affecting commerce.[10] Congress may regulate activity, even if that activity is purely intrastate in character, where that activity, combined with like conduct by others similarly situated, affects commerce among the states.[11] Congress need only make a rational finding that the regulated activity affects interstate commerce.[12] The amount of commerce involved has no relevance.[13]

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[4] U.S. CONST. art. I, § 8, cl. 1.
[5] Rust v. Sullivan, 500 U.S. 173, 193 (1991).
[6] Helvering v. Davis, 301 U.S. 619, 640-41 (1937).
[7] South Dakota v. Dole, 483 U.S. 203, 205 (1987).
[8] Id. at 206-07 (quoting Fullilove v. Klutznick, 448 U.S. 448, 474 (1980)).
[9] U.S. CONST. art. I, § 8, cl. 3.
[10] Hodel v. Virginia Surface Mining and Reclamation Ass'n, Inc., 452 U.S. 264, 276 (1981).
[11] Id.
[12] Id.

Thus, it is not necessary that the particular person or entity being regulated has a substantial effect on commerce; the requirement is only that the activity, looked at cumulatively across the United States, has a substantial effect on commerce.

It is instructive that on two occasions, the Supreme Court has held that Congress may regulate strip mining pursuant to its power under the Commerce Clause, even though the regulation of land use traditionally is a local activity, and even though the land itself is not a part of interstate commerce.[14] In upholding the relevant statute, the Supreme Court deferred to the congressional findings that, cumulatively across the United States, strip mining has adverse affects on the public welfare, the public lands, and our natural environment.[15]

Indeed, the conditions under which Congress creates and passes legislation are not static. Public transportation—once widely considered to be an inherently local activity—has evolved dramatically in the 45 years since the enactment of the Urban Mass Transportation Act of 1964. We would emphasize that, in 2008, transit passengers took 10.7 billion trips in the United States.[16] In 2007, transit agencies spent $14.5 billion on capital expenses, procuring items such as buses and railcars from businesses across the country that enter into and are used in the interstate flow of commerce.[17]

In many instances, of course, public transportation agencies operate rail and bus systems that carry passengers across state lines for employment, commercial, medical, social, and recreational activities—and in these instances, the nexus between public transportation and interstate commerce is obvious. Moreover, of the top 50 most populated urbanized areas in the United States, 14 cross state lines: Boston, Bridgeport-Stamford, Charlotte, Chicago, Cincinnati, Kansas City, Louisville, Memphis, New York, Philadelphia, Portland, Providence, St. Louis, and the District of Columbia *Note: For purposes of participation in the FTA formula programs, the term "urbanized area" means an area encompassing a population of 50,000 people, regardless of state boundaries, as determined by the U.S. Census Bureau.* Additionally, throughout the nation, travelers use public transportation to reach airports, train stations, and interstate bus terminals to board other modes of transportation that take them across state lines. Moreover, if the flow of public transportation is interrupted in a major city such as New York, whether through a labor strike, an earthquake, a flood, a terrorist attack, or even a rail accident, there would be significant consequences for international commerce.

Today, moreover, we can appreciate the beneficial effect of public transportation on the global environment. Because of transit use, 4.16 billion gallons of gasoline are

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[13] Hodel v. Indiana, 452 U.S. 314, 325 (1981).
[14] Hodel v. Virginia Surface Mining and Reclamation Ass'n, Inc., 452 U.S. 264; Hodel v. Indiana, 452 U.S. 314.
[15] Id.
[16] AM. PUB. TRANSP. ASS'N, PUBLIC TRANSPORTATION RIDERSHIP REPORT, FOURTH QUARTER (2008), http://www.apta.com/resources/statistics/Documents/Ridership/2008_q4_ridership_APTA.pdf.
[17] AM. PUB. TRANSP. ASS'N, PUBLIC TRANSPORTATION FACT BOOK 20-22 (2009), http://www.apta.com/gap/policyresearch/Documents/APTA_2009_Fact_Book.pdf.

saved each year.[18] Carbon dioxide emissions are reduced by 37 million metric tons annually.[19] Clearly, legislation to enhance the safety of public transportation can make significant contributions to lessening the United States' dependence on fossil fuels and improving its air quality.

Recent legislation provides further evidence of transit's impact on interstate commerce. In 2009, Congress passed the American Recovery and Reinvestment Act (ARRA), which provides $8.4 billion for investment in transit projects with the purposes "[t]o preserve and create jobs and promote economic activity" and "[t]o invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits."[20] This committee is well aware of the many jobs created and maintained and the economic benefits to communities large and small through the ARRA funding FTA has awarded to public transportation agencies.

In short, just as the Supreme Court has upheld the constitutional authority of Congress to regulate strip mining under the Commerce Clause, it follows that Congress has the same constitutional authority to regulate rail transit safety—an activity with a much more direct connection to the national economy. Thus, there can be no doubt that Congress has the constitutional authority—whether through the General Welfare Clause or the Commerce Clause—to regulate the safety of public transportation systems.

3. Did the Department consider other ways to improve the safety of transit systems and, if so, what did the Department consider and why did it decide against such ideas?

RESPONSE: Yes, a team of safety officials and experts under the leadership of Deputy Secretary John D. Porcari was convened to focus on developing options for transit safety reforms. To that end, the workgroup collaborated with other modal administrations within DOT with jurisdiction in safety regulation. Those agencies included FRA, the Federal Motor Carrier Safety Administration, and the Federal Aviation Administration. The workgroup was also assisted with its analysis by the Research and Innovative Technology Administration. This team reviewed the many alternative models within DOT to address safety as well as the statutory authorities on safety for transit with an eye toward developing a safety reform recommendation. In addition, after meetings with Federal safety professionals and outreach sessions involving transit officials, union members, and State and local governmental officials, the workgroup determined that without minimum Federal safety standards, programs preventing major rail transit accidents will be uneven with no assurance that safety issues are adequately addressed.

4. Safety issues with respect to transit operations are determined, in part, by the type, age, and condition of the rail transit system and rolling stock, as

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[18] LINDA BAILEY, PATRICIA L. MOKHTARIAN, & ANDREW LITTLE, ICF INT'L, THE BROADER CONNECTION BETWEEN PUBLIC TRANSPORTATION, ENERGY CONSERVATION AND GREENHOUSE GAS REDUCTION 11-13 (2008).
[19] Id. at 13.
[20] Pub. L. No. 111-5, § 3, 123 Stat. 115 (2009).

well as by demography, geography, and weather. How does the Department expect to develop truly effective nationwide safety standards that account for significant differences in rail system technologies, demography, geography, and weather throughout the country?

RESPONSE: Unlike the freight and passenger system of railroad transportation, local rail transit operators are more unique with regard to their equipment, technology, and operating environment. As a result, FTA envisions putting in place requirements that transit agencies develop programmatic standards that use a safety management systems approach. This approach will require that agencies develop good data collection systems to identify their unique risks and the most effective ways to eliminate or mitigate those risks. As an example, an agency might determine that its greatest risk of train collisions involves movements within a storage yard. This approach would look to having a transit agency develop information not only on actual accidents but on precursors to them—such as near misses, brake failures, excessive speed, and failure to make safety stops— and then design a program to measure and improve its performance. To help ensure that the Federal government is sensitive to each transit agency's unique risks, the Secretary approved the charter of TRACS on December 8, 2009. TRACS will be comprised of broadly representative rail transit stakeholders who will provide recommendations on the development of workable and appropriate Federal safety standards. On February 1, 2010, FTA published a notice in the *Federal Register* soliciting nominations for membership in TRACS by February 26, 2010.

5. **If you allow States to opt out of transit safety oversight, why wouldn't all States decide to allow the Federal Government to take on this responsibility and the attendant expense and possible legal exposure?**

RESPONSE: FTA will reimburse a State for the eligible costs of implementing the program. Our framework with States being able to opt out is consistent with the approach recommended to Congress by the American Association of State Highway and Transportation Officials, the organization that represents State DOTs (most SSOAs are State DOTs). Our proposal will allow States to continue this safety role providing they establish necessary authority and can demonstrate effectiveness. Some have indicated a desire to maintain these programs, particularly if their existing public transportation rail safety laws and regulations set higher standards than required by Federal law and are directed at specific conditions in their jurisdiction. Some States may elect to "opt out" even if there is federal funding, and we want to make sure that rail passengers in those States benefit from the highest possible level of safety. If we develop a more comprehensive Federal program, it may not be logical to create a robust State program. For example, North Little Rock, Arkansas has a 3.5-mile rail transit line and Kenosha, Wisconsin has a 1.9-mile system. Six States have rail transit operations with less than 20 miles of track. It is likely much more cost effective for a federal workforce to pay occasional visits to ensure safety on such small systems than it would be for States with limited rail transit operations to have full time employees providing oversight. Several States established a rail transit safety oversight structure before it was a federal

requirement and we would expect that these as well as some others would want to play an active role in ensuring effective safety programs that affect their citizens.

6. **Will you support 100% of all States' administrative safety oversight expenses, whether the State opts to continue providing transit safety oversight or not?**

RESPONSE: A significant number of States have noted that the existing Federal requirements are an unfunded mandate; therefore, the goal is to cover the administrative expenses associated with executing a Federal transit safety oversight program. Should a State decide to discontinue its program, FTA would not provide funding for a non-existent program.

7. **What is the estimated cost of supporting State safety oversight functions?**

RESPONSE: The President's FY 2011 budget requests $30 million to implement the Administration's rail transit safety legislation pending in Congress for the start-up year. Future years will require additional levels of funding for a full year's effort.

8. **How many new FTA employees will be needed to support your proposal, and what will the cost be?**

RESPONSE: The President's FY 2011 budget proposes 130 new FTEs related to rail transit safety oversight; 30 FTEs to expand FTA's Office of Safety to provide expertise to implement new safety oversight programs and regulations, and 100 FTEs to form federal and State teams with the power to conduct investigations and audits.

9. **How long will it take to implement your proposed rail transit safety initiative? If your proposal is enacted, what changes will take place immediately? What activities will be phased in?**

RESPONSE: The Secretary's legislative proposal to Congress anticipates a 3-year phased approach to fully develop and implement a robust rail transit regulatory program. We will continue with the current practice of States providing oversight and FTA conducting audits of the existing State programs. During this period, we will also work collaboratively with our rail transit stakeholders through TRACS to develop effective safety initiatives that can be implemented in the short-term as we develop a comprehensive regulatory system for the rail transit industry.

10. **After the full implementation of this safety proposal, should it be determined that a provision was insufficient to prevent a particular accident, has the Department considered how it will respond with respect to allocation of fault?**

RESPONSE: The Department has not considered how it will respond with respect to the allocation of fault should it be determined that a provision was insufficient to prevent a

particular accident. Rather, the purpose of an accident investigation would be to determine the cause or causes of an accident and whether or not those causes were in violation of any statutory or regulatory provision. Once FTA understands the causes of the accident, that understanding, if relevant, would be used to modify the requirements to reduce the possibility of recurrence. Nonetheless, FTA recognizes that provisions may also mitigate the consequences of an accident, to the extent that an accident cannot be prevented, such as provisions that result in requirements for more crashworthy rail transit cars.

11. The bill states that the Federal Transit Administration's authority to conduct inspections, investigations, audits, examinations and testing of transit systems extends to "persons engaged in the business of a public transportation system." What is the breadth of this provision? Does this extend FTA jurisdiction to consultants, contractors, lobbyists, transit agency board members?

RESPONSE: If the Public Transportation Safety Act were enacted into law and contained the provision identified above, FTA would define the term "persons engaged in the business of a public transportation system" through the rulemaking process, which allows for public notice and an opportunity for comment.

12. Under subsection (e)(4) of the bill regarding "entry," what do you envision as "at reasonable times and in a reasonable way" that FTA or a state agency may enter and inspect transit systems? Does this mean inspectors can stop existing service for an inspection?

RESPONSE: Subsection (e)(4) regarding "entry" is similar to FRA's "entry" statute at 49 U.S.C. 20107(b), which also includes the terms "at reasonable times and in a reasonable way." Legislative history of section 20107(b) defines "at reasonable times" to include "any time when trains are operating on the railroad as well as any time when work connected with the rail operations is being performed." *See* H.R. Rep. No. 96-1025, at 14, 15 (1980), reprinted in 1980 U.S.C.C.A.N. 3830, 3839. Legislative history also indicates that "in a reasonable manner" (the pre-recodification language) prohibits restrictions requiring inspectors "to sign releases of liability, to wear identify tags, or to use protective gear." Id. If the Public Transportation Safety Act were enacted into law and it contained subsection (e)(4) as currently written, the Secretary would be vested with the authority to define the terms through the rulemaking process. Prior to issuing a notice of proposed rulemaking, FTA would look to existing legislative history, regulations and guidance for direction in defining the terms. FTA's proposed definitions would then be subject to public comment. All comments would be considered and addressed in the notice of a final rule. Please be aware that subsection (e)(4) applies to an officer or employee of the Secretary, or agent designated by the Secretary. It does not apply to State agency employees or representatives of a State agency. The existence and scope of a State's authority to inspect a rail transit system would derive from applicable State law.

13. The train control systems used by rail transit agencies vary widely. Please provide the type of train control system and manufacturer for the following rail transit systems. (In cases where there is more than one kind of system used, provide information for train control over the largest part of the rail system.) [Chart has not been recreated given the response to the question.]

RESPONSE: Detailed information on signaling systems on North American rail transit systems is not available at this time. That information is being developed by a Transit Cooperative Research Program (TCRP) Quick Study. FTA funds the TCRP program and has partnered with the American Public Transportation Association and the Transportation Research Board to support and guide the study. A survey form has been distributed to transit operators and a meeting of signal engineers was held in Washington D.C. this past November to discuss industry efforts to address urgent recommendations from the NTSB relative to the WMATA June 22 Fort Totten collision. The information you request has not yet been developed by the TCRP study. That phase of the project is expected to be completed in spring 2010.

TESTIMONY OF

WILLIAM MILLAR, PRESIDENT

AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

OF THE

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

ON "PUBLIC TRANSIT SAFETY: EXAMINING THE FEDERAL ROLE"

****

DECEMBER 8, 2009

SUBMITTED BY

American Public Transportation Association
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The American Public Transportation Association (APTA) is a nonprofit international association of more than 1,500 public and private member organizations, including transit systems and high-speed, intercity and commuter rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. More than 90 percent of the people using public transportation in the United States and Canada are served by APTA member systems.

INTRODUCTION

Chairman DeFazio, Ranking Member Duncan and members of the Highways and Transit Subcommittee, on behalf of the American Public Transportation Association (APTA) and its more than 1,500 member organizations, I thank you for the opportunity to testify today as your subcommittee seeks to examine the role of the federal government in the ongoing effort to maintain safe public transportation operations.

Public transportation systems in America are safe and well used. In 2008, Americans took a modern record 10.7 billion trips on public transportation, 15 times the number of trips taken on domestic airlines. Each weekday, 35 million times people board public transportation vehicles. According to the Federal Transit Administration (FTA), from the period of 2003 to 2008, heavy rail passenger fatalities dropped by 50 percent and there were zero light rail passenger fatalities. A person is at least 142 times less likely to die as a passenger on rail transit as rather than as a passenger in an automobile.

Achieving the highest levels of safety for riders, employees and the public remains our number one goal. APTA and our industry continues to develop and promote wide ranging safety standards, conduct safety audits, convene working groups to address implications of new technologies on system safety, while meeting higher ridership demands, and dealing with aging infrastructure and procurement complications associated with building state of the art transit systems. Unfortunately, despite the industry's unyielding commitment to safety, accidents do sometimes happen. As we meet here today to discuss the possible expansion of the federal role in public transit safety and potential legislative proposals, including the Public Transportation Safety Program Act of 2009, which I believe Secretary LaHood will address today, I hope to provide you with a better understanding of what our industry is already doing to increase safety and to ensure that public transportation continues to be, by far, the safest mode of surface transportation in the nation.

One final note of introduction. While it will take many actions to improve transit's enviable safety record, it will also take significant financial investment to bring public transportation systems up to a state of good repair, increase the training of the men and women and who work in our industry and correct safety deficiencies identified. If safety is to be taken to the next level, investments must be made. It is not enough to just pass laws and issue regulations.

ABOUT APTA

The American Public Transportation Association is a nonprofit international association of more than 1,500 public and private member organizations, including transit systems and high-speed, intercity and commuter rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. More than 90 percent of the people using public transportation in the United States and Canada are served by APTA member systems.

APTA SAFETY PROGRAMS

The American Public Transportation Association has been designated as the standards development organization for public transportation. For more than twenty years, APTA has partnered with the U.S. transit industry, the FTA, and its predecessor the Urban Mass

Transit Administration (UMTA), to develop standardized programs for safe, efficient, and secure transit operations. APTA has also developed and continues to manage a number of safety specific programs that provide safety audits for transit operators on a triennial basis and other services. In the early 1970's, APTA members began applying to new rail transportation systems the concepts of a safety system first developed by the military and NASA. In collaboration with UMTA and the U.S. Department of Transportation's (DOT) Volpe Center in Cambridge, Massachusetts, APTA developed a Safety Management Program and published its guidance document, commonly referred to as the APTA Manual, on how to create a System Safety Program Plan. In 1987, APTA developed a companion industry audit program, based on the Manual, as a voluntary program for rail transit agencies to measure their progress and to help develop benchmarking of effective practices. This program, which was later expanded to include commuter rail and bus services, serves the purpose of being a developmental, self correcting safety process that emphasizes continuous improvement toward the goal of safety excellence. This program also served as the basis for the existing FTA State Safety Oversight (SSO) program, found at 49 CFR Part 659, and has been incorporated by reference in the Transport Canada Safety Management Systems regulation as well. Since its inception as a voluntary program, our independent audits have been conducted at 75 APTA member transit agencies, with over 415 audits completed during the last 20 years.

The APTA Safety Management program along with its audit component has been used effectively by transit agencies to locate weaknesses in their operations and to demonstrate their diligence to safety and security, it has even been used as evidence to insurance carriers to justify lower premiums. In addition, the program has provided a forum for the exchange of effective safety and security practices, spurred the development of tools and resources to the industry, and gave rise to a national and international methodology for assessing operating risks. The audit program incorporates the APTA standards into the elements whenever there are standards that address safety critical areas. The external audit concept has also created the concept of the APTA Peer Review program which is a targeted audit process drawing from industry subject matter experts to assist transit agencies in dealing with specialized program areas. To date, over 110 Peer Reviews have been performed for agencies seeking help with problematic areas of their operations. APTA's safety programs are recognized internationally in North America, Europe and Asia and are designed to examine every area of transit planning, construction, acquisition, operations, security, emergency preparedness and maintenance to ensure the safety of our public transportation passengers and employees.

APTA RAIL TRANSIT SAFETY STANDARDS PROGRAM

Congress is currently considering legislative proposals to assign statutory responsibility to the FTA for developing mandatory federal bus and rail transit safety regulations. On behalf of APTA and its members, who have provided unmatched access to subject matter experts volunteering countless hours over twenty years to promote safety for all passengers and employees, I ask Congress and the FTA to build on our existing safety standards program to serve as the backbone of this initiative.

APTA's commitment to safety is the basis of our Standards Development Program. Initiated in 1996, APTA is continually developing standards in the areas of rail transit, commuter rail, bus operations, procurement, intelligent communications interface protocols, and security. We are an officially accredited Standards Development Organization (SDO), recognized by the U.S. Department of Transportation and partially funded through grants provided by the FTA. Since Fiscal Year 2006, the FTA has provided $3 million in grant funding to APTA to develop standards for the public transportation industry, in addition to more than $3 million

from members who have provided access to 2,000 subject matter experts volunteering tens of thousands of hours to develop this program. We develop standards using formal methods patterned after the process required by the American National Standards Institute (ANSI). This multi-faceted approach includes:

- a balanced representation of interested parties
- a required public comment period
- a formal process to respond to comments
- the availability of an appeals process
- a balloting group broadly representative of the industry
- consensus as defined as a super majority of the balloting group
- and a formal method to respond to requests for interpretation of or changes to the standard

Partnering with other SDO's, including the American Society of Mechanical Engineers (ASME), the Institute of Electrical and Electronics Engineers (IEEE) and the American Rail Engineering and Maintenance of Way Association (AREMA), as well as a wide range of experts in the fields of transit system operation, car manufacturers, vehicle operations management, technical consultants, safety professionals and government representatives, APTA has created and implemented nearly 170 consensus based standards that promote safe and efficient transit system operations. Our robust standards programs have been designed to guarantee that reviews are conducted on an ongoing basis and provide the flexibility to make updates and amendments as new issues and technologies arise.

Particularly relevant to the topic of the hearing today is APTA's collaborative efforts on the ASME Rail Transit 1 and Rail Transit 2 standards, commonly referred to as RT-1 and RT-2. RT-1 applies to the carbody of newly constructed light-rail transit vehicles, and RT-2 applies to the carbody of heavy rail transit vehicles. Neither standard covers vehicles that fall under the jurisdiction of the Federal Railroad Administration (FRA). The focus of this program, which was initiated in 1998, is to support industry efforts to write structural standards for rail transit vehicles. According to ASME, RT-2 specifically "defines requirements for the incorporation of passive safety design concepts related to the performance of the carbody of heavy rail transit vehicles in conditions such as collisions, so as to enhance passenger safety, and limit and control damage." Published in 2008, this standard highlights the industry's commitment to ensuring the highest level of passenger safety is achieved in the event of an impact.

Several weeks ago, APTA hosted a 2-day meeting of the ASME Rail Transit Standards Committee to re-examine the RT-2 Standard to specifically address the possible inclusion of enhancements that may become necessary to further address over-ride protection in the event of a high-speed impact. Collaborative industry partnerships built upon long-standing relationships allow us to convene meetings of our standards setting committees to ensure our program is relevant and can quickly address safety issues as they arise. Similarly, in response to multiple incidents resulting from distracted drivers, APTA is in the process of finalizing safety standards for transit agencies regarding this issue.

Congress has previously recognized the importance of promoting these voluntary industry-based standards to create uniformity within the legal and regulatory structure of the United States. The National Technology Transfer and Advancement Act of 1995 (P.L. 104-113) encourages government agencies to work together with industry leaders to develop private, voluntary safety standards for federal grantees. APTA has met this directive by working together with the FTA, the FRA and other federal agencies, public transit systems,

academics, and a variety of outside experts to develop a wide-range of industry safety standards.

There are many tangible benefits of the APTA program in particular, such as:

- improving safety of operations and services
- reducing operating and maintenance costs
- creating a process where transit systems share best practices
- increasing and improving transit system/supplier communication
- making development of procurement specifications easier and less costly
- making legal defense more effective in liability cases
- helping states establish and improve safety oversight programs
- providing much needed guidance to new start transit systems
- creating opportunities for reliability and efficiency improvements
- decreasing training costs

STATE SAFETY OVERSIGHT PROGRAM

Pursuant to the Intermodal Surface Transportation Efficiency Act of 1991, better known as ISTEA (P.L. 102-240), the FTA was directed by Congress to establish a State Safety Oversight program that would be created and managed by the states. Effective since 1997, states are mandated to establish State Oversight Agencies (SOA) that design and implement safety oversight and audit programs for the light-rail and subway systems within their jurisdiction. Understanding that each transit agency has its own unique characteristics, the FTA wisely opted against a "one-size-fits-all" approach and instead sought to create an SSO program flexible enough to take into account these distinctions. State Oversight Agencies were tasked with creating their own standards and then measuring the compliance of each transit agency through audits. Currently there are 26 State Oversight Agencies that oversee 48 rail transit systems.

States with larger transit systems such as California, Pennsylvania and New York have taken proactive approaches and instituted statewide regulatory procedures, while others states with perhaps a small single transit system have opted to allocate less resources and less stringent guidelines. This has resulted in widely disparate funding and staffing levels, as well as varied staff capabilities, that in some cases may be inadequate to fully address safety concerns. A 2006 report by the U.S. Government Accountability Office (GAO) on rail transit issues revealed that in interviews with representatives from 24 oversight agencies, 16 officials indicated that they lack adequate numbers of qualified staff. [1]

APTA believes the current SSO program is uneven in its effectiveness and varies greatly from one State Oversight Agency to the next. Therefore, we suggest the FTA, in concert with all stakeholders, identify the SSO programs that do work and use those programs to develop a federal template for requirements to which each State Oversight Agency must adhere. Further, in order for an SSO program to be successful, there must be adequate and consistent staffing levels and training, and uniform standards for monitoring and auditing that are flexible enough to integrate new and emerging technologies. In addition to improving the existing SSO program, there is also a critical need to strengthen the program at the federal level. In order to properly develop, implement and manage an effective

[1] U.S. Government Accountability Office, *Rail Transit: Additional Federal Leadership Would Enhance FTSA's State Safety Oversight Program*, GAO-06-821. July 2006, Summary.

oversight program, the FTA must significantly expand their program personnel and in-house expertise.

We believe the Administration is generally on the right track in its proposal to enhance the State Safety Oversight structure, though a small number of our members would prefer to eliminate the SOA's and instead have the FTA conduct the program. With proper authority, sufficient funding, training and personnel, we believe SSO agencies can effectively manage and enforce rail transit safety regulations.

ADDITIONAL CONSIDERATIONS

To achieve the goals of the proposed legislation, the role of the Federal Transit Administration must evolve from acting solely as a grant-making agency. A clear mandate from Congress which provides the FTA with not only the authority to run a federal rail transit safety standards and management program, but also the ability to provide enforcement capabilities ensuring compliance with such programs is necessary. To this end, if safety standards for rail transit systems are to be established by federal regulation, I urge the FTA to consider adopting the practice of using consensus-based industry standards as the foundation, as supported by the Technology Transfer Act, and where appropriate, incorporating pertinent voluntary standards by reference into regulation. APTA has provided to the staff of this subcommittee a list of existing voluntary standards, and those in development, that we suggest the FTA should consider for initial incorporation into regulation. The industry has made significant investments, along with the FTA, to develop these standards. It only seems logical to build off of the hard work and expertise that has gone into their development instead of pioneering an entirely new standards program. The ultimate goal must be to build a federal program that, when properly administered, produces an improved level of safety than is currently the case.

Where feasible, standards should be performance-based rather than prescriptive to accommodate local conditions and diverse operations, as well as to foster innovation in technology and problem-solving. Additionally, any federal program should incorporate a federal preemption to ensure that efforts at the state level remain concentrated on identified national safety priorities. Once a federal transit safety standards program is established, state safety oversight agencies should consistently enforce the federal standards.

To fully support the adoption and implementation of these programs, it will become necessary for Congress to provide enforcement capabilities to the Federal Transit Administration to ensure compliance. Such authority should be vested in the form of "grant conditions," meaning that the FTA has the ability to direct grant funding to be used to correct major inadequacies and significant incidences of noncompliance that will effectively improve safety. It goes without saying that leveraging monetary penalties, including fines, as an enforcement tool would be counterproductive as transit agencies are public entities funded by fares riders pay and taxpayer dollars. We suggest establishing a timetable to allow systems to be brought into compliance without penalty and incorporating a progressive ratings systems whereby instances of noncompliance are evaluated based on risk and/or necessity. To this end, an appeals process must be instituted to ensure fairness in the dispensation of violations.

Transforming the safety mission of the FTA is a goal that will require new funding and staff. APTA fully supports providing the FTA with new funding to ensure there are adequate personnel and subject matter experts on staff at the federal level. Funding will also be

required to ensure SSA's are adequately staffed and properly trained to carry out the critical functions of an oversight agency, and proper funding for transit agencies will also be required to succeed in improving safety.

To meet the new staffing levels required an immediate problem will be encountered: A significant shortage of trained safety personnel who understand the public transportation industry. Congress should provide funding to create a national FTA rail transit safety standards certification program. Although related programs for this do exist, the training is neither standard nor does it result in recognized certification. In order to expand the workforce of properly trained rail transit safety professionals, a program with a standardized national curriculum must be established. APTA would welcome the opportunity to work with the FTA to determine core safety competencies required for effective safety management at all levels, to implement such a program.

There is also a critical need for an improved and reliable national transit operations database that agencies and other industry practitioners can use to benchmark their operating performance, including trends in safety. Federal safety priorities must also address the delivery of adequate resources to support and sustain research to close gaps in the body of knowledge to enhance safe transit operations.

CONCLUSION

The nation's 48 rail transit operations are safe and their customers should utilize them without hesitation, but safety can always be improved. Day in and day out we hold ourselves to the highest degree of accountability to ensure safe transit for all passengers and will continue to do so. Through ongoing partnership, collaboration and communication we have been able to create standards that provide an inherently safe mode of transportation. If it is the will of Congress to federalize these standards, one can expect the same level of dedication and commitment to safe passenger transit from our agencies across the country. APTA commends the Department of Transportation and the FTA for opening this critical dialog and we look forward to beginning the work we ahead of us with the Transit Rail Advisory Committee for Safety (TRACS). Once again thank the Subcommittee for holding this hearing and for providing me the opportunity to present APTA's views. I look forward to answering your questions.

United States Government Accountability Office

GAO

Testimony
Before the Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, House of Representatives

For Release on Delivery
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RAIL TRANSIT

Observations on FTA's State Safety Oversight Program and Potential Change in Oversight Role

Statement of Katherine Siggerud, Managing Director
Physical Infrastructure Issues

GAO
Accountability * Integrity * Reliability

GAO-10-293T

December 8, 2009

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Highlights

Highlights of GAO-10-293T, a testimony before the Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, House of Representatives

RAIL TRANSIT

Observations on FTA's State Safety Oversight Program and Potential Change in Oversight Role

Why GAO Did This Study

Rail transit generally has been one of the safest forms of public transportation. However, several recent notable accidents are cause for concern. For example, a July 2009 crash on the Washington Metro Red Line resulted in nine deaths. The federal government does not directly regulate the safety of rail transit. Through its State Safety Oversight program, the Federal Transit Administration (FTA) requires states to designate an oversight agency to directly oversee the safety of rail transit systems. In 2006, GAO issued a report that made recommendations to improve the program. The Department of Transportation (DOT) is planning to propose legislation that, if passed, would result in a greater role for FTA in regulating and overseeing the safety of these systems.

This statement (1) summarizes the findings of GAO's 2006 report and (2) provides GAO's preliminary observations on key elements DOT has told us it will include in its legislative proposal for revamping rail transit safety oversight. It is based primarily on GAO's 2006 report, an analysis of the Administration's proposal through review of documents and interviews with DOT officials, and GAO's previous work on regulatory programs that oversee safety within other modes of transportation. GAO's 2006 report was based on a survey of the 27 state oversight agencies and transit agencies covered by FTA's program. GAO provided a draft of this testimony to DOT officials and incorporated their comments as appropriate.

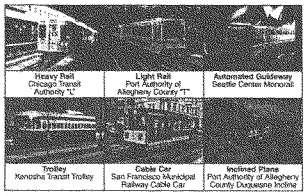
View GAO-10-293T or key components. For more information, contact Katherine Siggerud at (202) 512-2834 or siggerudk@gao.gov.

What GAO Found

GAO's 2006 report found that officials from the majority of the state oversight and transit agencies stated that the State Safety Oversight program enhances rail transit safety but that FTA faced several challenges in administering the program. For example, state oversight agencies received little or no funding from FTA and had limited funding for staff. In fact, some required that the transit agencies they oversaw reimburse them for services. Also, expertise, staffing levels, and enforcement powers varied widely from agency to agency. This resulted in a lack of uniformity in how oversight agencies carried out their duties. As of 2006, 13 oversight agencies were devoting the equivalent of less than one full-time employee to oversight functions. Also, 19 oversight agencies GAO contacted lacked certain enforcement authority, such as authority to issue fines, and those that did have such authority stated that they rarely, if ever, used it.

DOT is planning to propose major changes in FTA's role that would shift the balance of federal and state responsibilities for oversight of rail transit safety. According to DOT officials, under this proposal, the agency would receive authority to establish and enforce minimum standards although states still could maintain an oversight program. States could become authorized to enforce these standards if FTA determines their program capable and financially independent of the transit system they oversee. FTA would provide financial assistance to approved programs. Such changes would have the potential to address challenges GAO cited in its 2006 report. For example, providing funding to participating state agencies could help them maintain an adequate number of trained staff, and providing FTA and participating states with enforcement authority could help better ensure that transit systems take corrective actions when problems are found. Congress may need to consider several issues in deciding whether or how to act on DOT's proposal. These include determining what level of government has the best capacity to oversee transit safety, ensuring that FTA and state oversight agencies would have adequate and qualified staff to carry out the envisioned program, and understanding the potential budgetary implications of the program.

Examples of Rail Transit Systems Subject to FTA State Safety Oversight Program



Sources: PennDOT; Seattle Center Monorail; San Francisco Municipal Railway; GAO.

December 8, 2009

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to provide testimony on the mechanisms in place to oversee the safety of the nation's rail transit systems. Rail transit moves more than 7 million people in the United States daily and generally has been one of the safest forms of public transportation. However, several recent notable accidents and other troubling safety events are cause for concern. For example, a June 2009 crash on the Washington Metro Red Line resulted in nine deaths. Metro also has suffered from several incidents involving fatalities to track workers and other employees. In addition, in May 2009, two trolleys in Boston collided, injuring 49 people, and in July 2009 two rail cars collided in San Francisco, injuring 48 people.

The federal government does not directly regulate the safety of rail transit in the United States. However, in 1991, Congress required the Federal Transit Administration (FTA) within the U.S. Department of Transportation (DOT) to issue regulations requiring states to designate an oversight agency to oversee the safety and security of rail transit agencies and withhold federal funds if a state did not comply. Through the resulting State Safety Oversight (SSO) program, FTA requires states to designate an oversight agency to implement FTA safety and security oversight over rail transit agencies. In 2006, we testified on the SSO program and issued a report that made recommendations to improve the program.[1] DOT plans to submit a proposal for legislation that, if passed, would result in a greater role for the department in regulating and overseeing safety of rail transit systems.

My testimony today (1) summarizes the findings of our 2006 report and (2) provides our preliminary observations on key elements DOT has told us it will include in its legislative proposal for revamping rail transit safety oversight. In our observations, we cite key issues Congress may need to consider in determining whether or how to act on DOT's proposal. My comments are primarily based on our 2006 report; interviews with DOT officials about the department's plans for proposing a greater federal role

[1]GAO, *Rail Transit: Observations on FTA's State Safety Oversight Program*, GAO-06-997T (Washington, D.C.: July 19, 2006) and *Rail Transit: Additional Federal Leadership Would Enhance FTA's State Safety Oversight Program*, GAO-06-821 (Washington, D.C.: July 26, 2006).

in rail transit safety oversight; a review of related documents that we obtained; a comparison of key elements of the planned proposal with issues raised in our 2006 report; and our previous work on regulatory programs, DOT's transit programs, and efforts to oversee safety within the various modes of transportation. Our 2006 report was based on a survey of 27 state safety oversight agencies and transit agencies covered by FTA's program as well as reviews of program documentation and guidance and interviews with FTA, the National Transportation Safety Board, the American Public Transportation Association, the Transportation Security Administration (TSA), state safety oversight agencies, and transit agencies. We plan to issue a report on challenges in improving rail transit safety in fall 2010 for the Senate Committee on Banking, Housing, and Urban Affairs. We conducted our prior and current work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We provided a draft of our statement to the Department of Transportation and incorporated its comments as appropriate.

In summary:

- Our 2006 report found that officials from the majority of oversight and transit agencies stated that the SSO program enhances rail transit safety but that FTA faced several challenges in administering the program. FTA had not definitively shown that the program had enhanced safety, however, because it did not have performance goals and did not measure performance. Therefore, FTA had little information with which to track oversight agencies' performance over time. It has since taken steps to begin developing performance goals and metrics. Other challenges facing FTA in terms of assuring that the SSO program adequately oversees transit safety included that state oversight agencies received little or no funding from FTA and that some of them had limited funding for staff—in fact some required the transit agencies they oversaw to reimburse them for services. Also, expertise, staffing levels, and states' enforcement authority, e.g. fines, varied widely from agency to agency. As of 2006, 13 state oversight agencies were devoting the equivalent of less than one full-time employee to oversight functions. Finally, we found that transit and oversight agencies were confused about the role of FTA and TSA in overseeing security functions.

- DOT plans to propose major changes in FTA's role that would shift the balance of federal and state responsibilities for oversight of rail transit safety. According to DOT officials, under this proposal, FTA would receive statutory authority to establish and enforce minimum standards. Still, FTA might not have to take on the enforcement role in all circumstances; states could become authorized to enforce these standards if FTA determines their programs are capable and financially independent of the transit system they oversee. FTA would provide financial assistance to approved programs. These changes would have the potential to address some challenges and issues we cited in our 2006 report. For example, providing funding to participating state agencies could help them maintain an adequate number of trained staff. Also, providing FTA and participating states with enforcement authority could help ensure that transit systems take corrective actions when problems are found. Congress may need to consider several issues in deciding whether or how to act on DOT's proposal. These include
  - determining what level of government, state or federal, is most capable of overseeing transit safety,
  - ensuring that FTA and state oversight agencies would have adequate and qualified staff to carry out the envisioned program,
  - determining which enforcement mechanisms are best for rail transit so that FTA or the state oversight agencies can ensure that identified safety problems are corrected before they lead to accidents, and
  - understanding the budgetary implications of the program.

Background

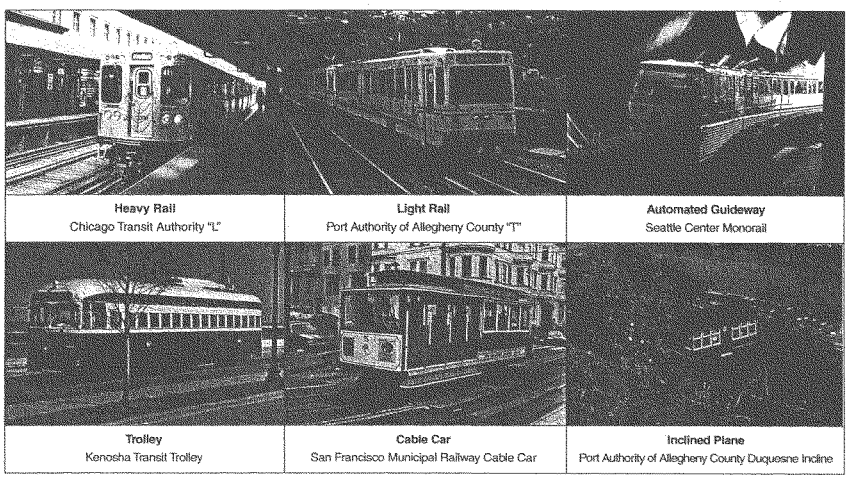
The SSO program covers all states with fixed guideway systems operating in their jurisdictions. FTA defines a rail fixed guideway system as any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that is not regulated by the Federal Railroad Administration (FRA) and is

- included in FTA's calculation of fixed guideway route miles, or
- receives funding under FTA's formula program for urbanized areas, or

- has submitted documentation to FTA indicating its intent to be included in FTA's calculation of fixed guideway route miles to receive funding under FTA's formula program for urbanized areas.[2]

Figure 1 shows the types of systems that are included in the SSO program.

Figure 1: Examples of the Types of Rail Systems Included in the State Safety Oversight Program



Sources: PennDOT; Seattle Center Monorail; San Francisco Municipal Railway; GAO.

In the SSO program, state oversight agencies are responsible for directly overseeing rail transit agencies. As of December 2009, 27 state oversight agencies exist to oversee rail transit in 26 states.[3] According to FTA, states must designate an agency to perform this oversight function at the time

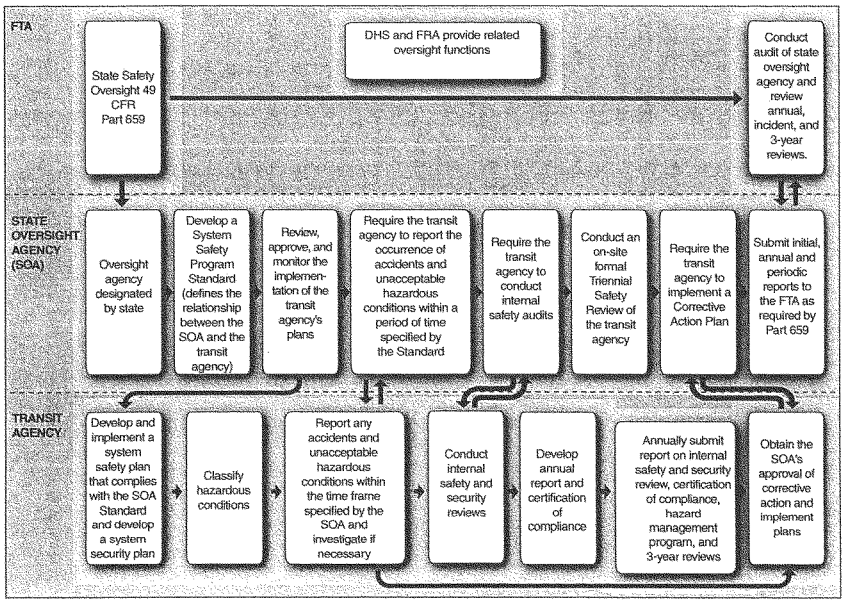
[2]49 C.F.R. § 659.5.

[3]One state, Illinois, has two oversight agencies, each overseeing a different rail transit agency.

FTA enters into a grant agreement for any "New Starts" project involving a new rail transit system, or before a transit agency applies for FTA formula funding.[4] States have designated several different types of agencies to serve as oversight agencies, including state departments of transportation, public utilities commissions, or regional transportation funding authorities. FTA has a set of rules that an oversight agency must follow, such as developing a program standard that transit agencies must meet, reviewing transit agencies' safety and security plans, conducting safety audits, and investigating accidents. In the program, rail transit agencies are mainly responsible for meeting the program standards that oversight agencies set out for them, which generally include developing a separate safety and security plan, developing a hazard management process, reporting accidents to oversight agencies within 2 hours, and other similar tasks. Under the program, FTA provides limited funding to oversight agencies in only limited instances, generally for travel or training, under the program. While oversight agencies are to include security reviews as part of their responsibilities, TSA also has security oversight authority over transit agencies. (See fig. 2 showing roles and responsibilities of participants in the program.)

[4]New Starts refers to capital investment grants that fund new fixed guideway capital projects (49 U.S.C. § 5309).

Figure 2: Roles and Responsibilities of Participants in the SSO Program



Source: GAO adaptation of State Safety Oversight Program Annual Report 2003, FTA Office of Safety and Security.

FTA's role in overseeing safety and security of rail transit is relatively limited. FTA relies on a staff member in its Office of Safety and Security to lead the SSO program. A program manager is responsible for the SSO program along with other duties. Additional FTA staff within the Office of Safety and Security assist with outreach to transit and oversight agencies and additional tasks. FTA regional personnel are not formally involved with the program's day-to-day activities, but officials from FTA regional offices help address specific compliance issues that occasionally arise and help states with new transit agencies establish new oversight agencies.

FTA also relies on contractors to do many of the day-to-day activities, ranging from developing and implementing FTA's audit program of state oversight agencies to developing and providing training classes on system safety.

Rail transit has been one of the safest modes of transportation in the United States. For example, according to DOT, in 2008, 57.7 people were injured traveling in motor vehicle accidents per 100 million miles traveled and 5.5 people were injured in commuter rail accidents per 100 million miles traveled.[5] For rail transit, the rate was 0.5 people injured per 100 million miles traveled. The injury rate on rail transit has varied from 0.2 to 0.9 injuries per 100 million miles traveled since 2002. Also, the Washington Metro Red Line accident this summer marked the first fatalities involving a collision between two rail cars on a U.S. rail transit system in 8 years. However, according to FTA officials, the recent major incidents in Boston, San Francisco, and Washington have increased their concern about rail transit safety. In addition, FTA states that the number of derailments, worker injuries, and collisions has increased on rail transit systems as a whole in the last several years.

Our 2006 Report Found Most Participants Stated That the State Safety Oversight Program Was Worthwhile but FTA Faced Several Challenges in Administering the Program Effectively

Our 2006 report found that officials from the majority of oversight and transit agencies with whom we spoke stated that the SSO program enhances rail transit safety. Officials at several transit agencies cited improvements in reducing the number of derailments, fires, and collisions through actions undertaken as a result of their work with state oversight agencies. However, despite this anecdotal evidence, FTA had not definitively shown that the program had enhanced safety because it had neither established performance goals nor tracked performance. Also, FTA had not audited each state oversight agency in the previous 3 years, as the agency had stated it would. Therefore, FTA had little information with which to track oversight agencies' performance over time. We recommended that FTA set and monitor performance goals for the SSO program and keep to its stated schedule of auditing state oversight agencies at least once every 3 years. Although FTA officials pointed out that tracking safety performance would be challenging in an environment where fatalities and incidents were low, they agreed to implement our

[5]Commuter rail is a type of public transit that is characterized by passenger trains operating on railroad tracks and providing regional service (e.g., between a central city and adjacent suburbs).

recommendation. FTA assigned the task to a contractor and said that it would make auditing oversight agencies a priority in the future.

We also found that FTA faced several challenges in assuring the effectiveness of the program and recommending improvements to transit agency safety practices.

Funding challenges limited staffing levels and effectiveness. Officials at several state oversight agencies we spoke with stated that since FTA provided little to no funding for rail transit safety oversight functions, and because of competing priorities for limited state funds, they were limited in the number of staff they could hire and the amount of training they could provide. While FTA requires that states operate safety oversight programs, capital and operating grants are not available to support existing state oversight agencies once passenger service commences. FTA, however, has begun to provide training for state oversight agency staff.[6] With the current financial crises most states are experiencing, states face increasing challenges in providing adequate funding for state oversight agencies. Also, in our 2006 report, we found that 10 state oversight agencies relied on the transit agencies they oversaw for a portion of their budgets. In those cases, the oversight agencies required that the transit agency reimburse the oversight agency for its oversight expenses.

Expertise varied across oversight agencies. The level of expertise amongst oversight staff varied widely. For example, we found that 11 oversight agencies had staff with no previous career or educational background in transit safety or security. Conversely, another 11 oversight agencies required their staff to have certain minimum levels of transportation education or experience, such as having 5 years of experience in the safety field or an engineering degree. In the agencies in which oversight officials had little or no experience in the field, officials reported that it took several years before they became confident that they knew enough about rail transit operations to provide effective oversight—a process that new staff would likely have to repeat when the current staff leave their positions. Officials from 18 of the 24 oversight agencies with whom we spoke stated that additional training could be useful in providing more effective safety oversight. FTA, under the current system, does not have the authority to mandate a certain level of training for oversight

[6]FTA also provides some funding for new oversight agencies during their start-up process and before passenger service commences on the transit agencies they oversee.

agency staff. In response to our prior recommendation, FTA has created a recommended training curriculum and is encouraging oversight agency staff to successfully complete the curriculum and receive certification for having done so.

Staffing levels varied across oversight agencies. The number of staff that oversight agencies devoted to safety oversight also varied. For example, we found that 13 oversight agencies dedicated less than one full-time equivalent (FTE) staff member to oversight. While in some cases the transit agencies overseen were small, such as a single streetcar line, we found one state that estimated it devoted 0.1 FTE to oversight of a transit agency that averaged 200,000 daily trips. Another state devoted 0.5 FTE to overseeing five different transit systems in two different cities.

To help ensure that oversight agency staff were adequately trained for their duties, we recommended that FTA develop a suggested training curriculum for oversight agency staff and encourage those staff to complete it. FTA implemented our recommendation and over 50 percent of state oversight agencies have staff who have completed at least the first tier of this training. Still, the number of staff devoted to safety oversight remains potentially problematic. FTA currently does not require that states devote a certain level of staffing or financial resources to oversight; without additional funding from the federal government or another source, and due to the fiscal difficulties most states are now experiencing, it is unlikely states will independently increase staffing for safety oversight. FTA, however, has asked many SSO agencies to perform formal manpower assessments to ensure they have adequate resources devoted to oversight functions.

Enforcement powers of oversight agencies varied. The individual authority each state oversight agency has over transit agencies varies widely. While the SSO program gives state oversight agencies authority to mandate certain rail safety practices, it does not give them authority to take enforcement actions, such as fining an agency or shutting down operations. Some states have given their oversight agencies such authority, however. In our 2006 report, we stated that 19 of 27 oversight agencies had no punitive authority, such as authority to issue fines, and those that did have such authority stated that they rarely, if ever, used it. While taking punitive action against a rail transit agency could be counterproductive (by, for instance, withholding already limited funding), several oversight agency officials told us the threat of such action could potentially make their agencies more effective and other DOT modal administrations with safety oversight authority can level fines or take other punitive action against the entities they oversee.

Confusion existed about agency responsibilities for security oversight. Our 2006 report also found that the transit and oversight agencies were confused about the role TSA would take in overseeing security and what role would be left to the state oversight agencies, if any. We made recommendations to TSA and FTA to coordinate their security oversight activities. The agencies agreed and FTA officials reported they are now coordinating their audits with TSA.

Preliminary Observations on DOT's Plans For Revamping Rail Transit Safety Oversight and Key Issues Congress May Need to Consider

DOT is planning to propose major changes in FTA's role that would shift the balance of federal and state responsibilities for setting safety standards for rail transit agencies and overseeing their compliance with those standards. Based on information provided to us by DOT, the department plans to propose a new federal safety program for rail transit, at an unspecified future date, with the following key elements:

- FTA, through legislation, would receive authority to establish and enforce minimum safety standards for rail transit systems not already regulated by FRA.
- States could become authorized to enforce the federal minimum safety standards by submitting a program proposal to FTA and receiving approval of their program. In determining whether to approve state safety programs, FTA would consider a state's capability to undertake rail transit oversight, including staff capacity, and its financial independence from the transit systems it oversees. DOT would provide federal assistance to approved state safety programs. Participating states could set more stringent safety standards if they choose to do so.
- In states that decide to "opt out" of participation or where DOT has found the program proposals inadequate, FTA would oversee compliance with and enforce federal safety regulations.

These changes would give FTA the authority to directly regulate rail transit safety and, in cooperation with the states, to oversee and enforce compliance by rail transit systems with these regulations. These changes would bring its authority more in line with that of other modal administrations within DOT. For example, FRA, Federal Motor Carrier Safety Administration, Federal Aviation Administration, and Pipeline and Hazardous Materials Safety Administration promulgate regulations and technical standards that govern how vehicles or facilities in their respective modes must be operated or constructed. In addition, each of these agencies use federal or state inspectors, or a combination of both, to

determine compliance with the safety regulations and guidance they issue. Finally, these agencies can mandate corrective actions and levy fines to transportation operators, among other actions, for noncompliance with regulations.

The new program DOT is planning to propose has the potential to address some challenges and issues we cited in our 2006 report. The consideration of staffing levels in deciding whether to approve states' proposed programs and the provision of funds to approved programs could increase levels of staffing. Requiring that participating states not receive funds from transit agencies would make the state agencies more independent of the transit agencies they oversee. Providing FTA and participating states with the authority to enforce minimum federal safety standards across the nation's transit systems could help ensure compliance with the standards and improved safety practices, and might prevent some accidents as a result.

While the new program, as envisioned by DOT, may have some potential benefits, our work on the SSO program, other transit programs, and regulatory programs suggests there are a number of issues Congress may need to consider in deciding whether or how to act on DOT's proposal.

- ***Roles of the states versus FTA.*** The following questions would need to be considered when determining whether changes are needed in the balance of federal versus state responsibility for establishing rail transit safety:

  - Are uniform federal standards and nationwide coverage essential to achieving rail transit safety?

  - Which level of government, state or federal, has the capacity to do the job at hand, taking into account such factors as resources and enforcement powers?

  In addition, shifting federal-state responsibilities for oversight of rail transit safety would bring a number of operational challenges. These include finding the appropriate level of FTA oversight of state programs and allocating costs between the federal government and the states. The new oversight system to be proposed would potentially involve major changes in the way states interact with FTA in overseeing transit safety. The new balance of state and federal responsibilities could take some time for transit agencies to adjust to, especially those that would now be reporting directly to federal officials.

- ***Adequate staff with needed skills.*** FTA would need to ensure it has adequate qualified staff to oversee safety under the new program, especially in states that opt out of participating in the new program. FTA's current safety staff is very small as is the staff devoted to rail transit safety oversight in most state agencies. Building the capability within FTA, its contractors, and these state agencies to develop and carry out the envisioned program would pose a number of challenges. However, the actions FTA has taken in response to our 2006 recommendation to institute a training curriculum for oversight agency staff, would give it a head start on this process.

- ***Enforcement.*** Congress would need to determine which enforcement mechanisms to authorize FTA to use and FTA would need to develop an enforcement approach that makes the best use of these enforcement mechanisms. Other DOT modal administrations with safety oversight responsibilities, such as the Federal Aviation Administration and FRA, are authorized to issue fines or civil penalties to operators that violate regulations. However, transit agencies are usually publicly owned and face many financial challenges. As a result, fines and penalties could be counterproductive to enhancing safety when funding is at a premium and local riders or taxpayers ultimately could bear the cost of fines. Other enforcement tools are options. For example, FRA may order a locomotive, freight car, or passenger car out of service or may send warning letters to individuals if a safety violation is found or if an individual is not following safety procedures, among other enforcement actions.

- ***Cost.*** According to FTA officials, their estimates of the total cost of the new program the department plans to propose are very preliminary. Better estimates of what, if any, costs that states would bear under the new system will also be important before moving forward with this proposal. This could include considering any estimated costs the federal government would incur under various scenarios based on how many states opt out and how many new federal employees or contractors would be required under each scenario to act as trainers, inspectors, and administrative staff. Currently, states bear most of the costs for transit safety oversight. Determining these additional costs would be added as the federal and state governments face significant increasing fiscal pressures. Further, it is uncertain how the program will be paid for. Congress will need to determine if riders, states, those who pay taxes to the Highway Trust Fund, or the Department of the Treasury, or a combination of sources, would bear the cost of this program.

In addition to the issues that Congress may need to address, FTA would face some challenges in implementing a new system of transit safety oversight. These include:

- ***Variations in the different types of transit.*** The U.S. rail transit system consists of several different types of vehicles, from heavy and light rail to monorails and funiculars or inclined planes. These vehicles operate on different kinds of track with different power sources and can vary from new modern vehicles to vehicles that are 30 or more years old. Setting federal safety regulations for these varying systems could be a lengthy process and could require multiple parallel rulemakings.

- ***Transition to the new system.*** If the new safety oversight system is approved, it will take some time to transition to the new system. States currently performing safety oversight that opt out in favor of federal oversight will likely need to continue to perform their oversight functions until FTA has additional staff and an enforcement mechanism in place. However, a state may be less likely to replace staff who leave or ensure staff in place stay adequately trained if the state is in the process of giving over its oversight responsibilities to FTA. While the likely effect of this may be minimal, this situation could create the possibility of relaxed oversight during the transition period.

As part of our ongoing review of challenges to improving rail transit safety, we will review states' and FTA's current efforts to oversee and enhance rail transit safety as well as DOT's efforts to strengthen the federal role in overseeing rail transit safety.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other Members of the Subcommittee might have.

For further information on this statement, please contact Katherine Siggerud at (202) 512-2834 or siggerudk@gao.gov. Contact points for our Congressional Relations and Public Affairs offices may be found on the last page of this statement. Individuals making key contributions to this testimony were David Wise, Director; Catherine Colwell, Judy Guilliams-Tapia, and Raymond Sendejas, Assistant Directors; Timothy Bober; Martha Chow; Antoine Clark; Colin Fallon; Kathleen Gilhooly; David Goldstein; Joah Iannotta; Hannah Laufe; Sara Ann Moessbauer; and Stephanie Purcell.

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Testimony of
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Submitted to the
Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
U.S. House of Representatives

Hearings on
Public Transit Safety: Examining the Federal Role

December 8, 2009

Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee, my name is Arun Vohra. I am the President of MINI, LLC, a woman owned small business that has expertise in high technology applications for transportation, infrastructure, energy, and manufacturing. I am a Registered Professional Engineer in Maryland, and have been working on one of the largest unserved safety issues of subways since 2001. The safety issue is dirty electrical insulators which support the electrified third rail. When dirty, they leak electricity to the ground, causing additional safety issues, as well as electrical energy losses, increasing operating cost and infrastructure corrosion. I have walked on the tracks of the largest U.S. subways and have seen that they all have dirty insulators, especially in the tunnels.

I fully agree with and support the Public Transportation Safety Program Act of 2009 proposed by the Hon'ble Ray LaHood, Secretary of Transportation (DOT) and the Hon'ble Peter Rogoff, Administrator of the Federal Transit Administration (FTA). Federal safety regulation, oversight and enforcement are desperately needed for subways. Congress and the Administration should establish and enforce federal safety standards, protect the public, enhance economic development, increase energy efficiency and reduce the carbon footprint of subways to make safe, reliable, well maintained and efficient subways and a strong America.

Safe subway operation depends on the chain of proper design, construction, operation, maintenance, service, repair and replacement of track, structure (tunnels, bridges, stations,) controls and rolling stock. The weakest link in the chain of safe subway operation is maintenance that has been deferred, sometimes for years, because of tight budgets. The reason why the subways run as well as they do is because of the expertise, experience and dedication of the long serving, unrewarded and unseen workers who are doing the best they can, but need help, to provide safe and smooth subway operation.

I will illustrate the need for Federal safety regulations by describing the critical need for cleaning dirty third rail insulators. My remarks apply to insulators on all subway systems including the Maryland Transit Administration, (MTA), Baltimore; Washington Metropolitan Area Transit Authority (WMATA); Southeastern Pennsylvania Transportation Authority (SEPTA); Chicago Transit Authority (CTA); New York City Transit (NYCT); Metropolitan Atlanta Rapid Transit Authority (MARTA); Bay Area Rapid Transit District (BART); and Massachusetts Bay Transportation Authority (MBTA). Although the press articles quoted below concern WMATA, other subways also have the same insulator issues as WMATA. Pictures of dirty insulators from some of these subways are shown below.

At the present time, most subways are operating in a survival mode with substandard operation due to lack of maintenance. Track infrastructure maintenance has often been deferred year after year due to budget issues. When maintenance is deferred, systems fail. When systems fail, risk is generated and safety is compromised. While this rarely results in loss of life, it leads to degraded operation and consequently delays and cancellations, causing inconvenience to passengers. According to the Washington Post of December 4, 2009, "...Metro's projected budget gap for next year has grown significantly – to $175 million... Metro's recommendation to close the gap include ... shifting $30 million set aside for preventive maintenance to the operating budget. ..." The proposed FTA safety regulations will ensure that the track infrastructure is well maintained and supports current and future demand for rail services, and does so safely and reliably.

Subways rely on insulators to keep the electricity that powers trains flowing through the third rail where it belongs. The high-voltage third rail sits on insulators spaced 6 to10 feet apart, depending on the subway, which means there are 500 to 900 insulators in just one mile of track. There are about 1,200,000 insulators to be cleaned in the nation's major subways. Keeping so many insulators clean enough to break the electric conduction path is an expensive challenge to safety and reliability. In the U. S., insulators are rarely, if ever, cleaned because cleaning is a manual, slow and costly process compounded by limited track availability and space constraints around insulators. An automated cleaner has not been available so far, because manufacturers have not been willing to invest large amounts of money in research and development of cleaners because of the high risk, difficulty, and the cost of design and construction. Subways defer system wide insulator cleaning and resort to breakdown replacement. As a result, subways routinely replace dozens of burnt out insulators every year at considerable cost. In contrast, the Vienna, Austria subway cleans every insulator by hand, every year, because Vienna sees the value of safe and reliable service and is willing to pay for it. Dirty insulators can have other side effects that are very costly in the long run.

Dirty insulators fail due to the accumulation of electrically conducting particulates and dirt on the insulators. The dirt contains carbon dust from carbon brushes on the traction motor commutators, dust from brake pads, rust particles scraped by the collector shoe from the third rail, lime and winter road salt deposits from evaporation of water dripping from roads above the rail line, and dirt. Normal maintenance of the tracks includes rail

grinding that generates a significant amount of iron particles that also coat the insulators. The dirt eventually short circuits the insulator, causing a corona discharge, electrical arcing, smoke, and flame. If the insulator is made of fiberglass composite or wood, it will burn. Ceramic insulators can become white hot, incandescent and melt. On rare occasions, when a ceramic insulator flashes over (fails), it explodes with an ear splitting bang, jeopardizing the safety of workers and customers. The explosive failure may possibly be due to the instantaneous and enormous thermal stresses at the point of flashover, which far exceed the tensile and compressive strength of the ceramic material from which the insulator is made. Ceramic insulator failure sometimes results in a plasma ball, with a temperature of about 5000 ^{0}F which can vaporize a concrete tie and rebar. Wood ties can be set on fire. The reduced support to the running rails due to a burnt out tie, especially on a curve, may cause a derailment of a train with catastrophic results. The third rail safety cover is typically made of fiberglass or wood, and it can also burn. An overheated insulator can cause the plastic cover of an adjacent electric supply cable to overheat. If the insulator flashes over, the plastic covering can burn, releasing possibly lethal toxic smoke. Failed insulators can shut down train operations until action is taken to resolve the situation. Failed insulators are among the most frequent causes of downtime in many subways. As an example, according to the Washington Post of Sunday, August 9, 2009, "... Smoke Closes Metro Station. The L'Enfant Plaza Metro station was closed for nearly 90 minutes Saturday after Metro police noticed heavy smoke coming from the tracks on the Green and Yellow lines. A preliminary investigation indicated that the smoke developed after an insulator on one of the tracks caught fire or an object came into contact with the insulator ..."

Dirty insulators also leak electricity continuously and increase cost. The New York State Energy Research and Development Authority (NYSERDA) funded a landmark study in 2008 that showed that the NYCT subway loses $2 million per year from leaking electricity from dirty insulators. The NYCT Subway has over 440,000 insulators. There are about 1,200,000 insulators nationwide.

Based on the NYSERDA study, the estimated total annual U.S. electricity leaking from dirty insulators is 59.4 million kilowatt hours at a cost of $12 million. If the insulators were to be cleaned, the carbon reduction from the reduced fuel used in the electric generating plants would be 7.5 metric tons per year. Based on data from subways and the National Transit Database on reported annual insulator fires, service outage time per fire, and numbers of customers waiting, and the value of customer's time as established in a study sponsored by the American Public Transportation Association, the U.S. estimated annual passenger delay time cost is $175 million. Based on an estimated cost of $10 to clean a heavily encrusted insulator, cleaning would save $187 million/1,200,000 or about $156 per insulator. The follow-on routine insulator cleaning will be much less costly.

Stray currents caused by leaking insulators, are another significant issue. Stray currents can cause operational problems with train control circuits, and significantly increase corrosion of metal components and structures in bridges, tunnels and neighboring utilities and other metal infrastructure on the tracks. One subway has indicated heavy rusting of their bridges and of a fuel pipeline near their tracks, and cracking of concrete ties that

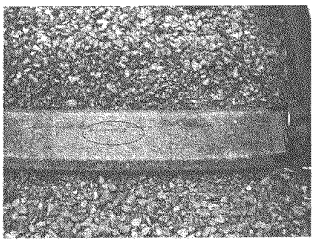
contain steel reinforcing rods. Another subway installed a $4 million cathodic protection system to prevent corrosion on a critical part of their system and will have to spend $1 (one) million dollars every five years to maintain it. According to a Washington Post article on December 4, 2009, regarding the Metrorail extension to Dulles Airport, there is a safety issue on the 32-year old foundations to be used in a new bridge to be built over Interstate Highway 66: "...inspections of rust and corrosion and tests to determine whether electrical currents from the existing Orange Line could have caused pilings to deteriorate, a concern of Metro Officials ...".

The "electrical currents from the existing Orange Line" are probably leaking electricity from dirty insulators that have not been cleaned. The eventual replacement of bridges and other metal infrastructure, including the steel reinforcing bars in the tunnels, concrete ties and structures, that have corroded due to leaking current from dirty insulators will run into many, many billions of dollars. The corrosion of metal conduits that carry the signal communications could also lead to train control malfunction and tragic accidents.

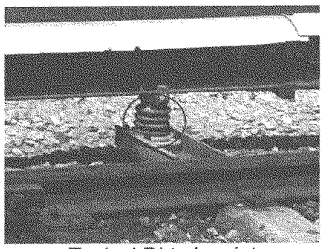
Although there is no safety standard on cleaning dirty insulators, the FTA is to be congratulated for thinking ahead, recognizing the importance of this issue and supporting development of a high speed automated in-place insulator cleaner that will make the cleaning process safer and affordable. In-place cleaning saves the labor cost of $60 to $100 to replace an insulator, and $15 to $70 for a new fiberglass or $60 to $100 for a new ceramic insulator. NYSERDA is also to be congratulated for providing additional support for a demonstration of the cleaner at the NYCT subway. Every dollar spent on insulator cleaning will save over 15 dollars in avoidance of electric wastage and passenger delays alone.

Establishing Federal safety regulations would eliminate insulator failures, support continued safe, secure, and reliable operation; and stimulate economic growth by eliminating passenger delays due to insulator failure. Energy diversity would be increased by increasing the energy efficiency of subways and Greenhouse gas emissions would be reduced.

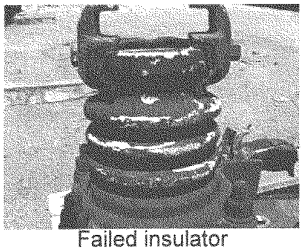
In summary, Federal safety regulation, oversight and enforcement will sustain the future, maintain the present, and repair the past. Congress and the Administration should establish and enforce federal safety standards, protect the public, enhance economic development, increase energy efficiency and reduce the carbon footprint of subways to make safe, reliable, well maintained and efficient subways and a strong America.



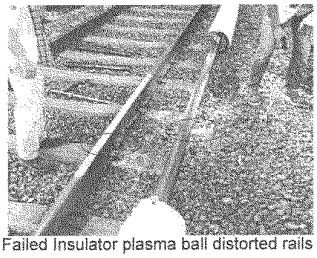
Cracked concrete tie due to rebar corrosion from leakage current



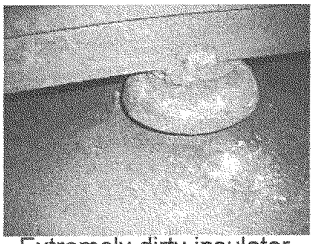
Typical Dirty Insulator



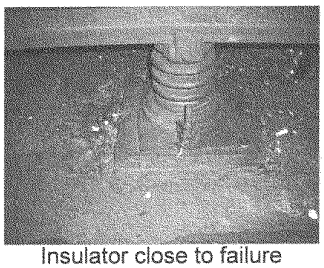
Failed insulator



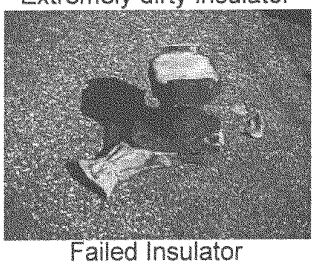
Failed Insulator plasma ball distorted rails



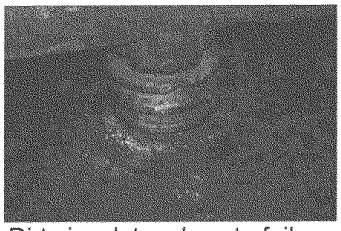
Extremely dirty insulator



Insulator close to failure



Failed Insulator



Dirty insulator close to failure