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EXAMINING THE FEDERAL ROLE IN OVERSEEING THE SAFETY OF PUBLIC TRANSPORTATION SYSTEMS

HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING, TRANSPORTATION, AND COMMUNITY DEVELOPMENT

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

ON

EXAMINING THE FEDERAL ROLE IN OVERSEEING THE SAFETY OF PUBLIC TRANSPORTATION SYSTEMS

DECEMBER 10, 2009

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EXAMINING THE FEDERAL ROLE IN OVERSEEING THE SAFETY OF PUBLIC TRANSPORTATION SYSTEMS

THURSDAY, DECEMBER 10, 2009

U.S. SENATE,
SUBCOMMITTEE ON HOUSING, TRANSPORTATION, AND COMMUNITY DEVELOPMENT,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Subcommittee met at 9:33 a.m., in room SD–538, Dirksen Senate Office Building, Senator Robert Menendez (Chairman of the Subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN ROBERT MENENDEZ

Chairman MENENDEZ. Good morning. This hearing of the Banking Subcommittee on Housing, Transportation, and Community Development will come to order. I would like to, first of all, thank Chairman Dodd and Ranking Member Shelby and Senator Vitter and their staffs for working with us to put together today's hearing.

Chairman Dodd is a busy man these days. He is in the midst of achieving the most important reform in our health care system in a generation, while at the same time working hard to completely overhaul our regulatory financial system, not to mention his central role in formulating legislation to jump-start our economy and create millions of new jobs. So in the interest of giving him a few minutes this week to sleep and eat, I volunteered to lead on this hearing. So we appreciate everything he is doing.

I want to start off by praising the work of Secretary LaHood and Administrator Rogoff. They are overseeing transit policy at a time of historic ridership, but also at a time when States and localities have few resources to meet this demand. They have proven themselves able and visionary leaders in these trying times.

As seen by the proposal they will be discussing today, their leadership on safety has been particularly important. In transportation policy, safety must always be of paramount importance. This past summer, the tragic Metro crash claimed the lives of nine people, including a retired commanding general of the D.C. National Guard and his wife, two working moms, a retired teacher, and a woman who worked with nurses around the world. We must never forget that coming up short on safety results in tragedies that must be avoided at any cost.

As we begin this discussion, there are a few key points I would like to make.

First, the way we currently regulate mass transit safety simply does not make sense to me. There is basically no Federal role in transit safety oversight, and, frankly, that is pretty shocking. We have 27 States with a mishmash of regulations who are underfunded, understaffed, who are lacking in safety training and oversight, and who are often not doing a good job of maintaining transit assets.

Second, in the past 2 years, there has been a disturbing trend in transit safety. Fatalities, injuries, and derailments all seem to be trending upwards, and we must act promptly to make sure this trend is stopped and reversed.

Third, it is important to keep in mind that despite the lack of Federal oversight and the disturbing trends in recent years, mass transit is still, however, by most measures the safest mode of transportation that there is, much safer than driving, safer than flying, even safer than commuter rail, which is governed by a very robust Federal safety system.

The last point I would like to make is that no matter how well we regulate transit safety, we cannot expect safe systems if we do not invest in new infrastructure. According to an FTA report this past April, it would cost $50 billion just to get the Nation's seven largest transit systems to an acceptable state of good repair. A jobs bill is being put together as we speak, and I am hopeful that robust rail modernization funds will be part of that bill. Rail modernization funds spend out quickly, they create jobs, and they are an investment in infrastructure that is critical to our economic health. These funds must be part of any effort to make transit safer.

So I want to thank the Administration for a well-thought-out proposal. I look forward to working with them and the Chairman to make transit safety an important Federal priority. This issue is of the utmost importance and cannot be held hostage, in my view, by the reauthorization process. Therefore, despite a quite full Committee schedule, I certainly hope and expect that we will mark up transit safety legislation early next year.

With that, let me recognize the distinguished Ranking Member, Senator Vitter, for his comments.

Senator VITTER. Thank you, Mr. Chairman. I am eager to hear the testimony, so I will simply thank you and the Committee for this hearing and welcome Secretary LaHood, and I had the honor and pleasure of serving with him in the House. So thanks for your continuing service, Mr. Secretary.

Chairman MENENDEZ. Senator Warner.

STATEMENT OF SENATOR MARK R. WARNER

Senator WARNER. Thank you, Mr. Chairman, and I appreciate the chance to be here and thank you and the Ranking Member for holding this important hearing. My apologies on the front end to the Secretary and Mr. Catoe and some of the others on the other panels. I have to step out in about 20 minutes.

I want to, first of all, again echo the Chairman's comments on the importance of transit safety and the fact that it has been an area that I think has often been, at least at the Federal level, overlooked, and I have to acknowledge, as a former Governor, perhaps at the State level overlooked as well. So I want to start, again, by

applauding the Secretary for his collaborative approach he has taken in trying to see how the Federal Government can be involved in strengthening these State and local efforts in terms of transit safety, and I really look forward to working with the Chairman and the Ranking Member and you on making sure we move forward with this.

You know, echoing again what the Chairman said, the recent incidents on Metro are more than just an incident to me since this is a network that serves my communities in Virginia. And we all remember the tragic accident in Maryland in June. But as we know, there had been a series of other incidents that had taken place over the last few months, three of them actually in Virginia, one as recently as November 29th in West Falls Church. So this string of incidents really heightens the need for our attention and focus.

Echoing again what the Chairman said, we need to make sure we have got adequate Federal funding, and I am happy to see that the recently released conference report on the fiscal year 2010 Transportation, HUD appropriations bill includes about $150 million in new funding for grants, and WMATA can go after some of those to address safety and maintenance issues. I think one of the things all of us who live in the greater capital area realize is the Metro system—which I can still remember when we prided it as brand spanking new—is getting up in age now. [Inaudible], whom I have worked with for many, many decades, reminded me it is about 35 years old, 35, 40 years old at this point, and just like any house that gets that age, things all of a sudden start breaking down at one. And I think we are seeing that, at least on the maintenance side with Metro, it is showing its age.

So I echo the Chairman's comments that not only do we need to increase our focus on safety, but we also have to increase our focus on maintenance.

I just want to make two final points before the Secretary's comments. I hope we would look at this from the standpoint of how we get transit safety right. There very well probably should be an increased Federal transit safety role. As I echoed earlier, so many States, perhaps with the exception of California, most States do not do a very good job on transit safety. I know we have gone back to my Secretary of Transportation—or Governor Kaine's Secretary of transportation, who was also my Secretary of Transportation, and trying to look at what authority we thought we had in Virginia to take on transit safety. And it has just never been high enough on our priority list, and there is some uncertainty on what kind of authority at the State level we have.

And in terms of Metro, that is further compounded because of the challenge with the three jurisdictions. I know that the biggest divide oftentimes talked about in this area is oftentimes viewed as the Potomac River between Virginia, Maryland, and the District. And with these three jurisdictions here in the Metro system, we are going to have to find a way to perhaps strengthen the tri-jurisdiction oversight board; we are going to have to look at how we strengthen both local and State abilities to look at safety.

And since I am not going to be here for Mr. Catoe's comments, I do want to at least pose a couple questions. One is that we have

read that Metro has lost a number of its experienced employees in the normal course of retirement, and as we have seen, some of these positions, particularly in terms of safety oversight, may be being replaced by much younger employees. I would hope to hear from Mr. Catoe's testimony what he is doing to emphasize safety in terms of training of all employees, how we make sure that safety is a high priority and is measured and employees are measured on their safety performance. And I am wondering, in light of the fact that we have had this attrition, what else we can do to slow further attrition of an experienced workforce; what new safety training programs are you putting in place; and then, third, has there been any thought to, at least on some short-term basis, even perhaps bringing back some of the recently retired employees who have got an expertise in safety on how they might help consult or further train this newer workforce.

So while I will not be here to hear his responses, I look forward to getting the answers to those questions and, again, look forward to working with you, Mr. Secretary and Members of this Committee, on trying to get this right. Thank you.

Chairman MENENDEZ. Thank you, Senator Warner.

Senator Reed.

Senator REED. I just want to recognize and welcome Mr. LaHood. It was a pleasure serving with you in the Congress, Ray. And also Peter Rogoff, who was very kind and able when he was here in the Senate. Thank you, Peter.

Thank you, Mr. Chairman.

Chairman MENENDEZ. And he is still kind and able, right?

Senator REED. Well, we will see.

[Laughter.]

Chairman MENENDEZ. Well, that is why I posed the question. Thank you.

Let me introduce Secretary LaHood, whom we all know very well. He is the 16th United States Secretary of Transportation, and while he has had a relatively short tenure, he has already, I think, distinguished himself in the role. Several of us have had the opportunity to serve with the Secretary back in the House of Representatives where we proudly served with him on the Transportation and Infrastructure Chairman.

So, with that, Mr. Secretary, we welcome you and are ready for your comments.

STATEMENT OF RAY LAHOOD, SECRETARY, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY PETER M. ROGOFF, ADMINISTRATOR, FEDERAL TRANSIT ADMINISTRATION

Mr. LAHOOD. Mr. Chairman, Mr. Ranking Member, thank you very much for the opportunity to testify on our proposed legislation to reform the Department of Transportation's role in overseeing the safety of our Nation's rail transit systems. With me today is Peter Rogoff, whom all of you know. He is our Transit Administrator now and doing a great job.

Traveling by rail transit in the 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 regulations, oversight, or enforcement authority, and we must remedy that gap. Rail transit systems carry far more passengers daily than either our domestic airlines or passenger and commuter railroads, where safety is stringently regulated by the FAA and the FRA, respectively. Yet the DOT is prohibited by a provision in the Urban Mass Transportation Act from issuing national safety regulations for rail transit systems. That antiquated provision was put into law 45 years ago. I ask you to change it now so that we can address the safety needs of the more than 14 million Americans that use these rail transit systems every day. This is an antiquated law, and it needs to be changed.

At present, 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 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 regulatory oversight and enforcement authority granted to each transit system.

This results in a patchwork of 27 separate State 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 an average of 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 now. Under the leadership of our Deputy Secretary John Porcari, our Department has developed a legislative proposal that has now been formally transmitted to you all on behalf of the President, to the Speaker of the House, and the President of the Senate, and I ask you consider our reform proposal seriously and promptly.

Our legislative proposal would accomplish three goals to strengthen transit safety nationwide.

Number one, through the FTA, it would establish and enforce minimum Federal safety standards for rail transit systems that receive 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 seek to ensure that States will now have the manpower and training and the enforcement tools to conduct meaningful oversight. In States that choose to opt out, the FTA will enforce the new Federal standards.

And, three, the program would ensure that any State agency overseeing transit systems would be financially independent from

the transit systems it oversees. This morning, I have 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 effort. Our goal is not to impose highly detailed regulations but, rather, to encourage rail transit agencies to use modern risk analysis to identify their own unique safety vulnerabilities and then take action.

Safety remains our highest priority at DOT. We have established in the Department a DOT Safety Council that will tackle critical and cross-cutting safety issues across all transportation modes. Our transit safety legislation proposal was brought before our council and approved through the input of safety experts across the entire Department. I believe our 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.

We look forward to your questions, Mr. Chairman, and thank you again for your leadership, for Chairman Dodd's leadership, and allowing us to be here to testify today.

Chairman MENENDEZ. Thank you, Mr. Secretary, for your testimony.

Let me welcome and call upon the distinguished Chair of the full Committee, who I guess I gave just enough time to have a little breakfast before he got here.

Chairman DODD. Well, I thank you for that.

Chairman MENENDEZ. With everything you are doing, in my opening statement—we are amazed that you actually—health care reform, the jobs package, financial regulatory reform. So we are thrilled to have you here.

Chairman DODD. Well, I would not miss Ray LaHood, a friend and colleague.

Mr. LAHOOD. Thank you, sir.

STATEMENT OF CHAIRMAN CHRISTOPHER J. DODD

Chairman DODD. I will be very, very brief.

First of all, let me thank Senator Menendez for doing this. He has a strong interest, obviously, in the subject matter, and you see by just the participation here of Senator Vitter as well as Mark Warner and Jack Reed and others. This subject matter is one that all of us have a great deal of interest in, and, Ray, we are very excited, obviously—and you and I have worked already on a number of issues together—about your leadership in this effort. So I appreciate that very, very much.

As I said before, this is a—we often talk about win–win issues. I often describe this issue as a win–win–win–win–win, and basically what that means is it cuts down traffic congestion, what we are talking about, transit policies, revitalizes communities, reduces our dependence on foreign oil, protects our environment, and perhaps most importantly, connects people to jobs and services. And so this is an issue that truly demands our ongoing attention.

And you may have said this already, Mr. Chairman, and if I am repeating some of your remarks, I apologize. But I was stunned to

see the numbers on ridership—and I know you and I have talked about this, Ray, already, but the highest numbers since 1956, 10.7 billion trips taken last year on public transit. And so as Chairman of the Committee working with Senator Menendez and others, Senator Shelby, we want to work with you to increase that number in the years to come as well.

But a first priority, obviously, is security of our transit systems, and even though there are problems and we read about them and highlight it, I think it is important to note that among the safest modes of transportation is transit. From 1998 to 2007, incidents on public transportation rail systems fell by half, which is a very positive sign, despite the notoriety, obviously, of some of these major problems we have seen. But a recent series of high-profile accidents have some Americans concerned, and rightfully so. Since last spring, there have been accidents in Boston, San Francisco, and here in Washington. Nine people have lost their lives, 133 have been injured—obviously, number that are not acceptable. But, still, I think the record overall has been a pretty good one.

The Transit Administration has limited authority, as you have pointed out, to implement and enforce national transit safety standards, and we need to correct that, meaning that we have gone without a proper national safety program. States handed an unfunded mandate have been forced to scrap by the State Safety Oversight Boards. Many of these boards lack authority and expertise, as you point out, and here is where we have got to close that gap, obviously. This is an *ad hoc* approach to transit safety. Oversight has got to be replaced with a clear national transit safety standards, and I support you in that effort.

Secretary LaHood and Administrator Rogoff have taken a leadership role, and we are deeply grateful to both of you for doing so, and we will closely review it and work with you, and by improving our oversight structure, it will not be enough. We need to address the enormous backlog of needed investments in transit infrastructure, and you and I have talked a lot about this.

Metro North, which provided nearly 40 million trips in Connecticut last year alone, has not had a collision in more than 25 years. But we cannot keep running along aging rail lines and decaying tracks and bridges and expect the record of safety to continue. It just will not happen.

A recent rail modernization study by the FTA of the Nation's nine largest transit operators, including Metro North, found that one-third of the studied agencies' assets are near or have exceeded their expected life span and are in either marginal or poor condition. We are running about a $50 billion deficit in funding for the needed repairs, which is just going to only grow.

Funding levels for the Fixed Guideway Modernization Program lag well behind what is needed to address backlogs in repair and replacement and must be addressed in the next transportation bill.

We can get a head start on catching up by funding the transit capital investment, the jobs bill, something I think we ought to do. Rebuilding and repairing our infrastructure will create jobs, obviously, we all know and create more reliable systems. No rider should ever wonder if they are safe on our transit systems.

So I commend you for what you are doing, and I should note that Senator Mikulski is also testifying today, and she has taken a great interest in this issue as a result of the tragic accident last summer on the Washington Metro system. So I would like to thank our witnesses in advance and, Ray, for your testimony as we move forward on this, and obviously, the opportunity here for us to take advantage of what people now perceive as a needed area of interest and concern ought to be utilized. And so I thank you.

I thank again Bob Menendez, who has done just a wonderful job on this issue as well, and we share, obviously, in our region, along with Jack, this tremendous dependency and a growing dependency and an opportunity for us to really expand and lead the country in so many ways in this area. So I thank you and I thank Bob.

Thanks, Mr. Chairman.

Chairman MENENDEZ. Thank you, Chairman.

We will turn to a round of questions here. We will put 5 minutes on the clock. Let me start off. Mr. Secretary, again, I want to reiterate I think this is a strong proposal that sets us on the path to a much safer national transit system, but I have got a few questions.

One—and, you know, the Administrator is sitting next to you—is FTA ready for this type of change? Up until now, I view the FTA as much more of a grantmaking organization, and my understanding is that it has less than full-time employees—three full-time employees that are focused on safety. So the question is: Can FTA effectively change its mission and can it effectively ramp up, assuming the Congress passes the legislation and sends it to the President? Is that something that you envision being able to happen?

Mr. LAHOOD. Yes, sir, Mr. Chairman. We believe that upon enactment and having this bill signed, whatever you all do, it will take upwards of 3 years to really implement it, and during that time we will be able to staff up and work with the States on really developing the very best safety program possible. We believe it is possible, and if you do not mind, I will let Peter say a word about this also.

Chairman MENENDEZ. Absolutely.

Mr. ROGOFF. Well, Mr. Chairman, we have been working with OMB in development of the 2011 budget proposal of the President to make sure that there is a meaningful funding increment to hire the necessary staffing both in terms of folks who write regulations, economists, attorneys, but also to better finance the State partners in the field so they can buildup their expertise and inspections, the training costs, the salary costs to stand up this system.

Chairman MENENDEZ. Which brings me to my second question, some of the details which have to be fleshed out, and those details are going to determine whether the safety regime is going to be successful or not. When do you envision being able to give us insights as to what type of oversight authority States are going to need to meet Federal standards? And how much are we talking about in terms of projected costs as well as, you know, what type of staffing will be necessary in order to meet these new more rigorous standards?

Mr. ROGOFF. Well, sir, the funding increments and the funding needs of the program have about 30 components. First, as I mentioned, is getting the necessary folks in—house in FTA to do the regulation writing. Importantly, because the State have stood up sort of the bare minimum in terms of State oversight, our proposal envisions the Federal Government taking over that cost and growing it in terms of their—you know, right now, as the Secretary said in his opening statement, these State agencies, with one exception, average less than one person per year. We do not think that is anywhere near adequate. So we would propose through Federal grants to grow that resource both to handle the staffing costs and the training costs.

Now, overall, in terms of hard numbers, we are not in a position while the 2011 budget is being developed to talk about hard numbers, but we are comfortable saying that it will be well less than 1 percent of the FTA's total budget. We are fine-tuning with OMB those needs right now.

In the area of authorities that we would expect the safety partners in the States to have, in order for us to certify them as an adequate State partner to enforce Federal regulations, in general we want them to have the necessary teeth to actually compel the attention of the transit agencies they oversee. And that is something we have not seen to date. So that could—not necessarily but could—include the ability to assess fines. They would have to have full access to inspect those systems. They would have to have full access to all of the agencies' documentation. And if we found them to be inadequate, we would have Federal FTA personnel handle the oversight in that State.

Chairman MENENDEZ. One last question. Mr. Secretary, you talked about in your testimony the desire to have performance-based measurements when evaluating whether an agency is operating safely or not. What type of performance measurements are we talking about? Are we talking about the number of accidents, personnel dedicated to safety, condition of systems? What are we looking at?

Mr. LAHOOD. Well, we have some experience with this through the FRA and also through our pipeline safety program in the Department, and we would probably look at those standards and issues in relationship to what best practices have been with the FRA and our pipeline safety, and then work with the transit organizations to make the highest safety standards and our ability to really oversee those in a way that reflects the values that, you know, safety is number one.

We had a meeting, Peter and I convened a meeting of transit groups from around the country—this was a few months ago—to explain to them that we felt it was important for the Department to step up on safety and to elicit their ideas on how we could use their expertise, whatever they had, with our expertise to really develop these kinds of standards.

So we are going to take best practices from around the country. We are going to take best practices from within our own Department through the FRA, which, you know, does some of this, and also our pipeline safety, and really try and use best practices to develop these new standards.

Chairman MENENDEZ. Just one quick follow-up. I think it is great to have the stakeholders with you. What was their attitude?

Mr. LAHOOD. Well, I will let Peter talk about that. I think the fact that Mr. Catoe is here today, he just told me before we began, he supports what we are doing, and he has given us a lot of encouragement to move ahead with it. I think that is a very strong signal from one of the largest Metro systems in the country—America's Metro system, if you will. And we appreciate the fact that he is here today supporting our efforts, and I think that is true. But Peter was actually interfacing with these folks a little more than I was.

Mr. ROGOFF. Mr. Chairman, I would say there are a lot of elements of our legislative proposal that have been infused by our meetings with the stakeholders, not just—we had State DOT commissioners at that meeting. Senator Warner talked about his State commissioner who frankly admitted at that meeting that he did not know, until the issue of the Norfolk rail system came to him, that he even had this responsibility in his agency. Two other State transportation commissioners basically confessed the same thing as part of that stakeholders meeting.

So, clearly, we took from that the need to raise the visibility and either raise the capability of the State partners or, frankly, replace them with a Federal presence to make sure that the issues are being attended to.

Chairman MENENDEZ. Thank you very much.

Senator Reed.

Chairman DODD. Just quickly——

Chairman MENENDEZ. Senator Dodd.

Chairman DODD. Senator Menendez asked the one question, but we are doing a lot of opting out today in various proposals around Congress, whether it is public options or the like. And I notice here, despite the efforts—and I commend you for them—you allow the States to opt out here. And just given the budgetary constraints and all the other pressures that every one of our States is facing across the country—I talked to my Governor the other today, spoke to the Speaker of the House last night on matters in Connecticut, and they are all facing it. And I just wonder, how are you going to encourage the States not to opt out, it seems to me, given the pressures they are under?

Mr. ROGOFF. Well, sir, we are talking about adopting, basically taking on the State costs as a Federal cost in this instance. So we would be covering—if they would grow the inspection presence and grow their authorities to do an adequate job, we would cover the salaries, we would cover the training, we would cover the travel of those State partners.

They could still opt out. There are a couple of States—Wisconsin might be one that has a very short amount of mileage; Arkansas might be another that has only less than 4 miles of rail transit service. They may opt out only because the effort might not seem worthy given the size of their systems. But, in general, if we are taking on the costs, we would hope that they would continue to participate with us.

Chairman DODD. Well, I hope you are right, as well. Let us know. Let us know in what ways we can incentivize that even more, because that will be critically important.

Last, let me just raise—and Peter, let me quote you, because I thought this was a very strong statement and one I couldn't agree with more. And the quote that you made in August, I think it was, of this year, you said, "Deferred maintenance items, if deferred long enough or left undetected, can become critical safety risks. The issues of the conditions of our transit infrastructure and the safety of our transit systems are inextricably linked," end of quote. I mean, it is a very concise, clear statement, it seems to me. So I also hope that we think of ways, Ray, to start talking about addressing the backlog.

These problems just grow. I mean, I talked about the $50 billion now. Those numbers really become exponentially larger with every passing day and week, and particularly if ridership is up and more demand is on it, more stress on the systems. I mean, all of these factors contribute to that.

And I realize this is hard. We have got to think more creatively about how we finance and budget these things. I know you have heard me and my colleagues probably *ad nauseam* to the boredom of many of them, I think. I am talking about this Infrastructure Bank idea, particularly for regional and national infrastructure needs of the country. There are other ideas, the bonding ideas that Ron Wyden has talked about. I am sure there are many other ideas.

We will never do this out of the normal appropriation process. Despite the Herculean efforts of our colleague from Maryland and others, there just are limits. I mean, talk about the magnitude of the problem and the ability either to cut other spending or to raise taxes, obviously, we all know who have been here more than a week, that is impossible. So we have got to think differently about how we do this, and we don't have a lot of time, in my view, because the problems become so monumental and the stresses on the system even larger all the time.

So I hope there is a high priority, and even though it doesn't necessarily produce the job tomorrow that people would like, and I would like it, as well, we had better start thinking about these longer-term ideas and how sustaining these systems—or, frankly, this is all going to be—we are going to have more safety problems. I don't care how many bills we pass. You let your system begin to collapse as it is, that deferred maintenance just predicts the kind of safety problems you are going to have. So they are inextricably linked, to quote Peter.

Mr. LAHOOD. Well, Mr. Chairman, if I could just say, I know that you know this, but it is worth saying. At the economic summit that President Obama hosted at the White House, he sat in on the infrastructure panel that I was a part of and he talked about the Infrastructure Bank. The President is very keen on this idea, so obviously we are very keen on it. There is a lot of momentum growing for the Infrastructure Bank for the very reason that you say. There is just not enough money to do all the things we all want to do around here and this is a pretty good way to really identify some big things that can be done. I think you will see a lot of interest

from this Administration, from the President on down, for this idea.

Mr. ROGOFF. Sir, could I just add two things real quickly to that point? When the Secretary took office, we established a new strategic plan for the Department, and one of those five priorities for the Department is the state of good repair of the transportation system. It is not just limited to transit. It covers the highway system and the pipeline network and all those things. But I think you will see going forward a budget emphasis on not just expanding new systems, but also on focusing on what is the condition of the existing infrastructure.

Also, recognizing that that backlog exists, and as you point out, we are not going to buy it down tomorrow. We think this proposal is essential to that because it requires folks to use safety management systems, recognizing that the system may be in poor repair. How do we identify what the greatest safety risk is first, before the accident happens? That is an elemental part of this proposal.

Chairman DODD. Thank you. Thank you very much.

Chairman MENENDEZ. Thank you.

Senator Reed.

Senator REED. Thank you very much, Chair Menendez, and thank you again, gentlemen, for not only your testimony today, but your service.

Just following Senator Dodd's point, if we subsidized these transit systems at the rate we subsidize the airline infrastructure and the road infrastructure, these problems might be self-correcting because the money would be adequate to do this. I think every system wants to do this. This is not something that they are saying, no, no, no, don't bother us. They want to have a safe system.

But let me ask a very specific question, and that is, within the legislation, there is a proposal to expand coverage to bus systems and there are two possible ways to do that. One would be the bus—or there are several possible ways. One is the bus systems that are linked to the transit rail systems you are proposing. The other would be to bus systems are not, and that is the case in Rhode Island, where we have a statewide bus system which has a reasonably good record, but we can always do better.

Just can you both, Mr. Secretary and Mr. Rogoff, comment on this. Will you exercise this authority? Is this something just good to have on the books? Or is this part of a specific plan with a time table?

Mr. LAHOOD. Well, I will let Peter comment, too. It is a part of really trying to look at this in a comprehensive way. As Peter indicated, our number one priority at DOT is safety in all modes. We know that people ride not only trains, light rail, but buses, and we just think there needs to be attention paid to this, and we didn't want to leave it out and then be criticized for, how come you are not taking care of this mode of transportation?

Mr. ROGOFF. The only thing I would add, sir, it is not in our near-term plans to take on the bus regulatory agenda. We want to walk before we run. We think that the greater focus should be on rail. But since we are prohibited by law since 1964 from regulating in either area, we felt it important when coming to you and asking that prohibition be lifted that we address the entire transit uni-

verse and have the option of getting into the bus area if we feel it is necessary.

Senator REED. I appreciate that. It helps clarify your intentions.

I understand, not directly, but at least indirectly, for the National Highway Traffic Safety Agency and the Federal Motor Carrier Safety Administration, they have—probably not coordinated, but they have authority in this area. Is the first step to sort of coordinate their activities, existing activities? Is that something you are thinking about?

Mr. ROGOFF. Before—again, our emphasis is really on the rail area.

Senator REED. Right.

Mr. ROGOFF. We wanted to reserve the statutory authority that the Secretary makes the necessary finding to get in the bus area. But if we got to that point, we would have very clear delineations of authority, as you correctly point out. NHTSA and FMCSA have different regulatory authorities, depending on whether it is focused on the driver or the vehicle. If we were to get into this space, we would focus more on the systems, and like I said, that is not in our near-term plans.

Senator REED. Just a final question. The thrust of the legislation is to have a transit system independent safety oversight body. I don't know, is that the system today everywhere, or will some States and localities have to modify their approach? And also, how do you ensure this independence? And it goes, I think, to a question Senator Dodd raised about paying for this and making requirements on States and localities and not being able to fully satisfy their funding.

Mr. ROGOFF. Well, we would like to fully satisfy their funding by doing it through grants to the State participants. But importantly, they would have to—a number of them would have to change their governance structure. This is one of the deficiencies that we wanted to address head-on. Right now, some of these transit oversight agencies actually depend on the transit system they oversee for their budget. It is a conflict of interest we don't allow anywhere else in Federal transportation safety. We don't allow the airlines to decide how much the FAA inspectors will get paid this year or what their numbers will be. We don't allow the freight railroads to determine how many rail inspectors there will be and how much they get paid.

But somehow, this current system for transit rail safety has evolved into where certain systems have been allowed to either pay their safety oversight entity or not. By taking over at the Federal level those costs, we hope to eliminate that conflict of interest, and yes, there would have to be some governance structures as well as boosting of staff and capability.

Senator REED. Thank you. Thank you, Mr. Chairman.

Chairman MENENDEZ. Thank you, Senator Reed.

Well, let me thank you, Mr. Secretary and Mr. Administrator. We appreciate it and look forward to continuing to work with you and the Chairman of the Committee.

Mr. LAHOOD. Thank you very much.

Chairman MENENDEZ. As you depart, let me welcome our distinguished colleague from Maryland, Senator Mikulski, who has been

a vocal advocate for more Federal oversight of the transit safety issue and recently introduced S. 1506, the National Metro Safety Act, which I know she is going to want to talk about today.

Senator Mikulski, thank you for joining us and we look forward to hearing your testimony.

STATEMENT OF BARBARA MIKULSKI, U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MIKULSKI. Thank you very much, Mr. Chairman, and thank you for those nice words of introduction.

I really want to thank you for your national leadership on transportation safety in general and also on this transit safety issue in particular and the entire Committee. You were prompt in responding to my request to take a look at these issues affecting the Washington-Maryland-Virginia Metro System, and I really would like to compliment Secretary LaHood and the President.

You know, we have had these terrible accidents and the reaction has been swift, it has been urgent, and it has been thorough. And I think if we all work together, the executive and legislative branch, you as the authorizers, we as the appropriators, we can really, within the next year, really do something that we can feel proud of and that our constituents can rely on. I feel like it is a new day, that there is a freshness in leadership and a commitment to rigorous follow-through.

I recognize that transit safety is a national problem. But I am here today to speak about the Washington Metro that serves Maryland, Virginia, and the District of Columbia. I am here to speak up for all the people in the Capitol Region, over 2 million people who every day ride the Metro, go to school on the Metro, keep their doctors' appointments on the Metro, and use the Metro.

But the Metro also serves the Nation. It is America's subway. Your constituents and many people from around the world use the Metro when they come to Washington and they need to be able to rely on Metro for not only the reliability of timeliness and adherence to schedule, but also for safety.

I want to commend today the day-to-day staff at Metro, the worker bees at Metro, the people who actually get out there every day and operate it. They have done a fantastic job, and I just remind you that on 9/11, they helped evacuate the District of Columbia at some considerable risk and fear to their own lives. They also did a spectacular day on Inauguration.

But Metro is facing very serious problems. Yes, they do need money. They remind us about it continually. But I think that they need a more vigorous, aggressive form of management and they need to know their Federal Government is on their side in terms of a national framework for public safety.

I am calling for really a sense of urgency, both by Metro and ourselves, because I want to tell you some shocking things just in the last year. In the last year, there have been 11 deaths on Metro. Eleven people have died on Metro. In June, a Metro train struck another train during the evening rush hour. Eight passengers were killed, including one from Maryland, and also a Metro employee. Over 50 passengers were injured.

Then in August, another Metro employee died, a track repairman. And guess what? He was hit by Metro maintenance equipment. We have trains owned and operated by Metro that are the cause of the problem. This wasn't a terrorist bomb on the tracks. This wasn't a drunk driver cutting in front of the train. This was Metro equipment that failed the people who were riding it and failed the people who were working on it.

And in September, there was another employee death. A communication technician was killed, guess what, from injuries caused by being hit by a train. I wonder, what is Metro doing? And all the riders and the workers have gotten is lip service, a lip service commitment to having change.

My observation of Metro management is they think that having a meeting about the problem is solving the problem rather than the kind of aggressive work that you do. There is a pattern of laxity, passivity, and lip service. I would hope that the Metro Board would take appropriate action. I can tell you this. The Metro leadership, as you know, wouldn't even let the inspectors from the three jurisdictions on the tracks. So we have got problems with Washington Metro, itself, and I don't want to have more meetings. I want to have more action.

But guess what? We have let Metro down, too. I asked Secretary LaHood to investigate some of the Metro safety practices. But what is loud and clear is that we have not followed through on the National Transit Safety Board recommendations. I have met with the NTSB and said, what do we need to do? They went over recommendation by recommendation, going back in the last years since 2002 and 2006. They said that FTA has not taken any action on their recommendations. FTA says it doesn't have the authority, and even if they had the authority, they don't have the money. So, you know, we are passing rail cars. I mean, we need to act.

So as you can see, I am really hot about this, and what I would like us to do is pass legislation that not only fixes Metro, but deals with the larger issues. My legislation is complementary to what the President is advocating and Secretary LaHood discussed with you today. My legislation is focused on the implementation of the National Transit Safety Board's recommendations. It would require the Secretary to implement the prior recommendations, particularly in emergency evacuation standards, the crashworthiness of their cars, and the data event requirements. These are NTSB's most wanted.

You know, we have systems that regulate everything. We have Federal safety standards for buses and airplanes and even commuter rail, but not for subways. So one would be on crash worthiness standards for train cars. I think you would find interesting that there is no standards for the safety of these cars. So we need to be able to prevent the cars from telescoping in crashes. I don't want to go into ghoulish and grim details, but people died and were injured because the cars telescoped. The NTSB offered a recommendation in 2006. Nothing happened.

Then we need to have data event recorders, just like we have on airplanes. They recommended it in 2002. Nothing happened.

The other was emergency entry and evacuation standards for train cars. You know how you can get out of an airplane? You don't

know how to get out of these cars. They recommended that they have car design standards to provide safe and rapid emergency ability to get out and for the first responders to get in. There are no standards in this area. NTSB reports that the FTA has delegated this to the American Public Transportation Association. Well, that is nice, but we have a job to do. I mean, I respect the American Public Transportation Association, but they can't be the ones to develop the standards. We need to develop them.

Then last, but not at all least, is the hour of services so that train operators have 8 hours of uninterrupted sleep between shifts. This is almost like what we regulate for people who drive buses on interstate and also on airplanes.

And also, we need to retire the older cars and replace them because they can't stand the shock.

So, Mr. Chairman, I just want you to know, I am no novice with Metro and I am no Janie-come-lately. Working with the Congressional delegations across the Potomac, the Virginia Senators and their Members, Tom Davis, Frank Wolf, men known to you, Hoyer, Mikulski, Van Hollen, Sarbanes, now Cardin. We have worked together. We have gotten them the money. We have helped get them a dedicated revenue stream. When the omnibus passes over the next 72 hours, we are going to make a first installment of $150 million. We now will have the beginning downpayment on the money, but we now need fresh, aggressive management at the Metro and we need to have Federal standards for not only us, but for the Nation. And we look forward to working with you and the President's team on this.

Mr. Chairman, that concludes my remarks.

Chairman MENENDEZ. Well, Senator, let me thank you for your leadership in this regard, your advocacy. I couldn't think of anybody better to be on our side in terms of making this happen than yourself, certainly from your perch in the Appropriations Committee, which is going to be an important part of this. So we thank you very, very much for your insights and for your leadership.

I know I have no questions. Senator Reed.

Senator REED. No, I don't. I just want to thank the Senator for her great work and her great support, not only of transit in the metropolitan region, but transit all over the country and particularly in Rhode Island. Once again, you have taken the lead, so thank you very much.

Senator MIKULSKI. Well, thank you. Senator Reed, I know you are also a leader on national security. But as you know with BRAC, we have moved so many facilities now to Fort Belvoir, they need the Metro. It is a national security issue in terms of safety and reliability.

Senator REED. And environmental protection and——

Senator MIKULSKI. And environmental protection.

Senator REED. ——a long, long list.

Senator MIKULSKI. Yes. Thank you.

Senator REED. Thank you.

Chairman MENENDEZ. Thank you, Senator. Thank you very much.

As Senator Mikulski departs, let me call up our final panel.

John Catoe is the General Manager for the Washington Metropolitan Transit Agency. Mr. Catoe has served as the Authority's General Manager since 2007, and before joining the Authority, he was the Deputy Chief Executive Officer for the Los Angeles County Metropolitan Transportation Authority. We welcome him today.

Brian Cristy is the Director of the Transportation Oversight Division of the Massachusetts Department of Public Utilities, where he has been the Director there since 1992. In that position, he oversees State safety oversight of the Massachusetts Bay Transportation Authority.

David Wise is the Director of the Physical Infrastructure Team at the U.S. Government Accountability Office. In that role, as the team director, Mr. Wise leads a team that specializes in assessing the U.S. Government's role in surface transportation. We appreciate their work.

And finally, William Millar is the President of the American Public Transportation Association, which consists of over 1,500 member organizations across the United States, including numerous transit systems and rail operators. He has been before the Committee many times and we welcome him again for his expertise.

Let me ask each witness to keep your statement to about 5 minutes. Your full written statement will be included in the record, without any objection so that we can have time for questions.

And with that, we will start off with you, Mr. Catoe. Welcome.

STATEMENT OF JOHN B. CATOE, JR., GENERAL MANAGER, WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Mr. CATOE. Thank you, Mr. Chairman, and thank you for the opportunity to testify before you today.

Let me begin by reiterating a point I made when I testified here in August. Like many transit agencies, Metro needs to expand our system's capacity to meet future ridership growth. But like other agencies, we are struggling even to maintain what we have in a state of good repair because funding has not kept pace with the capital needs of our aging system. If not addressed, I believe this combination of increasing transit demand, aging infrastructure, and lack of sufficient funding will combine to form a perfect storm that will eventually undermine transit success.

I reiterate this point today because safety and state of good repair are two sides of the same coin. The ability of transit agencies to continue to provide safe and reliable service depends on our ability to maintain our systems in a state of good repair. I encourage the Subcommittee to keep this in mind as you consider ways to improve safety at our Nation's transit systems.

Before I talk about oversight, let me tell you about some of the things we are doing at Metro to improve safety. We continue to respond to the June 22 accident in several ways, including operating trains manually and developing software to alert us to track circuit problems on a real-time basis. We also have undertaken a number of other safety initiatives, including more worksite inspections, stricter hiring standards, and tougher disciplinary action for safety violations, such as cell phone use while operating a Metro vehicle.

In addition, we have started and continue to expand additional training classes for all of our Metro employees, particularly those

in the operations department. Also, I have taken a resource within the agency and reassigned our Chief of Police, a long-term transit safety professional, who previously worked with the Federal Transit Administration, to give new guidance to our overall safety program.

Our internal efforts to ensure Metro's safety are overseen by the Tri-State Oversight Committee, known as the TOC. I think it is fair to say that Metro, TOC, and the witnesses here today all share the same basic goal: Effective oversight that results in a safe environment for transit riders and employees.

To meet that goal, I believe the Federal Government should take a more active role to ensure consistency and quality of oversight across the country. In particular, I believe that effective oversight should include five key elements.

First, an oversight agency must have full-time, trained, and experienced staff and sufficient funding to attract and to retain them. Let me also note that it is equally important for the transit agency itself to have sufficient resources, including staffing and training, for its internal safety programs.

The second element of effective oversight of subway systems like Metro is a system safety focus, by which I mean that the oversight agency will not develop standards relating to individual components on rail cars without considering all the components and complications of the system in its entirety.

Third, I strongly endorse the involvement of transit experts in the development of any safety standards. Transit professionals know technical requirements and operating conditions best because we operate it every day.

Fourth, effective oversight requires meaningful enforcement authority. I encourage you to consider ways of ensuring compliance other than fines or withholding of funds, which would further reduce our already limited funding.

Finally, I believe that the use of cost-benefit analysis for safety requirements would stimulate the development of realistic, workable solutions for safety issues. It is important to understand that almost every element of a subway system has a potential impact on safety. If transit systems have to rob Peter to pay Paul and defer needed capital investments to address new safety requirements, there is a potential to create new safety issues.

Thank you again for giving me this opportunity to testify in front of this Committee and I look forward to answering any questions that you may have.

Chairman MENENDEZ. Thank you, Mr. Catoe.

Before I introduce Mr. Wise, I am going to ask Senator Reed to chair for a while. I have been called to the Majority Leader's office for a meeting. I hope to get back, because I have read all your testimony, and then I have a series of questions. But Senator Reed, if you would chair at this point, I would appreciate it.

Senator REED [presiding]. Thank you very much, Mr. Chairman.

Mr. Wise, please.

STATEMENT OF DAVID J. WISE, DIRECTOR, PHYSICAL INFRASTRUCTURE TEAM, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. WISE. Chairman Menendez, Ranking Member Vitter, and Members of the Subcommittee, we appreciate the opportunity to provide testimony at this hearing on the mechanisms in place to oversee the safety of the Nation's rail transit systems.

Rail transit moves more than seven million people in the United States daily and generally has been one of the safest forms of public transportation. As Department of Transportation Secretary LaHood noted in his December 8 testimony to the House Transportation and Infrastructure Committee, "Rail transit, however, does have the potential for catastrophic accidents with multiple injuries, considerable property damage, and heightened public concern."

My statement today will cover two topics. First, the results of a report we issued in 2006 to the House T&I Committee which focused on the State Safety Oversight Program for rail transit. Second, our preliminary observations on DOT's proposal to change the agency's role in safety oversight.

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 within 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.

The State Safety Oversight Program generally covers rail transit systems that are not subject to Federal Railroad Administration oversight and receive New Starts or Urbanized Area Federal funds. These include systems such as fixed, light, heavy, or rapid rail, monorail, inclined plane, funicular, and trolley. As you know, under the program, State safety agencies oversee transit systems. FTA provides oversight of those State agencies.

We found in 2006 that State oversight and transit agencies generally viewed the program positively. For example, some told us that the safety plans benefited transit agencies and that State safety oversight agency reviews had influenced the transit agencies' ability to make safety-related capital investments.

Our report also found a number of challenges to the program's effectiveness. Funding challenges in State government limited the number of staff to a level that 14 of the 24 State oversight agencies that we contacted said were insufficient. Expertise varied significantly among the State agencies. Eleven had staff without expertise in rail safety. Nineteen State agencies had no enforcement authority if transit agencies did not follow their safety recommendations or violated standards. Ten State agencies relied on the transit agencies under their purview for a portion of their budgets, including reimbursement for oversight expenses. Finally, FTA had fallen behind its stated schedule to perform audits of the program every 3 years.

To address these challenges, we recommended that FTA reinvigorate the program, establish a training curriculum, and provide funds to assist with travel for training. FTA has acted on these recommendations.

Regarding DOT's proposal, it is likely to address the problem of staffing levels because it would require FTA certification of State

programs and provide funds to the agencies. By providing FTA explicit enforcement authority, the proposal would also address the problem of States having no power to compel safety improvements by transit agencies.

Finally, as stated by Secretary LaHood at the December 8 T&I hearing, the new program is intended to ensure that a State agency is fully financially independent from the transit systems it oversees.

In our view, there are also several issues for Congress to consider with regard to this proposal. First, is oversight and enforcement better accomplished at the State or Federal level? The answer may vary by State and by transit agency.

Second, what enforcement tools would be appropriate given that transit systems need to serve their riders and they are typically funded by fares and taxes?

Third, what will be the cost of this program and what should be the source of funds?

Finally, what will be the challenges in Federal regulation of an enormously varied industry?

Mr. Chairman, oversight of transit rail safety is a key Government function required to ensure a safe system and maintain the public's trust.

This concludes my statement and I am happy to answer the Subcommittee's questions.

Senator REED. Thank you very much, Mr. Wise.

Mr. Cristy, please.

STATEMENT OF BRIAN CRISTY, DIRECTOR, TRANSPORTATION OVERSIGHT DIVISION, MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Mr. CRISTY. Chairman Menendez, Ranking Member Vitter, and distinguished Members of the Subcommittee, I thank you for the opportunity to discuss the roles and responsibilities of the Massachusetts Department of Public Utilities, which is the designated State Safety Oversight agency for the Massachusetts Bay Transportation Authority, and suggestions for improving the SSO program and rail transit safety on a national level.

The MBTA, which is over 100 years old, is the fifth largest transit authority in the United States, and it provides service to over 1.3 million passengers per day. The Department's safety oversight of the MBTA was originally established in 1964, pursuant to the MBTA's enabling legislation. The Department instituted the SSO program in 1995, as mandated by 49 C.F.R. Part 659.

The Department's safety-related oversight of the MBTA includes the ability to promulgate rules and regulations and issue administrative decisions that require corrective actions by the MBTA. For example, in January 1980, the Department mandated hours-of-service regulations for rail transit operators. In August of this year, following the May 2009 Green Line accident at Government Center in Boston, the Department became the first rail transit oversight agency to prohibit all MBTA train operators and bus operators from using a cell phone or having a cell phone in his or her possession while on duty.

The success of the Department's safety-related oversight of the MBTA depends upon maintaining an open dialog and consistent line of communication with the MBTA on all safety-related issues. This includes around-the-clock access to MBTA property to conduct or participate in meetings, audits, training, and investigations. Further, the Department has direct access to the MBTA's general manager and other upper management officials, and it receives automatic electronic notification of any safety-related incident that takes place on the MBTA's property.

The Department supports the Administration's proposal to establish Federal Transit Administration safety regulatory authority over fixed rail transit systems as this proposal will strengthen the existing SSO program. The proposal would cause the FTA to become a safety regulatory partner rather than an adviser.

The Department, however, respectfully submits that enhancements to the SSO program including the following: one, a phase-in period of any new FTA requirements to allow States and transit systems sufficient time to meet new requirements and/or standards; a Federal venue for SSO agencies to seek fines for issues of noncompliance on the part of a transit system, and we believe these fines should be imposed by FTA on behalf of the SSO; and, three, additional training opportunities for the SSO community, together with a Federal requirement that transit system staff and management participate in training specific to this program, and to the extent possible require that the transit authority director of safety be a direct report to the general manager or transit system CEO.

In addition, any Federal legislation should take into account the uniqueness of each transit system. For example, a new start will not have the same safety issues as a legacy property such as the MBTA.

Finally, most critical to the success of any oversight program is funding, and there must be a source of funds identified and provided based on an agreed-upon formula and criteria. The funding should provide for staffing, training, certification, and for flexibility in hiring. For instance, an SSO may want to hire a consultant for a short-term project rather than a full-time staff person.

In closing, the Department supports a strong rail transit system SSO program with new enhancements to allow the FTA to become a more active participant in the safety regulatory process. The Department submits that in order for any program to succeed, the local transit authority must be an equal partner with full support of the program coming from the top of the rail transit agency down to the operator level.

Thank you for allowing me to testify this morning.

Senator REED. Thank you, Mr. Cristy.

Mr. Millar, please.

STATEMENT OF WILLIAM MILLAR, PRESIDENT, AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

Mr. MILLAR. Thank you, Senator Reed, and it is a pleasure to be back before this Committee and a great honor indeed. On behalf of the 1,500 members of the American Public Transportation Association, we do appreciate this opportunity.

Public transportation systems in America are safe and well used. In 2008, Americans took a modern record of 10.7 billion trips on America's public transportation systems. This is 15 times the number of trips that they took on the Nation's domestic airlines, and according to the U.S. Department of Transportation data, a person is many, many times safer as a passenger riding on rail transit than as a passenger riding in a motor vehicle.

That said, things could always be made safer, and we commend this Subcommittee, Senator Mikulski, Secretary LaHood, Administrator Rogoff, and others who are working on this important aspect, this important need, and we are certainly looking forward to working with all of you as you develop various ideas.

Now, APTA and the industry have worked for decades to improve safety. Indeed, the enviable safety record that the industry as a whole has is a result of these many decades of work. Through our safety activities for our members, our safety audit program, our peer review process, to name just a few things, APTA and its members have developed the expertise to continue to improve rail safety in America.

We have been briefed on the proposal that Secretary LaHood outlined to you this morning, and we generally support these efforts in this specific proposal. We do have a number of concerns, which I outlined in my written testimony, and I would like to describe some three key points to you this morning.

First, on the issue of standards, APTA has a highly technical and rigorous standards development process. We have developed more than 170 consensus standards to ensure safe operations, including 96 rail safety standards. For example, in the last 2 years, APTA has worked with the American Society of Mechanical Engineers to publish standards on crash-worthiness for new heavy-rail and new light-rail vehicles to ensure minimum safety in the event of a collision. Generally, our standards are performance-based, and we would strongly recommend that these standards, which have been partially funded by the Federal Transit Administration, be used in any new safety oversight program.

Second is the issue of Federal preemption in this safety area. Recently, Secretary LaHood said that a passenger who uses rail transit in Chicago expects the same level of safety when he or she travels to San Francisco and boards a rail transit car there. We certainly agree with that, and the most effective method of achieving this goal is by adopting uniform national performance-based standards. We believe that uniformity and a national focus are essential elements of the performance to be achieved by applying safety standards. While we understand some State or local authorities may desire to raise the bar on some particular aspect of safety, to do so would ultimately detract from the overall effort. A standard created in one location would, through the threat of litigation, become a *de facto* national standard. This *de facto* standard would supplant the considered judgment of the Federal Transit Administration, informed by collective experience of the entire industry, and substitute a disjointed collection of highest bars driven by the courts.

There is also a practical reason for this concern, and that is, there is a demonstratable need for uniformity of safety require-

ments in, for example, rail transit cars. This is a very small market. About 300 heavy-rail cars and about 70 light-rail cars are built each year for use in the U.S. market. Now, these cars could be built to specifications in accordance with a set of widely adopted industry consensus performance standards or federally adopted standards.

If States were allowed to set differing rail car standards, the manufacturer would have to design, engineer, test, and build various versions of the same model. This is problematic for two reasons: one, the reengineering and redesigning to meet differing safety criteria extensively significantly increases the cost of the cars, and, again, these are funded in large measure with Federal taxpayer dollars, and may stifle competition by reducing the number of rail car manufacturers willing and able to big. This is an important topic with a lot of nuance, and over the coming weeks we do need to work carefully on this point.

The third point I wish to make is the matter of funding. It will take many actions to improve transit's enviable safety record. It will also take significant financial investment to bring public transit systems up to a state of good repair, to increase the training of the men and women who work in our industry and are ultimately responsible for its safe operation, and to correct safety deficiencies that may be identified. If safety is to be taken to the so-called "next level," investments must be made. It is not enough just to pass laws and issue regulations.

Once again, Mr. Chairman, we appreciate the opportunity to be here. We commend you, the Subcommittee, Senator Mikulski, DOT, and especially FTA for opening this dialog on the safety issue, and we look forward to working together to improve rail safety across America.

Senator REED. Thank you very much, Mr. Millar, and you have been a great source of advice and counsel to this Committee when I was chairing it and when I was the Ranking Member, and so thank you for being with us today.

Let me take up the point that you concluded with and ask both you and Mr. Wise, this funding issue—in fact, if anyone would like to join in, you could. This funding issue is absolutely critical. Authorizing is good. Appropriating is better in some respects. And we have a challenge here of both maintenance, training, and then safety supervision. And with limited resources, there is always a competition between those.

Can you comment just about the general—how much we need on a notional value to do these things, to what extent investing in safety supervision is a higher rate of return than some of these other investments, training and maintenance? Mr. Millar, and then, Mr. Wise, if you have ever looked at this.

Mr. MILLAR. Well, let me start with the very big picture. The American Association of State Highway and Transportation Officials, in their bottom-line report, says that we should be investing from all sources over $59 billion a year in public transportation to upgrade it to meet the increasing demand for it.

With regard to safety, there can be no doubt, although the statistics are hard to come by, that a system that is not kept up to date,

that is not able to apply the latest in safety technology, is, I think, commonsense-wise, not as safe as it could be.

There is a great deal of focus on technology and on equipment, and that is very important when it comes to safety. But there is way much less focus, in my personal opinion, very little focus on the actual training and development of the expertise of the men and women who work in the industry.

Also, while it is commendable that FTA wishes to increase its staffing in the safety area and it is commendable that they wish to increase the staffing in the State oversight agencies, the fact of the matter is there are not colleges and universities and community technical schools turning out these type of safety experts in public transportation.

We have suggested—and I am happy to report the Administrator has said, "Send me a paper on it." We have suggested that maybe some kind of joint program—maybe we could take advantage of the University Transportation Center Program. Maybe there are community college resources that could be put together with proper curriculum, building on the Oklahoma Safety Center work, the National Transit Institute in New Jersey work. There are a number of basic pieces of work done. We need to knit them together, scale them up so that the industry and those who would regulate the industry have the proper safety expertise to proceed.

It is certainly in the tens of millions of dollars on just that training piece alone in addition to the overall work that needs to be done on the state of good repair.

Senator REED. Thank you.

Mr. Wise, from your perspective, any sort of notion of these issues of overall cost or prioritizing training *versus* maintenance *versus* safety supervision?

Mr. WISE. Well, we have not studied the overall costs for coming up with a system to address all these issues. But in 2006, we did look at the training issue and made a recommendation to FTA that it needed to establish a training curriculum, and it has done that. And there has been a fair amount of activity in that direction toward getting an enhanced training regimen for the State safety officer. So that point I think is something positive.

On the other point about the relative importance of the various components, I think there is no question that an integrated approach is required and that, as an example, clearly there is a nexus between an aging rail transit system and the issue of safety. As the system gets older, there are parts more prone to break and tracks become aged, and so as a result you do have implications for safety. If there are budgetary pressures and funds are moved from capital operating budgets, again, there is an impact, a potential impact on safety.

Senator REED. Let me just follow up quickly. In that 2006 review of GAO, you made recommendations but you did not recommend a Federal Government takeover, as proposed in this legislation. Any comments on that? Did you consider it? Or did you explicitly exclude it to simply did not reach the issue?

Mr. WISE. There are a couple of points to make there. We did consider the issue, but in 2006, I would say the environment in safety at that time was a bit different. At that point in time, there

really was not any kind of movement in the Administration that favored the idea of trying to bring in a very robust Federal role toward safety oversight. So we tried to craft a recommendation to work within the existing system, and we felt that there were opportunities within the existing structure to improve and monitor the system with more limited changes and modest costs to the Federal Government.

So what we are seeing today I think is a much different—well, two things occurred, I think. One, there has been a number of incidents since 2006 that I think have heightened awareness toward strategy that have even occurred in the last 10 or 12 months. And, second, there is a different perspective in this Administration toward the Federal regulatory role in rail transit safety.

Senator REED. Thank you very much.

Mr. Catoe, you have a very challenging job. Anyone who drives in in the morning and listens to the radio knows that. And as the record indicates, this concern has been prompted by several different incidents all through the country. But one basic question is: Do you think this proposal, if enacted, would go a long way to precluding the accident that your system saw—and other systems, but I think you can only speak really to your system.

Mr. CATOE. It will be a step in the right direction. As I mentioned in my testimony, there are many different actions we must take. One is the State oversight or Federal oversight to ensure consistency in safety programs throughout the United States.

The other that has been mentioned is the need of keeping our system in a state of good repair. If you have infrastructure—or the example that we have in Washington with an older series of rail cars that need to be replaced and there is no funding to replace those, then your safety issues could still be there from an equipment standpoint.

The third issue—and it will be a major one confronting transit systems this year, but we must confront it and take actions—is to move monies, operating dollars, to additional safety training. We have a safety training program, but it is clear that additional training is necessary, and that means shifting of funds that were set aside for operating will now go into additional training, which will impact the levels of operations.

I think a combination of all of those actions will focus on reducing transit incidents here in Washington and around the country.

Senator REED. Thank you. Mr. Catoe, you indicated that one of the remedial steps that you have taken is to actually have manual operation of the trains.

Mr. CATOE. Yes.

Senator REED. Which raises in my mind sort of the—I am old enough to think that the driver is always driving the train, but I guess that is not the case. But these computer systems were initially installed because they would have been sort of fail-safe, that they would have been much better than a manual operation. Now, ironically, you find that manual operation is a way to deal with your system's problem.

Can you just comment on this whole issue of manual operation *versus* computers?

Mr. CATOE. Yes, sir. The manual operation was instituted after the June 22nd accident here in Washington. As you are aware, the National Transportation Safety Board is conducting that investigation, and one of the interim recommendations that they made to us was to do increasing testing of the signaling system to make sure there are no malfunctions.

Given that the absolute cause of that accident has not been communicated to us, but we know it is some type of signaling error that occurred in the automatic control system, we believe—and, again, that is not finalized—it is prudent to have our operators operate in manual mode and at the same time to run twice-daily tests to determine if there are any signal malfunctions.

Now, we are in the process of testing a new system that will in real time detect any lack of signals or any improper signals being sent on the system, but that is in the testing stage, and we expect to have that system fully tested and ready to implement sometime during the next year.

But manual mode is in place until we can determine all of the correct fixes to the cause of the accident.

Senator REED. I would think—and I am not an expert, but that seldom stops us from asking questions. I would think, though, that these systems, as they are deployed today, would have as a major feature basically indicating that there is something wrong, you know, that you would not find it out in an accident. Maybe Mr. Millar can help. Do most—and, again, the newest systems, I would assume. But do most systems, if there is any kind of uncertainty about the status of the system, basically start flashing red and you can switch to manual or you can—do you know?

Mr. MILLAR. There is a saying in our business that if you have seen one transit system, you have seen one transit system. Each system is unique in its design. Some systems, particularly in the heavy-rail area, in the newer heavy-rail systems, very, very highly automated, very, very complex software and technology that drives the system, rarely two systems with exactly the same systems, though. And so each system has its own characteristics. No system is perfect. Each system has some different strengths, and they were designed that way for a couple reasons: one, the point in time where they were designed, the technology was whatever state it was at that point; and, two, the unique characteristics that were expected to be faced in that situation.

After the NTSB put out its urgent request, and reinforced by FTA this summer after the WMATA accident, NTSB, FTA, many of the transit systems, as well as the private sector companies that have this expertise, have been meeting to try to see, both to help analyze what could be done with legacy systems, but also what could be done with future systems to make them safer. We believe that is the correct approach, and we strongly support what Mr. Catoe said, that until we know finally and for sure what the cause of this accident was, as well as others that the NTSB is looking into, we should not jump to conclusions. But there are good operational, prudent operational decisions that can be made, and we believe WMATA has made one of those prudent decisions.

Senator REED. Just a quick follow-up. I would presume that in the new Federal role that is proposed, either the Federal agency or

the delegated authority to the State with Federal support would, as a minimum, certify these systems as being functional, and that would be something that would have to be done?

Mr. MILLAR. Yes, I think we need to understand what would make sense in that area. The FTA proposal, as I understand it, calls for certifying the State agencies, for example. Once standards are agreed to, we expect that that certification would move on down the line.

Senator REED. Yes. There is a difference between certifying an agency and certifying a system.

Mr. MILLAR. Yes, we agree.

Senator REED. There are a lot of certified agencies operating systems that are not that good.

Mr. Cristy, thank you for joining us today. There is an issue here of sort of regional operations. MBTA operates into Rhode Island, a commuter rail. I am correct, I hope.

Mr. CRISTY. For the purposes of commuter rail, but that is separate from this program.

Senator REED. Right. I just want to clarify the lines here, that your understanding is that the commuter rails are still subject to other jurisdiction. This is not implicated. But just in general—and this might go to the whole panel—are there—I presume there are metropolitan systems that operate across State lines with transit. How do we sort of do this joint certification? Or is that something that is in the legislation and that you are comfortable with?

Mr. CRISTY. In the State of Massachusetts, the only system impacted by this Federal legislation, current and proposed, is the MBTA's rail fixed guideway system. The other 15 regional transit authorities in Massachusetts are bus only. The commuter rail is subject to FRA jurisdiction, and it does go into your State, yes.

Senator REED. Mr. Millar, do you have a point?

Mr. MILLAR. Yes, there are several systems that do operate across State lines, and, of course, we will look forward to working with FTA on what is practical in that regard. But uniformity of regulation is something that our members hold as a very important value. They do not want to be—if they operate in two States, they do not want to be regulated one way in one State and a different way in the second State.

Senator REED. Right. And, Mr. Cristy, you have a bus system as well as a subway system as well as a commuter rail system. And as we talked with the Secretary and the Administrator, there is language at least which in the future might incorporate the bus system into this overall. Would you think from your perspective as an operator that would be a good approach, a bad approach? How should it be done?

Mr. CRISTY. Well, as the oversight agency in Massachusetts, we also have jurisdiction over the other 15 bus-only transit systems, and we do conduct safety oversight of those other 15 transit bus systems now and have since the early 1960s with respect to bus safety as well.

Senator REED. Let me raise another question that I raised with the previous panel, and that is, the independence. You have an independent—I presume. You can for the record explain. You have

an independent agency. You do not—MBTA does not pay your salary or anything else.

Mr. CRISTY. No, sir. It is the public utility commission.

Senator REED. Right.

Mr. CRISTY. So by nature they are independent regulatory agencies.

Senator REED. And you are self-funded?

Mr. CRISTY. We are a separate line item in the budget for the State budget, but have no relationship to the authority whatsoever.

Senator REED. And in terms of the ability to fund these operations, would you say it is robust or it lags behind other agencies—other responsibilities you have?

Mr. CRISTY. Well, that is one of the provisions of the proposal that most interests the Commonwealth of Massachusetts——

Senator REED. And the State of Rhode Island.

Mr. CRISTY. ——is that the possibility to obtain Federal funding which be greatly appreciated.

Senator REED. Well, gentlemen, if there is an issue that you want to raise, I thank you for your testimony, and it is perspectives of operators as well as the industry as well as the GAO, which has a very valuable and insightful voice on these matters. If there are no further comments, I want to thank you for your testimony.

This will conclude the hearing on transit safety. I want to thank the witnesses for participating and helping the Committee learn more about this topic. The record will remain open for 1 week to allow Senators a chance to follow up questions in writing. We ask that you please try to respond promptly.

The hearing will now come to a close. Thank you very much, gentlemen.

[Whereupon, at 11:03 a.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF RAY LAHOOD

SECRETARY, DEPARTMENT OF TRANSPORTATION

DECEMBER 10, 2009

Chairman Menendez, Ranking Member Vitter, 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 have followed 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, DC, 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. 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 inspec-

tors 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 week 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.

PREPARED STATEMENT OF SENATOR BARBARA MIKULSKI

Thank you, Chairman Menendez and Ranking Member Vitter, for your leadership in holding this hearing today and inviting me to testify on my metro safety bill. I recognize transit safety is a national problem, but I am here today to speak up for Washington Metro, which serves Maryland, DC, and Virginia and all the people in the Capital Region who rely on DC Metro to get to work, get to school and get around.

Washington Metro is America's subway. Your constituents use Metro when they come to Washington. So what happens in our Nation's Capital has national ramifications. There is much to commend the day-to-day staff at Metro for: the worker bees who do all the operations, their fantastic job on the 9/11 evacuation and their great job on the inauguration. But Metro is facing very serious challenges—manage-

ment, money and increased public safety. That's why I introduced the National Metro Safety Act.

There have been 11 metro deaths this year. Let me repeat that: 11 deaths in the past six months. In June, one Metro train struck another train during evening rush hour on Metro's busiest rail line. Eight passengers were killed, including one Marylander from Hyattsville and one Metro employee. Over 50 passengers were injured.

In August, another Metro employee died. He was a track repairman from Silver Spring, Maryland, and he was hit by maintenance equipment. In September, there was yet another employee death. A communications technician was hit by a train and later died from his injuries. Metro has promised changes, but all we have gotten is lip service.

Last month, I asked Secretary LaHood to investigate Metro's safety practices after reports that Metro was denying safety inspectors access to tracks. Metro cannot turn inspectors away or say when and where they can inspect the tracks. Why have inspectors then?

I met with the National Transportation Safety Board (NTSB) immediately after the June crash with members of the National Capital Region Delegation. NTSB briefed us on the cause of the crash and their initial investigation findings. NTSB said it had recommended that the Federal Transit Authority (FTA) establish Federal safety standards but that FTA hadn't taken action. NTSB provided information on other previous recommendations it had issued to Washington Metro and FTA, all of which had been ignored.

As you can see, I am really hot about this. I was shocked to learn Federal safety standards don't exist for metro systems. Even though we have Federal safety standards for buses, airplanes and commuter rail systems like MARC.

That's why I introduced the National Metro Safety Act to begin this important discussion and give the U.S. Department of Transportation this authority. My bill gives Secretary LaHood the authority to develop, implement and enforce national safety standards by working with NTSB. It requires Secretary LaHood to implement the NTSB's prior recommendations that have fallen on deaf ears.

These recommendations relate to crashworthiness. NTSB's most wanted are emergency entry and evacuation, data event recorders and train operator fatigue management procedures—the most important safety recommendations that must be implemented.

Over the years, NTSB has made very sound recommendations for reform, which FTA has ignored. NTSB recommended that FTA develop minimum crashworthiness standards to prevent train cars from telescoping in crashes and establish a timetable for removing equipment that can't be modified to meet new safety standards. NTSB reports FTA has not implemented this recommendation. FTA has been slow to action and slow to take charge. FTA has been working with industry groups and the Federal Railroad Administration.

NTSB recommended FTA develop car design standards to provide safe and rapid emergency responder entry and passenger evacuation like emergency window exits. NTSB reports FTA has delegated this responsibility to the American Public Transportation Association and standards are not yet completed.

NTSB recommended that FTA require event records on cars. Old cars are not equipped with recorders. NTSB reports FTA washed its hands of this one. FTA responded it does not have the regulatory authority to establish this requirement. Why didn't FTA ask us?

NTSB has also made recommendations for reform to DC Metro which have also been ignored. NTSB has recommended Metro either retire its oldest train cars or retrofit them with the most modern collision protection. NTSB reports Metro said it had no plans to overhaul the older cars and could not replace them until the end of 2014.

I am not happy about Metro management. I have no confidence in Metro. Every time you turn around or turn a page there is another problem. There is a pattern of laxity, passivity and lip service. Metro leadership wouldn't let inspectors on the tracks. That's when I called for a Federal investigation.

It was only last week that the head of safety was reorganized out. Safety responsibilities were concentrated in one place and now they are dispersed. Once again, we are lurching around: too little, too late and all coming to Congress to testify. There are severe management difficulties at Metro. I call upon Metro's board to take appropriate and immediate action.

I am no novice with Metro. No Janie-come-lately. Money is a factor affecting Metro. As a member of the Appropriations Committee, I have tried to make sure Metro has funding. I have worked with Maryland Senators Sarbanes and Cardin. I worked with former Banking Chairman Sarbanes and Senator John Warner to

complete the originally planned 103-mile system and extend the Blue Line to Largo Town Center in Prince George's County.

In 2008, I worked with Senator Ben Cardin to authorize dedicated funding for Metro, a total of $1.5 billion over 10 years. This year, I worked with Senator Patty Murray to get the first installment of these funds, $150 million, in the annual spending bill.

Mr. Chairman, as you know, it is about money, but also management. We need strong management at Metro and at the Federal level. I want to work with you on a legislative framework that follows the recommendations of NTSB. These aren't my recommendations. We also need the right resources. That will make America's Subway, and subways all across America safe, reliable and sound. Thank you for inviting me to testify this morning.

PREPARED STATEMENT OF JOHN B. CATOE, JR.

GENERAL MANAGER, WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

DECEMBER 10, 2009

Mr. Chairman, Ranking Member Vitter, and Members of the Subcommittee, thank you for the opportunity to testify before you today. I am John Catoe, General Manager of the Washington Metropolitan Area Transit Authority, known as WMATA, or Metro. I last testified before this Subcommittee a few months ago on August 4, 2009. At that hearing, I discussed Metro's capital needs over the next 10 years and made several recommendations about ways that the Federal Government could help rail transit systems meet their infrastructure needs. In that testimony, I stressed that the ability of transit agencies to maintain aging infrastructure in a state of good repair has a direct impact on the safety and reliability of transit service. Today I will focus on the oversight of rail transit safety and Metro's experience with the Federal Transit Administration's (FTA) State Safety Oversight program.

Background on Metro

Let me begin by providing some background on Metro. The agency was created in 1967 through an Interstate Compact agreed to by the Commonwealth of Virginia, the State of Maryland, and the District of Columbia, and approved by the Congress. Metro is the largest public transit provider in the Washington, DC, metropolitan area and the second largest subway, sixth largest bus system, and the eighth largest paratransit system nationally. Sometimes known as "America's Transit System," Metro serves a population of over 3.5 million within a 1,500 square-mile area, as well as visitors to our Nation's capital from across the country and around the world. Not only is the Metro system critical to the economic vitality of this region, it was created to serve the Federal Government and continues to do so. For example, nearly half of all Metrorail stations are located at Federal facilities, and Federal employees comprise about 40 percent of Metrorail's rush hour riders.

During Metro's most recent fiscal year (July 1, 2008–June 30, 2009), we provided on average 748,000 rail trips, 446,000 bus trips, and 7,000 paratransit trips every weekday. The Metrorail system operates a fleet of 1,100 rail cars on a 106-mile system with 86 stations, and the Metrobus system operates a fleet of more than 1,500 buses serving more than 12,000 bus stops along 340 routes in the District of Columbia, Maryland, and Virginia. But perhaps our greatest asset is our human capital. Every day, our employees—operators, mechanics, technicians, inspectors—come to work committed to providing safe and reliable service to thousands of customers.

A Changing Industry

In many ways, moving people on transit today is much the same as it was 30 years ago. The focus of the station manager, vehicle operator, mechanic, or track inspector is the same. We support safe mobility in our communities today just as we did decades ago, by providing cost-effective transportation to jobs, healthcare, education, Government services, shopping, and entertainment.

Yet there have been changes over the last decade that make this period unique in the history of the public transportation industry. Today, people are using transit more than at any time since the Eisenhower Administration. Here in the Washington area, ridership on the Metrorail system has grown by 15 million annual passenger trips over the last 3 years—a 7 percent increase. Ridership on our other modes is growing as well: Metrobus has grown by 2 million annual passenger trips (a 2 percent increase), and MetroAccess ridership is up by 43 percent since FY2007. While we are currently seeing a decline in ridership growth as a result of the economic downturn, which we hope will be short-term, our growth rate in recent years has put us well above original expectations for the capacity of the system. The Met-

rorail system was designed in the late 1960s and early 1970s to carry 500,000 daily passengers. Today, we routinely provide nearly 750,000 rail trips each day.

At the same time, transit infrastructure across the country is aging, and existing capital resources have not kept pace with needs. As highlighted in the FTA's Rail Modernization Study earlier this year, there is a significant and growing backlog of investment needs among our Nation's major rail transit systems. These needs include repairing leaking tunnels and crumbling platforms, upgrading tracks and associated infrastructure, fixing escalators, replacing buses and rail cars at the end of their lifecycle, and updating critical software.

The combination of increasing transit demand, aging infrastructure, and inadequate funding will combine to form a "perfect storm" that will undermine transit's success if we do not take steps to address them now. Both service and safety would suffer if our Nation's transit systems do not receive the resources needed to maintain a state of good repair. This Subcommittee's examination of these issues could not be more timely.

Safety Oversight at Metro

As the Members of this Subcommittee are aware, on June 22 of this year, a collision of two Metrorail trains resulted in the loss of nine lives, including the operator of the striking train, and more than 70 injuries. This was the worst accident in Metro's 30-year history, and we are cooperating fully with the National Transportation Safety Board (NTSB), the lead agency in the accident investigation. While it may be months before the NTSB issues a final report, we are not waiting for the final report before taking action to improve safety for our riders and employees. We have already taken a number of steps to ensure that the system is as safe as possible, including operating trains manually, increasing the frequency of our track circuit monitoring, and requesting an independent peer review of our entire track signaling system by a team of train signaling experts. We have also started testing the software that would alert us to circuit problems on a real-time basis, per the NTSB's interim recommendation to all transit agencies in September.

These efforts complement the wide range of initiatives, programs, and audits that Metro uses each day to enhance our system's safety. For example, we have increased the number and frequency of work-site inspections, including safety checks at all track maintenance work sites on all shifts. We have adopted stricter hiring standards and more stringent disciplinary actions for safety violations such as cell phone use while operating a Metro vehicle. We are working to provide refresher training to our front-line employees, and the Metro Transit Police Department has trained over 2,400 operations employees in emergency response, to provide better coordination between responding agencies to major service disruptions. Most recently, we began a pilot program of placing warning signals on station platforms to alert train operators of maintenance work at upcoming stations. We also conduct regular inspections and preventive maintenance on all systems and components of the Metro system—including tracks, vehicles, aerial structures (bridges), and stations—to ensure that they are as safe as possible.

Our internal efforts to ensure the safety of the Metrorail system have been overseen since 1997 by the Tri-State Oversight Committee (TOC), which carries out FTA's State Safety Oversight program in our region. The TOC is composed of two members from each of Metro's Compact jurisdictions: the District of Columbia, State of Maryland, and Commonwealth of Virginia. The TOC is a partner in our efforts to maintain the highest levels of safety, and we have a strong, cooperative working relationship with the TOC.

Metro interacts with the TOC in a variety of ways. In addition to monthly meetings, which also include FTA staff, Metro and TOC staff members meet every two weeks for detailed discussions on current issues. The TOC has reviewed and approved our System Security Plan (SSP) and System Safety Program Plan (SSPP), which outlines the policy, goals, elements, processes, and controls for maintaining system safety. Metro notifies the TOC of incidents that meet certain thresholds in terms of property damage or injury. In addition, Metro provides the TOC with a variety of information and reports regarding, for example, accident investigations, hazard management, emergency management, rules compliance, training and certification, and internal safety reviews, audits and inspections. Metro also works with the TOC to develop corrective action plans to improve safety at the agency. The TOC oversees Metro's annual review of our SSP and SSPP, and reviews and approves our internal safety and security audits. The TOC also completes extensive triennial reviews of our safety programs, with the next review scheduled for later this month.

TOC is aware of our limited resources, and we work together to manage a set of corrective action plans that address many long-term issues, such as the need to re-

place more than a quarter of our Metrorail fleet, for upgrades to our electrical and software systems, and for additional employee training. Many of these issues require funding that we simply do not have. The FTA is also kept abreast of these funding challenges through its regular meetings with TOC and Metro, as well as the TOC and FTA triennial reviews.

Strengthening Transit Safety Oversight

Let me turn now to the specific focus of this hearing—how to maintain the highest level of rail transit safety. While today's witnesses represent a variety of different perspectives, I believe that we all share the same basic goal: effective oversight that results in a safe environment for transit riders and employees. In order to meet that goal, I believe that the Federal Government should take a more active role than it does today, to ensure consistency and quality of oversight across the country.

As you examine the current safety oversight program and consider ideas for its improvement, I would like to share what I believe would be the key characteristics of effective safety oversight for heavy rail transit based on my first-hand experience:

1. Full-Time, Trained, and Experienced Staff

Safety oversight is not something that takes place only in periodic meetings or reviews. Effective oversight requires continuous monitoring and interaction with the transit agency. In order to carry out its function, the oversight agency must have a thorough knowledge of the systems, technology, infrastructure, and procedures at the transit agency. The effectiveness of an oversight agency is dependent on the quality of its staff. Funding must be made available to the oversight agency to attract and retain qualified, full-time staff. In a 2006 report on the State Safety Oversight program, the Government Accountability Office identified the lack of sufficient staffing, and sufficiently qualified staff, as key weaknesses in the current oversight program.

Let me also point out that it is equally important for the transit agency itself to have sufficient resources for its internal safety programs, including staffing and training. I cannot stress this enough. In this time of unprecedented budgetary challenges, transit agencies will have to make hard choices about how to use scarce dollars. Additional Federal investment in the "human capital" of transit agencies could significantly benefit our efforts to improve transit safety.

2. A "System Safety" Focus

The current State Safety Oversight rule covers diverse forms of fixed guideway transit. Heavy rail systems (*i.e.,* subways) such as Metrorail are unique in several ways from other rail transportation and even from other fixed guideway transit. They do not share tracks with other revenue vehicles (as commuter trains do with freight trains); they do not operate over grade-crossings (such as some light rail systems); and they do not operate on city streets (as do some light rail and trolley systems). Heavy rail subway systems are self-contained and operate using technology and equipment that is customized for each system, due to differences of geography, geology, climate, population/ridership, and age of the system. Therefore, the focus of heavy rail safety oversight must continue to be on "system safety," as it is in current System Safety Program Plans. Heavy rail transit vehicles operate in a closed, more controlled environment than vehicles which operate in "mixed traffic." Safety is designed not only into the rail cars, but also into the other elements of the system, such as train control, power supply, communications, track access procedures, and intrusion protection. Therefore, I recommend that any standards or regulations relating to heavy rail transit be developed or adopted not as isolated elements, but as part of a system safety approach which considers how all of the components of a heavy rail system work together to ensure safe operation.

3. Involvement of Industry Experts

I commend Secretary of Transportation LaHood for convening a meeting of stakeholders in August to discuss rail transit safety and for including transit industry leaders in that meeting. I also applaud the FTA for taking the initiative to establish the new Transit Rail Advisory Committee for Safety (TRACS), which I hope will be a vehicle through which FTA will take advantage of the wealth of real-world knowledge and expertise in the U.S. transit industry.

In addition, I would urge Congress and the Administration to consider the national standards that already exist, and were developed by expert professionals with years of transit experience. Many of these standards have been or are being developed by the American Public Transportation Association (APTA) and cover a breadth of system safety elements such as operating practices, train operator hours of service, inspection and maintenance of vehicles, signals and communications, and

fixed structures (such as yards, shops, stations, tracks, and electrical substations). APTA also collaborated with the American Society of Mechanical Engineers to develop a heavy rail crashworthiness standard—using the application of crash energy management—that is used by transit agencies around the country.

Transit professionals know best the technical requirements and operating conditions of heavy rail transit. Their knowledge has already made, and will continue to make, significant contributions toward increasing the safety of transit systems.

4. Meaningful Enforcement Authority

Effective regulation requires the ability to ensure compliance when the situation warrants. However, it is important to keep in mind that unlike other transportation providers like freight railroads and airlines, transit agencies are not profit-making entities. Any fines or withholding of funds would have to come not from profits, but from our limited pool of public funding, which, if depleted further, could actually have the unintended consequence of reducing system safety.

I encourage the Congress and the Administration to consider alternative means of ensuring compliance. The Federal Government regulates or oversees numerous other industries and activities besides transportation, and I expect that a thorough review of compliance and enforcement mechanisms used by the various Federal agencies would yield some ideas that could be effective in the transit context without adversely impacting system safety.

5. Cost/Benefit Analysis for Safety Recommendations and Requirements

As I noted earlier, one of the major challenges we face in implementing corrective actions identified by the TOC, or safety recommendations from other agencies, is lack of sufficient funding. Transit agencies' choices are constrained by available resources. One way to address this challenge is for the oversight entity to use cost/benefit analysis to help develop workable solutions that can realistically be implemented by the transit agency.

The FTA's Rail Modernization Study found that more than one-third of transit agencies' assets are either in marginal or poor condition. At Metro, we have identified more than $11 billion in capital needs over the next 10 years, the majority of which is needed to maintain the current bus, rail and paratransit systems in a state of good repair and to deliver safe and reliable service. Perhaps the most important idea I want to convey to you today is that rail transit safety is not limited to those issues that you read about in news reports. While it is easy to say that scarce transit funds should be spent first on safety, it is important to understand that almost every element of a rail transit system has a potential impact on system safety. If transit agencies have to "rob Peter to pay Paul" and defer maintenance or other needed capital investments to address safety recommendations or requirements, there is the potential to create new safety issues.

Conclusion

I appreciate the Subcommittee's interest in the safety of public transportation. We at Metro take our responsibility for providing safe and reliable transportation very seriously, and we would welcome additional oversight to help us achieve that goal. In particular, I strongly urge the Congress to make sure that additional oversight comes with the funding to make sure that it is effective. In addition, I urge you to provide a higher level of investment in rail infrastructure to ensure that transit agencies across the country can maintain our systems to a level that allows us to provide the safest and most reliable service. Thank you for the opportunity to testify today, and I look forward to answering any questions you may have.

PREPARED STATEMENT OF DAVID J. WISE

DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE

DECEMBER 10, 2009

United States Government Accountability Office

GAO

Testimony
Before the Subcommittee on Housing, Transportation, and Community Development, Committee on Banking, Housing, and Urban Affairs, U.S. Senate

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RAIL TRANSIT

Observations on FTA's State Safety Oversight Program and Potential Change in Its Oversight Role

Statement of David J. Wise, Director
Physical Infrastructure Issues

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Highlights

Highlights of GAO-10-314T, a testimony before the Subcommittee on Housing, Transportation, and Community Development, Committee on Banking, Housing, and Urban Affairs, U.S. Senate

December 10, 2009

RAIL TRANSIT

Observations on FTA's State Safety Oversight Program and Potential Change in Its 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 key elements of DOT's planned 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-10-314T or key components. For more information, contact David J. Wise at (202) 512-2834 or wised@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 10, 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

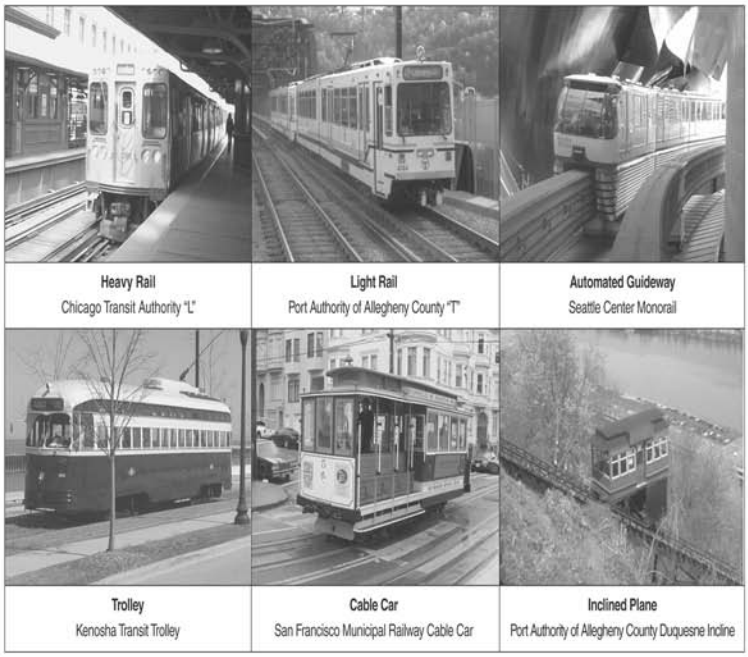
The SSO program covers all states with fixed guideway systems operating in their jurisdictions. FTA defines a rail fixed guideway system as any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that is not regulated by the Federal Railroad Administration (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

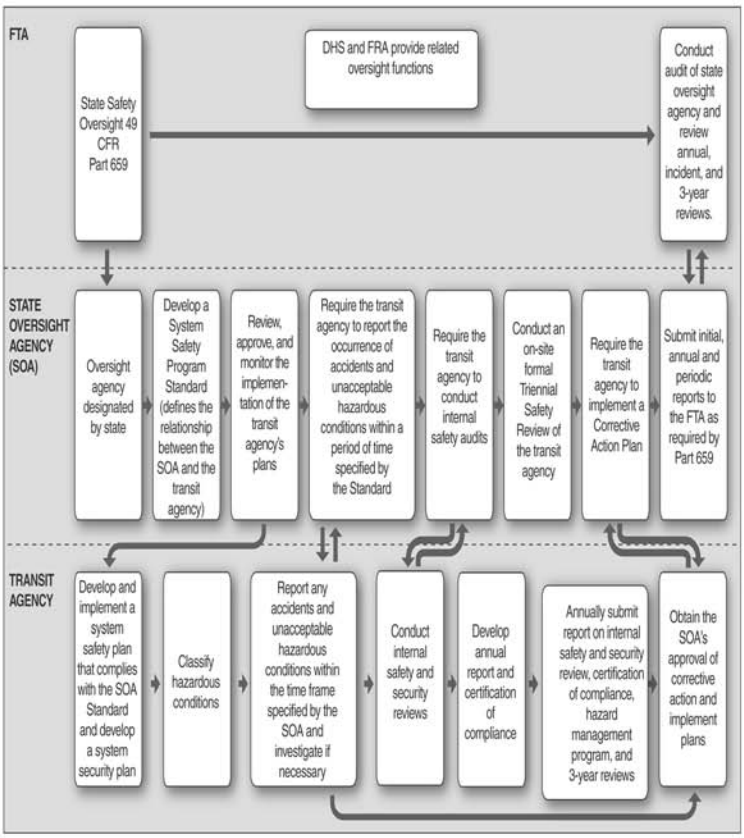
[2]49 C.F.R. § 659.5.

[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. 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, 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 David J. Wise at (202) 512-2834 or wised@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 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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PREPARED STATEMENT OF BRIAN CRISTY

DIRECTOR, TRANSPORTATION OVERSIGHT DIVISION, MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

DECEMBER 10, 2009

Chairman Menendez, Ranking Member Vitter, and distinguished Members of the Subcommittee, my name is Brian Cristy and I am the director of the Transportation Oversight Division of the Massachusetts Department of Public Utilities (Department). I thank you for the opportunity to discuss the role and responsibilities of the Department as a State Safety Oversight (SSO) agency and suggestions for improving the SSO program and rail transit safety on a national level.

Introduction

The Department is the designated SSO agency for the Massachusetts Bay Transportation Authority (MBTA), the Commonwealth's fixed rail system. The MBTA, which is over 100 years old, is the fifth largest transit authority in the United States, and it provides service to over 1.3 million passengers per day. The Department's safety oversight of the MBTA was established in 1964, pursuant to M.G.L. c. 161A, §3(i) (*See,* also, Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-40, 49 U.S.C. Section 5330; 49 C.F.R. Part 659). The Department instituted the SSO program in 1995.

The Department's Role as SSO Agency

The Department's safety-related oversight of the MBTA includes the ability to promulgate rules and regulations and issue administrative decisions that require corrective actions by the MBTA. For example, in January 1980, the Department was the first oversight agency to mandate hours-of-service regulations for rail transit operators. Further, following several derailments of the MBTA's Green Line No. 8 low-floor vehicle (No. 8 Car) in 1999 and 2001, and the investigation that followed, the Department ordered the MBTA to prepare a Corrective Action Plan (CAP) that would, among other things, address the adequacy of the wheel-rail interface for the No. 8 Car's center truck to prevent future derailments. With the approval of the Department in March 2003, the MBTA began a gradual reintroduction of the No. 8 Car. In addition, in August 2009, the Department became the first rail transit oversight agency to prohibit all MBTA train and bus operators from using a cell phone or having a cell phone in his or her possession while on duty.

The success of the Department's safety-related oversight of the MBTA depends upon maintaining an open dialogue and consistent line of communication with the MBTA on all safety-related issues. This includes around-the-clock access to MBTA property (including computer databases) to conduct or participate in meetings, audits, training, and investigations. Further, the Department has direct access to the MBTA's general manager and other upper management officials, and it receives automatic electronic notification of any safety-related incident that takes place on the MBTA's property. In addition, the Department communicates directly with the MBTA concerning the SSO program by providing mandatory training to MBTA upper management that is specifically related to the program.

In an effort to further promote an efficient oversight program, the Department coordinates various oversight activities with the MBTA's safety department. Such protocol is designed to ensure that the safety department is an active participant in any corrective measures, and it provides an opportunity for the MBTA to enhance safety internally. For example, the Department and the MBTA jointly conduct mandatory quarterly meetings, cochaired by the Department's oversight manager and the MBTA's safety director, to discuss and formulate action on a number of safety issues. From these meetings, investigations, and analyses of hazards, evolve the aforementioned CAPs designed to reduce or eliminate the identified hazards. The Department is required by the current Federal program to accept or reject all CAPs submitted by the MBTA, and the Department tracks the CAPs to completion. This function is unique to local oversight given that CAPs are tracked in "real time," something that may not be practical at the Federal level. It should be noted that CAPs often take weeks, months, or even years to fully implement.

The Proposed Legislation

The Department supports the Administration's proposal to establish Federal Transit Administration (FTA) safety regulatory authority over fixed rail transit systems, as this proposal will strengthen the existing SSO program. The Department, however, respectfully submits that enhancements to the SSO program are necessary and should include the following: (1) a phase-in period for any new FTA requirements to allow States and transit systems sufficient time to meet new requirements

and/or standards; (2) a Federal venue for SSO agencies to seek fines for issues of noncompliance on the part of a transit system (these fines should be imposed by FTA on behalf of the SSO); (3) additional training opportunities for the SSO community, together with a Federal requirement that transit system staff and management participate in training specific to this program and to the extent possible; (4) a requirement that the transit authority director of safety be a direct report to the general manager or transit system CEO; and (5) the continued emphasis on communication and cooperation between the oversight agency and the transit authority.

The Department submits that problems associated with the existing oversight program should be identified and "designed out." For example, SSO agencies should have access to transit system property and records related to the oversight function, as this is critical to promoting local relationships and partnerships that traditionally may not have been practical at the Federal level. Further, the Department suggests that the CAP process can be improved. For instance, a limit should be imposed on the number of extensions requests a transit authority can seek before submitting to the oversight agency a final report regarding the cause of the accident or incident. Ultimately, this would reduce the length of the CAP review process and expedite the approval of corrective action measures to be taken by the transit authority.

In addition, any Federal legislation should take into account the uniqueness of each transit system. For example, a new start will not have the same safety issues as a legacy property such as the MBTA, which is over 100 years old. Finally, most critical to the success of any oversight program is funding, and there must be a source of funds identified and provided based on an agreed-upon formula and criteria that would apply to both the SSO community and rail transit systems. The funding should provide for staffing, training, certifications, and for flexibility in hiring. For instance, an SSO may want to hire a consultant for a short term project rather than hire a staff person.

Conclusion

The Department supports a strong rail transit system SSO program with new enhancements to allow the FTA to become a more active participant in the safety regulatory process. The Department submits that in order for any program to succeed, the local transit authority must be an equal partner with full support of the program coming from the top of the rail transit agency down to the operator level. A revised oversight program must also include a dedicated funding source with realistic performance measurements. With the considerations outlined above, the Department submits that a revised oversight program will result in a more balanced program and, therefore, a safer public transit system.

Thank you for the opportunity to provide this testimony on behalf of the Massachusetts Department of Public Utilities.

PREPARED STATEMENT OF WILLIAM MILLAR

PRESIDENT, AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

DECEMBER 10, 2009

Introduction

Chairman Menendez, Ranking Member Vitter, and Members of the Housing, Transportation and Community Development 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, public transportation vehicles are boarded 35 million times. 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. As well, according to the FTA, this means a person is at least 142 times less likely to die as a passenger on rail transit 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 continue 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, 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.

While it will take many steps 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, to increase the training of transit employees, and to correct safety deficiencies identified. It is simply not enough to pass laws and issue regulations, if safety is to be taken to the next level, investments must be made.

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 20 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 1970s, APTA members began applying to new rail transportation systems the concepts of a safety system first developed by the military and the National Aeronautics and Space Administration (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 20 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 2007, 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 multifaceted 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 SDOs, 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 reexamine 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.

To further improve the existing SSO program, there is also a critical need to strengthen oversight of the program at the Federal level. We recommend restructuring the FTA Office of Safety and Security, which currently manages the SSO program by significantly expanding their program personnel and in-house expertise to properly develop, implement and manage an effective oversight program.

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 SOAs 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 indus-

[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.

try 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. We must also consider whether or not this new program must fit into the local, State, and regional criteria put forth by local planning agencies. Additionally, any Federal program should incorporate a Federal preemption to ensure that efforts at the State level remain concentrated on identified national safety priorities. In creating a coordinated Federal approach for a standards program, the FTA should provide the fundamental safety principles from which States can use different methodologies to create programs that meet the specific needs of their unique transit system. Once a Federal transit safety standards program is established, State safety oversight agencies should consistently enforce the Federal standards as well as provide necessary technical assistance based on their training and specialized understanding of an individual transit system.

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 system 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 SSAs 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 have ahead of us with the Transit Rail Advisory Committee for Safety (TRACS). Once again, I 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.

RESPONSES TO WRITTEN QUESTIONS OF CHAIRMAN DODD FROM RAY LAHOOD

Q.1. How will FTA oversee State agencies that opt into the new program if enacted?

A.1. The Federal Transit Administration (FTA) proposes to use its staff to audit the performance of State agencies that have adopted a Public Transportation Safety Program. FTA will ensure that each participating State program meets or exceeds the minimum Federal standards for adequacy in the areas of staffing, training, and statutory authority to conduct meaningful oversight. Similar to existing FTA program audits, the safety audit process will include a scheduled program review (probably on a 3-year cycle) with unscheduled spot audits of specific activities.

Q.2. Staffing needs will vary from State to State based on the number and size of rail systems within each State. What methodology will FTA use to determine the proper staffing level at FTA needed to carry out this regulatory role?

A.2. FTA will need to build internal staff to develop and maintain the regulatory program as well as monitor State agencies and enforce Federal regulations in those States that "opt out." In determining proposed staffing levels, FTA performed an initial preliminary workforce analysis factoring such considerations as the complexity of existing rail transit infrastructure; the number of personnel engaged in current Federal oversight activities; the number of transit systems and their current geographic locations; the number of track miles associated with the State safety oversight program; and, current and projected ridership. Workforce analysis will continue to be refined as the program evolves based on State participation and the specific requirements of the regulations that are developed.

RESPONSES TO WRITTEN QUESTIONS OF CHAIRMAN DODD FROM JOHN B. CATOE, JR.

Q.1.a. In light of the recent accidents nationwide, many believe there should be a stronger role for the Federal Government in transit safety. What do you believe is the proper amount of authority and oversight at the Federal level?

A.1.a. I believe that there needs to be consistency in safety oversight across the country. To ensure that, I believe that the Federal Government needs to take a more active role in transit safety oversight. As I discussed in my testimony, Federal authority should be designed to ensure consistency across the country in the following elements: funding for qualified staff; enforcement authority; and regulations that are focused on system safety and that were developed using a cost/benefit analysis.

Q.1.b. What are the concerns of the industry in regards to the Administration's proposed new Federal role in transit safety?

A.1.b. Assuming that the elements I mentioned above are addressed, the key concern that I have is how transit agencies will find the resources to address any changes required by a new Federal safety regulator. As I mentioned in my testimony, if a regu-

lator tells a transit agency it must spend funds to correct an identified safety issue without providing at least some of that funding, the agency may have to defer other needed maintenance, with the potential to create other—perhaps more serious—safety issues.

Q.1.c. What should FTA consider when developing standards if this proposal is enacted?

A.1.c. If the Federal Government is going to establish standards, I would strongly recommend that it start with the national standards that have already been developed by the American Public Transportation Association, and also that it recognize the importance of conducting cost/benefit analysis for any regulatory proposal.

Q.2.a. GAO stated in their testimony that some states have given their oversight agencies enforcement authority, but many of these oversight agencies have "rarely, if ever, used it." How will enforcement authority help oversight agencies be effective?

A.2.a. As I stated in my testimony, effective oversight requires the ability to ensure compliance when the situation warrants. However, the most effective oversight will come from having the staffing and expertise to work collaboratively with the transit agency. Enforcement authority must be part of an overall oversight mechanism that also includes funding for qualified staff.

Q.2.b. Moreover, current law allows for FTA to withhold 5 percent of formula funds from a State that is not in compliance. Has this been effective? If not, what enforcement tools would be effective?

A.2.b. As General Manager of the Washington Metropolitan Area Transit Authority, I can state that my motivation for maintaining safety is to assure the highest level of safety for our customers and employees. We do what is needed to maintain safety because it is part of the job of providing this important transportation service and it is essential to protect the lives of those in our system—not because we fear that we will get a fine.

As the Congress considers new Federal transit safety legislation, I encourage you to consider alternatives to fines or withholding of funds. Unlike other transportation providers like freight railroads and airlines, transit agencies are not profit-making entities. Any fines or withholding of funds would have to come not from profits, but from our limited pool of public funding—which, if depleted further, could actually have the unintended consequence of reducing system safety.

As I stated in my testimony, the Federal Government regulates or oversees numerous other industries and activities besides transportation, and I expect that a thorough review of compliance and enforcement mechanisms used by the various Federal agencies would yield some ideas that could be effective in the transit context without adversely impacting system safety.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CARDIN FROM JOHN B. CATOE, JR.

Q.1.a. In Thursday's hearing, Senator Jack Reed asked about the warning system in place to notify the control station of signaling errors. How many signaling errors occur per day?

A.1.a. My only mention of signaling errors in my December 10 testimony referred to the failure of train detection (wrong-side failure) as it pertains to the National Transportation Safety Board (NTSB) findings of the June 22 collision. The signaling system is an extremely complex system with literally millions of components performing diverse functions over the 213 miles of mainline track; in the service, inspection and storage yards; and onboard the transit vehicles. There are several malfunctions per day of different components throughout the system; however, wrong-side failures are extremely rare. Only two other similarly severe wrong-side failures of the signaling system are known in the history of the Washington Metropolitan Area Transit Authority (WMATA). These incidents, which are well publicized, occurred in the Rosslyn tunnel and at the Potomac Avenue Metrorail station.

Q.1.b. How are the errors that trigger these warnings dealt with both in the short term and the long term?

A.1.b. In the short term, WMATA has increased testing and performs twice-daily reviews of track circuit performance. WMATA instituted a formal business process that enlists the services of several departments. The review begins with engineers evaluating the performance of all mainline track circuits twice a day by reviewing central computer data for all train movements during peak service. Data anomalies are reported for investigation by maintenance personnel. Unexplained data that appear to indicate hazardous conditions receive immediate attention, and maintenance personnel are dispatched. Once the cause of the data anomaly has been corrected the equipment is restored to service.

To address system anomalies in the long term, an automated real-time warning system will be developed and deployed. As I testified, we expect to deploy this system later this year. The warning system will notify Central Control personnel within seconds of a track circuit difficulty with train detection. Using future internal controls developed around the warning system, the Central Control supervisory staff would stop trains as they approach the problem location, allow manual operation passage at slow speed, and initiate track circuit maintenance personnel response, all within seconds of the alarm.

Q.2.a. In your testimony, you mentioned that the Tri-State Oversight Committee has overseen internal safety efforts since 1997. You described them as a partner in your efforts to maintain the highest safety levels. Yet on November 9, 2009, the *Washington Post* reported that Metro denied the Tri-State Oversight Committee from inspecting the rails. Does Metro have any obligation to let the Tri-State Oversight Committee conduct investigations or follow their recommendations?

A.2.a. The Tri-State Oversight Committee (TOC) is the State Safety Oversight (SSO) agency for the WMATA Metrorail system,

Under Federal Transit Administration (FTA) regulation 49 CFR Part 659, which went into effect in 1997, all States with a defined rail transit system that is not under the jurisdiction of the Federal Railroad Administration (FRA) must develop and maintain a SSO agency, In general, almost all heavy-rail rapid transit systems such as WMATA, the New York City subway system, other large-city subway systems, and light rail systems are outside the jurisdiction of the FRA and thus come under the jurisdiction of the SSO, if they are funded by the FTA.

Under the regulation, each State is responsible for designating an agency to carry out the SSO requirements. The States have latitude to determine which entity can conduct the oversight, as long as it is not the transit agency itself. At a minimum, the regulation requires that the SSO agencies do the following: develop standards for the transit system's safety and security plans; approve these plans; investigate accidents and hazardous conditions which meet certain criteria prescribed in 49 CFR Part 659; require the transit system to develop corrective action plans to address safety deficiencies; approve the corrective action plans; and conduct independent reviews of the implementation of the safety and security plans on at least a triennial basis. The SSO agencies can also conduct other activities as they deem appropriate based upon state specific requirements. If the FTA determines that a State is not in compliance with the SSO requirements, it can withhold up to 5 percent of the grant funds to that State transportation or rail system.

Unlike the FRA or FAA, however, SSOs have no authority under 49 CFR Part 659 or by any other FTA regulations to enforce their findings with fines, civil actions, or other penalties. Any such authority must come from State legislatures. The FTA intended the SSO program to function as a "cooperative" effort with the transit agencies and as such it was not designed to operate under the traditional regulatory framework of fines and penalties.

Over the past 6 months, WMATA and the TOC have worked together to review the effectiveness and implementation of a variety of initiatives and recommendations. Most recently, TOC urged WMATA "to take immediate, short-term action to better ensure the safety of workers in the Right of Way (ROW)," TOC had provided to WMATA's Executive Leadership Team a report titled, "WMATA's Rail Transit Special Safety Study-Roadway Worker Protection." WMATA carefully reviewed this report and implemented the following immediate actions:

- A copy of this report was provided to senior leadership of ATU Local 689 and to safety and track maintenance experts at four peer transit agencies around the Nation, as well as to the FTA, for review.
- A ROW safety workshop was conducted January 11–13, 2010, with TOC as an active participant. During this workshop, key themes were identified (*e.g.,* practical field testing, tunnel walks, announcements, and general awareness of the location of workers on the ROW).
- WMATA will focus efforts on reviewing the rules and protections for lone workers, track walkers, and temporary/emergency work sites.

- Key sections of the Rulebook will be reviewed and redeveloped.
- "Roll-out" training will be implemented for the new ROW Worker Protection Program.

We look forward to continuing the partnership with TOC to review and strengthen WMATA's rail program.

Q.2.b. What was the reason for not letting the Tri-State Oversight Committee conduct an inspection?

A.2.b. WMATA at no time denied the TOC the ability to conduct an inspection. WMATA did, however, work with the TOC to determine the safest possible way to achieve their goals. In a December 2, 2009, news article published by WTOP.com. TOC Chairman Eric Madison stated, "We want to make it clear. Metro wasn't barring us from the tracks. The issue was how we access the tracks. Metro's concern was that we access the tracks as safely as possible. And we wanted to make sure that we were in compliance with their rules as well. I think we have a clear understanding now of what we are trying to achieve and how Metro can help us do that."

Q.3.a. Metro's publicly announced its plan to increase accountability. I applaud this action. Can you tell me what has resulted from this new increased accountability policy?

A.3.a. In recent months, the WMATA Board of Directors has taken several actions to improve safety oversight at WMATA. For example, on November 19, 2009, the Board established a new Board policy requiring WMATA staff to cooperate fully with the federally recognized safety oversight agency, the TOC. During its monthly Customer Service, Operations and Safety Committee meetings, the Board receives regular reports on safety and operational performance, including summaries of information such as rail injury and fatality rates, distance between bus incidents, and smoke and fire incidents. The operations report reviews information such as rail on-time performance, bus on-time performance, and elevator and escalator availability.

WMATA recently established an Office of Performance with the stated mission of using performance information to guide actions, to promote WMATA's benefits in the region, and to unify employees to accomplish our goals. The staff includes seven people with expertise in performance measurement, data validation and analysis, and other areas such as strategic planning, finance, and organizational management. Deliverables from this new office will be grounded in WMATA's five strategic goals and include execution plans that link departmental work to those strategic goals, a performance tool that will track agency progress towards achieving WMATA's vision of being the "Best Ride in the Nation," and an annual performance report. Key safety performance and operational reliability measures will be incorporated into these products based upon available data, current performance reporting efforts, and industry best practices.

In addition, WMATA has formed a Safety Action "Report Out" Team which meets every 2 weeks and is responsible for tracking safety performance and addressing specific actions to improve safety in all operations work areas. The team will report directly to the General Manager, the Deputy General Manager of operations, and

the Chief Safety Officer to drive accountability for safety at WMATA. The Board will be carefully monitoring the progress of the Safety Action Team.

Q.3.b. What measures of accountability have occurred and where does the buck stop?

A.3.b. WMATA has instituted a number of improvements to transparency and accountability including:

- increasing review of criminal history and credentials of potential employees;
- partnering with other transit properties and national safety facilities to ensure current and robust employee training;
- revising the Metrorail and Metrobus Safety Rules and Procedures and the Authority's System Safety Program Plan;
- meeting with frontline management to reinforce their responsibility to ensure safe workplace and service; management will report to me periodically on safety in their work sites;
- Ongoing training and coaching to develop a safety culture;
- Changing executive management structure where necessary;
- Partnering with unions, FTA, TOC, and other transit properties to achieve goals.

It will take the efforts of every WMATA employee to make WMATA the safest system possible. However, no one is more accountable than I am.

RESPONSES TO WRITTEN QUESTIONS OF CHAIRMAN DODD FROM DAVID WISE

Q.1. In light of the recent accidents nationwide, many believe there should be a stronger role for the Federal Government in transit safety. What do you believe is the proper amount of authority and oversight at the Federal level? What are the concerns of the industry in regards to the Administration's proposed new Federal role in transit safety? What should FTA consider when developing standards if this proposal is enacted?

A.1. In determining the proper amount of authority and oversight at the Federal level, it is important to consider whether uniform Federal standards are needed and the capacity of the States *versus* FTA to carry out transit safety oversight.

- Regarding standards, FTA's current regulation on the State Safety Oversight (SSO) Program requires that transit agencies' safety plans include various minimum components of safety management, such as a process for identifying, managing, and eliminating hazards. In addition, State oversight agencies may choose to develop technical standards, such as requirements for the strength of track or crashworthiness of rail vehicles.
- Regarding the capacity of the States to perform safety oversight, we found in 2006 that, while most oversight agency staff believed they were doing a good job, the levels of resources, staff expertise, and enforcement powers varied across State oversight agencies. Oversight agencies were unsure whether they had sufficient numbers of staff to adequately oversee a

transit agency's operations; 13 of 24 agencies estimated dedicating less than one full-time equivalent staff member to the oversight task. Many State officials stated that they were unsure if they were adequately trained. Also, we found that 19 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. In response to our recommendation, FTA developed a suggested training curriculum for State oversight staff and, currently, over 50 percent of these agencies have staff who have completed at least the first tier of this training.

- Regarding the capacity of FTA to perform safety oversight, the agency currently has a small number of safety staff (5 filled headquarters positions) as well as a contractor for the SSO program with about 4–5 staff. To fulfill its proposed role, it would need to significantly enhance its internal and contractor staffing and expertise.

It may also be helpful to compare FTA's authority with that of other modal administrations within DOT. FTA currently has less authority to regulate and oversee safety than these other agencies. For example, the Federal Railroad Administration, 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 inspectors and, in some instances, State inspectors 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. However, FTA historically has been primarily a grantmaking agency.

We do not have information on the views across the transit industry on the Administration's proposal. However, as part of our ongoing review of challenges to improving rail transit safety, we intend to interview officials of major rail transit systems and will ask for their views on the proposal.

If the proposal is enacted, FTA will face challenges in developing safety standards for an industry that varies a great deal. For example, transit systems use different types of vehicles and these vehicles operate on different types of track with different power sources. FTA could develop standards that are flexible enough to apply to varying types of transit systems or develop separate more specific standards for the different types of vehicles and track. The latter approach could be a lengthy process and could require multiple parallel rulemakings. DOT has noted that it does not plan to develop highly specific regulations but instead, as a first step, would require each transit system to implement "Safety Management Systems" that would identify its greatest safety vulnerabilities through risk analysis and then take the necessary actions to address those risks. Risk management is a systematic approach for dealing with the risks posed by safety hazards (such as collisions, derailments, or worker or passenger injuries). Risk

management can help to improve systemwide safety by systematically identifying and assessing the risks associated with various safety hazards and prioritizing them so that resources can be allocated to address the highest risks first. It also can help in ensuring that the most appropriate alternatives to prevent or mitigate the effects of hazards are designed and implemented.

FTA established the Transit Rail Advisory Committee for Safety in December 2009. This Committee, which will consist of up to 25 voting members, is charged with analyzing transit safety issues and developing recommendations for minimum, national transit safety standards. We believe this is a positive step that will enable FTA to tap into the expertise of various key stakeholders in developing regulations.

Q.2. GAO stated in their testimony that some States have given their oversight agencies enforcement authority, but many of these oversight agencies have "rarely, if ever, used it." How will enforcement authority help oversight agencies be effective? Moreover, current law allows for FTA to withhold 5 percent of formula funds from a State that is not in compliance. Has this been effective? If not, what enforcement tools would be effective?

A.2. Based on prior work on enforcement of transportation safety regulations, we believe that providing FTA and participating States with enforcement authority could help better ensure that transit systems take corrective actions when problems are found. For example, safety inspection and enforcement can lead to the correction of safety problems and improved compliance with safety regulations and, as a result, reduce accidents.

Under the current SSO program, FTA can withhold State formula funds from States that are not meeting SSO requirements. Prior to 1999, FTA has withheld formula funds twice: (1) about $95 million from one State for its failure to designate a State safety oversight agency, and (2) about $2.3 million from another State for failure to meet the FTA rule's implementation deadlines. Since then, FTA has not withheld formula funds from any States due to noncompliance with these requirements.

The transit agencies FTA oversees usually are 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 could ultimately bear the cost of fines. There are other enforcement options available, however. For example, in addition to penalties, 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. The American Public Transportation Association also has suggested a timetable to allow transit systems to be brought into compliance without penalty as well as providing FTA with the ability to direct grant funding for transit systems to be used to correct significant incidences of noncompliance. In addition, the negative consequences of noncompliance—such as those stemming from lawsuits and bad publicity—can serve as a deterrent.

RESPONSES TO WRITTEN QUESTIONS OF CHAIRMAN DODD FROM BRIAN CRISTY

Q.1. In light of the recent accidents nationwide, many believe there should be a stronger role for the Federal Government in transit safety. What do you believe is the proper amount of authority and oversight at the Federal level?

A.1. On behalf of the Massachusetts Department of Public Utilities (DPU), I support the Administration's proposal as a means to provide robust Federal safety oversight of rail transit systems. I agree with the Administration's intention to institute a performance-based approach to oversight by establishing a quality safety management system for each rail transit agency. In exercising oversight authority, I agree with Secretary LaHood that the Federal Transit Administration (FTA) must be permitted to establish and enforce meaningful minimum safety standards for all rail transit systems. These standards should address, among other areas, hours-of-service regulations for rail transit operators, crashworthiness standards for rail vehicles, and the installation of event recorders on all rail vehicles. Further, as part of the proposed safety certification program identified by Secretary LaHood, I believe that State oversight agencies should be authorized to investigate and discover minimum standard safety violations, and report such violations to the FTA. In turn, the FTA should be permitted to enforce these standards through the assessment of monetary penalties against a rail transit authority for noncompliance. Further, the proposed legislation should provide for safety training and staffing support in order to effectively implement the FTA standards. Finally, I agree that the proposed legislation should not preempt States from establishing more stringent safety standards.

Q.2. What are the concerns of the industry in regards to the Administration's proposed new Federal role in transit safety?

A.2. Because the final regulations have not yet been promulgated, I have some concern regarding the ability of the local rail transit system to implement the Federal requirements in an efficient and expeditious manner, while maintaining the paramount objective of public safety. The most effective set of minimum standards will be those that are easy to interpret and implement by existing rail transit systems. Further, the specific requirements of the program (*e.g.,* minimum standards, inspections, reporting, *etc.*) should not unduly constrain, administratively, financially, or otherwise, either the oversight agency or the rail transit system. That said, I am encouraged by Secretary LaHood's testimony that the proposed legislation is not intended to create voluminous and highly specific regulations.

Q.3. What should FTA consider when developing standards if this proposal is enacted?

A.3. In addition to the above considerations, I agree with Secretary LaHood's testimony that each rail transit system should identify its safety issues and take the necessary actions to address those risks. Thus, I would encourage the FTA to communicate directly with the oversight agencies and the individual rail transit systems in developing safety standards. More specifically, however, I believe that

the FTA should carefully consider the role of the rail transit system's safety department, as this group is responsible for maintaining day-to-day safety on the system. I spoke to some extent in my initial testimony about the important relationship between the MBTA's safety department, and the DPU, as the oversight agency. It is my belief that any safety training and staffing support provided by the new legislation should be directed to maintaining an experienced, well-trained safety department.

Q.4. GAO stated in their testimony that some States have given their oversight agencies enforcement authority, but many of these oversight agencies have "rarely, if ever, used it." How will enforcement authority help oversight agencies be effective?

A.4. Enforcement authority is an important part of a safety oversight program. As I noted above, the FTA should be authorized to institute fines for noncompliance with minimum safety standards. I believe the assessment of a monetary penalty will provide the necessary incentive for an otherwise noncompliant entity to ensure that it continues to meet Federal regulations. The FTA should retain the authority prescribe appropriate due process mechanisms related to the assessment of monetary penalties.

Q.5. Moreover, current law allows for FTA to withhold 5 percent of formula funds from a State that is not in compliance. Has this been effective? If not, what enforcement tools would be effective?

A.5. I believe that the current law allowing for the FTA to withhold 5 percent of formula funds from a noncompliant State is not effective in most cases, at least as it applies to Massachusetts. The reason for this is because the formula funds are distributed to all transit systems in the Commonwealth, not just the MBTA. Thus, if 5 percent of the funds are withheld because of a violation incurred by the MBTA, the remaining transit systems (*i.e.,* buses) are adversely impacted, as well. As noted above, an effective enforcement tool would be the assessment of a monetary penalty against the rail transit system.

RESPONSES TO WRITTEN QUESTIONS OF CHAIRMAN DODD FROM WILLIAM MILLAR

Q.1. In light of recent accidents nationwide, many believe there should be a stronger role for the Federal Government in transit safety. What are the concerns of the industry in regards to the Administration's proposed new Federal role in transit safety?

A.1. Rail transit in America is an extremely safe mode of transportation, but it can always be made safer. APTA believes the Administration's proposal is a good start in the effort to strengthen the Federal role in transit safety. We appreciate the Congress' and the Administration's willingness to consider APTA's views and to work with the industry as this proposal moves forward. If Congress enacts this proposal, we will work cooperatively with the Administration as it implements this program. As I discussed in my testimony, we believe that the Federal Transit Administration (FTA) is the appropriate agency to oversee this program, and we support adequate Federal funding to implement this program, to ensure the availability of qualified safety experts and to bring systems up to

a state of good repair which should have a positive effect on safety. Further, we are appreciative of the anticipation that this proposal would envision the use of APTA as a Standards Development Organization (SDO).

The industry has several concerns in regards to the Administration's proposed new Federal role in transit safety. The most important aspect in creating a new regulatory program is consistency. There must be consistent application, adherence and enforcement in order for any new Federal program to be successful. The public transit industry believes that to ensure consistency, Federal safety standards should preempt State and local standards. Uniformity and a national focus are the essential elements of achieving a successfully applied Federal safety standards program. While some States or local entities may seek to separate standards for safety, to do so might ultimately detract from the overall effort. Standards created in one location would, through the threat of litigation, become a *de facto* national standard. Such *de facto* standards would serve to supplant the judgment of the FTA, an agency whose work is crafted by the collective experience of the industry, and will thus create a disjointed collection of separate standards driven by decisions handed down by the courts. Uniformity is essential to ensuring that the Federal investment is effectively used for safety initiatives that reflect national safety priorities.

In addition, we are concerned that the proposal does not contain clear language outlining enforcement mechanisms. Public transit agencies are public entities funded with taxpayer dollars and fares from riders, therefore, levying monetary fines is counterproductive as an enforcement scheme. The most effective method of providing enforcement may be to vest the FTA with the authority to impose "grant conditions" on grantees, requiring significant safety findings be fixed prior to allowing an agency to move forward with other projects.

Q.2. What should FTA consider when developing standards if this proposal is enacted?

A.2. If this proposal is enacted, the FTA should consider that the development of effective Federal transit safety standards requires the involvement of transit industry expertise. Adequate funding must also be provided for the FTA to accomplish this mission.

Since 1996, APTA has been creating consensus based voluntary transit industry standards. Over 170 standards have been created to date, with nearly 96 rail transit safety standards in operation across the country. The APTA standards program was developed by thousands of industry volunteers serving on numerous working committees, creating standards for bus, rail transit and commuter rail operations, maintenance, procurement and Intelligent Transportation Systems (ITS). Funded in part by over $3 million in grants received from the FTA, our organization is an officially accredited SDO that is widely recognized as the leader in developing transit standards. Further, the APTA standards program for commuter rail has been used by the Federal Railroad Administration (FRA) and is incorporated into their regulatory program.

APTA's consensus based standards are currently being utilized by public transit systems throughout North America to achieve

operational efficiencies and safety improvements in services, facilities and vehicles. It is important to understand that the transit industry not only assists in developing the APTA standards but also operationally implements these standards at transit properties. As such, there is no reason for the FTA to create an entirely new program. We strongly encourage the FTA to use APTA's existing standards program as the foundation of their new initiative. Incorporating, where appropriate, the existing APTA standards program already in practice will serve to substantially reduce the cost of developing standards and will also provide for a more effective transition period and final implementation. Furthermore, using existing standards also follows a Congressional directive put forth in the National Technology Transfer and Advancement Act of 2005 (P.L. 104-113), which encourages Government agencies to work together with industry leaders to develop private, voluntary safety standards for Federal grantees.

As was the case with the initial creation of State Safety Oversight Agencies (SSOAs), the unfunded Federal mandate left States scrambling to find funding to employ properly trained staff and to implement effective programs. As a result, the program we currently have is disjointed, uneven in its effectiveness and varies greatly from one agency to the next. To make certain that a similar situation does not reoccur, the FTA must work with Congress to ensure that adequate funding is provided to hire and develop additional personnel and subject matter experts at the Federal level, to properly train and staff State oversight agencies, and to create a national FTA transit safety standards certification program to ensure that there is a national network of uniformly trained transit safety professionals at the Federal, State and transit agency levels. The FTA organization structure must also be reorganized so that it can properly support the new program.

Furthermore, Congress and the Department of Transportation must also ensure that both passenger rail regulatory agencies (the FRA and the FTA) work to create a consistent and coordinated approach to regulations as there are many locations where both agencies operate side-by-side or are operated jointly by the same multimodal public transportation agency.

GAO stated in their testimony that some States have given their oversight agencies enforcement authority, but many of these oversight agencies have "rarely, if ever, used it."

Q.3. How will enforcement authority help oversight agencies be effective?

A.3. State Safety Oversight Agencies tend not to use their enforcement authority because it is rare that such action is necessary. The public nature of the industry and its commitment to provide a safe public service is a higher priority than all other duties, therefore, when a significant safety hazard is identified, corrective actions are usually taken. Of the few SSOAs that do possess such authority, it is extremely rare that safety situations go unchecked or escalate to a point which would necessitate the utilization of enforcement powers.

Public transit agencies are extraordinarily aware of and sensitive to public perception, local politics and customer service. Whereas

private carriers may perceive fines from Federal regulators as a natural cost of doing business, public transit business models are simply unable to withstand similar monetary and public perception penalties. Public transit agencies are public purpose, not-for-profit entities funded with taxpayer dollars and fares from riders. There is no profit from which to pay fines. A substantial fine would result in less revenue, which would lead to a reduction in service or higher fares, either of which would push riders to use less safe modes of travel. As previously stated, the most effective method of providing enforcement is for the FTA to impose "grant conditions" on transit agencies, requiring significant safety issues be fixed prior to allowing an agency to access funds for regular needs and planned projects.

To the extent that monetary fines are inappropriate penalties for public transit agencies, we recognize that there must be measures of accountability in the event corrective actions are overlooked or ignored. Through our successful APTA Safety Audit Management Program, it has been our experience that once a safety issue is identified through an audit, a transit agency will immediately work to correct the deficiency.

Moreover, current law allows for FTA to withhold 5 percent of formula funds from a State that is not in compliance.

Q.4. Has this been effective? If not, what enforcement tools would be effective?

A.4. Under the Safe, Accountable, Flexible, Efficient Transportation Enhancement Act: A Legacy for Users (SAFETEA–LU) the FTA was permitted to begin withholding up to 5 percent of an entire State or urbanized area's §5307 Urbanized Area Grant Formula funding if a transit agency is found to be noncompliant on rail transit safety matters. This is not effective for several reasons. As the statute is currently written, safety noncompliance at an individual transit agency can result in an up to 5 percent reduction of an entire State's or Urbanized Area's (UZA) §5307 funds. Nowhere in the statute does the language identify that this penalty in the form of a funding reduction can be conveyed upon a particular transit agency, instead the statute explicitly allows for the entire State or UZA to be penalized, complicating matters for States and UZAs that have more than one transit agency. Furthermore, funding reductions prevent already cash strapped transit agencies from being able to properly leverage all available funds for critical corrective safety actions.

Recognizing the inequities associated with such a penalty, State oversight agencies have historically opted against reporting infractions as an enforcement tool. A much more effective enforcement mechanism would be to permit the FTA to impose "grant conditions" on grantees that are found to be in significant noncompliance with federally imposed safety regulations. Requiring transit agencies to direct their §5307 Urbanized Area Grant Formula funding to address significant incidences of noncompliance would better ensure that mandatory Federal safety requirements are met.

The imposition of "grant conditions" should be incorporated through an adequate timetable, allowing transit agencies to bring their systems into compliance without incurring any form of pen-

alty. Once the initial compliance period has elapsed, a progressive ratings system should be instituted, whereby instances of noncompliance will be evaluated based on risk and/or necessity. Further analysis is necessary to determine if 100 percent of §5307 funds of a noncompliant agency should be redirected towards corrective actions, or if instead, a similar evaluative ratings process should be instituted, allowing for progress in correcting safety issues while simultaneously providing transit agencies with the flexibility to adequately fund other existing programs.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

STATEMENT OF BENJAMIN L. CARDIN, U.S. SENATOR FROM THE STATE OF MARYLAND

Chairman Menendez, thank you for the unique opportunity to issue a statement in your Subcommittee about this important issue that hit all too close to home for me on the afternoon of June 22 this year.

The safe operation of Metro, and any transit system must not just be promised but also delivered. I share Senator Mikulski's frustration with WMATA's record on improved safety measures when just 2 weeks ago, on November 29th, yet another Metrorail accident occurred near Falls Church, Virginia, injuring three Metro employees and destroying three rail cars.

We have heard a lot of talk about the steps being taken at Metro to improve safety but what we need to see are results and accountability for when the safety of costumers and employees is compromised.

Part and parcel to the safe operation of any transit system is having adequate resources to maintain, repair and upgrade when necessary the essential infrastructure that deliver riders to their destinations. I have worked hard in the Environment and Public Works Committee to improve the funding authorizations for transit funding. In 2008 I was able to secure a 10 year $1.5 billion authorization for Metro. Building on that, I was very pleased that Senator Mikulski through her role on the Appropriations Committee was able to appropriate the first $150 million dollar installment of funds to Metro.

I completely understand that some of the most basic safety improvements require financial resources. Funding shortfalls have caused Metro to make repairs instead of replacing aging equipment or structures throughout the system. Repairing last year, I visited the Shady Grove Station and witnessed first-hand how they literally are using wood planks and iron rods to prop up station platforms. They have been forced to make such accommodations to keep the system running in the safest way possible.

Metrorail is the second busiest commuter rail system in America, carrying 1 million passengers a day. It carries the equivalent of the combined subway ridership of BART in San Francisco, MARTA in Atlanta, and SEPTA in Philadelphia each day. But more than three decades after the first trains started running, the system is showing severe signs of its age. Sixty percent of the Metrorail system is more than 20 years old. The costs of operations, maintenance, and rehabilitation are tremendous.

I believe that we must look at this not only as the responsibility of the local jurisdictions—Maryland, Virginia, and Washington, DC—but also as a Federal responsibility. Federal facilities are located within footsteps of 35 of Metrorail's 86 stations. Nearly half of Metrorail's rush hour riders are Federal employees. Approximately 10 percent of Metro's riders use the Metrorail stations at the Pentagon, Capitol South, or Union Station, serving the military and the Congress. In addition, Metro's ability to move people quickly and safely in the event of a terrorist attack or natural disaster is crucial. The Metro system was invaluable on September 11, 2001, proving its importance to the Federal Government and to the Nation during the terrorist attacks of that tragic day. There is a clear Federal responsibility to this system.

The devastating June 22 Metrorail accident that claimed nine lives and injured more than 70 passengers is the most devastating by any measure in Metro history. I want to once again send my deepest sympathies to the families, friends, and all those whose lives the victims of this tragedy.

The investigation by the National Transportation Safety Board is ongoing and I am happy to hear that Metro is cooperating with these Federal investigators. However, when regional authorities came out to inspect certain sections rail lines they were denied access. Metro's mishandling of the resolution of this catastrophe and further accidents, some fatal, that have occurred since the June 22 accident raise a number of reasonable questions about the condition of Metro's infrastructure and WMATA's grasp on how to safely run the system.

News reports found that the train car that caused the fatal accident was an older model that Federal officials had recommended for replacement. It did not have a data recorder or modern improvements to stand up to a collision, safety measures also recommended by NTSB to be put in place on metro trains. The cars were also 2 months behind on its scheduled maintenance. Metro officials are replacing these aging cars that date back to the 1970s. These costly replacements are being made, but the pace is too slow. In the meantime, Metro is repairing some of these older cars to keep them in service until new ones can be purchased.

I am proud to sponsor Senator Mikulski's National Metro Safety Act (S. 1506) to establish Federal safety standards for America's transit systems. While transit is statistically one safest modes of transportation in the country, the lack of oversight and accountability when tragedies do occur is unacceptable. Currently, the U.S. Department of Transportation, which provides considerable funding for transit, has no authority to determine public safety measures of the projects they help fund.

As we work towards providing better resources for transit systems across the country we must also help ensure the safety of our Nation's transit systems for the traveling public. Giving DOT and the NTSB similar safety standards authority over transit systems that it has over buses and airplanes will provide greater safety assurances for the millions of people who rely on public transit systems everyday. As we learn more about the causes of the June 22 Metro accident it is becoming increasingly apparent that it was only a matter of time before an incident like this happened. We must take steps to prevent these types of accidents from happening again and I look forward to working with Senator Mikulski and the Members of this Committee to improve the safety of our Nation's transit systems.

STATEMENT OF ARUN VOHRA, P.E., PRESIDENT MINI, LLC

Chairman Menendez, Ranking Member Vitter, 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 Honorable Ray LaHood, Secretary of Transportation (DOT) and the Honorable 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 to 10 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 systemwide 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 5,000 degrees Fahrenheit 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 5 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

STATEMENT OF RICHARD W. CLARK, DIRECTOR OF THE CONSUMER PROTECTION AND SAFETY DIVISION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION

Chairman Menendez 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 submit this testimony discussing 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 its 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 12 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 3-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 cur-

rently 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 1960s 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 not 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—if the lessons learned over the years since the Federal Railroad Safety Act of 1970 were acknowledged and adopted:

- A national *minimum* 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]

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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).

- 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.

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.

[3] *Union Pac. R.R. v. Cal. Pub. Util. Comm'n,* 346 F.3d 851 (9th Cir. 2003).

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 percent 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 unpowered 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

[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.

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.

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 postaccident testing following the June 22, 2009, collision between two rail transit trains near the Fort Totten station in Washington, DC, 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.

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[5] CPUC Resolution S-1358, August 31, 1972.
[6] CPUC Decision No. 81248.
[7] LBL-developed redundant software for train detection and train separation as recommended by the failure-mode analyses.
[8] CPUC Decision No. 83339.

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 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 6 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.
- 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)

[9] CPUC Decision No. 89902.
[10] CPUC Decision 90144, April 4, 1979

- 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 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 2 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.

TRANSIT SAFETY BILL

A BILL

To amend chapter 53 of title 49, United States Code, to establish a public transportation safety program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as "The Public Transportation Safety Program Act of 2009."

SEC. 2. PUBLIC TRANSPORTATION SAFETY PROGRAM.

(a) IN GENERAL.—Section 5329 of title 49, United States Code, is amended to read as follows:

"Sec. 5329. Public transportation safety program

"(a) RAIL FIXED GUIDEWAY SAFETY.—

"(1) PROGRAM.—The Secretary shall, as soon as practicable, establish and implement a public transportation safety program to improve the safety of, and reduce the number and severity of accidents involving, the design, construction, and revenue service operation of rail fixed guideway public transportation systems that receive financial assistance under this chapter.

"(2) EXCLUSION.—This section shall not apply to rail fixed guideway public transportation systems subject to regulation by the Federal Railroad Administration under subtitle V of this title and the Rail Safety Improvement Act of 2008.

"(3) NATIONAL TRANSPORTATION SAFETY BOARD.—When promulgating public safety transportation regulations, the Secretary shall, to the extent practicable, take into consideration relevant recommendations of the National Transportation Safety Board.

"(b) BUS SAFETY.—The Secretary may establish and implement a public transportation safety program to improve the safety of, and reduce the number and severity of accidents involving, public transportation bus systems that receive financial assistance under this chapter in accordance with the provisions of this section.

"(c) REGULATIONS AND ORDERS.—

"(1) IN GENERAL.—The Secretary shall promulgate regulations and issue orders for the safe operation of rail fixed guideway public transportation systems, after appropriate consideration of costs and benefits. The Secretary shall ensure that the regulations establish a Federal certification program for employees and contractors who

carry out a State public transportation safety program in compliance with this section and oversee the performance of employees or contractors responsible for performing safety activities identified in such program.

"(2) CONSULTATION BY DHS SECRETARY.—Before prescribing a security regulation or issuing a security order that affects the safety of public transportation design, construction or operations, the Secretary of Homeland Security shall consult with the Secretary.

"(3) WAIVERS.—The Secretary may waive compliance with any part of a regulation promulgated or order issued under this section if the waiver is in the public interest, or a regulation or order issued under this section. The Secretary shall not issue a waiver and shall immediately revoke a waiver if the waiver would not be consistent with the goals and objectives of this section. The Secretary shall make public the reasons for granting or revoking the waiver.

"(d) PREEMPTION.—

"(1) IN GENERAL.—A State may adopt or continue in force a law, regulation, or order related to public transportation safety until the Secretary promulgates a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to public transportation safety only if the law, regulation, or order—

"(A) has a safety benefit;

"(B) is not incompatible with a law, regulation, or order of the United States Government; and

"(C) does not unreasonably burden interstate commerce.

"(2) DAMAGES.—Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party—

"(A) has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary under this section;

"(B) has failed to comply with its own program, rule, or standard that it created under a regulation or order issued by the Secretary; or

"(C) has failed to comply with a State law, regulation, or order that is not incompatible with paragraph (1) of this subsection.

"(3) EFFECTIVE DATE.—This subsection shall apply to all State law causes of action arising from events or activities occurring on or after the enactment of this section.

"(4) FEDERAL JURISDICTION.—Nothing in this section creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for State law causes of action.

"(e) SAFETY PROGRAM ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary may take actions the Secretary considers necessary, including—

"(A) conducting 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;

"(B) delegating to a public entity or other qualified person the conduct of 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;

"(C) making reports, issuing subpoenas, requiring the production of documents, taking depositions, and prescribing recordkeeping and reporting requirements; and

"(D) making grants or entering into agreements—

"(i) for research, development, testing and training of every area of public transportation safety; and

"(ii) to assist a public entity or qualified person in carrying out the delegated activities set forth in subparagraph (B) of this paragraph.

"(2) ACCIDENTS AND INCIDENTS.—Activities authorized under this subsection may be engaged in for safety purposes, including accident and incident prevention and investigation.

"(3) COST SHARING.—The Federal share of a grant awarded or an agreement entered into under paragraph (1)(D) of this section may be up to 100 percent.

"(4) ENTRY.—In carrying out this subsection, an officer or employee of the Secretary, or agent designated by the Secretary under paragraph (1)(B) of this subsection, at reasonable times and in a reasonable way, may enter and inspect public transportation equipment, facilities, rolling stock, operations, and relevant records. When requested, the officer, employee, or the designated agent shall display proper credentials. During an inspection, the officer, employee, or designated agent of the Secretary qualifies as an employee of the United States Government under chapter 171 of title 28.

"(f) STATE PARTICIPATION.—

"(1) SAFETY PROGRAM.—A State may establish and implement a State public transportation safety program through statute and regulation that requires, at a minimum, compliance with the regulations and policies issued by the Secretary under this section and complies with subsection (d) of this section.

"(2) GRANTS.—The Secretary may make grants or enter into agreements under this subsection to carry out a State public transportation safety program, including to train employees necessary to administer and manage the program, and to enforce Federal and State public transportation safety laws, regulations and orders, provided that—

"(A) employees responsible for carrying out the safety oversight functions of a State public transportation safety program meet the safety certification criteria established through regulations issued under subsection (c)(1) of this section;

"(B) a State submits its public transportation safety program, which shall provide a right of entry and inspection to carry out the program, to the Secretary for review and written approval prior to implementing the program; and

"(C) a State submits each amendment to its public transportation safety program to the Secretary for review and written decision at least 60 days before the amendment becomes effective. If a State does not receive a written response from the Secretary by the end of the 60-day period, the amendment shall be deemed to be approved.

"(3) MULTI-STATE REQUIREMENTS.—When a single public transportation authority operates in more than one State, the affected States, if establishing and implementing a public transportation safety program as authorized under this subsection, shall—

"(A) establish and implement the program jointly to ensure uniform safety standards and enforcement procedures that shall be, at a minimum, in compliance with this section and the regulations and policies issued by the Secretary under this section; or

"(B) designate an entity (other than the public transportation authority) to carry out the activities and requirements specified by subparagraph (A) of this paragraph.

"(4) CONFLICT OF INTEREST.—A State may not—

"(A) allocate grant funds awarded under paragraph (1) of this subsection to a State agency or local entity that operates a public transportation system that receives Federal transit assistance;

"(B) allow a State agency or local entity that operates a public transportation system to provide funds to a State agency or an entity designated by the State that is responsible for establishing, implementing, or maintaining a State public transportation safety program; or

"(C) allow a State agency or local entity that operates a public transportation system to participate in the oversight of establishing, implementing, or maintaining a State public transportation safety program.

"(5) COST SHARING.—In the case of a State that implements a safety program under this section, the following applies:

"(A) The Secretary shall reimburse the State from a grant made or agreement entered into under this section, an amount that is up to 100 percent of the costs incurred by the State in a fiscal year for developing, implementing and enforcing a State public transportation safety program.

"(B) The Secretary, through regulations promulgated under this section, shall establish a schedule of reimbursable costs that the Secretary shall use to assist the State in defraying the State's costs of developing, implementing and enforcing a State public transportation safety program.

"(C) To help defray the costs of developing, implementing and enforcing a State public transportation safety program, the State may submit to the Secretary a voucher that does not exceed the amount identified on the schedule of reimbursable costs for an eligible activity.

"(D) The Secretary shall pay the State an amount not more than the Federal Government's share of costs incurred as of the date of the voucher.

"(6) NOTICE OF WITHDRAWAL.—The Secretary shall ensure that the State is carrying out the State public transportation safety program, as follows:

"(A) If the Secretary finds, after notice and opportunity to comment, that the State transportation safety program previously approved is not being followed or has become inadequate to ensure enforcement of the regulations or orders, the Secretary shall withdraw approval of the program and notify the State.

"(B) A State public transportation safety program shall no longer be in effect upon the State's receipt of the Secretary's notice of withdrawal of approval.

"(C) A State receiving notice under subparagraph (A) of this paragraph may seek judicial review of the Secretary's decision under chapter 7 of title 5, United States Code.

"(D) Notwithstanding the withdrawal, a State may retain jurisdiction in administrative and judicial proceedings begun before the withdrawal if the issues involved are not related directly to the reasons for the withdrawal.

"(g) ENFORCEMENT.—

"(1) IN GENERAL.—The Secretary has the authority—

"(A) to establish, impose and compromise a civil penalty for a violation of a public transportation safety regulation promulgated or order issued under this section;

"(B) to establish, impose and compromise a civil penalty for violation of the alcohol and controlled substances testing provisions under section 5331 of this chapter;

"(C) to request an injunction for a violation of a public transportation safety regulation promulgated or order issued under this section; and

"(D) to notify the Attorney General when the Secretary receives evidence of a possible criminal violation under paragraph (5).

"(2) DEPOSIT OF CIVIL PENALTIES.—An amount collected by the Secretary under this section shall be deposited into the General Fund of the United States Treasury.

"(3) ENFORCEMENT BY THE ATTORNEY GENERAL.—At the request of the Secretary, the Attorney General shall bring a civil action—

"(A) for appropriate injunctive relief to ensure compliance with this section;

"(B) to collect a civil penalty imposed or an amount agreed upon in a compromise under paragraph (1) of this subsection; or

"(C) to enforce a subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition issued by the Secretary under this section.

"(4) JURISDICTION.—An action under paragraph (3) of this subsection may be brought in a district court of the United States in any State in which the relief is required. On a proper showing, the court shall issue a temporary restraining order or preliminary or permanent injunction. An injunction under this section may order a public transportation agency receiving assistance under this chapter to comply with this section, or a regulation promulgated under this section.

"(5) CRIMINAL PENALTY.—A person who knowingly violates this section or a public transportation safety regulation or order issued under this section shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both; except that the maximum amount of imprisonment shall be 10 years in any case in which the violation results in death or bodily injury to any person. For purposes of this subparagraph—

"(A) a person acts knowingly when—

"(i) the person has actual knowledge of the facts giving rise to the violation; or

"(ii) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge; and

"(B) actual knowledge of the existence of a statutory provision, or a regulation or a requirement required by the Secretary is not an element of an offense under this paragraph.

"(h) EMERGENCY AUTHORITY.—

"(1) ORDERING RESTRICTIONS AND PROHIBITIONS.—If, through testing, inspection, investigation, or research carried out under this section, the Secretary decides that an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment, the Secretary immediately may order restrictions and prohibitions, without regard to section 553 and section 554 of title 5, United States Code, that may be necessary to abate the emergency situation.

"(2) EMERGENCY CONDITION OR PRACTICE.—The order shall describe the condition or practice, or a combination of conditions and practices, that causes the emergency situation and promulgate standards and procedures for obtaining relief from the order. This paragraph does not affect the Secretary's discretion under this subsection to maintain the order in effect for as long as the emergency situation exists.

"(3) REVIEW OF ORDERS.—After issuing an order under this subsection, the Secretary shall provide an opportunity for review of the order under section 554 of title 5, United States Code. If a petition for review is filed and the review is not completed by the end of the 30-day period beginning on the date the order was issued, the order stops being effective at the end of that period unless the Secretary decides in writing that the emergency situation still exists.

"(4) CIVIL ACTIONS TO COMPEL ISSUANCE OF ORDERS.—An employee of a rail fixed guideway public transportation system provider who may be exposed to imminent physical injury during that employment because of the Secretary's failure, without any reasonable basis, to issue an order under paragraph (1) of this subsection, or

the employee's authorized representative, may bring a civil action against the Secretary in a district court of the United States to compel the Secretary to issue an order. The action shall be brought in the judicial district in which the emergency situation is alleged to exist, in which the employing provider has its principal executive office, or in the District of Columbia. The Secretary's failure to issue an order under paragraph (1) of this subsection may be reviewed only under section 706 of title 5, United States Code.

"(i) EFFECT ON EMPLOYEE QUALIFICATIONS AND COLLECTIVE BARGAINING.—

This section does not—

"(1) authorize the Secretary to promulgate regulations and issue orders related to qualifications of employees, except qualifications specifically related to safety; or

"(2) prohibit collective bargaining agreements between public transportation agencies and public transportation employees or their representatives, including agreements related to qualifications of the employees that are not inconsistent with regulations and orders promulgated under this section.

"(j) PUBLIC TRANSPORTATION EMPLOYEE PROTECTIONS.—Applicable provisions of the public transportation employee protection provisions under section 1142 of title 6, United States Code, apply to direct and indirect recipients of Federal transit assistance under this chapter.

"(k) JUDICIAL REVIEW.—A person adversely affected or aggrieved by a final action of the Secretary under this section or under section 5331 of this title may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals for the United States for the circuit in which the person resides and has its principal place of business. Judicial procedures require—

"(1) the petition be filed not more than 60 days after the Secretary's action becomes final;

"(2) the clerk of the court immediately send a copy of the petition filed under paragraph (3) of this section to the Secretary;

"(3) the Secretary file with the court a record of any proceeding in which the final action was issued as provided in section 2112 of title 28, United States Code; and

"(4) the court to consider an objection to a final action of the Secretary only if the objection was made in the course of the proceeding or review conducted by the Secretary or if there was a reasonable ground for not making the objection in the proceeding."

(b) AUTHORIZATIONS.—Section 5338 of title 49, United States Code, is amended—

(1) by redesignating subsections (e), (f) and (g) as subsections (f), (g) and (h), respectively;

(2) by inserting a new subsection (e) to read of follows:

"(e) SAFETY PROGRAM.--There is authorized to be appropriated such amounts in each fiscal year as necessary to administer section 5329 and to make grants or enter into agreements to carry out section 5329."; and

(3) in subsection (h), as redesignated, by striking "and (d)" and inserting "(d) and (e)".

(c) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—Section 5334(b)(1) of title 49, United States Code, is amended by inserting "or for purposes of establishing and enforcing programs to improve the safety of the nation's public transportation systems, and reducing accidents on rail fixed guideway and bus systems for public transportation," after "emergency,".

(d) ALCOHOL AND CONTROLLED SUBSTANCES TESTING.—Section 5331(b)(2) of title 49, United States Code, is amended—

(1) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(2) by inserting a new subparagraph (A) following "Secretary of Transportation--" to read as follows:

"(A) shall establish and implement an enforcement program, including the imposition of penalties for failure to comply with this section;".

(e) CONFORMING AMENDMENT; REPEAL.—

(1) CHAPTER ANALYSIS.—The analysis for chapter 53 of title 49, United States Code, is amended by striking the item relating to section 5329 and inserting the following:

"5329. Public Transportation Safety Program.".

(2) REPEAL.—Section 5330 of title 49, United States Code, is repealed three years after the effective date of final regulations issued by the Secretary under section 5329 of title 49, as amended by this section.

ANALYSIS OF PROPOSED PUBLIC TRANPORTATION SAFETY PROGRAM

Section 1 provides the short title of the bill, "The Public Transportation Safety Program Act of 2009."

Section 2 of the Act would establish a Public Transportation Safety Program, within the U.S. Department of Transportation, as section 5329 of title 49, United States Code. This new section 5329 would replace the current section 5329, which addresses the investigations of safety hazards and security risks.

Subsection (a) of section 5329 would require the Secretary, as soon as practicable, to establish and implement a Public Transportation Safety program to improve the safety of rail fixed guideway public transportation systems in design, construction, or revenue service that receive Federal financial assistance under chapter 53 of title 49. Section 5329 would not apply to fixed guideway public transportation systems subject to regulation by the Federal Railroad Administration (FRA) under subtitle V of title 49, United States Code, and the Rail Safety Improvement Act of 2008. Paragraph (3) requires the Secretary, to the extent practicable, to take into consideration the recommendations of the National Transportation Safety Board.

Subsection (b) would give the Secretary the option to establish and implement a Public Transportation Safety program for bus public transportation systems that receive Federal financial assistance under chapter 53.

Subsection (c) would require the Secretary to promulgate notice and comment regulations and issue orders for rail fixed guideway public transportation systems not already regulated by FRA to ensure the safe operation of the systems. Paragraph (1) of subsection (c) states that, as a part of the regulatory process, FTA would be required to establish a certification program for employees and contractors who carry out a State public transportation safety program in compliance with the section and oversee the performance of employees and contractors responsible for performing safety activities identified in the State's program.

Paragraph (2) would ensure that the Department of Homeland Security consults with the Secretary of Transportation before prescribing a security regulation or issuing a security order that affects the safety of public transportation design, construction or operations.

Paragraph (3) of subsection (c) would allow the Secretary to waive compliance with any part of a regulation or order if it were in the public interest. The Secretary would be prohibited from issuing a waiver and must immediately revoke the waiver if the waiver would be inconsistent with the goals and objectives of this section. The Secretary would have to publish the reasons for granting or revoking the waiver.

Subsection (d) deals with preemption. Paragraph (1) of subsection (d) would allow a State to adopt or continue in force a law, regulation, or order related to public transportation safety until the Secretary prescribes a regulation or issues an order covering the subject matter of the State requirement. Regardless, a State could adopt or continue in force an additional or more stringent law, regulation, or order related to public transportation safety when the law, regulation, or order

that has a safety benefit. However, the State directive must not be incompatible with a law, regulation, or order of the United States Government and must not unreasonably burden interstate commerce.

Paragraph (2) of subsection (d) states that this section does not preempt a State action commenced pursuant to its laws seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by the Secretary through a regulation or order with respect to public transportation safety matters; or has failed to comply with a State's own program, rule, or standard that it created pursuant to a regulation or order issued by the Secretary; or has failed to comply with a State law, regulation, or order that is additional to or more stringent than Federal public transportation safety laws, but yet not inconsistent with those Federal laws. Paragraph (3) would provide that this would apply to all State law causes of action arising from events or activities occurring on or after the enactment of this section. Paragraph (4) states that this section would not create a Federal cause of action on behalf of an injured party or confer Federal question jurisdiction for such State law causes of action.

Subsection (e)(1) would authorize the Secretary to take certain actions the Secretary deems necessary. This includes conducting 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 or delegating these functions to a public entity or other qualified person. It also authorizes the Secretary to make reports, issue subpoenas, require the production of documents, take depositions, and prescribe recordkeeping and reporting requirements with respect to public transportation safety regulation compliance.

Paragraph (1) of subsection (e) would also allow the Secretary to make grants, or enter into agreements for research, development, testing and training of every area of public transportation safety and also to assist a delegated public entity or qualified person in carrying out the safety program activities authorized under this subsection.

Paragraph (2) of subsection (e) clarifies that the Secretary or State may engage in safety activities, including for purposes of accident and incident prevention and investigation. The Federal share of research and safety activity grants or agreements could be up to 100 percent under paragraph (3) of subsection (e).

Paragraph (4) of subsection (e) clarifies that an officer or employee of the Secretary, or agent designated by the Secretary, may enter and inspect public transportation equipment, facilities, rolling stock, operations, and relevant records at reasonable times and in a reasonable way. When requested, the officer or employee of the Secretary, or agent designated by the Secretary, would be required to display proper credentials. During an inspection, the officer, employee, or designated agent of the Secretary qualifies as an employee of the United States Government for purposes of tort claims procedures under 28 U.S.C. Chapter 171.

Paragraph (1) of subsection (f) provides for State participation. Under this paragraph, a State may, at its choosing, establish and implement a State public transportation safety program that requires, at a minimum, compliance with the Federal laws and the regulations and policies

related to public transportation safety. A State program would not be limited to rail fixed guideway public transportation systems.

Paragraph (2) of subsection (f) would authorize the Secretary to make grants to carry out a Public Transportation Safety program established by a State, including to train employees necessary to administer and manage a Public Transportation Safety program and to enforce Federal and State public transportation safety laws, regulations and orders. Paragraph (3) would make grants contingent on employees responsible for oversight of the performance of safety functions under the State program meeting the safety certification criteria established through regulations prescribed by the Secretary. In order to receive a grant, a State would have to submit its Public Transportation Safety program to the Secretary for review and written approval prior to implementing the program, and also submit any amendment to its program to the Secretary for review and written approval at least 60 days before the amendment becomes effective. The amendment would be deemed approved absent a written response from the Secretary by the end of the 60-day period.

Paragraph (3) of subsection (f) provides Public Transportation Safety program methodologies when a single public transportation authority operates in more than one State. In this case, the affected States must establish and implement a program jointly to ensure uniform safety standards and enforcement procedures that would have to be, at a minimum, in compliance with Federal public transportation safety law, regulations and policies. Alternatively, the States could designate an entity (other than the public transportation authority) to perform safety activities on the States' behalf.

Paragraph (4) of subsection (f) deals with potential conflicts of interest. First, a State would be prohibited from allocating funds awarded in a grant to carry out a State Public Transportation Safety program to a State agency or local entity that operates a public transportation system. Second, a State could not allow a State agency or local entity operating a public transportation system to provide funds to a State agency or another entity designated to have responsibility for the safety functions by the State. Last, a State agency or local entity that operates a public transportation system would be prohibited from having a role in overseeing a State Public Transportation Safety program.

Paragraph (5) of subsection (f) would authorize up to a 100 percent share in Federal assistance. The Secretary through regulations issued under this section would be required to establish a schedule of reimbursable costs that the Secretary must use to assist a State in defraying its costs of developing, implementing and enforcing a State Public Transportation Safety program. To help defray the costs of developing, implementing and enforcing a State program, a State would submit to the Secretary a voucher that does not exceed the amount identified on the schedule of reimbursable costs for an eligible activity. The Secretary would be required to pay the State an amount not more than the Federal Government's share of costs incurred as of the date of the voucher. Reimbursement to the State would be in an amount not more than the Federal Government's share of costs incurred as of the date of the voucher.

Paragraph (6) requires the Secretary to ensure that the State is carrying out the State Public Transportation Safety program in compliance with Federal law. If the Secretary finds, after

notice and opportunity to comment, that the State program previously approved is not being followed or has become inadequate to ensure enforcement of the regulations or orders, the Secretary must withdraw approval of the program and notify the State. Once the State receives the notification, the State Public Transportation Safety program will no longer be in effect. A State receiving notice of the withdrawal of approval may seek judicial review of the Secretary's decision under chapter 7 of title 5, United States Code (Administrative Procedure Act). Notwithstanding the withdrawal, a State would retain jurisdiction in administrative and judicial proceedings begun before the withdrawal if the issues involved are not related directly to the reasons for the withdrawal. If a State program approval is withdrawn, the Secretary would apply Federal enforcement and oversight.

Subsection (g) authorizes the Secretary to enforce compliance with the public transportation safety program. Under paragraph (1) of this subsection, the Secretary could establish, impose and compromise a civil penalty for a violation of a public transportation safety regulation prescribed or order issued in accordance with this section or for a violation of the alcohol and controlled substances testing provisions under 49 U.S.C. 5331. The Secretary could request an injunction for such violations. Under paragraph (2), civil penalties collected by the Secretary would be deposited into the General Fund of the United States Treasury. The Secretary would notify the Attorney General when the Secretary received evidence of a possible criminal violation under paragraph (5) of this subsection, which is described below.

Paragraph (3) of subsection (g) would allow the Secretary to request that the Attorney General bring a civil action for injunctive relief, to collect a civil penalty, or to enforce the Secretary's subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition. Under paragraph (4), the action could be brought in U.S. District Court in any State in which relief is sought. The court, based on evidence, would be required to issue a temporary restraining order or preliminary or permanent injunction. The injunction could order a public transportation agency receiving Federal transit assistance to comply with the Federal Public Transportation Safety program laws and regulations.

Paragraph (5) of subsection (g) would authorize criminal penalties when a person is found to have knowingly violated the section or a public transportation safety regulation or order issued under the section. The person would receive a fine consistent with title 18, United States Code, imprisoned for not more than 5 years, or both; except that the maximum amount of imprisonment is 10 years in any case in which the violation results in death or bodily injury to any person. A person acts knowingly when the person has actual knowledge of the facts giving rise to the violation; or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. Actual knowledge of the existence of a statutory provision, or a regulation or a requirement required by the Secretary is not an element of an offense.

Subsection (h) provides the Secretary with authority to issue an order mandating restrictions or prohibitions without regard to the rulemaking and hearing process that may be required under 5 U.S.C. 553 and 554, when through testing, inspection, investigation or research, an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment. The order must describe the condition or practice, or a combination of conditions and practices,

that causes the emergency situation and prescribe standards and procedures for obtaining relief from the order. The Secretary has the discretion to maintain the order in effect for as long as the emergency situation exists.

After issuing an order under subsection (h), the Secretary must provide an opportunity for review of the order pursuant to the adjudication provisions under 5 U.S.C. 554. If a petition for review is filed and the review is not completed by the end of the 30-day period beginning on the date the order was issued, the order stops being effective unless the Secretary decides in writing that the emergency situation still exists.

Paragraph (4) of subsection (h) permits an employee of rail fixed guideway public transportation system provider who may be exposed to imminent physical injury during that employment because of the Secretary's failure, without any reasonable basis, to issue an emergency order, or the employee's authorized representative, to bring a civil action against the Secretary in a U.S. district court to compel the Secretary to issue an order. The action must be brought in the judicial district in which the emergency situation is alleged to exist, in which the employing provider has its principal executive office, or in the District of Columbia. The Secretary's failure to issue an emergency order can be reviewed only under the Scope of Review provisions set forth in 5 U.S.C. 706.

Subsection (i) would prohibit the Secretary from prescribing regulations or issuing orders related to employee qualifications, unless the qualifications are specifically related to safety. In addition, this subsection would not prohibit collective bargaining agreements between public transportation agencies and public transportation employees or their representatives, including agreements related to employees' qualifications that are not inconsistent with regulations and orders issued under this section.

Subsection (j) clarifies that the public transportation employee protection provisions of 6 U.S.C. 1142 (administered by the Department of Labor) apply to direct and indirect recipients of Federal transit assistance funds.

Subsection (k) would provide for judicial review under the section. A person adversely affected or aggrieved by the final action of the Secretary involving the imposition of a civil penalty for violating this section, the issuance of a regulation or order under this section, the violation of the alcohol and controlled substances testing provisions of 49 U.S.C. 5331, or the issuance of a regulation or order under 49 U.S.C. 5331, may file a petition for review of the final action in the U.S. Court of Appeals for the District of Columbia or in the court of appeals for the United States for the circuit in which the person resides and has its principal place of business. The petition must be filed not more than 60 days after the Secretary's action becomes final. The clerk of the court is required to immediately send a copy of the petition filed to the Secretary. The Secretary must file with the court a record of any proceeding in which the final action was issued as provided in Judiciary and Judicial Procedures for Record on Review and Enforcement of Agency Orders prescribed under 28 U.S.C. 2112. The court may consider an objection to the Secretary's final action only if the objection was made in the course of the proceeding or review conducted by the Secretary or if there was a reasonable ground for not making the objection in the proceeding.

Subsection (b) of section 2 of the Act would amend section 5338 of title 49, United States Code, to authorize such amounts in each fiscal year to be appropriated from the General Fund of the United States Treasury as are necessary to administer section 5329 and make grants or enter into agreements to carry out that section. Section 5338(h) is amended to reflect that the funds are available until expended.

Subsection (c) of section 2 of the Act would amend the current prohibition in Federal law (49 U.S.C. 5334) on regulation of transit operations and service practices to allow for the new Federal transit safety program.

Subsection (d) of section 2 of the Act would amend 49 U.S.C. 5331(b)(2), "Alcohol and Controlled Substances Testing," to require the Secretary to establish and implement an enforcement program, including the imposition of penalties for failure to comply with FTA's Alcohol and Controlled Substances Testing program.

Subsection (e) of section 2 of the Act makes a conforming amendment and provides for a repeal of existing law. It would amend the chapter analysis to reflect the new heading of section 5329 of title 49, United States Code as the "Public Transportation Safety Program." It would also repeal 49 U.S.C. 5330, "State Safety Oversight," three years after the effective date of final regulations issued by the Secretary under section 5329 of title 49, as amended by the Act.

DOT FACT SHEET—THE PUBLIC TRANSPORTATION SAFETY PROGRAM ACT OF 2009

What Does the Act Do?

The proposed legislation does three things:

- First, the bill would authorize the Secretary to establish and enforce Federal safety standards for rail transit systems that receive Federal transit assistance—effectively eliminating the statutory prohibition against imposing broad safety standards that have been in place since 1965.
- Second, the Secretary would allow States to be eligible for Federal transit assistance to hire and train State oversight personnel to enforce new Federal regulations. State programs must be well staffed and adequately empowered by State governments to fully enforce Federal regulations in order to be eligible for Federal funds.
- Third, the program would require the State agencies conducting oversight to be fully financially independent from the transit systems they oversee. The Federal Transit Administration would enforce all Federal regulations where States chose not to participate in the program or where the State program is found to lack the necessary enforcement tools.

Why Rail Transit Regulation?

- The current system for Federal rail transit safety oversight does not guarantee a consistent level of safety for transit passengers among all transit systems in all States.
- More than 14 million passengers use rail transit systems every weekday. Yet, the responsibility for their safety is currently left to a patchwork of 27 State agencies with inconsistent standards, inadequate powers and insufficient staffing.
- While rail transit remains a safe way to travel, the Obama Administration believes we must take serious steps now to make it even safer and ensure that it remains safe in the years to come.

Additional Details of "The Act"

- Under the Administration's proposal, the FTA and State agencies participating in Federal transit safety enforcement will be authorized to conduct inspections, investigations, audits and examinations, as well as test public transportation systems' equipment, facilities, rolling stock, operations, and persons engaged in the business of a public transportation system.
- FTA will also have the authority to issue reports and subpoenas, require the production of documents, take depositions, and establish recordkeeping and reporting requirements.
- The Secretary would establish a safety certification program under which a State that chooses to participate would be eligible for Federal transit assistance to carry out a federally approved Public Transportation Safety program. Participating States would 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 they oversee.
- In all States where either the State agency has "opted out" of participation or where the Secretary has found the requesting State agency to be inadequate, the Secretary, acting through the FTA, would enforce all Federal safety regulations.
- States would not be preempted from establishing more stringent safety standards than the Federal standards, if the standards meet certain criteria.
- The bill also would allow the Secretary to establish a safety program for public transportation bus systems that receive Federal transit assistance.
- Secretary LaHood also announced the formation of a Transit Rail Advisory Committee on Safety (TRACS) that will help guide the Department's rail transit safety regulations.