



**AMERICAN  
PUBLIC  
TRANSPORTATION  
ASSOCIATION**

July 8, 2011

Docket Management Facility:  
U.S. Department of Transportation,  
1200 New Jersey Avenue, SE.  
Washington, DC 20590-0001

**RE: Docket No. FRA-2011-0025**

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Railroad Administration's (FRA) notice and request for comments on the Study on Protection of Certain Railroad Risks Reduction Data from Discovery or Use in Litigation, published May 9, 2011 at 76 FR 26682.

***About APTA***

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems. Virtually all passenger railroad operators in the United States are counted among APTA's members.

We urge FRA to conclude that withholding safety information from discovery and admission into evidence in federal or state court proceedings is in the public interest.

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We believe protection of safety data is an indispensable key to ensuring strong, effective safety programs. If safety data and analyses were available through sunshine laws, discovery, or otherwise, and available for use as evidence, it would serve as a disincentive to the full and forthright safety analysis necessary to a strong program. In addition to incentivizing a defensive litigation posture, allowing discovery and use of safety data would allow individual juries and courts to second guess the FRA-reviewed and approved safety analysis at individual railroads. Inevitably, such a piecemeal approach would lead to fragmented and inconsistent safety practices across the country.

As FRA moves from this conclusion to its rulemaking, we believe that rulemaking must create the framework of a comprehensive protection of this data. The ultimate rule must unambiguously preempt state law, including public records or "sunshine" laws, to ensure information protected on one front is not made available through alternative means. Moreover, the rule must ensure data held by federal agencies and others (e.g., consultants, state or local authorities, auditors, public safety officials, or others) is fully covered by these protections.

The ultimate rule must broadly and unambiguously define safety data to avoid protracted litigation over the extent of coverage, ensure the rule cannot be circumvented, and ensure the intent of protection is not frustrated.

Finally, the rule should clearly establish that any order to produce safety data shall be deemed a final, appealable order. Any court proceeding that threatens the protections of this ultimate rule cannot be allowed to pierce the veil subject to later appeal. Once safety data is released, the efficacy of the program would be compromised.

We appreciate the opportunity to assist FRA in this important endeavor. For additional information, please contact James LaRusch, APTA's chief counsel and vice president corporate affairs, at (202) 496-4808 or [jlarsch@apta.com](mailto:jlarsch@apta.com).

Sincerely yours,

A handwritten signature in cursive script, appearing to read "William Millar".

William Millar  
President