



AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION

August 12, 2019

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

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Paul P. Skoutelas

RE: FRA-2011-0060 and FRA-2009-0038

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 of proposed rulemaking regarding System Safety Program (SSP) and Risk Reduction Program published on June 12, 2019 at 84 FR 27215.

About APTA

The American Public Transportation Association is a nonprofit international association of 1,500 public and private sector organization which represent a \$71 billion industry that directly employs 430,000 people and supports millions of private sector jobs. APTA members are engaged in the areas of bus, paratransit, light rail, commuter rail, subways, waterborne services, and intercity and high-speed passenger rail. This includes: transit systems; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA is the only association in North America that represents all modes of public transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products.

APTA has surveyed its members and provides the following comments:

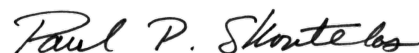
- The public transportation industry ("Industry") supports the proposed protection for Confidential Close Call Reporting System (C3RS) outlined in the regulation § 270.105 paragraph (a)(3) to provide that for Federal or State court proceedings however this protection does not go far enough and needs to be expanded to also protect The Freedom of Information Act / Freedom of Information Law (FOIL/FOIA) or other such requests to release this confidential data. We agree with FRA that protection afforded for court proceedings will allow railroads to perform robust analyses however without extending this protection to FOIL/FOIA these robust analyses will not occur. Further, given that FRA does not require any railroads to implement a C3RS program and without broad umbrella protections for this program it could have a chilling effect on

railroads utilizing or considering implementing this program. This proposed broad protection should also apply to any Federal program utilized by the railroads, such as RISE or Clear Signal for Action. The industry's concern that failure to adopt broad protections for these programs could have the unintended consequence of not fully realizing the stated goal of the system safety program and many railroads reconsidering their voluntary utilization of these Federal programs. The legal protection needs to be broad and expanded for all elements of SSP to ensure a robust safety review is done.

- If a person intends to designate another person as responsible for compliance, the SSP plan must describe the railroad management and organizational structure, including management responsibilities within the SSP and the distribution of safety responsibilities within the railroad. § 270 “does not require a person to designate another person as responsible for compliance...” FRA therefore expects that a designation would identify only a single entity with overall responsibility for SSP compliance.
- We support the definition of a railroad contained within this regulation: § 270.5 defines “railroad” as “[a] person or organization that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person,” and § 270.3(a)(1) unambiguously states the rule applies to “[r]ailroads that operate intercity or commuter passenger train service on the general railroad system of transportation” These provisions indicate FRA intended the rule to apply to providers of IPR service, including “State sponsors” of IPR service. Further, at no point in the rulemaking process did FRA indicate it intended to exempt States providing IPR service from the rule. We strongly support the language, “that each entity involved in providing passenger rail service—including “State sponsors”—is responsible for complying with Federal rail safety requirements”. State sponsors, to ensure all elements of the proposed SSP have the appropriate oversight, states must be solely responsible for its employees and contractor's compliance. We feel strongly that this regulation does not exempt States from this SSP regulation.
- With regards to section 270.201, we disagree with the FRA's proposal to provide railroads with one year after the publication of a final rule to submit SSP plans to FRA for review and approval. While Industry is certainly prepared to implement the SSP plans timely given some of the new elements, we recommend that FRA allow two years from final rule, which is similar to what the Federal Transit Administration (FTA) provided for the implementation of the Safety Management System (SMS) program. Many commuter railroads have numerous disciplines, unions, contractual and other complex safety and training issues that will have to be addressed. The additional time will allow public agency commuter railroads to implement this important rule in a thorough manner.

We appreciate the opportunity to comment and look forward to working with FRA on this very important rule. If you have questions or would like to discuss our comments further, please contact Linda Ford, APTA's General Counsel, at (202) 496-4808 or lford@apta.com.

Sincerely yours,



Paul P. Skoutelas
President and CEO