

**TESTIMONY OF**  
**WILLIAM MILLAR, PRESIDENT**  
**AMERICAN PUBLIC TRANSPORTATION ASSOCIATION**  
**BEFORE THE**  
**SUBCOMMITTEE ON HIGHWAYS AND TRANSIT**  
**OF THE**  
**HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**  
**ON “PUBLIC TRANSIT SAFETY: EXAMINING THE FEDERAL ROLE”**

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**SUBMITTED BY**

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**The American Public Transportation Association (APTA) is a nonprofit international association of more than 1,500 public and private member organizations, including transit systems and high-speed, intercity and commuter rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. More than 90 percent of the people using public transportation in the United States and Canada are served by APTA member systems.**

## **INTRODUCTION**

Chairman DeFazio, Ranking Member Duncan and members of the Highways and Transit Subcommittee, on behalf of the American Public Transportation Association (APTA) and its more than 1,500 member organizations, I thank you for the opportunity to testify today as your subcommittee seeks to examine the role of the federal government in the ongoing effort to maintain safe public transportation operations.

Public transportation systems in America are safe and well used. In 2008, Americans took a modern record 10.7 billion trips on public transportation, 15 times the number of trips taken on domestic airlines. Each weekday, people board public transportation vehicles 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, a person is at least 142 times less likely to die as a passenger on rail transit as rather than as a passenger in an automobile.

Achieving the highest levels of safety for riders, employees and the public remains our number one goal. APTA and our industry 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, including the Public Transportation Safety Program Act of 2009, which I believe Secretary LaHood will address today, I hope to provide you with a better understanding of what our industry is already doing to increase safety and to ensure that public transportation continues to be, by far, the safest mode of surface transportation in the nation.

One final note of introduction. While it will take many actions to improve transit's enviable safety record, it will also take significant financial investment to bring public transportation systems up to a state of good repair, to increase the training of the men and women who work in our industry and to correct safety deficiencies identified. If safety is to be taken to the next level, investments must be made. It is not enough to just pass laws and issue regulations.

## **ABOUT APTA**

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## **APTA SAFETY PROGRAMS**

The American Public Transportation Association has been designated as the standards development organization for public transportation. For more than twenty years, APTA has partnered with the U.S. transit industry, the FTA, and its predecessor the Urban Mass

Transit Administration (UMTA), to develop standardized programs for safe, efficient, and secure transit operations. APTA has also developed and continues to manage a number of safety specific programs that provide safety audits for transit operators on a triennial basis and other services. In the early 1970's, APTA members began applying to new rail transportation systems the concepts of a safety system first developed by the military and NASA (National Aeronautics and Space Administration). In collaboration with UMTA and the U.S. Department of Transportation's (DOT) Volpe Center in Cambridge, Massachusetts, APTA developed a Safety Management Program and published its guidance document, commonly referred to as the APTA Manual, on how to create a System Safety Program Plan. In 1987, APTA developed a companion industry audit program, based on the Manual, as a voluntary program for rail transit agencies to measure their progress and to help develop benchmarking of effective practices. This program, which was later expanded to include commuter rail and bus services, serves the purpose of being a developmental, self correcting safety process that emphasizes continuous improvement toward the goal of safety excellence. This program also served as the basis for the existing FTA State Safety Oversight (SSO) program, found at 49 CFR Part 659, and has been incorporated by reference in the Transport Canada Safety Management Systems regulation as well. Since its inception as a voluntary program, our independent audits have been conducted at 75 APTA member transit agencies, with over 415 audits completed during the last 20 years.

The APTA Safety Management program along with its audit component has been used effectively by transit agencies to locate weaknesses in their operations and to demonstrate their diligence to safety and security, it has even been used as evidence to insurance carriers to justify lower premiums. In addition, the program has provided a forum for the exchange of effective safety and security practices, spurred the development of tools and resources to the industry, and gave rise to a national and international methodology for assessing operating risks. The audit program incorporates the APTA standards into the elements whenever there are standards that address safety critical areas. The external audit concept has also created the concept of the APTA Peer Review program which is a targeted audit process drawing from industry subject matter experts to assist transit agencies in dealing with specialized program areas. To date, over 110 Peer Reviews have been performed for agencies seeking help with problematic areas of their operations. APTA's safety programs are recognized internationally in North America, Europe and Asia and are designed to examine every area of transit planning, construction, acquisition, operations, security, emergency preparedness and maintenance to ensure the safety of our public transportation passengers and employees.

## **APTA RAIL TRANSIT SAFETY STANDARDS PROGRAM**

Congress is currently considering legislative proposals to assign statutory responsibility to the FTA for developing mandatory federal bus and rail transit safety regulations. On behalf of APTA and its members, who have provided unmatched access to subject matter experts volunteering countless hours over twenty years to promote safety for all passengers and employees, I ask Congress and the FTA to build on our existing safety standards program to serve as the backbone of this initiative.

APTA's commitment to safety is the basis of our Standards Development Program. Initiated in 1996, APTA is continually developing standards in the areas of rail transit, commuter rail, bus operations, procurement, intelligent communications interface protocols, and security. We are an officially accredited Standards Development Organization (SDO), recognized by the U.S. Department of Transportation and partially funded through grants provided by the FTA. Since Fiscal Year 2006, the FTA has provided \$3 million in grant funding to APTA to develop standards for the public transportation industry, in addition to more than \$3 million

from members who have provided access to 2,000 subject matter experts volunteering tens of thousands of hours to develop this program. We develop standards using formal methods patterned after the process required by the American National Standards Institute (ANSI). This multi-faceted approach includes:

- a balanced representation of interested parties
- a required public comment period
- a formal process to respond to comments
- the availability of an appeals process
- a balloting group broadly representative of the industry
- consensus as defined as a super majority of the balloting group
- and a formal method to respond to requests for interpretation of or changes to the standard

Partnering with other 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 re-examine the RT-2 Standard to specifically address the possible inclusion of enhancements that may become necessary to further address over-ride protection in the event of a high-speed impact. Collaborative industry partnerships built upon long-standing relationships allow us to convene meetings of our standards setting committees to ensure our program is relevant and can quickly address safety issues as they arise. Similarly, in response to multiple incidents resulting from distracted drivers, APTA is in the process of finalizing safety standards for transit agencies regarding this issue.

Congress has previously recognized the importance of promoting these voluntary industry-based standards to create uniformity within the legal and regulatory structure of the United States. The National Technology Transfer and Advancement Act of 1995 (P.L. 104-113) encourages government agencies to work together with industry leaders to develop private, voluntary safety standards for federal grantees. APTA has met this directive by working together with the FTA, the FRA and other federal agencies, public transit systems,

academics, and a variety of outside experts to develop a wide-range of industry safety standards.

There are many tangible benefits of the APTA program in particular, such as:

- improving safety of operations and services
- reducing operating and maintenance costs
- creating a process where transit systems share best practices
- increasing and improving transit system/supplier communication
- making development of procurement specifications easier and less costly
- making legal defense more effective in liability cases
- helping states establish and improve safety oversight programs
- providing much needed guidance to new start transit systems
- creating opportunities for reliability and efficiency improvements
- decreasing training costs

## **STATE SAFETY OVERSIGHT PROGRAM**

Pursuant to the Intermodal Surface Transportation Efficiency Act of 1991, better known as ISTEA (P.L. 102-240), the FTA was directed by Congress to establish a State Safety Oversight program that would be created and managed by the states. Effective since 1997, states are mandated to establish State Oversight Agencies (SOA) that design and implement safety oversight and audit programs for the light-rail and subway systems within their jurisdiction. Understanding that each transit agency has its own unique characteristics, the FTA wisely opted against a “one-size-fits-all” approach and instead sought to create an SSO program flexible enough to take into account these distinctions. State Oversight Agencies were tasked with creating their own standards and then measuring the compliance of each transit agency through audits. Currently there are 26 State Oversight Agencies that oversee 48 rail transit systems.

States with larger transit systems such as California, Pennsylvania and New York have taken proactive approaches and instituted statewide regulatory procedures, while other 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.<sup>1</sup>

APTA believes the current SSO program is uneven in its effectiveness and varies greatly from one State Oversight Agency to the next. Therefore, we suggest the FTA, in concert with all stakeholders, identify the SSO programs that do work and use those programs to develop a federal template for requirements to which each State Oversight Agency must adhere. Further, in order for an SSO program to be successful, there must be adequate and consistent staffing levels and training, and uniform standards for monitoring and auditing that are flexible enough to integrate new and emerging technologies. In addition to improving the existing SSO program, there is also a critical need to strengthen the program at the federal level. In order to properly develop, implement and manage an effective

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<sup>1</sup> U.S. Government Accountability Office, *Rail Transit: Additional Federal Leadership Would Enhance FTSA's State Safety Oversight Program*, GAO-06-821. July 2006, Summary.

oversight program, the FTA must significantly expand their program personnel and in-house expertise.

We believe the Administration is generally on the right track in its proposal to enhance the State Safety Oversight structure, though a small number of our members would prefer to eliminate the 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 industry has made significant investments, along with the FTA, to develop these standards. It only seems logical to build off of the hard work and expertise that has gone into their development instead of pioneering an entirely new standards program. The ultimate goal must be to build a federal program that, when properly administered, produces an improved level of safety than is currently the case.

Where feasible, standards should be performance-based rather than prescriptive to accommodate local conditions and diverse operations, as well as to foster innovation in technology and problem-solving. Additionally, any federal program should incorporate a federal preemption to ensure that efforts at the state level remain concentrated on identified national safety priorities. Once a federal transit safety standards program is established, state safety oversight agencies should consistently enforce the federal standards.

To fully support the adoption and implementation of these programs, it will become necessary for Congress to provide enforcement capabilities to the Federal Transit Administration to ensure compliance. Such authority should be vested in the form of "grant conditions," meaning that the FTA has the ability to direct grant funding to be used to correct major inadequacies and significant incidences of noncompliance that will effectively improve safety. It goes without saying that leveraging monetary penalties, including fines, as an enforcement tool would be counterproductive as transit agencies are public entities funded by fares riders pay and taxpayer dollars. We suggest establishing a timetable to allow systems to be brought into compliance without penalty and incorporating a progressive ratings systems whereby instances of noncompliance are evaluated based on risk and/or necessity. To this end, an appeals process must be instituted to ensure fairness in the dispensation of violations.

Transforming the safety mission of the FTA is a goal that will require new funding and staff. APTA fully supports providing the FTA with new funding to ensure there are adequate personnel and subject matter experts on staff at the federal level. Funding will also be

required to ensure 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, and 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.