



April 28, 2015

Docket Management Facility  
U.S. Department of Transportation,  
1200 New Jersey Avenue S.E., W12-140  
Washington, DC 20590-0001

**RE: Docket No. FRA-2015-0038**

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 to the Federal Railroad Administration (FRA) Notice of Proposed Rulemaking on Risk Reduction Program (RRP), published February 27, 2015 at 80 FR 110950.

***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.

**FRA should clarify what fatalities provide a basis for mandating a Risk Reduction Program**

This program will apply to railroads with inadequate safety records. A fatality is established as an indicator of such inadequacy. The draft does not, however, differentiate between accidents based on railroad negligence, those based on victim negligence, and suicides. The latter two cannot be said to be an indicator of inadequate safety and should be differentiated.

**Section 271.11 should be strengthened**

The current language of draft section 271.11, while offering protection from discovery and admission into evidence, is likely to generate litigation. The phrase "sole purpose" continues to be ill defined and creates an invitation to plaintiffs' counsel to find any other use safety data has been used for. As a practical matter, finding such a use will not be difficult. Railroads use safety data to make procurement, personnel, and other decisions on a routine basis, effectively nullifying the protection of this paragraph. FRA should remove the reference to "sole purpose." If a railroad is creating and using data for safety, it should be protected.

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We note FRA has attempted to define this phrase in its commentary as an "original and primary" purpose. While this is somewhat clearer, that phrase does not appear in the proposed regulatory text and is inconsistent with the word "sole."

**Section 27.101(c) should be more clearly defined**

The current language of draft section 27.101(c) aspires to communication and cooperation, but provides no framework for accomplishing either and no standard by which to measure either.

**FRA should detail the interface between this and the System Safety Program (SSP) Plan**

Passenger railroads are already working on safety plans under the FRA's SSP rule. Railroads subject to the RRP require guidance on how to ensure their plans support and properly interface with plans already mandated by FRA. To do otherwise is to risk excessive costs to re accomplish work already done by passenger railroads under FRA direction.

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,



Michael P. Melaniphy  
President & CEO

MPM/jpl:jr