

**STATEMENT OF
THE HONORABLE RAY LAHOOD
SECRETARY OF TRANSPORTATION**

BEFORE THE

**SUBCOMMITTEE ON HOUSING, TRANSPORTATION,
AND COMMUNITY DEVELOPMENT
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE**

HEARING ON

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

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, D.C., 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 SSO 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 SSO -- the California Public Utilities Commission. When you look collectively at all the other SSOs 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 inspectors 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.