THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

July 11, 2003

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Enclosed for introduction and referral to the appropriate committee is a bill entitled the

"Federal Railroad Safety Improvement Act."

Pursuant to the U. S. Department of Transportation's strategic plan and in concert with participating State rail safety agencies, the Federal Railroad Administration (FRA) and its more than 700 employees help to promote the safety of railroad operations in our Nation through various efforts, including the regulation and inspection of about 220,000 miles of track, 1.3 million cars and locomotives, and 62,000 automated warning devices at almost 252,000 highway-rail grade crossings. The accompanying legislation would reauthorize this important safety mission for four years. The bill proposes other measures that would significantly advance railroad safety, primarily by enhancing the Secretary of Transportation's authority to gather information that will help to assess and reduce or offset hazards at highway-rail crossings. The bill would also underscore the Secretary's authority to address security threats in the railroad safety context.

In addition to addressing the critical issue of security, the bill seeks to prevent highway-rail grade crossing collisions, which cause about a half of all rail-related deaths each year. In the year 2001, the latest year for which final figures are available, 3,236 crossing collisions claimed the lives of 421 people, approximately 43 percent of all rail-related fatalities. To improve crossing safety, the bill proposes a measure that would improve the Department's National Crossing Inventory (Inventory), a large computerized database containing vital safety information on the identification, location, physical characteristics, and other salient features of at-grade and grade-separated highway-rail crossings nationwide. The Department, as custodian of the Inventory, acts as a clearing house by combining the data supplied by both railroads and States into a uniform database. Many States rely upon this Inventory in making decisions about which crossings need better warning systems. As the only nationwide database that contains the characteristics of crossings, the Inventory is used extensively by the Department, States, railroads, and researchers for crossing safety studies. Currently, reporting to the Inventory by both States and railroads is voluntary; some information is missing, and some is very outdated. The bill would require that railroads and States make initial reports to the Inventory about new and previously unreported crossings and provide periodic updates for all crossings, so that the crossings can be accurately ranked according to risk. These improved rankings will assist States

in identifying which of the crossings are the most hazardous and in channeling Federal safety improvement funds to the most hazardous crossings first.

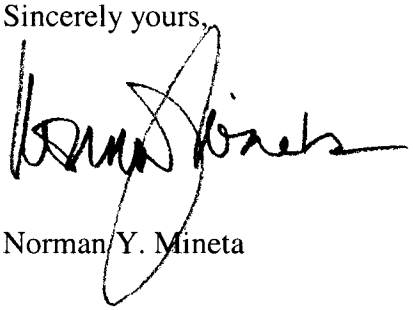
Other highlights of the bill include provisions that would make other necessary enhancements to FRA's delegated inspection and rulemaking authority. For example, one section would permit the Secretary to authorize FRA inspectors to monitor a railroad's radio communications outside the presence of the railroad's personnel for the purpose of accident prevention (including accident investigation) and, with certain exceptions, to use the information received. Another section would allow FRA, with the concurrence of the Administrator of the Environmental Protection Agency, to regulate noise emissions from the right of way due to the passage of a high-speed train at more than 150 miles per hour.

Enactment of the Federal Railroad Safety Improvement Act would support FRA's efforts to address security threats to railroad operations, to reduce collisions at highway-rail crossings, and generally to reduce casualties and damages associated with railroad operations.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this legislative proposal for the consideration of Congress, and that its enactment would be in accord with the program of the President.

If I can provide further information or assistance, please feel free to call me.

Sincerely yours,



Norman Y. Mineta

Enclosures

A BILL

To authorize appropriations for activities under the Federal railroad safety laws for fiscal years 2004 through 2007, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Railroad Safety Improvement Act".

SEC. 2. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 3. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Amendment of title 49, United States Code.

Sec. 3. Table of contents.

TITLE I—RULEMAKING, INSPECTION, AND ENFORCEMENT AUTHORITY

Sec. 101. National crossing inventory.

Sec. 102. Transportation security.

Sec. 103. High-speed rail noise regulation.

Sec. 104. Railroad accident and incident reporting.

Sec. 105. Railroad radio monitoring authority.

Sec. 106. Technical amendments regarding enforcement by the Attorney General.

Sec. 107. Technical amendments to civil penalty provisions.

TITLE II–MISCELLANEOUS PROVISIONS

Sec. 201. Technical amendments to eliminate unnecessary provisions.

Sec. 202. Alternate names for chapters of subtitle V, part A.

Sec. 203. Authorization of appropriations.

TITLE I--RULEMAKING, INSPECTION, AND ENFORCEMENT AUTHORITY

SEC. 101. NATIONAL CROSSING INVENTORY.

(a) AMENDMENT.–Chapter 201 is amended by adding at the end the following new section:

"Sec. 20154. National crossing inventory

"(a) INITIAL REPORTING OF INFORMATION ABOUT PREVIOUSLY UNREPORTED CROSSINGS.–Not later than 6 months after the date of enactment of the Federal Railroad Safety Improvement Act or 6 months after a new crossing becomes operational, whichever occurs later, each railroad carrier shall–

"(1) report to the Secretary of Transportation current information, as specified by the Secretary, concerning each previously unreported crossing through which it operates; or

"(2) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

"(b) UPDATING OF CROSSING INFORMATION.–(1) On a periodic basis beginning not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act and on or before September 30 of every third year thereafter, or as otherwise specified by the Secretary, each railroad carrier shall–

"(A) report to the Secretary current information, as specified by the Secretary, concerning each crossing through which it operates; or

"(B) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

"(2) A railroad carrier that sells a crossing on or after the date of enactment of the Federal Railroad Safety Improvement Act, shall, not later than the date that is 18 months after the date of enactment of the Act or 3 months after the sale, whichever occurs later, or as otherwise specified by the Secretary, report to the Secretary current information, as specified by the Secretary, concerning the change in ownership of the crossing.

"(c) RULEMAKING AUTHORITY.–The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Federal Railroad Administration's Highway-Rail Crossing Inventory Instructions and Procedures Manual that is in effect on the date of enactment of this section, until such provision is superseded by a regulation issued under this section.

"(d) DEFINITIONS.–In this section–

"(1) 'crossing' means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where–

"(A) a public highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or

"(B) a dedicated pedestrian pathway that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated.

"(2) 'State' means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, or the Virgin Islands.".

(b) TABLE OF SECTIONS AMENDMENT.–The table of sections for chapter 201 is amended by adding after the item relating to section 20153 the following new item:

"20154. National crossing inventory.".

(c) AMENDMENT.--Section 130 of title 23, United States Code, is amended by inserting the following new subsection at the end:

"(k) NATIONAL CROSSING INVENTORY.–(1) Initial Reporting of Crossing Information.--Not later than 6 months after the date of enactment of the Federal Railroad Safety Improvement Act or within 6 months of a new crossing becoming operational, whichever occurs later, each State shall report to the Secretary of Transportation current information, as specified by the Secretary, concerning each previously unreported crossing located within its borders.

"(2) Periodic Updating of Crossing Information.--On a periodic basis beginning not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act and on or before September 30 of every third year thereafter, or as otherwise specified by the Secretary, each State shall report to the Secretary current information, as specified by the Secretary, concerning each crossing located within its borders.

"(3) Rulemaking Authority.–The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Federal Railroad Administration's Highway-Rail Crossing Inventory Instructions and Procedures Manual that is in effect on the date of enactment of this subsection, until such provision is superseded by a regulation issued under this subsection.

"(4) Definitions.–In this subsection–

"(A) 'crossing' means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where–

"(i) a public highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or

"(ii) a dedicated pedestrian pathway that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated.

"(B) 'State' includes the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.".

(d) CIVIL PENALTIES.–(1) Section 21301(a)(1) is amended–

(A) by striking the period at the end of the first sentence and substituting "or with section 20154."; and

(B) in the second sentence, by inserting "or violating section 20154 of this title" between "chapter 201" and "is liable".

(2) Section 21301(a)(2) is amended by inserting after the first sentence the following: "The Secretary shall subject a person to a civil penalty for a violation of section 20154 of this title.".

SEC. 102. TRANSPORTATION SECURITY.

Section 20103(a) is amended to read as follows:

"(a) REGULATIONS AND ORDERS.–The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety, including security,

supplementing laws and regulations in effect on October 16, 1970. When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary of Transportation.".

SEC. 103. HIGH-SPEED RAIL NOISE REGULATION.

(a) AMENDMENT.--Chapter 201, as amended by this Act, is further amended by adding a new section at the end as follows:

"Sec. 20155. High-speed rail noise regulation

"The Secretary of Transportation, with the concurrence of the Administrator of the Environmental Protection Agency, shall prescribe regulations specifying the maximum permissible sound energy emissions received along the right-of-way due to the passage of a high-speed train, including a magnetic levitation system, operating at speeds greater than 150 miles per hour. Railroad-related noise regulations prescribed under the Noise Control Act of 1972 (42 U.S.C. 4916(a)) shall govern noise emissions from the operation of high-speed rail systems and from locomotives, cars, and consists of locomotives and cars when operating at speeds equal to or less than 150 miles per hour.".

(b) TABLE OF SECTIONS AMENDMENT.--The table of sections of chapter 201, as amended by this Act, is further amended by adding after new item 20154 the following new item:

"20155. High-speed rail noise regulation.".

SEC. 104. RAILROAD ACCIDENT AND INCIDENT REPORTING.

Section 20901(a) is amended to read as follows:

"(a) GENERAL REQUIREMENTS.–On a periodic basis specified by the Secretary of Transportation, a railroad carrier shall file a report with the Secretary on all accidents and

incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier's operations during the specified period. The report shall state the nature, cause, and circumstances of each reported accident or incident. If a railroad carrier assigns human error as a cause, the report shall include, at the option of each employee whose error is alleged, a statement by the employee explaining any factors the employee alleges contributed to the accident or incident.".

SEC. 105. RAILROAD RADIO MONITORING AUTHORITY.

Section 20107 is amended by inserting at the end the following new subsections:

"(c) RAILROAD RADIO COMMUNICATIONS.--(1) To carry out the Secretary's responsibilities under this part and under chapter 51, the Secretary may authorize officers, employees, or agents of the Secretary to conduct the following activities at reasonable times:

"(A) Intercepting a radio communication that is broadcast or transmitted over a frequency authorized for the use of one or more railroad carriers by the Federal Communications Commission, with or without making their presence known to the sender or other receivers of the communication and with or without obtaining the consent of the sender or other receivers of the communication.

"(B) Communicating the existence, contents, substance, purport, effect, or meaning of the communication, subject to the restrictions in paragraph (3).

"(C) Receiving or assisting in receiving the communication (or any information therein contained).

"(D) Disclosing the contents, substance, purport, effect, or meaning of the communication (or any part thereof of such communication) or using the communication (or any information

contained therein), subject to the restrictions in paragraph (3), after having received the communication or acquired knowledge of the contents, substance, purport, effect, or meaning of the communication (or any part thereof).

"(E) Recording the communication by any means, including writing and tape recording.

"(2) The Secretary and officers, employees, and agents of the Department of Transportation authorized by the Secretary may engage in the activities authorized by paragraph (1) for the purpose of accident prevention, including, but not limited to, accident investigation.

"(3) (A) Subject to paragraph (F), information obtained through activities authorized by paragraphs (1) and (2) shall not be admitted into evidence in any administrative or judicial proceeding except to impeach evidence offered by a party other than the Federal Government regarding the existence, electronic characteristics, content, substance, purport, effect, meaning, or timing of, or identity of parties to, a communication intercepted pursuant to paragraphs (1) and (2) in proceedings pursuant to sections 5122, 20702(b), 20111, 20112, 20113, or 20114 of this title.

"(B) If information obtained through activities set forth in paragraphs (1) and (2) is admitted into evidence for impeachment purposes in accordance with subparagraph (3)(A), the court, administrative law judge, or other officer before whom the proceeding is conducted may make such protective orders regarding the confidentiality or use of the information as may be appropriate in the circumstances to protect privacy and administer justice.

"(C) Information obtained through activities set forth in paragraphs (1) and (2) shall not be subject to publication or disclosure, or search or review in connection therewith, under section 552 of title 5.

"(D) No evidence shall be excluded in an administrative or judicial proceeding solely because the government would not have learned of the existence of or obtained such evidence but for the interception of information that is not admissible in such proceeding under paragraph 3(A).

"(E) Nothing in this subsection shall be construed to impair or otherwise affect the authority of the United States to intercept a communication, and collect, retain, analyze, use, and disseminate the information obtained thereby, under a provision of law other than this subsection.

"(F) No information obtained by an activity authorized in paragraph (1)(A) that was undertaken solely for the purpose of accident investigation shall be introduced into evidence in any administrative or judicial proceeding in which civil or criminal penalties may be imposed.".

"(4) Section 705 of the Communications Act of 1934 (47 U.S.C. 605) and chapter 119 of title 18, United States Code, shall not apply to conduct authorized by and pursuant to this subsection.

"(d) DEFINITION.--In this section, 'at reasonable times' means at any time that the railroad carrier being inspected or investigated is performing its rail transportation business.".

SEC. 106. TECHNICAL AMENDMENTS REGARDING ENFORCEMENT BY THE ATTORNEY GENERAL.

Section 20112(a) is amended–

(1) in paragraph (1), by inserting "this part, except for section 20109 of this title, or" before "a railroad safety regulation";

(2) in paragraph (2), by inserting ", 21302, or 21303" after "section 21301"; and

(3) in paragraph (3), by inserting after "subpena" the following: ", request for production of documents or other tangible things, or request for testimony by deposition" and by striking "chapter" and substituting "part".

SEC. 107. TECHNICAL AMENDMENTS TO CIVIL PENALTY PROVISIONS.

(a) CHAPTER 201 GENERAL VIOLATIONS.–Section 21301(a)(2), as amended by this Act, is further amended by inserting after "$10,000" and after "$20,000" the following: "or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-410, 28 U.S.C. 2461 note)".

(b) CHAPTER 201 ACCIDENT AND INCIDENT VIOLATIONS AND CHAPTER 203-209 VIOLATIONS.–(1) Section 21302(a)(2) is amended by inserting after "$10,000" and after "$20,000" the following: "or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-410, 28 U.S.C. 2461 note)".

(2) Section 21302, as amended by this Act, is further amended by adding new subsections (c) and (d) at the end, to read as follows:

"(c) SETOFF.–The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

"(d) DEPOSIT IN TREASURY.–A civil penalty collected under this section shall be deposited in the Treasury as miscellaneous receipts.".

(c) CHAPTER 211 VIOLATIONS.–(1) Section 21303(a)(2) is amended by inserting after "$10,000" and after "$20,000" the following: "or the amount to which the stated maximum

penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-410, 28 U.S.C. 2461 note)".

(2) Section 21303, as amended by this Act, is further amended by adding new subsections (d) and (e) at the end, to read as follows:

"(d) SETOFF.–The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

"(e) DEPOSIT IN TREASURY.–A civil penalty collected under this section shall be deposited in the Treasury as miscellaneous receipts.".

TITLE II–MISCELLANEOUS PROVISIONS

SEC. 201. TECHNICAL AMENDMENTS TO ELIMINATE UNNECESSARY PROVISIONS.

(a) AMENDMENTS.--Chapter 201, as amended by this Act, is further amended by striking--

(1) the second sentence of section 20103(f);

(2) section 20145;

(3) section 20146; and

(4) section 20150.

(b) TABLE OF SECTIONS AMENDMENTS.–The table of sections for chapter 201, as amended by this Act, is further amended by striking and reserving the items for the following sections: 20145, 20146, and 20150.

SEC. 202. ALTERNATE NAMES FOR CHAPTERS OF SUBTITLE V, PART A.

(a) AMENDMENT.--Section 20101 is amended by–

(1) revising the section heading to read as follows:

"**Sec. 20101. Purpose and title of chapter**";

(2) designating the text of the section as subsection (a) and adding a subsection heading "PURPOSE.–"; and

(3) adding at the end of the section the following new subsection:

"(b) TITLE OF CHAPTER.–This chapter may be cited as the 'Federal Railroad Safety Act'.".

(b) AMENDMENT.--Section 20301 is amended by–

(1) revising the section heading to read as follows:

"**Sec. 20301. Definition; nonapplication; and titles of provisions in chapter**"; and

(2) adding at the end of the section the following new subsection:

"(c) TITLES OF PROVISIONS IN CHAPTER.–Sections 20301-20304 and 20306 of this chapter may be cited as the 'Safety Appliance Act'. Section 20305 may be cited as the 'Mail Car Inspection Act'.".

(c) AMENDMENT.--Section 20501 is amended by--

(1) revising the section heading to read as follows:

"**Sec. 20501. Definition; title of chapter**";

(2) designating the text of the section as subsection (a) and adding the subsection heading "DEFINITION.–"; and

(3) adding at the end of the section the following new subsection:

"(b) TITLE OF CHAPTER.–This chapter may be cited as the 'Signal Inspection Act'.".

(d) AMENDMENT.--Section 20701 is amended by–

(1) revising the section heading to read:

"**Sec. 20701. Requirements for use; title of chapter**";

(2) designating the text of the section as subsection (a) and adding the subsection heading "REQUIREMENTS FOR USE.–"; and

(3) adding at the end of the section the following new subsection:

"(c) TITLE OF CHAPTER.–This chapter may be cited as the 'Locomotive Inspection Act'.".

(e) AMENDMENT.--Section 20901, as amended by this Act, is further amended by–

(1) revising the section heading to read as follows:

"Sec. 20901. Reports; title of chapter"; and

(2) adding at the end of the section the following new subsection:

"(c) TITLE OF CHAPTER.--This chapter may be cited as the 'Accident Reports Act'.".

(f) AMENDMENT.--Section 21101 is amended by–

(1) revising the section heading to read as follows:

"**Sec. 21101. Definitions; title of chapter**";

(2) designating the text of the section as subsection (a) and adding the subsection heading "DEFINITIONS.–"; and

(3) adding at the end the following new subsection:

"(b) TITLE OF CHAPTER.--This chapter may be cited as the 'Hours of Service Act'.".

(g) AMENDMENT.--Section 21301, as amended by this Act, is further amended by–

(1) revising the section heading to read as follows:

"**Sec. 21301. Chapter 201 general violations; title of chapter**"; and

(2) adding at the end of the section the following new subsection:

"(d) TITLE OF CHAPTER.--This chapter may be cited as 'Penalties for Railroad Safety Violations'.".

(h) TABLES OF SECTIONS AMENDMENTS.–(1) The table of sections for chapter 201, as amended by this Act, is further amended by striking the existing item for section 20101 and substituting:

"20101. Purpose and title of chapter.".

(2) The tables of sections for chapters 203-213, respectively, are amended by respectively–

(A) striking the existing item for section 20301 and substituting:

"20301. Definition; nonapplication; and titles of provisions in chapter.";

(B) striking the existing item for section 20501 and substituting:

"20501. Definition; title of chapter.";

(C) striking the existing item for section 20701 and substituting:

"20701. Requirements for use; title of chapter.";

(D) striking the existing item for section 20901 and substituting:

"20901. Reports; title of chapter.";

(E) striking the existing item for section 21101 and substituting:

"21101. Definitions; title of chapter."; and

(F) striking the existing item for section 21301 and substituting:

"21301. Chapter 201 general violations; title of chapter.".

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

Section 20117(a) is amended–

(a) in subsection (a)(1), by striking "chapter" and substituting "part and to carry out chapter 51 of this title in all modes of transportation but with particular emphasis on the transportation or shipment of hazardous materials by railroad" and by striking subparagraphs (A) through (F);

(b) by striking subsection (a)(2); and

(c) by redesignating subsection (a)(1) as subsection (a), and inserting the following at the end:

"(1) $166,200,000 for the fiscal year ending September 30, 2004.

"(2) Such sums as may be necessary for fiscal years 2005 through 2007.".

SECTION-BY-SECTION ANALYSIS OF

THE FEDERAL RAILROAD SAFETY IMPROVEMENT ACT

Section 1 would provide that this proposal may be cited as the "Federal Railroad Safety Improvement Act."

Section 2 would provide that references in the proposal to the amendment or repeal of a section or other provision are references to a section or other provision of title 49 of the United States Code, unless the proposal explicitly states that the section or other provision is from a different source.

Section 3 would list the section and title headings of each section and title of this proposal, in the order in which the sections and titles appear.

TITLE I--RULEMAKING, INSPECTION, AND ENFORCEMENT AUTHORITY

Section 101, "National Crossing Inventory," would establish a new section and subsection[1] to require railroads and States, respectively, to provide the Secretary of Transportation with information necessary for risk analysis of the country's more than 250,000 highway-rail crossings and pedestrian crossings.[2] Such information has been collected by the Department of Transportation since 1974, and maintained in a national database called the "US DOT National Crossing Inventory File" (Inventory) since 1975. The Inventory is the only nationwide database on the characteristics of crossings. However, the information has not been

[1] Section 20154 and new subsection (k) of 23 U.S.C. 130

[2] A "pedestrian crossing" is an intersection of a dedicated pedestrian pathway and a railroad track.

required, and thus some crossing information has not been reported at all or not adequately updated by the States and the railroads.

The primary purpose of the Inventory is to serve as a uniform computerized database on crossings throughout the country that can be merged with other data, including the Federal Railroad Administration's (FRA) accident/incident database, and used to promote crossing safety. States, railroads, and other entities responsible for crossing safety analyze information in the Inventory for planning and implementation of crossing-improvement programs such as the vital "Section 130" program,[3] which provides Federal funds to the States to install or improve warning devices at crossings or to eliminate crossings altogether. This is done with States or railroads or both providing funds on a matching basis. In addition to being used for proper allocation of Section 130 resources, the Inventory is used by Federal, State, and local law enforcement personnel to identify especially hazardous crossings on which to focus inspection and enforcement efforts. It is also used extensively by the Department, States, railroads, and researchers for crossing safety studies, some of which have helped FRA formulate regulatory actions.

Currently, data for the Inventory are usually supplied partially by the railroad that operates through the crossing, with the remainder supplied by the State where the crossing is located. For example, for public highway-rail crossings, the railroad typically provides such information as the volume of railroad traffic through the crossing and the type of warning device at the crossing, while the State typically provides such information as the volume of highway traffic through the crossing.

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[3] 23 U.S.C. 130

Because information in the Inventory is not adequately reported and maintained, decisions about how to allocate scarce warning-device, inspection, and enforcement resources must be made on the basis of outdated or incomplete information. On January 22, 2002, the National Transportation Safety Board issued a safety recommendation[4] that arose out of a fatal crossing collision involving a school bus and that detailed some of the shortcomings of the Inventory. The Board's safety recommendation indicated that "[b]ecause the States and others rely on this inventory for determining hazards and predicting accidents at grade crossings, inaccurate information can lead to invalid assessments" of the relative level of hazard at one particular crossing as compared to another. To remedy the deficiencies in the system, it is imperative that the Department receive accurate reports. The legislation seeks to achieve that objective in several ways.

Section 101 would require that railroads provide the Secretary with three kinds of reports.

First, railroads would be required to provide initial reports on previously unreported crossings, including new crossings. (The reports would be due within six months after enactment of this bill or within six months of a new crossing becoming operational, whichever occurs later.)

Second, updates to the Inventory would be required on a periodic basis beginning no later than 18 months after enactment, and continuing on a schedule no less often than by September 30 of every third year thereafter, or as otherwise specified by the Secretary.

[4] Safety Recommendation No. H-01-42

Third, for crossings that are transferred to other ownership, notice to the Secretary would be required from the seller within three months of the sale or within 18 months after enactment, whichever occurs later, or as otherwise specified by the Secretary.

Each railroad would have to provide an initial, periodic, and, if applicable, change-of-ownership report on each crossing through which it operates, or else see to it that the same information is provided to the Secretary by another railroad that operates through the same crossing.

Section 101 would also require each State to provide information on crossings within its borders, with initial reports to the Inventory and periodic updates on the same schedule as the railroads'.[5]

The Secretary would be authorized to determine which crossing data would be supplied by the railroad and which would be supplied by the State. The particular information to be included in these reports and the entity responsible for providing the data would be specified by the Secretary. The Secretary would be permitted to enforce each provision of FRA's Highway-Rail Crossing Inventory Instructions and Procedures Manual that is in effect upon enactment of this section, until such provision is superseded by a regulation issued under this section.

[5] A new subsection (k) would be added to section 130 of title 23, United States Code.

Section 102, "Transportation Security," would amend current law to clarify that the Secretary of Transportation's authority to issue regulations and orders governing "every area of railroad safety"[6] includes "security." The issues of rail safety and security are often inextricably linked in railroad operations. Prior to creation of the Transportation Security Administration (TSA) in the wake of the events of September 11, 2001, the distinction was not critical. However, the authority over rail and other transportation security generally was transferred to TSA, first as an entity under the Department of Transportation and later under the Department of Homeland Security. FRA, TSA, and Homeland Security have an extremely cooperative relationship. However, clarification of FRA's jurisdiction is necessary to ensure that any regulations and orders which may have some carryover into the security arena will withstand legal challenge and protracted litigation by outside parties. The Homeland Security Act of 2002 supports the conclusion that "safety" includes "security" when it defines "safety" for purposes of the Railroad Safety State Participation Program as including security.[7] It also provides that the Secretary of Transportation's authority to issue hazardous materials transportation safety regulations includes security measures.[8] The proposed language provides more consistency overall.

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[6] 49 U.S.C. 20103(a)

[7] See Pub. L. No. 107-296, section 1710(a), amending 49 U.S.C. 20105.

[8] See Pub. L. No. 107-296, section 1711(a), amending 49 U.S.C. 5103(b).

The inseparability of the safety and security issues is not new. Current statute provides the Secretary of Transportation with plenary authority, delegated to the Federal Railroad Administrator, to address any hazards to life and property, regardless of the source of the potential threat, that may arise in the context of railroad operations. These threats include not just threats to trains, passengers, employees, communities near railroads, and railroad property, but also threats to the general public that could be posed by exploitation of railroad operations and equipment by terrorists. FRA has issued various rules which necessarily overlap safety and security, including the following:

- a 1998 final rule on Passenger Train Emergency Preparedness[9] that requires passenger railroads to conduct detailed planning for emergency situations, which are defined to include a "security situation" such as a bomb threat; and
- a December 2001 interim final rule and a January 2002 final rule on foreign dispatching of railroad operations in the United States[10] that are based in part on the agency's concerns about the security of foreign dispatching facilities.

In each of these cases, rules focused on the safety of railroad operations necessarily have an impact on security and are to some degree motivated by security concerns.

Further, FRA has issued many other safety regulations regarding track, structures, equipment, signal and train control systems, and employee qualifications, rules that are not explicitly based on security concerns, but that have a bearing on security. FRA may find it

[9] 49 C.F.R. part 239

[10] 49 C.F.R. part 241

necessary to issue amendments of these safety regulations or entirely new safety regulations or orders that have security implications.

Section 103, "High-speed rail noise regulation," proposes to require the Secretary of Transportation to set standards governing the maximum permissible sound energy emissions from certain high-speed rail operations. The Environmental Protection Agency (EPA) has issued noise emission standards for interstate railroads pursuant to the Noise Control Act of 1972[11]. The regulations establish maximum noise emission levels for specific kinds of (i) on-track railroad equipment, (ii) railroad operations, and (iii) railroad facilities. These standards have, in effect, become the noise-design criteria for railroad equipment in the United States, and there has been little or no problem with compliance by the traditional freight and passenger rail equipment. High-speed rail operations at more than 150 mph, however, emit a different type of noise, which exceeds EPA standards and does not lend itself to being reduced to the levels covered by the existing standards. The authority is proposed for the Department of Transportation, delegated to FRA, since the EPA noise office has been dismantled for about 20 years, and FRA holds the expertise in high-speed rail engineering.

Under current EPA regulations, moving locomotives may emit a maximum of 90 decibels when measured at 100 feet from the track centerline.[12] Recent research for FRA has shown that at train speeds greater than 150 mph, aerodynamic noise becomes the dominant noise source.

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[11] 40 C.F.R. part 201

[12] 40 C.F.R. 201.12(b)

This proposal would address the shift from equipment noise to aerodynamic noise as the dominant source of noise during operations above 150 mph.

Under this provision, the Secretary, with the concurrence of the Administrator of the EPA, would be required to issue a regulation that specifies the maximum permissible sound energy emissions received along the right of way due to the passage of a high-speed train, as opposed to the maximum permissible noise emission levels for specific pieces of rail equipment. The specification of maximum sound energy level is consistent with the current European approach to the regulation of high-speed rail operation noise. In establishing the maximum permissible sound energy level for high-speed rail operations, the Secretary would be authorized to consider the maximum levels permitted by countries with extensive experience with high-speed rail operations as well as the maximum sound exposure levels resulting from average or typical U.S. rail freight trains operating in compliance with existing EPA standards.

Standards established by the Secretary under to this section would replace the standards issued under the Noise Control Act of 1972 only when the rail equipment is operating in excess of 150 mph. At all other times, the equipment would be required to conform to the existing EPA noise standards applicable to railroad equipment.

Section 104, "Railroad Accident and Incident Reporting," would amend section 20901(a) of title 49, United States Code, in two ways._ First, it would eliminate the_statutory_ requirement that railroads' reports to FRA regarding accidents and incidents on their properties be made under oath and notarized. The oath and notarization requirement causes unnecessary expense and delay, and is an obstacle to filing reports electronically. _Federal statutes call for

criminal penalties for filing false statements.[13] Thus, at a time when efficiency and technology allow for electronic filing, the current requirement is redundant and unnecessary.

Second, section 104 would allow the Secretary of Transportation to specify the frequency with which the accident and incident reports must be filed, providing discretion to set different reporting requirements for different classes of railroads or different types of situations and to permit a reduction in the frequency of filings. Although the Secretary would be authorized to set any reporting interval, the Secretary would be expected to require reports at least on a quarterly basis.

[13] See, e.g., 49 U.S.C. 21311.

Section 105 would permit the Secretary of Transportation to authorize his or her subordinates and agents, such as Federal railroad safety inspectors to monitor ("intercept") and record railroad radio communications and, with certain exceptions, to use those communications and the information they contain, for the purpose of accident prevention, including, but not limited to, accident investigation. Communication by radio is one of the most critical elements of railroad operations and safety. Both the railroads and FRA have prescribed rules governing radio use.[14] Railroads permit employees to use the company radio exclusively for railroad operations and prohibit them from using the company radio for any unnecessary or irrelevant communications, such as personal, non-business conversations.[15]

While the railroad is authorized to monitor the communications of its employees to determine whether safety rules and operations are being followed, current law arguably precludes FRA inspectors from monitoring these communications without the presence of a railroad employee who is an authorized sender or receiver of the communication. FRA access to railroads' radio communications would likewise help ascertain that Federal railroad safety rules are being followed.

Railroads use their dedicated radio frequencies to control, and promote the safety of, various types of operations. In connection with road train and switching operations, radio

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[14] See, e.g., FRA's Railroad Communications rules (49 C.F.R. part 220), roadway worker protection rules at 49 C.F.R. 214.319-214.325, and Railroad Operating Rules (49 C.F.R. part 217).

[15] See Rule 700, "Radio Use," and Rule 709, "Prohibited Transmissions," Northeast Operating Rules Advisory Committee Rules, which apply to more than 30 railroads in the United States.

communications are used in at least six major ways. First, railroads use radio to transmit movement authorities from the dispatcher directly to the crew in the cab of the locomotive. Second, radio is used to communicate intra-crew directives, that is, communications on when to go, stop, back up, slow down, etc., both in road trains and in switching operations. Third, radio is used to relay information from one crew to another crew, e.g., when traffic conditions result in more than one train in the block or when a train stops because of work or the need to be inspected. Fourth, radio is often used to transmit wayside detector information. Fifth, radio is used to transmit information from wayside employees to crews or dispatchers regarding defects on passing trains. Sixth, radio provides a way for trains in distress to summon help immediately and a way for employees to prevent accidents or mitigate their severity by alerting dispatchers and crews to track obstructions or washouts, etc. In addition to being used in road train and switching operations, radio is also used in the maintenance and inspection of railroad track and structures, as well as railroad signal and train control systems.

Although FRA inspectors may monitor radio communications in the presence of an authorized railroad employee, typically, when an FRA inspector arrives on railroad property, railroad users of radio are often informed by their coworkers to be guarded as they are being monitored by FRA. Thus it is difficult to determine what is normal behavior or what is particular attention to the regulations due to FRA's presence. Access to candid communications from off-site would yield a truer picture of compliance levels.

FRA's objective of accident prevention is ordinarily fulfilled by means of the safety inspection of railroad operations on a daily basis and the enforcement of the rail safety laws. Monitoring of radio communications would not only help achieve that objective, but would

greatly improve the efficiency of those inspections, the accuracy of their results, and the effective redeployment of FRA's limited inspection resources based on those more accurate results.

Section 105 would cover only a communication by radio over a frequency that the Federal Communications Commission (FCC) authorizes to one or more railroads.[16] It would not apply to railroads' communications by such means as cellular or cordless telephones. It would also require that the monitoring of railroad radio communications be conducted "at reasonable times," defined as whenever the railroad being inspected or investigated is performing its rail transportation business.

[16] See FCC regulations at 47 C.F.R. part 90, especially sections 90.35(b)(2)(i), (b)(3), and (c)(50) and Subpart G. Frequencies lying between 160.215 and 161.610, inclusive, in the Industrial/Business Pool are authorized to railroads. See 47 C.F.R. 90.35(b)(2)(i) and the Industrial/Business Pool Frequency Table at 47 C.F.R. 90.35(b)(3).

Section 105 of the proposed legislation is intended to create an exception to existing prohibitions on intercepting railroad radio communications for the Secretary's subordinates and agents, such as Federal inspectors administering the Federal railroad safety laws, including the hazardous materials transportation laws.[17] All authorities that would be granted by proposed subsection 20107(c)(1) would be usable for the purpose of accident prevention, including, but not limited to, accident investigation.

Information obtained through the Government's activities described in the proposal would not be admissible into evidence in any administrative or judicial proceeding, except in the six enumerated types of railroad safety proceedings for impeachment purposes only and then only if the Government's monitoring was done not solely for the purpose of accident investigation. (If the Government's interception of a communication under proposed subsection 20107(a)(1)(A) was done solely for the purpose of accident investigation, then the information obtained from it would not be admissible for any purpose in an administrative or judicial proceeding in which criminal or civil penalties might be imposed.) In situations in which information intercepted would not itself be admissible into evidence in a proceeding, it would constitute background material, which might suggest further investigation and ultimately lead to the discovery of admissible evidence; other information that is the fruit of the intercepted information would be admissible (if otherwise admissible under applicable procedural rules). Such admissible evidence might include a tape recording or transcript of the communication made by the railroad (under its own authority to monitor the communications) or the testimony of a participant in the communication.

[17] 49 U.S.C. subtitle V, part A (49 U.S.C. ch. 201-213), and 49 U.S.C. ch. 51

Further, the proposal would provide a mechanism for ensuring confidentiality, when appropriate, of intercepted communications introduced in rail safety proceedings as impeachment evidence. It would also take the intercepted communications outside the scope of the Freedom of Information Act, thereby effectuating the agency's intent to assure that it does not release the communications to railroad carriers. Finally, the proposed legislation would preserve unaffected other statutory authorities for interception of communications.

Section 106, "Technical Amendments Regarding Enforcement by the Attorney General," would clarify that the Federal district courts have jurisdiction to entertain three types of civil actions brought by the Attorney General at the request of the Secretary of Transportation. First, section 106 would explicitly authorize the Attorney General to seek an injunction against violation of a rail safety statute.[18] The Attorney General is already authorized to sue in Federal district court to enjoin a violation of rail safety regulations, but not rail safety statutes. The new section would permit suits for these injunctions except for those dealing with employee protections against discrimination for whistleblower activities or for reasonably refusing to work in the face of an imminent danger of death or serious injury, rights that would continue to be enforced under the Railway Labor Act. Second, section 106 would clarify the availability of another enforcement tool by stating that the Attorney General may enforce the Secretary's requests for production of documents or other tangible things and requests for testimony by deposition under the rail safety laws. The existing rail safety laws lack an explicit provision for enforcement of these discovery devices. Finally, section 106 would conform the Attorney General's enforcement powers under the pre-1970 rail safety statutes to those under the 1970 rail

[18] 49 U.S.C. ch. 201-213

safety statute with respect to collection of civil penalty settlements and the enforcement of administrative subpenas.[19]

[19] The pre-1970 rail safety statutes are found primarily in 49 U.S.C. ch. 203-211. The "1970 statute" refers primarily to 49 U.S.C. ch. 201, where the provisions of the now repealed Federal Railroad Safety Act of 1970 have been recodified.

Section 107 has a dual purpose. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, maximum civil penalties are required to be adjusted for inflation. That statute did not directly amend the civil penalty provisions of the substantive laws affected, but rather required the Federal agencies charged with enforcing those laws to issue regulations revising the penalty amounts. This new proposal would cross-reference the appropriate provisions of that Act. Although inflation adjustments have been and will continue to be made by regulation, this provision in the railroad statutes would provide further notice to the regulated public of this requirement and prevent having to search through related statutes to determine a respondent's maximum liability.[20]

Second, section 107 would revise the civil penalty provisions to make them more uniform. Under the 1970 rail statute, the Government may deduct the amount of any unpaid penalty or settlement owed by a respondent from any funds (such as tax refunds) owed by the Government to the respondent. These technical amendments would put enforcement of the pre-1970 safety statutes on an equal footing with enforcement of the 1970 statute.

TITLE II–MISCELLANEOUS PROVISIONS

Section 201 would eliminate several provisions of the rail safety laws that are unnecessary because they have been executed or become obsolete. First, the proposal would strike as executed the following three provisions that require the Secretary to submit a report to Congress: the second sentence of section 20103(f) (report on tourist railroads); section 20145 (report on detection of bridge displacement); and section 20150 (report on positive train control). The Secretary has submitted each of these reports already. Second, the proposal would repeal

[20] Pub. L. No. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended

section 20146, a provision to establish, and authorize appropriations to fund, an Institute for Railroad Safety at $1 million per year for fiscal years 1996-2000. Congress did not appropriate funds for the institute and, in any event, the authorization of appropriations for fiscal years 1996-2000 has expired.

Section 202 of the proposal would assign convenient, alternate names to the chapters of the U.S. Code that comprise the railroad safety laws. This is intended to facilitate communication about the Federal railroad safety laws (49 U.S.C. chapters 201-213), in order to improve the administration and enforcement of those laws, litigation under those laws, and compliance with those laws. Currently, each of these chapters is denoted by a three-digit number and a verbal heading. With the exception of chapters 203 and 213, each chapter generally corresponds to a single railroad safety statute that was formerly codified primarily in title 45 of the U.S. Code. In 1994, as part of the recodification of certain general and permanent Federal laws related to transportation, these railroad safety statutes were repealed, and their provisions were revised and reenacted without substantive change as positive law in title 49.[21] For example, chapter 201, "General," contains all of the general and permanent provisions of the Federal Railroad Safety Act of 1970, as amended, except for the provisions on civil and criminal penalties.

In all cases, the current chapter heading does not restate the name of the statute that the chapter supersedes. In some cases, the current chapter heading does not even readily connote the name of the statute that the chapter supersedes. For example, to a person who has no knowledge of the rail safety laws, the heading "chapter 201, General" does not immediately suggest that the

[21] See Pub. L. No. 103-272 (July 5, 1994); H.R. Rep. No. 103-180 (1993).

chapter is a recodified version of the Federal Railroad Safety Act of 1970. This is unfortunate primarily because decades, if not a century, of administrative interpretations, court filings, and court decisions have been developed under the statutes as they were named before the 1994 recodification. That body of administrative interpretations, briefs, and case law, which uses the pre-recodification names of the statutes, is more difficult to understand without a ready reference to those pre-recodification statutory names within the text of the current U.S. Code; this is particularly true for new practitioners and others who are not already acquainted with the original names of the statutes. Although the legislative history of the recodification law provides tables that may used to identify the pre-recodification statute, the process is fairly cumbersome and dependent on material not as readily available as the U.S. Code.

Furthermore, not only old (pre-recodification) case law but also new (post-recodification) case law often uses the old names of the statutes. E.g., in Norfolk Southern Ry. v. Shanklin, 529 U.S. 344 (2000), the Supreme Court helpfully referred to the "Federal Railroad Safety Act of 1970" as if it still existed. Courts and litigators use the old names for the ease of reference they provide, but use of those names is not, in fact, consistent with existing law. With the new case law, the problem is that the old statutory name does not lead the reader to the new statutory citation and that the new case law also becomes difficult to integrate into the recodified statute. After a case provides an initial citation to the recodified section, all other references are to the original name of the statute, e.g., the "Locomotive Inspection Act" or the "Federal Railroad Safety Act of 1970." If the novice misses the initial citation, the references to the old statutes can become confusing.

To provide a bridge between the old statutory names and the recodified statutes, section 202 would incorporate into the U.S. Code one alternate name for each chapter of the rail safety laws or, in the case of chapter 203, an alternate name for each of two portions of that chapter. With respect to each of chapters 201 and 205-211, section 202 would establish one alternate name that clearly corresponds to the name of the statute that the chapter supersedes. With respect to chapter 203, the proposal would permit sections 20301-20304 and 20406 to be cited as the "Safety Appliance Act." Section 20305 (formerly 45 U.S.C. 37), which is an independent provision that was never part of the old Safety Appliance Acts, would be permitted to be cited as the "Mail Car Inspection Act." With respect to chapter 213, the chapter where the civil and criminal civil penalty provisions for all of the various Federal railroad safety statutes are now consolidated, the section would allow that chapter to be cited as "Penalties for Railroad Safety Violations." The names proposed in the bill would allow plainer discussion of the railroad safety laws on a daily basis within the legal community and more lucid written interpretations of those laws by FRA, litigants generally, and the courts. The names proposed in the section for chapters 201-211 would also help link the recodified statutory provisions in title 49 with the administrative interpretations, court filings, and judicial case law under earlier versions of the original statutory provisions. For example, section 202 would allow chapter 201 to be cited as the "Federal Railroad Safety Act," thereby linking the reader to the case law on the Federal Railroad Safety Act of 1970.

There is precedent for enacting a provision such as section 202, both with respect to chapters that, like those in title 49, are positive law and with respect to those that are not positive law. For example, section 220501(a) of title 36 says that chapter 2205 may be referred to as the

"Ted Stevens Olympic and Amateur Sports Act." Title 36 is positive law. In addition, section 1403(a) of title 26 allows chapter 2 of subtitle A to be called the "Self-Employment Contributions Act of 1954." Title 26 is not positive law.

Section 203 of the proposal would clarify the scope of FRA's safety and operations program and its research and development program and authorize appropriations for those programs. Subsection (a) would indicate that these programs include FRA's activities to carry out not only 49 U.S.C. chapter 201. In particular, these programs also include implementation of chapters 203-213, as well as program activities to administer chapter 51 in all modes of transportation, but particularly in the rail mode.

Subsection (b) would authorize appropriations for FRA's safety and operations program and research and development program for four fiscal years--2004 through 2007. A total of $166,200,000 would be authorized for fiscal year 2004; this amount includes two components: (1) $131,175,000 for FRA's safety and operations program and (2) $35,025,000 for FRA's research and development program. The authorization levels for fiscal years 2005 through 2007 would be for such sums as may be necessary.