



**U.S. Department
of Transportation**

Office of the Secretary
of Transportation

Assistant Secretary

400 Seventh St., S.W.
Washington, D.C. 20590

April 7, 2004

The Honorable John McCain
Chairman, Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The U.S. Department of Transportation (DOT) would like to provide you with its views on S. 2273, the Rail Security Act of 2004 (Act). DOT's views are limited to the sections, noted in this letter, in which the Secretary of Transportation would have significant responsibilities. We have also enclosed a separate list that recommends specific technical revisions.

Section 2 of the bill would require the Under Secretary of Homeland Security for Border and Transportation Security (Under Secretary), in consultation with the Secretary of Transportation, to assess security risks for both freight and passenger rail transportation. Section 2 would also require the Under Secretary to transmit to Congress a report containing an updated assessment and prioritized recommendations every two years. DOT has no objection to this proposal and is prepared to work closely with the Under Secretary to assess the security needs in this area.

Section 3 of the bill would clarify the enforcement authority of rail police officers, employed by a particular rail carrier, to include authority within any jurisdiction in which any rail carrier owns property. DOT has no objection to this provision. Section 3 would also require the Secretary of Transportation, in consultation with the Under Secretary, to review existing DOT rail regulations for the purpose of identifying areas that need to be revised for safety and security purposes within one year of the date of enactment of this Act. DOT is continually reviewing and revising its regulations for purposes of making the Nation's rail system safer and more secure; therefore, DOT has no objection to this provision in principle. However, the one-year deadline for the Secretary of Transportation's review of rail regulations coincides with the deadline for the Comptroller General's study of foreign rail security systems specified in section 4 of the bill. We suggest, therefore, that the Secretary of Transportation be given 18 months in lieu of one year in order for the Secretary to have time to take into account the results of the Comptroller General's study.

Section 5 of the bill would require the Under Secretary, in cooperation with the Secretary of Transportation, to study the cost and feasibility of requiring security screening for passengers, baggage, and mail carried on passenger trains and to report the results of the study and the Under

Secretary's recommendations, if any, to Congress. Section 5 would also call for a pilot program of random security screening of passengers and baggage at a total of five passenger rail stations served by Amtrak that would be selected by the Under Secretary. The section would authorize appropriations of \$5 million for fiscal year 2005 to the Under Secretary to carry out the section. DOT has no objection to the cooperative role envisioned by this section, but otherwise defers to the Department of Homeland Security (DHS). Additionally, section 5 requires matching of a "government issued" identification to passenger tickets "prior to boarding trains." This could negatively affect Amtrak's efficiency and overhead costs.

Section 7 of the bill would authorize a total of \$670 million for Fiscal Years 2005 through 2009 to be appropriated to the Secretary of Transportation to make grants to Amtrak for design and construction of fire and life-safety improvements to tunnels in New York, New York, Baltimore, Maryland, and Washington, DC. Funds appropriated pursuant to this section would remain available until expended. Amtrak would be required to submit for the Secretary's approval an engineering and financial plan for projects and a project management plan for each project. The Secretary would not be authorized to disburse funds to Amtrak unless the Secretary had approved such plans. DOT recognizes the benefits of fire and life-safety improvements to these critical elements of the Nation's rail infrastructure. In recognition of the importance of these tunnels, not just for intercity but also for commuter rail service, we believe that any funds made available for this purpose should flow through a Federal-State partnership such as that proposed in the Administration's legislative proposal to restructure intercity rail passenger service—the Passenger Rail Investment Reform Act. It should also be noted that the President's 2005 Budget proposes \$1.4 billion for Amtrak beginning in 2006, assuming fundamental reforms are instituted. This amount could help fund life-safety and security projects identified in an Amtrak security plan.

Section 8 of the bill would require the Under Secretary and the Secretary of Transportation to enter into a memorandum of agreement regarding their respective roles and responsibilities in dealing with railroad security matters within 60 days of the enactment of the Act. While DOT fully supports the need for an MOA with DHS on this and other subjects, such internal agreements are a matter of Executive Branch organization that are inappropriate for legislation. Section 8 would also clarify that, in the context of the Secretary of Transportation's regulatory authority at 49 U.S.C. 20103, the statutory term "safety" includes security. DOT supports this provision and notes that a comparable provision appears in section 102 of DOT's current rail safety reauthorization proposal and in section 205(b) of S. 1402, as passed by the Senate.

Section 9 of the bill would require Amtrak to submit to the Chairman of the National Transportation Safety Board (NTSB) a plan for addressing the needs of families of passengers involved in a fatal Amtrak accident. In particular, the section would require that the plan include a procedure by which Amtrak would use reasonable efforts to determine the number and names of passengers aboard an unreserved train and those not holding reservations on other trains. It is worth noting that Amtrak does not currently keep passenger logs for its unreserved cars. The

section also prohibits NTSB and Amtrak from sharing passenger lists with “any person” but allows information about a passenger to be shared with the family of a passenger. DOT suggests including clarifying language to preserve the Secretary of Transportation’s existing authority to obtain this information directly from Amtrak. FRA needs passenger identity information in order to conduct thorough investigations including, for example, matching injuries with rail car interior features. Nevertheless, FRA has no reason to include personal identifying information in accident reports, and does not do so. Finally, the section would authorize to the Secretary of Transportation, for Amtrak’s administration of this section, \$500,000 for fiscal year 2005. Other than the concerns noted, DOT does not object to this section.

Section 10 of the bill would authorize the Under Secretary to make grants through the Secretary of Transportation to Amtrak for system-wide Amtrak security upgrades. To receive funds from the Secretary for a particular security upgrade project, Amtrak would have to have a system-wide security plan approved by the Under Secretary, in consultation with the Secretary of Transportation. In addition, as in section 7(e) of the bill, Amtrak would be required to submit for the Secretary’s approval an engineering and financial plan for projects and a project management plan for each project. The Secretary would not be authorized to disburse funds to Amtrak unless the Secretary had approved such plans. This section would authorize \$62.5 million for fiscal year 2005 to the Under Secretary to carry out the section, with funds appropriated remaining available until expended.

Section 11 of the bill would authorize the Under Secretary to make security improvement grants to freight railroads, the Alaska Railroad, hazardous materials shippers, and owners of tank cars used to ship hazardous materials, and, through the Secretary of Transportation, to Amtrak. Amtrak’s eligibility for funds would be subject to the same conditions as described in section 10. The section would authorize to be appropriated to the Under Secretary \$250 million for fiscal year 2005, with amounts appropriated under this section remaining available until expended. DOT notes that the Government currently does not provide grants to the rail industry other than Amtrak and the Alaska Railroad. Further, the Administration is concerned that providing direct assistance to the rail industry generally could open the Government to the demands of other industries seeking similar funding.

Section 12 of the bill would authorize the Secretary of Transportation to use up to 0.5 percent of amounts available to Amtrak for capital projects under the Act to enter into contracts for the review of proposed capital projects and related program management plans and to oversee construction of such projects. DOT supports this provision.

Section 13 of the bill would require the Under Secretary, in conjunction with the Secretary of Transportation, to execute a research and development program to improve freight and intercity passenger rail security and, to carry out the program, would authorize appropriations to the Under Secretary of \$50 million per year for fiscal years 2005 and 2006. Funds appropriated pursuant to the section would remain available until expended. DOT believes that such a research and development program should be tailored to respond to the findings of risk

assessments and should be developed in such a way as to avoid overlap with existing research and development conducted by FRA for safety purposes.

Section 14 of the bill would mandate that FRA undertake certain actions to improve the safety of railroad track and railroad tank cars. DOT notes that the provision is unnecessary and duplicative because the Secretary of Transportation and the Secretary's delegate for rail safety matters, the Administrator of FRA, may perform the required actions already under existing statutory authority. In any event, any such a mandate should be directed to the Secretary of Transportation and not to FRA or the Administrator of FRA. DOT also notes that the Administrator of the Research and Special Programs Administration is, in most matters, the Secretary's delegate with respect to railroad tank car safety.

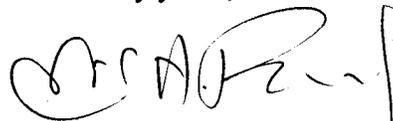
The track-related provisions in section 14 of the bill would obligate FRA to take certain actions regarding continuous welded rail (CWR) track within 90 days of enactment. One such provision would obligate FRA to require each railroad with CWR track to have procedures that better identify cracks in the joint bars that connect strings of CWR. FRA is allowed to impose such a requirement only by issuing an order or regulation. Although DOT believes that a direct final rule would be allowable pursuant to the provision, FRA rules are normally issued pursuant to notice and comment under 49 U.S.C. 20103(e), and the 90 day mandate would not permit such a proceeding. Allowing time for a normal proceeding, perhaps through FRA's Railroad Safety Advisory Committee, would enable rail labor, rail management, and other interests to provide their insights on how a rule should be crafted. DOT suggests, therefore, changing the beginning of section 14(a)(1) to read: "(1) initiate a rulemaking to require . . .".

Section 14 would also require FRA to coordinate with the NTSB in conducting an analysis to determine the impact resistance of the steels in the shells of pressure tank cars built before 1989 and to report to Congress on recommendations for measures to eliminate or mitigate the risk of catastrophic failure. FRA has been working with the Association of American Railroads Tank Car Committee, of which the NTSB is a member, and the joint government-industry Stub Sill Working Group to determine the impact loads to which a tank car is subjected both in normal transport and under accident conditions. Over-the-road tests will be conducted this year. FRA has also been researching the fatigue life of tank car steels and developing probability-of-detection curves for the materials. This work is also in conjunction with the Stub Sill Working Group. We would prefer to continue working through these existing groups rather than start a new effort with the NTSB. Otherwise, DOT has no objection to section 14.

DOT appreciates the Committee's commitment to rail security and looks forward to continue working with the Committee and other agencies with rail security oversight responsibilities to help provide the safest and most secure rail system possible.

The Office of Management and Budget has advised that there is no objection, from the standpoint of the Administration's program, to the submission of this letter to Congress. We appreciate the opportunity to comment on this legislation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "E. Frankel". The signature is stylized with a large initial "E" and a long, thin vertical stroke extending downwards from the end of the name.

Emil H. Frankel
Assistant Secretary for Transportation Policy

Enclosure

Enclosure: DOT's Technical Comments on S. 2273

Section 2.

Section 2 of the bill refers to "freight and passenger rail transportation (encompassing rail carriers, as that term is defined in section 20102(1) of title 49, United States Code)." We note that the cited section, 49 U.S.C. 20102(1), does not define the term "rail carrier" but rather the term "railroad." "Rail carrier" is not defined in 49 U.S.C. 20102 at all; that section defines the term "railroad carrier," and in subsection (2), not subsection (1). Therefore, we suggest that "railroad carrier" be substituted for "rail carrier" and that "section 20102(2)" be substituted for "section 20102(1)".

Section 7.

DOT suggests the following edits:

- (1) for clarity and consistency, replace "LIFE SAFETY" with "LIFE-SAFETY" in the section heading and in the catchline for subsection (a);
- (2) in subsection (a) if the "tunnels on the Northeast Corridor" are Amtrak tunnels, then "Amtrak" should be inserted before "tunnels";
- (3) replace the semi-colon at the end of subsection (e) with a period; and
- (4) replace "life safety" with "life-safety" in subsection (f).

(DOT questions whether the description of two tunnels in subsection (b)(2) is adequate. The current description reads: "the Baltimore & Potomac tunnel and the Union tunnel".)

Section 13.

Subsection (c), "Accountability," states that the Under Secretary would be required to ensure that the program would be coordinated with other research and development initiatives at the Department of Homeland Security and at DOT. DOT suggests (1) moving the entire text of subsection (c) (which addresses coordination issues) to the end of section 13(b), which deals with those issues, and (2) correcting a typographical error in the text by replacing "the would be useful" with "that would be useful". In addition, DOT suggests that, after the heading of section 13(c), "ACCOUNTABILITY.--", the text of section 11(b), "Accountability," should be copied and inserted. (The text of section 11(b) is as follows: "The Under Secretary shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this Act and the priorities and other criteria developed by the Under Secretary.")

Section 14.

Subsection (b) would require FRA to “validate the predictive model it is developing to quantify the maximum dynamic forces acting on railroad tank cars under accident conditions” and to commence a rulemaking to establish proper design standards for pressurized tank cars. DOT suggests striking “maximum” and inserting “relevant” because “maximum” is undefined for these purposes and “relevant” describes the type of dynamic forces that should be studied.