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Federal Railroad Safety Program and Reauthorization Issues

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SUMMARY

The Federal Railroad Administration (FRA) of the U.S. Department of Transportation (DOT) is the primary federal agency that promotes and regulates railroad safety. To implement its safety responsibilities, FRA uses numerous strategies including the Safety Assurance and Compliance Program (SACP), field inspections, and the Railroad Safety Advisory Committee (RSAC). SACP involves numerous partnerships forged by railroad management, FRA personnel, and labor to improve safety and compliance with federal railroad safety regulations. About 422 FRA personnel and 150 state inspectors oversee the operations of the railroad industry in the field. RSAC uses a consensus-based process involving hundreds of experts who work together to formulate recommendations on new or revised safety regulations for FRA's consideration.

The combined impacts of SACP, RSAC, and billions of dollars of investment in railroad infrastructure, as well as other industry, labor, and government initiatives, have yielded improvements in railroad safety, especially during the last 10 years. Despite those advances, further improvements in both the safety record and FRA's regulations and programs are possible, but each approach has its own potential benefits and costs.

The last railroad safety reauthorization statute (P.L. 103-440) was enacted in 1994 and funding authority for that program expired at the end of FY1998. FRA safety programs continue using the authorities of existing laws and funds appropriated annually. The reauthorization process provides an opportunity to review federal policies and programs, to consider the current state of railroad safety, and to explore various options intended to further improve safety. Enacting a new statute affecting railroad safety is difficult, especially when a balance is sought among the interests of public safety, railroad labor, and management. The costs and benefits of new regulations and revised federal programs affecting railroad operations also are major considerations.

Several hearings on railroad safety were held during the 105th, 106th, and 107th Congresses, but no consensus has yet been reached on a railroad safety reauthorization bill. P. L. 106-69 appropriated $94.288 million for FRA's FY2000 railroad safety program and related expenses, and for FY2001, P.L. 106-346 appropriated $101.7 million for these activities. In P.L. 107-87 Congress appropriated $110.9 million for these expenses for FY2002, rejecting once more the Administration's request for user fees. And for FY 2003, the Administration requested $122.9 million. In July 2002, the Administration submitted to Congress proposed legislation to amend railroad safety law and to authorize funds for specified FRA activities for FYs 2003 through 2006.

This issue brief discusses various rail safety issues that either were considered during the 106th Congress or were discussed during the 107th Congress. Those include: whether the railroads should be required to develop fatigue management plans, whether changes in the hours of service requirements for railroad workers should be instituted, whether increased protection for railroad workers from alleged harassment and intimidation is needed, and whether federal efforts and FRA funding levels to improve grade crossing safety are adequate. Also, the option of simply reauthorizing current federal railroad safety law without any new requirements or authorities for FRA to implement is analyzed.

MOST RECENT DEVELOPMENTS

Several bills regarding railroad safety were introduced in the 107th Congress. For example, Representative Dingell on February 6, 2001, introduced H.R. 432, which would authorize state or local governments to enact laws or regulations to address trains obstructing highway/rail grade crossings, unless regulations were issued by the Secretary of Transportation by August 1, 2002. On February 12, 2001, Representative Young introduced H.R. 554, which would require the National Transportation Safety Board (NTSB) to serve as a liaison between rail passenger carriers and families of accident victims. The House passed H.R. 554 on February 14, 2001. On May 9, 2001, H.R. 1020, which directs the Secretary of Transportation to establish a program of capital grants to Class II and Class III railroads to rehabilitate, preserve, or improve railroad track and related infrastructure, was marked up by the railroad subcommittee, amended and returned for consideration by the House Committee on Transportation and Infrastructure. On May 20, 2001, Rep. Petterson introduced H.R. 1942 which would require that the National Transportation Safety Board investigate all rail grade crossing accidents where there are fatalities or high property damage. On June 12, 2001, Senator Levin et al. introduced S. 1015 which would require the Secretary of Transportation to address safety concerns and to minimize delays for motorists at railroad grade crossings. On May 16, 2002, Rep. Oberstar introduced H.R. 4761, which included provisions intended to reduce employee fatigue, increase protection of railroad employees, improve grade crossing safety, strengthen passenger service safety standards (including regulations for establishing positive train control standards on high priority railroad corridors), and require federal certification of qualification of railroad operating employees.

On June 6, 2002, the Subcommittee on Railroads of the House Committee on Transportation and Infrastructure held a hearing on recent derailments and railroad safety. The purpose of the hearing was to inquire into the present state of track safety, hours of service regulations, and the National Transportation Safety Board (NTSB) recommendations pertaining to railroad safety. On July 11, 2002, the Surface Transportation and Merchant Marine Subcommittee of the Senate Commerce Committee held a similar hearing on railroad safety. In July 2002, the Administration submitted to Congress proposed legislation to amend railroad safety law and to authorize funds for specified FRA activities for FYs 2003 through 2006. The proposal included a renewed request to initiate user fees to cover specified program costs.

In November 2002, Congress passed and the President signed the Homeland Security Act of 2002 (P.L. 107-296). In Sec. 1710 Congress explicitly expanded the definition of railroad safety in federal law to include railroad security. The Act also requires that "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)."

BACKGROUND AND ANALYSIS

The FRA of the U.S. Department of Transportation (DOT) is the primary federal agency that promotes and regulates railroad safety. Every few years, the Congress amends or

reauthorizes the federal railroad safety law that governs FRA's program. The last railroad safety statute (P.L. 103-440) was enacted in 1994 and funding authority for that program expired at the end of FY1998. FRA's safety programs continue using the authorities of existing laws and funds appropriated annually. In July 2002, the Bush Administration sent FRA safety reauthorization proposals to Congress.

The primary objective of federal law pertaining to railroad safety is to promote the safety of railroad employees, passengers, and the public. FRA exercises jurisdiction over all aspects of railroad safety as provided for in the Rail Safety Act of 1970 (P.L. 91-458). More recent safety laws enacted during the last 25 years, such as P.L. 96-423, P.L. 100-342, P.L. 102-365, and P.L. 103-440, have been designed to accomplish a variety of more specific objectives. For example, those statutes provided specific authorities to FRA that are intended to reduce drug and alcohol problems in the railroad industry, reduce the frequency of highway-rail grade crossing incidents, and strengthen the civil penalty process and increase penalty amounts authorized to be imposed on those individuals and companies that violate federal railroad safety regulations. A list of federal railroad safety laws may be found at [http://www.fra.dot.gov/counsel/regs/cfr_49_jan1998/index.htm]

The reauthorization process provides an opportunity to review FRA's safety programs and policies, and evaluate various options intended to further improve railroad safety. Enacting new law in the railroad safety arena is difficult, especially when a balance is sought among the sometimes conflicting interests of railroad safety, labor, and management. The cost and benefits of new regulations and FRA's programs affecting railroad operations also are major considerations.

Presented below is an overview of the scope and nature of FRA's current safety program, including a discussion of its regulatory development processes and the strategies used to promote safety. In addition, the safety record of railroad operations is analyzed. Those topics bear on the legislative issues pertaining to reauthorization, which are discussed in the last section of the issue brief.

Overview of the Scope and Nature of FRA's Safety Program

The national railroad system consists of more than 661 railroads (including about 9 major (Class I) carriers that control more than 90% of rail freight revenues), with over 265,000 employees, 1.2 million freight cars, 20,000 locomotives, 220,000 miles of track, and over 252,000 highway-rail grade crossings with 62,000 automated warning devices. The safety of that system affects millions of people who commute by rail each year, billions of dollars of commerce transported by railroads each year, millions of commuters who drive over highway-rail grade crossings each year, and millions of residents who live near railroad tracks used to transport hazardous materials. Safety is primarily the responsibility of the industry and its employees, as well as the motoring public, especially at highway-rail grade crossings. The FRA and state and local governments also are participants in the safety process.

The development of new or revised regulations, the assessment of the safety operations of railroads, and the promotion of compliance with the federal safety regulations form the core of FRA's safety program. FRA uses numerous strategies to implement those functions. For example, FRA issues the federal railroad safety regulations that prescribe a minimum or floor level of safety standards affecting various aspects of railroad operations. Those regulations include standards for track, signals, brake testing, operating equipment, engineer certification, and maintenance of highway-rail grade crossings. Some 422 FRA railroad safety personnel conduct audits or investigations of railroads, their personnel, and shippers offering hazardous materials for rail transportation, or conduct other safety-oriented activities. Federal inspectors check for compliance with the federal safety regulations, which include hazardous materials transportation regulations pertaining to railroad transportation. When deemed appropriate, FRA's safety personnel, working with their attorneys, issue civil penalties or pursue stronger actions that are imposed against railroads, hazardous materials shippers, or employees who are alleged not to be in compliance with the safety regulations. In addition to team and individual inspections, the agency conducts the Safety Assurance and Compliance Program, which is discussed below.

FRA's resources also help train about 150 state inspectors who submit reports of probable violations of the safety regulations to FRA. Those state inspectors also work jointly with federal personnel on various safety issues. Each year federal and state railroad inspectors are able to audit only a small part of the industry. Government safety personnel also provide technical and educational assistance, especially to small and historic (or tourist) railroads.

In P.L. 105-277, Congress appropriated $77.3 million in FY1999 to fund the activities of FRA's Office of Safety and administrative expenses of other associated offices within FRA. In the FY2000 budget, the Clinton Administration requested $95.462 million for those expenses. Most of those funds are used to pay for salaries as well as associated travel and training expenses for field and headquarters staff and for information systems monitoring the safety performance of the industry. P.L. 106-69 appropriated $94.288 million for FRA's FY2000 railroad safety program and related expenses. In its FY2001 budget submission, the Clinton Administration requested $103.2 million for these activities. P.L. 106-346 appropriated $101.7 million for these activities in FY 2001. P.L. 107-87 appropriated $110.9 million for these expenses in FY2002, rejecting the Bush Administration's request for user fees. For FY2003, the Administration proposed $122.9 million, and again requested user fees (which the Administration said would reduce the net request by about $45 million).

Regulatory Development and the Railroad Safety Advisory Committee

The Railroad Safety Act of 1970 and subsequent railroad safety laws have provided the legal basis for much of FRA's regulatory agenda. Over the last 30 years, and often in response to specific crashes involving railroads, Congress also has directed the FRA to issue specific regulations in various technical areas. In many of its rulemaking procedures conducted during the last two and one half years, FRA has made substantial use of the work of the Railroad Safety Advisory Committee (RSAC). That federal advisory committee helps FRA develop new regulatory standards through a collaborative, consensus-based process involving key segments of the railroad community. FRA either can choose to use, modify,

or reject the recommendations from RSAC as it formulates notices of proposed rulemakings.

The record of the RSAC shows numerous accomplishments in a regulatory arena where progress has often been difficult. (Two examples of final regulations that were expedited by RSAC deliberations include revisions of the track standards and radio communication regulations.) According to FRA, RSAC's collaborative approach of creating regulations established by a consensus of all involved parties yields rules that are more easily understood and consistently complied with than rules produced by using FRA's traditional, less consultative method. Prior to the implementation of the RSAC, FRA's rulemaking officials had to deal more often with one or more parties that either threatened to challenge a new regulation in court, or formally petitioned the FRA Administrator to reconsider the imposition of a final rule. The RSAC process has reduced that concern for FRA and, in general, is supported by both railroad labor and management.

Despite intensive work and prolonged debates, RSAC members sometimes cannot reach an agreement on some issues, e.g., the development of power brake regulations. In such cases, if the FRA decides to pursue a rulemaking using its conventional procedures, the agency has the option of using the analysis obtained and research conducted earlier as part of the RSAC deliberations.

The FRA issues each year many proposed safety regulations that often draw heavily from the RSAC work. And after receiving comments from interested parties, FRA issues final rules. An overview of FRA regulations, orders and notices may be found at: [http://www.fra.dot.gov/counsel/regs/index.htm]. Illustrative recent rules, proposed and finalized, are listed below.

Proposed Rule. 49 CFR Parts 209, 234, and 236 -- proposed in the *Federal Register* (v. 66, no. 155) on August 10, 2001 (p. 42352) – is a performance standard for processor-based signal and train control systems. The proposed rule also covers systems that interact with highway-rail grade crossing systems and specifies requirements for notification to FRA.

Final Rules. On August 1, 2001, the FRA published in the *Federal Register* (v. 66, no. 148, p. 39683) amendments to the final rule which revised the regulations governing braking systems and equipment used in freight and other non-passenger railroad train operations.

On August 9, 2001, the FRA published in the *Federal Register* (v. 66, no. 154, p. 41969) a final rule conforming its drug and alcohol testing regulation to the December 19, 2000, revision of DOT's transportation workplace testing procedures.

Compliance and Enforcement

Historically, FRA conducted audits of the operation and equipment of many railroads, sometimes found probable violations of the safety regulations, sometimes assessed penalties against those railroad companies, and on many occasions issued out-of-service orders for defective equipment. According to FRA, such team and individual inspector-based audits still comprise about 70% of the agency's inspection and enforcement program.

FRA now complements its traditional enforcement approach with a much broader strategy that seeks to promote overall railroad safety, improve labor/industry relationships affecting safety, and strengthen commitments to safety by all involved parties. FRA's new strategy, which began to evolve in 1993 and was first implemented in 1995, is embodied in the Safety Assurance and Compliance Program (SACP). As part of that process, FRA seeks to determine the root causes of system wide safety problems and eliminate those through a partnership effort involving railroad managers and employees who are directly affected by safety challenges. Under SACP, FRA serves as a catalyst to bring labor and management together to work collaboratively on safety issues.

A key component of the SACP is the "Safety Action Plan." In that document, each participating railroad describes steps it will take to correct systemic safety defects or areas of noncompliance with the federal railroad safety and hazardous materials transportation regulations. FRA claims that it works with the railroads to ensure that the plan is implemented. The topics dealt with by the SACP process and the action plan may extend considerably beyond compliance with the federal safety regulations. Depending on the safety challenges found at a particular railroad, FRA may work with labor and management to address such issues as: How can industry/labor relationships affecting safety be improved? How can the "corporate culture" affecting safety be improved? How can communications among labor organizations and senior management be improved? How can rail labor and management work together to solve a particular safety problem?

According to FRA, the ultimate goal of the railroad safety program is zero tolerance for any safety hazard in the industry. To reach that goal, FRA managers seek to direct their inspection and enforcement resources at the most critical safety problems. In some cases, the FRA has noted that some railroads have taken major steps and invested substantial sums to improve the safety of their operations and the compliance with the federal safety regulations. In some other cases, FRA found continuing problems of alleged non-compliance; and, consequently, FRA issued civil penalties and took other actions to promote compliance with the safety regulations and to address safety issues.

Some are critical of the FRA compliance and enforcement program. For example, at times some in rail labor complain that the vitality and vigor of the program needs to be increased. On the other hand, some in rail management complain that FRA's proposed civil penalties for alleged noncompliance with the safety regulations are too high. As is the case with each of the various modal administrations of the U.S. Department of Transportation, FRA faces the challenge of using a mix of appropriate strategies to promote safety and to improve compliance with its regulations.

Railroad Safety Statistics

The long-term safety record of the railroad industry is important to consider when evaluating various legislative alternatives regarding the future of the federal railroad safety program or the possible imposition of future regulatory requirements. Those opposing the mandating of various new safety regulations in a reauthorization bill often cite the steady and significant improvements in the long-term safety record of the industry, while proponents of legislation specifying new safety requirements cite opportunities to further improve the safety

record. The following discussion summarizes the overall safety record and focuses on statistics involving highway-rail grade crossing crashes.

The safety record of railroad operations, as measured using a variety of different criteria, continues to improve steadily. **Table 1** shows safety data for two recent time periods: between 1986 through 1993 (under FRA's more traditional approach of using primarily site-specific enforcement actions to promote compliance with the safety regulations), and from 1993 through 2000 (under the new SACP approach and the time period immediately leading towards the SACP).

Table 1. Safety Improvements

	1986	1993	Change from 1986 through 1993	1993	2000	Change from 1993 through 2000
Total Railroad Related Fatalities	1,091	1,279	17.23%	1,279	937	-26.7%
Crossing Fatalities [a]	616	626	1.62%	626	425	-32.1%
Trespasser Fatalities [b]	398	523	31.41%	523	463	-11.5%
EOD Casualties [c]	22,444	15,410	-31.3%	15,410	8,447	-45.2%
EOD Casualty Rate[d]	6.97	5.93	-14.9%	5.93	3.44	-42.0%
Train Accidents [e]	2,761	2,785	0.87%	2,785	3,193	14.65%
Excluding Highway-Rail Crossings	2,620	2,611	-0.34%	2,611	2,983	14.25%
Train Accident Rate	4.87	4.54	-6.83%	4.54	4.42	-2.62%
Excluding Highway-Rail Crossings	4.62	4.25	-7.95%	4.25	4.13	-2.96%

[a] Includes all trespasser and employee fatalities at highway-rail grade crossings.
[b] Does not include trespasser deaths at grade crossings.
[c] EOD = Employee on Duty. The casualties shown include both employee deaths (roughly 35 per year) and the rest as injuries, most of which are due to nontrain incidents.
[d] Rate = number of cases per 200,000 hours worked.
[e] A "train accident" involves a fatality resulting from a collision, derailment, fire, etc., that caused monetary damage to on-track equipment or to the track above a specified dollar threshold — in 2000 that threshold limit was $6,600. "Other incidents" involve any other situation that resulted in a death but did not result in railroad damage above the threshold limit. Those definitions are specified by FRA and are used throughout the industry.

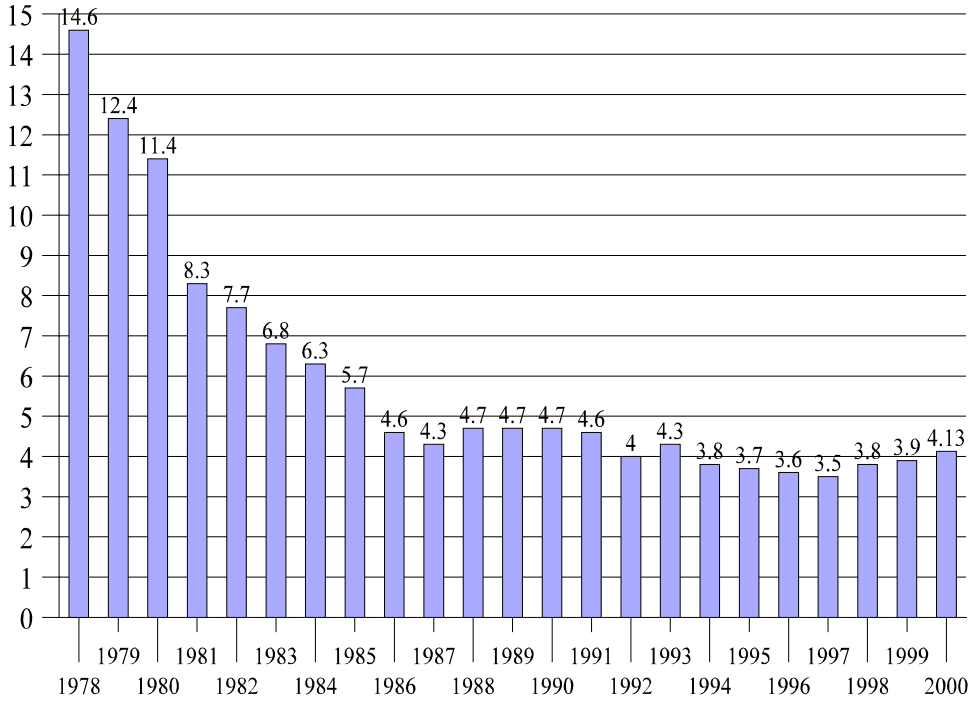
Source: Federal Railroad Administration.

The train accident rates (excluding crossings) from 1978 through 2000 are presented in **Figure 1** below.

FRA data indicate that the total number of fatalities at highway-rail grade crossings decreased from 488 during 1996, to 461 in 1997, to 431 in 1998, to 402 in 1999, but increased to 425 in 2000. Also, FRA data indicate that the number of trespasser fatalities in incidents that do not involve crossings went from 469 during 1996, to 529 in 1997, to 535 in 1998, and dropped to 463 in 2000. From 1997 to 2001, trespasser fatalities occurring in incidents not involving grade crossings outnumbered total grade crossing fatalities and were the largest single component of railroad-related fatalities. Grade crossing and trespasser incidents combined account for about 95% of the fatalities associated with railroad transportation in 2000. The FRA says that about 90% of the fatalities that occur at grade

crossings are the result of a driver failing to stop at a crossing or stopping and then proceeding in error.

Figure 1. Train Accident Rate*



* Train Accident Rate–Train Accidents Per Million Train Miles

Source: Federal Railroad Administration

In recent years (1996-2000), between 4-14 passenger deaths occurred each year on the nation's railroads. Historically, many passenger deaths have little, if anything, to do with actual railroad operations. For example, some fatalities occur when a passenger is getting on or off the train. Events external to railroad operations, such as a barge operator hitting a rail bridge and causing a train to derail or a truck driver violating the traffic signals at a crossing and causing a collision with a passenger train, sometimes have led to catastrophic disasters. During the last 10 years, several major train crashes, however, occurred involving passenger fatalities that were directly related to train operations.

Although there are variations in the safety record or the degree of regulatory compliance of an individual railroad from year to year, the long-term indicators document that improvements in railroad safety have already been made. FRA maintains that its preliminary data show that 2001 marked the all time safety records in a number of areas, e.g., the total number of rail-related accidents and incidents and the total accident/incident rate was the lowest ever recorded. Nevertheless, many in railroad labor continue to express concern over work conditions and shortages of skilled staff who often must assume greater responsibility for heavier and longer trains. Catastrophic events can occur at any time that will significantly change crash statistics, especially for the year of the event.

Key Reauthorization and Other Current Topics

Debate over the reauthorization of the federal railroad safety program generally includes two major considerations: the reauthorization of funding for continuation of the core FRA safety program (including RSAC, SACP, and the basic compliance and enforcement activities), and whether to provide FRA with any new authorities or mandates to issue new or revised safety regulations. Debate over the first consideration is generally not controversial. Debate over the second consideration has historically proven to be much more problematic because of the complexity of the issues and the diversity of perspectives help by railroad labor, management, and FRA. Some of the issues debated as part of the reauthorization process include: Should railroads be required to implement fatigue management plans? Should the hours of service regulations be extended to cover additional railroad workers? What should be done, if anything, to deal more effectively with alleged harassment and intimidation of railroad workers? What might be done to further reduce death and injury at highway-rail grade crossings?

Those issues were discussed during each of the last three Congresses. Brief background information and analysis on each issue is presented below, and other current topics also are considered.

Fatigue and Hours of Service

Fatigue due to excessive work hours or numerous shifts in working schedules may reduce the alertness, mental acuity, and judgement of operating employees. As the NTSB has noted, unpredictable work and rest cycles can adversely affect the performance of the duties of a train crew, and ultimately, the safety of railroad operations. To help deal with those challenges, labor and management on some railroads are working cooperatively to reduce fatigue and related job stress. AAR points out that the class I railroads and various unions have signed an agreement to establish joint work/rest committees to address various aspects of railroad operations affecting fatigue. On some railroads, employees, however, claim that they still face difficult conditions, such as working numerous concurrent 12-hour days without sufficient time off to rest and dealing with unpredictable work schedules.

There are numerous approaches that have been considered that might reduce fatigue and stress in the railroad environment. During hearings held in recent years, the legislative option that received significant attention was included in the Clinton Administration's reauthorization proposal. (Note– The Bush Administration has not yet submitted a railroad safety reauthorization proposal to Congress.) The Clinton Administration's proposal would have required specified railroads to develop programs to minimize the occurrence of fatigue-related crashes and to submit a fatigue management plan that addressed appropriate fatigue countermeasures, training on fatigue issues, screening for sleep disorders, and scheduling practices for railroad operations. FRA approval of the plans would have been required. In support of this proposal during testimony delivered on September 16, 1998, before the Subcommittee on Surface Transportation and Merchant Marine of the Senate Committee on Commerce, Science, and Transportation, the FRA Administrator indicated that about one-third of railroad accidents/incidents are caused by human factors and cited fatigue of operating employees as the most pervasive railroad safety issue. The FRA Administrator at the time (Jolene Molitoris) concluded that fatigue management was an essential element for

improving railroad safety. Some union representatives, such as the Brotherhood of Railroad Signalmen, favored the Clinton Administration's proposal regarding fatigue management.

Many in industry do not want mandated fatigue management plans that would have to meet specified requirements set by FRA. Those supporting that view assert that joint labor/management demonstration projects to reduce fatigue already are improving safety and advancing the current state of knowledge. Because those efforts are being pursued on a voluntary basis, they see no need for mandated federal requirements to deal with fatigue and work schedules. Given the complexity and detailed requirements of the Clinton Administration's proposal, some maintain that the proposed requirements for a fatigue management plan are too prescriptive and burdensome.

The Clinton Administration's 1998 safety proposal also sought to extend the coverage of the existing Hours of Service Act to some workers involved in railroad operations who are not currently covered and to clarify coverage in the case of employees working for two different railroads. When commenting on that proposal before a subcommittee of the House Committee on Transportation and Infrastructure on May 20, 1998, a spokesman for the Brotherhood of Railway Carmen (BRC) Division of the Transportation Communications International Union favored the concept of extending the coverage of the hours of service regulations and stated that the changes were long overdue. On the other hand, the Association of American Railroads (AAR) supported simply reauthorizing the basic FRA safety program without a change in the coverage of the Hours of Service Act and without the inclusion of new mandates for additional regulations.

The Clinton Administration's last reauthorization proposal, which was introduced by request as H.R. 2683 (of the 106th Congress) on August 3, 1999, was similar in many respects to the proposal considered by the 105th Congress. The 1999 proposal would have required specified freight railroads and passenger carriers to develop detailed fatigue management plans and submit those for FRA's review. The plans, which FRA proposed to monitor periodically, would have pertained to employees who are covered by the Hours of Service Act and employees who construct or maintain track. Similar to the proposal considered during the 105th Congress, the Clinton Administration's revised proposal sought to extend the coverage of the existing Hours of Service Act to some workers involved in railroad operations who are not currently covered and to clarify coverage in the case of employees working for two different railroads or a railroad and a railroad contractor.

Debate on reauthorization also has involved the issue of whether FRA should be authorized to set new hours of service requirements for railroad workers already covered by the Hours of Service Act. The maximum number of hours that those railroad employees can work and the minimum number of hours of off duty time required before those employees can return to work are specified in law. Consequently, the existing statutory requirements do not allow FRA to issue regulations revising the hours of service.

During the 105th and 106th Congresses, the Clinton Administration did not propose to provide FRA with the authority to issue new hours of service requirements. The Clinton Administration recognized that both rail labor and management historically have not favored that approach. Instead, the Clinton Administration proposed the amendments to the Hours of Service Act that are described above. In various congressional hearings, the NTSB has stated that it does not agree with the FRA position. The Safety Board maintains it is time to

reassess the appropriateness of the current Hours of Service Act because that Act does not accommodate increased commuting distances crews encounter in going from one job location to the next; the need to rest, eat, or attend to personal matters; or address the advances in our scientific understanding of human work/rest scheduling requirements.

On July 23, 2001, Rep. LaTourette introduced H.R. 2596 which would amend the Hours of Service Act to give train employees 72 consecutive hours of rest after being on duty or available for duty for seven consecutive days or any portion thereof.

On May 16, 2002, Representatives Oberstar and Filner introduced H.R. 4761, which would change the existing hours of service requirements affecting train employees, and also would affect the requirements pertaining to hours of service of signal and dispatching service employees, power directors, and transport vehicle drivers. The bill also specifies the requirements for sleeping quarters for employees, and requires specified railroad companies to develop and implement fatigue management plans. Commenting on the bill before the Railroad Subcommittee of the House Committee on Transportation and Infrastructure on June 6, 2002, Dr. Martin Moore-Ede, CEO of Circadian Technologies Inc., stated "...that current Hours of Service laws, or the proposed modifications, offer little hope for preventing fatigue, and furthermore they risk unduly restricting the business operations of the railroads and negatively impacting the lives of rail employees." He proposed that railroads employ a "Risk-Informed Performance-Based Fatigue Management" approach to setting employees' work schedules. On the other hand, many in rail labor are supportive of various proposed revisions of the hours of service rules as specified in H.R. 4761.

Alleged Harassment and Intimidation

Allegations regarding harassment and intimidation of some railroad workers continue to be an ongoing problem in some segments of the railroad industry. The Clinton Administration's 1998 reauthorization proposal included provisions that were designed to strengthen protection for railroad employees who report on-the-job injuries or illnesses, cooperate with FRA or NTSB safety investigations, or refuse to authorize the use of potentially hazardous equipment, track, or railroad-related structures under specified conditions. Many in railroad management opposed those provisions, arguing that existing law provides sufficient protection and that the railroads take many steps to reduce harassment and intimidation by their managers against employees. The Association of American Railroads points out that according to the Bureau of Labor Statistics, railroads have lower employee injury rates than do other transportation industries. In testimony before the House Committee on Transportation and Infrastructure, Subcommittee on Railroads on May 20, 1998, a representative of the American Short Line and Regional Railroad Association stated that the Clinton Administration's proposal:

> ... would greatly extend and expand the sanctions and penalties which are already in place to protect railroad employees from harassment and intimidation. The problem is that there has been no showing of a compelling need for such an extreme remedy. Also the potential legal and liability burden that would be imposed on our member railroad companies and their managerial employees is of grave concern.

The representative also objected to the section of this proposal bill that would have increased the penalties for railroads who discriminate against, suspend or discharge employees for

protected acts by eliminating the current $20,000 ceiling governing such cases and authorizing punitive damages in addition to compensatory damages in all cases.

In contrast, in testimony at the same hearing, a representative of the BRC supported the provisions of the proposal bill to strengthen legal protections against harassment and intimidation. He stated:

> While the statute's current anti-retaliatory language protects only operating employees who refuse to operate unsafe equipment, the proposed bill would expand such protection to include those inspection and repair employees who refuse to falsely certify the safety of track, locomotives, rolling stock or signal systems. This is a long overdue change that will help ensure that all safety-sensitive rail employees will feel free to place safety above a fear of being disciplined or otherwise harassed for doing what is, after all, their job.

Highway-Rail Grade Crossing Safety

About 4000 times each year a train and a highway vehicle collide at a highway/rail grade crossing. Safety at public crossings is primarily a responsibility of state and local transportation officials, railroads, law enforcement officers, and the motoring public. State transportation personnel seek careful engineering of roadways crossing track and appropriate pavement markings, signs and guardrails at crossings. Those infrastructure investments, however, require capital and often must compete with other funding priorities. Railroad personnel are required to maintain and check for proper function of signals at crossings. Adequate enforcement of state and local codes and regulations pertaining to traffic movements at crossings is recognized as an essential component of safety. Enforcement officers, however, often have many other priorities and responsibilities that limit the time that can be devoted to grade crossing safety. Another means intended to promote safety is to close a grade crossing. Since 1991, when FRA set a goal of closing 25% of the U.S. grade crossings by 2001, over 31,000 have been eliminated, which is a net reduction of 11%. Because elimination of crossings is frequently expensive, this approach is not always possible, and it often meets with opposition at the local level.

The FRA uses a multifaceted approach intended to improve highway-rail grade crossing safety. Among the key strategies used are: employing FRA field staff to help communities address grade crossing problems, working with law enforcement personnel to increase traffic safety at crossings, and sponsoring public education and outreach activities.

For several years now, FRA has allocated roughly $1 million annually to help support the activities of Operation Lifesaver, Inc., (OL), which is a nationwide, non-profit organization dedicated towards reducing deaths and injuries at highway-rail grade crossings and along railroad rights-of-way. For example, the FY2001 conference agreement which accompanied P.L. 106-346 increased Operation Lifesaver (OL) funding to $1,025,000 and provided $300,000 of that for a national public service campaign. In addition to the support received from FRA, OL receives $500,000 each year from the Federal Highway Trust Fund to help defray primarily the administrative costs of running OL. The states also allocate about $155 million of their federal highway trust fund monies each year to improve the infrastructure at crossings.

As part of the reauthorization process, numerous options to improve grade crossing safety have been considered. For example, H.R. 2450, introduced in the 106th Congress, included various provisions pertaining to emergency notification of operating problems at crossings. That bill would have required each railroad carrier to establish and maintain a toll-free telephone service to receive calls reporting malfunctions of signals and gates at highway-rail grade crossings over which it dispatches trains and disabled vehicles blocking railroad tracks at such crossings. Many railroads have already installed toll-free telephone lines to facilitate the reporting of malfunctioning grade crossings equipment, but those systems are not universal. Both 106th Congress measures, H.R. 2682 and S. 1559, would have required DOT to develop a model state law with penalties for violations of crossing signals, would have required states and railroads to submit current information to be used in the national grade crossing inventory that helps identify high risk crossings, and sought to expand toll-free systems for the notification of signal malfunctions or other safety problems at grade crossings. Other options intended to improve grade crossing safety that were discussed included: providing for a specific amount of funds for OL as part of the authorization for FRA's safety program, and specifying additional guidance or directives regarding the grade crossing activities of the FRA.

DOT reports that since 1991 there have been about 30% fewer fatalities at U.S. highway-rail grade crossings. Given the progress that has been made in reducing the number of deaths at grade crossings during the last 10 years, some have questioned whether there is a need for additional congressional action in this area. On the other hand, recent, high visibility crashes have strengthened the argument of those supporting additional efforts to improve safety at grade crossings.

Congress has expressed much interest in efforts by communities to ban the sounding of train horns at highway-rail grade crossings. FRA studies show that on average collision risk increases when a community bans the sounding of a train horn. Section 302 of the 1994 Swift Rail Development Act (P.L. 103-440) directs the Secretary of Transportation to prescribe regulations requiring that a locomotive horn must be sounded at public highway-rail grade crossings, except under specified circumstances. In the *Federal Register* on January 13, 2000, the FRA proposed new regulations to require, in general, that the horn on the lead locomotive be sounded in a specified manner when the train is approaching and passes through each public crossing. FRA proposes, however, that locomotive horns need not be sounded where there is little risk of danger, e.g., when trains operate at low speeds (no more than 15 mph) under specified conditions, or where a "quiet zone" has been established that provides for supplementary safety measures which fully compensate for the absence of the warning provided by the horn.

On July 18, 2000, the Subcommittee on Ground Transportation of the House Committee on Transportation and Infrastructure held a hearing to obtain information and views on the FRA rulemaking proceeding to implement the 1994 law. Some opponents of FRA's proposal have asserted that it would divert resources away from improvements at high risk crossings to fund noise abatement efforts, raise adverse "quality of life" impacts caused by the sounding of train horns, and require expensive infrastructure investments to meet FRA requirements to avoid the sounding of a train horn. Some view FRA's proposal as an inappropriate intrusion into local decision making, especially given efforts by communities to improve the safety of their crossings. The final rule has not yet been issued.

On February 6, 200l, Representative Dingell introduced H.R. 432, which would authorize a State or local government to regulate trains blocking grade crossings, if the Secretary of Transportation has not issued regulations to deal with this problem before August 1, 2002. Representative Dingell also introduced H.R. 433 on February 6, which directs the Secretary of Transportation to issue regulations regarding trains blocking grade crossings and to minimize delay for affected automobile traffic. On June 12, 2001, Senator Levin et al. introduced S. 1015, which would require the Secretary of Transportation to issue regulations to address safety concerns and to minimize delays for motorists at railroad grade crossings.

H.R. 4761 includes several provisions regarding grade crossing safety. One would require each railroad carrier to establish and maintain by January 1, 2004, a toll-free telephone service to receive calls reporting: a) malfunctions of signals and gates at highway-rail grade crossings over which it dispatches trains, and b) disabled vehicles blocking railroad tracks at such crossings. Many railroads have already installed toll-free telephone lines to facilitate the reporting of malfunctioning grade crossings equipment. H.R. 4761 would also require the Secretary of Transportation to develop model state legislation regarding violations of grade crossing signals.

The Administration's proposed "Federal Railroad Safety Improvement Act," submitted July 2002, seeks to improve the National Crossing Inventory, a database containing information on the location and physical characteristics of grade crossings. FRA wants to improve the quality of the information contained in the inventory, which can be used to help channel federal aid funds to the most hazardous crossings first. At present, reporting by both states and railroads is voluntary. The proposal seeks to require the railroads and the states to make initial reports to the inventory about previously unreported and new crossings and to provide periodic updates for all crossings.

Track Safety Standards

At a June 6, 2002 hearing before the railroad subcommittee of the House Transportation and Infrastructure Committee, FRA Administrator Alan Rutter stated that track-caused accidents have been increasing recently, and these became the leading accident cause in 2001. He asserted that possible reasons for this increase and the deterioration in track conditions may include reduced investment in infrastructure, reduced number of maintenance-of-way employees, insufficient training or monitoring of railroad track inspectors, increased traffic, increased axle loadings, and/or higher speeds. In contrast, the AAR points out that safety, in general, has improved for many reasons: huge investments in infrastructure and technology, comprehensive employee training, and cooperative relationships with various groups affecting safety. More specifically, AAR also states that many railroad have applied and are developing new technologies to improve track safety.

To help address this challenge, FRA obtained 12 additional track inspector positions in FY 2002, and is seeking 12 additional inspectors positions in the FY2003 request. In addition, FRA claims it has strengthened its enforcement program in this area. The National Transportation Safety Board notes that FRA's recently revised track standards did not require the use of advanced track inspection technology, such as track geometry cars. The Board asserts that data identified by such cars would enable a track inspector to more effectively identify track anomalies, monitor segments with potential defects, and monitor the results

of track work performed. NTSB also maintains that the FRA should do much more track inspecting, and consider the volume of hazardous materials shipments over the line in determining frequency and type of inspections.

Other Legislative Initiatives

The Rail Passenger Disaster Family Assistance Act of 2001 (H.R. 554), which was passed by the House on February 14, 2001, would require the Chairman of the National Transportation Safety Board (NTSB) to: designate a Board employee after a rail passenger accident involving major loss of life to act as a point of Federal contact for families of involved passengers and to serve as a liaison between the rail passenger carrier and the affected families; and, to designate an independent nonprofit organization to have primary responsibility for the emotional care and support of the affected families. The bill also directs each rail passenger carrier to submit to the Secretary of Transportation and the Chairman of the NTSB a plan for addressing the needs of the families of passengers involved in crashes involving a major loss of life. The bill also shields the rail passenger carrier from liability for damages (except for gross negligence or intentional misconduct) in any action in a federal or state court arising out of the carrier's performance in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to the required plan.

H.R. 4761 would affect safety standards for rail passenger equipment, signal systems on track used by passenger trains, and the fuel tanks of passenger service locomotives. Additionally, the act would require the implementation by September 30, 2005, of positive train control systems on high-priority rail lines to be identified by the Secretary of Transportation.

Maintain the Status Quo

There also is the option of reauthorizing funding for FRA's railroad safety program without providing any new mandates or authorities. Those favoring that approach maintain that additional mandates or authorities are not warranted or justified in view of the improving trend in railroad safety statistics. Railroad representatives also point out that their companies have been investing billions of dollars annually in infrastructure and safety programs. Indeed, the commitment of many in labor, management, and government to work together, as well as independently, has resulted in many safety improvements. Various safety measures taken by railroad management and labor under the SACP and the regulatory improvements recommended by the consensus-based RSAC and implemented by FRA have accelerated the momentum to improve safety.

On the other hand, simply reauthorizing funding for the existing FRA program without any new directions or guidance may not address some pressing safety challenges in a timely manner. In past reauthorization statutes, the Congress has required the issuance of specific safety regulations and set deadlines for regulatory action. FRA has now completed most of the congressionally mandated regulations and has made progress on those remaining.

LEGISLATION

S. 948 (Lott)/H.R. 2029 (Pickering)

Amends Title 23 of the U.S. Code to direct the Secretary of Transportation to carry out a grant program to provide financial assistance to states for up to 90 percent of the cost of local rail line relocation projects. S. 948 introduced May 24, 2001, read twice and referred respectively to Committee on Environment and Public Works. H.R. 2029 introduced May 25, 2001; referred to Committee on Transportation and Infrastructure.

S. 1015 (Levin et al.)

Directs the Secretary of Transportation to issue regulations to address safety concerns and to minimize delays for motorists at railroad grade crossings. S. 1015 introduced June 12, 2001, read twice and referred to the Committee on Commerce, Science, and Transportation.

S. 1220 (Breaux)

Amends federal rail transportation law by directing the Secretary of Transportation to establish a program of capital grants to Class II and Class III railroads to rehabilitate, preserve, or improve railroad track and related infrastructure. Also authorizes the Secretary to also make grants (to pay credit risk premiums, lower rates of interest, or provide for a holiday on principal payments) to supplement specified direct loans or loan guarantees. Introduced July 23, 2001; read twice and referred to Committee on Commerce, Science, and Transportation. Reported out (amended) favorably by the Committee on April 18, 2002. Placed on the Senate Legislative Calendar on August 1, 2002.

H.R. 432 (Dingell)

To authorize state and local governments to regulate, for public safety purposes, trains that block road traffic. Introduced February 6, 2001; referred to Committee on Transportation and Infrastructure.

H.R. 433 (Dingell)

To require the Secretary of Transportation to issue regulations addressing safety concerns by minimizing delay for automobile traffic at railroad grade crossings. Introduced February 6, 2001; referred to Committee on Transportation and Infrastructure.

H.R. 554 (Young)

To establish a program, coordinated by the National Transportation Safety Board, of assistance to families of passengers involved in rail passenger accidents. Introduced February 12, 2001; referred to Committee on Transportation and Infrastructure. Considered by the House under provisions of Rules Committee Resolution H.Res. 36. Passed House February 14, 2001, and sent to the Senate. Received in the Senate, read twice and referred to Committee on Commerce, Science, and Transportation.

H.R. 1020 (Quinn)

Amends federal rail transportation law by directing the Secretary of Transportation to establish a program of capital grants to Class II and Class III railroads to rehabilitate, preserve, or improve railroad track and related infrastructure. Also authorizes the Secretary to also make grants (to pay credit risk premiums, lower rates of interest, or provide for a holiday on principal payments) to supplement specified direct loans or loan guarantees.

Introduced March 14, 2001; referred to Committee on Transportation and Infrastructure. Marked up by the railroad subcommittee, amended, and returned for consideration by the full Committee May 9, 2001. Reported by the Committee on June 16, 2001, and placed on the Union Calendar.

H.R. 1942 (Peterson)

Amends federal transportation law to require the National Transportation Safety Board (NTSB) to investigate all railroad grade crossing accidents that result in a fatality or substantial property damage. Introduced May 22, 2001, referred to Committee on Transportation and Infrastructure, on May 23, 2001, referred to the Railroad Subcommittee.

H.R. 2596 (LaTourette)

Amends Title 49 U.S.C. §21103 to require that employees who have been on or available for duty for any portion of seven consecutive days be given 72 hours of rest time. Introduced July 23, 2001; referred to Committee on Transportation and Infrastructure, referred on July 24, 2001 to the Railroad Subcommittee.

H.R. 4761 (Oberstar and Filner)

Amends federal transportation laws to regarding the hours of service and fatigue management for railroad employees, safety investigations, grade crossing safety, passenger service safety standards, safety rulemaking and enforcement, and federal certification of railroad operating employees. Introduced May 16, 2002, referred to Committee on Transportation and Infrastructure, referred on May 17, 2002 to the Railroad Subcommittee.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress. House. Committee on Transportation and Infrastructure. Subcommittee on Railroads. *Reauthorization of the Federal Railroad Administration*. Hearings held March 26, 1998, April 1, 1998, April 29, 1998 and May 20, 1998. H.Rept. 105-62. 1269 p.

U.S. Congress. House. Committee of Conference. *Making Appropriations for the Department of Transportation And Related Agencies for the Fiscal Year Ending September 30, 2000, and for Other Purposes*. H.Rept. 106-355. 142 p.

U.S. Congress. House. Committee of Conference. *Making Appropriations for the Department of Transportation And Related Agencies for the Fiscal Year Ending September 30, 2001, and for Other Purposes*. H.Rept. 106-940. 189 p.

U.S. Congress. Senate. Committee on Appropriations. *DOT and Related Agencies Appropriations*, Fiscal Year 1999. S.Hrng. 105-851. 983 p.

U.S. Congress. House. Committee on Transportation and Infrastructure. Subcommittee on Railroads. *Reauthorization of the Federal Railroad Administration*. Hearing held June 6, 2002. [http://www.house.gov/transportation/rail/06-06-02/06-06-02memo.html]