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Federal Railroad Safety Program and Reauthorization Issues

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Federal Railroad Safety Program and Reauthorization Issues

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 380 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 and 106th Congresses, but no consensus was reached on a railroad safety reauthorization bill. 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, 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.

This issue brief discusses various rail safety issues that were considered during the 106th Congress and are likely to be relevant to the debate during the 107th Congress. Those pertain to 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

The 106th Congress considered several bills intended to improve railroad safety. On March 24, 1999, Senator Lott and three co-sponsors introduced S. 712, which would have allowed postal patrons to contribute funds to promote highway-rail grade crossing safety through the purchase of specially-issued U.S. postage stamps. On July 8, 1999, S. 712 was reported to the Senate and placed on its legislative calendar. On May 6, 1999, Senators Johnson and Daschle introduced S. 983 which would have required the Secretary of Transportation to issue regulations to provide for improvements in the conspicuity (or visibility) of rail cars. On July 1, 1999, Representative Oberstar introduced H.R. 2450, which included provisions to reduce employee fatigue, increase protection of railroad employees, and strengthen grade crossing safety. H.R. 2666, introduced by Representatives Shows and Lampson on July 20, 1999, dealt with similar issues. H.R. 3091, introduced by Representative LaTourette on October 18, 1999, also dealt with fatigue and off duty concerns. S. 1144, as reported to the Senate on January 7, 2000, would have required the Secretary to revise traffic signs at grade crossings. The Clinton Administration submitted a revised railroad safety reauthorization bill that was introduced by request as H.R. 2683 and S. 1496. The new proposal included several initiatives that were not in the Clinton Administration's previous bill that was submitted during the 105th Congress, and many provisions that are either similar or identical to those previously submitted to the 105th Congress. P. L. 106-346 appropriated $101.7 million for FRA's FY2001 railroad safety program and related expenses. (See "Appropriations for FY2001: Department of Transportation and Related Agencies," CRS Report RL30508.) On July 18, 2000, the Subcommittee on Ground Transportation of the House Committee on Transportation and Infrastructure held a hearing on FRA's rulemaking proceeding regarding a provision of the Swift Rail Development Act (P.L. 103-440) requiring audible warnings at public highway-rail grade crossings (49 U.S.C. 20153) under certain conditions.

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.

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.

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 700 railroads (including about 10 major carriers that control more than 90% of freight revenues), with over 265,000 employees, 1.2 million freight cars, 20,000 locomotives, and 220,000 miles of track. 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 380 FRA railroad safety personnel conduct audits or investigations of railroads, their personnel, and shippers offering hazardous materials for rail transportation. 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.

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. There are 48 members of the RSAC, including voting representatives from 27 organizations. Over time, more than 500 people have served on the various technical working groups and task forces of the advisory committee.

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.

RSAC has not yet issued recommendations on such key issues as reducing fatigue and stress in the railroad work environment, improving the hours of service for railroad workers, and dealing effectively with harassment and intimidation in the railroad environment. Because of the controversial nature and complexity of those issues, it remains uncertain whether RSAC will be able to offer consensus-based recommendations to address those challenges.

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. During the last few years, FRA has launched extensive safety program reviews of all of the Class I (major railroads) and of more than 35 smaller railroads as part of SACP. 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. Although the SACP is a factor helping to improve railroad safety, it is not possible, for reasons discussed in the next section, to conclude that SACP is the major contributor to recent improvements in the overall trend in safety.

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.

In 1998 the U.S. DOT's Office of the Inspector General (IG) completed a review (Report TR-1998-210) of the SACP process and found that:

> ...the SACP process is not as comprehensive as it needs to be to achieve the desired results. FRA can strengthen its SACP by making improvements in the following areas: (i) defining SACP policies and procedures more clearly, (ii) developing better railroad safety profiles, (iii) identifying systemic safety issues in safety action plans, and (iv) monitoring and enforcing railroad compliance with safety action plans.

FRA agreed with the IG's recommendations and the agency is proceeding to institute a variety of changes to strengthen the SACP.

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 1987 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 1999 (under the new SACP approach and the time period immediately leading towards the SACP). During the years 1993 through 1999, FRA reports that there has been a 27.1% decrease in total railroad-related fatalities, a 43.8% drop in on-the-job casualties, and a 9.5% decline in the train accidents rates including grade crossing crashes.

Table 1. Safety Improvements

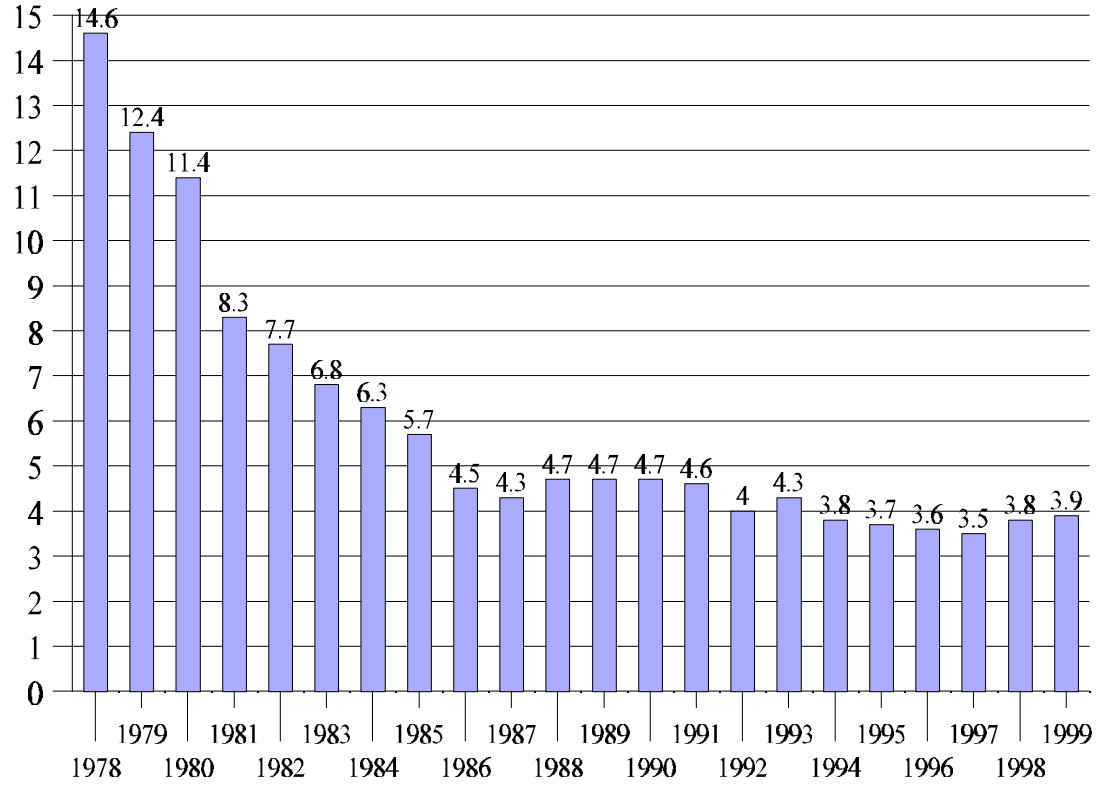
	1987	1993	Change from 1987 through 1993	1993	1999	Change from 1993 through 1999
Total Railroad Related Fatalities	1,165	1279	9.79%	1,279	932	-27.1%
Crossing Fatalities [a]	624	626	0.32%	626	402	-35.8%
Trespasser Fatalities [b]	453	523	15.45%	523	479	-8.41%
EOD Casualties [c]	22,037	15,410	-30.1%	15,410	8,653	-43.8%
EOD Casualty Rate[d]	7.12	5.93	-16.7%	593	3.39	-42.8%
Train Accidents [e]	2,647	2,785	5.21%	2,785	2,924	4.99%
Excluding Highway-Rail Crossings	2,512	2,611	3.94%	2,611	2,768	6.01%
Train Accident Rate	4.55	4.54	-0.38%	4.54	4.10	-9.52%
Excluding Highway-Rail Crossings	4.32	4.25	-1.59%	4.25	3.89	-8.64%

[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 1999 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 1999 are presented in **Figure 1** below.

Figure 1. Train Accident Rate*



* Train Accident Rate–Train Accidents Per Million Train Miles

Source: Federal Railroad Administration

FRA data indicate that the total number of fatalities at highway-rail grade crossings has decreased from 488 during 1996, to 461 in 1997, to 431 in 1998, and to 402 in 1999. 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 478 in 1999. During 1997, 1998 and 1999, 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 1999. 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.

In recent years (1996-1999), between 6-14 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. That trend may continue if industry and labor continue to invest in railroad safety and to increase compliance with the federal railroad safety regulations. On the other hand, catastrophic events such can occur at any time.

Key Legislative Issues

Debate over the reauthorization of the federal railroad safety program generally includes two major considerations: whether to authorize 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 pertaining to the issuance of new regulations or the conduct of its safety activities. 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 frequently offered by railroad labor, management, and FRA.

Some of the issues debated as part of the reauthorization process included: 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? Should FRA's current safety program simply be reauthorized without any new authorities or regulatory mandates?

Those issues were discussed during the 105th Congress and again during the 106th Congress, and are likely to be relevant to the debate during the 107th Congress. Brief background information and analysis on each issue is presented below.

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. 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 the most attention was included in the Clinton Administration's reauthorization proposal. That 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 Federal Railroad 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 Administrator 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.

Several concerns regarding the Clinton Administration's proposal were raised during various hearings held in the 105th Congress. 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 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.

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 proposal included provisions that were designed to strengthen protection for railroad employees who report on-the-job injuries or illnesses, cooperate with safety investigations conducted by the FRA or the NTSB, 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. For example, 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 the Clinton Administration's 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 Clinton Administration's 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.

With respect to the challenge of dealing with alleged harassment and intimidation, the Clinton Administration's revised reauthorization proposal, as introduced in the 106th Congress contained many similar (or identical) approaches to those included in the 1998 reauthorization

bill. For example, like the 1998 bill, the revised proposal was intended to expand the scope of protected activities, such as a car inspector reporting to a railroad carrier a potential danger to other railroad employees, and strengthen the remedies available to railroad employees who report certain injuries or cooperate with crash investigators. Similar to the proposal of the 105th Congress, the Clinton Administration wanted to strengthen relief available to employees who suffer suspension, discharge, or another form of discrimination for certain protected activities. Under current law, FRA maintains that if the violation of protected activities does not involve pay, the employee may be granted reasonable damages, including punitive damages up to $20,000. H.R. 2683, of the 106th Congress, proposed to allow the possibility of receiving punitive damages in all cases, including those involving pay, and to improve the relief available by increasing the ceiling on punitive damages from $20,000 to $100,000. In its 1998 proposal, the Clinton Administration sought to eliminate the cap on all money damages for discrimination not affecting pay.

There are alternatives to the Clinton Administration's proposal. For example, H.R. 2666, of the 106th Congress, would have provided the Secretary of Transportation with the authority to issue an order that would exclude from employment certain supervisors which had harassed or intimidated a railroad employee with the intent of discouraging that employee from reporting an accident or injury or practices that violate the safety regulations, or "... who has demonstrated personal dishonesty or willful or continuing disregard for railroad safety or the integrity or accuracy of railroad safety reporting requirements..."

Highway-Rail Grade Crossing Safety

About 4000 times per 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.

Many Members continue to be concerned about the scope and nature of FRA's highway-rail grade crossing activities. Questions include: Are FRA grade crossing activities adequate and effective? How is FRA helping the states to deal with this safety challenge? Is FRA's budget adequate to deal with that challenge? What additional measures could be taken by FRA to improve safety at those crossings?

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 many years,

FRA has allocated several hundred thousand dollars 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. In the 1994 rail safety statute (P.L. 103-440), Congress authorized specific amounts of monies from FRA's funds to help support the activities of OL. For example, that law authorized $750,000 for FY1997 OL activities. Most of the funds provided by FRA to OL are used to provide grants to state OL organizations to further their campaigns and activities. Specific statutory authority for FRA to fund OL has now expired. The conference reports accompanying the FY1998 and the FY1999 DOT appropriations acts directed the FRA to allocate $600,000 each year to support OL activities. The FY2000 conference agreement accompanying P.L. 106-69 increased funding for OL to $950,000 and provided support for a national public service campaign to increase awareness to crossing safety and trespass prevention. The FY2001 conference agreement which accompanied P.L. 106-346 increased Operation Lifesaver funding to $1,025,000 and provided $300,000 of that for the 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 a minimum of about $145 million of 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. In addition, the bill would have required the Secretary to develop model state legislation providing for civil or criminal penalties, or both, for violations of grade crossing signals. 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.

On March 24, 1999, Senator Lott and three co-sponsors introduced S. 712, which would have allowed postal patrons to contribute funds to promote highway-rail grade crossing safety through the purchase of specially issued U.S. postage stamps. Net funds from those purchases would have been used to support OL activities. When introducing the bill, Senator Lott stated:

> To save lives now, we must intensify our efforts to educate our citizens on the hazards of, and proper method for, crossing a railroad track. The `Look, Listen, and Live Stamp Act' would promote this worthy cause in two ways. First, the stamp itself, and its display in post offices throughout America, would serve as a reminder to all to treat the crossing of a

railroad track as a life or death situation. Second, it would provide an additional source of revenue to the Department of Transportation to fund Operation Lifesaver programs.

DOT and the railroad industry support this measure. Some, however, do not favor the use of net postal fees for such purposes.

S. 1144, which was reported to the Senate on January 7, 2000, would have required the Secretary to initiate a rulemaking to revise the *Manual on Uniform Traffic Control Devices* to require that any sign for a railroad- highway grade crossing without a gate and automatic protection device must: indicate that any driver must check the tracks for oncoming trains before crossing at the grade crossing; and be distinguishable from a sign for a railroad highway grade crossing with a gate and automatic protection device.

DOT reports that since 1993 there have been about 36% 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 25 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. Although it notes some uncertainties, FRA asserts that the estimated (preliminary) benefits of implementing this proposed rule exceed the estimated costs over a 20 year period at a 7% discount rate.

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. On July 27, 2000, Representative Lipinski introduced H.R. 5059, which would delay the effective date of implementation of the proposed regulations for 10 years.

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 in support of such an approach argue that additional mandates or authorities are not warranted or justified in view of the improving trend in railroad safety statistics, particularly during the last 10 years. Industry representatives also point out that the railroads have been making billions of dollars of investments annually in their 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 achieved by the consensus-based RSAC 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

P.L. 106-69

To appropriate funds for the Department of Transportation and related agencies for the fiscal year ending September 30, 2000, and for other purposes. Introduced on May 27, 1999, and reported out of Appropriations Committee on May 27, 1999. Appended to H.R. 2084 as Senate Amendment SP1624, September 14, 1999. Passed Senate September 16, 1999; conference report passed by House and Senate October 4, 1999, signed into law October 9, 1999 (P.L. 106-69).

P.L. 106-346

To appropriate funds for the Department of Transportation and related agencies for the fiscal year ending September 30, 2001, and for other purposes. An original measure reported out of Appropriations Committee on May 17, 2000. Passed House May 19, 2000. Proposed as amendment S.A. 3426 June 14, 2000. Passed Senate June15, 2000; conference report passed by House and Senate October 6, 2000, signed into law October 23, 2000 (P.L. 106-).

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.

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FOR ADDITIONAL READING

Association of American Railroads. *The Engine That Drives America. Railroad Issues in the 105th Congress*, January 1998.

Federal Railroad Administration. *Enhancing Rail Safety Now and into the 21st Century: The Federal Railroad Administration's Safety Programs and Initiatives — A Report to Congress*. October 1996. 54 p.

U.S. Department of Transportation. Office of Inspector General. *Safety Assurance and Compliance Program: Federal Railroad Administration*, September 30, 1998. 23 p.

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