



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

FEB 12 2007

The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
Washington, DC 20515

Dear Madam Speaker:

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

"Federal Railroad Safety Accountability and Improvement Act."

Pursuant to the U. S. Department of Transportation's strategic plan and in concert with participating State rail safety agencies, the Federal Railroad Administration (FRA) and its more than 800 employees help to promote the safety of railroad operations in our Nation through various efforts, including the regulation and inspection of more than 190,000 miles of track, a million cars and locomotives, and 60,000 automated warning devices at more than 240,000 highway-rail grade crossings. The accompanying legislation would reauthorize this important safety mission for four years. The bill also proposes a number of other measures that would significantly advance rail safety, primarily by fostering railroads' accountability for their safety performance, by reducing the fatigue of safety-critical workers, and by preventing collisions at highway-rail crossings.

In order to enhance the accountability of railroads for their own safety, the bill would authorize appropriations for the addition of a safety risk reduction program to FRA's current safety activities. Since rail-related accidents, injuries, and deaths are already at low levels, FRA needs to supplement its traditional behavior-based and design-specification-based regulations with a robust safety risk reduction program to drive down those key measures of risk at a reasonable cost. In the safety context, a risk reduction program is intended to make sure that the systems by which railroads operate and maintain their properties are adequate to meet safety objectives. This approach focuses on both entire systems and management-level decisions and improves these systems by eliminating or minimizing processes that cause, or tend to allow, employees to make mistakes that lead to accidents, injuries, or deaths. To implement this new program, FRA will need to acquire new skills and adapt to new ways of thinking. To encourage railroads to prepare safety risk analyses pursuant to the program that are thorough and in-depth, a companion provision would generally prohibit these analyses from being released under the Freedom of Information Act or to private litigants in civil litigation for damages.

To help improve the alertness of railroad operating personnel, the bill would permit FRA, as the Secretary's delegate, to replace the hours of service laws (49 U.S.C. chapter 211) with scientifically based regulations, after first seeking consensus recommendations from the

agency's Railroad Safety Advisory Committee. The hours of service laws, first enacted in 1907 and currently delegated to FRA to administer, contain no substantive rulemaking authority over duty hours. FRA's lack of regulatory authority over duty hours, unique to FRA among all the safety regulatory agencies in the Department, precludes FRA from making use of almost a century of scientific learning on the issue of sleep-wake cycles and fatigue-induced performance failures. FRA's general safety rulemaking power under chapter 201 of title 49 would provide ample authority to deal with the entire subject of maximum work periods and minimum rest periods in light of current research on those subjects; however, the hours of service laws effectively bar such a rational regulatory initiative because the chapter 201 authority may be used only to supplement the pre-1970 railroad safety statutes, not to supplant them. Where the hours of service laws set a rigid requirement, e.g., maximum on-duty and minimum off-duty periods for train crews, a regulation could not lawfully vary from them. FRA would refrain from adopting new requirements relating to fatigue if the agency determines that voluntary activities are adequately addressing topics of concern, and the agency would be authorized to allow a railroad to comply with an approved fatigue management plan as an alternative to compliance with the usual regulatory regimen. The regulations would be subject to review under the Congressional Review Act (5 U.S.C. 801) as the sole and exclusive means of review.

In addition to taking important steps to combat operating employee fatigue, the bill seeks to prevent highway-rail grade crossing collisions, which cause more than a third of all rail-related deaths each year. To make crossings safer, the bill proposes a measure that would improve the Department's National Crossing Inventory (Inventory), a large computerized database containing vital safety information on the identification, location, physical characteristics, and other salient features of at-grade and grade-separated highway-rail crossings nationwide. Currently, reporting to the Inventory by both States and railroads is voluntary; some information is missing, and some is very outdated. The bill would require initial reports on unreported crossings and periodic updates on all crossings, so that each crossing can be accurately ranked according to its risk. These improved rankings will assist States in identifying which of the crossings are the most hazardous and in channeling Federal safety improvement funds to the most hazardous crossings first and will help the Department and the transportation research community to identify the most promising strategies for further reducing casualties at crossings.

In summary, enactment of the Federal Railroad Safety Accountability and Improvement Act would promote safety in three main ways: by allowing FRA to launch a safety risk reduction program that will make railroads more accountable for their safety performance; by reducing the fatigue of safety-critical employees; and by getting FRA vital, up-to-date data on all highway-rail crossings.

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The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this legislative proposal for the consideration of Congress, and that its enactment would be in accord with the program of the President. If I can provide further information or assistance, please feel free to call me.

Sincerely yours,

A handwritten signature in black ink that reads "Mary E. Peters". The signature is written in a cursive, flowing style.

Mary E. Peters

Enclosures