THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

August 23, 2002

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

Dear Mr. Speaker:

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

"Amendments to the Rail and Mass Transportation Anti-Terrorism Statutes."

Consistent with the U.S. Department of Transportation's mission to advance the safety and security of our Nation's railroads and mass transportation systems, including the protection of individuals on the property of such systems, the Department proposes to strengthen the criminal laws related to terrorist attacks and other violence against these transportation systems.

Congress recently enacted anti-terrorism legislation (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56). Among other things, the USA PATRIOT ACT establishes criminal sanctions against terrorist attacks on mass transportation systems (18 U.S.C. 1993), and added a conspiracy provision to the existing "wrecking trains" statute (18 U.S.C. 1992). The proposed amendments would consolidate sections 1992 and 1993 into a new section 1992 (with the existing section 1993 being repealed) to accomplish the following major objectives, which are described in more detail in the section-by-section analysis of the bill.

First, the bill would extend to railroads the same protections against terrorist acts recently enacted for mass transportation systems by section 801 of the USA PATRIOT ACT. The wrecking trains statute was enacted in 1948, and was slightly updated in 1994, 1995, and in 2001 in section 811(e) of the USA PATRIOT ACT, but it does not include many of the acts of terrorism prohibited by the new mass transportation anti-terrorism statute, nor is the scope of the wrecking trains statute as broad as that of the new statute. The bill would make these additional acts of terrorism applicable to railroads. In addition, the following features of the mass-transportation anti-terrorism statute would be made applicable to persons who commit prohibited acts against railroad carriers: (a) persons who travel, communicate, or transport materials across State lines in aid of the commission of the enumerated acts would be covered; and (b) generally,

the *mens rea* standard in the mass-transportation anti-terrorism statute (that the actor willfully commit one of the enumerated prohibited acts) would be used in place of the mental element of intent to derail, disable, or wreck a train, currently required under existing section 1992. These two changes will make it easier to prosecute any of the prohibited acts.

Second, the bill would update and slightly expand the existing language dealing with acts of violence against railroad carriers. For example, more expansive language taken from other Federal criminal statutes would be used (e.g., replacing the term "explosive substance" with "destructive substance"), and additional types of railroad property and equipment would be protected (e.g., electromagnetic guideways, locomotive tenders, and on-track equipment).

Third, the bill would (a) extend to mass transportation systems a similar provision in the existing wrecking trains statute that makes it a crime to undermine or make unworkable or unusable or hazardous to work or use railroad infrastructure, e.g., terminals, and (b) add "track" and "electromagnetic guideways" to the list of types of mass transportation infrastructure protected.

Fourth, the bill would make it a crime to cause "the release of a hazardous material or a biological agent or toxin for use as a weapon on the property of a mass transportation provider or railroad carrier, with the intent to endanger the safety of any person or with a reckless disregard for the safety of human life."

Fifth, the bill would clarify that new section 1992 would not apply to actions involving a "destructive substance" or "destructive device" that is also classified as a hazardous material in commerce, if the action meets one of two standards. The first standard is that the action complies with chapter 51 of Title 49 and U.S. Department of Transportation regulations, exemptions, approvals, and orders issued under that chapter. The second standard is that the action constitutes a violation of chapter 51 of Title 49, or a regulation or order issued under that chapter, but is not a criminal violation of that chapter, regulation, or order.

Sixth, the bill would make it an "aggravated offense" to undertake the prohibited terrorist acts in the case of a railroad train or mass transportation vehicle or ferry carrying high-level radioactive waste, spent nuclear fuel, or a hazardous material that is listed in table 1 of section 172.504 of Title 49, Code of Federal Regulations, or offenses that have resulted in the death of any person. The penalty could include a fine, imprisonment for a term of years or life, or both. In addition, the following enhanced penalties from the existing wrecking trains statute would apply to: (a) offenses involving railroad equipment moving high-level radioactive waste or spent nuclear fuel would carry a term of imprisonment of not less than 30 years, and (b) offenses involving railroads that result in death would also carry the possibility of a death sentence; similar penalty provisions were not contained in the mass transportation anti-terrorism statute.

Seventh, definitions from section 1993 would be transferred to new section 1992 and slightly modified to reflect the inclusion of railroads, and terrorist acts involving radioactive material and spent nuclear fuel. The definition of "dangerous weapons" would be updated to cover "box cutters" and other recent developments. The definition of "mass transportation" would be modified and solely for the purpose of section 1992, would be limited to surface transportation (including, but not limited to subway, other rail rapid transit, and bus) and ferry boats that provide regular and continuing general or special transportation in the United States. Currently section 1993 incorporates the definition of "mass transportation" used in mass transportation legislation (49 U.S.C. 5302(a)(7)), but then provides for several exceptions to that definition. In essence, section 1993 currently covers transportation by a conveyance that provides regular and continuing general or special transportation to the public, including school bus, charter, and sightseeing transportation. It is possible to read section 1993 as covering aircraft and maritime navigation, but covering these modes of transportation in the new section 1992 is not necessary as these modes of transportation are comprehensively covered by other Federal criminal statutes, as outlined in the section-by-section analysis of the bill. The approach of the bill is to reflect what we think Congress originally intended. The Department is aware that S. 2621 would define a mass transportation vehicle under section 1993 as including, e.g., a commercial airplane, and has no objection to that approach.

Railroads and mass transportation systems pose attractive targets for terrorist attacks because of the large concentration of people, the closed environment, the difficulty of securing such extensive systems, the easy escape routes, and the fact that attacks can be highly disruptive to the economy. The need for strong criminal legislation to deter terrorist attacks and other violence against these transportation systems is highlighted by two recent incidents: (1) the October 2001 wreck of a Greyhound bus, caused by a passenger slitting the driver's throat, which resulted in ten passengers being killed; and (2) the August 26, 2000 derailment of a Dakota, Minnesota and Eastern Railroad freight train, caused by the vandalizing of a switch, which resulted in the conductor being killed and the engineer being seriously injured. Enactment of new section 1992 should help deter acts of violence against railroads and mass transportation systems, and ensure that those acts that do occur are appropriately punished.

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 contact me.

Sincerely yours,

Norman Y. Mineta

Enclosures

# A BILL

To amend 18 U.S.C. 1992, the "wrecking trains" statute, and 18 U.S.C. 1993.

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

## SECTION 1. SHORT TITLE.

This Act may be cited as "Amendments to the Rail and Mass Transportation Anti-Terrorism Statutes".

## SEC. 2. ATTACKS AGAINST RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS.

(a) IN GENERAL.–Chapter 97 of Title 18, United States Code, is amended by striking sections 1992 and 1993 and inserting the following:

**"Sec. 1992. Terrorist attacks and other acts of violence against railroad carriers and mass transportation systems**

"(a) GENERAL PROHIBITIONS.--Whoever willfully–

"(1) wrecks, derails, sets fire to, or disables a mass transportation vehicle or ferry, or a train, locomotive, tender, motor unit, freight or passenger car, or other on-track vehicle used, operated, or employed by a railroad carrier;

"(2) places or causes to be placed any biological agent or toxin, destructive substance, or destructive device in, upon, or near a mass transportation vehicle or ferry, or a train, locomotive, tender, motor unit, freight or passenger car, or other on-track vehicle used, operated, or employed by a railroad carrier, without previously obtaining the permission of the mass transportation provider or railroad carrier, and with intent to endanger the safety of any passenger or employee of such a provider or carrier, or with a reckless disregard for the safety of human life;

"(3) sets fire to, undermines, makes unworkable, unusable, or hazardous to work on or use, or places or causes to be placed any biological agent or toxin, destructive substance, or destructive device in, upon, or near any–

"(A) garage, terminal, structure, track, electromagnetic guideway, supply, or facility used in the operation of, or in support of the operation of, a mass transportation vehicle or ferry, without previously obtaining the permission of the mass transportation provider, and with intent to, or knowing or having reason to know such

activity would likely, derail, disable, or wreck a mass transportation vehicle or ferry used, operated, or employed by a mass transportation provider; or

"(B) tunnel, bridge, viaduct, trestle, track, electromagnetic guideway, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of, or in support of the operation of, a railroad carrier, without previously obtaining the permission of the railroad carrier, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck a train, locomotive, tender, motor unit, freight or passenger car, or other on-track vehicle used, operated, or employed by a railroad carrier;

"(4) removes an appurtenance from, damages, or otherwise impairs the operation of a mass transportation signal or dispatching system or railroad signal system, including a train control system, centralized dispatching system, or highway railroad grade crossing warning signal, without authorization from the mass transportation provider or railroad carrier;

"(5) interferes with, disables, or incapacitates any dispatcher, driver, captain, locomotive engineer, railroad conductor, or other person while the person is employed in dispatching, operating, or maintaining a mass transportation vehicle or ferry, or a train, locomotive, tender, motor unit, freight or passenger car, or other on-track vehicle, with intent to endanger the safety of any passenger or employee of a mass transportation provider or railroad carrier, or with a reckless disregard for the safety of human life;

"(6) commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to an employee or passenger of a mass transportation provider or railroad carrier, or any other person while any of the foregoing is on the property of a mass transportation provider or railroad carrier;

"(7) conveys or causes to be conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this subsection;

"(8) causes the release of a hazardous material or a biological agent or toxin on the property of a mass transportation provider or railroad carrier, with the intent to endanger the safety of any person or with a reckless disregard for the safety of human life; or

"(9) attempts or threatens to do any of the aforesaid acts,

"shall be fined under this title or imprisoned not more than 20 years, or both, if the act is committed, or, in the case of an attempt or threat to do an act enumerated in paragraphs (1) through (8) of this subsection, it would be committed, on, against, or affecting a mass transportation provider or railroad carrier engaged in or affecting interstate or foreign commerce, or if that person travels or communicates across a State line in order to commit an act enumerated in paragraphs (1) through (9) of this subsection, or transports materials across a State line in aid of the commission of an act enumerated in paragraphs (1) through (9) of this subsection.

"(b) AGGRAVATED OFFENSE.--Whoever commits an offense under subsection (a) in a circumstance in which–

"(1) the mass transportation vehicle or ferry, or train, locomotive, tender, motor unit, freight or passenger car, or other on-track vehicle, was carrying a passenger at the time of the offense;

"(2) the mass transportation vehicle or ferry was carrying high-level radioactive waste or spent nuclear fuel at the time of the offense;

"(3) the train, locomotive, tender, motor unit, freight or passenger car, or other on-track vehicle was carrying high-level radioactive waste or spent nuclear fuel at the time of the offense;

"(4) the mass transportation vehicle or ferry, or train, locomotive, tender, motor unit, freight or passenger car, or other on-track vehicle, was carrying a hazardous material listed in Table 1 of section 172.504 of Title 49, Code of Federal Regulations, at the time of the offense;

"(5) the offense has resulted in the death of any person, in the case of an offense involving a mass transportation vehicle or ferry; or

"(6) the offense has resulted in the death of any person, in the case of an offense involving a train, locomotive, tender, motor unit, freight or passenger case, or other on-track vehicle,

shall be guilty of an aggravated form of the offense and shall be fined under this title or imprisoned for any term of years or life, or both, and, in the case of a violation described in paragraph (3), the term of imprisonment shall be not less than 30 years, and shall also be subject to a maximum penalty of death in the case of a circumstance described in paragraph (6).

"(c) CONSPIRACY.--A person who conspires to commit any offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.

"(d) NONAPPLICABILITY.–Provisions of subsections (a) and (c) of this section do not apply to the act of an entity with respect to a destructive substance or destructive device that is also classified as a hazardous material in commerce if the act–

"(1) complies with chapter 51 of Title 49 and regulations, exemptions, approvals, and orders issued under that chapter, or

"(2) constitutes a violation of chapter 51 of Title 49 or a regulation or order issued under that chapter, but not a criminal violation of that chapter, regulation, or order.

"(e) DEFINITIONS.--In this section–

"(1) the term 'biological agent' has the meaning given to that term in section 178(1) of this title;

"(2) the term 'dangerous weapon' means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, including a pocket knife with a blade of less than 2_ inches in length and a box cutter;

"(3) the term 'destructive device' has the meaning given to that term in section 921(a)(4) of this title;

"(4) the term 'destructive substance' means an explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or material, or matter of a combustible, contaminative, corrosive, or explosive nature, except that the term 'radioactive device' does not include any radioactive device or material used solely for medical, industrial, research, or other peaceful purposes;

"(5) the term 'hazardous material' has the meaning given to that term in chapter 51 of Title 49;

"(6) the term 'high-level radioactive waste' has the meaning given to that term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

"(7) and solely for the purpose of this section, the term 'mass transportation' means

transportation by a conveyance that provides (A) regular and continuing general or special surface transportation to the public in the United States including, but not limited to, transportation by subway or other rail rapid transit, and by bus, and (B) regular and continuing general or special transportation to the public in the United States by ferry boat;

"(8) the term 'on-track vehicle' means a vehicle that runs on rails or electromagnetic guideways;

"(9) the term 'railroad' has the meaning given to that term in chapter 201 of Title 49;

"(10) the term 'railroad carrier' has the meaning given to that term in chapter 221 of Title 49;

"(11) the term 'serious bodily injury' has the meaning given to that term in section 1365 of this title;

"(12) the term 'spent nuclear fuel' has the meaning given to that term in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23));

"(13) the term 'State' has the meaning given to that term in section 2266 of this title; and

"(14) the term 'toxin' has the meaning given to that term in section 178(2) of this title.".

(b) CONFORMING AMENDMENTS.–(1) The chapter analysis for chapter 97 of Title 18, United States Code, is amended–

(A) by striking "RAILROADS" in the chapter heading and inserting "RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS";

(B) by striking the items relating to sections 1992 and 1993; and

(C) by inserting after the item relating to section 1991 the following:

"1992. Terrorist attacks and other acts of violence against railroad carriers and mass transportation systems.".

(2) The chapter analysis for part I of Title 18, United States Code, is amended by striking the item relating to chapter 97 and inserting the following:

"97. Railroad carriers and mass transportation systems. . . . . .1991".

(3) The following sections of title 18, United States Code, are amended as follows:

(A) section 2332b(g)(5)(B)(i) is amended by striking "1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence against mass transportation systems)," and inserting "1992 (relating to terrorist attacks and other acts of violence

against railroad carriers and mass transportation systems),";

(B) section 2339A is amended by striking "1993,"; and

(C) section 2516(1)(c) is amended by striking "1992 (relating to wrecking trains)," and inserting "1992 (relating to terrorist attacks and other acts of violence against railroad carriers and mass transportation systems),".

**SECTION-BY-SECTION ANALYSIS**
**OF THE AMENDMENTS TO THE**
**RAIL AND MASS TRANSPORTATION ANTI-TERRORISM STATUTES**

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56, established criminal sanctions against terrorist attacks on mass transportation systems (new 18 U.S.C. 1993), and added a conspiracy provision to the existing "wrecking trains" statute (18 U.S.C. 1992). The proposed amendments would consolidate sections 1992 and 1993 into a new section 1992 (with the existing section 1993 being repealed) to accomplish the following major objectives, which are described in more detail below.

First, the bill would extend to railroads the same protections against terrorist acts recently enacted for mass transportation systems by section 801 of the USA PATRIOT ACT. The wrecking trains statute ("existing section 1992") was enacted in 1948, and was slightly updated in 1994, 1995, and in 2001 by section 811(e) of the USA PATRIOT ACT, but existing section 1992 does not include many of the acts of terrorism prohibited by the new mass transportation anti-terrorism statute, nor is the scope of the existing section 1992 as broad as that of the new statute. The bill would make these additional prohibited acts of terrorism applicable to the railroads. In addition, the following features of the mass-transportation anti-terrorism statute would be made applicable to persons who engage in prohibited conduct against railroad carriers: (a) persons who travel, communicate, or transport materials across a State line in aid of the commission of the enumerated acts would be covered; and (b) generally, the *mens rea* standard in the mass-transportation anti-terrorism statute (that the actor willfully commit one of the enumerated prohibited acts) would be used in place of the mental element of intent to derail,

disable, or wreck a train currently required under the second paragraph of existing section 1992(a). These two changes would make it easier to prosecute any of the prohibited acts.

Second, the bill would update and slightly expand the existing language dealing with acts of violence against railroad carriers. For example, more expansive language taken from other Federal criminal statutes would be used (e.g., replacing the term "explosive substance" with "destructive substance"), and additional types of railroad property and equipment would be explicitly protected (e.g., electromagnetic guideways, locomotive tenders, and on-track equipment).

Third, the bill would (a) extend to mass transportation systems a similar provision in the existing wrecking trains statute that makes it a crime to undermine or make unworkable or unusable or hazardous to work or use railroad infrastructure, e.g., terminals, and (b) add "track" and "electromagnetic guideways" to the list of types of mass transportation infrastructure protected.

Fourth, the bill would make it a crime to "cause[ ] the release of a hazardous material or a biological agent or toxin on the property of a mass transportation provider or railroad carrier, with the intent to endanger the safety of any person or with a reckless disregard for the safety of human life . . . ."

Fifth, the bill would clarify that new section 1992 would not apply to actions involving a "destructive substance" or "destructive device" that is also classified as a hazardous material in commerce, if the action meets one of two standards. The first standard is that the action complies with chapter 51 of Title 49 and U.S. Department of Transportation regulations, exemptions, approvals, and orders issued under that chapter. The second standard is that the

action constitutes a violation of chapter 51 of Title 49, or a regulation or order issued under that chapter, but is not a criminal violation of that chapter, regulation, or order.

Sixth, the bill would make it an "aggravated offense" to undertake the prohibited terrorist acts in the case of a railroad train or mass transportation vehicle or ferry carrying high-level radioactive waste, spent nuclear fuel, or a hazardous material that is listed in table 1 of section 172.504 of Title 49, Code of Federal Regulations, or offenses that have resulted in the death of any person. The penalty could include a fine, imprisonment for a term of years or life, or both. In addition, the following penalties from the existing wrecking trains statute would apply: (a) offenses involving railroad equipment moving high-level radioactive waste or spent nuclear fuel carry a term of imprisonment of not less than 30 years; and (b) offenses involving railroads that result in death also carry the possibility of a death sentence; similar penalty provisions were not contained in the mass transportation anti-terrorism statute.

Seventh, the definitions from section 1993 would be transferred to new section 1992 and slightly modified to include railroads, and terrorist acts involving radioactive material and spent nuclear fuel. The definition of "dangerous weapons" would be updated to cover "box cutters" and other previously unrecognized weapons. The definition of "mass transportation" used in 1993 would be slightly revised. Currently, the definition of "mass transportation" in 1993 incorporates by reference the definition of "mass transportation" used in mass transportation funding legislation (49 U.S.C. 5302(a)(7)), except that section 1993 also specifically covers "school bus, charter, and sightseeing transportation," which are specifically excluded from the definition of "mass transportation" in section 5302(a)(7). The proposed definition of "mass transportation is limited–and solely for the purpose of 18 U.S.C. 1992--to *surface* transportation

(including, but not limited to subway, other rail rapid transit, and bus) and ferry boats that provide regular and continuing general or special transportation *in the United States*. The use of the word "bus" in the proposed definition of "mass transportation," would cover city, metropolitan, school, charter, sightseeing, and intercity buses in the United States.

It is possible to read existing section 1993 as covering aircraft and maritime navigation, but covering these modes of transportation in the new section 1992 is not necessary as these modes of transportation are comprehensively covered by other Federal criminal statutes. See, under Title 18, section 32 (relating to violence against aircraft), section 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175 and 175b (relating to biological weapons), 229 (relating to chemical weapons), 831 (relating to nuclear materials), 842(m) and (n) (relating to plastic explosives), 844(i) (relating to arson and bombing of property used in interstate commerce), 956(a)(1)(relating to conspiracy to murder, kidnap, or maim persons abroad), 1362 (relating to destruction of communications lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), and 2332b (relating to acts of terrorism transcending national boundaries). See, under Title 49, section 5124 (providing criminal penalties under title 18 for violations of 49 U.S.C. 5104(b), covering tampering, with a package, container, aircraft, or vessel used to transport hazardous material in commerce) section 46502 (relating to aircraft piracy), 46504 (relating to assault on a flight crew with a dangerous

weapon), 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), 46506 (if homicide or attempted homicide is involved), and 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility).

**Section 1.** Section 1 would provide that the proposal may be cited as the "Amendments to the Rail and Mass Transportation Anti-Terrorism Statutes".

**Section 2. Subsection (a)** of this proposed section would consolidate existing section 1992 with the recently enacted anti-terrorism provisions for mass transportation systems (18 U.S.C. 1993) into a new section 1992. Section 1993 would be repealed as surplusage.

*Subsection (a) of proposed section 1992* would incorporate the existing statutory prohibitions of existing section 1992 and section 1993, with some modifications, and add more prohibitions.

Proposed paragraph (1) is similar to the first paragraph of existing section 1992(a), which prohibits willfully derailing, disabling, or wrecking railroad rolling equipment, and section 1993(a)(1), which prohibits willfully wrecking, derailing, setting fire to, or disabling a mass transportation vehicle or ferry. However, proposed paragraph (1) would add the act of willfully setting fire to such railroad rolling equipment, would replace "engine" with "locomotive" and "tender," and would replace "car" with "freight or passenger car, or other on-track vehicle." "Mass transportation vehicle or ferry" would be added for consolidation purposes.

Proposed paragraph (2) is similar to the second paragraph of existing section 1992(a), which also prohibits willfully placing "any explosive substance on or near" a railroad bridge, track, station, or other property used in the operation of a railroad, except that specified railroad

rolling equipment and "mass transportation vehicle or ferry" are added to mirror section 1993(a)(2). In addition, to be consistent with existing Federal criminal laws, including section 1993, the term "explosive substance" in existing section 1992(a)(2) would be replaced with the terms "destructive substance" and "destructive device," which would be defined in proposed subsection (e). The term "destructive device" is defined in proposed subsection (e) as having the meaning given to that term in 18 U.S.C. 921(a)(4). The term does not include any shotgun that the Secretary of the Treasury finds is generally recognized as particularly suitable for sporting purposes, nor does it include a rifle that the owner intends to use solely for sporting, recreational, or cultural purposes. However, use of any weapon on the property of a railroad carrier or mass transportation provider with the intent to cause death or serious bodily injury to any person on the property of a railroad carrier or mass transportation provider would constitute a violation of proposed paragraph (6). A person who wishes to avoid any possibility of violating the statute should make sure to unload a weapon before bringing it on board a passenger train or mass transportation vehicle or ferry and may wish to turn the weapon over to a railroad employee or mass transportation provider for the duration of the person's trip. Finally, consistent with section 1993(a)(2), a prohibition against placing on railroad rolling equipment or a mass transportation vehicle or ferry any biological agent or toxin has been added.

Proposed paragraph (3) is similar to existing second paragraph of section 1992(a), which prohibits certain violence against railroad infrastructure, with the following exceptions. First, the term "explosive substance" would be replaced with the terms "destructive substance" and "destructive device." Second, "electromagnetic guideway" would be added to the list of specific types of railroad infrastructure protected. See 49 U.S.C. 20102(1). Third, proposed paragraph

(3) would apply to specified mass transportation infrastructure; the proposed paragraph is similar to section 1993(a)(3), except for adding "track" and "electromagnetic guideway" to the list of protected infrastructure.

Proposed paragraph (4) would make punishable damaging or otherwise impairing a "mass transportation signal or dispatching system" or "railroad signal system," including a train control system, a centralized dispatching system, or highway-railroad grade crossing warning signal. The proposed paragraph is a broadening of existing section 1992, which refers only to "signal," and the proposed paragraph incorporates language from section 1993(a)(4). An instance of an individual willfully damaging or "hacking" into a computer located in a centralized dispatching facility in Fort Worth, Texas, for the purpose of creating a false proceed signal in Butte, Montana, would be covered under new section 1992, but possibly not be covered under the existing section 1992.

Proposed paragraph (5) would make punishable acts that interfere with, disable, or incapacitate any person while he or she is employed in dispatching, operating, or maintaining a mass transportation vehicle or ferry or railroad on-track equipment. This paragraph is similar to section 1993(a)(5). There is no parallel provision in the existing section 1992; however, section 1991 of Title 18, United States Code, does cover entering a train located in the District of Columbia, a United States territory, or other place within the exclusive jurisdiction of the United States to commit murder, robbery, or unlawful violence.

Proposed paragraph (6) would make punishable an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to an employee or passenger of a mass transportation provider or railroad carrier, or any other person while any of the foregoing is

on the property of a mass transportation provider or railroad carrier. This paragraph is similar to section 1993(a)(6); there is no parallel provision in the existing section 1992. This paragraph would complement section 1991 of Title 18, United States Code, which is discussed above. "Dangerous weapon" is defined in proposed subsection (e) as, in effect, having the meaning prescribed in section 930 of Title 18, United States Code, except that in light of the hijacking events of September 11, 2001, the proposed term specifically includes as examples a pocket knife with a blade of less than 2_ inches in length and a box cutter. (The definition in section 930 of Title 18, United States Code specifically excludes a pocket knife with a blade of less than 2_ inches in length.)

Proposed paragraph (7) would make punishable conveying or causing to be conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this subsection. This paragraph is identical to section 1993(a)(7); there is no comparable provision in existing section 1992.

Proposed paragraph (8) would bar causing the release of a biological agent or toxin, with the intent to endanger the safety of any person, or with a reckless disregard for the safety of human life. There is no parallel provision in the existing section 1992 or section 1993. This paragraph would complement sections 5104 and 5124 of Title 49, United States Code, which make it a crime to knowingly tamper with a package, container, or railroad freight car used to transport hazardous material in commerce. This paragraph would also complement section 2332a(a) of Title 18, United States Code, which prohibits use of a weapon involving a disease organism against a person if such use affects interstate or foreign commerce.

Proposed paragraph (9) would make punishable attempts and threats to do any of the acts described in paragraphs (1) through (8).

There is Federal jurisdiction if the act is committed, or in the case of an attempt or threat, if the act would be committed, on, against, or affecting a mass transportation provider or railroad carrier engaged in or affecting interstate or foreign commerce, *or if in the course of committing the act, the person travels or communicates across a State line in order to commit such acts, or transports a material across a State line in aid of the commission of such act.* The emphasized language is not in existing section 1992 but is in section 1993.

Absent aggravating circumstances, the penalty for committing any of the acts described in proposed section 1992(a) would be a fine or imprisonment of not more than 20 years, or both; this penalty provision is in existing section 1992 and section 1993.

*Subsection (b) of proposed section 1992* would provide for higher penalties for violations of proposed subsection (a) in certain aggravating circumstances. A person convicted of any crime that would be prohibited by subsection (a) with aggravating circumstances would be guilty of an aggravated form of the offense and subject to the following sanctions:

- a fine under Title 18 or imprisonment for any term of years or life, or both, if the railroad train or mass transportation vehicle or ferry involved was carrying one or more passengers at the time of the offense (as provided for in section 1993(b) for a mass transportation vehicle or ferry; there is no comparable provision in existing section 1992);
- a fine under Title 18 or imprisonment for any term of years or for life, or both, and not less than a term of 30 years, if the railroad train involved was carrying high-level

radioactive waste or spent nuclear fuel at the time of the offense (as provided in existing section 1992(b) for trains);

- a fine under Title 18 or imprisonment for any term of years or for life, or both, if the mass transportation vehicle or ferry involved was carrying high-level radioactive waste or spent nuclear fuel at the time of the offense (there is no comparable provision in section 1993);
- a fine under Title 18 or imprisonment for any term of years or for life, or both, if the railroad train or mass transportation vehicle or ferry was carrying a hazardous material listed in Table 1 of section 172.504 of Title 49, Code of Federal Regulations. This table currently includes hazardous materials required to be placarded as follows: EXPLOSIVES 1.1, 1.2, or 1.3; POISON GAS; DANGEROUS WHEN WET; ORGANIC PEROXIDE; POISON INHALATION HAZARD; or RADIOACTIVE (there is no comparable provision in existing section 1992 or section 1993);
- a fine under Title 18 or imprisonment for any term of years or for life, or both, if the offense has resulted in the death of any person and the offense involves a mass transportation vehicle or ferry (as provided in section 1993(b)); or
- a maximum penalty of death if the violation of subsection (a) of which a person was convicted has also resulted in the death of any person and the offense involves a train, locomotive, tender, motor unit, freight or passenger car, or other on-track vehicle (as provided in existing section 1992(b)).

*Subsection (c) of proposed section 1992* would provide that a person who conspires to commit any offense under proposed section 1992 shall be subject to the same penalties as the

penalties (other than the death penalty) prescribed for the offense, the commission of which was the purpose of the conspiracy. This is provided for in existing section 1992(c) and section 1993(a)(8).

*Subsection (d) of proposed section 1992* would provide that proposed subsections (a) and (c) do not apply to acts involving a destructive substance or device that is also classified as a hazardous material in commerce if the act complies with the hazardous materials transportation laws or, at least, is not a criminal violation of those laws.

*Subsection (e) of proposed section 1992* would define certain terms used in the section. For example, "railroad carrier" would be defined as that term is defined in the railroad safety laws (49 U.S.C. 20102(2)), as a person providing transportation by railroad.

The term "railroad" would be defined as in 49 U.S.C. 20102(1), to include transportation by means of conventional trains, new high-speed rail systems, magnetically levitated trains, as well as commuter or other short-haul railroad passenger service, but to exclude rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

The term "mass transportation" would be redefined as explained above.

Proposed use of the term "serious bodily injury" from 18 U.S.C. 1365 is intended to exclude minor injuries, such as that resulting from a minor altercation between two passengers, from coverage.

"High-level radioactive waste" and "spent nuclear fuel" would be defined as those terms are used in the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12), (23), respectively).

**Subsection (b)** of section 2 of the proposal would make various conforming changes to Title 18, United States Code. First, the subsection would modify the analysis of chapter 97, the heading of chapter 97, and the analysis of part I, Title 18, to reflect the new proposed heading for proposed section 1992, the proposed repeal of section 1993, and the proposed changing of the name of the chapter from "Railroads" to "Railroad carriers and mass transportation systems" to reflect current terminology in both Title 18 and Title 49, United States Code. Second, because current 18 U.S.C. 1992 and 1993 are referenced in other criminal statutes in Title 18, the subsection would make additional conforming amendments to these criminal statutes. The statutes that would be conformed are section 2332b, "Acts of terrorism transcending national boundaries"; section 2339A, "Providing material support to terrorists"; and section 2516, "Authorization for interception of wire, oral, or electronic communications."