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BEFORE THE
TRANSPORTATION AND HAZARDOUS MATERIALS SUBCOMMITTEE
HOUSE COMMITTEE ON ENERGY AND COMMERCE
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Mr. Chairman, it is a pleasure to appear before your subcommittee to discuss the reauthorization of the federal railroad safety program. I would like to outline for you the elements of the Administration's proposed reauthorization bill and summarize many areas in which FRA plans to act on the regulatory front.

The Administration's Reauthorization Proposal

The Administration's proposed legislation would authorize for fiscal year 1992 appropriations of $41,024,000 for general safety operations and $26,298,000 for railroad research and development. We believe these sums are necessary for the effective administration of the railroad safety laws, including the implementation of our new National Inspection Plan, and the continuation of important research and development efforts. For fiscal year 1993, the bill would authorize such sums as may be necessary.

Our bill would also clarify the meaning of the word "person" in the penalty provision of the Federal Railroad Safety Act of 1970. Prior to the 1988 amendments, FRA's enforcement authority extended primarily to railroads. The Rail Safety Improvement Act of 1988 substituted the word "person" for "railroad," making clear that any entity that violates a railroad safety rule or order is subject to

appropriate sanctions. However, some have apparently misconstrued the parenthetical language after "person" as limiting our enforcement authority to railroads, managers, supervisors, officials, or other employees or agents of railroads. Of course, the United States Code defines "person" very broadly and the word "including" is generally read as meaning "including but not limited to." Our proposed amendment to the parenthetical would clarify that FRA has enforcement authority over any entity that may violate rail safety orders or rules. This includes, for example, non-railroad owners of track, manufacturers of railroad equipment, and contractors who provide goods and services to railroads. These entities are all in a position to violate railroad safety rules or orders. The requested amendment would preclude the need to litigate over whether such entities are "persons" within the meaning of the Safety Act.

We also propose to ensure that FRA enforcement personnel have the same protection against assault, intimidation, and interference in the performance of their official duties that other federal law enforcement personnel have. This has become an important issue to FRA field personnel, especially since the implementation of individual liability for safety violations.

We believe the time is ripe for addressing issues of employee fatigue and work cycles; to enable us to do so, our bill proposes to give us regulatory authority over railroad employees' hours of service. This would be accomplished by

repealing the Hours of Service Act, issuing the provisions of the current act in regulatory form effective upon the act's repeal, and then exploring the difficult issues of employee fatigue, stress, and work/sleep cycles in a rulemaking hearing. The current statute, for example, permits train crews to work eight hours on, eight hours off, forever. As long as the employee receives the minimum off-duty period of eight hours (or ten hours, if the employee has worked twelve consecutive hours) in a 24-hour period, he or she is considered properly rested under the law regardless of how many such consecutive duty tours the employee may work without getting a longer break. We need to consider whether a longer break is needed periodically. At a time when human factor accidents are the fastest growing segment of train accidents (as they have been since 1986), we believe FRA should have regulatory authority to address these subjects in light of currently available information on the relationship between fatigue and safety.

Our proposal would also repeal the other railroad safety laws that predate the Federal Railroad Safety Act of 1970. The Safety Act provides authority over "all areas of railroad safety." The substantive elements of these statutes have nearly all been issued as regulations (often under the joint authority of the Safety Act and the older statute) and, under our proposal, any such provisions not yet part of the regulations would be issued as regulations effective upon repeal. These statutes are superfluous in light of the Safety

Act's broad authority, and many of their provisions are obsolete. Moreover, to the limited extent that these statutes require certain features (e.g., grabirons) on all railroad equipment regardless of the alternative forms of safety protection that modern technology may provide, they tend to discourage technological development. While a process exists for exempting equipment from these requirements, it is an ad hoc, piecemeal approach based on use of a vague standard that does not on its face ensure safety.

We urge the Subcommittee to adopt the Administration's proposal.

FRA's Regulatory Agenda

FRA is very close to completing the huge regulatory workload imposed on it by the Rail Safety Improvement Act of 1988. I expect that very soon I will be able to sign the final rules on engineer qualifications and grade crossing signal inspection and the proposed rule on event recorders. We held our hearing on bridge worker safety on May 1, and we are moving quickly toward a final decision on that issue. In addition to these developments under the RSIA, I recently signed a proposed rule to permit the states to participate in enforcement of the federal hazardous materials regulations.

Now that we are so close to completing the RSIA rules, FRA can turn its attention to a very full plate of planned regulatory activities based on its own deferred regulatory agenda and pending petitions filed by interested parties.

Allow me to discuss just a few examples of the regulatory issues before us.

In the track area, there are several subjects that FRA intends to address and there is a pending rulemaking petition filed by the Brotherhood of Maintenance of Way Employees that proposes sweeping changes in the track standards. We plan to move expeditiously toward resolving the BMWE petition and addressing those track issues that require attention.

In the area of grade crossing safety, we expect shortly to complete a rulemaking that takes the first steps toward improving safety by requiring the reporting of any failures of active warning devices and the filing of railroad programs for inspecting grade crossing signals. The next step will address inspection and repair without undue delay of malfunctioning devices (including those that "fail safe"). We believe that these steps, together with data collection through our field personnel and review of Texas "1-800" hotline data, will permit us to identify appropriate intervals and procedures for inspection and maintenance of the whole range of active crossing devices in service.

We are also considering a variety of other measures that may improve grade crossing safety, such as eliminating the 25 percent of all grade crossings which we believe to be unnecessary. With over 200,000 public highway-rail grade crossings in the United States, we have more than one crossing per mile of railroad track, which is clearly excessive. FRA is

also joining its sister DOT agencies to support a major training effort for grade crossing enforcement through the Law Enforcement Training Network. We are establishing a strategy for research and development to identify additional areas in which crossing safety can be improved, utilizing funds appropriated for the current year. I want to emphasize that these and other efforts, taken as a whole, will constitute a significant Highway-Rail Grade Crossing Initiative to address this problem.

FRA has been working on locomotive cab safety for several years, and this effort has contributed to significant progress. In September 1989, the Association of American Railroads adopted design standards for road locomotives built after August 1, 1990 that require anticlimber devices, collision posts, and thicker steel on short hoods. American locomotive builders are applying those design criteria as though they were mandatory. FRA is about to enter into a contract to study the effectiveness of these measures by using computer simulations. FRA hopes to have the study completed by mid-1992. Once FRA has had a chance to review the study, we will be better able to determine whether further action is necessary to improve locomotive cab safety.

FRA will also open a proceeding to review locomotive and train brake safety issues.

FRA is working on a number of hazardous materials issues such as placement of hazardous materials cars in a train and

tank car design. We believe there are certain issues that can be addressed without further research, and we will be moving on those issues as soon as possible. However, issues of tank car design will take us a little longer because they are technically quite difficult.

We also plan to begin this year any regulatory action that may be necessary to implement high speed rail transportation and to address safety issues inherent in the growth of the tourist and scenic railroad segment of the industry.

These are just some of the items that FRA has on its regulatory agenda. In addition to working on that agenda, FRA is in the process of implementing its new National Inspection Plan, which is designed to allocate inspection time more strategically toward the areas of greatest safety risk. Effective implementation of the Plan has required a shift, now complete, to supervising along the lines of the technical disciplines within railroad safety; an improved and expanded training program, which is already underway; revamping our data systems and planning mechanisms to provide us with better data to guide our decisions; and improved policy guidance, which is being achieved by revising the enforcement manuals in each technical discipline. Of course, the agency's aggressive enforcement program will continue to consume a large share of our available worktime, both in the headquarters and the field. I am sure the Subcommittee understands that, with a workload this heavy, I will be forced to make some very hard decisions

as to which projects get highest priority and which must get a lower priority.

I appreciate your consideration of my views and would be happy to address any questions the Subcommittee may have.