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SUMMARY

OF

LEGISLATIVE AND OVERSIGHT ACTIVITIES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

CONVENED JANUARY 4, 2007
ADJOURNED DECEMBER 19, 2007

SECOND SESSION

CONVENED JANUARY 3, 2008
ADJOURNED JANUARY 3, 2009

**COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE**

U.S. HOUSE OF REPRESENTATIVES



JANUARY 2, 2009.—Committed to the Committee of the Whole House on
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develop recommendations and identify best practices to be taken by the private sector to foster preparedness, and requires the establishment of a voluntary private sector preparedness accreditation and certification program. The Secretary of Homeland Security has designated the Administrator of FEMA to administer this program.

Prioritizing the Vulnerabilities of Critical Infrastructure

The presence of critical infrastructure within a State and its probable vulnerability to attack was recognized by the 9/11 Commission as an important element in determining the State's overall risk and subsequent security funding needs. Although the Secretary of Homeland Security has the responsibility to conduct vulnerability assessments pursuant to the Homeland Security Act of 2002, the Commission criticized DHS for not setting national priorities with respect to critical infrastructure. Title X addresses this concern by requiring the Secretary to maintain a prioritized critical infrastructure list and to provide a report on the comprehensive risk assessments of critical infrastructure conducted by DHS.

SURFACE TRANSPORTATION

The 9/11 Commission Report recommended that the Federal Government "should identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of doing so, and then develop a plan, budget, and funding to implement the effort." This Act addresses this recommendation and the security needs of public transportation, rail, and over-the-road bus systems.

Strengthening Public Transportation, Rail, Bus, and Truck Security

Titles XIV and XV of the Act:

Require DHS to complete a nationwide risk assessment of a terrorist attack on railroad carriers and develop and implement a National Strategy for Railroad Transportation Security and a National Strategy for Public Transportation Security;

Mandate that all public transportation agencies, railroad carriers, and over-the-road bus operators at high risk for terrorism undergo an assessment of the vulnerability of their infrastructure and operations to terrorism, and prepare and implement a security plan;

Establish three separate security grant programs for carriers to implement specific vulnerabilities identified in their security plans:

\$3.4 billion for FY 2008–2011 for eligible transit systems;

\$1.2 billion for FY 2008–2011 for eligible railroad carriers; and

\$87 million for FY 2008–2011 for eligible over-the-road bus operators;

Authorize \$650 million for grants to Amtrak for system-wide security upgrades and \$200 million for grants to Amtrak for tunnel improvements;

Authorize annual funding through FY 2011 for a security research and development programs dedicated to public transportation, rail, and over-the-road bus transportation;

Require DHS to establish a program for security exercises at public transportation systems, railroad systems, and over-the-road bus systems, and requires security training for employees of transit agencies, rail carriers, and over-the-road bus operators;

Establish strong whistleblower protections for transit, rail, and bus employees, and requires such employees, or employees of contractors, to undergo a security background check;

Require DHS to conduct a comprehensive assessment of the risk of terrorist attack on the nation's school bus transportation system; and

Require DHS to submit a report to Congress on the status of security in the trucking industry and requires an audit by the Inspector General on the Highway Watch program.

Advancing Hazardous Materials and Pipeline Security

This Act also includes several provisions to address vulnerabilities related to hazardous materials transportation including: requiring physical testing of rail cars used to transport highly toxic chemicals material; evaluating the security risks of transportation routes of security sensitive materials; equipping rail cars transporting high hazard materials with communications technology; documenting existing highway routes for hazardous materials transported by truck; and tracking technologies for motor carrier shipments of certain security-sensitive hazardous materials. The Act also addresses pipeline security by requiring DHS to develop a pipeline security and incident recovery protocols plan, to review pipeline operators' security plans, and to inspect the 100 most critical pipeline operators.

Improving Transportation Security Planning and Information Sharing

The 9/11 Commission observed that while DHS had developed a National Strategy for Transportation Security ("Strategy"), it lacked the necessary detail to make it a useful tool. Title XII of the Act directs DHS to include additional information, as specified in the legislation, in subsequent submissions of the Strategy to Congress; requires DHS to tie the priorities identified in the Strategy to risk assessments conducted by DHS; and requires DHS to link its budget submissions to such priorities. The Act also requires DHS to develop a Transportation Security Information Sharing Plan and to provide a semiannual report to Congress identifying recipients of transportation security information.

main impaired after more than three decades of effort. Witnesses identified key challenges for the future of the Clean Water Act, including the escalating wastewater infrastructure needs (estimated to be between \$300 billion and \$400 billion over the next 20 years), the jurisdictional uncertainty created by two recent Supreme Court decisions, stormwater and other wet weather discharge concerns, and water-related challenges posed by global climate change.

THE IMPACT OF RAILROAD INJURY, ACCIDENT, AND DISCIPLINE
POLICIES ON THE SAFETY OF AMERICA'S RAILROADS

On October 25, 2007, the Committee on Transportation and Infrastructure held a hearing to examine the impact of railroad injury, accident reporting, and discipline policies on rail safety. The Oversight and Investigations ("O&I") staff conducted an in-depth investigation of railroad employee injury reporting practices. The purpose of this hearing was to examine allegations contained in hundreds of reports from rail employees collected and reviewed by O&I staff suggesting that railroad safety management programs sometimes either subtly or overtly intimidate employees from reporting on-the-job injuries.

It was alleged that many Class I railroads have management programs and policies that inhibit or intimidate employees into not reporting on-the-job injuries. Thus, many injury accidents, that are required to be reported to the Federal Railroad Administration ("FRA"), may be never reported as a result. It is alleged that railroad management personnel invoke pressure upon employees in three common ways: 1) by "counseling" them not to file an injury report in the first place, subtly suggesting that it might be in their "best interests" not to do so; 2) by finding employees exclusively at fault for their injuries and administering discipline; and 3) by subjecting employees who have reported injury accidents to increased performance monitoring, performance testing, and often followed by subsequent disciplinary action up to, and including, termination.

O&I staff examined many of the Class I railroads' safety management policies for dealing with employee injuries. All of these programs certainly appear intent on preventing injuries, but it is also clear that these programs may create "unintended consequences". A major unintended consequence is that employees generally perceive intimidation to the extent that those who are injured in rail incidents are often afraid to report their injuries or seek medical attention for fear of being terminated or severely disciplined. Many of the reports compiled by staff suggest that railroad employees often find themselves the targets of a higher degree of management scrutiny immediately after filing an injury report. The railroads argue that these are "counseling programs" intended to prevent future injuries, but the programs are often perceived by employees as intimidation which inhibits the reporting of injuries in order to escape inevitable management attention in the aftermath of an injury report. Railroads are incentivized to keep their injury reports down in order to escape scrutiny from the FRA.

O&I staff reviewed all of the most recent FRA "Comprehensive Accident/Incident Recording Keeping Audits" conducted under Part 225 of the FRA regulations for the Class I railroads. According to these audits, FRA found 352 violations for underreporting, with the

largest category representing failures to report employee injuries. It is important to recognize that this represents the number of underreported injury events that FRA was able to identify by auditing railroad records, but this number does not represent the number of injuries that may have never been reported by employees. In a discussion with O&I staff, the FRA Associate Administrator for Safety stated that she believed that supervisory pressure on employees to not report injuries is a significant issue. When the FRA receives complaints on this subject, it does investigate these reports. The Associate Administrator maintained that FRA simply does not have the resources to investigate the extent of the "harassment" issue.

In 2007, Congress enacted the 9/11 Commission Act of 2007 (P.L. 110-53), which strengthens whistleblower protections for rail workers and contains provisions to strengthen the protection of rail workers against management harassment.

NATIONAL SURFACE TRANSPORTATION POLICY AND REVENUE STUDY COMMISSION REPORT

On January 17, 2008, the Committee held a hearing to receive testimony from members of the National Surface Transportation Policy and Revenue Study Commission ("Commission") regarding the Commission's recommendations on preserving and enhancing the nation's intermodal surface transportation system to meet future mobility, economic and quality of life needs. Congress established the Commission by section 1909 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. The Commission was tasked with forecasting the surface transportation system necessary to support our economy 50 years in the future. The 12-member Commission met 22 times, including 10 field hearings across the country as well as 12 meetings in Washington, DC, to hear about the challenges facing America's surface transportation network. Throughout this process, the Commissioners heard testimony from 293 witnesses representing a wide range of perspectives across the broad spectrum of stakeholders. Witnesses included national transportation advocates, policymakers, industry, labor, and from the general public. The Commission outlined its findings and recommendations in its report, *Transportation for Tomorrow*. The purpose of the report was to assist Congress as it formulates short-, medium-, and long-term strategies necessary to achieve these goals, as well as mechanisms to finance the investments necessary to meet these goals.

In the report, the Commission calls for a "new beginning", and expresses concerns with reauthorizing the Federal surface transportation program in its current form. To address this concern, the report recommends consolidating the more than 100 current federal surface transportation programs down to ten focus areas. The ten focus areas are based on a desired outcome, as opposed the current modal organization.

Overall, the report calls for an annual investment level of between \$225 billion and \$340 billion—by all levels of government and the private sector—over the next 50 years to upgrade all modes of surface transportation, including highways, bridges, public transit, freight rail and intercity passenger rail. To achieve this

force rail safety regulations. It also conducts research and development in support of improved rail safety. In addition, the FRA has a number of responsibilities relating to rail security, including assessing civil and criminal penalties for actions that impair or impede the operation of railroad equipment. The FRA has the authority to issue regulations and orders pertaining to rail safety and security and to issue civil and criminal penalties to enforce those regulations and orders. Under current law, all laws, regulations, and orders related to rail safety and security must be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to rail safety or security until the Secretary of Transportation or the Secretary of Homeland Security prescribes a regulation or issues an order covering the subject matter of the State requirement. The FRA relies on 421 Federal safety inspectors and 160 State safety inspectors to monitor the railroads' compliance with federally mandated safety standards.

At the hearing, the Administrator of the FRA testified that the railroad industry's overall safety record has improved during recent decades, and most safety trends are heading in the right direction. The Administrator testified that the FRA has undertaken a number of initiatives to improve rail safety, including the National Rail Safety Action Plan; a rulemaking to federalize core railroad operating rules governing the handling of track switches, leaving cars in the clear, and shoving cars; deployment of new track inspection vehicles; and development of positive train control technology. The Vice Chairman of the National Transportation Safety Board ("NTSB") testified that the NTSB continues to have concerns with several aspects relating to rail safety, including railroad fatigue, the transportation of hazardous materials in tank cars, and positive train control. The Department of Transportation Inspector General testified that it would like to see two key issues addressed in FRA reauthorization: (1) improving grade crossing safety through better compliance with safety regulations and by working with States, and (2) identifying safety trends through data analysis. The Government Accountability Office ("GAO") testified that based on a recent report on the FRA's overall safety oversight strategy, it recommended that FRA (1) put into place measures of the results of its inspection and enforcement program; and (2) evaluate its enforcement program.

REAUTHORIZATION OF THE FEDERAL RAIL SAFETY PROGRAM (PT. II)

On January 31, 2007, the Subcommittee reconvened to continue receiving testimony on the Federal rail safety program and to discuss proposals for reauthorization of the FRA.

The President and Chief Executive Officer of the Association of American Railroads ("AAR") testified in support of the Committee adopting performance-based, as opposed to design-based, standards in any reauthorization that addressed workplace safety regulation. The President of AAR also stated that the overall railroad industry safety record is excellent, reflecting the extraordinary importance railroads place on the safety of their employees and the communities they serve. The President of the Transportation Trades Department, AFL-CIO, testified that safety in the railroad industry

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has deteriorated in recent years and urged the Subcommittee to reauthorize the FRA in order to improve rail safety. He also urged the Subcommittee to adopt legislation that improved whistleblower protections; mandated minimum training standards, and methods to ensure that training programs are appropriate and effective; revise the hours of service statute to ensure workers obtain adequate rest; eliminate limbo time; and adopt new rail safety technologies. The President of the Teamsters Rail Conference testified that any reauthorization should include increased employee protections; address rail worker fatigue by counting limbo time as time on duty; require ten-hour calling times to ensure proper rest; ensure appropriate staffing; address dark territory; and eliminate camp cars. Finally, the American Association for Justice testified that the Subcommittee should adopt an amendment to clarify the preemption clause in the Federal Rail Safety Act ("FRSA"), making it clear that any uniform standards established by the FRA pursuant to the FRSA are minimum standards.

FATIGUE IN THE RAIL INDUSTRY

On February 13, 2007, the Subcommittee held a hearing on fatigue in the rail industry.

The FRA reports that human factors are responsible for nearly 40 percent of all train accidents, and a new study confirms that fatigue plays a role in approximately one out of four of those accidents.

The hours of service law, which was originally enacted in 1907, and substantially amended in 1969, deals only with acute fatigue, not with cumulative fatigue. The law permits working 11 hours and 59 minutes followed by eight hours off duty and another 11 hours and 59 minutes on duty, perpetually. This kind of "backward-rotating shift" can wreak havoc on an employee's circadian rhythm.

In addition, the law does not address "limbo time", which is the time when a crew's working assignment was finished and they are waiting for transport back to their homes. During limbo time, crewmembers are required to stay awake, alert, and able to respond to any situation and follow the railroad's operating rules, which means that crews are regularly on the job for 15 to 20 hours at a time.

On numerous occasions, the Department of Transportation ("DOT") has formally submitted legislation to reform the hours of service law, supplement it with fatigue management requirements, or authorize the FRA to prescribe regulations on fatigue in light of current scientific knowledge. Currently, the statute contains no substantive rulemaking authority over duty hours. The 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. Despite the need for reform to address fatigue, no action has been taken.

At the hearing, the Administrator of the FRA testified that the Department of Transportation should have the regulatory authority to replace the hours of service laws with scientifically-based regula-

High-speed rail transportation is widely used in France, Germany, Great Britain, Spain, Italy, Japan, China, South Korea, Sweden, and the Netherlands. By comparison, the only American line that can approach the speeds of the European and Asian high-speed rail systems is Amtrak's Acela line, which operates between Washington, DC, and Boston, Massachusetts. The Acela is capable of achieving speeds of up to 135 mph between Washington, DC, and New York, New York, and 150 mph between New York and Boston, but usually averages considerably less than that (82 mph and 66 mph, respectively), largely due to congestion and track conditions.

Witnesses appearing at the hearing testified on behalf of France, Japan, China, Spain, and the International Railway Association. Witnesses stated the reason for high-speed rail's success is due to a number of factors, including their governments' willingness to invest significant public funds to develop high-speed rail and to make rail a fierce competitor to other modes. The witnesses also testified to the benefits of high-speed rail, including job creation and environment benefits.

RAIL SAFETY LEGISLATION

On May 8, 2007, the Subcommittee held a hearing on pending rail safety legislation.

The FRA administers the Federal rail safety program, which was last reauthorized in 1994; that authorization expired in 1998. Following the previous reauthorization, the Subcommittee and its predecessor subcommittees have held 22 hearings on rail safety.

On May 2, 2007, Chairman James L. Oberstar and Subcommittee Chairwoman Corrine Brown introduced H.R. 2095, the "Federal Railroad Safety Improvement Act of 2007". H.R. 2095 is a four-year reauthorization for the Federal rail safety program. It requires the Secretary to develop a long-term strategy for improving railroad safety; strengthens hours-of-service for signalmen and train crews by increasing rest time and eliminating limbo time; requires railroads to remove and maintain clear from its right-of-way at all grade crossings all vegetation that may obstruct the view of pedestrians and motor vehicle operators for a reasonable distance in either direction; requires all railroads and States to report information on grade crossings to the Secretary to enable the Secretary to update the DOT's grade crossing inventory; increases the ceiling for civil penalties for general railroad safety violations, accidents and incident violations, and hours-of-service violations; requires Class I railroads to implement positive train control systems by December 31, 2014; requires the Secretary to issue a regulation requiring railroads to manage the rail in their tracks to minimize accidents due to internal rail flaws; and requires the Secretary to establish minimum training standards for each craft of railroad employees.

At the hearing, the Administrator of the FRA urged the Subcommittee to adopt H.R. 1516, the Administration's alternative to H.R. 2095. The President of the Transportation Trades Department, AFL-CIO supported H.R. 2095, including the provisions requiring prompt medical attention for rail workers and stronger whistleblower protections. The Teamsters Rail Conference and the

United Transportation Union stated that nothing is more important to improving rail safety than the provisions in H.R. 2095 relating to worker fatigue. However, the President of the AAR expressed a number of concerns with H.R. 2095, including the provisions that dealt with worker fatigue, limbo time, and positive train control.

AMTRAK STRATEGIC INITIATIVES

On June 12, 2007, the Subcommittee held a hearing to review Amtrak's fiscal year ("FY") 2008 Strategic Plan ("Plan"). The Plan is a collaborative product of Amtrak's management and Board of Directors that establishes certain business goals to improve profitability, expand and enhance services, improve its physical assets, and improve employee and passenger safety. The FY 2008 plan is the most recent edition of a series of strategic initiatives Amtrak has published since 2003. The subsequent revisions reflect a movement by Amtrak from a focus on stabilization of a fragile business enterprise with substantial and critical deferred maintenance needs, to a more stable environment that focuses on better utilization of physical and organizational assets to improve financial performance.

Amtrak released its FY 2008 Plan at a time of record demand. Year-to-date ridership in March 2007 was at 2.17 million passengers, a seven percent increase over March 2006 and two percent better than budget projections. Ticket revenues of \$126.6 million were nearly 14 percent above FY06 revenues and six percent better than its budget projections. However, Amtrak also faces significant challenges. On-time performance ("OTP") outside the Northeast Corridor continues to decline, hurting efforts to maintain ridership and attract new ridership. Over the past four years, long-distance OTP performance has declined each year. Additionally, Amtrak's 16 state corridors continue a trend of four years of declining OTP. Amtrak is also beginning a multi-year cycle of replacing its aging fleet of railcars, with many cars more than 25 years old. It also faces \$161 million in deferred projects and required security upgrades on its property and track. Amtrak must also devote a significant portion of its annual budget to debt service.

At the hearing, Amtrak's President and Chief Executive Officer ("CEO") testified that Amtrak was developing a strategic plan to meet these challenges. This plan included focusing on continued company-wide cost reduction initiatives to reduce Amtrak's reliance on Federal operating assistance and increasing revenue by adding frequencies and improving revenue management. Amtrak's other key goals and objectives include containing cost growth, improving financial transparency, providing a safe environment for employees and passengers, improving the management of our human capital, and finally conserving natural resources. The Plan intends to reduce Amtrak's dependence on Federal operating support over the next five fiscal years by increasing revenue and containing costs.

Amtrak's President and CEO also outlined several goals that Amtrak would like to accomplish in a reauthorization bill. These goals were to solidify Amtrak's role in providing intercity passenger rail service, including establishing a federal policy for corridor development, improving long-distance services to better link state

September 6, 2007 on the BP permit process. On August 23, 2007, BP America issued a public statement abandoning the proposed refinery expansion that would require the higher discharge limits.

The Subcommittee on Water Resources and Environment continues to examine the extent to which States are allowing facilities to circumvent the laws and exceed discharge levels for toxic pollutants such as mercury.

PRIVATIZATION OF FAA FLIGHT SERVICE STATIONS

O&I staff conducted an investigation of the FAA contract to privatize Flight Service Stations ("FSS"). On February 1, 2005, the FAA awarded Lockheed Martin a five-year, fixed-price contract (with five additional option years) to operate and modernize the FSS system that provides weather information and flight plan filing services to pilots on the ground and in the air. The contract is worth about \$1.8 billion and represents one of the largest non-defense outsourcing of services in the Federal Government. The FAA estimates that by contracting out FSS, it will save between approximately \$1.7 and \$2.2 billion over the ten-year life of the agreement.

The first phase of the transition to Lockheed Martin management of the FSS system ran smoothly. However, in 2007, Lockheed Martin launched an aggressive implementation plan, declaring its three hub locations operational and consolidating other FSS locations at a rate of three facilities per week. Within days, service to pilots deteriorated dramatically.

On October 10, 2007, the Subcommittee on Aviation held a hearing on the issue. As a result of the investigation, the FAA has significantly tightened management oversight of the contractor. Substantial monetary performance penalties on the contractor have been assessed, and the performance of FSS services began to slowly improve. By the summer of 2008 (the period of highest demand), FSS services had improved dramatically, and the contractor was meeting all FAA-defined performance objectives. However, high fuel prices contributed to less overall demand for FSS services.

RAIL SAFETY REPORTING AND EMPLOYEE HARASSMENT

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report in the first place, subtly suggesting that it might be in their "best interests" not to do so; (2) by finding employees exclusively at fault for their injuries and administering discipline; and (3) by subjecting employees who have reported injury accidents to increased performance monitoring, performance testing, and often followed by subsequent disciplinary action up to, and including, termination.

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In 2007, Congress enacted the 9/11 Commission Act of 2007 (P.L. 110-53), which strengthens whistleblower protections for rail workers and contains provisions to strengthen the protection of rail workers against management harassment.

**LAX FLEET MANAGEMENT PRACTICES ENABLE GOVERNMENT
EMPLOYEES TO IGNORE LOCAL PARKING LAWS AND EVADE FINES**

According to the Texas Transportation Institute, traffic congestion continues to worsen in American cities, creating a \$78 billion annual drain on the U.S. Economy. Parking restrictions are one way cities manage congestion by providing curb access for commercial deliveries and transit services; as well as providing additional lane capacity during rush hour. During a 6-month investigation, Oversight and Investigations staff found that Federal employees in the District of Columbia ("DC") and New York City ("NYC") in-

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Hearing on the Reauthorization of the Federal Rail Safety Program

On January 30, 2007, the Subcommittee met to receive testimony on the Federal rail safety program and to discuss proposals for reauthorization of the Federal Railroad Administration ("FRA"). The FRA was last reauthorized by the Federal Railroad Safety Authorization Act of 1994; that authorization expired in 1998. One of the main responsibilities of the FRA is to promulgate and enforce rail safety regulations. It also conducts research and development in support of improved rail safety. In addition, the FRA has a number of responsibilities relating to rail security, including assessing civil and criminal penalties for actions that impair or impede the operation of railroad equipment. The FRA has the authority to issue regulations and orders pertaining to rail safety and security and to issue civil and criminal penalties to enforce those regulations and orders. Under current law, all laws, regulations, and orders related to rail safety and security must be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to rail safety or security until the Secretary of Transportation or the Secretary of Homeland Security prescribes a regulation or issues an order covering the subject matter of the State requirement. The FRA relies on 421 Federal safety inspectors and 160 State safety inspectors to monitor the railroads' compliance with federally mandated safety standards.

At the hearing, the Administrator of the FRA testified that the railroad industry's overall safety record has improved during recent decades, and most safety trends are heading in the right direction. The Administrator testified that the FRA has undertaken a number of initiatives to improve rail safety, including the National Rail Safety Action Plan; a rulemaking to Federalize core railroad operating rules governing the handling of track switches, leaving cars in the clear, and shoving cars; deployment of new track inspection vehicles; and development of positive train control technology. The Vice Chairman of the National Transportation Safety Board ("NTSB") testified that the NTSB continues to have concerns with several aspects relating to rail safety, including railroad fatigue, the transportation of hazardous materials in tank cars, and positive train control. The Department of Transportation Inspector General testified that it would like to see two key issues addressed in FRA reauthorization: (1) improving grade crossing safety through better compliance with safety regulations and by working with states, and (2) identifying safety trends through data analysis. The Government Accountability Office ("GAO") testified that based on a recent report on the FRA's overall safety oversight strategy, it recommended that FRA (1) put into place measures of the results of its inspection and enforcement program; and (2) evaluate its enforcement program.

*Hearing on the Reauthorization of the Federal Rail Safety Program
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adopting performance-based, as opposed to design-based, standards in any reauthorization that addressed workplace safety regulation. The President of AAR also stated that the overall railroad industry safety record is excellent, reflecting the extraordinary importance railroads place on the safety of their employees and the communities they serve. The President of the Transportation Trades Department, AFL-CIO, testified that safety in the railroad industry has deteriorated in recent years and urged the Subcommittee to reauthorize the FRA in order to improve rail safety. He also urged the Subcommittee to adopt legislation that improved whistleblower protections; mandated minimum training standards, as well as methods to ensure that training programs are appropriate and effective; revise the Hours of Service statute to ensure workers obtain adequate rest; eliminate limbo time; and adopt new rail safety technologies. The President of the Teamsters Rail Conference testified that any reauthorization should include increased employee protections; address rail worker fatigue by counting limbo time as time on duty; require ten-hour calling times to ensure proper rest; ensure appropriate staffing; address dark territory; and eliminate camp cars. Finally, the American Association for Justice testified that the Subcommittee should adopt an amendment to clarify the preemption clause in the Federal Rail Safety Act, making it clear that any uniform standards established by the FRA pursuant to the FRSA are minimum standards.

Hearing on Fatigue in the Rail Industry

On February 13, 2007, the Subcommittee met to receive testimony on fatigue in the rail industry. The FRA reports that human factors are responsible for nearly 40 percent of all train accidents, and a new study confirms that fatigue plays a role in approximately one out of four of those accidents.

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Additionally, the law does not address "limbo time," which is the time when a crew's working assignment was finished and they are waiting for transport back to their homes. During limbo time, crewmembers are required to stay awake, alert, and able to respond to any situation and follow the railroad's operating rules, which means that crews are regularly on the job for 15 to 20 hours at a time.

The DOT on numerous occasions has formally submitted legislation to reform the hours of service law, supplement it with fatigue management requirements, or authorize the FRA to prescribe regulations on fatigue in light of current scientific knowledge. Currently, the statute contains no substantive rulemaking authority over duty hours. The 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 fa-

Hearing on Rail Safety Legislation

On May 8, 2007, the Subcommittee met to receive testimony on pending rail safety legislation. The FRA was last reauthorized in 1994; that authorization expired in 1998. Following the previous reauthorization, the Subcommittee and the previous Subcommittees that held jurisdiction over the FRA held 22 hearings on rail safety. On May 2, 2007, Chairman Oberstar and Chairwoman Brown introduced H.R. 2095, the Federal Railroad Safety Improvement Act of 2007. H.R. 2095 is a four-year reauthorization for the Federal rail safety program. It requires the Secretary to develop a long-term strategy for improving railroad safety; strengthens hours-of-service for signalmen and train crews by increasing rest time and eliminating limbo time; requires railroads to remove and maintain clear from its right-of-way at all grade crossings all vegetation that may obstruct the view of pedestrians and motor vehicle operators for a reasonable distance in either direction; requires all railroads and States to report information on grade crossings to the Secretary to enable the Secretary to update the DOT's grade crossing inventory; increases the ceiling for civil penalties for general railroad safety violations, accidents and incident violations, and hours-of-service violations; requires Class I railroads to implement positive train control systems by December 31, 2014; requires the Secretary to issue a regulation requiring railroads to manage the rail in their tracks to minimize accidents due to internal rail flaws; and requires the Secretary to establish minimum training standards for each craft of railroad employees.

At the hearing, the Administrator of the FRA urged the Subcommittee to adopt H.R. 1516, the Administration's alternative to H.R. 2095. The President of TTD supported H.R. 2095, including the provisions requiring prompt medical attention for rail workers and stronger whistleblower protections. The Teamsters Rail Conference and the United Transportation Union stated that nothing is more important to improving rail safety than the provisions in H.R. 2095 relating to worker fatigue. However, the President of the AAR expressed a number of concerns with H.R. 2095, including the provisions that dealt with worker fatigue, limbo time, and positive train control.

Hearing on Federal, State, and Local Roles in Rail Safety

On August 9, 2007, the Subcommittee held a field hearing in Norwalk, California to receive testimony on Federal, State, and local roles in rail safety. Federal, State, and local governments all play a role in rail safety. The FRA administers the Federal rail safety program. It has the authority to issue regulations and orders pertaining to rail safety and to issue civil and criminal penalties to enforce those regulations and orders. The FRA relies on 421 Federal safety inspectors and 160 State safety inspectors to monitor the railroads' compliance with the federally-mandated regulations and orders. These inspectors operate out of eight regional offices and are divided into six safety disciplines: (1) Track and Structures; (2) Signal and Train Control; (3) Motive Power and Equipment; (4) Operating Practices, which includes (5) Drug and Alcohol; and (6) Hazardous Materials. They also promote numerous initia-

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